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

Proceeding	91239139
Party	Defendant 3 Square, Inc.
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Attachments	San Pasqual v. 3 Square - Opposition to Motion to Strike.pdf(126256 bytes)

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

SAN PASQUAL CASINO DEVELOPMENT GROUP, INC.	:	
	:	
Opposer	:	
v.	:	Opp. No. 91239139
3 SQUARE, INC.,	:	
	:	
Applicant	:	

APPLICANT'S BRIEF IN OPPOSITON TO OPPOSER'S MOTION TO STRIKE ANSWER

Applicant 3 Square, Inc. (3 Square) hereby opposes Opposer's untimely¹ Motion to Strike Applicant's Answer in its entirety. The motion has no valid basis in fact or law and should be denied for the following reasons.

The Notice of Opposition filed by Opposer San Pasqual Casino Development Group, Inc. violates Rule 8 Fed. R. Civ. P., which requires that a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought." San Pasqual's notice of opposition is not short and it contains many redundant, immaterial and impertinent statements. Indeed, it includes more than 100 paragraphs many of which: (a) seek admissions as to issues that were already resolved by the Board's decision granting 3 Square's petition to cancel San Pasqual's trademark registrations, wherein the Board recognized that 3 Square has prior rights in the mark BLD; (b) contain irrelevant factual assertions, (c) include premature discovery requests; (d) would require BLD to investigate facts that are irrelevant and/or outside of its immediate knowledge in order to admit or deny and (e) make assertions as to matters allegedly contained in the publications or in the record of the cancellation proceeding.

¹ San Pasqual admitted on the first page of its brief that it filed its motion more than 21 days after being served with 3 Square's answer to the notice of opposition.

3 Square could have moved to strike the 100 paragraph long notice of opposition but did not do so because it did not wish to waste the Board's time and cause unnecessary delay. Instead, 3 Square answered or denied all of the allegations or, in a few instances, stated that it lacked knowledge sufficient to admit or deny some of the requests. It is San Pasqual that is now delaying this proceeding by filing a groundless motion to strike the answer in its entirety. The motion is based primarily on San Pasqual's inadmissible opinion that 3 Square should not have stated that it lacked knowledge sufficient to admit or deny certain paragraphs (33, 34-38, 39, 44, 45-46, 48-54, 74). Obviously, this is not a ground for a motion to strike under Rule 12(f) Fed. R. Civ. P.

San Pasqual also objected to denials of certain paragraphs including Par. 28, which includes a contention of law, Par. 28 and 29, which allegation as to materials supposedly contained in the record below and to alleged news articles.

All of the paragraphs in question either refer to contentions of law, and/or non-germane facts, and/or allegations that would require discovery to obtain sufficient facts to admit or deny, and/or characterizations relating to documents in a prior proceeding that ultimately will speak for themselves. Accordingly, the motion to strike should be summarily denied. A party is under no obligation to engage in an extensive review of the record in the prior proceeding or of the truth of documents allegedly found in the public domain in order to admit or deny allegations relating to such documents. Similarly, a party is under no obligation to admit or deny facts as to which it would be required to conduct investigations such as whether or not a business is operating in a particular location. 3 Square properly indicated it lacked knowledge sufficient to admit or deny these and other improper allegations contained in the notice of opposition.

CONCLUSION

For the foregoing reasons, the motion to strike should be denied.

Respectfully submitted.

3 SQUARE, INC.

By: 

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Opposition to Opposer’s Motion to Strike (re Opp. No. 91239139) is being served upon Opposer’s counsel Hillary A Brooks of Brooks Quinn LLC at hillary@brooksquinn.com and docketing@brooksquinn.com on June 11, 2018.

/s/ Michael A. Grow