

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

MBA

Mailed: May 11, 2012

Cancellation No. 92051140

Leonid Nahshin

v.

Product Source
International, LLC

Michael B. Adlin, Interlocutory Attorney:

This case now comes up for consideration of respondent's fully-briefed motion to strike all or portions of petitioner's notices of reliance, filed October 17, 2011.¹ Specifically, respondent seeks to strike Exhibits E and F to petitioner's Notice of Reliance Part A ("NOR-A") (and the text referring thereto), Exhibit D to petitioner's Notice of Reliance Part B ("NOR-B") (and the text referring

¹ Petitioner's former counsel's motion to withdraw from representation of petitioner, filed December 1, 2011, and the appearance of petitioner's new counsel, filed December 13, 2011, are noted. The request to withdraw as counsel is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40, and is accordingly granted, and Vera Chernobytsky no longer represents petitioner in this proceeding. It is presumed that petitioner's new counsel has all files and papers related to this proceeding, but if not, former counsel shall provide them within twenty days of this order.

thereto) and petitioner's Notice of Reliance Part D ("NOR-D") in its entirety.

Before addressing the specific notices of reliance at issue, petitioner argues as a general matter that respondent's objections are "untimely" because they were not filed until approximately nine months after the notices of reliance. Petitioner further argues that respondent's motion to strike should be denied because respondent "does not actually address the specific reasons that Petitioner gives for Noticing these documents as being inadequate." Finally, petitioner argues that it should be given "time to cure any defects if they existed."

Petitioner's arguments are not well-taken. Respondent's objections are not untimely because, as respondent points out, this proceeding was suspended from February 2 through August 22, 2011. Essentially, therefore, respondent filed its objections less than three months after petitioner filed its notices of reliance. More importantly, as respondent also points out, at the time of resumption, petitioner's testimony period was already closed, meaning that petitioner could not have attempted to "cure" any deficiencies no matter when respondent filed its objections after resumption. And to the extent that respondent did not address petitioner's purported reasons for introducing the materials in question through notice of reliance, that is of

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no consequence. Indeed, if petitioner attempted to introduce through notice of reliance evidence which cannot be introduced through a notice of reliance, then petitioner's reasons for attempting to introduce the evidence in that impermissible manner would be irrelevant.

NOR-A

Exhibits E and F to NOR-A contains petitioner's written responses to respondent's discovery requests, and documents petitioner produced in response to the requests. Respondent argues that these materials may not be made of record through a notice of reliance alone.

Respondent's motion to strike these exhibits is hereby **GRANTED**. In fact, with exceptions not applicable here, responses to discovery requests may only be introduced by the inquiring party. Trademark Rule 2.120(j)(5); TBMP § 704.10 (3d ed. 2011). And documents produced in response to discovery requests may not generally be introduced through notice of reliance. See Trademark Rule 2.120(j)(3)(ii); TBMP § 704.11; L.C. Licensing Inc. v. Berman, 86 USPQ2d 1883, 1886 n. 5 (TTAB 2008) (cited by petitioner).

NOR-B

Because Exhibit D to NOR-B contains documents produced by respondent in response to petitioner's document requests, respondent's motion is **GRANTED** and those documents are also

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hereby stricken. Id. Petitioner argues that respondent's written responses, to the extent that they indicate that respondent does not have documents responsive to petitioner's discovery requests, are "highly relevant" and "statements against interest by Respondent." In any event, these particular written responses that no documents exist, as opposed to other written responses and documents actually produced, are admissible, and are not stricken by this order. L.C. Licensing, 86 USPQ2d at 1886 n. 5.

NOR-D

Respondent moves to strike this notice of reliance because it provides notice of petitioner's "intent to take testimony of" four witnesses, which, according to respondent, "is not the proper subject of a notice of reliance." Respondent's motion is **GRANTED** and this notice of reliance is stricken because a party may not notice its intent to take testimony, or introduce testimony, through a notice of reliance. Trademark Rules 2.120(j), 2.122; TBMP §§ 704.02-704.04, 704.07-704.11.

Conclusion

Respondent's motion to strike is granted and Exhibits E and F to petitioner's NOR-A (and the text referring thereto), Exhibit D to petitioner's NOR-B (and the text referring thereto) and petitioner's NOR-D in its entirety

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are all stricken. Proceedings herein are resumed, and trial dates are reset as follows:

Plaintiff's 30-day Trial Period Ends	CLOSED
Defendant's Pretrial Disclosures	CLOSED
Defendant's 30-day Trial Period Ends	June 1, 2012
Plaintiff's Rebuttal Disclosures	June 16, 2012
Plaintiff's 15-day Rebuttal Period Ends	July 16, 2012

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 Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
