

ESTTA Tracking number: **ESTTA695428**

Filing date: **09/11/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061981
Party	Defendant Yoel Steinberg
Correspondence Address	YOEL STEINBERG DBA CUPK KOSHER SUPERVISION 1823 53RD STREET BROOKLYN, NY 11204 UNITED STATES yoelhalevi@juno.com
Submission	Motion to Strike
Filer's Name	yoel steinberg
Filer's e-mail	yoelhalevi@juno.com
Signature	/ys/
Date	09/11/2015
Attachments	Motion to strike HIGHEST STANDARDS edited.pdf(35431 bytes) cert of serv sep11 edited.pdf(7878 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kosher Supervision Services, Inc.

Petitioner,

v.

Yoel Steinberg,

Registrant.

Cancellation No. 92061981

CONSOLIDATED MOTION TO

STRIKE MATTERS FROM THE

PLEADING (without consent¹)

Pursuant to TBMP 506.01

REGISTRANT’S MOTION TO STRIKE MATTER FROM PLEADING

I, Yoel Steinberg, Registrant for Registration No. 3830599, registered on August 10, 2010, (henceforth “my mark”) in regard to the Petition to Cancel filed by KOSHER SUPERVISION SERVICES, INC., on record as mailed on Aug 7, 2015, against registration of my trademark K (AND DESIGN) (K disclaimed), respectfully motion that paragraph 6 of the petition and the allegations contained therein be removed from consideration and stricken from the record, pursuant to TBMP 506.01 on the grounds that “*stringent standards for certifying that goods meet the highest standards of Kosher law* [emphasis added]” as stated in the allegation is not permissible as a cause for action as it refers to a Doctrine of Religion that is not Legally nor even Religiously definable, and is therefore both impermissible and insufficient as a cause for claim.

¹ My humble apologies are offered to both The Board and to the adversary in my not seeking adversary’s prior consent to this motion. My not seeking prior consent is not due to any lack of courtesy but rather to avoid the disadvantageous position of contacting the adversary before having representation of counsel. The adversary should also note paragraphs 3,4,5,6 later in this motion to realize why it is in its interest to consent to this motion

STATEMENT OF FACTS

KOSHER LAW is perceived by the public to be a body of laws the observance of which is part of the Religious Practice of Judaism. The body of KOSHER LAW is a Religious Doctrine outlined in Scripture, Talmud, Rabbinical Literature and Tradition. To the Faithful, it is a Historical fact that KOSHER LAW is sourced in Divine Revelation through the Prime Prophet Moses, and was transmitted via Tradition to contemporary times, along with Rabbinical safeguards later instituted as authorized by Divine Revelation. Questions of whether any particular product is compliant with KOSHER LAW are presumed to be referred to knowledgeable and G-d fearing experts such as rabbis. KOSHER LAW applies at least in part to whether food is religiously permissible to be eaten (or drunk).

Petitioner asserts (as implied by the allegation) in paragraph 6 of the petition that there exist “standards” of Kosher law. Petitioner further asserts (as implied by the allegation) that there is a “highest” standard of kosher law, and that its “standards” is “stringent” and “highest”. Petitioner wants to base its cause for claim on such assertions.

GROUND FOR MOTION

1. It is self evident that “highest standard of Kosher law” is not a definable term of Law², nor of Rabbinic Literature³, nor is it uniformly defined or identified even in commerce. It

² Even within the States which do have Kosher Law Statutes, there is no such definition for a “Highest” standard.

³ The Talmud Hagiga mentions certain “standards of certification” for food (e.g. “al taharas hakodesh”, “al taharas hatrumah”) which although do have somewhat of a certification process described elsewhere in The Talmud (Taharos), these standards are simply impossible to comply with during modern times. From a practical point of view

is also an obvious logical impossibility for any standard to be “highest” since any “standard” can always be improved upon to create an even higher standard ad absurdum. As such, the allegation of paragraph 6 of the petition would not be actionable even if it were admitted into consideration at the trial for this cause. The allegation is therefore insufficient.

2. Furthermore, If the allegations contained in paragraph 6 of the petition were not removed from consideration, then The Board would be in the awkward position of applying Religious Doctrine and determining matters of Religious law: whether each and all of the products that Petitioner’s asserts its mark appears on do or do not “meet the highest standards of Kosher law”, and whether or not the standards which apply to the kosher status of those products are indeed “stringent” and “highest”, and whether or not there exist additional “standards of Kosher law” that are even higher than those which apply to products on which Petitioner’s asserted mark appears on. The allegation is therefore impermissible since The Board as a Governmental Body would not be permitted to involve itself in determining Doctrines of Religion. This involvement is contrary to the First Amendment of The Constitution of The United States of America. This involvement would also be contrary to the intent of the Law which gives The Board it Authority, since the intent of the Lanham Act was stipulated as applying to commerce as it may be regulated by Congress. And any US Trademark Law which The Board must determine is based on Congressional Authority to regulate commerce. This Authority of The Board however does not extend to matters of religion that are beyond the scope

the only way to observe a “highest standard” of “kosher” would then be not to eat any food at all!

of Congressional Authority to regulate commerce.

3. Moreover, If the allegations contained in paragraph 6 of the petition were not removed from consideration, The Board would also be in the awkward position of determining whether Petitioner's assertion is even contradicted by Petitioner's own website in the glossary and in Petitioner's other publication(s) there which to information and belief concede what in my opinion, and in the opinion of many, are numerous shortcomings, leniencies, and loopholes of Kosher law (a.k.a. Halocha) used in the standard of kosher for products certified by Petitioner's mark. Petitioner would then need to address the kosher standard referred to in its website glossary page as "cholv stam"⁴ vis a vis the more "stringent" and "higher" "standard" referred to in its website as "cholv yisrael"⁵, and that the glossary even concedes that unless otherwise indicated, dairy products certified as kosher are presumed not to comply with this "higher" "standard" of "cholv yisrael", And similar discussions as they may be applied to other "higher" "standards" of kosher mentioned⁶ in that website glossary page, and in regard to additional "standards" of kosher not mentioned in that webpage.

4. Moreover, If the allegations contained in paragraph 6 of the petition were not removed from consideration, The Board would also be in the awkward position of determining whether it is commercially perceived among a significant populace among kosher consumers that even the members of Petitioner's own Rabbinical advisory board will not accept the "standard for kosher" of many products certified by Petitioner's mark as those products fall

⁴ The webpage there defines what the term is supposed to refer to.

⁵ The webpage there defines what the term is supposed to refer to.

⁶ "Pas palter" "Choshdosh" [sic] etc.

short of the rabbi's own personal "standard for kosher".

5. In short, puffery (or perhaps even false claims in advertising) have no place at a Federal proceeding at the TTAB. And allegations which assert such puffery are insufficient as a cause for complaint, and are impermissible.

6. Petitioner should also pause to reconsider its claims of what the public and trade "recognizes" about the goods it certifies, and whether it really wants us to go through that door⁷ at the trial. Although I reserve right to address these issues in my answer and counter-claim, and at later stages of this proceeding, Petitioner should agree to consent to this motion of striking paragraph 6 of the petition from the pleading, so that Answering to paragraph 6 will not be necessary.

7. Moreover, even the text itself of paragraph 6 of the Petition must be stricken from the record because allowing Religious Doctrine into the record of a Federal Proceeding as a cause for complaint would be recognizing an Institution of Religion, in violation of The First Amendment of The Constitution of The United States of America.

CITATIONS

TBMP 506 Motion to Strike Matter From Pleading

Fed. R. Civ. P. 12(f) Motion to Strike. *The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading ...*

506.01 Nature of Motion

Upon motion, or upon its own initiative, the Board may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

The Board also has the authority to strike an impermissible or insufficient claim or portion of a claim from a pleading.

⁷ Upon information and belief, Petitioner's mark certifies a brand of "Bacon and Maple flavored potato Chips".

Motions to strike are not favored, and matter will not be stricken unless it clearly has no bearing upon the issues in the case. ... Nevertheless, the Board grants motions to strike in appropriate cases.

US CONSTITUTION

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

15 USC §1127. CONSTRUCTION AND DEFINITIONS; INTENT OF CHAPTER

*In the construction of this Act, unless the contrary is plainly apparent from the context--
...The word "commerce" means all commerce which may lawfully be regulated by Congress. ...
The intent of this Act is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations. [Emphasis added. Omissions indicated by the ellipses]*

US Court of Appeals, Second Circuit, Kommack Self Service Kosher Meats Inc vs. Weiss
Docket No.s 00-9116, 00-9118 Decided May 21 2002

Respectfully submitted,

Dated Sept 11, 2105

By:



Yoel Steinberg
D/B/A CupK Kosher Supervision
1823 53rd Street
Brooklyn, NY, 11204
Phone (718) 232-4275
Registrant/Respondant

CERTIFICATE OF SERVICE UNDER 37 CFR § § 2.111

I hereby certify that the foregoing Motion To Strike Matter From Pleading, in regard to the Proceedings of Cancellation No. 92061981, has been served via first class mail upon Petitioner on September 11, 2015, at Petitioner's address as reflected in the records of The United States Trademark Office as follows:

MICHAEL R FRISCIA
MCCARTER & ENGLISH, LLP
FOUR GATEWAY CENTER, 100 MULBERRY STREET
NEWARK, NJ 07102-4056 UNITED STATES

Date: September 11, 2015

Yoel Steinberg