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

Proceeding no.	91256413
Party	Plaintiff OlÃ© Mexican Foods, Inc.
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Attachments	Reply Brief Motion to Strike NORs 1 4 5 and 8.pdf(13540 bytes )

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

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In the Matter of Trademark Appl'n No.:  
88-646,951

For the Mark: OLÉ CHAMOYLE

Filing date: October 8, 2019

OLÉ MEXICAN FOODS, INC.,

Opposer,

v.

Opposition No. 91256413

CERVEZA CITRUS L.L.C.,

Applicant.

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**OPPOSER'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO STRIKE**

Opposer, Olé Mexican Foods, Inc. ("Opposer"), by and through its undersigned counsel, hereby submits the following Reply to Applicant's Response in Opposition to Opposer's Motion to Strike Applicant's First, Fourth, Fifth, and Eighth Notices of Reliance. 40 TTABVUE; 41 TTABVUE.

Applicant agrees that the proper representation of the mark at issue in the above-captioned Opposition is OLÉ not OLE' and, consequently, Opposer continues its Motion to Strike Applicant's First Notice of Reliance. 39 TTABVUE 2-3.

Applicant still has not stated why the deposition excerpts submitted in its Fourth and Fifth Notices of Reliance "should in fairness be considered so as to make not misleading the excerpts offered by" Opposer in its Sixth and Seventh Notices of Reliance. Rather, Applicant is misusing Trademark Rule 2.120 (k)(4) to submit new testimony on unrelated matters. *Swatch*

*AG (Swatch SA) (Swatch Ltd.) v. M.Z. Berger & Co.*, 108 USPQ2d 1463, 1466 (TTAB 2013)(the Board held that it was not an appropriate use of Trademark Rule 2.120(k)(4) to introduce unrelated testimony); *Wear-Guard Corp. v. Van Dyne-Crotty Inc.*, 18 USPQ2d 1804, 1806 n.2 (TTAB 1990) (adverse party failed to show how portions submitted were misleading), *aff'd*, 17 USPQ2d 1866 (Fed. Cir. 1991). Consequently, Opposer continues its Motion to Strike Applicant's Fourth and Fifth Notices of Reliance. 39 TTABVUE 3.

Finally, Opposer does not consent to the admission of the photographs in Applicant's Eighth Notice of Reliance. Since Applicant concedes that they were "included in Applicant's Opposition to Opposer's Motion for Summary Judgment" and not otherwise authenticated, Opposer continues its Motion to Strike Applicant's Eighth Notice of Reliance. 39 TTABVUE 3.

WHEREFORE, Opposer respectfully requests that Applicant's First, Fourth, Fifth, and Eighth Notices of Reliance be stricken from the record and for such other relief as to the Board seems just.

Dated: October 4, 2022

Respectfully submitted,

/paul s. owens/  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of October, 2022, a true and correct copy of the foregoing Opposer's Reply Brief in Support of its Motion to Strike Applicant's First, Fourth,

Fifth, and Eighth Notices of Reliance was served on Applicant by emailing a copy to Applicant's attorney of record at:

Richard A. Ryan, Esq.  
Email: Richard@fresnopatentlaw.com

/paul s. owens/  
Paul S. Owens, Esq.