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

Proceeding	92054821
Party	Plaintiff Ooh La La ! Jewelry and Accessories, Inc.
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Date	09/24/2013
Attachments	PETITIONERS' MOTION TO STRIKE REGISTRANTS' AMENDED AND RENEWED MOTION TO DISMISS.pdf(77862 bytes)

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**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

OOH LA LA ! JEWELRY AND
ACCESSORIES, INC., a Florida corporation,
AMY TURNER, an individual and TAMMY
KIPP, an individual,

Petitioners,

v.

OOH LA LA, LLC an Alabama limited
liability company, TRACI MACARO, an
individual, KENNETH R. MACARO,

Registrants.

In the Matter of Registration No.: 3040209

WORD MARK: **OOH LA LA**

CLASS - IC 035

Proceeding Number - 92054821

**PETITIONERS' MOTION TO STRIKE REGISTRANTS' AMENDED AND RENEWED
MOTION TO DISMISS**

Petitioners, Ooh La La! Jewelry and Accessories, Inc, Amy Turner, and Tammy Kipp (hereinafter "Petitioners"), by and through undersigned counsel, hereby move to strike Registrants' Amended and Renewed Motion to Dismiss filed on September 9, 2013 by Ooh La La, LLC, Traci Macaro, and Kenneth R. Macaro's (collectively, "Registrants"), and in support thereof state the following:

1. This case involves a petition for cancellation of a trademark registration for the mark Ooh La La that was and continues to be used ubiquitously, which was obvious to Registrants prior to filing their application.
2. On May 16, 2012, Registrants filed and served their Answer to the Petition.
3. Trademark Trial and Appeal Board Manual of Procedure, otherwise known as TBMP, section 503.01, provides:

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When the defense of failure to state a claim upon which relief can be granted is raised by means of a motion to dismiss, **the motion must be filed before, or concurrently with, the movant's answer.**

(emphasis supplied).

4. As set forth above, the answer in this case was filed on May 16, 2012. Registrants' original motion to dismiss, filed two months later, seeks dismissal for failure to state a claim upon which relief can be granted under 12(b)(6). Accordingly, the failure to file the motion to dismiss prior to or concurrently with the answer waives the motion.

5. In conclusion, Registrants original motion to dismiss was filed July 16, 2012, two months after Registrants answer. Thus, Petitioners respectfully request that the Panel strike Registrants' untimely and waived motion to dismiss.

WHEREFORE, Petitioners respectfully request that the Panel strike Registrants' Amended and Renewed Motion to Dismiss filed on September 9, 2013.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been electronically filed with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office through the web site at <http://esta.uspto.gov>, and a true and correct copy hereof has been furnished via e-mail to: **David R Burkholder, Esq.**, Attorney for Defendant, OOH LA LA LLC, BALCH & BINGHAM, LLP, 1901 Sixth Avenue North, Suite 1500, Birmingham, AL 35203,

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dburkholder@balch.com, and emlpa@comcase.net, on September 24, 2013.

CONROY, SIMBERG, GANON, KREVANS,
ABEL, LURVEY, MORROW & SCHEFER,
P.A.

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