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

Proceeding	91165876
Party	Plaintiff House of Blues Brands Corp. House of Blues Brands Corp. ,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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HOUSE OF BLUES BRANDS CORP.	§	
	§	
Opposer,	§	
	§	
v.	§	Mark: IN ROCK WE TRUST
	§	
CELEBRITES PUBLISHING CORP.,	§	
	§	Consolidated Opposition Nos.
Applicant.	§	91165876; 91165899; and 91165901

OPPOSER'S MOTION TO STRIKE APPLICANT'S NOTICE OF RELIANCE ON RULE 30(b)(6) DEPOSITION

Opposer, House of Blues Brands Corp., in accordance with Section 532 of the Trademark Trial and Appeal Board Manual of Procedure, hereby moves to strike Applicant's Notice of Reliance on Rule 30(b)(6) Deposition because Applicant has failed to meet the procedural and substantive requirements established by Trademark Rule of Practice 37 C.F.R. § 2.120(j)(4). *See* Applicant's Notice of Reliance on Rule 30(b)(6) Deposition (filed as TTABVUE Document No. 24 under consolidated opposition number 91165876).

During the discovery period, Opposer deposed Applicant's vice president, Colleen Noah-Marti, and made portions of the deposition of record pursuant to 37 C.F.R. § 2.120(j)(1). *See* Opposer's Notice of Reliance on Rule 30(b)(6) Deposition (filed as TTABVUE Document Nos. 21-23). Applicant now impermissibly seeks to introduce additional portions of this deposition through a Notice of Reliance that fails to comply with the procedural and substantive requirements specified in 37 C.F.R. § 2.120(j)(4).

Section 2.120(j)(4) of the Code of Federal Regulations states:

> If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of

> reliance any other part of the deposition which should in fairness be considered *so as to make not misleading what was offered by the submitting party*. A notice of reliance filed by an adverse party must be supported by a written statement explaining why the adverse party needs to rely upon *each* additional part listed in the adverse party's notice, failing which the Board, in its discretion, may refuse to consider the additional parts.

37 C.F.R. § 2.120(j)(4) (emphasis added); TTAB Manual of Procedure § 704.09.

Applicant's Notice of Reliance fails to meet the procedural requirements set forth in this rule because Applicant does not adequately identify how the portions of the deposition introduced by Opposer are misleading or why Applicant needs to rely on each additional portion of the deposition it seeks to introduce. Applicant merely states without explanation that the additional portions are necessary "to fairly portray the testimony of the deponent, to complete the testimony set forth by Opposer's citations, and to avoid what would otherwise be a misleading portrayal of deponent's testimony." *See* Applicant's Notice of Reliance. Such a cursory statement cannot be sufficient to trigger the Trademark Rules of Procedure's atypical exception to the rules of evidence. *See Wear-Guard Corp. v. Van Dyne-Crotty, Inc.*, 18 U.S.P.Q.2d 1804, 1806 n.2 (TTAB 1990) (determining that a petitioner's objection in a cancellation proceeding was "well taken" where the "[r]egistrant ha[d] not shown how those portions of the discovery depositions of registrant's employees submitted by petitioner [were] misleading when considered by themselves").

Allowing Applicant's single cursory statement to satisfy the written statement requirement would frustrate the purpose behind rule 2.120(j)(4) because it would shift the burden to the wrong party. Statements made by a party's own officer during a discovery deposition cannot be relied upon by that party unless it can meet the requirements established in the rules. Therefore, under the Trademark Rules, it is Applicant's burden to prove that each portion of the deposition it seeks to add is necessary to avoid the inclusion of misleading information in the

record. If Applicant's single sentence were enough to meet this obligation, then the burden would effectively be on Opposer to comb through the deposition transcript and guess at what portions Applicant believes to be misleading in order to make a decision as to whether or not it should object to Applicant's Notice of Reliance. Accordingly, Applicant's written statement is insufficient under rule 2.120(j)(4) and the Board should strike Applicant's Notice of Reliance on Rule 30(b)(6) Deposition on procedural grounds.

In addition to being procedurally defective on its face, Applicant's Notice of Reliance is substantively defective because some, if not all, of the additional deposition portions it seeks to introduce are unrelated to the matters introduced by Opposer. In particular, Applicant seeks to introduce the following portions of Opposer's discovery deposition, none of which have any bearing on the portions of testimony introduced by Opposer: 35:25 to 36:24; 36:21 to 38:02; 92:07 to 93:20; and 101:21 to 102:13.

Lines 35:25 to 36:24 of the deposition relate to the topic of trademark searches conducted prior to filing an application—a topic not found in the portions of the deposition relied upon by Opposer. This section immediately follows a portion of the deposition introduced by Opposer that relates to the identity of Applicant's target customers and has nothing to do with whether or not a trademark search was conducted. In fact, Opposer has not introduced any portion of the deposition where this topic is discussed. Therefore, this additional portion of the discovery deposition is not necessary to clarify any misleading statements introduced by Opposer and does not satisfy the requirements of Rule 2.120(j)(4).

In lines 36:21 to 38:02 of the deposition, the deponent discusses potential logo designs to accompany Applicant's proposed mark. Again, this discrete subject matter is unrelated to any

portion of the deposition relied upon by Opposer and, therefore, Applicant should not be permitted to rely on this portion of the deposition.

In lines 92:07 to 93:20, the deponent makes the self-serving assertion that no third party marks, including Opposer's, are similar to the proposed mark. This statement is not only unrelated to any portion of the discovery deposition introduced by Opposer, but it is not even responsive to the questions asked by Opposer in this portion of the deposition, all of which relate to the deponent's knowledge of whether certain third party marks are actually in use. It is clear that Applicant has requested the inclusion of this information because it believes it may help its position, not to prevent the inclusion of misleading information.

Lines 101:21 to 102:13 include questions concerning the contents of a letter Applicant's attorney sent to Opposer's attorney. Opposer has not sought to rely on any portion of the discovery deposition relating to this letter nor has either party introduced the letter itself into evidence. There appears to be no reason why this portion of the deposition should be included and Opposer has not provided one.

Because the above-referenced portions of Opposer's 30(b)(6) deposition are unrelated to those portions introduced by Opposer, they fail to meet the substantive requirements of Trademark Rule of Procedure 2.120(j)(4) and Applicant is not entitled to rely on them at trial.

Prayer

For these reasons, Opposer respectfully requests that the Board strike Applicant's Notice of Reliance on Rule 30(b)(6) Deposition and not consider the portions of Opposer's 30(b)(6) deposition that Applicant seeks to introduce through its Notice of Reliance.

Respectfully submitted,

Date: 7/10/2007 By: _____

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposer's Motion To Strike Applicant's Notice Of Reliance On Rule 30(B)(6) Deposition was served on the following counsel this 10th day of July, 2007, via regular U.S. Mail, postage pre-paid:

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