

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

Mailed: October 18, 2006

Opposition No. 91162330

L.C. LICENSING, INC.

v.

BERMAN, CARY

**Thomas W. Wellington,
Interlocutory Attorney:**

This proceeding now comes up on opposer's motion (filed October 5, 2006) for an order concerning the Rule 30(b)(6) deposition of applicant, Cary Berman, which was taken during the discovery period. Specifically, opposer seeks authorization to file an unsigned copy of the deposition transcript. In support of its motion, opposer states that it has attempted to secure Mr. Berman's signature; however, Mr. Berman has refused to sign a copy of the deposition transcript.

On October 16, 2006, at 2:00 pm eastern time, the Board convened a telephone conference between Kieran Doyle, Esq., counsel for opposer, and Cary Berman, pro se applicant, and the above-referenced Board attorney

responsible for resolving interlocutory matters in this case.

During the telephone conference, applicant acknowledged that he has refused to sign a copy of the deposition transcript. Mr. Berman did not provide any reason for not signing the transcript. He stated, however that he did not see any requirement to sign the deposition transcript other than opposer's counsel requesting him to do so.

The Board distinguishes between a deposition taken during the discovery period versus that taken during the testimony periods. See TBMP § 404.09 (2d ed. rev. 2004). Likewise, Trademark Rule 2.123(e)(5) provides that, in the case of testimonial depositions, "[w]hen the deposition has been transcribed, the deposition shall be carefully read over by the witness or by the officer to him, and shall then be signed by the witness in the presence of any officer authorized to administer oaths unless the reading and the signature be waived on the record by agreement of all parties." There is no such specific Trademark Rule for discovery depositions. Accordingly, the discovery deposition at issue, taken under Fed. R. Civ. P. 30(b)(6) is governed by the rule's subsection (e) which states as follows:

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

As is readily apparent from the language of the rule, the burden is upon the deponent (or an interested party) to request the opportunity to review the deposition transcript and to make any appropriate changes. Here, the record reflects that no such a request was made and, to the contrary, applicant refused an opportunity to review and sign the deposition transcript.

In view thereof, opposer's motion is granted only to the extent that opposer may make the unsigned deposition of record during its testimony period, as provided by Trademark Rule 2.120(j). See TBMP § 704.09 (2d ed. rev. 2004) regarding introducing discovery depositions into evidence.

Lastly, although the issue was not raised by the parties, the Board would be remiss if we did not clarify that deposition testimony obtained during the discovery period should only be filed with the Board in certain

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situations. See TBMP § 409 (2d ed. rev. 2004) regarding appropriate situations. Discovery papers or materials, including deposition testimony, otherwise improperly filed with the Board may be returned to the party that filed them. *Id.*

Trial dates remain as set forth in the Board's September 29, 2006 order.¹

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¹ In the order, the Board also allowed applicant thirty (30) days there from to file an answer to the notice of opposition, as amended. This time period has not been extended or stayed as a result of the motion addressed in this order.