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

Proceeding	91177036
Party	Defendant Mujahid Ahmad
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Serial No.  
Filed on  
For the Mark  
Published for Opposition on

78/866376  
April 20, 2006  
NATIONSTAR  
January 2, 2007

<p>Nationstar Mortgage LLC,  <i>Opposer</i></p> <p>vs.</p> <p>Mujahid Ahmad,  <i>Applicant</i></p>	<p>Opposition No. 91177036</p>
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**APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO PRESENT EXPERT  
TESTIMONY IN REBUTTAL PERIOD**

Applicant hereby responds to Opposer's Motion to Present Expert Testimony in Rebuttal Period filed in this matter ("Motion"), and moves the Board to deny the Motion for the reasons stated below.

**I. Background**

The Motion seeks Board permission to take and submit the expert testimony of John Socknat during Opposer's rebuttal testimony period. Opposer's Motion was filed on October 19, 2010. Applicant's testimony period ended on September 22, 2010. Opposer's testimony period, marking the beginning of trial, opened on February 24, 2010. Opposer has given no previous notice to Applicant of its intent to offer expert witness testimony in this opposition. Opposer bases its Motion on the argument that it has been unfairly prejudiced by Applicant's introduction during Applicant's testimony

period of testimony and exhibits regarding Applicant's actual use of the NATIONSTAR mark prior to Applicant's filing of his application. Specifically, Opposer states that:

Opposer has been prejudiced by Applicant's reversal of course during his testimony period and his reversion to a claim of prior use.

Motion, p. 5. Specifically, Opposer argues that the Board should grant the Motion to allow expert testimony during Opposer's rebuttal testimony period, because (1) in early 2008, Applicant amended the basis of his application from "first use" under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a) to "intend to use" under Section 1(b), 15 U.S.C. § 1051(b), and (2) Applicant unfairly surprised and prejudiced Opposer when Applicant offered testimony of actual use during Applicant's testimony period. To cure that prejudice, the Motion seeks permission to introduce the expert opinion testimony of John Socknat. This expert opinion testimony does not relate to Applicant's use or non-use of the NATIONSTAR mark, but opines regarding various civil and criminal statutes that may have been violated by Mr. Ahmad at the time he filed his application. Report of Opposer's Expert John Socknat Pursuant to Fed.R.Civ.P. 26(a)(2), attached to Opposer's Motion as Exhibit A.

On May 29, 2009, prior to trial but after Applicant amended his filing basis, Opposer conducted a discovery deposition of Applicant. During the course of that deposition, the Opposer specifically asked Applicant about Applicant's use of the NATIONSTAR mark:

Q. Where do you advertise NationStar?

A. Through my website; nationstarmortgage.com, through fliers, through business cards, through postcards, through mailings, through friends, and also through word of mouth referrals.

Q. When did you begin advertising NationStar?

A. In the beginning of 2005.

Deposition of Mujahid Ahmad, May 27, 2009<sup>1</sup> (“Ahmad Deposition”), p. 10, lines 13-19.

Opposer continued to question Applicant about his use of the NATIONSTAR mark.

Opposer asked Applicant about the information contained in his Application:

Q. You see the first use dates on the same page of this document?

A. That’s right. Yeah.

Q. It says at least as early as 4-04-2005?

A. That’s right.

Q. Did you submit those dates?

A. I submitted the date because it says as early as, so they were not specific what date I start my business.

Ahmad Deposition p. 22, lines 5-12. By Opposer’s March 24, 2010 Notice of Reliance,

Opposer made the Deposition of Ahmad part of the trial record.

## **II. Argument**

### **A. Opposer’s request to allow testimony of its expert witness is untimely.**

Opposer has asked permission to submit testimony of its expert witness in a manner that precludes Applicant from making any meaningful preparation or response. If Opposer had timely disclosed the expert witness testimony that it now seeks to offer, Applicant could have provided testimony and exhibits that would have provided a defense to the accused crimes and Applicant could have offered his own expert witness explaining why no laws were violated. Instead, because this expert is being offered during Opposer’s rebuttal period, Applicant’s sole recourse would be cross-examination of Opposer’s expert. Applicant submits that this is not an effective procedure by which Applicant could present its side of the story.

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<sup>1</sup> The Deposition of Ahmad has already been submitted to the Board three times during the course of this Opposition – as an exhibit to Opposer’s most previous motion for summary judgment, as an exhibit to Applicant’s opposition to Opposer’s motion for summary judgment, and as part of Opposer’s notice of reliance. Due to the large size of this document and the difficulties created during previous electronic submissions, it has not been attached to this pleading.

Fed.R.Civ.P. 26(a)(2) requires disclosure of intent to use expert testimony, including identification of expert witnesses and a statement of the opinions to be expressed, as part of the required discovery disclosures. The purpose of this disclosure is to allow the other party to prepare cross-examination of the expert and to arrange responsive experts of their own. 6 Moore's Federal Practice § 26.23[2][a][i] (Mathew Bender 3d ed.) The remedy for failure to timely disclose an expert is exclusion of such expert's testimony under Fed.R.Civ.P. 37(c)(1). The Board does have discretion to allow Opposer's expert testimony. Courts have cited four factors for determining when they should exercise the discretion to allow expert witness testimony despite inadequate notice to the other party. These factors are (1) the importance of the evidence, (2) the prejudice to the opposing party, (3) the possibility of curing prejudice, and (4) the party's explanation for its failure to disclose the its expert witness. See *Bradley v. U.S.*, 866 F.2d 120, 125 (5<sup>th</sup> Cir. 1989). Each of these factors argues against allowing Opposer's expert testimony, but the unfair prejudice to Applicant from being accused and convicted of crimes by expert testimony is profound. This amounts to a kangaroo court where Applicant is blindsided by criminal accusations and then prohibited from presenting any defense whatsoever. The absence of any meaningful opportunity for Applicant to cure the prejudice caused by admitting Mr. Socknat's expert testimony demands that Opposer's request be denied.

**B. Applicant has not reversed its position regarding his actual use of the NATIONSTAR mark.**

More than two years ago, during the course of this opposition, Applicant amended his application from based on actual use to intended use. Other than

amendment to its application, Applicant has consistently maintained his position regarding actual use of the NATIONSTAR mark. This consistency applies to Applicant's discovery responses to Opposer, Opposer's discovery deposition of Applicant, Applicant's own testimony and the testimony of Applicant's other witnesses. Opposer has not cited any fact other than amendment of Applicant's filing basis that would argue against Applicant's actual use of the NATIONSTAR mark. There was absolutely no "reversal of course" during Applicant's testimony period.

**C. Opposer has not been surprised by Applicant's claims of actual use of the NATIONSTAR mark.**

During Opposer's discovery deposition, Opposer questioned Applicant about his use of the NATIONSTAR mark. As noted above, Applicant responded to Opposer's questions by describing his actual use of the mark prior to filing his application. Opposer has placed a transcript of that deposition in the trial record by its notice of reliance. The information provided by Applicant during Opposer's discovery deposition and Applicant's direct and cross-examination testimony is consistent. When asked, Applicant has responded that he was using the NATIONSTAR mark prior to filing his trademark application.

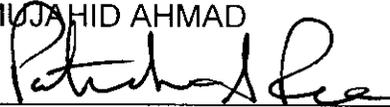
Opposer placed evidence of Applicant's actual use in the trial record when it filed its notice of reliance on Opposer's discovery deposition of Applicant. When Opposer received the same information regarding actual use during Applicant's trial testimony deposition, Opposer claimed surprise by Applicant's unexpected "reversal of course". Applicant is mystified by Opposer's inconsistent positions where, on the one hand, it places evidence of actual use into the trial record and then, on the other hand, claims

surprise when the same evidence appears in a different part of the proceeding. Clearly Opposer has not been surprised by Applicant's actual use of the NATIONSTAR mark prior to filing his application.

For the reasons stated above, Opposer's Motion should be denied.

Respectfully submitted,

MUJAHID AHMAD



Date: November 3, 2010

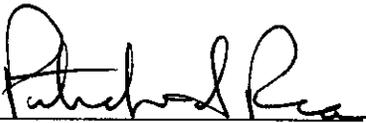
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CERTIFICATE OF MAILING

I hereby certify that on November 3, 2010, the foregoing Applicant's Opposition to Opposer's Motion to Present Expert Testimony in Rebuttal Period is being deposited with the United States Postal Service, with sufficient postage as first-class mail, in an envelope addressed to

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Patrick I. Rea