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

Proceeding	91181492
Party	Plaintiff BIG O TIRES, INC.
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Submission	Motion to Strike
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BIG O TIRES, LLC,

Opposer,

vs.

GLOBAL POWER TECH INC.,

Applicant.

Opposition No. 91181492

**OPPOSER'S MOTION TO STRIKE
APPLICANT'S "ANSWER TO OPPOSITION"**

COMES NOW the Opposer, Big O Tires, LLC ("Big O"), and hereby moves the Trademark Trial and Appeal Board ("Board") to strike the "Answer to Opposition" filed herein by Applicant. In support of its Motion, Big O submits the following.

On December 26, 2007, Opposer Big O filed its Notice of Opposition herein. The Notice of Opposition consists of eight numbered paragraphs setting forth the basis of Big O's opposition claims.

On April 1, 2008, Applicant filed – but did not serve¹ – "Answer to Opposition" (hereinafter referred to as "Answer"). However, the Answer – a single paragraph comprising seven lines – does not state, as to each of the allegations contained in the Notice of Opposition, that the allegation is either admitted or denied. The Answer does not contain admissions or denials corresponding to the numbered paragraphs in the Notice of Opposition. Instead, the very brief Answer attempts to argue the merits of the opposition.

¹ On April 11, 2008, the Board issued an order noting that Applicant's Answer failed to include proof of service on Opposer's counsel; and forwarding same to Opposer's counsel.

Applicant's Answer plainly does not comport with the requirements of F.R.Civ. P. 8(b), and therefore should be rejected by the Board. *See Thrifty Corp. v. Bomax Enterprises*, 228 USPQ 62, 63 (TTAB 1985). *See also* TTAB Manual of Procedure §311.02(a) (footnote omitted):

The defendant should not argue the merits of the allegations in a complaint but rather should state, as to each of the allegations contained in the complaint, that the allegation is either admitted or denied. If the defendant does not have sufficient information to admit or deny an allegation, the defendant may so state, and this statement will have the effect of a denial as to that allegation. If the complaint consists of numbered paragraphs setting forth the basis of plaintiff's claim of damage, the defendant's admissions or denials should be made in numbered paragraphs corresponding to the numbered paragraphs in the complaint.


It is incumbent on Applicant to answer each of the numbered paragraphs 1 through 8 of the Notice of Opposition herein by specifically admitting or denying the allegation(s) contained in each one. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any of the allegations, it should so state. *See Thrifty Corp. v. Bomax Enterprises, supra*. This is important not only to enable Opposer Big O to determine which of its factual allegations are contested (and therefore, for which further proof is required), but also to relieve the Board of the unnecessary burden of "interpreting" Applicant's Answer. *Cf. Turner Entertainment Co. v. Kent Nelson*, 38 USPQ2d 1942 (TTAB 1996) (applicant's answers were argumentative and non responsive and Board was ultimately forced to interpret the answer).

Accordingly, Opposer respectfully submits that its Motion to strike should be granted; that Applicant should be directed to file an appropriate Answer conforming to F.R.Civ.P. 8(b) within twenty (20) days after the date of the Board's Order, and that all remaining dates in the opposition be reset accordingly.

Respectfully Submitted,

BIG O TIRES, LLC

By:



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Dated: April 18, 2008
Attorney Docket No. I-5728

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of April, 2008, a true copy of the foregoing OPPOSER'S MOTION TO STRIKE APPLICANT'S "ANSWER" TO THE NOTICE OF OPPOSITION was served by upon Applicant by:

- email at grtcanada@yahoo.com; and
- first-class mail, postage prepaid at:

Global Power Tech., Inc.
c/o Jessie Laba
744 Woods Lane
Grosse Pointe, Michigan 48236

