

ESTTA Tracking number: **ESTTA385096**

Filing date: **12/21/2010**

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

Proceeding	91191601
Party	Plaintiff The Laryngeal Mask Company Limited
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Submission	Motion to Strike
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Date	12/21/2010
Attachments	Opposers Motion to Strike Applicants Opposition to MSJ.PDF ( 5 pages ) (132307 bytes )

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

In the Matter of App. Serial No.: 78/448,067  
Mark: C-LMA

THE LARYNGEAL MASK COMPANY LTD. <p style="text-align:right">Opposer,</p>	)	
v.	)	Opposition No. 91191601
ANIBAL DE OLIVEIRA FORTUNA <p style="text-align:right">Applicant.</p>	)	

**OPPOSER’S MOTION TO STRIKE APPLICANT’S OPPOSITION TO OPPOSER’S  
MOTION FOR SUMMARY JUDGMENT**

The Laryngeal Mask Company Ltd. (“Opposer”) moves, pursuant to the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 517, to strike Anibal de Oliveira Fortuna’s (“Applicant”) Opposition Against Opposer’s Motion for a Summary Judgment as untimely. Applicant’s filing comes 17 days after any such response was due, under Trademark Rule 2.127(e)(1). Accordingly, Applicant’s response should be stricken and given no consideration by the Board.

1. On October 29, 2010, Opposer timely filed and served its Motion for Summary Judgment, prior to the beginning of Opposer’s trial period, which was at that time set for December 15, 2010.

2. Pursuant to Trademark Rule 2.127(e)(1) and TBMP § 502.02(b), “a brief in response to a motion for summary judgment *shall/must* be filed within 30 days from the date of service of the summary judgment motion” (emphasis added).<sup>1</sup>

3. Applicant never requested any extension of time to respond to Opposer’s Motion for Summary Judgment. Nor did Applicant file a motion seeking to extend his deadline for responding to Opposer’s motion with the Board, and the Board did not issue any order extending Applicant’s time to respond to this motion.

4. Therefore, Applicant was required to file and serve his response to Opposer’s Motion for Summary Judgment, if any, by no later than November 29, 2010.<sup>2</sup>

5. On December 16, 2010, Applicant filed an Opposition Against Opposer’s Motion for a Summary Judgment, 17 days after such response was due.

6. Applicant’s disregard for deadlines in this proceeding and been persistent and egregious. As detailed in Opposer’s Response To Applicant’s Opposition Against Deem Acceptance Of Opposer’s Third Request For Admissions of even date and Opposer’s September 24, 2010 Motion to Deem Admitted Opposer’s Second and Third Requests for Admissions, has already caused substantial delay and expense for Opposer. Among the deadlines which Applicant has failed to meet in this proceeding: Applicant’s initial disclosures (never issued); Applicant’s reply to Opposer’s March 23, 2010 letter raising deficiencies in Applicant’s discovery responses and follow-up letter dated April 9, 2010 (Applicant first ignored Opposer’s correspondence, then flatly refused to discuss the issues raised); Applicant’s response to

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<sup>1</sup> While the Trademark Rule uses the term “shall” and the TBMP uses the term “must,” both terms are equally obligatory.

<sup>2</sup> Applicant’s 30 day deadline would have been November 28, 2010, but this date fell on a Sunday, so Applicant was afforded an additional day to respond pursuant to 37 CFR § 2.196.

Opposer's Second Request for Admissions (purported responses more than four months late - deemed admitted by operation of law); Applicant's response to Opposer's Third Requests for Admissions (purported responses three days late - deemed admitted by operation of law); Applicant's First Request for Admissions (served 20 days after the close of discovery; disallowed in Board's December 16, 2010 Order); Applicant's motion to reopen the discovery period (filed more than two months after the close of discovery; motion denied in Board's December 16, 2010 Order); and Applicant's motion to withdraw certain admissions (filed more than two months after Applicant was put on notice in Board's October 5, 2010 Order that his admissions were effective as a matter of law; motion filed after Opposer filed its motion for summary judgment and after Applicant's period for responding to that motion expired).

7. As the Board stated in its December 16, 2010 order, "[s]trict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel."

8. Given Applicant's continued disregard of deadlines set forth in Orders of the Board and by Rule, including his failure to timely respond to Opposer's Motion for Summary Judgment as required by Trademark Rule 2.127(e)(1), Opposer requests that Applicant's Opposition Against Opposer's Motion for a Summary Judgment and supporting brief be stricken and given no consideration by the Board.

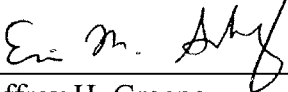
9. Throughout Applicant's untimely opposition to Opposer's summary judgment motion, Applicant assumes that his motion to withdraw admissions will be granted.

Accordingly, if the Board for any reason sees fit not to strike Applicant's Opposition Against Opposer's Motion for a Summary Judgment, the arguments Opposer will make in reply will largely depend on the outcome of Applicant's pending motion to withdraw his admissions.

10. For this reason, Opposer respectfully requests that if the Board denies Opposer's motion to strike, that it continue the deadline for Opposer to file its reply brief to Applicant's summary judgment opposition until an order is issued on Applicant's December 10, 2010 motion to withdraw certain admissions, a response to which was filed today, December 21, 2010.

Respectfully submitted,

FOLEY & LARDNER LLP

By:  \_\_\_\_\_

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*Attorneys for Opposer*

Dated: New York, New York  
December 21, 2010

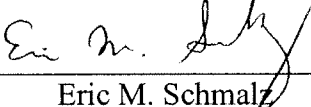
**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION TO STRIKE APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT** was deposited via first class airmail with the U.S. postal service, postage prepaid, in an envelope addressed to Applicant:

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-001 Santos, SP Brazil

and sent to him via electronic mail at the address "anibal.fortuna@uol.com.br."

Dated: December 21, 2010

  
Eric M. Schmalz