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

Proceeding	91196375
Party	Plaintiff OMS Investments, Inc.
Correspondence Address	JOHN GARY MAYNARD III HUNTON & WILLIAMS LLP 951 E BYRD ST RICHMOND, VA 23219 UNITED STATES hwritm@hunton.com
Submission	Motion to Strike
Filer's Name	John Gary Maynard
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Date	12/22/2010
Attachments	Motion to Strike - Opp No. 91196375 John Parella - executed.pdf (4 pages) (120725 bytes)

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

In the matter of Trademark Application Serial No. 77/844,382

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OMS Investments, Inc.,)	
)	
Opposer,)	
)	Opposition No. 91196375
v.)	
)	
John Parella,)	
)	
Applicant.)	
<hr style="border: 0.5px solid black;"/>)	

OPPOSER’S MOTION TO STRIKE APPLICANT’S ANSWER

Opposer OMS Investments, Inc. (“Opposer”), through its undersigned attorneys, requests that the Board strike Applicant John Parella’s (“Applicant”) Answer dated November 26, 2010 (“Amended Answer”).

FACTS

On September 3, 2010, Opposer filed a Notice of Opposition against Applicant’s GRO-LIKE-A-PRO application, the subject of Application Serial No. 77/844,382. As grounds for its opposition, Opposer asserted priority of use and likelihood of consumer confusion under Trademark Act Section 2(d), as well as trademark dilution under Trademark Act Section 43(c). 15 U.S.C. § 1052 (d), 15 U.S.C. 1125 (c).

On September 25, 2010, Applicant’s attorney filed a motion to withdraw as counsel of record. Thereafter, on October 12, 2010, Applicant requested an extension of time to respond to Opposer’s Notice of Opposition. On October 25, 2010--prior to a decision from the Board regarding his extension request, Applicant filed his Answer (“previous Answer”). The Board informed Applicant on November 8, 2010, that his previous Answer did not comply with

applicable rules, including the Board's rules as well as the Federal Rules of Civil Procedure. Consequently, the Board disregarded Applicant's previous Answer and directed him to provide an Answer that complied with applicable rules by November 29, 2010. On November 26, 2010, Applicant submitted his Amended Answer.

ARGUMENT AND AUTHORITY

Applicant's Answer must contain admissions to, or denials of, the allegations in Opposer's Notice of Opposition and may include any defenses to those allegations. TBMP § 311.01(a). If Applicant is without knowledge or information sufficient to form a belief as to the truth of an allegation, Applicant must state so accordingly, and this will have the effect of a denial. *Id.* at § 311.02(a).

Applicant's Amended Answer falls far short of a responsive pleading that comports with applicable rules as it suffers from two fatal flaws: 1.) Applicant's Amended Answer, like his previous Answer, does not confirm or deny Opposer's allegations; and 2.) Applicant's Amended Answer merely argues the merits of his position. Taken together, these deficiencies amount to a purported Answer filed by Applicant that is nothing more than a non-responsive and argumentative document that runs afoul of the Board's rules.

Other than Applicant's admission of his name and address in paragraph 1 of his Amended Answer, Applicant neither admits nor denies Opposer's allegations. Furthermore, Applicant uses his numbered responses to argue the merits of his position--which is forbidden by the Board's rules. *See* TBMP § 311.02(a) ("The defendant should not argue the merits of the allegations in a complaint but rather should state, as to each of the allegations contained in the complaint, that the allegation is either admitted or denied.") As just one example of Applicant's repeated argumentative statements, in paragraph 6 of Opposer's Notice of Opposition, Opposer asserts

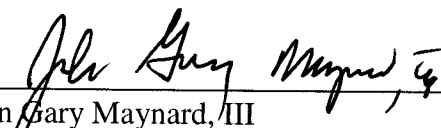
that its Marks have been prominently featured in online advertising campaigns, and have been the subject of a significant amount of unsolicited press. In response, Applicant asserts Opposer “provides no proof of any unsolicited press or association...Other GRO marks in the marketplace have been in use for decades alongside MIRACLE-GRO without confusing the consumer.” Thus, as in his previous Answer which was not considered by the Board, Applicant has used his Amended Answer to argue his position, as opposed to confirming or denying Opposer’s allegations. For this reason, Applicant’s Amended Answer should be stricken and given no consideration by the Board.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board grant this Motion to Strike Applicant’s Answer.

This 22nd day of December, 2010.

OMS INVESTMENTS, INC.



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Certificate of Service

I hereby certify that a true and complete copy of the foregoing Motion to Strike Applicant's Answer has been served on Mr. John Parella by mailing said copy on December 22, 2010, via First Class Mail, postage prepaid to:

Mr. John Parella

1625 Lockridge Dr.

Cumming GA 30041



Janet W. Cho