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

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| Proceeding | 92073334 |
| Party | Defendant Universal Sewing Supply, Inc. |
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| Submission | Motion to Strike |
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| Signature | /s/Scott Eidson |
| Date | 08/30/2021 |
| Attachments | Motion to Strike.pdf(16728 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| Great Knives Manufacture Co., Ltd., Petitioner, v. Universal Sewing Supply, Inc., Respondent. | Cancellation No. 92073334 Mark: GOLDEN EAGLE U.S. Reg. No. 5829055 |
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**RESPONDENT’S MOTION TO STRIKE PORTIONS OF TESTIMONY
DECLARATION OF CHUNG YING (ERIC) TSAI AND RESPONDENT’S STATEMENT
OF EVIDENTIARY OBJECTIONS TO TESTIMONY DECLARATION OF CHUNG
ING (ERIC) TSAI**

Respondent, Universal Sewing Supply, Inc., moves to strike Paragraphs 12 and 13 and Exhibit 2 to Petitioner’s Testimony Declaration of Chung Ying (Eric) Tsai and respectfully requests that the Trademark Trial and Appeal Board (“Board”) sustain its objections to certain evidence made of record by Petitioner as set out in this statement.

I. Respondent Seeks to Introduce Inadmissible Hearsay Evidence in Paragraphs 12 and 13

Respondent seeks to rely on testimony of Mr. Tsai about what he “understand[s] that Respondent’s CEO Mr. Samuels has testified in a discovery deposition...” Decl. of Tsai at ¶ 12 and 13, Dkt. 13. This testimony aims to re-characterize the discovery testimony offered by Respondent’s CEO. Paragraphs 12 and 13 are not the statements of Mr. Tsai and are offered to prove the truth of the matter asserted—as such they are inadmissible hearsay pursuant to Federal Rule of Evidence 801. As Paragraphs 12 and 13 do not qualify under any exclusion or exception to hearsay, these paragraphs should be stricken.

II. Petitioner’s Random Collection of Documents in Exhibit 2 Contains Inadmissible Hearsay, Has Not Been Properly Authenticated, and Mr. Tsai has Not Established That He Has Personal Knowledge of the Various Documents Contained Therein.

In Paragraph 5 of Petitioner’s Testimony Declaration of Chung Ying (Eric) Tsai, Mr. Tsai states that Exhibit 2 “are copies of representative invoices for shipments of GKM’S GOLDEN EAGLE products in the United States.” However, Exhibit 2, which was filed confidentially, seems to include many different documents besides “invoices.” As examples, Exhibit 2 includes emails; packing lists; bills of lading; purchase orders; product images and sell sheets; and certificates of origin. Decl. of Tsai, Ex. 2 at GKM_000288-289; GKM_000076; GKM_000236-246; GKM_000368; GKM_000371; GKM_000286; GKM_000221; GKM_000303; GKM_000313; and GKM_000327, Dkt. 14. In addition, the Exhibit is missing pages 227-229, 272-279, and 440-454. Under Federal Rule of Evidence 901, Mr. Tsai’s lone sentence does not sufficiently establish a proper foundation for the random collection of 400+ pages of documents—with omitted pages—that Mr. Tsai has lumped together in Exhibit 2.

In addition, some of the e-mails in the Exhibit appear to contain inadmissible hearsay as they are statements made by others (e.g. Respondent’s distributor) pertaining to the alleged sale of goods (which is the truth of the matter asserted). *See, e.g.*, Decl. of Tsai, Ex. 2 at GKM_000190, GKM_000282, Dkt. 14. Mr. Tsai does not appear on a majority—if any—of these emails. Many of the emails do not even originate with Petitioner. As a result, and on the basis of Mr. Tsai’s testimony, they should be excluded as inadmissible hearsay pursuant to Federal Rule of Evidence 801.

Equally fatal to the admissibility of Mr. Tsai’s proffered Exhibit 2 is his lack of personal knowledge regarding the various documents contained in the exhibit. *See Fed. R. Evid. 602.* Nowhere does Mr. Tsai testify, or otherwise indicate, that he has personal knowledge about all the various documents attached as Exhibit 2.

Furthermore, it does not seem that these deficiencies in Mr. Tsai's evidentiary proffer are curable. Mr. Tsai testifies that "GKM does not retain copies of invoices that are more than five years old." Decl. of Tsai at ¶ 5. However, in Exhibit 2, Mr. Tsai claims to have included "invoices" from as early as 2002, many of these invoices are also attached to emails with recipients and senders that are not the Petitioner. *See* Decl. of Tsai, Ex. 2 at GKM_000001, Dkt. 14. Petitioner has not provided sufficient evidence in the Declaration of Mr. Tsai to provide authentication of these invoice documents. It is not Respondent's duty to parse through 400+ pages of random documents that are indiscriminately attached to Mr. Tsai's declaration and guess as to: (1) whether Petitioner has knowledge of a particular document; (2) what foundation may exist for the documents—as few of them seem to originate with Petitioner; or (3) how they are not inadmissible hearsay. For these reasons, Respondent asks that Ex. 2 of Petitioner's Testimony Declaration of Chung Ying (Eric) Tsai be stricken in its entirety.

III. Conclusion

For the foregoing reasons, Respondent respectfully requests that the Board sustain Respondent's Objections to Paragraphs 12 and 13 and Exhibit 2 to Petitioner's Testimony Declaration of Chung Ying (Eric) Tsai and requests that they be stricken from the record.

Dated: August 30, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of RESPONDENT’S MOTION TO STRIKE PORTIONS OF TESTIMONY DECLARATION OF CHUNG YING (ERIC) TSAI AND RESPONDENT’S STATEMENT OF EVIDENTIARY OBJECTIONS TO TESTIMONY DECLARATION OF CHUNG ING (ERIC) TSAI has been served on Daniel I. Schloss by forwarding said copies on August 30, 2021, via email to:

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/s/ B. Scott Eidson