

ESTTA Tracking number: **ESTTA35658**

Filing date: **06/14/2005**

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

Proceeding	91157022
Party	Defendant FD Management, Inc. FD Management, Inc. 300 Delaware Avenue Wilmington, DE 19801
Correspondence Address	JOSEPH R. DREITLER JONES DAY P.O. Box 165017 COLUMBUS, OH 43216-5017 UNITED STATES jrdreitler@jonesday.com
Submission	Motion to Strike
Filer's Name	Joseph R. Dreitler
Filer's e-mail	jrdreitler@jonesday.com, mrtrue@jonesday.com, nafickle@jonesday.com
Signature	/joseph r dreitler/
Date	06/14/2005
Attachments	Motion to Strike.PDF (3 pages)

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

IN THE MATTER OF:

TRADEMARK APPLICATION NO. 76/372,550 - ARDENBEAUTY

DATE OF PUBLICATION: JUNE 3, 2003

The Wet Seal, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91157022
)	
FD Management, Inc.,)	
)	
Applicant.)	
)	

**FD MANAGEMENT, INC.'S MOTION TO STRIKE
OPPOSER'S NOTICE OF RELIANCE UNDER RULE 2.122(e)**

Applicant hereby moves to strike, in its entirety, Opposer's Notice of Reliance and all attachments thereto, filed on June 9, 2005, consisting of copies of third party registrations from the PTO web-site.

Opposer's Testimony Period closed three and one-half (3½) months ago, on February 24, 2005. 37 CFR 2.122(e) is clear on its face. With respect to the introduction of evidence, it shall be introduced prior to the close of the offering party's Testimony Period. As set forth in the Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 702.02(b)(1), "When a notice of reliance under any of the aforementioned rules is filed after the close of the offering party's testimony period, an adverse party may file a motion to strike the notice of reliance (and, thus, the evidence submitted thereunder), in its entirety, as untimely. Alternatively, an adverse party may raise this ground for objection in its brief on the case." *See, Jean Patou Inc. v. Theon*

Inc., 18 USPQ2d 1072, 1075 (TTAB 1990). In *Patou*, the Board ruled that the filing of the notice of reliance, after the close of that party's testimony period, ". . . clearly is untimely."

And so it is in this case. Opposer filed a Notice of Reliance on June 9, 2005, yet its Testimony Period had closed on February 24, 2005. There is no issue. Rule 2.122(e) is mandatory, not discretionary:

"The notice of reliance shall (emphasis added) be filed during the testimony period of the party that files the notice."

Opposer did not file its Notice of Reliance under Rule 2.122(e) until long after its Testimony Period had closed. The Notice of Reliance and all attachments must be stricken from the record.

Dated: June 14, 2005

Respectfully submitted,



Joseph R. Dreitler

Brian J. Downey

Mary R. True

JONES DAY

P.O. Box 165017

Columbus, Ohio 43216-5017

Telephone: (614) 281-3902

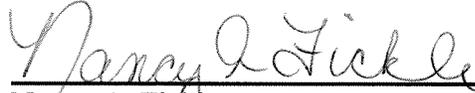
Facsimile: (614) 461-4198

Attorneys for Applicant

FD MANAGEMENT, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion To Strike Opposer's Notice Of Reliance Under Rule 2.122(e) was served via facsimile and U.S. mail on John M. Cone, Esq. c/o Akin, Gump, Strauss, Hauer & Feld, LLP, 1700 Pacific Avenue, Suite 4100, Dallas, Texas 75201, this 14th day of June 2005.



Nancy A. Fickle