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

Proceeding	91244470
Party	Plaintiff LOWA Sportschuhe GmbH
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial Nos. 87736955 and 87736959

LOWA Sportschuhe GmbH)	
)	
Opposer,)	Opposition No. 91244470
)	
v.)	
)	
Loma Power Holdings)	
)	
Applicant.)	
_____)	

**MOTION TO STRIKE APPLICANT’S AFFIRMATIVE DEFENSES
AND MOTION TO SUSPEND**

Pursuant to TBMP § 506, LOWA Sportschuhe GmbH (“Opposer”) (“Petitioner”), hereby moves to strike the first twelve affirmative defenses filed by Loma Power Holdings (“Applicant”) in its responsive pleading in the above-referenced action.

Pursuant to Fed. R. Civ. P. 12(f), the Board may order stricken from a pleading any insufficient or impermissible defense, or any redundant, immaterial, impertinent, or scandalous matter. *See also* Trademark Rule 2.116(a). Opposer requests that the Board strike the four affirmative defenses because they are insufficiently pleaded under Fed. R. Civ. P. 8(b) and TBMP § 311.02(b). Under these rules, Applicant must identify the bases for its Affirmative Defenses with sufficient detail to provide both Opposer and the Board with fair notice of the predicate for such defenses. The four affirmative defenses, which are handled in turn below, do not meet this standard for the reasons set out below.

1. *The affirmative defense of estoppel is not available to Applicant.*

The Board holds that “it has been consistently held that the doctrine of estoppel may be invoked only by one who has been prejudiced by the conduct relied upon to create the estoppel.” *See Castro v. Cartwright*, Opposition No. 91188477 (September 5, 2009) (striking estoppel affirmative defense). Applicant has not offered any such facts. Further, “because [Applicant] has not alleged that [it] was induced to select [its] mark because of the conduct of [Opposer] or that [Applicant] is in privity with the third parties who have assertedly used similar marks for similar goods with [Opposer]’s acquiescence thereto, [Applicant]’s pleading is insufficient.” *See Castro v. Cartwright*, Opposition No. 91188477 (September 5, 2009) (striking acquiescence affirmative defense). Applicant’s first affirmative defense must be stricken.

2. *The affirmative defense of waiver is not available to Applicant.*

“This assertion is insufficient on its face inasmuch as it fails to give [Opposer] or the Board any factual basis for the defense.” *Castro v. Cartwright*, Opposition No. 91188477 (September 5, 2009) (striking “doctrine of waiver” affirmative defense). Applicant’s second affirmative defense must be stricken.

3. *The affirmative defense of laches is not available to Applicant.*

Applicant provides no facts to establish any foundation for an affirmative defense of laches. Applicant’s third affirmative defense must be stricken.

4. *The affirmative defense of acquiescence is not available to Applicant.*

Similar to the defense of estoppel, Applicant “has not alleged that [it] was induced to select [its] mark because of the conduct of [Opposer] or that [Applicant] is in privity with the third parties who have assertedly used similar marks for similar goods with [Opposer]’s acquiescence thereto, [Applicant]’s pleading is insufficient.” *See Castro v. Cartwright*,

Opposition No. 91188477 (September 5, 2009) (striking acquiescence affirmative defense).
Applicant's fourth affirmative defense must be stricken.

As this case proceeds, Opposer should not be burdened with discovery related to such claims, the result of which would be a waste of the parties' time and resources and a waste of the Board's resources in more advanced motion practice. Opposer respectfully requests that the four affirmative defenses be stricken from the answer.

Opposer respectfully requests the Board to suspend this action during the pendency of this motion because the outcome of the motion will potentially affect the scope of discovery and the need to expend limited discovery requests regarding meritless and unavailable defenses.

This 13th day of December 2018.

Respectfully submitted,

TROUTMAN SANDERS LLP



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent by email to the following listed correspondent:

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This 13th day of December 2018.



Austin Padgett