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

Proceeding	91211530
Party	Defendant William T. Odonnell DBA Odonnell Entertainment
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Date	10/24/2014
Attachments	MOTION TO QUASH OPPOSERS NOTICE OF DEPOSITION WILLIAM T ODONNELL SR.pdf(32594 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Serial No. 85/785,996
For the mark ADVENTURES OF SHADOW,

Registration No. 3,991,181
For the mark ADVENTURES OF SHADOW,

J-Lynn Entertainment, LLC,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91211530 (Parent)
	:	Cancellation No. 92056491 (Child)
William T. Odonnell, d/b/aOdonnell Entertainment,	:	
	:	
Applicant.	:	

**MOTION TO QUASH OPPOSER’S NOTICE OF DEPOSITION
OF WILLIAM T. ODONNELL, SR.**

NOW COMES Applicant, William T. Odonnell, Jr. ("Applicant") moves the Trademark Trial and Appeal Board (the "TTAB" or the "Board") to quash Opposer, J-Lynn Entertainment, LLC’s Notice of Testimonial Deposition of William T. Odonnell, Sr. pursuant to TBMP § 521 *et seq.*, on the basis that (i) there was not due notice of the proposed deposition; and (ii) witness is not competent to give adequate testimony.

STATEMENT OF THE CASE

Opposer’s trial period opened in this matter on or about October 21, 2014. On or about October 23, 2014, Counsel for Applicant received by e-mail Opposer’s Notice of Depositions for the following witnesses: William T. Odonnell, Jr., William T. Odonnell, Sr., George Eitzen, Rick McRostie, Jerry Dean Greer, Sean McLaughlin, Jerusha Wilhelmi and Juan Carillo. Opposer’s Notice of Deposition of William T. Odonnell, Sr. notes the telephonic deposition for October 28, 2014 at 8:45 a.m. (PST). (*see* Exhibit A). Applicant now timely files the instant motion respectfully requesting the Board enter an Order to quash the Notice of Deposition of William T. Odonnell, Sr.

ARGUMENT

Fed. R. Civ. P. 30(b)(1) requires a party seeking to take testimony depositions upon oral examination to give every adverse party reasonable notice in writing of the time when and place where the depositions will be taken, the cause or matter in which they are to be used, and the name and address of each witness to be examined. See also Trademark Rule 2.123(c); and TBMP Sections 718.03(b) and 713.05. It has been the Board's standard practice to apply Rule 30(b)(1), together with Trademark Rule 2.123(c), to determine the reasonableness of notice in the case of testimony depositions. Whether notice is reasonable is determined under the individual circumstances of each case. See, *C & F Packing Company, Inc., v. Doskocil Companies, Inc.*, 126 FRD 662, (N.D. Ill. 1989); *Electronic Industries Association v. Patrick H. Potega DBA Lifestyle Technologies*, 50 USPQ2d 1775 (TTAB 1999); and *Jean Patou Inc. v. Theon Inc.*, 18 USPQ2d 1072 (TTAB 1990).

In the instant matter, Applicant only received six days actual notice based on electronic service of the Opposer's Notice of Deposition of William T. Odonnell, Sr. scheduled for October 28, 2014 at 8:45 a.m. (PST). Moreover, the Notice of Deposition failed to provide the name of the Officer to Administer Deposition as required by 37 CFR § 2.123(c & d); TBMP Section 703.01(e); and Fed. R. Civ. P. 28. Additionally, the Notice of Deposition is prejudicial and libelous in nature. It should also be noted that Mr. Odonnell is not competent to give testimony in this proceeding as he is 88 years old and has recently been hospitalized for a heart condition (likely, congestive heart failure) and suffers from moderate dementia.

In sum, it is respectfully submitted to the Board that the Opposer's Notice of Deposition of William T. Odonnell, Sr. is not reasonable and is inadequate on its face.

CONCLUSION

WHEREFORE for the premises considered, Applicant, William T. Odonnell, Jr. by counsel, respectfully moves the Board for an Order to Quash the Opposer's Notice of Deposition of William T. Odonnell, Sr.

Respectfully submitted this 24th day of October, 2014.

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