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

Proceeding	92061981
Party	Plaintiff Kosher Supervision Service, Inc.
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Attachments	Brief in Opposition to Respondent's Motion to Strike.pdf(265631 bytes)

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

In the Matter of Trademark Registration No.: 3,830,599

For the Mark:



Registration Date: August 10, 2010

KOSHER SUPERVISION SERVICE,)
INC. and KOSHER SUPERVISION)
SERVICES INC.)

Petitioner,)

v.)

YOEL STEINBERG D/B/A)
CUPK KOSHER SUPERVISION)

Respondent.)

CANCELLATION NO. 92061981

BRIEF IN OPPOSITION TO RESPONDENT’S MOTION TO STRIKE

Kosher Supervision Service, Inc. and Kosher Supervision Services Inc.¹ (collectively, “Petitioner”) submit this brief in opposition to Respondent’s Motion to Strike paragraph 6 of the Petition for Cancellation (“Motion”). Respondent’s Motion should be denied on its merits.

Under Federal Rule of Civil Procedure 12(f), “[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.

¹ Kosher Supervision Service, Inc. and Kosher Supervision Services Inc. are the same entity. Kosher Supervision Services Inc. is the owner name listed on U.S. Registration No. 927,067 but this name contains a typographical error. Petitioner intends to file a request to correct the owner name on U.S. Registration No. 927,067 to Kosher Supervision Service, Inc.

Civ. P. 12(f)). It is important to note the purpose of the Rule: “[t]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial” *Barnes & Noble, Inc. v. LSI Corp.*, 849 F. Supp. 2d 925, 928 (N.D. Cal. 2012) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)); see also *Operating Eng’rs Local 324 Health Care Plan v. G & W Const. Co.*, 783 F.3d 1045, 1050 (6th Cir. 2015) (internal citations omitted). Consistent with that limited purpose, “motions to strike are viewed with disfavor and are not frequently granted.” *Operating Eng’rs Local 324 Health Care Plan*, 783 F.3d at 1050 (citing *Brown & Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir. 1953); *Lunsford v. United States*, 570 F.2d 221, 229 (8th Cir. 1977)). In fact, “[a] motion to strike should not be granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation.” *U.S. ex rel. Ruhe v. Masimo Corp.*, 929 F. Supp. 2d 1033, 1038 (C.D. Cal. 2012) (internal citation omitted); see also *Operating Eng’rs Local 324 Health Care Plan*, 783 F.3d at 1050. Moreover, when ruling on a motion to strike, “a court views the pleading under attack in the light most favorable to the nonmoving party.” *Barnes & Noble, Inc.*, 849 F. Supp. 2d at 928-29 (internal citation omitted).

Here, Petitioner’s allegations in paragraph 6 of the Petition for Cancellation bear centrally on Petitioner’s claims of likelihood of confusion and dilution, which are the bases of the Petition. An important factor that courts consider in determining whether a likelihood of confusion exists is the strength or fame of the senior user’s mark. See *Interpace Corporation v. Lapp, Inc.*, 721 F.2d 460, 463 (3d Cir. 1983); *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir. 1961); *Application of E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361

(C.C.P.A. 1973). Also, a key factor that courts consider in evaluating a claim of trademark dilution is the degree of recognition of a famous mark. *See* 15 U.S.C. § 1125(c)(2)(B)(iv). Petitioner's allegations in paragraph 6 demonstrate that Petitioner's Marks are very strong and widely recognized by the public due to "extensive promotion, advertising and provision of high-quality goods in connection with Petitioner's Marks for over 40 years," which has resulted in "the public and the trade . . . recogniz[ing] goods offered in connection with Petitioner's Marks as signifying Petitioner" and the stringent standards that Petitioner's certification marks represent. Petition for Cancellation at ¶ 6.

Furthermore, there is nothing to suggest that the allegations in paragraph 6 are either "redundant, immaterial, impertinent, or scandalous." "Immaterial" has been defined as that which "has no essential or important relationship to the claim for relief or the defenses being pleaded." *Consumer Solutions REO, LLC v. Hillery*, 658 F. Supp. 2d 1002, 1020 (N.D. Cal. 2009) (quoting *Fantasy, Inc.*, 984 F.2d at 1527). "Impertinent" material is "statements that do not pertain, and are not necessary, to the issues in question." *Id.* (internal citations omitted). "Scandalous" matters are "allegations that unnecessarily reflect[] on the moral character of an individual or state[] anything in repulsive language that detracts from the dignity of the court." *Id.* (internal citations omitted). Finally, "redundant," under its plain meaning, suggests material that "does not appear anywhere else in the [pleading]." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010) (noting that Federal Rules are interpreted by the rules' "plain meaning" and finding material not to be redundant because it did not appear anywhere else in the complaint).

The allegations in paragraph 6 are none of these things. They provide important support for Petitioner’s claims that Respondent’s Registration has caused a likelihood of confusion with and dilution of Petitioner’s Marks and therefore should be cancelled. Consequently, it is not the case that these allegations “have no possible bearing on the subject matter of the litigation.” Nor can it rightly be said that the allegations in paragraph 6 present “spurious issues” that will lead to the needless expenditure of time and money because these allegations bear centrally on Petitioner’s claims of likelihood of confusion and dilution. Granting Respondent’s motion, therefore, would not advance the purpose of Rule 12(f).

Further, while Federal Rule of Civil Procedure 8 requires that a pleading set forth “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), a pleader must be careful not to make its statement too short or too plain. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Indeed, the Supreme Court has stated that “a plaintiff’s obligations to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do Factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (internal citations omitted). Discussing this standard, *Iqbal* further instructs that a pleading “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570). In particular, *Iqbal* stresses that this requires a pleader to *show* that it is entitled to the relief sought. *Id.* at 679 (“where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief”). *See also* Fed. R. Civ. P.

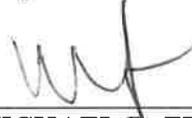
8(a)(2) (requiring a “short and plain statement of the claim *showing* that the pleader is entitled to relief”) (emphasis added).

In accordance with these principals, Petitioner’s allegations in paragraph 6 of the Petition for Cancellation were intended to provide “sufficient factual matter” to show that Petitioner’s claims of likelihood of confusion and dilution are plausible and that Petitioner’s right to relief is not merely speculative.

CONCLUSION

Accordingly, the Board should deny Respondent’s Motion to Strike.

Respectfully submitted,



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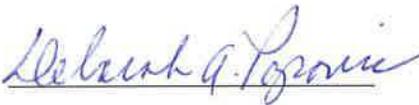
Dated: October 1, 2015

CERTIFICATE OF SERVICE UNDER 37 CFR §§ 2.111

I hereby certify that the foregoing Brief in Opposition to Respondent's Motion to Strike has been served via first class mail upon the Respondent on October 1, 2015, at the Respondent's address as reflected in the records of the U.S. Patent & Trademark Office, as follows:

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Date: October 1, 2015


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