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

Proceeding	92071596
Party	Defendant Camera Copters, Inc.
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Signature	/lilliantaylorstajnbaher/lths/041921/
Date	04/19/2021
Attachments	CameraCoptersRsp2Mn2Strike.pdf(108084 bytes)

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

Schiebel Industries AG

Applicant,

v.

CAMERA COPTERS, INC.,

Respondent.

Opposition No. 92071596

Mark: CAMERA COPTERS

RESPONSE TO MOTION TO STRIKE

Federal Rules of Civil Procedure Rule 27 (a)(4) Motions - Reply to Response, makes clear that Registrant's Reply to Response to Motion to Dismiss for Mootness, presenting matters that relate to the Applicant's Response to Motion to Dismiss for Mootness, is appropriately considered. The provision of opportunity to Reply results because sometimes "matters relevant to the motion arise after the motion is filed; treatment of such matters in the reply is appropriate [particularly when it relates] to the response." *Rule 27 Committee Notes on Rules—1998 Amendment.*

Relevant in the Reply are each matter addressed because Applicant, in its Response:

- raised the assertion that a fact it alleged – a 2009 date of first use – must be presumed true, giving rise to the question whether an exception exists when Applicant previously engaged with the USPTP regarding the same mark for the same goods, resulting in a contrary adjudicated fact;
- made a claim 180° contrary to the law, that goods related to services are not to be considered when assessing priority claims, giving rise to the requirement to provide case law, laying bare the fallacy of the argument;
- deflected from the fact that it cannot succeed in its underlying suspended application, by trying to obtain a decision based upon an alleged prior common law usage, giving rise to the question whether that usage, if indeed prior, was a bad faith infringing use, a non-exclusive, or a minuscule use insufficient to establish US common law trademark rights;

- conflated the question of whether it has standing with the question of whether there exists a case or controversy upon which relief may be granted, giving rise to the requirement to reply with the distinction having been made clear by no less than the U.S. Supreme Court, so as not to forfeit or concede on an erroneous point.

The scope of Applicant's bad faith, from attacking Registrant's decades long, hard-earned market share, to the pleading practices of filing a frivolous Petition, then defending against dismissal with spurious law and argument, is unabashed. The instant Motion to Strike is no exception, Applicant, in its Response, having been the clear source of all issues raised in the Reply, including those of Judicial Estoppel, and the ways in which Applicant parried judicial principals and mislead with near conflagrations of case law. The instant motion provides grounds in and of itself for dismissal as a sanction. *NSM Resources Corp. v. Microsoft Corp., 113 USPQ2d 1029, 1038 (TTAB 2014) (entering sanction of entry of judgment for bad-faith litigation under both the Board's inherent authority to sanction and Rule 11); Central Manufacturing Inc. v. Third Millennium Technology Inc., 61 USPQ2d 1210, 1215 (TTAB 2001) (applying sanction for bad-faith conduct under the Board's inherent authority to sanction, regardless of whether sanctions available under Fed. R. Civ. P. 11).*

Wherefore Registrant prays,

- its Reply to Response to Motion to Dismiss for Mootness be considered for its merits in full,
- that the Board strike both Applicant's bad faith Motion and bad faith Response, and

that the Petition is dismissed with prejudice.

Respectfully submitted this 19th day of April, 2021

/Lillian Taylor Štajnbaher/LTHS/041921/

by Lillian Taylor Štajnbaher, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the Response to Motion to Strike has been served on Schiebel Industries AG by forwarding said copy on April 19, 2021, via email to:

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Dated: April 19, 2021

/Lillian Taylor Štajnbaher/LTHS/041921/
Lillian Taylor Štajnbaher, Esq.