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

Proceeding	91162370
Party	Defendant De Beers LV Ltd
Correspondence Address	Darren W. Saunders Hiscock & Barclay, LLP Seven Times Square New York, NY 10036 UNITED STATES DSaunders@hblaw.com
Submission	Motion to Extend
Filer's Name	Darren W. Saunders
Filer's e-mail	dsaunders@hblaw.com, rpowell@hblaw.com, apatel@hblaw.com, trademarks@hblaw.com
Signature	/darren.saunders/
Date	02/20/2009
Attachments	De Beers Motion to Extend Applicant's Testimony Period.pdf (24 pages) (682727 bytes)

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

DE BOULLE DIAMOND & JEWELRY, INC.,

Opposer,

v.

DE BEERS LV LTD.,

Applicant.

Consolidated Opposition No.: 91162370

Opposition No.'s: 91162370

91162469

91164615

91165285

91165465

MOTION TO EXTEND APPLICANT'S TESTIMONY PERIOD

Applicant hereby moves the Board for a 60-day extension of its testimony period to provide it sufficient time to seek relief from a federal district judge in connection with the intentional evasion of service of a subpoena on Opposer's CEO, Denis Boulle.

I. PRELIMINARY STATEMENT

This motion for an extension of Applicant's testimony period is necessitated by Opposer's intentional evasion of service of a properly issued subpoena. The witness, Mr. Denis Boulle, is the CEO of Opposer, De Boulle Diamond and Jewelry, Inc. and has principal knowledge of material the facts underlying this proceeding. As Mr. Boulle is an adverse witness, De Beers caused a notice of examination to be issued on January 23, 2009 to Mr. Boulle for a deposition on March 3, 2009 in Dallas, where Mr. Boulle resides and works.

Applicant De Beers has been diligently attempting to serve the subpoena on Mr. Boulle over the past three weeks. Indeed, two process servers made a combined 28 attempts to serve Mr. Boulle at his home and place of business without success, frustrating Applicant's ability to present its testimony during the scheduled testimony period. (The testimony period is currently

set to close on March 16, 2009). As a result, De Beers is now forced to seek relief from a federal district judge in Dallas in order to effect service of the notice of examination on Mr. Boule. This will require De Beers to initiate a miscellaneous action in the United States District Court for the Northern District of Texas, which De Beers will accomplish in the next several days.

De Boule brought these five consolidated opposition proceedings, which have been ongoing for over four years. As the Opposer, De Boule has an obligation to act in good faith and comply with the Federal Rules of Civil Procedure and the Trademark Rules. De Boule is doing neither. Clearly, De Beers has the right to call Mr. Boule as a witness to defend this proceeding and Mr. Boule cannot lawfully avoid testifying by playing cat-and-mouse games. De Beers respectfully submits that it should not be penalized by, and De Boule should not be rewarded for its bad faith conduct and intentional evasion of service. Accordingly, De Beers requests that the Board extend Applicant's testimony period for a sufficient period of time to enable De Beers to obtain the necessary relief from the federal district court to enable it to take the testimony deposition of Mr. Boule.

II. FACTS

In this consolidated opposition proceeding, Opposer De Boule Diamond & Jewelry, Inc. ("De Boule") opposes the following five U.S. trademark applications filed by Applicant De Beers LV Ltd.: DB SIGNATURE (78/245,210); DB LOGO (78/245,219); DB MONOGRAM (78/245,779); DB STAR(78/245,795); and SO DB (79/000,478).¹

¹ On February 19, 2009, Applicant filed an Express Abandonment of Trademark Application Nos. 78/245,219 (DB LOGO); 78/245,779 (DB MONOGRAM); 78/245,795 (DB STAR); and 79/000,478 (SO_DB) leaving DB SIGNATURE as the sole application which De Beers will continue to defend in this proceeding.

During Opposer's testimony period, which was originally set to close on July 16, 2008. Opposer took the testimony deposition of only one witness, Mr. Boulle. Applicant's counsel traveled from New York to Dallas to attend the deposition for the purposes of cross-examination. At the testimony deposition, two lawyers questioned the witness on his direct testimony - - the attorney of record in the proceeding, Dennis Griggs, Esq., and another attorney Pieter Tredoux. As a result, the direct testimony took an inordinate amount of time, essentially the entire business day. The parties agreed that the deposition would be continued to permit the cross-examination of Mr. Boulle by De Beers on another date in Dallas. The parties further agreed to request an extension of the testimony periods as needed to permit the cross-examination.²

Over the course of the next several months, the parties engaged in settlement discussions and agreed to several extensions of Opposer's testimony period to facilitate settlement negotiations. Before the Opposer's testimony period was set to close on January 14, 2009 it became clear to De Beers that settlement was not imminent. Accordingly, counsel for De Beers contacted Plaintiff's counsel to request that the parties file one additional stipulated request to extend the testimony periods to permit the cross-examination of Mr. Boulle. Counsel for Opposer never returned De Beers' telephone calls and instead on January 14, 2009 submitted Volume I of the testimony of Mr. Boulle, its exhibits and Notice of Reliance, and permitted the testimony period to close.

² The agreements between the parties were on the record and appear at the end of the deposition transcript of Mr. Boulle, which is contained in Volume II of the testimony. However, it appears that Opposer filed and served only Volume I of the testimony, as Applicant did not receive a copy of Volume II and it does not appear that Volume II is in the TTAB record.

Thereafter, Applicant began to prepare for its testimony period, which opened on February 16, 2009 and is currently set to close on March 16, 2009.³ Applicant determined that it would call two witnesses to testify, Hamida Belkadi from De Beers in New York and Denis Boule, as an adverse witness in Dallas. Applicant's counsel contacted Opposer's counsel to ask if a notice of examination would be necessary to command the attendance of Mr. Boule at a testimony deposition. Opposer's counsel refused to respond and, therefore De Beers retained a process server to serve a subpoena on Mr. Boule to command his appearance for deposition testimony.

Pursuant to Rule 45, Fed. R. Civ. P., the subpoena was duly issued on January 23, 2009 from the United States District Court for the Northern District of Texas along with a check for the prescribed witness fee, which was used as a notice for examination described under C.F.R. 2.123(c). (See Exhibit A attached hereto). The process server, Mr. Larry M. Merrell, made 17 attempts to serve Mr. Boule with the subpoena between January 23, 2009 and February 5, 2009. (See Process Server Log, attached as Exhibit B). Having no success, De Beers retained a second process server, Wendy Bigony. She made 11 attempts to serve Mr. Boule between February 9, 2009 and February 16, 2009, also with no success. (See Affidavit of Diligence, attached as Exhibit C).

Significantly, Mr. Boule has for sometime had actual knowledge that De Beers has been attempting to serve the subpoena on him and that De Beers intends to take his testimony deposition. Quite obviously, and as is clear from Exhibits B and C hereto, Mr. Boule, who resides and works in Dallas, has been purposefully evading service of the subpoena. Counsel for

³ In the Board's order, Applicant's testimony period is set to close on March 15, 2009, which is a

De Beers brought this to the attention of Opposer's counsel but counsel refused to intercede and instead threatened to seek sanctions if Applicant moves forward with the testimony deposition of Mr. Boule. (See letters of February 4 and February 6, 2009 attached as Exhibits D and E hereto). As a result, De Beers has no choice but to file a miscellaneous action in the United States District Court in Dallas in order to obtain an order from a federal district judge authorizing an alternative method of service of the subpoena on Mr. Boule. Applicant has retained counsel in Dallas and is now expeditiously moving forward with initiation of the miscellaneous action.

Accordingly, Applicant needs the requested extension of time in order to obtain judicial relief from the United States District Court in Dallas to compel Mr. Boule's attendance for deposition testimony.

III. ARGUMENT

A. Opposer is Acting in Bad Faith by Purposely Evading Service of a Properly Issued Subpoena and Therefore Applicant Has Good Cause To Request This Extension.

Rule 2.121(a) states that the parties may request the Board to reschedule testimony periods, for either reopening or extension. A party requesting extension of its testimony period, as De Beers requests herein, must show good cause for the extension. (See Fed. R. Civ. Pro. 6(b); *see also* TMBP § 509.01(a)). The Board liberally grants requests to reschedule set periods, where the application is for an extension. *See American Vitamin Products, Inc. v. DowBrands Inc.*, 22 U.S.P.Q.2d 1313 (TTAB 1992).

Applicant's request for extension is based on good cause. Specifically, Applicant's need for an extension is based on Mr. Boule's bad faith conduct by evading service, preventing

(..continued)
Sunday.

Applicant from taking testimony during the set schedule. For the reasons expressed herein, Applicant has demonstrated good cause for its request for an extension of its testimony period.

Mr. Boule, CEO of Opposer, is purposefully evading service of Applicant's subpoena, necessitating Applicant's request for an extension because it needs time to procure federal judicial relief compelling Mr. Boule to attendance for trial examination.

B. Applicant Has Been Deprived the Opportunity of Cross-Examination of Opposer's Trial Witnesses in Violation of Rule 2.123.

Applicant will be prejudiced if it is not afforded an opportunity to question Mr. Boule, because Applicant has not had an opportunity to cross-examine Mr. Boule. It is fundamental in United States jurisprudence that witness testimony is not admissible in a judicial or administrative proceeding without the opposing party having the opportunity to cross-examine the witness. Consistent with this fundamental principle, Rule 2.123(e)(3) mandates that an adverse party have an opportunity to cross-examine every witness. Because Applicant was not afforded a reasonable opportunity to cross-examine Mr. Boule, this is a further basis upon which to grant the requested extension.⁴

C. Applicant Has the Absolute Right to Call Mr. Boule as an Adverse Witness During Its Testimony Period.

Regardless of whether Applicant had cross-examined Mr. Boule during Opposer's testimony period, under the Trademark Rules and the Federal Rules of Evidence, De Beers had the absolute right to call Mr. Boule as an adverse witness during its testimony period. (*See Trademark Rule 2.122(a), Rule 602, FED. R. EVID*). Furthermore, Applicant has complied with the pre-trial disclosure requirements under Rule 2.121(e) by providing Opposer with notice that

⁴ De Beers reserves the right to object to the admissibility in whole of Mr. Boule's testimony should it not have the opportunity to examine Mr. Boule in this proceeding.

it intended to call Mr. Boulle; and also the notice of examination requirements under Rule. 2.123(c) by attempting to provide Mr. Boulle with a subpoena. In sum, because Applicant has the right to call Mr. Boulle as an adverse witness, and because Mr. Boulle is refusing to accept service of a subpoena compelling his attendance at the testimony deposition, Applicant has shown good cause for this request for extension of its testimony period.

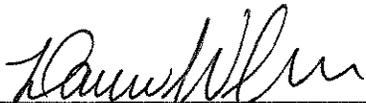
IV. CONCLUSION

De Beers requests the Board extend Applicant's testimony period for a sufficient period of time so that it may obtain federal judicial relief requiring Mr. Boulle to appear for testimony deposition, and so that it may adequately defend this proceeding, and for such other and further relief as the Board may deem appropriate.

Respectfully submitted,

DE BEERS LV LTD.

DATED: February 20, 2009

By: 
Darren W. Saunders
Hiscock & Barclay, LLP
Seven Times Square
New York, NY 10036
P: 212.784.5800
F: 212.784.5777

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February 2009 I served the foregoing MOTION TO
EXTEND APPLICANT'S TESTIMONY PERIOD by electronic and first class to:

Dennis T. Griggs, Esq.
Griggs Bergen LLP
17950 Preston Road
Suite 1000
Dallas, Texas 75252



EXHIBIT A

**Issued by the
UNITED STATES DISTRICT COURT
Northern District of Texas**

De Boulle Diamond & Jewelry, Inc.
V. Opposer

De Beers LV Ltd.,

Applicant.

SUBPOENA IN A CIVIL CASE

United States Patent and Trademark Office
Case Number:¹ Trademark Trial and
Appeal Board

Consolidated Opposition No.: 91162370

TO: Denis J. Boulle
6821 Preston Road
Dallas, Texas 75205

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
901 Main Street, Suite 6000 Jackson Walker L.L.P. Dallas, Texas 75202	03/03/2009 at 9:30 a.m.

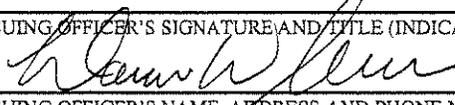
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Attorney for Defendant (Applicant)	01/23/2009

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Darren W. Saunders
Hiscock & Barclay LLP Seven Times Square, New York, NY 10036 (212) 784-5800

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT B

Process Service Log

Date: FEBRUARY 18, 2009 Server's Name: LARRY M. MERRELL

Cause # CONSOLIDATED OPPOSITION NUMBER: 91162370

Style of Case: DeBOULLE DIAMOND & JEWELRY, INC. VS. DeBEERS LV LTD.

County: _____ Court: UNITED STATES PATENT AND TRADEMARK OFFICE, TRADEMARK TRIAL AND APPEAL BOARD

Type of Service requested: SUBPOENA

Company/Person Being Served: DENIS J. BOULLE
6821 PRESTON ROAD (OFFICE)

Address: 4024 DRUID LANE (RESIDENCE)

City / Zip: DALLAS Phone # _____

Times to Reach Company/ Person: _____

Date	Time	Notes
01-23	3:30pm	BOULLE NOT AT OFFICE
01-26	10:40AM	BOULLE NOT AT OFFICE
01-27	4:25pm	BOULLE NOT AT OFFICE
01-28	1:15pm	BOULLE NOT AT OFFICE
01-28	1:20pm	BOULLE NOT AT HOME (WIFE THERE)
01-28	4:05pm	NO ANSWER AT HOME

Date	Time	Notes
01-28	4:10pm	BOULLE NOT AT OFFICE
01-29	11:35AM	BOULLE NOT AT OFFICE
01-29	11:40AM	BOULLE NOT AT HOME - LEFT my PHONE NUMBER WITH WIFE
01-29	5:40pm	NO ANSWER AT HOME
01-30	12:50pm	BOULLE NOT AT OFFICE - LEFT my PHONE NUMBER
01-30	12:55pm	NO ANSWER AT HOME
02-03	9:15AM 10:30AM	WAITED OUTSIDE OFFICE - BOULLE NEVER SHOWED UP
02-03	11:10 AM	BOULLE NOT HOME - LEFT PHONE NUMBER WITH WIFE AGAIN
02-03	3:15pm	BOULLE NOT AT OFFICE
02-05	1:10pm	BOULLE NOT AT OFFICE
02-05	1:15pm	BOULLE NOT AT HOME - MAID ANSWERED DOOR

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

DE BOULLE DIAMOND and
JEWELRY INC.

Opposer,

VS.

DE BEERS LV, LTD

Applicants.

§
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CASE NO. 91162370

AFFIDAVIT OF DILIGENCE

I, Wendy Bigony, having been first duly sworn do state the following that:

I am over the age of eighteen (18) years of age and have no interest in the outcome of the above referenced cause. All of the facts stated herein are true and correct.

On February 09, 2009, at 3:45 p.m., I received a Citation and Petition, to be delivered to Denis J. Boule at 4024 Druid Lane, Dallas, Texas 75205.

The following are my additional attempts to deliver said documents to the Defendant.

<u>Date</u>	<u>Time</u>	<u>Results</u>
02/09/09	6:40 p.m.	I arrived at the above-referenced location and received no answer at front door. I went to side door and Mrs. Boule told me to leave the property.
02/10/09	12:55p.m.	I attempted service at work address at 6821 Preston Road, Dallas, Texas 75205. His employer told me that Mr. Boule was not in and believed that he was out of town. I saw red Ferrari parked out front in reserved parking and took license plate tags down. I ran tag (747-TZN) and the Ferrari does belong to Mr. Boule. I also saw a man around the corner that looked like him according to a picture that was provided to me. He immediately walked away when he saw me and was very suspicious.
02/10/09	7:20 p.m.	Attempted service at his home. I received no answer at the front door. Lights were on and cars were in driveway.
02/11/09	5:45 p.m.	I went to his business address and he was not there.

- 02/11/09 5:55 p.m. I went to his home and the maid told me over the intercom that Mr. Boulle was not home; his Ferrari was in the driveway.
- 02/13/09 9:30 a.m. I staked out at his work address until 10:30 a.m. and there was no show of Mr. Boulle.
- 02/13/09 4:15 p.m. I attempted at his home and there was no answer at the door. His car was in the driveway.
- 02/14/09 12:55 p.m. I attempted both place of business and residential address and he was not at either place and neither was his car.
- 02/14/09 I called his store and employee stated that Mr. Boulle would be in the store Monday afternoon.
- 02/16/09 5:15 p.m. Went to his home and maid told me over the intercom that Mr. Boulle was not home and said he was out of town. His red Ferrari was in the driveway.
- 02/16/09 5:25 p.m. I called Mr. Boulle's store and spoke with the financial/operations manager and he stated that Mr. Boulle was not in. I told him that the first time I came by the store that Mr. Boulle's Ferrari was parked outside. He said "they" bring it to the store frequently. I gave him my name and number and told him that I had Subpoena to deliver to Mr. Boulle. I asked him to call me and let me know when I could deliver.

It is my belief that the defendant is avoiding service of process. Therefore, it is requested that service upon Defendant, Denis J. Boulle, be made by leaving a true copy of the above-referenced documents, attached with any individual over the age of sixteen (16) or by affixing it to the Defendant's main entrance of the usual place of abode, at 4024 Druid Lane, Dallas, Texas 75205.

Further affiant says not.

Wendy Bigony
 Wendy Bigony SCH 4124

SUBSCRIBED AND SWORN TO before me by Wendy Bigony on this the 19th day of February, 2009, to attest witness my hand and seal of office.

A. Torres
 NOTARY PUBLIC in and for
 THE STATE OF TEXAS

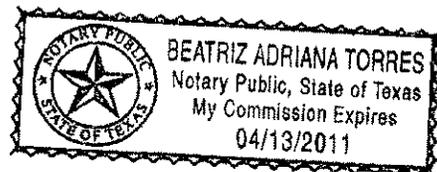


EXHIBIT D

DARREN W. BAUNDERS
PARTNERSEVEN TIMES SQUARE
NEW YORK, NEW YORK 10036
T 212.784.5800 • F 212.784.5777DIRECT DIAL 212.784.5805
DIRECT FAX 212.784.5757
DSAUNDERS@HBLAW.COM
ALSO ADMITTED IN: CONNECTICUT

February 4, 2009

VIA UPS
VIA ELECTRONIC MAILDennis Griggs, Esq.
Griggs Bergen LLP
Preston Road at Frankford
Preston Plaza, Suite 1000
17950 Preston Road
Dallas, Texas 75252Re: De Boule Diamond & Jewelry, Inc. v. De Beers LV Ltd.
Consolidated Opposition No. 91162370

Dear Mr. Griggs:

This concerns the testimony deposition of Denis Boule.

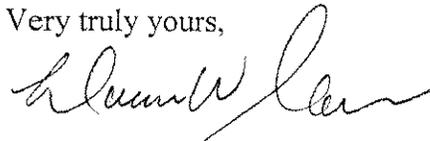
We are extremely disappointed that you did not honor our agreement to continue the deposition of Mr. Boule so that he can be cross-examined. As I am sure you are aware, cross examination of a witness is a fundamental right in the United States jurisprudence and is a prerequisite to the admissibility of any testimony. It is particularly distressing that you chose to submit the Boule testimony without the courtesy of contacting me to discuss how we should proceed, particularly in view of the inordinate amount of time taken in the questioning of the witness by two different attorneys, necessitating that we return for a second day in order to conduct cross-examination.

Regardless of the foregoing, De Beers has the absolute right under TTAB rules to call Mr. Boule as a witness during its testimony period. We have been attempting over the past two weeks to serve Mr. Boule with a subpoena and it has become apparent that he is intentionally evading service. We will do whatever is necessary to secure Mr. Boule's attendance at the testimony deposition, noticed for March 3, 2009, including bringing the matter to the attention of a federal district judge if necessary.

Dennis Griggs, Esq.
February 4, 2009
Page 2

As there has already been an inordinate amount of wasteful motion practice in this proceeding, we are writing in an attempt to avoid further unnecessary and costly motion practice. Accordingly, please let me know by the close of business Friday, February 6, 2009 whether you will accept service of the subpoena on Mr. Boule. In the absence of a timely and affirmative response, we shall proceed accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Darren W. Saunders", written in a cursive style.

Darren W. Saunders

c: Pieter Tredoux (via email only)

EXHIBIT E

PIETER J. TREDOUX

ATTORNEY AND COUNSELOR
300 PARK AVENUE, SUITE 1700
NEW YORK, NEW YORK 10022
212.308.3500 T 212.308.2500 F
PTREDOUX@TREDOUX.COM

February 6, 2009

VIA ELECTRONIC MAIL: DSAUNDERS@HBLAW.COM

Darren E Saunders, Esq.
Hiscock & Barclay LLP
Seven Times Square
New York, New York 10036

Re: Consolidated Opposition No. 91162370
De Boulle Diamond & Jewelry, Inc. v. De Beers LV Ltd.

Dear Mr. Saunders:

Mr. Boulle testified in this Proceeding on July 9, 2008, of which you received notice and attended. De Boulle concluded its testimony and passed the witness. Thereafter Mr. Boulle was your witness. You requested that the testimony be continued to allow you for your cross-examination.

Subsequently we worked with you for six months in agreeing to a number of extensions of Opposer's Testimony Period, to accommodate your client in its decision on how to proceed with its Applications made the subject matter of this Proceeding and Mr. Boulle's testimony.

Our correspondence also reflects that De Boulle notified you on December 3, 2008, that it was not prepared to agree to a further extension of Opposer's Testimony Period beyond January 14, 2009. You notified us at that time that De Beers was going to dismiss the Applications made the basis of the Proceeding. Thereafter the Board also notified the parties that no further extensions of Opposer's Testimony Period would be granted without a joint status report.

We did not hear from you at all after December 3, 2008 regarding Mr. Boulle's testimony. I then called you a number of times during the week of January 5, 2009, to discuss the matter with you, but you did not return my telephone calls. On January 12, 2009, I sent you an e-mail admonishing you to return my telephone calls. You did not call until the afternoon of January 13, 2009, the day before Opposer's Testimony Period

Darren E. Saunders, Esq.
February 6, 2009
Page 2

expired, to inform me that De Beers would not withdraw its Applications as you had previously represented to me in correspondence you were going to do. No mention was made regarding Mr. Boule Testimony or the pending deadline to conclude Opposer's Testimony Period. I told you I would call you back after discussing the new development with the client, which I did early on the morning of January 14, 2009, but again you did not return my telephone call. In stead you sent me an e-mail at 6:00 p.m. on January 14, 2009, the day of the conclusion of Opposer's Testimony Period, again making no mention of Mr. Boule Testimony or the pending deadline to conclude Opposer's Testimony Period

De Beers has accordingly had more than six (6) months to request that Mr. Boule's testimony be resumed for your cross-examination, but it chose not to do so. Not once during the six months did it even request that it be provided dates for the continuation of the testimony.

De Boule therefore had no alternative but to protect its interests and comply with the TBMP, by having Mr. Boule's testimony transcribed and submitted to the Board, and doing the other things required at the conclusion of Opposer's Testimony Period.

You further did not protest the fact that Opposer's Testimony Period was allowed to expire after you received Notice of the filings made by De Boule on January 14, 2009. In stead you informed us via e-mail on January 15, 2009 that you were going to subpoena Mr. Boule to testify in this Proceeding.

Once more we did not hear from you for weeks, until February 4, 2009, now attempting to blame De Boule for you own failure to make any attempt at all to notify De Boule that you intend to reconvene testimony of Mr. Boule, a witness that was passed to you six months earlier, for purposes of your for cross-examination.

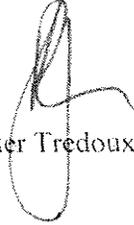
Mr. Boule has therefore already testified in this Proceeding and De Beers has had ample opportunity to cross-examine the witness. Your attempt to serve a subpoena on Mr. Boule, and to engage baseless and costly Motion practice in federal court, is therefore no more than a thinly-veiled attempt by De Beers, to harass, annoy, and intimidate De Boule a small jewelry store and competitor of De Beers, and its shareholder and CEO, Mr. Boule, and cause them unnecessary cost and expense, as punishment for De Boule exercising its rights to protect its intellectual property rights by opposing the Applications filed by De Beers in this Proceeding.

We do not represent Mr. Boule personally in this matter, and have not been authorized to accept service on his behalf. We have however been informed by De Boule that it is not aware of any attempts made to serve Mr. Boule with a subpoena, except on February 3, 2009, when someone came to his home while Mr. Boule was in California.

Darren E. Saunders, Esq.
February 6, 2009
Page 3

You are hereby advised that if you proceed with the baseless Motion practice threatened in your letter, our client will vigorously defend its rights and seek the imposition of all sanctions available under the Rules against De Beers, including, but not limited to, the recovery of its attorney's fees and costs.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Pieter Tredoux'. The signature is stylized with a large, looped initial 'P' and a long, sweeping horizontal stroke extending to the right.

Pieter Tredoux

cc: Dennis Griggs, Esq.