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

Proceeding no.	91287935
Party	Defendant Chalk Warrior, LLC
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Date	03/21/2024
Attachments	Chalk Warrior Opposition to Genesco Motion to Strike 4863-5035-9727 v .1.pdf(134712 bytes)

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

GENESCO BRANDS, LLC,

Opposer,

v.

CHALK WARRIOR, LLC,

Applicant.

Opposition No. 91287935

Serial No. 97/338,936

Mark:



APPLICANT’S OPPOSITION TO OPPOSER’S MOTION TO STRIKE

Applicant Chalk Warrior, LLC opposes Opposer’s Genesco Brands, LLC’s motion to strike Applicant’s defense of failure to state a claim (8 TTABVUE) from its Answer (7 TTABVUE). As an initial matter, Opposer’s motion is untimely. A motion to strike matter from a pleading to which no responsive pleading is required is due “21 days after service upon the moving party of the pleading that is the subject of the motion.” *See* Fed. R. Civ. P. 12(f); TBMP 506.02 (same). Applicant filed its Answer on February 7, 2024, and Opposer did not file its motion to strike until 23 days later on March 1, 2024. *See* 7 TTABVUE, 8 TTABVUE. The Board should deny Opposer’s motion on this basis alone. *See, e.g., Sizzler Restaurants Int’l, Inc. v. The Western Sizzlin Corporation*, Opposition Nos. 105,363 & 105,423 (T.T.A.B. Aug. 13, 1999) (denying untimely motion to strike affirmative defense).

Regardless, “motions to strike are not favored,” and Opposer’s motion exemplifies why. TBMP 506.01. Applicant’s defense of failure to state a claim may be raised at various times throughout this proceeding, even at trial. *See* Fed. R. Civ. P. 12(h)(2)(C); TBMP 503.01 (“For example, the defense may be raised, after an answer is filed, by a motion on the pleadings, by a motion for summary judgment, or at trial.”). Opposer’s inclusion of that defense in its answer thus

has no effect on its ability to raise it later and causes no prejudice to Applicant. Given the absence of any material benefit to Opposer if it prevails on its motion, Applicant can only assume Opposer filed it to drive up litigation costs. The Board should deny Opposer’s motion to strike. *See, e.g., Ohio State Univ. v. Ohio Univ.*, 51 U.S.P.Q.2d (BNA) 1289, 1292 (T.T.A.B. 1999) (“[M]atter will not be stricken unless such matter clearly has no bearing upon the issues in the case. . . . The Board, in its discretion, may decline to strike even objectionable pleadings where their inclusion does not prejudice the adverse party[.]”).

Respectfully submitted,

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By: */Mary D. Hallerman/*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Applicant's Opposition to Opposer's Motion to Strike was served on Opposer by emailing a copy to its counsel of record at the address below:

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