

ESTTA Tracking number: **ESTTA270646**

Filing date: **03/06/2009**

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

Proceeding	91173105
Party	Defendant Michael Dalton
Correspondence Address	Michael Dalton P.O. Box 18137 670 Northland Blvd. Cincinnati, OH 45218-0137 UNITED STATES DALTONME@hotmail.com
Submission	Motion to Strike
Filer's Name	Michael Dalton
Filer's e-mail	DALTONME@hotmail.com
Signature	/ Michael Dalton /
Date	03/06/2009
Attachments	StrikeMotionMangham.pdf (3 pages)(826809 bytes)

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

Honda Motor Co. LTD	:	
	:	
Opposer	:	
	:	
vs.	:	Opposition No. 91173105
	:	
	:	
Michael Dalton	:	
	:	
Applicant	:	

**APPLICANT’S MOTION TO STRIKE ENTIRE TESTIMONY OF
CYNDEE MANGHAM**

Now comes Defendant – Applicant, Michael Dalton, prior to his testimony period and hereby moves to strike the entire trial testimony of Cyndee Mangham and all exhibits taken on September 16, 2008 as being outside Opposer’s set testimony period that opened on September 28, 2008 and closed on October 27, 2008.

In addition, Opposer claimed documentary evidence and exhibits were secured, obtained, outside the set discovery period, which closed on May 30, 2008.

Therefore;

As a matter of law, pursuant to trademark rules, the applicant is entitled to have the entire testimony of Cyndee Mangham and accompanying exhibits stricken from the record.

The particulars fully presented in the following Memorandum in Support.

Memorandum in Support

The trademark trial and appeal board, on February 29, 2008, set the time for discovery to close on May 30, 2008¹.

The board, on August 20, 2008, set the time for plaintiff s 30-day testimony period to open on September 28, 2008 and close on October 27, 2008.²

The Opposer insisted on conducting their trial testimony deposition of Cyndee Mangham on September 16, 2008. The applicant did not participate in that proceeding.

The assignment of testimony periods corresponds to setting a case for trial in court proceedings.³

The taking of depositions during the assigned testimony periods corresponds to the trial in court proceedings.⁴

The Trademark Trial and Appeal Board will issue an order setting a deadline for each party's required pretrial disclosures and assigning to each it's time for taking testimony. NO testimony shall be taken except during the times assigned ...⁵

The Opposer lacks the authority to schedule their own court date of September 16, 2008 when the board has set their testimony period to begin September 28, 2008.

The court should note, without wavier of applicant's motion to strike, during the process of the Mangham deposition it was revealed all of opposer's claimed and

¹ see doc 15

² See doc 42

³ Trademark rule 2.116(d)

⁴ Trademark rule 2.116(e)

⁵ Trademark rule 2.121(a)

submitted evidence was discovered on August 3, 2008, outside the discovery period which ended on May 30, 2009⁶ and should be stricken.

As such, the applicant is entitled to have the entire testimony, exhibits, and public reliance documentations stricken from the record.

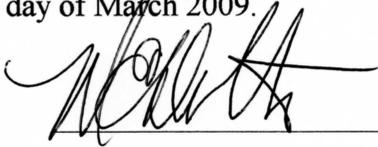
Respectfully submitted,



Michael Dalton, pro se
PO Box 18137
Cincinnati, Ohio 45218-0137
(513) 557-2901
DALTONME@hotmail.com

Certificate of Service

I, Michael Dalton, hereby certify that this Motion to Strike has been served by electronic email upon Opposor's council Dyan Finguerra-Ducharme, dyan.finguerra-ducharme@wilmarhale.com and standard U.S. mail upon Dyan Finguerra-DuCharme at Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Ave, New York, NY 10022 this 6th day of March 2009.



Michael Dalton, pro se
PO Box 18137
Cincinnati, Ohio 45218-0137
(513) 557-2901
DALTONME@hotmail.com

⁶ Deposition of Cyndee Mangham, p. 21 at 20