

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: July 1, 2016

Opposition No. 91215896

*Bells Brewery, Inc.*

*v.*

*Innovation Brewing*

**Robert H. Coggins,  
Interlocutory Attorney:**

Now before the Board is Applicant's motion for sanctions, filed February 25, 2016. The motion is fully briefed.

Applicant seeks to prohibit Opposer from relying at trial on any of the documents Opposer produced to Applicant on February 5, 2016, which may be responsive to requests for production of documents served by Applicant upon Opposer on November 11, 2014 (first set of requests) and March 20, 2015 (second set of requests). The current motion was filed by Applicant five days into Opposer's testimony period; however, Opposer has not introduced any evidence in this proceeding except for the TSDR printouts of Opposer's pleaded registrations which were submitted with the original Notice of Opposition. *See* Trademark Rule 2.122(d)(1).

It is not the Board's practice to make prospective or hypothetical evidentiary rulings. Further, the Board will not screen all of a party's proffered evidence before

trial. Thus, the Board will deny a motion to prospectively exclude evidence that might be introduced at trial and that might be inconsistent with discovery responses or other material not provided during discovery. *See Greenhouse Sys. Inc. v. Carson*, 37 USPQ2d 1748, 1750 (TTAB 1995). Rather than requesting a discovery sanction prospectively, the better practice is to file a motion to strike or otherwise object to such evidence after it is introduced, identifying the specific evidence objected to and the asserted basis for exclusion thereof. If the objection is one that cannot be cured promptly, the adverse party may wait and raise the objection in or with its main brief on the case. *RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.*, 106 USPQ2d 1492, 1493 (TTAB 2013) (“Board does not make prospective or hypothetical evidentiary rulings.”); *Dan Foam ApS v. Sleep Innovations Inc.*, 106 USPQ2d 1939, 1942 (TTAB 2013) (Board does not entertain motions *in limine* or otherwise exclude evidence prospectively); TBMP §§ 527.01(f) and 707 (2016)

In view of the circumstances of this case and the Board’s standard practice, Applicant’s motion for sanctions is **denied**.

Schedule

Proceedings are **resumed**. Dates are **reset** on the following schedule:

Opposer’s Trial Period Resumes	8/1/2016
Opposer’s Trial Period Ends	8/30/2016
Applicant’s Pretrial Disclosures	9/11/2016
Applicant’s 30-day Trial Period Ends	10/26/2016
Opposer’s Rebuttal Disclosures	11/10/2016
Opposer’s 15-day Rebuttal Period Ends	12/10/2016

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.