

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

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Mailed: June 10, 2016

Opposition No. 91223262

*Content Guru Limited*

*v.*

*Twitter, Inc.*

**Michael Webster, Interlocutory Attorney:**

On August 12, 2015, Content Guru Limited (“Opposer”) filed a notice of opposition opposing registration of application Serial No. 86328428 for the standard character mark TWEETSTORM for various services in International Classes 38 and 45.<sup>1</sup> As grounds for opposition, Opposer alleges priority and likelihood of confusion based on common law use of the mark STORM and ownership of pending application Serial No. 77544841 for the same mark in standard character form covering various goods and services in International Classes 9 and 38.<sup>2</sup> In its answer, Twitter, Inc. (“Applicant”) denied the salient allegations in the notice of opposition and asserted affirmative defenses.

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<sup>1</sup> Application filed on April 14, 2015, based on intent-to-use under Section 1(a), 15 U.S.C. § 1051(a).

<sup>2</sup> Opposer’s pleaded application was filed on August 12, 2008, based on intent-to-use, under Section 1(a), 15 U.S.C. § 1051(a), and published for opposition on July 31, 2012.

This case now comes before the Board for consideration of Applicant's motion (filed February 3, 2016) to take the discovery depositions of foreign deponents by oral examination.<sup>3</sup> On February 17, 2016, Opposer filed a response to the Applicant's motion and a motion to quash the notices of oral deposition. On March 8, 2016, Applicant filed a response to Opposer's motion to quash and a reply in support of its motion to take depositions by oral examination. In view of Opposer's response in opposition to Applicant's motion to take depositions by oral examination, Opposer's motion to quash is moot.<sup>4</sup>

Applicant states that Opposer, in its initial disclosures and discovery responses, identified several individuals who may have discoverable information, including Opposer's Rule 30(b)(6) witnesses, and that each of the individuals is located in the United Kingdom. Applicant argues that it should be able to cross examine Opposer's representatives orally because the ability to cross-examine the witnesses is lost when a deposition is not conducted by oral examination. Applicant further argues that good cause to take the depositions by oral examination exists because 1) the only representatives that Opposer has identified as having relevant knowledge reside in the United Kingdom; 2) the information regarding the selection and adoption of Opposer's mark is crucial to the proceeding and is within the deponent's control; 3)

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<sup>3</sup> Applicant has served notices of deposition for the oral deposition of Martin Taylor and Opposer's designated 30(b)(6) witness(es). In its reply brief, Applicant states that Martin Taylor will likely be Opposer's 30(b)(6) representative. Thus, only one oral deposition may be sought.

<sup>4</sup> The Board notes that, in any event, Opposer makes no substantive arguments in its motion to quash other than to state that Applicant is "without good cause" to take the depositions orally. 16 TTABVUE at 4.

Opposer's responses to Applicant's discovery requests are vague and insufficient; and  
4) Opposer would suffer minimal inconvenience because travel for Opposer's attorney would be minimal; alternatively, she could attend the deposition by video conference.

Opposer contends that Applicant's allegation that Opposer's discovery responses are insufficient or incomplete does not amount to good cause because discovery is still open and Opposer is still producing documents in response to Opposer's requests. Opposer further contends that, if deposition by oral examination is allowed by the Board, Opposer's counsel would need to travel to the United Kingdom in order to "prepare and defend the witness[es]." 15 TTABVUE at 3.

In reply, Applicant argues, among other things, that "it is inequitable for Twitter to be forced to depose Opposer's representatives, particularly its 30(b)(6) representative, solely through written questions . . . when Opposer has the benefit of taking the live depositions of Twitter's representatives." 18 TTABVUE at 6.

Pursuant to Trademark Rule 2.120(c)(1), the discovery deposition of a person residing in a foreign country who is a party, or who is an officer, director, or managing agent of a party, or a person designated under Fed. R. Civ. P. 30(b)(6), shall, if taken in a foreign country, be taken by written questions unless the Trademark Trial and Appeal Board, upon motion for good cause, orders or the parties stipulate, that the deposition be taken by oral examination. 37 C.F.R. § 2.120(c)(1).

Whether good cause exists under Rule 2.120(c)(1) is a case-by-case determination based on the particular facts and circumstances of each situation wherein the Board weighs the equities, including the advantages of an oral deposition and any financial

hardship that the nonmoving party might suffer if the deposition were taken orally in the foreign country. *See Orion Group, Inc. v. The Orion Insurance Co. P.L.C.*, 12 USPQ2d 1923, 1925 (TTAB 1989).

In this case, the Board finds that Applicant has failed to show that good cause exists to warrant that the discovery deposition of Martin Taylor and Applicant's 30(b)(6) witness(es) be taken orally. Discovery in the proceeding is currently ongoing and Opposer has not identified any particular facts or circumstances at this stage of discovery that would tip the balance of the equities in favor of granting the motion. The mere fact that each of the discovery deponents are located in a foreign country is not out of the ordinary for a party that resides in a foreign country. *Cf. Feed Flavors Inc. v. Kemin Industries, Inc.*, 209 USPQ 589, 591 (TTAB 1980) (good cause shown to cross-examine witnesses orally because deponents were former employees of respondent and were being deposed for the first time during petitioner's rebuttal testimony period); *see also, Orion Group Inc. v. the Orion Insurance Co. P.L.C.*, 12 USPQ2d 1923, 1925-6 (TTAB 1989) (good cause shown for oral deposition to confront sole witness in summary judgment motion where no discovery had been taken). In addition, Applicant seeks information regarding the selection and use of Opposer's mark that is, under the circumstances, generally discoverable information in a proceeding involving allegations of priority and likelihood of confusion. Thus, the nature of the information sought by the discovery depositions does not weigh in favor of good cause to grant the motion. *Cf. Century 21 Reals Estate Corp. v. Century Life of America*, 1079, 1080 (TTAB 1990) (in view of the nature of the testimony, good

cause shown to take oral deposition of expert witness regarding the accuracy of a telephone survey during opposer's rebuttal period). Further, because remedies under the Trademark Rules are available in the event a party fails to respond to, or sufficiently answer, discovery requests, *see* TBMP § 411 (2015), the alleged insufficiency of Opposer's written discovery responses does not provide Applicant with good cause to take foreign depositions orally.<sup>5</sup>

In view of the above and under the circumstances, Applicant's motion for an order under Trademark Rule 2.120(c) to take discovery depositions by oral examination is **denied**.

Proceedings herein are resumed. Discovery and trial dates are reset as follows:

Expert Disclosures Due	<b>7/1/2016</b>
Discovery Closes	<b>7/31/2016</b>
Plaintiff's Pretrial Disclosures	<b>9/14/2016</b>
Plaintiff's 30-day Trial Period Ends	<b>10/29/2016</b>
Defendant's Pretrial Disclosures	<b>11/13/2016</b>
Defendant's 30-day Trial Period Ends	<b>12/28/2016</b>
Plaintiff's Rebuttal Disclosures	<b>1/12/2017</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>2/11/2017</b>

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.

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<sup>5</sup> The Board expects the parties and their representatives to cooperate with one another in the discovery process and looks with extreme disfavor on those who do not. *See* TBMP § 408.01 (2015).