

ESTTA Tracking number: **ESTTA727508**

Filing date: **02/17/2016**

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

Proceeding	91223262
Party	Plaintiff Content Guru Limited
Correspondence Address	JANET F SATTERTHWAITE Potomac Law Group 1300 Pennsylvania Ave Nw WASHINGTON, DC 20004 UNITED STATES jsatterthwaite@potomaclaw.com, tm@potomaclaw.com, ereese@potomaclaw.com
Submission	Other Motions/Papers
Filer's Name	Janet F. Satterthwaite
Filer's e-mail	tm@potomaclaw.com, jsatterthwaite@potomaclaw.com, ereese@potomaclaw.com
Signature	/Janet F. Satterthwaite/
Date	02/17/2016
Attachments	Opp. to Motion for Live Depositions.pdf(121064 bytes)

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

In re Serial No. 86328428
to register: TWEETSTORM
Filed: July 3, 2014
Published: April 14, 2015

-----X		
CONTENT GURU LIMITED,	:	
	:	Opposition No. 91223262
Opposer,	:	
	:	
v.	:	
	:	
TWITTER, INC.,	:	
	:	
Applicant.	:	
-----X		

**OPPOSER’S OPPOSITION TO APPLICANT’S MOTION TO TAKE DEPOSITION OF
FOREIGN DEPENDENTS BY ORAL EXAMINATION**

Opposer, Content Guru Limited (“CGL” or “Opposer,”) hereby opposes Applicant Twitter’s motion to ignore the Rules of the Trademark Trial and Appeal Board for their own convenience.

The Rules provide that depositions of foreign deponents be taken by written question except for good cause shown. See 37 C.F.R. Section 2.120 (c) and 2.124. Twitter has no good reason for good cause and has not met its burden to flout the rule.

1. Twitter’s Motion is Premature Since it Has Not Yet Even Seen CGL’s Documents.

Twitter is crying before it is hurt, presumably to cause CGL to spend more. As noted in Twitter’s motion, Twitter demanded this exception to the Rules as early as the Rule 26 conference, when they had no idea whether they thought they had “good cause” other than they wanted to avoid complying with the rules. Roach Decl. At 2.

Even now, Twitter claims it has not seen CGL’s documents. This is because they have not yet been produced. Indeed, neither party has produced any document yet, as discovery is still incipient and the parties only recently exchanged written responses to discovery requests. *See* Declaration of Janet Satterthwaite at 2-7,. Twitter is thus crying before it is hurt, since it has yet to see what documents will be produced. Once it sees the documents, it will know whether there are in fact any customers of CGL in the United States, for example. Twitter is making collateral attacks on CGL’s discovery responses on the Motion, but the parties have not even had any discussions or correspondence about alleged deficiencies in each others’ written responses. Satterthwaite Decl . at. 8. Nor has Twitter availed itself of Requests for Admissions before firing off this Motion. *Id.* at 6.

2. Twitter Cites Only Irrelevant Case Law.

Twitter cites a number of federal court cases about the merits of live depositions, but these are not TTAB cases and those courts are not bound by TTAB rules.

The only TTAB cases Twitter relies on are *Orion*, from the 1980's. *Orion Grp. Inc. v. The Orion Ins. Co. PLC*, 12 U.S.P.Q.2d 1923, 1925 (T.T.A.B. 1989) and *Feed Flavors Inc. v. Kemin Indus., Inc.*, 209 U.S.P.Q. 589, 1980 WL 39356, at *2 (T.T.A.B. 1980)

Neither of these cases dealt with plain vanilla discovery depositions of a foreign party that fall squarely within the rule for written questions. In *Orion*, the foreign party had moved for summary judgment based *solely* on an affidavit of a witness in the United Kingdom who had not been deposed. The U.S. party filed a Rule 56(f) motion for a deposition to cross examine the affiant. Those were the exceptional circumstances that are not shown here. In *Kemin*, a party notices its *own* key US-based witnesses' rebuttal testimony, during the trial testimony period and not during discovery, by written question in order to avoid having their own employee witnesses be cross-examined, and the other party forced them to provide live witnesses. The case turned on a different rule, Trademark Rule 2.124(a), which provides that "a party may take the *testimony* of a witness by written questions to be propounded by an officer before whom deposition may be taken." Under part (c) of the rule, "on motion made within ten days after service of the notice and written questions, it may be ordered, for good cause shown, that the testimony be not taken in accordance with this section but by oral examination of the witness." *Feed Flavors Inc., v. Kemin Industries, Inc.*, 209 U.S.P.Q. (BNA) ¶ 589 (Trademark Tr. & App. Bd. Aug. 25, 1980)(Emphasis added.)

3. Twitter is Twisting the Balance of Equities.

Next, it is specious to suppose that CGL will allow a live deposition where its counsel is not physically present to prepare and defend the witnesses. Twitter blithely asserts that "Opposer's attorney could attend by videoconference, obviating any need for Opposer's counsel to travel to the United Kingdom." Mot. At 8. What would happen if we were to suggest that Twitter defend its own witnesses remotely without any in-person contact by counsel to prepare or defend them?

Twitter wants to have its own counsel sit in their office in California and ask questions while forcing CGL to fly its attorneys to London. Furthermore, the alternative answer is not to fly both sets of counsel to London so that it costs the same for both. That is not a reason to flout the rules.¹

¹

4. Twitter has not Explained Why it Even Needs a Live Deposition.

Next, Twitter has not explained what it is they think they need to find out from these witnesses. BOTH parties in this case have filed intent-to-use applications. Twitter has admitted that it has not yet used its mark in commerce. *See Answer at 5*, admitting Teitter has no used its mark in commerce. Twitter has cited to no specific reason why it needs a live deposition outside the normal TTAB rules.

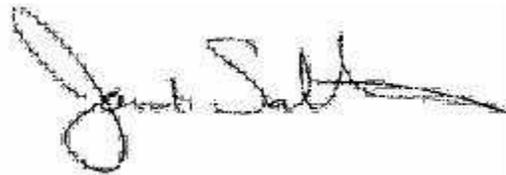
In *Orion*, the movant very specifically needed to cross-examine an affiant whose affidavit was the sole basis for a summary judgment motion. Here, Twitter just prefers live depositions because they prefer them and will cause CGL to spend more money.

Opposer CGL therefore asks that the Board deny Twitter's motion.

Dated: February 17, 2016

Respectfully Submitted,

POTOMAC LAW GROUP, PLLC



By: _____
Janet F. Satterthwaite
Elissa Brockbank Reese
Potomac Law Group, PLLC
1300 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Tel: 202.486.1578
Fax: 202.318.7707
E-Mail: jsatterthwaite@potomaclaw.com,
ereese@potomaclaw.com, tm@potomaclaw.com
Attorneys for Content Guru Limited

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

In re Serial No. 86328428
to register: TWEETSTORM
Filed: July 3, 2014
Published: April 14, 2015

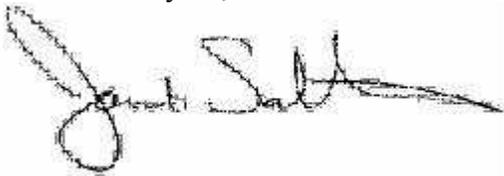
-----X		
CONTENT GURU LIMITED,	:	
	:	Opposition No. 91223262
Opposer,	:	
	:	
v.	:	
	:	
TWITTER, INC.,	:	
	:	
Applicant.	:	
-----X		

DECLARATION OF JANET F. SATTERTHWAITE

1. I am over 18 and suffer no legal disabilities.
2. I am counsel to Opposer Content Guru Limited in the Captioned matter.
3. We timely served Content Guru Limited's written responses and objections to Twitter's First Set of Interrogatories and Requests for Production on December 17, 2015.
4. Twitter timely served its responses and objections to our First Set of Interrogatories and Requests for Production on January 21, 2016.
5. Twitter timely served its responses and objections to our First set of Request for Admission on February 1, 2016.
6. Twitter has not served us with Requests for Admission.
7. Neither party has produced any documents yet.
8. As of the filing of Twitter's motion, neither party had yet initiated any conversation, oral or written, about the adequacy of any discovery responses or the timing of document production.
9. I volunteered to Twitter's counsel by telephone on February 4 that we were gathering documents from our client but so far only had a few, and were working to set up a call with our client to discuss this.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

February 17, 2016



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

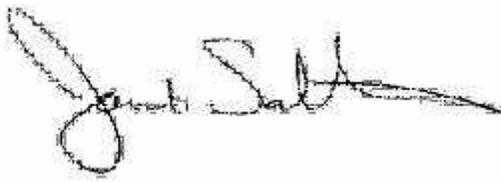
In re Serial No. 86328428
to register: TWEETSTORM
Filed: July 3, 2014
Published: April 14, 2015

-----X	:	
CONTENT GURU LIMITED,	:	Opposition No. 91223262
Opposer,	:	
	:	
v.	:	
	:	
TWITTER, INC.,	:	
	:	
Applicant.	:	
-----X	:	

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing OPPOSITION TO MOTION has been served on Opposer by depositing said copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Joseph Petersen
Kilpatrick Townsend & Stockton LLP
1080 Marsh Road
Menlo Park, California 94025
Telephone: 650.614.6427
Fax: 650.644.0570
Email: JPetersen@kiltown.com, aroach@kiltown.com, cgenteman@kiltown.com,
agarcia@kiltown.com, tadmin@kiltown.com



Dated: February 17, 2016

Janet F. Satterthwaite