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

Proceeding no.	92079034
Party	Defendant Intelligent Blends, LP
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PEANUTS WORLDWIDE LLC, *Petitioner / Counterclaim Defendant* vs. INTELLIGENT BLENDS, LP, *Respondent / Counterclaimant.*	)	Cancellation No. 92079034

RESPONDENT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO STRIKE PETITIONER'S AFFIRMATIVE DEFENSES

Pursuant to 37 CFR § 2.127, Trademark Trial and Appeal Board Manual of Procedure ("**TBMP**") §§ 316 and 506, Respondent, Intelligent Blends, LP ("**Respondent**") hereby submits its Reply Brief in support of its Motion to Strike Petitioner's Affirmative Defenses (11 TTABVUE 10). For the reasons below, Respondent respectfully requests that the Trademark Trial and Appeal Board ("**Board**") grant Respondent's Motion to Strike Petitioner's Affirmative Defenses.

I. PETITIONER'S AFFIRMATIVE DEFENSES OF LACHES AND UNCLEAN HANDS ARE IMMATERIAL TO A FAILURE TO FUNCTION COUNTERCLAIM

The Board may strike from a pleading any insufficient defense, or any redundant, immaterial, impertinent or scandalous matter. *See* Fed. R. Civ. P. 12(f); *Am. Vitamin Prods. Inc. v. DowBrands Inc.*, 22 U.S.P.Q.2d 1313, 1314 (T.T.A.B. 1992); TBMP § 506.01. Respondent's counterclaim alleges that Petitioner's mark IT'S THE GREAT PUMPKIN, CHARLIE BROWN ("**Petitioner's Mark")** fails to function as a trademark. Petitioner should be barred from defending its mark by raising the affirmative defenses of laches and unclean hands because such

defenses are immaterial to the issue of whether Petitioner's Mark was validly registered on the Principal Register.

It is well-established that certain equitable defenses, such as laches, estoppel, and acquiescence are not available against certain claims before the Board. *See TBC Corp. v. Grand Prix Ltd.,* 12 U.S.P.Q.2d 1311, 1313 (T.T.A.B. 1989) ("It is in the public interest to remove abandoned registrations from the register."); *Saint-Gobain Abrasives, Inc. v. Unova Indus. Autom. Sys., Inc.,* 66 U.S.P.Q.2d 1355, 1359 (T.T.A.B. 2003) (it is in public interest to have certain registrations removed from register and this interest "cannot be waived by the inaction of any single person or concern no matter how long the delay persists."), *aff'd*, 377 F.2d 1001, 153 U.S.P.Q. 749 (C.C.P.A. 1967) (quoting *W. D. Byron & Sons, Inc. v. Stein Brothers Mfg.*, 146 U.S.P.Q. 313, 316 (T.T.A.B. 1965)). It is abundantly clear, therefore, that the context of a claim dictates the type of defenses available against such claim.

The issue presented by Respondent's counterclaim is whether Petitioner's Mark has met the legal requirements to be registered on the Principal Register, namely, whether Petitioner's Mark is the title of a single creative work, in which case it is not entitled to be registered, or the title of a series, in which case it may be registered. Any purported conduct, misconduct, or lack of conduct by the Respondent has no bearing on the issue of whether Petitioner's Mark functions as a valid trademark. Further, Respondent's intent in raising a claim of failure to function as a mark is irrelevant to whether Petitioner has a valid mark.

The affirmative defenses at issue are only applicable if the Board finds that Petitioner's Mark is not a valid trademark. If there is no valid trademark at issue, then Petitioner's affirmative defenses are moot. No public policy is served if, despite a finding of no trademark use, Petitioner is allowed to defend itself based on Respondent's conduct.

II. IN THE CONTEXT OF RESPONDENT'S COUNTERCLAIM, PETITIONER'S AFFIRMATIVE DEFENSES DO NOT PROVIDE PETITIONER ANY RELIEF

The basis for Petitioner's affirmative defenses in the context of Respondent's counterclaim are nonsensical, and thus are unable to provide any relief that the Board can offer.

In the case of laches, Petitioner's position is that it has suffered economic prejudice as a result of Respondent's delay in raising a failure to function defense. (12 TTABVUE 11).[1] However, if the Board finds that Petitioner's Mark is not a trademark, it is an impossibility for Petitioner to even argue that it experienced economic prejudice. There can be no economic harm if there was no proper mark used by Petitioner in commerce.

With respect to the defense of unclean hands, Petitioner alleges that Respondent engaged in unclean hands by trading on the goodwill of Petitioner's "trademark." *Id*. Such an allegation of unclean hands is in essence a claim of trademark infringement. However, the Board has no jurisdiction over claims of trademark infringement and unfair competition. *Paramount Pictures Corp. v. White*, 31 U.S.P.Q.2d 1768, 1771 n.5 (T.T.A.B. 1994). Furthermore, there can be no trademark infringement if the Board finds that Petitioner's Mark does not function as trademark. As such, Petitioner's affirmative defenses would be unable to provide Petitioner with any relief.

III. PETITIONER'S LACHES DEFENSE IS INSUFFICIENTLY PLEADED

A legally sufficient pleading of each defense must include enough factual detail to provide the opposing party of fair notice of the basis for the defense. Fed. R. Civ. P. 8(b)(1) and 12(f); *see e.g., IdeasOne Inc. v. Nationwide Better Health Inc.,* 89 U.S.P.Q.2d 1952, 1953 (T.T.A.B. 2009); *Midwest Plastic Fabricators, Inc. v. Underwriters Labs. Inc.*, 5 U.S.P.Q.2d 1067, 1069 (T.T.A.B.

[1] As discussed further below, a discussion of prejudice was first pleaded not in Petitioner's affirmative defenses but in Petitioner's Opposition Brief. For this present discussion, it is assumed that the Board, in its discretion, accepts a pleading of prejudice through Petitioner's Opposition Brief.

1980). A party must allege sufficient facts beyond a tender of "naked assertion[s]" devoid of "further factual enhancement," to support its claims or defenses. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009), *quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

While Petitioner's pleading of its laches defense in its answer contains certain "keywords" that purport to support a laches defense, the defense is superficially pled at best. Petitioner's allegations of laches are devoid of pertinent facts to make the laches defense plausible and thereby place Respondent on proper notice of the factual underpinnings of the defense.

Petitioner's pleading of laches in response to Respondent's counterclaim fails because Petitioner has not adequately plead both elements of laches. Petitioner does not adequately plead the date or provide a time reference from which laches may be lawfully measured. Furthermore, Petitioner fails to provide any factual allegations to suggest that it was prejudiced by Respondent's delay.

A. PETITIONER HAS NO LEGAL BASIS TO ALLEGE RESPONDENT HAD ACTUAL KNOWLEDGE OF PETITIONER'S TRADEMARK RIGHTS

In pleading the defense of laches, Petitioner must plausibly allege that there was unreasonable delay by Respondent in asserting its counterclaim. To do so, Respondent must be shown to have had actual knowledge or constructive notice of Petitioner's trademark use to establish a date from which delay can be measured for purposes of laches. *Ascendis Pharma A1s*, 2022 WL 1101923, at *33 (T.T.A.B. Apr. 8, 2022). Petitioner fails to provide a legally cognizable date from which actual acknowledge can be measured.

Petitioner asks the Board to measure Respondent's actual knowledge from the date on which Petitioner's Mark accrued common law rights. (10 TTABVUE 6 ¶ 2). Assuming that

Petitioner has common law rights in its mark,[2] Petitioner fails to provide any support for the assertion that Respondent had actual knowledge of Petitioner's rights.

Petitioner alleges that it had common law rights in Petitioner's Mark upon the initial airing of the television special. (12 TTABVUE 10). However, the first airing of the television special does not afford Petitioner trademark rights in Petitioner's Mark. The first airing of the show in 1966 was as a prime-time animated television special. It was presented as a **standalone** work without further episodes or parts. Thus, it is conclusive that the first airing of the television special under the title IT'S THE GREAT PUMPKIN, CHARLIE BROWN is insufficient to provide actual notice of trademark use.

B. PETITIONER WRONGLY CALCULATES THE DATE OF RESPONDENT'S CONSTRUCTIVE NOTICE

Next, Petitioner alleges that its mark was published for opposition on November 27, 2018. (10 TTABVUE 6 ¶ 3). However, an application's date of publication is not recognized as constructive notice of a party's trademark rights. *See Teledyne Techns., Inc. v. W. Skyways, Inc.*, 78 U.S.P.Q.2d 1203, 1210 (T.T.A.B. 2006) (in absence of actual notice prior to close of opposition period, date of registration is operative date for calculating laches.), *aff'd unpublished op.*, Appeal Nos. 2006-1366-67 (Fed. Cir. Dec. 6, 2006).

In the current case, Petitioner's Mark registered on May 5, 2020. Respondent raised its counterclaim against Petitioner's Mark on March 23, 2022, less than two years after Respondent's registration. Respondent is unaware of the Board sustaining a laches defense on the basis of a twenty-two (22) month delay from the date of constructive notice.

[2] The validity of Petitioner's rights in Petitioner's Mark is the subject of Respondent's counterclaim.

C. PREJUDICE WAS NOT PLEADED BY THE PETITIONER

Petitioner must assert that it was prejudiced by Respondent's alleged unreasonable delay. Assuming that Petitioner has adequately asserted unreasonable delay, Petitioner fails to allege any facts to assert that it was prejudiced ***as a result of Respondent's delay***. (*emphasis added*). *Gaming & Leisure Properties, Inc.*, 2017 WL 3670414, at *3 (T.T.A.B. Apr. 11, 2017). Petitioner did not provide any facts to support an allegation of prejudice.

Despite the deficiencies in Petitioner's pleadings, it is within the Board's discretion to allow the Petitioner to amend the pleadings pertaining to its affirmative defenses. *Midwest Plastic Fabricators Inc.*, 5 U.S.P.Q.2d at 1067; Fed. R. Civ. P. Rule 15(a). In the current case, Petitioner has effectively attempted to amend its pleading of the defense of laches by addressing the prejudice prong of the affirmative defense in its Opposition Brief. (10 TTABVUE 10). Assuming the Board accepts this "amendment" to Petitioner's pleading,[3] the pleading of prejudice as a whole is nonetheless insufficient. Petitioner baselessly alleges it has suffered economic prejudice without explaining anything further. Such factual allegation is especially necessary in this case. By Petitioner's own calculation, it has had a fifty-year head start in establishing its brand in Petitioner's Mark. Respondent must be placed on notice on how Petitioner was prejudiced by Respondent's purported delay.

Summarily, Petitioner failed to plead the date from which delay for the purposes of laches can be measured and failed to demonstrate that it relied on Respondent's silence to build up its brand, business, and/or goodwill. Since none of the elements supporting laches were adequately

[3] Respondent requests that in light of Petitioner attempting to employ the Opposition Motion as an amended pleading, the Board deny any further request by the Petitioner to amend its laches defense.

pled by Petitioner, Respondent's Motion to Strike Petitioner's Affirmative Defenses should be granted.

IV. CONCLUSION

For the reasons discussed above, Respondent respectfully requests that the Board grant Respondent's Motion to Strike Petitioner's Affirmative Defenses.

Dated: June 21, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing *Respondent's Reply Brief In Support of Its Motion to Strike Petitioner's Affirmative Defenses* has been served on the below-named counsel for Petitioner by forwarding said copy on June 21, 2022, via e-mail:

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Dated: June 21, 2022

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