

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: April 8, 2016

Cancellation No. 92062783

First Opinion, Inc.

v.

First Opinion Corporation

**Robert H. Coggins,  
Interlocutory Attorney:**

Before the Board is Petitioner's motion (filed April 6, 2016) to strike Respondent's affirmative defenses. The Board exercises its discretion to determine the motion prior to the time in which Respondent might otherwise file a written response thereto. Fed. R. Civ. P. 12(f).

Claims and Defenses

The petition for cancellation alleges abandonment as the sole ground for cancelling Registration No. 1335327, and abandonment and fraud as two grounds for cancelling Registration No. 1644040. In the answer, Respondent alleged the following "first affirmative defense":

Registrant alleges that Petition is barred from bringing this cancellation by the doctrines of waiver, estoppel, laches, and/or acquiescence.

Motion to Strike

Petitioner moves to strike Respondent's "first affirmative defense" which lists the four defenses of waiver, estoppel, laches, and acquiescence.

The Board may strike from a pleading any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter. *See* Fed. R. Civ. P. 12(f); *Am. Vitamin Prods. Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992); TBMP § 506.01 (2015). Motions to strike are not favored, and as such, a defense will not be stricken as insufficient if the insufficiency is not clearly apparent, or if it raises factual issues that should be determined on the merits. *See* TBMP § 506.01.

Affirmative defenses, like claims in a petition for cancellation, must be supported by enough factual background and detail to fairly place Petitioner on notice of the basis for the defenses. *See IdeasOne Inc. v. Nationwide Better Health Inc.*, 89 USPQ2d 1952, 1953 (TTAB 2009); *Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1289 (TTAB 1999) (primary purpose of pleadings "is to give fair notice of the claims or defenses asserted"). *See also* TBMP § 311.02(b) and the cases cited therein at [Note 15]. Respondent must allege sufficient facts beyond a tender of "naked assertion[s]" devoid of "further factual enhancement," to support its defenses. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), *quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The nakedly pleaded defenses of "waiver, estoppel, laches, and/or acquiescence" in the current Answer fail to meet that standard because they are bald, conclusory allegations which are not supported by any facts; they are, therefore, clearly insufficient. Moreover, the equitable defenses of laches and acquiescence are not

available against abandonment or fraud claims. *See Saint-Gobain Abrasives, Inc. v. Unova Indus. Automation Sys. Inc.*, 66 USPQ2d 1355, 1359 (TTAB 2003). In view thereof, the motion to strike is **granted** as well taken to the extent it seeks to strike Respondent's "first affirmative defense" of waiver, estoppel, laches, and acquiescence.

The Board freely gives leave to amend pleadings when justice so requires. Fed. R. Civ. P. 15(a)(2). Accordingly, Respondent is allowed until **April 22, 2016**, in which to file an amended Answer which pleads, with sufficient detail and supporting facts, any available affirmative defense Respondent may have a reasonable basis for alleging; failing which, this proceeding will continue on the original Answer, as stricken. In view thereof, the motion to strike is **denied** to the extent it seeks to prevent Respondent from re-alleging any available defense.

### Schedule

Dates are reset on the following schedule:

Amended Answer Due, if Filed	4/22/2016
Deadline for Discovery Conference	5/6/2016
Discovery Opens	5/6/2016
Initial Disclosures Due	6/5/2016
Expert Disclosures Due	10/3/2016
Discovery Closes	11/2/2016
Plaintiff's Pretrial Disclosures	12/17/2016
Plaintiff's 30-day Trial Period Ends	1/31/2017
Defendant's Pretrial Disclosures	2/15/2017
Defendant's 30-day Trial Period Ends	4/1/2017
Plaintiff's Rebuttal Disclosures	4/16/2017
Plaintiff's 15-day Rebuttal Period Ends	5/16/2017

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after

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completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.