

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

Mailed: December 3, 2013

Opposition No. 91195961

ELVH, Inc.

v.

Kelly Van Halen

**M. Catherine Faint,
Interlocutory Attorney:**

This case now comes up on applicant's motion, filed October 17, 2013, to compel opposer's responses to applicant's amended first set of interrogatories. The motion is contested. Also before the Board is opposer's motion to suspend for disposition of a civil action between the parties in the United States District Court for the Central District of California, Western Division, styled as, *ELVH, Inc. v. Kelly Van Halen*, Case No. CV13-7524MRW.

Motion to Compel

Opposer argues that the motion to compel is untimely as it was filed after the opening of opposer's testimony period.

A motion to compel must be filed prior to the commencement of the first testimony period as originally set or reset. See Trademark Rule 2.120(e)(1); and TBMP § 523.03 (3d ed. rev. 2 2013). Compare TBMP § 528.02 for an explanation of "as originally set or reset." If testimony periods are reset prior to the opening of the plaintiff's testimony period-in-chief, a

motion to compel filed before a first trial period opens is timely. However, once the first trial period opens, a motion to compel filed thereafter is untimely, even if it is filed prior to the opening of a rescheduled testimony period-in-chief for plaintiff. *Compare La Maur, Inc. v. Bagwells Enterprises, Inc.*, 193 USPQ 234 (Comm'r 1976).

The Board's order of July 31, 2013 set opposer's testimony period to open October 1, 2013, and applicant's motion was filed seventeen days later on October 17, 2013. Inasmuch as applicant's motion was filed after the opening of testimony, it is untimely. Accordingly, applicant's motion to compel is **denied**.

Motion to Suspend

It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. Trademark Rule 2.117(a); *see also General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933, 1937 (TTAB 1992). The civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board. *New Orleans Louisiana Saints LLC v. Who Dat?*, 99 USPQ2d 1550, 1552 (TTAB 2011); Trademark Rule 2.117(a).

After reviewing the complaint, it appears the parties, and the mark at issue, in the civil action are identical to those in this Board proceeding, and a resolution of the issues raised in the civil action may have a bearing on this case before the

Board. Accordingly, opposer's motion for suspension is **granted**.

Proceedings are suspended pending final disposition of the civil action between the parties.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board and call this case up for any appropriate action. During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.
