UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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Mailed: June 29, 2013

Cancellation No. **92056515**

Alternative Media Group, LLC

v.

Michael Snell

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on petitioner's motion (filed January 29, 2013) to strike the affirmative defenses asserted by respondent in his answer of January 9, 2013.

Preliminary Matters

Before addressing petitioner's motion, the Board notes petitioner's change of correspondence filed on May 8, 2013. The change in correspondence has been accepted and entered into the record.

The Board also notes that respondent filed his initial disclosures with the Board on March 12, 2013. Respondent is advised that initial disclosures, like requests for discovery, responses thereto, and materials or depositions obtained through the discovery process, should not be filed with the Board except when submitted (1) with a motion relating to discovery; or (2) in support of or in response

to a motion for summary judgment; or (3) under a notice of reliance during a party's testimony period; or (4) as exhibits to a testimony deposition; or (5) in support of an objection to proffered evidence on the ground that the evidence should have been, but was not, provided in response to a request for discovery. *See* Trademark Rule 2.120(j)(8). As such, respondent's filing will be given no further consideration.

Petitioner's Motion to Strike

A motion to strike is timely if made before responding to the pleading that is the subject of the motion or, if a response is not allowed, within twenty-one days after being served with the pleading plus five additional days if the pleading is served by first-class mail, "Express Mail," or overnight courier. *See* Fed. R. Civ. P. 12(f) and Trademark Rule 2.119(c). As petitioner's motion to strike was served and filed within twenty days of respondent's answer, the motion is timely.

Pursuant to Fed. R. Civ. P. 12(f), the Board may order stricken from a pleading any insufficient defense, or any redundant, immaterial, impertinent or scandalous matter. *See also* Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a); and TBMP § 506.01 (3d ed. rev. 2012). Motions to strike, however, are not favored and matter will not be stricken unless it clearly has no bearing upon the issues in the

case. *See Ohio State University v. Ohio University*, 51 USPQ2d 1289, 1292 (TTAB 1999).

In this proceeding, respondent has put forth five "defenses": unclean hands, laches, estoppel, acquiescence and fraud. The Board addresses each as follows:

Defense No. 1: (*unclean hands*)
Respondent has not pled any facts in support thereof nor has respondent provided petitioner with sufficient notice of any allegedly specific improper actions. Therefore, this defense is insufficient and is hereby **STRICKEN**. *See Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.*, 5 USPQ2d 1067, 1069 (TTAB 1987).

Defense No. 2: (*laches*)
Laches requires a showing of (1) unreasonable delay resulting in (2) material prejudice. *See Bridgestone/Firestone Research, Inc. v. Automobile Club de l'Ouest de la France*, 245 F.3d 1359, 1361, 58 USPQ2d 1460, 1462-63 (Fed. Cir. 2001). Respondent has not pled any facts in support thereof. Further, laches is not available against a claim of descriptiveness or a claim of genericness. *See Callaway Vineyard & Winery v. Endsley Capital Group, Inc.*, 63 USPQ2d 1919, 1923 (TTAB 2002) and *Loglan Institute, Inc. v. Logical Language Group, Inc.*, 22 USPQ2d 1531, 1534 (Fed. Cir. 1992). Therefore, this defense is hereby **STRICKEN**.

Defense No. 3: (*estoppel*)
Respondent has not pled any facts in support thereof. As such, the nature of the estoppel defense is not apparent. Therefore, this defense is hereby **STRICKEN**.

Defense No. 4: (*acquiescence*)
This defense requires a showing of active consent. *See Hitachi Metals International, Ltd. v. Yamakyu Chain Kabushiki Kaisha*, 209 USPQ 1057, 1067 (TTAB 1981). Respondent has not pled any facts in

support thereof. Further, acquiescence is not available against a claim of descriptiveness or a claim of genericness. *See Callaway Vineyard & Winery v. Endsley Capital Group, Inc.*, 63 USPQ2d 1919, 1923 (TTAB 2002) and *Loglan Institute, Inc. v. Logical Language Group, Inc.*, 22 USPQ2d 1531, 1534 (Fed. Cir. 1992). Therefore, this defense is hereby **STRICKEN**.

Defense No. 5: (*fraud*)
Respondent has not pled any facts in support thereof nor has respondent provided petitioner with sufficient notice of any allegedly specific improper actions. Therefore, this defense is insufficient and is hereby **STRICKEN**.

Thus, petitioner's motion to strike is hereby **GRANTED**. As the Board generally grants leave to amend pleadings that have been found insufficient, **respondent is allowed until JULY 31, 2013, in which to file and serve an amended answer** that properly sets forth any of the affirmative defenses discussed *supra*, failing which the answer of record will stand stricken as ordered herein.

Proceedings herein are **RESUMED** and dates are **RESET** as follows:

Amended Answer Due	**7/31/2013**
Deadline for Discovery Conference	**8/30/2013**
Discovery Opens	**8/30/2013**
Initial Disclosures Due	**9/29/2013**
Expert Disclosures Due	**1/27/2014**
Discovery Closes	**2/26/2014**
Plaintiff's Pretrial Disclosures Due	**4/12/2014**
Plaintiff's 30-day Trial Period Ends	**5/27/2014**
Defendant's Pretrial Disclosures Due	**6/11/2014**
Defendant's 30-day Trial Period Ends	**7/26/2014**
Plaintiff's Rebuttal Disclosures Due	**8/10/2014**
Plaintiff's 15-day Rebuttal Period Ends	**9/9/2014**

IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within **thirty days** after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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