

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

In the matter of trademark application Serial No. 77/171330  
For the mark SEO  
Published in the Official Gazette March 25, 2008

JE Hochman & Associates LLC,  
Opposer )  
 )  
v. ) Opposition No. 91184116  
 )  
Jason Gambert,  
Applicant )

OPPOSER'S MOTION TO STRIKE PORTIONS OF  
APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

I. INTRODUCTION

JE Hochman & Associates LLC, Opposer, respectfully submits this motion to strike those portions of the Answer to Notice of Opposition of Jason Gambert, Applicant, that are immaterial matter and to strike Applicant's affirmative defenses.

On May 15, 2008, Opposer by its attorneys, Akabas & Sproule, filed its opposition to the registration of the mark, SEO, by Applicant. A copy of the Notice of Opposition was served on Applicant by mail on May 14, 2008 at Applicant's address as shown in the Trademark Office records.

On June 6, 2008, Applicant received a purported pleading entitled Answer to Notice of Opposition (the "Pleading") which was postmarked June 3, 2008.

For the record, Opposer notes the Pleading was mailed by Applicant to Opposer, not Opposer's attorney. Although Opposer is represented by counsel of which Applicant would be aware as counsel signed the Notice of Opposition and set forth in the Notice its address, Applicant failed to properly serve the Pleading on Opposer's counsel. Also the copy of the Pleading mailed to Opposer directly was not a signed copy, although Applicant has apparently filed a copy that is signed.

## II. LAW AND ARGUMENT

“The Board may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Board also has the authority to strike an impermissible or insufficient claim (or portion of a claim) from a pleading.” Trademark Rule 506.01. In the interest of narrowing the scope of matters to be addressed as part of this opposition proceeding, Applicant’s defenses that are insufficient and other material that is immaterial or redundant should be stricken for the reasons set forth below.

### A. IMMATERIAL AND REDUNDANT MATTER SHOULD BE STRICKEN

If the Pleading is to be deemed an answer, then Applicant has included a variety of statements that are not relevant for inclusion in an answer in an opposition proceeding. “An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies.” 37 CFR § 2.106(b)(1). “The defendant should not argue the merits of the allegations in a complaint . . .” Trademark Rule 311.02(a). Each of the statements below in this Section II.A., which are from the Pleading (and which are referenced by the paragraph numbers used by Applicant in the Pleading) should be stricken because they are not a defense, an admission or a denial. They are more properly viewed as arguments on the merits of the opposition, which are immaterial to a proper answer. Such statements are also redundant in that they simply restate the subject of Applicant’s denials of Opponent’s averments, which denials are set forth earlier in the Pleading.

7. Applicant’s SEO mark and Opposer’s mark are different in meaning.
8. Applicant’s SEO mark and Opposer’s mark have very different commercial impressions.
9. Upon information and belief, the services of Applicant are different from the goods and services of Opposer.
10. Upon information and belief, Applicant’s services and Opposer’s goods and services are not likely to be marketed or sold together.

## B. INSUFFICIENT DEFENSES SHOULD BE STRICKEN

In an answer, a defendant may put forward defenses, including affirmative defenses. “However, the pleading should include enough detail to give the plaintiff fair notice of the basis for the defense.” Trademark Rule 311.02(b). Applicant in the Pleading has simply stated the name of a variety of defenses he is asserting. He has provided no allegations of any factual information that would support these defenses. It is not possible to determine what, if any, basis he has for asserting any of the defenses. This is not a matter of Applicant not including enough detail. Rather Applicant has provided absolutely no information, detailed or otherwise. Each of the statements below in this Section II.B., which are from the Pleading (and which are referenced by the paragraph numbers used by Applicant in the Pleading) should be stricken because they are insufficient defenses.

11. Opposer [*sic*] claims are barred by the doctrine of unclean hands or other applicable equitable principles.
12. Opposer [*sic*] claims are barred by the doctrine of laches or other applicable equitable principles.
13. Opposer [*sic*] claims are barred by the doctrine of mistake or other applicable equitable principles.
14. Opposer [*sic*] claims are barred by the doctrine of prior judgment or other applicable equitable principles.
15. Opposer has failed to adequately maintain, police, or enforce any trademark or proprietary rights it may have in the alleged mark.
16. The Notice of Opposition fails to state a claim upon which relief may be granted.

### III. CONCLUSION

For the reasons stated above, the Board should strike Applicant's immaterial and redundant statements and insufficient defenses.

Respectfully submitted,

JE Hochman & Associates LLC

By: 

Michael H. Sproule

Attorney for Opposer

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Dated: June 17, 2008

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Opposition No. 91184116

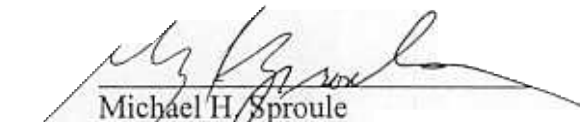
Jason Gambert,                                    )  
  )  
                  Applicant                            )

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S MOTION TO STRIKE PORTIONS OF APPLICANT'S ANSWER TO NOTICE OF OPPOSITION has been served on Jason Gambert by mailing, via First Class Mail, postage prepaid to his correspondence address of record in the Office, which is his last known address:

Jason Gambert  
10001 Woodcreek Oaks Blvd.  
Suite 1627  
Roseville CA 95747

on June 17, 2008.

  
Michael H. Sproule  
Attorney for Opposer