

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

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Mailed: April 17, 2012

Opposition No. 91199035
Cancellation No. 92053919

D.C. One Wholesaler, Inc.

v.

Jonathan E Chien dba I Love
DC, LLC

Elizabeth A. Dunn, Attorney (571-272-4267):

The stipulated protective agreement filed on February 7, 2012 is noted and its use in this proceeding is approved.¹

On March 1, 2012, opposer notified the Board of its timely disclosure to applicant of plans to use expert testimony.² Accordingly, proceedings herein are suspended

¹ The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection. The parties are referred, as appropriate, to TBMP §§ 412.03 (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board), 412.05 (Handling of Confidential Materials by Board).

² Opposer's motion to extend disclosure, discovery and trial dates is granted as conceded. Trademark Rule 2.127. The Board notes

pending the parties' compliance with Fed. R. Civ. P. 26(a)(2) and the exchange of discovery limited to planned expert testimony, including that of any rebuttal expert. Trademark Rule 2.120(a)(2).

To the extent that the use of experts did not form part of the parties' discovery conference discussions, the parties shall promptly confer on the arrangements for the completion of disclosures relating to planned expert testimony, including any testimony by a rebuttal expert, and for exchanging and responding to discovery requests, if any, related to the identified experts. Such discussions should also encompass stipulations regarding the introduction into evidence of the testimony of expert witnesses, for example, whether in lieu of testimony, the parties introduce the expert report(s), whether the expert testimony may be provided by affidavit or declaration, or whether the witnesses will present testimony and discuss exhibits in testimony depositions.

Federal Rule 26(a)(2) provides that a party planning to use an expert solely to contradict or rebut an adverse party's expert must disclose such plans within thirty days of the adverse party's prior disclosure. However,

opposer's April 13, 2012 correction of the dates set forth in the motion. In view of this suspension, which will require the Board to reset dates upon resumption, this correction is made moot.

Trademark Rule 2.120(a)(2) also provides that the Board may set a deadline for disclosing plans to use a rebuttal expert. Accordingly, if applicant has not already complied with the requirements of the federal rule, it is allowed until 20 days from the date of this order to disclose any planned rebuttal expert testimony. Federal Rule 26(a)(2) also details what information and materials must be provided for a party to satisfy its disclosure obligation with respect to experts. See "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42242, 42246 (Aug. 1, 2007).

Upon the completion of expert discovery and the service of information required by Federal Rule 26(a)(2), the parties must inform the Board so that proceedings may be resumed.
