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

Proceeding	91263623
Party	Defendant John Mills, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MARVEL CHARACTERS, LLC,)	Opposition No.: 91263623
)	
)	
Opposer,)	In the matter of:
)	
v.)	Serial. No.: 87857951
)	
)	Mark: NUFFSAID
)	
John Mills, LLC,)	Filed: March 30, 2018
)	
)	
Applicant.)	
_____)	

**JOHN MILLS, LLC’S REPLY IN FURTHER SUPPORT OF
MOTION TO STRIKE PORTIONS OF THE NOTICE OF OPPOSITION**

Applicant John Mills, LLC (“John Mills”) files this Reply Brief in further support of its Motion to Strike Portions of the Notice of Opposition pursuant to TBMP Rule 506 of the Trademark Trial and Appeal Board Manual of Procedure and shows the Board that Paragraphs 1-3 (the “Immaterial Allegations”) of the Marvel Characters, LLC’s (“Marvel”) Notice of Opposition should be stricken because they are immaterial and prejudicial to John Mills:

I. Introduction

Applicant only wants a fair proceeding – a proceeding that is decided on the merits, rather than on reputations. The facts that have no bearing on any issue in this matter and which tend to prejudice Applicant should be stricken. This is a point that not even Opposer argues.

II. Argument

Applicant moved to strike Paragraphs 1 through 3 of the Complaint because those paragraphs contain allegations which have no bearing on this matter and may bias the Board in Opposer’s favor.

Opposer's true intent is revealed in its opposition Brief, filed September 8, 2020. On page 5, Opposer writes, "[t]he mere fact that Opposer is a successful company seeking to enforce its trademark rights against junior users and applicants is not prejudice, but rather the hallmark of legitimate trademark enforcement." (Opposition Brief, p. 5). This isn't true at all. Being a "successful company" is not at all "the hallmark of legitimate trademark enforcement." "Successful companies" are just as likely or perhaps more likely to engage in excessive, or overreaching trademark enforcement.

Regarding Paragraph 1 of the Complaint, Opposer does not backdown, insisting that it having "8,000 characters" which have been featured in media "for more than 70 years" is somehow relevant to Opposer's use (or not) of NUFF SAID as a trademark. (Opposition Brief, p. 3). Whether Opposer has "8,000 characters" or 1 character, it does not make any issue in this opposition more or less likely to be true.

Furthermore, Opposer does not just stop with stating it has "8,000 characters," but specifically mentions characters (namely, Spiderman, Hulk and Fantastic Four) that Opposer expects will appeal to the readers of its brief. And while a litigant's background is often helpful, Opposer's approach here is different, in that the popularity and ubiquity of Spiderman, Hulk and Fantastic Four, can easily bias the reader in Opposer's favor. Indeed, it is clear that Opposer's reason for including this information is to appeal to the reader's biases with the hope that the bias helps Opposer prevail in this opposition.

Opposer relies heavily on *Disney Enterprises, Inc. v. United Trademark Holdings, Inc.*, 2020 WL 3076003 (TTAB June 8, 2020) arguing that this case supports the proposition that "Opposer and/or its related companies have made similar allegations in other cases sustained by the Board." (Opp. Br. at 3). But, *Disney Enterprises* did not involve either the alleged catchphrase

Nuff Said or a motion to strike by the Applicant. Rather, was a decision on the merits involving thirty registrations for marks associated with the Disney Character Tinker Bell. (*Disney Enterprises*, 2020 WL 3076003). Thus, the case is immaterial to whether Opposer’s allegations are relevant or prejudicial to Applicant. Interestingly, the Board noted in a footnote that *Disney Enterprises* filed a successful Motion to Strike in *Disney Enterprises*. (*Id.* at * 1, fn. 11). Thus, *Disney Enterprises* only serves highlight the disingenuousness of Opposer’s feigned incredulousness that a party would ever seek to strike immaterial and prejudicial allegations in a Board action.

Regarding Paragraph 2 of the Complaint, Opposer argues that it is relevant because it includes allegations regarding licensing “in connection with the involved apparel goods” as well as “allegations regarding Opposer’s use of the NUFF SAID mark through licensees.” (Opp. Br. at 4). But nowhere in Paragraph 2 does Opposer (1) reference its catchphrase that it claims is a trademark (2) or that any of the goods that are involved in this dispute are the subject of Opposer’s alleged “vast licensing library.” Instead of tying the allegations in Paragraph 2 to the specific catchphrase at issue, Opposer chose to tout its success as a company to try to sway the reader in its favor. Now, Opposer is left to grasp at imaginary straws in arguing that the allegations are relevant. Because Opposer does not state, in Paragraph 2, that its catchphrase Nuff Said is the subject of any licenses, Opposer’s “extensive licensing program for various trademarks” has no bearing on whether or not Applicant’s NUFF SAID Mark is registerable.

Regarding Paragraph 3 of the Complaint, Opposer again struggles to explain the relevancy of the allegations, claiming that the Paragraph contains allegations regarding its “Nuff Said” catchphrase. (Opp. Br. at 5). That claim is based on a blatant re-writing of Paragraph 3. Paragraph 3 lists three (3) alleged catchphrases, none of which is Nuff Said. (*See* Notice of Opposition at ¶

3). These three catchphrases, and their alleged association with Spider-Man, the Fantastic Four, and the Hulk are wholly irrelevant to whether Applicant's NUFF SAID Mark is registerable.

Opposer is correct that "*trademark law* does not discriminate." And because the law does not discriminate, Opposer is forced to try to find a way to bias the Board outside the law. That is exactly why Opposer has included so many allegations regarding its alleged trademark portfolio. If Opposer were confident in the merits of its claims, it would have limited its allegations to the specific alleged catchphrase at issue here – Nuff Said – rather than attempt to influence the Board with the number of characters and the size of its licensing program.

III. Conclusion

For the foregoing reasons, Applicant respectfully requests that the Board strike Paragraphs 1-3 of the Notice of Opposition because they are irrelevant and prejudicial.

Respectfully submitted this 28th day of September, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2020, I filed APPLICANT JOHN MILLS, LLC'S REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO STRIKE with the Trademark Trial and Appeal Board and served it on Petitioner by emailing a true copy of it to Counsel at the following email address:

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Dated: September 28, 2020

/s/ David M. Lilenfeld
David M. Lilenfeld