

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

Baxley

Mailed: January 14, 2009

Opposition No. **91184456**

L'Oreal USA, Inc.

v.

Robert Victor Marcon

Andrew P. Baxley, Interlocutory Attorney:

The copies of opposer's discovery requests and applicant's responses thereto and the notice of reliance that applicant filed on November 4, 2008, during the discovery period, are noted.

Discovery requests, responses thereto, and materials or depositions obtained through the discovery process should not be filed with the Board except when submitted with a motion relating to discovery, in support of or response to a motion for summary judgment, or under a notice of reliance during a party's testimony period. See Trademark Rule 2.120(j)(8); TBMP Section 409 (2d ed. rev. 2004). Further, notices of reliance may only be filed during the offering party's testimony period. See TBMP Sections 702 and 704.02 (2d ed. rev. 2004).

Based on the foregoing, the materials that applicant filed on November 4, 2008 are not properly before the Board

and will receive no consideration. If applicant intends to rely upon these materials at trial, he must refile the notice of reliance at the appropriate time. See also TBMP Section 704 *et seq.* (2d ed. rev. 2004) regarding the types of materials that are properly filed under notice of reliance.¹

Opposer's consented motion (filed January 9, 2009) to extend dates is granted. Dates are reset in accordance with the schedule set forth therein.

¹A cursory review of the materials at issue indicates that many of them are printouts of Internet website excerpts, including the USPTO's Trademark Electronic Search System (TESS) database. Current printouts of information from the electronic database records of the USPTO showing the current status and title of registrations are properly filed under notice of reliance. See Trademark Rules 2.122(d) and (e). However, printouts of pages from other Internet websites are not self-authenticating and are therefore not properly made of record by notice of reliance. See *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370 (TTAB 1998).

Such printouts may nevertheless be introduced into evidence through the testimony of a person who can clearly and properly authenticate and identify the materials, including identifying the nature, source and date of the materials. Further, Internet printouts are only probative of what they show on their face, not for the truth of the matters contained therein, unless a competent witness has testified to the truth of such matters. See TBMP Section 704.08 (2d ed. rev. 2004).