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

Proceeding	91239222
Party	Plaintiff Sterling Jewelers Inc.
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Submission	Motion to Strike Notice of Reliance
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Date	10/28/2019
Attachments	Motion to Strike and Objections to Evidence.pdf(175258 bytes)

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

Sterling Jewelers Inc., Opposer, v. Tat Lee, Applicant.	Opposition No.: 91239222 Mark: TITANIUM KAY Serial No.: 87435559
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**MOTION TO STRIKE IN PART APPLICANT’S NOTICE OF RELIANCE:
OPPOSER’S OBJECTIONS TO APPLICANT’S NOTICE OF RELIANCE**

Pursuant to TBMP 532 and 707, and 37 C.F.R. §§ 2.120, 2.122, and 2.123, Opposer, by and through its attorneys, respectfully submits the following objections to Applicant’s Notice of Reliance and moves to strike evidence that does not conform to the procedural requirements of the Trademark Trial and Appeal Board.

In the chart below, for each of Applicant’s exhibits to its Notice of Reliance, Opposer identifies its objection(s) and the basis for the objection(s), and if appropriate, Opposer moves to strike the exhibit.

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
101	Applicant's Banner Ads	A0102-105	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 703.01; TBMP 704.08(b)	<p>Citation to TBMP 703.01 is improper. There is no witness testimony referencing this exhibit. This exhibit has not been authenticated by Applicant and lacks foundation.</p> <p>There are no dates or web addresses on the face of the documents as required by TBMP 704.08(b) and 37 C.F.R. §2.122(e).</p> <p>Opposer moves to strike this exhibit.</p>
102	Applicant's Facebook Ads	A0109-111	37 C.F.R. § 2.116(e); 37 C.F.R. §2.122(e); TBMP 703.01; TBMP 704.08(b)	<p>Citation to TBMP 703.01 is improper. There is no witness testimony referencing this exhibit. This exhibit has not been authenticated by Applicant and lacks foundation.</p> <p>There are no dates or web addresses on the face of the documents as required by TBMP 704.08(b) and 37 C.F.R. §2.122(e).</p> <p>Opposer moves to strike this exhibit.</p>
103	Applicant's P&L statement 2014	A0113	37 C.F.R. §2.116(e); TBMP 703.01; TBMP 704.08(b)	<p>Submission of this exhibit by Applicant is improper under TBMP 703.01 and 704.08(b), but Opposer has already made this document of record in its Notice of Reliance.</p> <p>Opposer moves to strike this exhibit.</p>
104	Applicant's P&L statement 2015	A0115	37 C.F.R. §2.116(e); TBMP 703.01; TBMP 704.08(b)	<p>Submission of this exhibit by Applicant is improper under TBMP 703.01 and 704.08(b), but Opposer has already made this document of record in its Notice of Reliance.</p> <p>Opposer moves to strike this exhibit.</p>
105	Applicant's P&L statement 2016	A0118	37 C.F.R. §2.116(e); TBMP 703.01; TBMP 704.08(b)	<p>Submission of this exhibit by Applicant is improper under TBMP 703.01 and 704.08(b), but Opposer has already made this document of record in its Notice of Reliance.</p> <p>Opposer moves to strike this exhibit.</p>
106	Applicant's P&L statement 2017	A0121	37 C.F.R. §2.116(e); TBMP 703.01;	<p>Submission of this exhibit by Applicant is improper under TBMP 703.01 and 704.08(b), but Opposer has already made</p>

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
			TBMP 704.08(b)	this document of record in its Notice of Reliance. Opposer moves to strike this exhibit.
107	Affiliate marketing http://www.titaniumkay.com/affiliate.aspx	A0124-128	37 C.F.R. §2.116(e); 37 C.F.R. § 2.122(e)(2); TBMP 703.01; TBMP 704.08(b)	Submission of this exhibit by Applicant is improper under TBMP 703.01.
108	**HIGHLY CONFIDENTIAL/ ATTORNEYS' EYES ONLY** Examples of Sterling's past enforcement efforts	STERLING 0325-373	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 703.01; TBMP 704.08(b)	Submission of this exhibit by Applicant is improper under TBMP 703.01, 37 C.F.R. §2.122(e), and 704.08(b) and Applicant has not filed or served Opposer with a confidential version of this document. However, Opposer has already made this document of record in its Notice of Reliance. Opposer moves to strike this exhibit.
109	SCOTT KAY – jewelry class 14 Reg. No. 2,827,785 http://www.scottkay.com/	A0158-159	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
110	THE GUARDIAN BY SCOTT KAY jewelry class 14 Reg. No. 4,301,856	A0160-162	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
111	SCOTT KAY GUARDIAN jewelry class 14 Reg. No. 4,210,759	A0163-165	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
112	SCOTT KAY jewelry class 14 Reg. No. 5,022,610	A0166-168	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
113	EVAKAY jewelry class 14 Reg. No. 5,479,019 http://evakay.com/	A0169-171	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
114	TRU-KAY jewelry class 14 Reg. No. 5,280,454	A0172-174	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
115	TRU-KAY jewelry class 14 Reg. No. 1,267,889	A0175-176	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
116	KAYLOCHEER watches class 14 Reg. No. 5,328,552	A0177-179	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
117	JULIA KAYS jewelry class 14 Reg. No. 5,446,604 https://juliakays.com/	A0180-182	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
118	ALEXIA KAY jewelry class 14 Reg. No. 4,734,295	A0183-185	37 C.F.R. § 2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
119	KAYSHINE jewelry class 14 Reg. No. 4,738,244 http://www.kayshine.com/	A0186-188	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
120	JAYSANDKAYS jewelry class 14 Reg. No. 5,025,707	A0189-191	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
121	KAYMEN FASHION JEWELRY jewelry class 14 Reg. No. 4,997,959	A0192-194	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
122	KAY BUENA jewelry class 14 Reg. No. 4,063,091	A0195-197	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
123	RAQUEL KAY jewelry class 14 Reg. No. 4,279,847	A0198-200	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
124	DETRA KAY JEWELRY DESIGN jewelry class 14 Reg. No. 2,719,473	A0201-202	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
125	DETRA KAY JEWELRY DESIGN jewelry class 14 Reg. No. 2,719,474	A0203-204	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
126	MARY KAY jewelry class 14 Reg. No. 1,312,253	A0205-206	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	
127	BAR-KAY JEWELERS (common law) Jewelry retail store services http://www.bar-kayjewelers.com/	A0207-209	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	There are no dates or web addresses on the face of the documents as required by TBMP 704.08(b) and 37 C.F.R. §2.122(e). This Exhibit is not properly submitted under TBMP 704.03(b)(1)(B) because it is not a Third-Party Registration. Opposer moves to strike this exhibit.
128	SALLY KAY JEWELRY https://www.sallykayjewelry.com/ https://www.facebook.com/pages/Sally-Kay-Jewelry/272160639029 https://www.instagram.com/sallykayjewelry https://www.accessoryartists.com/jewelry_designers/sally_kay_silver.html https://www.pinterest.com/pin/101401429080971615	A0210	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e)(2), TBMP 704.08(b);	There are no dates or web addresses on the face of the documents as required by TBMP 704.08(b) and 37 C.F.R. §2.122(e). Opposer moves to strike this exhibit.
129	KAY'S FINE JEWELRY https://www.kaysfinejewelry.com/	A0211-220	37 C.F.R. §2.116(e); 37 C.F.R. §2.122(e)(2); TBMP 704.08(b)	There are no dates or web addresses on the face of the documents as required by TBMP 704.08(b) and 37 C.F.R. §2.122(e)(2). Opposer moves to strike this exhibit.

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
130	<p>**HIGHLY CONFIDENTIAL/ ATTORNEYS' EYES ONLY** Applicant's First Amended Responses to Opposer's First Set of Interrogatories (served as Exhibit 3, Deposition of Tat Lee) Interrogatory Response Nos. 1, 2, 3, 4, 5, 6 and 9 further referencing https://web.archive.org/web/*/Titaniumkay.com</p>	N/A	37 C.F.R §2.120(k)(5); TBMP 704.10	<p>Submission of this exhibit by Applicant is improper under 37 C.F.R §2.120(k)(5) and TBMP 704.10, but Opposer has already made this document of record in its Notice of Reliance.</p> <p>Opposer moves to strike this exhibit.</p>
131	<p>**HIGHLY CONFIDENTIAL/ ATTORNEYS' EYES ONLY** Applicant Tat Lee's Deposition – selected pages/lines: a. 27/1-22; 28/14-22; 29/10-22; 33/4-21; 34/7-35/2; 35/16-25; 37/7-38/8; 38/9-39/23; 42/6-43/10 b. 51/11-55/21; 58/2-5, 22-59/8; 61/8-10; 62/2-12; 64/3-13; 65/24-70/1; 70/10-72/5 c. 230/3-9</p> <ul style="list-style-type: none"> • Ex. 4, Applicant's Amended Response to Opposer's First Set of Requests for Production of Documents and Things (Commencing on p. 25) ² • Ex. 5, Internet Sales through Sears.com market channel (commencing on p. 50) ³ • ***HIGHLY CONFIDENTIAL/ ATTORNEYS' EYES ONLY*** Ex. 7, Internet Sales through Facebook marketing channel – Ads payments (AO106) (commencing on p. 91) ⁴ • ***HIGHLY CONFIDENTIAL/ ATTORNEYS' EYES ONLY*** Ex. 8, Applicant's expenses (AO100-101) for Google Adwords internet marketing (commencing on p. 97) 	N/A	37 C.F.R §2.120(k)(1); 37 C.F.R. §2.123(a); TBMP 704.09	<p>Submission of this exhibit by Applicant is improper under 37 C.F.R. §2.123(a), 37 C.F.R §2.120(k)(1), and TBMP 704.09, but Opposer has already made this document of record in its Notice of Reliance.</p> <p>Opposer moves to strike this exhibit.</p>

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
	<ul style="list-style-type: none"> • Ex. 9, Titanium Kay Facebook Page marketing channel (commencing on p. 105)⁶ • Ex 10, www.titaniumkay.com affiliate program webpages (AO124-127) for affiliate marketing channels (commencing on p. 118)⁷ • Ex. 11, Commission Junction webpage (A0124 - 138) for affiliate marketing channels (commencing on p. 145)⁸ • ***HIGHLY CONFIDENTIAL/ ATTORNEYS' EYES ONLY*** Ex. 12, Applicant's payment to affiliate program participants (AO108) (commencing on p. 148)⁹ • Ex. 14, Walmart.com marketing channel (commencing on p. 185)¹⁰ 			
132	Opposer's Responses to Applicant's First Set of Interrogatories: response Nos. 1 (parts 6-7, 9), 9 and 10.	A0225-234	37 C.F.R §2.120(k)(5); TBMP 704.10	Applicant has submitted only parts of Opposer's responses and a more complete copy will be submitted to avoid unfair interpretation of the responses offered by Applicant.
133	Whois website page for www.titaniumkay.com https://www.whois.com/whois/titaniumkay.com	A0221-0223	37 C.F.R. §2.116(e); 37 C.F.R §2.120; 37 C.F.R §2.122(e)(2); TBMP 704.08(b)	<p>Submission of this exhibit by Applicant is improper under 37 C.F.R. §2.120 because Applicant's testimony declaration does not provide foundation for or authenticate this document.</p> <p>There are no dates or web addresses on the face of the documents as required by TBMP 704.08(b) and 37 C.F.R §2.122(e)(2).</p> <p>Opposer moves to strike this exhibit.</p>

No.	Description	Control Number(s)	Rule	OPPOSER'S OBJECTIONS
134	Internet archive for Titanium Kay https://web.archive.org/web/*/Titaniumkay.com (illustrative pages)	A0245-251	37 C.F.R. §2.116(e); 37 C.F.R §2.120; 37 C.F.R §2.122(e)(2); TBMP 704.08(b)	Submission of this exhibit by Applicant is improper under 37 C.F.R. §2.120 because Applicant's testimony declaration does not provide foundation for or authenticate this document.
135	Photocopy of use of "Titaniumkay" on product packaging	A1029 [sic A0129]	37 C.F.R. §2.116(e), TBMP 703.01; 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(2)	Citations to TBMP 704.08(b) and 37 C.F.R. §2.122(e) are improper. This exhibit is not a printed publication available to the public on the internet or otherwise. Citation to TBMP 703.01 is improper. There is no testimony referencing this exhibit. Citation to TBMP 704.03(b)(2) is improper because this exhibit is not an application not subject of this proceeding. Opposer moves to strike this exhibit.
136	Brands of jewelry sold by Opposer in its retail stores and on the internet. https://www.kay.com/en/kaystore/cms/brands-collections-page?icid=MM:COLLECTIONS	A0235-A0244	37 C.F.R. § 2.116(e); 37 C.F.R. §2.122(e)(2); TBMP 704.08(b)	There are no dates or web addresses on the face of the documents as required by TBMP 704.08(b) and 37 C.F.R. §2.122(e)(2). Opposer moves to strike this exhibit.
137	"Titanium Kay" registration application status	A0252-253	37 C.F.R. § 2.116(e); 37 C.F.R. §2.122(e); TBMP 704.08(b); TBMP 704.03(b)(1)(B)	Citation to TBMP 704.03(b)(2) is improper because this exhibit is not an application not subject of this proceeding. The application subject of the proceeding automatically forms part of the record. Opposer moves to strike this exhibit.
138	Trial Declaration of Danny Lau	N/A	37 C.F.R. § 2.116(e); 37 C.F.R. §2.123(a); TBMP 703.01	Submission of this exhibit by Applicant is improper under 37 C.F.R. § 2.116(e), 37 C.F.R. §2.123(a), and TBMP 703.01. Opposer moves to strike this exhibit.

Dated: October 28, 2019

/s/ Amy J. Tindell

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Sterling Jewelers Inc.**

CERTIFICATE OF SERVICE

I certify that on October 28, 2019 I served a copy of the above **Motion to Strike** to Counsel for Applicant by e-mail at:

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/Amy Tindell/

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