

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

Mailed: February 3, 2014

Opposition No. 91210234

Carole A. Faulkner dba C I Host
Christopher A. Faulkner dba C I Host

v.

Gary Domel

Jennifer Krisp, Interlocutory Attorney:

This opposition proceeding is before the Board for consideration of opposers' October 29, 2013 motion to compel the discovery deposition of applicant. The motion has been fully briefed.

Opposers seek an order directing that the oral discovery deposition of applicant, Gary Domel, be taken in Dallas, Texas. Opposers noticed the deposition on July 30, 2013, to take place in Dallas.

Initially, the Board notes that a motion to compel must be supported by a written statement from the moving party showing that such party or, if represented by counsel, the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or, if represented by counsel, the attorney therefor, the issues presented in the motion, and that the parties were unable to resolve their differences. *See* Trademark Rule 2.120(e)(1);

TBMP § 523.02 (2013). By way of the communications made of record, opposers have established that they have satisfied the good faith effort requirement.

Opposers assert that the deposition was properly noticed to take place in Dallas because applicant's address, as stated in the opposed application, is a Bedford, Texas, address, and because this is a location which is in the Dallas federal judicial district.

In opposing the motion, applicant asserts, through the submission of his November 13, 2013 affidavit, that he resides in Spicewood, Texas, that he is regularly employed at his place of business located in Austin, Texas, and that these locations are within the judicial district of the Western District of Texas, Austin Division. In his brief, applicant further states that Dallas is not in the vicinity of his place of residence or place of business, but rather is approximately two-hundred miles north of Austin, and states that the parties have not stipulated or otherwise agreed that the deposition shall be taken in Dallas. Opposers do not state otherwise.

The Board's applicable authority, Trademark Rule 2.120(b), provides as follows:

The deposition of a natural person shall be taken in the Federal judicial district where the person resides or is regularly employed or at any place on which the parties agree by stipulation.

See also TBMP § 404.03 (2013). The record reflects that applicant resides in and is regularly employed in the Austin, Texas area. Opposers cite no authority

which dictates to the contrary, and cites no circumstances which indicate that the deposition should be taken in Dallas, Texas.

In view of the applicable authority and the record, opposers' motion to compel the discovery deposition of applicant to take place in Dallas, Texas, is denied.¹

Opposers are allowed until fifteen (15) days from the mailing date of this order in which to serve an amended notice of deposition which notices the deposition of applicant to take place in the Federal judicial district of Austin, Texas, in the absence of a stipulation between the parties setting an alternative location. As a matter of convenience and courtesy, and to avoid any scheduling conflicts, counsel should settle upon a mutually agreeable day and time for said deposition prior to service of the notice. *See* TBMP § 404.01 (2013).

Schedule

Proceedings are resumed, and discovery and trial dates are reset as indicated below:²

¹ The opposed application still reflects a Bedford, Texas address for applicant. In the event that applicant represents himself in any USPTO proceeding, applicant should heed the Board's clear directive that all parties to Board proceedings are responsible for ensuring that the Board has the party's current correspondence address, including an email address, if applicable, and that if a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party. The responsibility for any failure to receive correspondence due to a change of address of which the Board has not been given separate written notice lies with the party or its attorney or other authorized representative. *See* TBMP § 117.07 (2013) ("Change of Address").

² The parties are allowed until thirty (30) days from the mailing date of this order in which to serve responses to any discovery that was outstanding during the suspension period.

Expert Disclosures Due	3/7/2014
Discovery Closes	4/6/2014
Plaintiff's Pretrial Disclosures due	5/21/2014
Plaintiff's 30-day Trial Period Ends	7/5/2014
Defendant's Pretrial Disclosures due	7/20/2014
Defendant's 30-day Trial Period Ends	9/3/2014
Plaintiff's Rebuttal Disclosures due	9/18/2014
Plaintiff's 15-day Rebuttal Period Ends	10/18/2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.