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

In the matter of
Serial No. 78/302,599
Date of Publication: January 4, 2005
Mark: RESERVA SELECTO VIII

_____)	
C.A.T. TOBACCO CORPORATION,)	
)	
Opposer,)	
)	Opposition No. 91164950
v.)	
)	
ANNCAS, INC.,)	
)	
Applicant.)	
_____)	

OPPOSITION TO MOTION TO STRIKE

Opposer C.A.T. Tobacco Corporation, by its undersigned counsel, in opposition to Applicant's Motion to Strike, states as follows:

Applicant has moved to strike Paragraphs 2 and 3 of the Notice of Opposition. Those paragraphs refer to Opposer's registrations and pending applications for its various CARLOS TORAÑO® marks, other than its CARLOS TORAÑO RESERVA SELECTA mark. Applicant contends that these marks are not relevant to any issue in this case and should be stricken from the Notice of Opposition. For the reasons set forth below, Applicant's Motion should be denied.

I. The Standard On A Motion To Strike

Applicant's Motion to Strike is based upon Federal Rule of Civil Procedure 12(f) which provides:

Upon motion made by a party . . . , the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.



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Under the Federal Rules of Civil Procedure, as incorporated into the rules applicable herein, however, the purpose of a complaint – or a notice of opposition -- is to give fair notice of the claims asserted. *Ohio State University v. Ohio University*, 51 U.S.P.Q.2d 1289, 1292 (TTAB 1999); *Harsco Corp. v. Electrical Sciences, Inc.*, 9 U.S.P.Q.2d 1570, 1571 (TTAB 1988) (a party is allowed reasonable latitude in its statement of claims); *McDonnell Douglas Corp. v. National Data Corp.*, 228 U.S.P.Q. 45, 47 (TTAB 1985). *See also* TBMP § 309.03 (Substance of Complaint).

Accordingly, motions to strike are not favored. For that reason, matter will not be stricken unless it clearly has no bearing upon the issues in the case. *Ohio State University v. Ohio University*, *supra*, 51 U.S.P.Q.2d at 1292 (TTAB 1999); *Harsco Corp. v. Electrical Sciences, Inc.*, *supra*, 9 U.S.P.Q.2d at 1571; *Leon Shaffer Golnick Advertising, Inc. v. William G. Pendill Marketing Co.*, 177 U.S.P.Q. 401, 402 (TTAB 1973).

Indeed, the Board, in its discretion, may decline to strike even objectionable pleadings where their inclusion will not prejudice the adverse party, but rather will provide fuller notice of the basis for a claim or defense. *Ohio State University v. Ohio University*, *supra*, 51 U.S.P.Q.2d at 1292 (denying motion to strike affirmative defense that provides notice of party's position); *Order of Sons of Italy in America v. Profumi Fratell I Nostra AG*, 36 U.S.P.Q.2d 1221, 1223 (TTAB 1995) (denying motion to strike amplification of applicant's denial of opposer's claims); *Harsco Corp. v. Electrical Sciences, Inc.*, *supra*, 9 U.S.P.Q.2d at 1572 (motion to strike denied where allegations bear on use of mark and give respondent a more complete notice of the claims; reasonable latitude is permitted in statement of claims).

II. The Allegations Regarding Opposer's CARLOS TORAÑO® Family Of Marks Are Relevant To Whether There Is A Likelihood Of Confusion Between CARLOS TORAÑO RESERVA SELECTA Cigars And RESERVA SELECTO VIII Cigars

As stated in the Notice of Opposition, Opposer C.A.T. manufactures a number of different types of cigars that it promotes and distributes under the CARLOS TORAÑO® family of marks, including the cigars that are identified in Paragraphs 2 and 3 of the Notice of Opposition. Opposer alleges that, as a result, in order to distinguish Opposer C.A.T.'s CARLOS TORAÑO RESERVA SELECTA cigars from other CARLOS TORAÑO® brand cigars, consumers, including customers and retailers, are likely to shorten the mark CARLOS TORAÑO RESERVA SELECTA to "RESERVA SELECTA," further increasing the likelihood with cigars sold by Applicant under the mark RESERVA SELECTO VIII. Notice of Opposition ¶ 4.

There is nothing "redundant, immaterial, impertinent, or scandalous" about the allegations of Paragraphs 2 and 3 of the Notice of Opposition. To the contrary, the statements in Paragraphs 2 and 3 manifestly bear upon one aspect of the issue of likelihood of confusion.

Disregarding the patent bearing of these allegations on Opposer's claims, Applicant argues that Opposer has included these allegations to try to raise an issue of priority, but that, because the marks identified in Paragraphs 2 and 3 are not confusingly similar to Opposer's Mark, they are immaterial to the issues in the case. While Opposer has alleged priority, it is based on the fact that Opposer's first use of its CARLOS TORAÑO RESERVA SELECTA mark took place well before the filing of Applicant's intent-to-use application. Applicant's unjustifiable effort to avoid Opposer's priority

through a Motion to Strike directed to unrelated allegations should not be allowed and its motion should be denied.

III. CONCLUSION

For the reasons set forth above, Applicant's Motion to Strike should be summarily denied.

Respectfully submitted,

C.A.T. TOBACCO CORPORATION

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June 7, 2005

CERTIFICATE OF DELIVERY

I hereby certify that the foregoing Opposition to Applicant's Motion to Strike is being hand-delivered to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, Madison East, Concourse Level Room C 55, 600 Dulany Street, Alexandria, VA 22314, this 7th day of June 2005.

Mitchell H. Stabbe

Mitchell H. Stabbe

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Applicant's Motion to Strike was served on the following person, at his said address, by first class mail, postage prepaid, on this 7th day of June, 2005:

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