

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

Mailed: June 10, 2010

Cancellation No. 92050966

Atlas Flowers, Inc. d/b/a
Golden Flowers

v.

Golden Vision Flower Inc.

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

This case comes up for consideration of respondent's motion (filed May 14, 2010) for a protective order to preserve the audio recordings of the depositions of respondent made by a deposition service and court reporter employed by petitioner.

Telephone Conference

In an effort to quickly determine the motion, the Board exercised its discretion and conducted a telephone conference to resolve the merits of the motion. Participating in conference, which was held May 18, 2010, at 2:00 p.m. EDT, were Milton Springut, and Tal Benschar, counsel for petitioner; Jeffrey Dawson, counsel for respondent; and the above-referenced Board attorney responsible for resolving interlocutory matters in this case.¹ Inasmuch as the

¹ The deputy general counsel of the deposition service declined the Board's invitation to participate in the conference, citing the service's desire "to remain neutral" and not "to get involved in" a dispute between the parties.

conference was held prior to the expiration of time in which petitioner could file a brief in opposition, petitioner was allowed time during the conference to present an oral brief. Respondent then provided an oral reply in support of the motion.

Background

By way of background, on May 15, 2010, in response to the May 14th motion, the Board issued an order requiring petitioner to direct the deposition service and court reporter to preserve a copy of the audio recordings from the depositions of Shun-Chi Huang and Li-Ying Chuong. Petitioner complied with the Board's order by faxing to Esquire Deposition Services, and emailing to the court reporter, a letter urging the preservation of the audio recording in view of the Board's May 15, 2010 order.²

The Board presumes familiarity with the issues, and for the sake of efficiency this order does not summarize the parties' arguments made in the written submission or during the telephone conference. Instead, this order lists the decisions made by the Board after careful consideration of all arguments and the record in this case.

Motion for a Protective Order

² During the email exchange to coordinate a telephone conference on the motion, petitioner attached to an email a copy of its letter to the deposition service and court reporter. Both the assigned Interlocutory Attorney and counsel for respondent were addressees of the email. However, inasmuch as petitioner did not officially file the letter with the Board, the letter does not form part of the record of this case. It is nonetheless noted that petitioner complied with the Board's May 15, 2010 order, and the Board appreciates petitioner's quick attention to the matter.

Respondent's motion was granted. Accordingly, petitioner must direct the deposition service and court reporter, which petitioner engaged for the depositions of Shun-Chi Huang and Li-Ying Chuong, to produce to respondent a copy of the audio recording(s) of the depositions.

Respondent will (and agreed to) bear the cost of obtaining the recording, which cost will include payment to the deposition service for the audio recording.³ In view thereof, respondent must work with petitioner and petitioner's deposition service to arrive at a price for the recording.

Once respondent translates and transcribes the recording, respondent will (and agreed to) provide a copy of the transcripts to petitioner.

Schedule

In view of the circumstances, and as a matter of equity, the Board *sua sponte* extends the close of discovery by thirty days. Accordingly, dates are reset on the following schedule.

Expert Disclosures Due	6/18/2010
Discovery Closes	7/18/2010
Plaintiff's Pretrial Disclosures	9/1/2010
Plaintiff's 30-day Trial Period Ends	10/16/2010
Defendant's Pretrial Disclosures	10/31/2010

³ Although the deposition service did not participate in the telephone conference, the deputy general counsel of the deposition service did request (in an unofficial, procedural email on which counsel for respondent was originally copied and which has been forwarded to counsel for both parties) that if the Board determined that the recording should be provided to respondent, then respondent be ordered to pay for the recording so this situation would not "be used as a means to circumvent the cost for official recordings" of depositions.

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Defendant's 30-day Trial Period Ends	12/15/2010
Plaintiff's Rebuttal Disclosures	12/30/2010
Plaintiff's 15-day Rebuttal Period Ends	1/29/2011

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.