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

Proceeding	91256500
Party	Plaintiff Roberto Giordani
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ROBERTO GIORDANI,

Opposer,

v.

Tapa Reef Pty Ltd.,

Applicant.

Opposition No.: 91256500

OPPOSER’S MOTION TO STRIKE APPLICANT’S ANSWER

On February 1, 2021, Applicant an Australian Limited Company answered Opposer’s Amended Notice of Opposition, *pro se*. Because the answer was not submitted by U.S. counsel according to Rule 2.11(a) or as directed by the Board (10 TTABVUE), Applicant’s answer should be stricken as impermissible according to TBMP § 506 and receive no further consideration.

BACKGROUND

Applicant is an Australian Limited Company established, operating and existing according to the laws of Australia (13 TTABVUE). Applicant filed for registration of the opposed mark on May 8, 2019, and Applicant since prosecuted the application at the USPTO (see file wrapper abstract, attached).

Once this opposition instituted, Applicant (then represented by U.S. counsel) filed an extension of time to answer the Notice of Opposition (4 TTABVUE). But before filing the answer, Applicant conceded it “**does not have any right, title or interest**” in the opposed mark and asked to be substituted out (5 TTABVUE, p. 1).

Opposer is currently challenging the substitution request, and SEEKS JUDGMENT on the request to substitute because it supports the conclusion that Applicant's application is void *ab initio* (see 7 TTABVUE; see also, Board Order, 10 TTABVUE, FN 4,

“Even if the Board were to consider at this time (instead of deferring consideration of) Applicant's motion to substitute the party defendant, it is unlikely that the motion would be granted given Opposer's opposition thereto and the fact that the assignment occurred after this proceeding commenced...Further, the Board will not substitute a party to correct a misidentification. *Cf. Great Seats Ltd. v. Great Seats Inc.*, 84 USPQ2d 1235, 1240 (TTAB 2007) (application void *ab initio* where two separate commercial entities were in existence on application filing date and application was filed in name of wrong entity).”

On December 17, 2020, the Board deferred consideration of Applicant's motion to substitute until Applicant is represented by U.S. Counsel (10 TTABVUE, pp. 3-4; see also, Trademark Rule 2.11(a). On January 14 and 15, Applicant's domestic representative changed Applicant's correspondence address from Australia to U.S. and refused to comply with Rule 2.11(a) (11-12 TTABVUE).

The domestic representative was not authorized to file the refusal to comply at 11 TTABVUE. See Rule 2.119(d) (“The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 11.14(a) or qualified under § 11.14(b) and authorized under § 2.17(f).”).

Notwithstanding, Applicant's refusal to comply with Rule 2.11(a) is dependent on allegations, wholly inconsistent with The Australian Securities & Investments Commission (the body which laws define Applicant).

According to the Australian SEC, Applicant is and remains an Australian entity, registered, located, and doing business in Australia (13 TTABVUE).

CONCLUSION

Because the answer was not submitted by U.S. counsel, Applicant's Answer at 14 TTABVUE should be stricken and receive no further consideration.

Opposer respectfully request the Board therefore enter default or an ORDER TO SHOW CAUSE why the Opposition should not be granted for,

(1) Applicant refusing to comply with Rule 2.11(a) and the Board Order at 10 TTABVUE; and/or,

(2) U.S. Serial No. 88421700 being **void *ab initio***.

Dated: February 11, 2021

Respectfully submitted,
Hill Wallack LLP

By: /Jason DeFrancesco/
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Attorneys for Opposer,
ROBERTO GIORDANI

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via e-mail on contact for Applicant, CHRISTINE DEVENEY <christine.deveney@tapareef.com> on February 11, 2021.

/Jason DeFrancesco/
Jason DeFrancesco

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