

ESTTA Tracking number: **ESTTA260024**

Filing date: **01/12/2009**

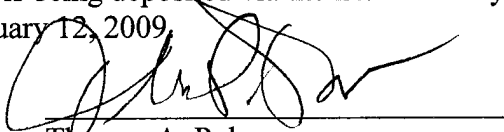
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187981
Party	Plaintiff The Lutheran Church - Missouri Synod
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Date	01/12/2009
Attachments	Response to Motion to Strike.pdf ( 5 pages )(181970 bytes )

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

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is addressed to the Trademark Trial and Appeal Board, Hon. Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, and is being deposited via the Electronic System for Trademark Trials and Appeals (ESTTA) on January 12, 2009.

  
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Thomas A. Polcyn  
USPTO Reg. No. 41,246

THE LUTHERAN CHURCH—MISSOURI SYNOD:

Opposer,

v.

HARRY B. MADSEN

Applicant.

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:  
:           Opposition No. 91187981  
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:           App. Ser. No. 77/487,948  
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:           Atty. Ref. 46324-80132  
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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**OPPOSER'S RESPONSE TO APPLICANT'S MOTION**  
**TO STRIKE NOTICE OF OPPOSITION**

The Lutheran Church—Missouri Synod (“Opposer”) for its Response to Applicant’s Motion to Strike the Notice of Opposition, states:

**INTRODUCTION**

U.S. App. Ser. No. 77/487,948 was published for opposition on November 4, 2008. The time period for filing an opposition therefore expired December 4, 2008. Opposer filed its

Notice of Opposition with the Trademark Trial and Appeal Board (“TTAB”) on December 2, 2008 via the U.S. Postal Service, including a proper Certificate of Mailing pursuant to 37 CFR Section 1.8. The TTAB issued an order dated December 11, 2008 confirming its acceptance of the Notice of Opposition and instituting this opposition proceeding. Opposer received the *Motion to Strike By Owner Harry B. Madsen as to The Notice of Opposition by the Lutheran Church – Missouri Synod, Opposer*, which is attached hereto as **Exhibit A**, and which states that it was mailed to the TTAB by Applicant on December 22, 2008.<sup>1</sup>

**APPLICANT’S MOTION TO STRIKE IS WITHOUT LEGAL BASIS  
AND SHOULD BE DENIED**

Applicant moves the TTAB to strike the Notice of Opposition on grounds that it “meets the requirements of neither: Section 1 - Specific USPTO rulings under this heading, nor Section 2 - Logic, nor Section 3 - Law.”

Section 1 of Applicant’s Motion to Strike admits that on December 4, 2008, Applicant received Opposer’s service copy of its Notice of Opposition, which was filed with the TTAB on December 2, 2008. *Para. 1F*. Applicant then references the TTAB’s December 3, 2008 Order, attached hereto as **Exhibit B**, which notified the parties that Opposer’s initial filing of a Notice of Opposition on November 24, 2008<sup>2</sup> “will not be considered” because it lacked a

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<sup>1</sup> Under 37 CFR Section 2.127(a), a responsive brief to a Motion to Strike must be filed within fifteen (15) days from the date of service of the motion. However, under 37 CFR Section 2.119(c), when service is by first-class mail, five (5) additional days are added to the 15-day period within which a response to a motion must be filed. Thus, if Applicant’s Motion to Strike was in fact mailed to the TTAB on December 22, 2008, the twenty (20) period would expire on Sunday January 11, 2009, and Opposer’s deadline for filing this Response would be January 12, 2009.

<sup>2</sup> Opposer filed this document with the TTAB by U.S. Mail on November 20, 2008 with a Certificate of Mailing pursuant to 37 CFR Section 1.8, so November 24, 2008 is presumably the date it was received and processed by the TTAB.

Certificate of Service as required by Trademark Rules. **Para. 1G** . Applicant then appears to misunderstand the purpose of the TTAB's December 3, 2008 ruling, when he alleges that Opposer's Notice of Opposition filed December 2, 2008 "was already dead in the water... because of the ruling..." **Para. 1H** . In fact, the December 3, 2008 ruling states expressly that it applies to the Notice of Opposition filed November 24, 2008. Applicant acknowledges that the December 3, 2008 ruling further provides that "if time remains in the opposition period... then opposer may be able to file a new notice of opposition with the appropriate fee and proof of service." **Para. 1H**. Opposer did just that.

Applicant's Motion to Strike then makes reference to an Extension of Time granted by the TTAB on December 3, 2008. **Paras. 1I and 1J**. However, Opposer is aware of no such extension having been granted by the TTAB, and Opposer did not request one. Indeed one would not be needed, as Opposer filed its Notice of Opposition on December 2, 2008, well within the original opposition period, which did not expire until December 4, 2008.

Applicant's Motion to Strike alleges that Opposer should have filed a motion to vacate the TTAB's December 3, 2008 ruling in order to rely on its December 2, 2008 Notice of Opposition, which Applicant acknowledges was timely filed. **Para. 1L**. No motion to vacate was required. By filing its December 2, 2008 Notice of Opposition, Opposer simply complied with the December 3, 2008 ruling.

Finally, Applicant's Motion to Strike alleges "considerable communications and filings EX PARTE by LCMS addressed to the USPTO" concerning its application. **Para. 1M**. As mentioned, Opposer's November 20, 2008 filing lacked a Certificate of Service. Opposer received a telephone call from the TTAB (prior to December 2, 2008), informing Opposer that

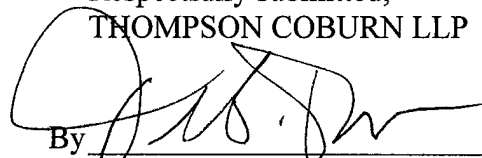
its November 20, 2008 filing lacked a Certificate of Service. Opposer is aware of no other *ex parte* communications with the USPTO.

In view of the above, Opposer respectfully submits that Section 1 of Applicant's Motion to Strike provides no factual or legal basis for striking Opposer's December 2, 2008 Notice of Opposition.

Sections 2 and 3 of Applicant's Motion to Strike also provide no basis for striking Opposer's December 2, 2008 Notice of Opposition. Simply stated, these sections contain irrelevant editorial comments and legally baseless arguments that fail to support a motion to strike. Therefore, for brevity and economy, Opposer will not waste the TTAB's time with a point-by-point analysis of these sections, other than to state that its December 2, 2008 Notice of Opposition complies with all TTAB Rules and Federal Rules of Civil Procedure that are applicable to opposition proceedings, and Applicant's Motion to Strike fails to show otherwise.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the TTAB enter an order denying Applicant's Motion to Strike and for such other relief as the TTAB deems appropriate.

Respectfully submitted,  
THOMPSON COBURN LLP

By 

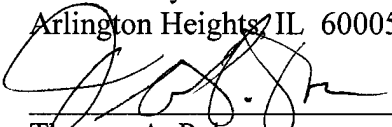
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Attorneys for Opposer  
The Lutheran Church—Missouri Synod

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Response to Applicant's Motion to Strike the Notice of Opposition has been served on Harry B. Madsen by mailing said copy on January 12, 2009 via First Class Mail, postage prepaid to:

Harry B. Madsen  
1850 Surrey Park Lane  
Arlington Heights, IL 60005



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Thomas A. Polcyn