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

Proceeding	92065543
Party	Plaintiff Quinn Foods LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

QUINN FOODS LLC, Petitioner, v. JSC TREATS INC., Registrant.
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Cancellation No. 92065543

Registration No. 4482579
Mark: QUIN
Registration Date: February 11, 2014

Registration No. 4869537
Mark: QUIN
Registration Date: December 15, 2015

**MOTION TO STRIKE REGISTRANT’S ANSWER TO
PETITION FOR CANCELLATION**

Petitioner Quinn Foods LLC (“Petitioner”) hereby moves pursuant to Fed. R. Civ. P. 12(f) and TBMP § 506 to strike Registrant JSC Treats Inc.’s (“Registrant”) Answer to Petition for Cancellation (10 TTABVUE) in its entirety as immaterial. A memorandum in support is incorporated herewith.

RELEVANT FACTUAL BACKGROUND

On March 6, 2016, Petitioner filed its Petition for Cancellation against U.S. Registration Nos. 4482579 and 4869537 for the mark QUIN (the “Petition”). (1 TTABVUE.)

On April 19, 2017, Registrant, through its attorney, filed its Answer to the Petition and a Counterclaim for Cancellation. (5 TTABVUE.) Registrant’s Answer and Counterclaim was titled “Registrant’s Opposition to Petitioner’s Motion to Cancel, Petition to Reject Pending Registration of ‘Quinn Snacks’, Defenses and Counter Petition for Cancellation of Quinn Mark, and Allegation of Fraud” (the “Answer and Counterclaim”).

On April 27, 2017, counsel for Registrant sent a letter to counsel for Petitioner identifying the filing made via ESTTA on April 19, 2017 as an answer (the “Letter”). In the Letter, counsel for

Registrant wrote, “I want to again express my appreciation for your understanding and cooperation with respect to the technical difficulties which arose in the *filing of our answer*.” (Declaration of Aaron Y. Silverstein, Jul. 5, 2017 (“Silverstein Decl.”), ¶ 3; *see* Silverstein Decl. Ex. A., at 1.) (emphasis added.)

On June 1, 2017, Petitioner filed an Answer to Registrant’s Counterclaim (6 TTABVUE) and a Motion for Judgment on the Pleadings (7 TTABVUE).

On June 15, 2017, Registrant, through newly appointed counsel, filed a second Answer to Petitioner’s Petition. (10 TTABVUE.) Registrant also filed a combined notice of withdrawal of Registrant’s previously filed Answer and Counterclaim without prejudice and a motion to strike Petitioner’s Answer to Counterclaim, arguing that Petitioner’s Answer was filed improperly. (11 TTABVUE.)

MEMORANDUM IN SUPPORT OF MOTION

Section 506.01 of the Trademark Trial and Appeal Board Manual of Procedure provides that the Board may, upon motion or upon its own initiative, “order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” TBMP § 506.01; *see* Fed. R. Civ. P. 12(f). On this basis, Petitioner moves to strike Registrant’s second Answer, filed on June 15, 2017, as immaterial because Registrant had already filed an Answer and Counterclaim.

On April 19, 2017, Registrant, through its attorney, filed its Answer to the Petition and a counterclaim. Although the filing was captioned “Registrant’s Opposition to Petitioner’s Motion to Cancel, Petition to Reject Pending Registration of ‘Quinn Snacks’, Defenses and Counter Petition for Cancellation of Quinn Mark, and Allegation of Fraud,” this filing constitutes an Answer. Registrant’s counsel filed the Answer via ESSTA, classifying it as an “Answer.” The Answer and Counterclaim is, in part, captioned “Registrant’s Opposition to Petitioner’s Motion to Cancel,” and Registrant expressly states that it is “fil[ing] an opposition to Petitioner’s motion [to cancel],” indicating that the filing is a

response to the Petition. (5 TTABVUE 1.) Most important, counsel for Registrant unequivocally identified the filing as an answer in correspondence with counsel for Petitioner.

The filing is clearly a responsive pleading that constitutes an Answer to Petitioner's Petition, even though it does not possess the traditional markings of an answer.¹ Moreover, the Board has previously found that a similarly styled filing constituted an answer. For example, in *Weyerhaeuser Co. v. SmartBuilt Homes, Inc.*, an applicant filed a pro se answer to the notice of opposition, captioned "Applicant's Rebuttal to Opposition." *Weyerhaeuser Co. v. SmartBuilt Homes, Inc.*, Opp. No. 91168932, 14 TTABVUE 2 (T.T.A.B. Aug. 9, 2004). The applicant wrote that it was "refut[ing] the unwarranted opposition by" the opposer, but did not expressly state that it was answering the opposition nor did the applicant clearly identify the filing as an answer. *Id.* at 4 TTABVUE 1. The Board nevertheless determined that the filing was an answer, even though it was "more in the nature of a brief, [and] does not contain any specific admissions or denials of the allegations set forth in the notice of opposition, but rather consists of applicant's generalized arguments in opposition to opposer's likelihood of confusion claim." *Id.* at 14 TTABVUE 2. If the Board determined that the pro se answer filed in *Weyerhaeuser* constituted an answer, Petitioner sees no reason why the Board should not find that Registrant's Answer and Counterclaim, prepared and filed by legal counsel² who stated it was an answer.

In filing its second Answer, Registrant is attempting a second bite at the apple. Registrant should not be permitted to file another answer just because it is unhappy with its previous attorney's work.

¹ "An answer need not follow a particular format." TBMP § 311.01(a). Rather, an answer need only "bear at its top the heading 'IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD,' followed by the name of the proceeding (e.g., 'ABC Corporation v. XYZ Company'), the proceeding number (e.g., 'Opposition No. 91156789' or 'Cancellation No. 92042567'), and a title describing the nature of the paper (e.g., 'ANSWER,' 'ANSWER AND COUNTERCLAIM,' etc.)." *Id.* Registrant's Answer and Counterclaim fulfills these specifications.

² Registrant's former counsel, Martin Medeiros of the Medeiros Law Group, held himself out as an attorney. *See* 5 TTABVUE 9; 5 TTABVUE Ex. D; *see also* Silverstein Decl. Ex. A.

CONCLUSION

In light of the foregoing, Petitioner respectfully requests that the Board grant this Motion and strike Registrant's Answer (10 TTABVUE.).

Dated: July 5, 2017

Respectfully submitted,

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QUINN FOODS LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion to Strike Registrant's Answer to Petition for Cancellation has been served on Registrant's correspondent of record by forwarding said copy on July 5, 2017, via email to:

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/Aaron Y. Silverstein/
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