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

Proceeding	91270193
Party	Plaintiff TF Intellectual Property Pty Ltd
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Date	11/22/2021
Attachments	Opposition to Motion for Leave to Amend.pdf(193830 bytes)

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

TF Intellectual Property Pty Ltd	:	
	:	
Opposer,	:	
v.	:	Opposition No. 91270193
	:	
Kenneth Thomas,	:	
	:	
Applicant.	:	

Application Serial No. 90343860
Mark: KULTURE KINGS & QUEENS

**OPPOSER’S OPPOSITION TO APPLICANT’S
MOTION FOR LEAVE TO AMEND ANSWER**

TF Intellectual Property Pty Ltd (“Opposer”) hereby opposes Applicant Kenneth Thomas’ (“Applicant”) Motion for Leave to file Amended Answer, filed on November 2, 2021 (“Applicant’s Motion”).

Background

Applicant’s Answer is improper. On October 21, 2021, Opposer wrote to Applicant regarding the Answer’s deficiencies, including the unnecessary general denials, improper request for costs and expenses, and improper affirmative defenses. (Ex. A) In reply, Applicant indicated that the Answer would be amended. Applicant proceeded to file the Motion for Leave without consulting Applicant. (Ex. B) Regrettably, Applicant’s proposed Amended Answer includes many of the same deficiencies as the original. Opposer therefore opposes the Motion to the extent that the Answer would still be deficient, as discussed below, or otherwise moves to strike the same.

Applicant's Affirmative Defense

Though stylized as such, Applicant's "Affirmative Defense" is not an affirmative defense (Fed. R. Civ. P. 8(d), TBMP 311.02(b)). Instead, it is a pure denial of Opposer's claim of likelihood of confusion. Applicant's Affirmative Defense recited:

- First Affirmative Defense: "Applicant's mark is dissimilar to Opposer's marks in their entireties as to appearance, sound, connotation and commercial impression. Also, the services described in Applicant's application are not related to nor share trade channels with any of the goods and/or services listed in the Opposer's various applications and, therefore, are unlikely to cause confusion amongst consumers."

Since no proper affirmative defense has been pled, it should be stricken.

Applicant's General Denial

Applicant's general denial is improper. The Trademark Manual of Board Procedure states that "if a Defendant intends in good faith to controvert all of the allegations contained in a complaint, the defendant may do so by general denial, subject to the obligations set forth in Fed. R. Civ. P. 11." TBMP Section 311.02(a). However, Applicant has already specifically addressed each point in the Notice of Opposition. Applicant's general denial is therefore duplicative and unnecessary.

Accordingly, the general denial should be stricken.

November 22, 2021

Respectfully submitted,
TF Intellectual Property Pty Ltd
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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR LEAVE TO AMEND ANSWER** was served by electronic mail on the Correspondent for the Applicant at the address identified in USPTO records:

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November 22, 2021
Date

/s/ Joan M. Burnett
Joan M. Burnett