

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

Mailed: September 19, 2007

Opposition No. 91165876  
Opposition No. 91165899  
Opposition No. 91165901

House of Blues Brands Corp.

v.

Celebrities Publishing  
Corporation

**Frances S. Wolfson, Interlocutory Attorney:**

This case now comes before the Board for consideration of opposer's motions (filed July 10, 2007) to strike applicant's notices of reliance on (1) portions of the discovery deposition transcript of Colleen Noah-Marti, (2) several printed publications and copies of third-party registrations, and (3) internet evidence that opposer contends has not been properly authenticated. The motions have been fully briefed.

It is the policy of the Board not to read trial testimony or examine other trial evidence prior to final decision. See TBMP § 502.01 (2d ed. rev. 2004) and authorities cited in that section. The Board cannot determine the propriety of the objection to the printed publications, the third-party registrations, or the alleged

internet evidence without reading the evidence to determine the nature of the evidence. Accordingly, the Board defers consideration of opposer's motion to strike applicant's notice of reliance on the printed publications, the third-party registrations, and the evidence opposer claims has been taken from the internet.

On the other hand, the Board can determine whether applicant's statement in support of its submission of portions of Ms. Noah-Marti's deposition complies with Trademark Rule 2.120(j)(4).<sup>1</sup>

Trademark Rule 2.120(j)(4) provides that "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." The submission must be accompanied "by a written statement explaining why the adverse party needs to rely upon each additional part listed in the adverse party's notice, failing with the Board, in its discretion, may refuse to consider the additional parts." Trademark Rule 2.120(j)(4).

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<sup>1</sup> During its testimony period, opposer submitted portions of the discovery deposition transcript of Colleen Noah-Marti, applicant's Vice-President and Secretary. Ms. Noah-Marti's deposition had been taken under Fed. R. Civ. P. 30(b)(6) during the discovery period. Applicant submitted additional portions of Ms. Noah-Marti's deposition transcript under Trademark Rule 2.120(j)(4).

Applicant identified those portions of Ms. Noah-Marti's deposition that it submitted under its notice of reliance, and attached them to its notice of reliance. Applicant's statement in support of its submission reads as follows:

The foregoing portions of the 30(b)(6) deposition of Colleen Noah-Marti were not made part of the record by Opposer. Opposer submitted excerpts from 82 of the 107 pages that comprise said deposition. The foregoing additional excerpts are necessary, as foreseen by Section 2.120(j)(4), 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.

In *Duramax Marine, LLC v. R.W. Fernstrum & Company*, 80 USPQ2d 1780 (TTAB 2006), the Board accepted an applicant's notice of reliance on discovery deposition transcripts where the additional portions submitted by applicant were provided "to complete the testimony" designated by its adverse party. Here, applicant has made a similar statement. Applicant has also stated that the "foregoing additional excerpts" are necessary to "fairly portray the testimony of the deponent" and to "avoid what would otherwise be a misleading portrayal of deponent's testimony." Moreover, in its response to opposer's motion, applicant expounded on the reasons why the additional portions should be allowed to be a part of the record.

Accordingly, applicant has made a sufficient statement under Trademark Rule 2.120(j)(4) to support its submission of those portions of Ms. Noah-Marti's deposition identified in applicant's notice of reliance. Opposer's motion to strike applicant's notice of reliance on the ground of an insufficient statement is denied. To the extent that opposer has moved to strike applicant's notice of reliance on substantive grounds, for the reasons stated above, consideration of the motion on such grounds is deferred to final decision. See TBMP § 502.01 (2d ed. rev. 2004).

Briefs are due in accordance with the following schedule:

Brief for party in position of plaintiff shall be due:	November 19, 2007
Brief (if any) for party in position of defendant shall be due:	December 19, 2007
Reply brief (if any) for party in position of plaintiff shall be due:	January 3, 2008