

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

Mailed: January 29, 2009

Opposition No. 91177156

H-D Michigan, Inc.

v.

Bryan Broehm

Ann Linnehan, Interlocutory Attorney

This case now comes up for consideration of opposer's motion (filed September 11, 2008) to strike the evidence filed by applicant on August 27, 2008. The motion is fully briefed.

In support of its motion, opposer argues that applicant filed his evidence on August 27, 2008, after the close of his testimony period; that the August 27, 2008 submission was not served on opposer; and that applicant seeks to introduce evidence that is not the proper subject matter for introduction by notice of reliance.

For purposes of this order, the Board presumes the parties' familiarity with the arguments and forgoes an exhaustive review of such arguments.

In a Board *inter partes* proceeding, a party has several options for introduction of evidence into the record. Certain documents may be introduced under a "notice of

reliance" by filing (and serving) a copy thereof *during* the party's testimony period. Alternatively, documents and testimony may be introduced by having a competent witness answer appropriate questions and identify documents during a testimonial deposition, held during the party's testimony period. It is undisputed that applicant did not conduct any testimonial depositions.

Applicant's testimony period closed on August 26, 2008. The evidence at issue, submitted under what the Board construes as a notice of reliance, was filed by applicant on August 27, 2008. This evidence is manifestly untimely. In addition, despite the Board's previous warnings to applicant, the Board notes that applicant failed to serve its notice of reliance on opposer as required under Trademark Rule 2.119.¹ Moreover, after reviewing the face of the subject notice of reliance (and the attached documents), the Board finds that the proffered materials are not appropriate for introduction by notice of reliance. With regard to Exhibits A and C of the notice of reliance, matter obtained from the Internet, such as those submitted by applicant, may be introduced into evidence through the testimony of a person who can properly authenticate and identify the materials. With regard to Exhibit B of the notice of reliance, the images of designs that applicant

states he "desires to market under the 'Holy-DivineSon' mark" these too are not appropriate for introduction by notice of reliance, but should have been introduced into evidence through the testimony of a person who can properly authenticate and identify the material.

In view of the foregoing, opposer's motion to strike is hereby granted and the matter submitted by applicant on August 27, 2008 will receive no further consideration.

The final decision for this proceeding will be issued in due course.

¹ Although the Board notes that applicant did serve his notice of reliance on opposer after opposer filed this motion to strike.