

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: July 18, 2005

Opposition No. **91157022**

The Wet Seal, Inc.

v.

FD Management, Inc.

Frances S. Wolfson, Interlocutory Attorney:

On June 14, 2005 applicant filed a motion to strike opposer's notice of reliance (filed June 9, 2005 via certificate of mailing) on the grounds that it was not filed during opposer's testimony period. Opposer responds that the notice of reliance is not untimely inasmuch as it was filed during opposer's rebuttal testimony period.

While opposer is correct that it may file testimony during its rebuttal testimony period, such may be filed "solely for rebuttal" purposes and not as part of its case in chief. Trademark Rule 2.121(c); see also Trademark Rule (2)(b)(1) ("The Trademark Trial and Appeal Board will schedule a testimony period for the plaintiff to present its case in chief, a testimony period for the defendant to present its case and to meet the case of the plaintiff, and a testimony period for the plaintiff to present evidence in rebuttal.").

Accordingly, inasmuch as determination of applicant's motion to strike opposer's notice of reliance requires the Board to decide whether opposer's evidence thereunder is improper rebuttal testimony, determination of applicant's motion is deferred until final hearing.

Opposer's rebuttal period closed June 9, 2005. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.