ESTTA Tracking number: **ESTTA271817**
Filing date: **03/12/2009**

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

Proceeding	91162370
Party	Plaintiff De Boulle Diamond & Jewelry, Inc.
Correspondence Address	Dennis Griggs Griggs Bergen LLP 17950 Preston Road, Suite 1000 Dallas, TX 75252 UNITED STATES dennis@griggslaw.com, ptredoux@tredoux.com, scott@griggslaw.com
Submission	Opposition/Response to Motion
Filer's Name	Dennis Griggs
Filer's e-mail	dennis@griggslaw.com, ptredoux@tredoux.com, scott@griggslaw.com
Signature	/Dennis Griggs/
Date	03/12/2009
Attachments	Opposers_Response_to_Applicant_Motion_Exhibits_031209.pdf (54 pages)(1553681 bytes)

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

DE BOULLE DIAMOND & JEWELRY, INC.,	
Opposer,	Consolidated Opposition No.: 91162370
v.	Opposition No.'s: 91162370 91164615
DE BEERS LV LTD.,	
Applicant.	

OPPOSER'S RESPONSE TO MOTION TO EXTEND APPLICANT'S TESTIMONY PERIOD

Opposer, De Boulle Diamond & Jewelry, Inc. ("Opposer" and/or "De Boulle"), hereby files this Response to the Motion to Extend Applicant's Testimony Period (the "Motion") filed by De Beers LV Ltd., Applicant ("Applicant" and/or "De Beers"), and in support of same will respectfully show:

I.

APPLICANT HAS FAILED TO SHOW GOOD CAUSE
FOR THE EXTENSION OF APPLICANT'S TESTIMONY PERIOD

TBMP §509.01(a) (2d ed. rev. 2004) provides:

509.01(a) Motions to Extend Time

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient.

Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or

unreasonable delay in taking the required action during the time previously allotted therefor.

(*footnotes omitted*)

(a) **Applicant has had more than six (6) months to conduct a cross-examination of Mr. Boulle**

Denis J. Boulle ("Mr. Boulle") testified in this Proceeding as a witness on behalf of Opposer on July 9, 2008. *Exhibit "A": Affidavit of Pieter Tredoux* ("Tredoux Affidavit"), ¶ 4, Appendix I. De Boulle served Notice of the testimony deposition on Applicant, and its counsel Darren Saunders, Esq., and invited them to attend and cross-examine the witness. *Id.* Mr. Saunders attended Mr. Boulle's testimony on July 9, 2008. *Id.* De Boulle concluded its testimony and passed the witness to De Beers. *Id.* Mr. Saunders then requested that the testimony be continued to allow for his cross-examination. *Id.*

De Boulle subsequently agreed to a number of extensions of Opposer's Testimony Period, over the next five (5) months to accommodate De Beers and Mr. Saunders in their decision on how to proceed with its Applications made the subject matter of this Proceeding and Mr. Boulle's testimony. *Tredoux Affidavit,* ¶ 5

De Beers did not once request that the testimony of Mr. Boulle be resumed for Mr. Saunders' cross-examination during the more than six (6) months that transpired since Mr. Boulle's testimony, or request that it be provided with convenient dates for the cross-examination during this period of time. *Tredoux Affidavit,* ¶ 8

Applicant has therefore been afforded all due process required under the law to cross-examine Mr. Boulle and any failure to do so is solely the result of its own lack of its own diligence and unreasonable delay.

(b) **Applicant knowingly allowed Opposer's Testimony Period to expire without reconvening the deposition of Mr. Boulle for its cross examination, as it was permitted to do**

On December 3, 2008, De Boulle notified De Beers and Mr. Saunders that it was not prepared to agree to a further extension of Opposer's Testimony Period beyond January 14, 2009. *Tredoux Affidavit,* ¶ 8, Appendix II. Thereafter the Board also notified the parties by Order dated December 16, 2008 that no further extensions of Opposer's Testimony Period would be granted without a joint status report. *See* Document 73, at fn.1.

Counsel for De Boulle called counsel for De Beers a number of times during the weeks of January 5, 2009, and January 12, 2009 to discuss the pending deadline to conclude Opposer's Testimony Period with him, but he did not return his telephone calls (except on one occasion). *See Tredoux Affidavit,* ¶ 7, Appendix III. Furthermore, counsel for De Beers made no effort at all to cooperate in the preparation of the status report required by the Board as a condition to any extension, to obtain dates for the continuation of Mr. Boulle's testimony, or otherwise obtain Opposer's consent to an extension of Opposer's Testimony Period for such purpose. *Id.*

Indeed, by December 3, 2008 all settlement discussion had concluded. *See Tredoux Affidavit,* ¶ 7, Appendix III. There was therefore no reason for De Beers not to proceed with the cross-examination of Mr. Boulle, and it had ample opportunity to do so

prior to January 14, 2009. Its failure to do so constitutes a lack of diligence and unreasonable delay on its part which negates any good cause for an extension of the testimony period requested. TBMP §509.01(a); *see Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999).

(c) **Applicant has not proceeded with diligence to procure its testimony, including, but not limited to, the cross-examination of Mr. Boulle**.

As set forth above, Applicant's failure to complete the cross-examination of Mr. Boulle was due to Applicant's own lack of diligence and unreasonable delay.

In addition, De Boulle has never been served with a Notice of the intention by De Beers to take the testimony of Mr. Boulle as a witness on behalf of the Applicant during Applicant's Testimony Period. *See* 37 C.F.R. §§ 2.123(c); *Tredoux Affidavit,* ¶ 9. Particularly, no Notice was served on De Boulle for the testimony of Mr. Boulle purportedly scheduled for March 3, 2009. *Id.* In addition, De Boulle has never been served with (or provided a copy of) the subpoena issued by Mr. Saunders for Mr. Boulle's testimony to be taken on March 3, 2009, attached to the Motion, as Exhibit "A" (the "Subpoena"). See *Id.*; *Fed.R.Civ.Proc.* 45(b)(1)

Furthermore, the sole reason advanced by Applicant for the extension sought is that it had not been afforded the opportunity to cross-examine Mr. Boulle. Applicant does not contend that it needs an extension to make a record of any other testimony or evidence, and has never served a Notice of its intention to take the testimony of any other witness, or even discussed the possibility of same with counsel for De Boulle, during Applicant's Testimony Period. *See Tredoux Affidavit,* ¶ 9.

Applicant has therefore not proceeded with diligence to preserve its testimony and evidence during Applicant's Testimony Period and good cause has therefore not been shown to extend the time for same as requested by the Motion.

(d) **Applicant in effect is requesting that the Board permit it to enforce a subpoena that is *ipso fact* invalid, moot, and over which the Board has no jurisdiction**

The testimony deposition of an adverse party, unless obtained voluntarily, may only be taken pursuant to a subpoena issued by a United States district court. TBMP 404.09 (2d ed. rev. 2004). [T]he Federal Rules governing subpoenas .. do not contemplate nationwide service of process or enforcement; instead, both service and enforcement proceedings have clear territorial limitations. *Dynegy Midstream Services v. Trammochem*, 451 F.3d 89, 95 (2d Cir. 2006). Not only is service of process geographically limited by Rule 45, but enforcement proceedings are too. *Id.*

Applicant's counsel issued the subpoena for Mr. Boulle's testimony in this case under the jurisdiction of the United States District Court for the Northern District of Texas, where Applicant attempted to convene the testimony deposition of Mr. Boulle. *See Motion*, Exhibit "A". Any application for an Order to compel Mr. Boulle's testimony pursant to the subpoena must therefore be made to the District Court. *See Dynegy*, 451 F.3d at 95.

Applicant did not serve a copy of the Subpoena on De Boulle prior to attempting service thereof as required by law. *Tredoux Affidavit,* ¶ 9; *see Fed.R.Civ.Proc.* 45(b)(1). In addition, Applicant has not served De Boulle with a Notice of the testimony deposition of Mr. Boulle upon which the Subpoena is based, prior to its issuance as required by law. *See*

37 C.F.R. §§ 2.123(c); *Tredoux Affidavit,* ¶ 9. The Subpoena is therefore *ipso facto* invalid.

Furthermore Applicant has not attempted to bring any enforcement action based on the Subpoena in the United States District Court for the Northern District of Texas, as required by law, and the subpoena has already expired by its own terms (assuming *arguendo* that it was validly issued in the first place).

(e) **Applicant has not acted in bad faith**

The Subpoena is issued on Mr. Boulle individually as a third-party witness and not in any capacity with De Boulle. *See Motion*, Exhibit "A". The Subpoena is also not issued on De Boulle as an adverse party in this Proceeding. *Id.*

In addition, as more particularly shown below, Mr. Boulle is not evading service, but, it is, in stead, De Beers, an international conglomerate, that is using a subpoena which was invalidly issued in a thinly-veiled attempt, to harass, annoy, and intimidate De Boulle, a small jewelry store and competitor of De Beers, Mr. Boulle, and his family, and cause them unnecessary cost and expense, as punishment for De Boulle exercising its rights to protect its intellectual property rights by opposing the Applications filed by De Beers in this Proceeding.

The allegation by Applicant that De Boulle is acting in bad faith is therefore inflammatory and false and should be stricken from the record.

(f) **Mr. Boulle is not evading service of process**

Applicant did not serve a copy of the Subpoena on De Boulle prior to attempting service thereof. *Tredoux Affidavit,* ¶ 9. Mr. Boulle therefore had no notice that anyone was attempting service on him, until one of the process servers employed by De Beers left a business card at his home while he was in California. *See Exhibit "C": Affidavit of Karen Boulle* ("Karen Boulle Affidavit"), ¶ 2, 3. Mr. Boulle retained an attorney to represent him in connection with the Subpoena on his return to Dallas. *See Karen Boulle Affidavit*, ¶ 3; *See Exhibit "B": Affidavit of Mark S. Farha* ("Farha Affidavit").

Mr. Boulle's attorney, Mark Farha, contacted the process server, Mr. Larry Merrell who told him that he was no longer employed by de Beers. *Farha Affidavit* ¶ 3. Mr. Merrell did not provide Mr. Farha with a copy of the Subpoena. *Id.* Mr. Farha then contacted Mr. Saunders, and left a detailed voice mail message with the purpose of his call. *Farha Affidavit* ¶ 4. Mr. Saunders did not return Mr. Farha's phone call for more than a week, and then only when De Beers had already filed or was about to file the Motion. *Id.*

In addition, it is apparent that the process servers employed by De Beers have used the invalid subpoena in a thinly veiled attempt to harass, annoy, and intimidate Mr. Boulle and his family. In this regard they have trespassed onto the Boulle residence at night, after dark, without announcing who they were, in an argumentative and threatening way, refusing to leave, and intentionally inflicting emotional distress on Mrs. Boulle. *See Karen Boulle Affidavit*, ¶ 7; *Farha Affidavit*, ¶ 5; *Motion,* Exhibit C., Affidavit of Diligence of Wendy Bigony: entry dated 02.09.09.

Apparently they have also incessantly knocked on the door of the Boulle residence at night after dark, while their teenage daughter was home alone, prompting a call to the police to protect the child. *See Karen Boulle Affidavit*, ¶ 6. On other occasions the process severs employed by De Beers have been argumentative with Mrs. Boulle when she opened the door and informed them that Mr. Boulle was not in town. *See Karen Boulle Affidavit*, ¶ 6.

It is therefore apparent that it is not that De Boulle is acting in bad faith, or that Mr. Boulle is not evading service, but, in stead, it is De Beers, an international conglomerate, that is using a subpoena which was invalidly issued in a thinly-veiled attempt, to harass, annoy, and intimidate De Boulle, a small jewelry store and competitor of De Beers, Mr. Boulle, and his family, and cause them unnecessary cost and expense, as punishment for De Boulle exercising its rights to protect its intellectual property rights by opposing the Applications filed by De Beers in this Proceeding.

II.

PRAYER

De Boulle Diamond & Jewelry, Inc., Opposer, prays that the Motion to Extend Applicant's Testimony Period filed by De Beers LV Ltd., Applicant, be denied and for such other and further relief at law and in equity to which Opposer may show himself justly entitled

This the 12th day of March, 2009.

/s/ Pieter J. Tredoux
Dennis T. Griggs
Texas State Bar No. 08488500
Griggs Bergen LLP
17950 Preston Road
Suite 1000
Dallas, Texas 75252
972-447-4569 [telephone]
972-732-9218 [telecopier]

and

Pieter J. Tredoux
(Member of the New York Bar)
300 Park Avenue
Suite 1700
New York, New York 10022
212-308-3500 – [telephone]
212-308-2500 – [telecopier]

CO-COUNSEL FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2009, a copy of the foregoing OPPOSER'S RESPONSE TO MOTION TO EXTEND APPLICANT'S TESTIMONY PERIOD WITH ATTACHED EXHIBITS A, B, C AND D was filed electronically through the Trademark Trial and Appeal Board Electronic Filing System. Notice of this filing will be sent electronically to all parties by operation of the TTAB's ESTTA system.

/s/ Dennis T Griggs
Dennis T. Griggs

In addition a copy of same was served vial electronic mail and United States Mail, first class, postage prepaid, addressed as follows on March 12, 2009:

Darren W. Saunders, Esq. DSaunders@hblaw.com
Mark I Peroff, Esq. MPeroff@hblaw.com
Hiscock & Barclay, LLP
Seven Times Square
New York, New York 10036

/s/ Pieter J. Tredoux
Pieter Tredoux

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

DE BOULLE DIAMOND & JEWELRY, INC.,	
Opposer,	Consolidated Opposition No.: 91162370
v.	Opposition No.'s: 91162370 91164615
DE BEERS LV LTD.,	
Applicant.	

EXHIBITS IN SUPPORT OF OPPOSER'S RESPONSE TO MOTION TO EXTEND APPLICANT'S TESTIMONY PERIOD

1. Affidavit of Pieter Tredoux	Exhibit "A"
2. Affidavit of Mark S. Farha	Exhibit "B"
3. Affidavit of Karen Boulle	Exhibit "C"
4. Affidavit of Alan J. Katz	Exhibit "D"

EXHIBIT "A"

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

DE BOULLE DIAMOND & JEWELRY, INC.,	
Opposer,	Consolidated Opposition No.: 91162370
v.	Opposition No.'s: 91162370 91164615
DE BEERS LV LTD.,	
Applicant.	

AFFIDAVIT OF PIETER TREDOUX

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Pieter Tredoux being by me duly sworn upon his oath deposed and stated as follows:

1. My name is Pieter Tredoux. I am over the age of eighteen years of age. I have never been convicted of a crime and I am fully competent to make this Affidavit. I have personal knowledge of the facts stated herein, all of which are true and correct.

2. I am an attorney licensed for the practice of law in the State of New York since 1989, and I am in good standing. I am also admitted to practice before the United States District Courts for the Northern and Western Districts of Texas, the United States District Court for the District of Colorado, the United States District Court for the Western District of Wisconsin, the United States Court of International Trade, and the United States

Court of Appeals for the Fifth, Sixth, and Federal Circuits. I am in good standing in all of those jurisdictions.

3. I am one of the attorneys who represent Opposer, De Boulle Diamond & Jewelry, Inc. ("Opposer" and/or "De Boulle"), in this Proceeding.

4. Denis J. Boulle ("Mr. Boulle") testified in this Proceeding as a witness on behalf of Opposer on July 9, 2008. De Boulle served Notice of the testimony deposition on De Beers LV Ltd., Applicant ("Applicant" and/or "De Beers"), and its counsel Darren Saunders, Esq., and invited them to attend and cross-examine the witness. Mr. Saunders attended Mr. Boulle's testimony on July 9, 2008. I attended the deposition as one of the attorneys for De Boulle. De Boulle concluded its testimony and passed the witness to De Beers. Mr. Saunders then requested that the testimony be continued to allow for his cross-examination. True and correct copies of the following pages of the transcript of Mr. Boulle's testimony on July 9, 2008 are attached hereto as Appendix I: Cover Page; Appearances; Pages 209-210; Changes and Signature; and Reporter's Certification.

5. De Boulle subsequently agreed to a number of extensions of Opposer's Testimony Period, over the next five (5) months to accommodate De Beers and Mr. Saunders in their decision on how to proceed with its Applications made the subject matter of this Proceeding and Mr. Boulle's testimony.

6. Eventually, on December 3, 2008, Mr. Saunders notified De Boulle that De Beers was going to dismiss the Applications made the basis of this Proceeding. De Boulle then notified De Beers and Mr. Saunders on December 3, 2008, that it was not prepared to agree to a further extension of Opposer's Testimony Period beyond January 14, 2009. A

true and correct copy of my correspondence with Mr. Saunders in this regard is attached hereto as Appendix II. Thereafter the Board also notified the parties by Order dated December 16, 2008 (Document 73) that no further extensions of Opposer's Testimony Period would be granted without a joint status report.

7. I called Mr. Saunders a number of times during the week of January 5, 2009, to discuss the pending deadline to conclude Opposer's Testimony Period and dismissal by De Beers of the Applications with him, but he did not return my telephone calls. On January 12, 2009, I sent Mr. Saunders an e-mail admonishing him to return my telephone calls. A true and correct copy of my correspondence with Mr. Saunders in this regard is attached hereto as Appendix III. He did not call back until the afternoon of January 13, 2009, the day before Opposer's Testimony Period expired, to inform De Boulle that De Beers would not withdraw its Applications as it had previously represented in correspondence it was going to do, making no mention of the continuation of Mr. Boulle's testimony or the pending deadline to conclude Opposer's Testimony Period. I called Mr. Saunders back early on the morning of January 14, 2009, after discussing the new development with the client, but again he did not return my telephone call. In stead Mr. Saunders sent me an e-mail at 6:00 p.m. on January 14, 2009, the evening of the deadline to conclude Opposer's Testimony Period, professing to have attempted to contact me that day, again making no mention of Mr. Boulle's testimony or the pending deadline to conclude Opposer's Testimony Period. There were no messages left for me on my voicemail system that day from Mr. Saunders, and I have no record on the caller ID's on

my cell phone, or the phone system at either my Dallas or my New York office of any calls received from Mr. Saunders on that day.

8. De Beers did not once request that the testimony of Mr. Boulle be resumed for Mr. Saunders' cross-examination during the more than six (6) months that transpired since Mr. Boulle's testimony, or request that it be provided with convenient dates for the cross-examination during this period of time.

9. De Boulle has never been served with a Notice of the intention by De Beers to take the testimony of Mr. Boulle as a witness on behalf of the Applicant in this Proceeding. Particularly, no Notice was served on De Boulle for the testimony of Mr. Boulle purportedly scheduled for March 3, 2009. In addition, De Boulle has never been served with or provided a copy of the subpoena attached to De Beers' Motion to Extend Applicant's Testimony Period, as Exhibit "A". Furthermore, De Boulle has never been served with a Notice of the intention by De Beers to take the testimony of any other witness to testify on behalf of the Applicant in this Proceeding, or even discussed the possibility of same with counsel for De Boulle, during Applicant's Testimony Period.

[*intentionally left blank*]

FURTHER AFFIANT SAYETH NAUGHT.

Pieter Tredoux

SUBSCRIBED AND SWORN TO BEFORE ME this 12th day of March, 2009, to certify which witness my hand and official seal.

[NOTARY SEAL]

Notary Public, State of Texas

APPENDIX "I"

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2

3 DE BOULLE DIAMOND & JEWELRY, INC.,	Consolidated Opposition No.: 91162370
4 Opposer,	
5 VS.	Opposition Nos.: 91162370 91162469 91164615 91165285 91165465
6 DE BEERS LV, LTD.,	
7 Applicant.	

8

9 ----------

10 **ORAL TESTIMONY OF**

11 **DENIS JOSEPH BOULLE**

12 **JULY 9, 2008**

13

14 **VOLUME 1 OF 2, PAGES 1-156**

15 ----------

16

17 **COPY**

18 ORAL TESTIMONY OF DENIS JOSEPH BOULLE, produced as a
19 witness at the instance of the opposer, and duly sworn,
20 was taken in the above-styled and numbered cause on the
21 9th day of July, 2008, from 10:14 a.m. to 4:39 p.m.,
22 before Julia E. Whaley, CSR, CRR, RMR, and Notary Public
23 in and for the State of Texas, reported by machine
24 shorthand, at the law offices of Griggs Bergen, L.L.P.,
25 17950 Preston Road, Suite 1000, Dallas, Texas.

1 A P P E A R A N C E S

2 **FOR THE OPPOSER:**

3 MR. DENNIS T. GRIGGIS
and MR. PIETER TREDOUX
4 Griggs Bergen, L.L.P.
901 Main Street
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9 **FOR THE APPLICANT:**

10 MR. DARREN SAUNDERS
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11 Seven Times Square
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12 646-845-2209 (Office)
646-845-2253 (Fax)
13 dsaunders@hblaw.com

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04:31:38 1 Q. Of which you have ultimate control?
04:31:39 2 A. Of course. Yeah.
04:31:45 3 MR. TREDOUX: I pass the witness. Offer
04:31:50 4 87. I don't think I've offered 87.
04:31:53 5 MR. SAUNDERS: Same objections as before
04:31:56 6 on all the ones I've previously stated. Let's go off the
04:32:00 7 record for a second.
04:32:00 8 (A recess was taken from
04:32:11 9 4:32 p.m. to 4:38 p.m.)
04:38:08 10 MR. SAUNDERS: The opposer's counsel has
04:38:13 11 now indicated that they have finished their direct
04:38:16 12 testimony of the witness -- and to the court reporter,
04:38:16 13 what time do you have?
04:38:16 14 COURT REPORTER: 4:38.
04:38:24 15 MR. SAUNDERS: 4:38, and we've discussed
04:38:25 16 it amongst ourselves off the record and come to an
04:38:28 17 agreement that it's perhaps best to not start the
04:38:32 18 cross-examination today and to agree to schedule another
04:38:36 19 day to have the cross-examination at the -- at our
04:38:41 20 soonest convenience and at the witness's soonest
04:38:44 21 convenience, and that if necessary, the parties will
04:38:47 22 stipulate to an extension, appropriate extension of the
04:38:52 23 testimony periods to accommodate cross-examination of
04:38:55 24 this witness. Is that correct?
04:38:57 25 MR. TREDOUX: Yes.

04:38:59 1 MR. SAUNDERS: Okay. Thank you.
04:39:01 2 MR. TREDOUX: To be continued in Mr.
04:39:03 3 Griggs's office here in Dallas?
04:39:10 4 MR. SAUNDERS: Here, yes.
04:39:17 5 (Deposition was concluded at 4:39 p.m.)
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1 CHANGES AND SIGNATURE

2 WITNESS NAME: **DENIS JOSEPH BOULLE**

3 DATE OF DEPOSITION: **JULY 9, 2008**

4 PAGE LINE CHANGE REASON

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1 _____
2 _____
3 _____
4 _____
5 _____
6 I, **DENIS JOSEPH BOULLE**, have read the foregoing
7 deposition and hereby affix my signature that same is
8 true and correct, except as noted above.
9 _____
10 **DENIS JOSEPH BOULLE**
11 THE STATE OF TEXAS)
12 COUNTY OF DALLAS)
13 Before me, _____ on this
day personally appeared **DENIS JOSEPH BOULLE**, known to me
14 (or proved to me under oath or through
_____) (description of identity
15 card or other document) to be the person whose name is
subscribed to the foregoing instrument and acknowledged
16 to me that they executed the same for the purposes and
consideration therein expressed.
17
Given under my hand and seal of office this
18
14th day of January, 2009.
19
20
_____
21 NOTARY PUBLIC IN AND FOR
THE STATE OF Texas
22 COMMISSION EXPIRES: 7/2/09
23
24 ALICE L. KATZ
Notary Public, State of Texas
My Commission Expires
25 July 02, 2009

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2

3 DE BOULLE DIAMOND & JEWELRY, INC.,	Consolidated Opposition No.: 91162370
4 Opposer,	
5 VS.	Opposition Nos.: 91162370 91162469 91164615 91165285 91165465
6 DE BEERS LV, LTD.,	
7 Applicant.	

8

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10 **REPORTER'S CERTIFICATION**

11 **ORAL TESTIMONY OF DENIS JOSEPH BOULLE**

12 **JULY 9, 2008**

13 ----------

14 I, Julia E. Whaley, CSR, CRR, RMR, and Notary Public
15 in and for the State of Texas, hereby certify to the
16 following:
17 That the witness, DENIS JOSEPH BOULLE, was duly
18 sworn by the officer and that the transcript of the oral
19 testimony is a true record of the testimony given by the
20 witness;
21 That the original transcript was submitted on
22 January 14, 2009, to Mr. Pieter Tredoux, Attorney for
23 Opposer, for examination and signature by witness and
24 return to the court reporter within 30 days;
25 That the amount of time used by each party at the

1 proceedings is as follows:

2 Mr. Griggs - 3 hours, 3 minutes

3 Mr. Tredoux - 1 hour, 31 minutes

4

5 That pursuant to information given to the officer at

6 the time said testimony was taken, the following includes

7 counsel for all parties of record:

8 **FOR THE OPPOSER:**

9 MR. DENNIS T. GRIGGIS
and MR. PIETER TREDOUX
10 Griggs Bergen, L.L.P.
901 Main Street
11 Suite 6300
Dallas, Texas 75202
12 214-653-2400 (Office)
214-653-2401 (Fax)
13 dennis@griggslaw.com
ptredoux@tredoux.com
14

15 **FOR THE APPLICANT:**

16 MR. DARREN SAUNDERS
Hiscock & Barclay, L.L.P.
17 Seven Times Square
New York, New York 10036
18 646-845-2209 (Office)
646-845-2253 (Fax)
19 dsaunders@hblaw.com

20

21 That $_____ is the officer's charges to the

22 Opposer for preparing the original transcript of

23 proceedings and any copies of exhibits;

24 I further certify that I am neither counsel for,

25 related to, nor employed by any of the parties or

1 attorneys in the action in which this proceeding was
2 taken, and, further, that I am not financially or
3 otherwise interested in the outcome of the action.
4 Certified to by me on this date, January 14, 2009.
5
6
7
8 Julia E. Whaley, CSR No. 2961
JULIA WHALEY & ASSOCIATES
2012 Vista Crest Drive
9 Carrollton, Texas 75007
214-668-5578/Fax 972-236-6666
10 Firm Registration Number 436
CSR Expiration Date: 12/31/09
11 Notary Expires 11/20/09
12
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16
17
18
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25

APPENDIX "II"

Subject: RE: DeBoulle v. DeBeers
From: "Saunders, Darren W." <DSaunders@hblaw.com>
Date: Thu, 4 Dec 2008 09:34:50 -0500
To: <ptredoux@tredoux.com>
CC: "Dennis Griggs" <dennis@griggslaw.com>

Pieter, Ok, thank you.

Regards,
Darren

-----Original Message-----
From: Pieter Tredoux [mailto:ptredoux@tredoux.com]
Sent: Wednesday, December 03, 2008 7:37 PM
To: Saunders, Darren W.
Cc: Dennis Griggs
Subject: Re: DeBoulle v. DeBeers

Darren:
De Boulle does not want to drag this out much longer.
Please let us know how you want to proceed after your meeting with the client next week.
In the mean time we will agree to extend for another 30 days.

Regards Pieter

Saunders, Darren W. wrote:

> Pieter,
>
> Thank you for the email. I will be meeting with the client next Wednesday, so nothing will be filed by next Monday. It may be best for both of us to extend the testimony period by 30 days though, so we will agree if you want.
>
> Best regards,
> Darren
>
> Darren W. Saunders
> Hiscock & Barclay LLP
> Seven Times Square
> New York, NY 10036
> P. 212.784.5805
> F. 212.784.5757
> dsaunders@hblaw.com
>
> -----Original Message-----
> **From:** Pieter Tredoux [mailto:ptredoux@tredoux.com]
> **Sent:** Wednesday, December 03, 2008 1:32 PM
> **To:** Saunders, Darren W.
> **Cc:** Dennis Griggs
> **Subject:** Re: DeBoulle v. DeBeers

Darren:

Under the circumstances, De Boulle is not interested in exploring the possibility of a co-existence agreement at this time.
De Boulle does not want to prolong this matter any further. The current deadline for completion of the Opposer's testimony period is December 13, 2008.
We will agree to further extend this period by 30 days, to provide De Beers the opportunity to file its Motion to Withdraw the trademark applications as you indicated, provided the Motion is filed by Monday.
De Boulle will not join in the Motion to Withdraw the trademark applications or consent to the withdrawal.

Please let me know how you wish to proceed.

Regards Pieter

Saunders, Darren W. wrote:

> Mr. Griggs,
>
> Upon due consideration, our client is not interested in De Boulle's settlement offer and instead intends to withdraw the trademark applications involved herein in order to put an end to this matter. If there is interest in discussing an appropriate co-existence agreement please let us know.
>
> Best regards,
> **Darren W. Saunders**
> Partner
>
> **Hiscock & Barclay, LLP**
> Seven Times Square • New York, NY 10036
> D: (212) 784-5805 • F: (212) 784-5757 • E: DSaunders@hblaw.com
>
> Hiscock Barclay
> **www.hblaw.com** • **vCard** • **Profile**
>
> > -----Original Message-----
> > **From:** Dennis Griggs [mailto:dennis@griggslaw.com]
> > **Sent:** Monday, November 10, 2008 11:17 AM
> > **To:** Saunders, Darren W.
> > **Cc:** ptredoux@tredoux.com
> > **Subject:** RE: DeBoulle v. DeBeers
> >
> > Mr. Saunders,
> >
> > Thank you,
> >
> > Dennis Griggs
> > Griggs Bergen LLP
> > 17950 Preston Road, Suite 1000
> >
> > Dallas, Texas 75252 USA

972-447-4569

972-732-9218 Fax

From: Saunders, Darren W. [mailto:DSaunders@hblaw.com]
Sent: Monday, November 10, 2008 10:10 AM
To: Dennis Griggs
Subject: RE: DeBoulle v. DeBeers

Mr. Griggs,

In response to your telephone message of last Friday, we will agree to an additional 30-day extension of the testimony period. Our client is still evaluating its options with respect to settlement and we will be back in touch shortly.

Best regards.

Darren W. Saunders
Hiscock & Barclay LLP
Seven Times Square
New York, NY 10036
P. 212.784.5805
F. 212.784.5757
dsaunders@hblaw.com

-----Original Message-----
From: Dennis Griggs [mailto:dennis@griggslaw.com]
Sent: Wednesday, October 01, 2008 1:39 PM
To: Saunders, Darren W.
Cc: ptredoux@tredoux.com
Subject: RE: DeBoulle v. DeBeers

Mr. Saunders,

Mr. Tredoux called you last week to discuss this proceeding, and has left voice mail requests. I spoke with Mr. Tredoux this morning and he requested that you call him soon, today if possible. 214-356-8755 or 214-712-9291 or 212-308-3500.

Dennis Griggs
Griggs Bergen LLP
17950 Preston Road, Suite 1000

Dallas, Texas 75252 USA

972-447-4569

972-732-9218 Fax

From: Saunders, Darren W. [mailto:DSaunders@hblaw.com]
Sent: Monday, September 29, 2008 10:55 AM
To: dennis@griggslaw.com
Subject: DeBoulle v. DeBeers

Dear Mr. Griggs,

Please let me know where your client stands on this matter. Is there any interest in pursuing settlement? If not, we will need to schedule the continued testimony depositions for a mutually convenient time.

I look forward to hearing from you.

Best regards,
Darren

Darren W. Saunders
Partner

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~HB~

--

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ooo
901 Main Street, Suite 6300
Dallas, Texas 75202
(214) 712-9291 o (214) 712-5690 (Telecopier)
E-mail: ptredoux@tredoux.com

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--

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APPENDIX "III"

Subject: Re: FW: DeBoulle v. DeBeers
From: Pieter Tredoux <ptredoux@tredoux.com>
Date: Mon, 12 Jan 2009 11:48:39 -0600
To: "Saunders, Darren W." <DSaunders@hblaw.com>

Darren you need to return my telephone calls.

Saunders, Darren W. wrote:

> Ok, thank you.
>
> -----Original Message-----
> **From:** Pieter Tredoux [mailto:ptredoux@tredoux.com]
> **Sent:** Monday, December 22, 2008 4:39 PM
> **To:** Saunders, Darren W.
> **Subject:** Re: FW: DeBoulle v. DeBeers
>
> Sorry for the confusion. I thought had already received the copies with the draft. The court reporter has the exhibits. I will ask her to contact you today.
>
> Saunders, Darren W. wrote:
>
> > Pieter,
> >
> > Your notes are correct. I did receive the draft transcript, but not the exhibits. I thought that you had retained possession of the exhibits, but I am not certain. In any event, I did not receive the exhibits from the court reporter.
> >
> > Regards,
> > Darren
> >
> > -----Original Message-----
> > **From:** Pieter Tredoux [mailto:ptredoux@tredoux.com]
> > **Sent:** Monday, December 22, 2008 3:53 PM
> > **To:** Saunders, Darren W.
> > **Cc:** Dennis Griggs
> > **Subject:** Re: FW: DeBoulle v. DeBeers
> >
> > Darren:
> >
> > I have a call in to the Court reporter to check on the status - she is in a deposition today.
> >
> > My notes show that we made a record of our agreement that the deposition would only be transcribed upon completion, but that you requested a draft of the first day's testimony.
> >
> > Did the Court reporter not send that to you with the exhibits?.
> >
> > Regards Pieter
> >
> > Saunders, Darren W. wrote:

Dear Pieter,

I would appreciate your confirming that a copy set of the deposition exhibits will be provided in due course.

Thank you.

Regards,
Darren

-----Original Message-----
From: Saunders, Darren W.
Sent: Tuesday, December 16, 2008 3:17 PM
To: 'ptredoux@tredoux.com'
Cc: Dennis Griggs
Subject: RE: DeBoulle v. DeBeers

Dear Pieter,

Thank you for your email. I note that the Board recently granted the additional extension request.

Our client is still weighing its options, but expects to reach a decision in the very near future. In this regard, we need a set of copies of the labeled testimony deposition exhibits used during the De Boulle deposition. Could you please promptly provide a set of the exhibits.

Thank you.

Regards,
Darren

> -----Original Message-----
> **From:** Pieter Tredoux [mailto:ptredoux@tredoux.com]
> **Sent:** Wednesday, December 03, 2008 7:37 PM
> **To:** Saunders, Darren W.
> **Cc:** Dennis Griggs
> **Subject:** Re: DeBoulle v. DeBeers
>
> Darren:
> De Boulle does not want to drag this out much longer.
> Please let us know how you want to proceed after your meeting with the client next week.
> In the mean time we will agree to extend for another 30 days.
>
> Regards Pieter
>
> Saunders, Darren W. wrote:

Pieter,

Thank you for the email. I will be meeting with the client next Wednesday, so nothing will be filed by next Monday. It may be best for both of us to extend the testimony period by 30 days though, so we will agree if you want.

Best regards,
Darren

Darren W. Saunders
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P. 212.784.5805
F. 212.784.5757
dsaunders@hblaw.com

-----Original Message-----
From: Pieter Tredoux [mailto:ptredoux@tredoux.com]
Sent: Wednesday, December 03, 2008 1:32 PM
To: Saunders, Darren W.
Cc: Dennis Griggs
Subject: Re: DeBoulle v. DeBeers

Darren:

Under the circumstances, De Boulle is not interested in exploring the possibility of a co-existence agreement at this time.
De Boulle does not want to prolong this matter any further.
The current deadline for completion of the Opposer's testimony period is December 13, 2008.
We will agree to further extend this period by 30 days, to provide De Beers the opportunity to file its Motion to Withdraw the trademark applications as you indicated, provided the Motion is filed by Monday.
De Boulle will not join in the Motion to Withdraw the trademark applications or consent to the withdrawal.

Please let me know how you wish to proceed.

Regards Pieter

Saunders, Darren W. wrote:

> Mr. Griggs,

Upon due consideration, our client is not interested in De Boulle's settlement offer and instead intends to withdraw the trademark applications involved herein in order to put an end to this matter. If there is interest in discussing an appropriate co-existence agreement please let us know.

Best regards,
Darren W. Saunders
Partner

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-----Original Message-----
From: Dennis Griggs [mailto:dennis@griggslaw.com]
Sent: Monday, November 10, 2008 11:17 AM
To: Saunders, Darren W.
Cc: ptredoux@tredoux.com
Subject: RE: DeBoulle v. DeBeers

Mr. Saunders,

Thank you,

Dennis Griggs
Griggs Bergen LLP
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Dallas, Texas 75252 USA

972-447-4569

972-732-9218 Fax

From: Saunders, Darren W. [mailto:DSaunders@hblaw.com]
Sent: Monday, November 10, 2008 10:10 AM
To: Dennis Griggs
Subject: RE: DeBoulle v. DeBeers

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Best regards.

Darren W. Saunders
Hiscock & Barclay LLP
Seven Times Square
New York, NY 10036
P. 212.784.5805
F. 212.784.5757
dsaunders@hblaw.com

-----Original Message-----
From: Dennis Griggs [mailto:dennis@griggslaw.com]
Sent: Wednesday, October 01, 2008 1:39 PM
To: Saunders, Darren W.
Cc: ptredoux@tredoux.com
Subject: RE: DeBoulle v. DeBeers

Mr. Saunders,

Mr. Tredoux called you last week to discuss this proceeding, and has left voice mail requests. I spoke with Mr. Tredoux this morning and he requested that you call him soon, today if possible. 214-356-8755 or 214-712-9291 or 212-308-3500.

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Dallas, Texas 75252 USA

972-447-4569

972-732-9218 Fax

From: Saunders, Darren W.
[mailto:DSaunders@hblaw.com]
Sent: Monday, September 29, 2008 10:55 AM
To: dennis@griggslaw.com
Subject: DeBoulle v. DeBeers

Dear Mr. Griggs,

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I look forward to hearing from you.

Best regards,
Darren

Darren W. Saunders
Partner

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~HB~

--

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New York, New York 10022
(212) 308-3500 o (212) 308-2500 (Telecopier)

ooo
901 Main Street, Suite 6300
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E-mail: ptredoux@tredoux.com

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EXHIBIT "B"

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

DE BOULLE DIAMOND & JEWELRY, INC.,	
Opposer,	Consolidated Opposition No.: 91162370
v.	Opposition No.'s: 91162370 91164615
DE BEERS LV LTD.,	
Applicant.	

AFFIDAVIT OF MARK S. FARHA

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Mark S. Farha, who is personally known to me, and first being duly sworn according to the law upon his oath deposed and said:

1. My name is Mark S. Farha. I am over eighteen years of age, have never been convicted of a crime and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, all of which are true and correct.

2. I am an attorney licensed to practice in the States of Texas and Kansas. I have been licensed in Texas since 1994 and in Kansas since 1992. I am in good standing as an attorney in both jurisdictions. I am also admitted to practice before the United States Court of Appeals for the Fifth Circuit, and the United States District Courts for the Northern, Eastern and Western Districts of Texas.

3. I was retained by Mr. Denis Boulle early in February, 2009, to represent him in connection with a subpoena that a Mr. Larry Merrell was attempting to serve on Mr. Boulle. I contacted Mr. Merrell on February 10, 2009. He told me that he was no longer employed to serve the subpoena. Mr. Merrill did not provide me with a copy of the subpoena.

4. I then contacted Mr. Darren Saunders, the attorney who instructed Mr. Merrell. I called Mr. Saunders February 10, 2009 and left a detailed voice mail message with the purpose of my call. Mr. Saunders did not return my phone call for more than a week. It is my understanding that by the time I received his voice mail Mr. Saunders had already filed or was about to file a Motion in the above referenced proceeding.

5. I have reviewed the Affidavit of Wendy Bigony filed in this proceeding and have spoken to Mrs. Karen Boulle about the events at the Boulle residence at 4024 Druid Lane, Dallas Texas 75205, on the evening of February 9, 2009. In my opinion the conduct of Ms. Bigony constitutes Criminal Trespass which is an offence under Tex. Penal Code Ann. § 30.05(a) (Vernon Supp. 2007). In addition in my opinion Ms. Bigony's conduct constitutes trespass on property in circumstances that could subject a Certified Process Server to a criminal conviction, regardless of whether such a charge is filed or a conviction obtained, and trespass on property in circumstances that would subject a Certified Process Server to civil liability, regardless of whether a civil lawsuit is filed, in violation of Section 2 of the proposed Code of Professional Conduct of

Certified Private Process Servers Promulgated by the Texas Process Server Review Board, currently before the Texas Supreme Court.

FURTHER AFFIANT SAYETH NAUGHT.

Mark S. Farha

SUBSCRIBED AND SWORN TO BEFORE ME this 11th day of March, 2009, to certify which witness my hand and official seal.

Sharone Hebert
Notary Public, State of Texas

[NOTARY SEAL]

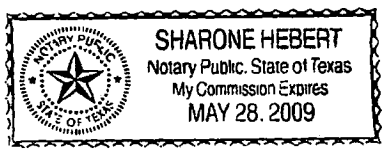

EXHIBIT "C"

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

DE BOULLE DIAMOND & JEWELRY, INC.,	
Opposer,	Consolidated Opposition No.: 91162370
v.	Opposition No.'s: 91162370 91164615
DE BEERS LV LTD.,	
Applicant.	

AFFIDAVIT OF KAREN BOULLE

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Karen Boulle, who is personally known to me, and first being duly sworn according to the law upon her oath deposed and said:

1. My name is Karen Boulle. I am over eighteen years of age, have never been convicted of a crime and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, all of which are true and correct.

2. I am the wife of Denis Boulle. We reside at 4024 Druid Lane, Dallas Texas 75205. On February 3, 2009, someone who identified himself as Larry Merrell came to the house. He gave me a business card and told me he was trying to serve a subpoena on my husband on behalf of De Beers. The gentlemen was very argumentative and implied that I was not telling the truth about my husband being out of town, and kept on arguing

with me, stating that my husband's car was in the garage and that he therefore must be home. He also remarked to me "why does your husband not want to accept this subpoena if he brought this lawsuit against De Beers?"

3. My husband was in California at the time. When he returned we hired Mr. Mark Farha, an attorney, to contact Mr. Merrell.

4. I had not met Mr. Merrell before February 3, 2009, and we have not been notified by anybody else who came to our house, before or after February 3, 2009, that they were trying to serve my husband with a subpoena. I do not know Wendy Bigony and I have never met anyone who identified herself as Wendy Bigony. Nobody identifying herself as Wendy Bigony has been to our house for purposes of serving Mr. Boulle with a subpoena or otherwise. No one other than Mr. Merrell on that one occasion has left any messages at the house informing us that they were trying to serve my husband with a subpoena.

5. There were also two other very disturbing incidents at the house during that period of time.

6. On or about February 29, 2009, at approximately 7:00 p.m., in the evening, after dark, while my husband and I were at dinner and my twelve-year old daughter was home alone, someone incessantly knocked on the door of our house. My daughter called me on the cell phone in panic and we called the University Park, Texas Police Department. The Police came to the house and found my daughter in fear sitting on the stairs with a baseball bat in hand.

7. In addition, on or about February 9, 2009, at approximately 7:00 p.m., someone trespassed on our property and came to the side of the house deep into the property line after dark. I was alerted, looked through the window and saw a woman who I do not know at all, standing outside. She did not identify herself or tell me her reason for being there. I was afraid. I told her she was trespassing on private property asked her to leave immediately. She refused and shouted at "why are you so hateful". I repeated my admonition to her that she was trespassing on private property asking her again to leave immediately. I had to do that four or five times before she eventually left.

8. We have more than one car. My husband leaves his car at home and never at the airport when he is out of town. Because customers recognize his car, we sometimes park it outside the store when he is not in town, so that people would still come in and shop, rather than wait until he is back in town.

FURTHER AFFIANT SAYETH NAUGHT.

Karen Boulle

SUBSCRIBED AND SWORN TO BEFORE ME this 12th day of March, 2009, to certify which witness my hand and official seal.

NICOLE E. COMPTON
Notary Public, State of Texas
My Commission Expires
January 12, 2013

[NOTARY SEAL]

Notary Public, State of Texas

EXHIBIT "D"

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

DE BOULLE DIAMOND & JEWELRY, INC.,	
Opposer,	Consolidated Opposition No.: 91162370
v.	Opposition No.'s: 91162370 91164615
DE BEERS LV LTD.,	
Applicant.	

AFFIDAVIT OF ALAN J. KATZ

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Alan J. Katz, who is personally known to me, and first being duly sworn according to the law upon his oath deposed and said:

1. My name is Alan J. Katz. I am over eighteen years of age, have never been convicted of a crime and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, all of which are true and correct.

2. I am the Vice-President of Operations of De Boulle Diamond & Jewelry, Inc., 6821 Preston Road, Dallas, Texas 75205 ("De Boulle"). I have been in that position since 2006. As part of my daily duties and operations at the De Boulle store I

oversee the security system at De Boulle including controls over persons seeking to enter the jewelry store.

3. No one has presented themselves at De Boulle and announced that the purpose of their visit was to serve Mr. Boulle with a subpoena on behalf of De Beers or otherwise in the above referenced case. I have not met Ms. Wendy Bigony and would not recognize her if I saw her. Nobody identifying herself as Wendy or Wendy Bigony has been to De Boulle for purposes of serving Mr. Boulle with a subpoena or otherwise. I did receive one telephone call from someone who identified herself as Wendy on or about February 16, 2009, but she never came to the store.

4. Mr. Boulle has frequently been out of town and not at De Boulle during the period January 20, 2009 through February 20, 2009. Because customers recognize his car, we sometimes park it outside store when he is not in, so that people would still come in and shop, rather than wait until he is back in town.

FURTHER AFFIANT SAYETH NAUGHT.

Alan J. Katz

SUBSCRIBED AND SWORN TO BEFORE ME this 12th day of March, 2009, to certify which witness my hand and official seal.

NICOLE E. COMPTON
Notary Public, State of Texas
My Commission Expires
January 12, 2013

[NOTARY SEAL]

Notary Public, State of Texas