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

Proceeding	91177845
Party	Plaintiff Michelle D. Mace
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Submission	Motion to Strike
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Attachments	Motion to Strike Answer.doc.pdf (3 pages)(513501 bytes)

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

In the matter of: Trademark Application Serial No. 78/935344

For the mark: BAMBOO2GO

Published in the Official Gazette: June 12, 2007

Opposition No.: 91177845

MICHELLE D. MACE

Opposer,

v.

2 TOUCH COMPANY,
a Florida corporation

Applicant.

**OPPOSER'S MOTION TO STRIKE APPLICANT'S ANSWER
AND MEMORANDUM OF LAW**

Opposer, MICHELLE D. MACE ("Opposer"), by and through her undersigned counsel, files this, her Motion to Strike Applicant's, 2 TOUCH COMPANY (hereinafter "Applicant"), Answer and Memorandum of Law and in support states as follows:

1. On July 24, 2007, within forty (40) days of being served with the Notice of Opposition, Applicant filed its Answer to Opposer's Notice of Opposition.
2. Applicant's Answer does not comply with the Federal Rules of Civil Procedure or the Code of Federal Regulations and Opposer is unable to determine whether Applicant admits or denies the allegations set forth in the Notice of Opposition.
3. Further, Applicant's Answer is improper as to form as set forth in 37

C.F.R. § 2.126.

Memorandum of Law

4. Rule 8 of the *Federal Rules of Civil Procedure* states in pertinent part as follows:

[A party] shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it is true and material and shall deny only the remainder.

5. A court may order stricken from any pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. R. 12(f).

6. Pursuant to 37 C.F.R. § 2.106(b)(1), “[a]n answer shall state in short and plain terms the applicant’s defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies.”

7. Applicant has failed entirely to respond to the averments contained in Opposer’s Notice of Opposition. Instead, Applicant has set forth what appear to be affirmative defenses which are extraneous to the averments set forth in Opposer’s Notice of Opposition.

8. Applicant may not simply refuse to provide an answer to the allegations in the Notice of Opposition. As to all allegations, Applicant must either admit them, deny them or disclaim all knowledge of them. A failure to deny an allegation may be deemed an admitted.

9. Additionally, Applicant’s Answer is not in the proper form as set forth in 37 C.F.R. § 2.126.

10. Therefore, Applicant’s Answer must be stricken in its entirety or all

averments contained in Opposer's Notice of Opposition deemed admitted.

WHEREFORE, Opposer MICHELLE D. MACE respectfully requests that Applicants, 2 TOUCH COMPANY's Answer be stricken in its entirety.


Dated: August 6, 2007

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6, 2007 a true and correct copy of the foregoing was furnished to The United States Patent and Trademark Office Before the Trademark Trial and Appeal Board via electronic filing and to 2 Touch Company, P.O. Box 31, Nokomis, FL 34274, twotouch@verizon.net via email and First Class Mail.

By 
Edward M. Livingston, Esq.