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Filing date: **03/25/2009**

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

Proceeding	91173105
Party	Plaintiff Honda Motor Co., Ltd.
Correspondence Address	Dyan Finguerra-DuCharme, Esq. Wilmer Cutler Pickering Hale and Dorr LLP 399 Park Avenue New York, NY 10022 UNITED STATES Dyan.Finguerra-DuCharme@wilmerhale.com
Submission	Opposition/Response to Motion
Filer's Name	Dyan Finguerra-DuCharme
Filer's e-mail	dyan.finguerra-ducharme@wilmerhale.com,jaclyn.geller@wilmerhale.com
Signature	/dyan finguerra-ducharme/
Date	03/25/2009
Attachments	Opposition to Motion to Dismiss.PDF (39 pages)(1129469 bytes)

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

In the Matter of Application Serial No. 78/339,571
Published in the Official Gazette of May 30, 2006 at TM 674
MARK: DEALERDASHBOARD

----------x

Honda Motor Co., Ltd.,

Opposition No. 91/173,105

Opposer,

v.

Michael Dalton,

Applicant.

----------x

OPPOSER'S OPPOSITION TO APPLICANT'S
RULE 2.132 MOTION TO DISMISS

Like his other two motions, Applicant's Rule 2.132 Motion to Dismiss wholly lacks merit. Opposer hereby incorporates by reference its oppositions filed in response to Applicant's prior motions to strike.

I. Applicant Cannot Meet the Standard Set Forth In 37 C.F.R. 2.132 For Failure to Prosecute

Applicant moves to dismiss for failure to prosecute pursuant to 37 C.F.R. 2.132 ("Rule 2.132"). Applicant cannot meet the necessary elements of Rule 2.132, and the Board should therefore deny Opposer's motion to dismiss in its entirety.

Rule 2.132 is titled "Involuntary Dismissal for Failure to Take Testimony" and is comprised of two parts. The first part allows a party to move to dismiss only "if the time for taking testimony by the party in the position of plaintiff has expired and that party has not taken testimony or offered any evidence, any party in the position of the defendant may ... move for dismissal on the ground of the failure of the plaintiff to prosecute." *See* 37 C.F.R. 2.132(a). Clearly, this is not the case here.

On October 27, 2008, Opposer filed a Notice of Testimony and a Notice of Reliance, which attached Applicant's deposition transcript, Applicant's responses to interrogatories, a Request for Admissions, printed publications, and a testimony deposition. *See* Ex. 1. Without doubt, Opposer has "taken testimony" in this case and dismissal for failure to prosecute under Rule 2.132(a) fails as a matter of law.

The second ground of Rule 2.132 provides for a motion under the following, limited circumstance:

> If no other evidence other than a copy or copies of the Patent and Trademark Office records is offered by any party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of the plaintiff has shown no right to relief.

See 37 C.F.R. 2.132(b). As shown in Exhibit 1, Opposer has filed a Notice of Testimony and Notice of Reliance that reflects evidence other than copies of PTO records. Indeed, Opposer submitted deposition transcripts, discovery responses and printed publications. Accordingly, as a matter of law, Applicant cannot meet the standard set forth in Rule 2.132(b). For these reasons, the Board should deny Applicant's motion to dismiss.

II. <u>Opposer's Testimony Evidence Was Properly Submitted</u>

Applicant uses his Rule 2.132 to reargue his previously filed motion to strike the testimony deposition of Cyndee Mangham (the "Mangham Transcript"). For the reasons set forth in Opposer's opposition to that motion, the Board should deny the motion to strike.

A. The Trial Testimony Was Not Untimely Taken

While Applicant argues that he was not present for the deposition of Cyndee Mangham (the "Mangham Deposition"), he fails to acknowledge that he chose not to attend the deposition. Applicant had more than adequate notice of the Mangham Deposition, which was initially scheduled for August 22, 2008. Preceding that date, as Applicant then well knew, Opposer's motion to extend the testimony period was pending before the Board and Opposer intended to reschedule the deposition for September upon a favorable ruling. *See* Ex. 2. When the Board issued its decision on August 20, 2008, Applicant sent Opposer an e-mail asking whether the deposition had been cancelled. Opposer immediately replied that the deposition was cancelled, and indicated that it would reissue a new notice once it could coordinate with Ms. Mangham's schedule. *See* Ex. 3. Thus, Applicant was on ample notice of the identity of the deponent and the fact that a deposition would soon commence. Indeed, on August 27, 2008, Opposer e-mailed Applicant a letter stating that Ms. Mangham's deposition was rescheduled to September 16, 2008, and also sent the letter along with the Notice of Deposition by first class mail. *See* Ex. 4. On September 9, 2008, the parties expressly discussed the timing of the deposition via e-mail. At no time did Applicant raise any issue with respect to the deposition being scheduled early, but rather merely noted a scheduling conflict. Opposer indicated that it could not reschedule the deposition and it would proceed. Notably, Applicant never responded to this email. *See* Ex. 5.

Thus, Opposer was on notice of the timing of the deposition as of August 27, 2008 and he chose not to attend and cross examine the witness. At no time did Applicant raise any issue with respect to Opposer scheduling the deposition

purportedly two weeks before its testimony period opened. It was obvious at that time that Opposer was proceeding under the auspices that the testimony period had remained open since July.

In sum, Applicant was aware of, and had more than adequate time to prepare for and attend, the deposition of Ms. Mangham. Applicant declined to raise the issue of the commencement of the timing period during good faith scheduling discussions between the parties. Applicant chose to not attend the deposition. Under these circumstances, Applicant has shown no prejudice resulting from the deposition going forth "early," nor can he, under the circumstances presented here. *See Of Counsel Inc. v. Strictly of Counsel Chartered*, 21 U.S.P.Q.2d (TTAB 1991) (denying motion to strike on the grounds that "the error in taking the testimony early was made in good faith and that applicant waived its objection to the premature taking of the trial deposition, which could have been *corrected* upon seasonable objection")(emphasis in original).[1]

B. The Transcript Was Properly Certified and Served

Despite Applicant's contentions, the Mangham Transcript was properly certified by an officer further to 37 C.F.R. 2.123(f). *See* Ex. 6.

Likewise, the Mangham Transcript was properly served further to 37 C.F.R. 2.125(a). The certified transcript was delivered to Opposer's counsel on September 24, 2008. *See* Ex. 7. Moreover, Applicant was served with a certified copy of Ms. Mangham's deposition on October 22, 2008, which is within thirty days of receipt of

[1] In the alternative, to the extent the deposition was taken early with respect to the time frame set forth in the Board's Order of August 20, 2008, any such error was made in good faith and is therefore not a valid basis to strike. *Bose Corp. v. Motorola, Inc.*, Opp. No. 74/663,244, 1999 WL 129188 (TTAB 1998) (denying motion to strike notice of reliance filed one month before the opening of the testimony period on the grounds, *inter alia*, that the "error in filing the notice early was made in good faith"). Accordingly, under the circumstances presented here, Applicant's motion should be denied.

the transcript by Opposer and before Opposer's testimony period closed. Even if the Board finds the service was untimely (which is was not), the remedy is to reset the adverse party's testimony period, not to strike the testimony. *See* 37 C.F.R. 2.125(a) ("If the transcript with exhibits is not served on each adverse party within thirty days ... any adverse party which was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset such adverse party's testimony and/or briefing periods, as may be appropriate.").

III. The Board Should Disregard Applicant's Arguments on the Merits

As set forth in Part I above, the only issues properly before the Board on a Rule 2.132 motion relate to the opposer's purported failure to take testimonial evidence. When testimony evidence has been submitted, the Board will not entertain arguments on the merits on a Rule 2.132 motion:

> Trademark Rule 2.132 is the specific rule providing for motions for judgment against a plaintiff for failing to make out a prima facie case of damage. The rule is limited to situations where the plaintiff presents no evidence (2.132(a)) or where only Patent and Trademark Office records are of record (2.132(b)). Where, as here, a plaintiff presents evidence other than Patent and Trademark Office records, the Board will not entertain any motion for judgment but, rather, will wait until final hearing to read testimony and examine the evidence prior to any final determination on the merits.

The Acme Engineering and Manufacturing Corporation, 216 U.S.P.Q. 517, 519 (TTAB 1982). Like *Acme*, here, it is inappropriate for Applicant to raise issues on the merits such as standing or whether Opposer has demonstrated that the mark at hand is descriptive or generic. These issues are reserved for the final hearing, not a Rule

2.132 motion. Accordingly, the Board should disregard these arguments as outside the scope of Rule 2.132 and deny Applicant's motion in its entirety.

Conclusion

For the reasons set forth above, Opposer requests that the Board deny Defendant's Rule 2.132 Motion to Dismiss.

Dated: March 25, 2009

WILMER CUTLER PICKERING
HALE and DORR LLP

By: _____

Dyan Finguerra-DuCharme
399 Park Avenue
New York, NY 10022
(212) 937-7203

Attorneys for Opposer
Honda Motor Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer's Opposition to Applicant's Rule 2.132 Motion to Dismiss by First Class Mail and email on March 25, 2009 to:

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

By: _____
Dyan Finguerra-DuCharme

EXHIBIT 1

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

In the Matter of Application Serial No. 78/339,571
Published: May 30, 2006 at TM 674
Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

NOTICE OF RELIANCE

Opposer Honda Motor Co., Ltd., pursuant to 37 C.F.R. §§ 2.120(j) and 2.122 hereby introduces into evidence the following:

A. Discovery Deposition and Exhibits of Applicant.

Pursuant to 37 C.F.R. § 2.120(j)(3)(i), Opposer hereby introduces into evidence the deposition of Michael Dalton, taken on May 5, 2008, with exhibits.

B. Applicant's Answers to Opposer's First Set of Interrogatories and Opposer's First Request for Admission.

Pursuant to 37 C.F.R. § 2.120(j)(3)(i), Opposer hereby introduces into evidence Applicant's Answers to Opposer's First Set of Interrogatories. In addition, Opposer hereby introduces into evidence its First Set of Requests for Admissions to Applicant, to which Applicant did not provide a response.

C. Printed Publications.

Pursuant to 37 C.F.R. § 2.122(e), Opposer hereby introduces into evidence the following printed publications available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in the proceeding:

1. Michael Alexander, Excel 2007 Dashboards & Reports for Dummies (2007), Bates No. H-000001 through H-003046 (attached as Exhibit 21 to the Mangham Deposition). This book is relevant to establish that Applicant's mark is generic and/or descriptive.

2. Wayne W. Eckerson, Performance Dashboards (2006), Bates No. H000585 through H-000907 (attached as Exhibit 22 to the Mangham Deposition). This book is relevant to establish that Applicant's mark is generic and/or descriptive.

3. Patrick LaPointe, Marketing by the Dashboard Light (2007), Bates No. H-000347 through H-000584 (attached as Exhibit 23 to the Mangham Deposition). This book is relevant to establish that Applicant's mark is generic and/or descriptive.

4. Stephen Few, Information Dashboard Design (2006), Bates No. H-000908 through H-001133 (attached as Exhibit 24 to the Mangham Deposition). This book is relevant to establish that Applicant's mark is generic and/or descriptive.

5. Calvin Kam & Martin Fischer, *Capitalizing on Early Project Decision-Making Opportunities to Improve Facility Design, Construction and Life-Cycle Performance*, 13 EACONS 1, 53-56 (2004), Bates No. 001481-001495, attached hereto as Exhibit C. This article is relevant to establish that Applicant's mark is generic and/or descriptive.

6. Thomas Erickson et. al, *Seeing is Believing: Designing Visualizations for Managing Risk and Compliance,* 46 IBM Systems Journal 205 (April 2007 – June 2007), Bates No. 0001496-001510, attached hereto as Exhibit C. This article is relevant to establish that Applicant's mark is generic and/or descriptive.

7. Judith Lamont, *Data-driven Decisions: The View from the* Dashboard, 16 KM World 14 (March 2007), Bates No. 001511-001513, attached hereto as Exhibit C. This article is relevant to establish that Applicant's mark is generic and/or descriptive.

8. John Goff, *See It Now*, CFO Magazine (December 2003), Bates No. 001514-001517, attached hereto as Exhibit C. This article is relevant to establish that Applicant's mark is generic and/or descriptive.

9. Scott Wallace, *Everybody's System*, Information Week at 21 (August 12, 1991), Bates No. 001518-001521, attached hereto as Exhibit C. This article is relevant to establish that Applicant's mark is generic and/or descriptive.

10. The American Heritage College Dictionary, 3d ed. (1997) at 356, Bates No. 001522-001524, attached hereto as Exhibit C. This dictionary entry is relevant to establish that Applicant's mark is generic and/or descriptive.

11. Webster's Third New International Dictionary (2001), Bates No. 001525-001527, attached hereto as Exhibit C. This dictionary entry is relevant to establish that Applicant's mark is generic and/or descriptive.

D. Testimonial Depositions And Exhibits.

Opposer hereby gives notice that, pursuant to 37 C.F.R. § 2.123, it intends to rely upon the testimonial deposition of Cynthia Mangham taken during the Opposer's Testimony Period, along with the exhibits introduced during that deposition. Ms. Mangham's certified transcript have been filed with the Board, along with exhibits identified and marked therein.

Dated: New York, New York
October 27, 2008

Respectfully submitted,

WILMER CUTLER PICKERING
HALE and DORR LLP

By: _____

Dyan Finguerra-DuCharme
399 Park Avenue
New York, NY 10022
(212) 937-7203

Mark G. Matuschak
60 State Street
Boston, Massachusetts 02109

(617) 526-6000

Attorneys for Opposer
Honda Motor Co., Ltd.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposer's Notice of Filing of Testimony has been served on October 27, 2008 by FedEx to:

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

Barbara Winterble

US1DOCS 6866393v1

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

In the Matter of Application Serial No. 78/339,571
Published: May 30, 2006 at TM 674
Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

NOTICE OF FILING OF TESTIMONY

Opposer Honda Motor Co., Ltd. hereby files the transcript of Cyndee Mangham taken on September 16, 2008, along with Exhibits 1 through 24, pursuant to 37 C.F.R. § 2.125. Further to 37 C.F.R. § 2.123, this transcript has been certified by the officer taking the deposition and the exhibits have been properly prepared.

Dated: New York, New York
October 27, 2008

Respectfully submitted,

WILMER CUTLER PICKERING
HALE and DORR LLP

By: Dyan Finguerra

Dyan Finguerra-DuCharme
399 Park Avenue
New York, NY 10022
(212) 937-7203

Mark G. Matuschak
60 State Street
Boston, Massachusetts 02109
(617) 526-6000

Attorneys for Opposer
Honda Motor Co., Ltd.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposer's Notice of Filing of Testimony has been served by FedEx to:

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

Barbara Winterble

EXHIBIT 2

WILMERHALE

Dyan Finguerra-DuCharme

+1 212 937 7203 (t)
+1 212 230 8888 (f)
dyan.finguerra-ducharme@wilmerhale.com

August 12, 2008

VIA Email and First Class Mail

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

Re: *Honda Motor Co., Ltd., Opposer, v. Michael Dalton, Applicant;*
Opposition No. 91/173/105

Dear Mr. Dalton:

Attached please find a notice of deposition. In the event that the TTAB grants our request for an extension of the testimony period, we will reschedule this deposition for September.

Very truly yours,

Dyan Finguerra-DuCharme

cc: Mark Matuschak, Esq.

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

In the Matter of Application Serial No. 78/339,571
Published: May 30, 2006 at TM 674
Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(b)(1), and Rule 404 of the Trademark Rules of Practice (37 C.F.R. 2.120), Opposer Honda Motor Co., Ltd. through its attorneys of record, shall take the deposition of Cyndee Mangham, on August 21, 2008, at 10:00 a.m. at Honda North America Inc., 700 Van Ness Ave., Torrance, CA , 90501-1486. The deposition will take place upon oral examination before a Notary Public or other officer authorized by law to administer oaths, will be recorded by stenography and videography and shall continue from day-to-day, Saturdays, Sundays and holidays excluded.

Dated: New York, New York
August 12, 2008

WILMER CUTLER PICKERING
HALE and DORR LLP

By: _____
Dyan Finguerra-DuCharme
399 Park Avenue

US1DOCS 6781235v1

New York, NY 10022
(212) 937-7203

Mark G. Matuschak
60 State Street
Boston, Massachusetts 02109
(617) 526-6000

Attorneys for Opposer
Honda Motor Co., Ltd.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposer's Notice of Deposition to Applicant has been served by First Class Mail to:

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

Barbara Winterble

EXHIBIT 3

Finguerra-DuCharme, Dyan

From: Finguerra-DuCharme, Dyan
Sent: Wednesday, August 20, 2008 4:07 PM
To: 'DALTONME'; Matuschak, Mark
Subject: RE: Deposition

Yes, we have cancelled the deposition. I will reissue a new notice once I work out a date with the witness.

From: DALTONME [mailto:DALTONME@hotmail.com]
Sent: Tuesday, August 19, 2008 3:56 PM
To: Finguerra-DuCharme, Dyan; Matuschak, Mark
Subject: Deposition

Assuming you have canceled the deposition for 08/22/08.

Let me know ASAP so I may cancel my arrangements.

http://DealerDashboard.com

Regards,

Michael Dalton
PO Box 18137
Cincinnati, Ohio 45218-0137
(513) 557-2901 voice & fax
sales@DealerDashboard.com

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From: <ESTTA@uspto.gov>
Sent: Wednesday, August 20, 2008 3:45 PM
To: <DALTONME@hotmail.com>
Subject: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored

> UNITED STATES PATENT AND TRADEMARK OFFICE
> Trademark Trial and Appeal Board
>
> Proceeding No. 91173105

>
> 08/20/2008
>
> IMPORTANT NOTICE
>
> The Trademark Trial and Appeal Board (TTAB) has issued an order in this
> proceeding. To see the order, click on the link below or paste the URL into
> the address box of your browser.
>
> http://ttabvue.uspto.gov/ttabvue/v?pno=91173105&pty=OPP&eno=20
>
> This order contains important information which you should review
> immediately. A response may be required and trial dates may have
> changed. In some cases, this will be the only notification of this order you
> will receive. An e-mail copy of the order itself will not be sent.
>
> If you are unable to view the order, call the TTAB for technical assistance at
> 571-272-8500. Do not use the reply button to respond to this message by
> e-mail.
> _____
>
> The entire public file of this proceeding may be viewed at
> http://ttabvue.uspto.gov.
>
> Papers in Board proceedings may be filed electronically with ESTTA at
> http://estta.uspto.gov.
>
> Further information is available at the TTAB□s web page at
> http:// www.uspto.gov.
>
>
>
>

EXHIBIT 4

Finguerra-DuCharme, Dyan

From: Finguerra-DuCharme, Dyan
Sent: Wednesday, August 27, 2008 3:25 PM
To: 'DALTONME'
Subject: Honda Deposition
Attachments: NYC3743H_Exchange_08272008-030642.pdf

Please see the attached.

Dyan Finguerra-DuCharme
WilmerHale
399 Park Avenue
New York, NY 10022 USA
+1 212 937 7203 (t)
+1 212 230 8888 (f)
dyan.finguerra-ducharme@wilmerhale.com

This email message and any attachments are being sent by Wilmer Cutler Pickering Hale and Dorr LLP, are confidential, and may be privileged. If you are not the intended recipient, please notify us immediately -- by replying to this message or by sending an email to postmaster@wilmerhale.com -- and destroy all copies of this message and any attachments. Thank you.

For more information about WilmerHale, please visit us at http://www.wilmerhale.com.

WILMERHALE

Dyan Finguerra-DuCharme

+1 212 937 7203 (t)
+1 212 230 8888 (f)
dyan.finguerra-ducharme@wilmerhale.com

August 27, 2008

VIA Email and First Class Mail

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

Re: *Honda Motor Co., Ltd., Opposer, v. Michael Dalton, Applicant;*
Opposition No. 91/173/105

Dear Mr. Dalton:

In accordance with my letter to you dated August 12, 2008, attached please find a notice of deposition rescheduling the deposition of Cyndee Mangham to Tuesday, September 16, 2008 at 10:00 a.m. at the Marriott Hotel, 3635 Fashion Way, Torrance CA.

Very truly yours,

Dyan Finguerra-DuCharme

cc: Mark Matuschak, Esq.

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

In the Matter of Application Serial No. 78/339,571
Published: May 30, 2006 at TM 674
Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(b)(1), and Rule 404 of the Trademark Rules of Practice (37 C.F.R. 2.120), Opposer Honda Motor Co., Ltd. through its attorneys of record, shall take the deposition of Cyndee Mangham, on Tuesday, September 16, 2008, at 10:00 a.m. at the Marriott Hotel, 3635 Fashion Way, Torrance, CA, 90503. The deposition will take place upon oral examination before a Notary Public or other officer authorized by law to administer oaths, will be recorded by stenography and shall continue from day-to-day, Saturdays, Sundays and holidays excluded.

Dated: New York, New York
August 27, 2008

WILMER CUTLER PICKERING
HALE and DORR LLP

By: _____
Dyan Finguerra-DuCharme
399 Park Avenue

US1DOCS 6781235v2

New York, NY 10022
(212) 937-7203

Mark G. Matuschak
60 State Street
Boston, Massachusetts 02109
(617) 526-6000

Attorneys for Opposer
Honda Motor Co., Ltd.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposer's Notice of Deposition to Applicant has been served by First Class Mail to:

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

Barbara Winterble

US1DOCS 6781235v2

EXHIBIT 5

Finguerra-DuCharme, Dyan

From: Finguerra-DuCharme, Dyan
Sent: Tuesday, September 09, 2008 6:43 PM
To: 'DALTONME'
Subject: RE: Extension of time

Michael,

I have purchased non-refundable airline tickets so we will proceed with the noticed deposition.

Dyan

From: DALTONME [mailto:DALTONME@hotmail.com]
Sent: Tuesday, September 09, 2008 1:36 PM
To: Finguerra-DuCharme, Dyan
Subject: Extension of time

Dyan:

I am having scheduling conflicts for the deposition next week. If you are in agreement please prepare the stipulated motion and extend the schedule an additional 30-60 days, what ever works best for you.

Let me know if you oppose.

Regards,

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

CONFIDENTIALITY NOTICE: This electronic mail transmission may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

EXHIBIT 6

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF LOS ANGELES)
3
4 I, DEBORAH L. HESKETT, CSR No. 11797, do hereby
5 certify:
6
7 That the foregoing deposition testimony of
8 Cynthia Mangham was taken before me at the time and
9 place therein set forth, at which time the witness was
10 placed under oath and was sworn by me to tell the truth,
11 the whole truth, and nothing but the truth;
12 That the testimony of the witness and all
13 objections made by counsel at the time of the
14 examination were recorded stenographically by me, and
15 were thereafter transcribed under my direction and
16 supervision, and that the foregoing pages contain a
17 full, true, and accurate record of all proceedings and
18 testimony to the best of my skill and ability.
19 I further certify that I am neither counsel for
20 any party to said action, nor am I related to any party
21 to said action, nor am I in any way interested in the
22 outcome thereof.
23
24
25

1 IN WITNESS WHEREOF, I have subscribed my name
2 this 23rd day of September, 2008.
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DEBORAH L. HESKETT, CSR No. 11797
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EXHIBIT 7

Finguerra-DuCharme, Dyan

From: Nina Deangelo [ndeangelo@veritext.com]
Sent: Thursday, March 19, 2009 2:34 PM
To: Finguerra-DuCharme, Dyan
Cc: Charmaine Gordon
Subject: RE: Deposition
Attachments: DOC188500.PDF

I can confirm that this is correct. Please see attached.

Nina DeAngelo
Client Services
Veritext
1350 Broadway, Ste 1407
New York, NY 10018
Phone: 212-490-3430 ext. 317
Fax: 212-279-9643
nina.deangelo@veritext.com

From: Finguerra-DuCharme, Dyan [mailto:Dyan.Finguerra-DuCharme@wilmerhale.com]
Sent: Thursday, March 19, 2009 2:06 PM
To: Nina Deangelo
Subject: RE: Deposition

Dear Ms. Deangelo,

Veritext transcribed a deposition of Cyndee Mangham in Honda v. Dalton, Opp. No. 91/173,103 on September 16, 2008. The deposition was held in Torrance, California.

Can you kindly confirm that the transcript was hand delivered to me on September 24, 2008?

I appreciate your attention to this matter.

Very truly yours,

Dyan Finguerra-DuCharme
WilmerHale
399 Park Avenue
New York, NY 10022 USA
+1 212 937 7203 (t)
+1 212 230 8888 (f)
dyan.finguerra-ducharme@wilmerhale.com

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ATTN: DYAN FINGUERRA-DUCHARME, ESQ.,

CASE NAME: TAYLOR VS. MCKELVEY
WITNESS: CYNTHIA MANGHAM
DATE TAKEN: 9/16/08
JOB# 188500
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