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

Proceeding	91204259
Party	Plaintiff Valhalla Motion Pictures, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Serial Nos. 77/948,333; 77/948,895; and 85/310,089

Valhalla Game Studio's Marks: VALHALLA GAME STUDIOS; VALHALLA GAME STUDIOS and Design; Valhalla Motion Pictures' mark: VALHALLA ENTERTAINMENT

VALHALLA MOTION PICTURES, INC.,

Opposer;

v.

Opposition No. 91204259
(parent case)

VALHALLA GAME STUDIOS CO. LTD.,

Applicant.

VALHALLA GAME STUDIOS CO. LTD.,

Opposer;

v.

Opposition No. 91206662

VALHALLA MOTION PICTURES, INC.,

Applicant.

EVIDENTIARY OBJECTIONS TO REPLY BRIEF IN CHILD CASE

Applicant Valhalla Motion Pictures, Inc. ("VMP") objects to the purported new evidence submitted by Opposer Valhalla Game Studios Co. Ltd. ("VGS") with its reply brief as untimely and not subject to cross-examination. The Declaration of Denise Moreno and its exhibits should be disregarded.

TMBP § 704.05(b) provides that "[e]xhibits and other evidentiary materials attached to a party's brief on the case can be given no consideration unless they were properly made of record during the time for taking testimony." (Emphasis added). Opposer's reply brief in the child case includes an attached declaration from a paralegal in Opposer's counsel's office and several exhibits that were not disclosed or submitted during Opposer's testimony period, either by trial deposition or by notice of reliance. This paralegal was not made available for cross-examination and appears to be unable to lay a foundation as to

any relevant issue based on personal knowledge in any case. *See* Rule 2.123(e)(3); TMBP § 703.01(h). The stratagem appears to be to attempt to obtain by surprise what would not have been permitted under the rules of evidence and to mislead the Board.¹

This purported new evidence must not be considered by the Board. TMBP § 706 states that “[e]vidence not obtained and filed in compliance with the rules of practice governing *inter partes* proceedings before the Board will not be considered by the Board.” (Emphasis added). *See also* Rule 2.123; *Swiss Watch International Inc. v. Federation of the Swiss Watch Industry*, 101 U.S.P.Q.2d 1731, 1734-35 (TTAB 2012) (declaration and exhibits submitted with brief not an acceptable way to make evidence of record); *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 U.S.P.Q.2d 1844, 1846 n.8 (TTAB 2004) (materials submitted outside of assigned testimony period and that failed to comply with the Board’s evidentiary rules shall be given no consideration).

The purported evidence attached to Opposer’s reply brief was not disclosed in discovery, was not made of record during the time for taking testimony, and was not submitted in accordance with TTAB rules. There has been no opportunity to review the exhibits or to permit cross-examination of the declarant. Indeed, Opposer has offered no explanation for the sudden submission months after the deadline. The Board should not consider it.

/s/ Pamela D. Deitchle

Dated: March 31, 2015

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¹ VMP previously introduced undisputed evidence that it first used VALHALLA ENTERTAINMENT in connection with a January 2010 *television broadcast* of a motion picture production. VGS tries to rebut that evidence by seeking to introduce a *home video product* (DVD) of that motion picture that was released much later and that its counsel appears to have purchased only in March 2015. It is standard entertainment industry practice, however, for DVDs to be released many months after the first commercial release. VGS’s proffer does not rebut VMP’s properly introduced evidence and is not probative of any disputed fact in this proceeding. VGS’s insinuations are unworthy of further response.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2015, a true and complete copy of the foregoing VAHALLA MOTION PICTURES, INC.'S EVIDENTIARY OBJECTIONS TO REPLY BRIEF IN CHILD CASE has been served on Opposer by electronic mail addressed to

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/s/ Pamela D. Deitchle

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