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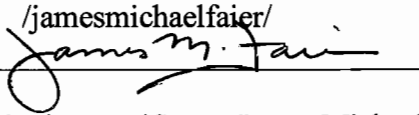
Filing date: **09/18/2013**

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

Proceeding	91211162
Party	Plaintiff Jongkind Grond B.V.
Correspondence Address	JAMES MICHAEL FAIER FAIER & FAIER PC 566 W ADAMS ST, SUITE 600 CHICAGO, IL 60661 UNITED STATES jmfaier@faier.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	09/18/2013
Attachments	TTAB_91211162_Jongkind_Grond_v_Green_Rain_Motion_Dismiss_Answer.pdf (33077 bytes )

Certificate of Mailing under 37 C.F.R. 2.197

I certify that this Notice of Opposition is being filed via the ESTTA system of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office on 18 September 2013

signature: <sup>/jamesmichaelfaier/</sup>  


name of person signing certificate: James Michael Faier.  
signed 18 September 2013

**In the United States Patent and Trademark Office  
Before the Trademark Trial and Appeal Board**

<b>Jongkind Grond BV,</b>		<b>Opposition No. 91211162</b>
<b>a limited liability company,</b>		
<b>Opposer,</b>		
<b>vs.</b>		
<b>Green Rain Inc.,</b>		
<b>a Nevada corporation,</b>		
<b>Applicant.</b>		

**Combined Motion to Dismiss for Failure to State a Claim and, in the Alternative, Answer to Counterclaim Petition to Cancel U.S.P.T.O. Regn. No. 4,051,374**

Opposer, Jongkind Grond B.V., here moves that the Board Dismiss the counterclaim filed in this action for failing to state a claim upon which relief might be granted. In the alternative, if the Board holds that the counterclaim as filed appropriately sets forth a clause of action, then Opposer asks that the Answer be entered in the record.

Applicant states its counterclaim in a manner that should be found to fail to meet minimum

drafting requirements of a complaint. Applicant pleads a counterclaim where the first statement is:

Applicant repeats and reallages [sic] each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

Looking to the Answer, Applicant provides an Answer replete with statements that might be considered allegations. Any complaint is supposed to set out allegations clearly so that they may be responded to in the Answer. The party responding to a complaint that lacks a clear allegation is left stabbing around in the dark asking, "what are the allegations?" A poorly drafted complaint fails to serve the purpose of justice that is the goal of our legal system. The partying answering a complaint should not be tasked with sifting for allegations hidden among other statements. While the rules might allow for a blanket denial, a reading of the TBMP in chapters 311 et seq. does not provide guidance that makes clear the obligations of the answering party. The rules surely do not, though, place on the answering party the sifting of allegations from other matter. Opposer asks that the Board order Applicant to make explicit the allegations it desires to raise. Opposer asks for time to respond to an amended pleading if the Board finds that Applicant should be allowed to amend and re-file a counterclaim in this matter.

**Answer**

In the alternative, Opposer, Opposer, Jongkind Grond B.V., here sets out its answer to the counterclaim Petition to Cancel U.S.P.T.O Registration 4,051,374 filed by Green Rain, Inc., Applicant, as follows:

1. With regard to the allegations of paragraph 1 of the Counterclaim, Applicant lacks knowledge or information sufficient to form a belief as to the allegations made by Applicant referred to in paragraph 1 of the Counterclaim and therefore denies same;

2. With regard to the allegations of paragraph 2 of the Counterclaim, Applicant admits same.
3. With regard to the allegations of paragraph 3 of the Counterclaim, Applicant denies same.
4. With regard to the allegations of paragraph 4 of the Counterclaim, Applicant denies same.
5. With regard to the allegations of paragraph 5 of the Counterclaim, Applicant denies same. The Board specifically states in the TBMP Section 311.02(b) that a "fair use" defense has no place in Board proceedings.
6. With regard to the allegations of paragraph 6 of the Counterclaim, Applicant denies same.

Opposer prays that the Board:

- (a) Find for the Opposer and refuse to register the SN 85728774, SN 85728792, and SN 85728756;
- (b) Refuse to cancel RN 4,051,374;
- (c) Such other relief as the Board should find appropriate and in the interests of justice.

Dated this 18<sup>th</sup> day of September 2013.

Respectfully submitted,



James Michael Faier, M.P.P., M.B.A., J.D.  
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*Attorneys for Applicant*

CERTIFICATE OF SERVICE

I, James Michael Faier, an attorney, certify that I served on this date a copy of the foregoing **Combined Motion to Dismiss for Failure to State a Claim and, in the Alternative, Answer to Counterclaim Petition to Cancel U.S.P.T.O. Regn. No. 4,051,374** upon counsel of record by depositing a copy thereof in the United States Mail, postage prepaid and addressed as follows:

DANIEL C. COTMAN, ESQ.  
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117 E COLORADO BLVD STE 460  
PASADENA, CALIFORNIA 91105-3730  
UNITED STATES

Dated this 18th day of September 2013.

/jamesmichaelfaier/

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James Michael Faier  
signed: 18 September 2013.