

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

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Mailed: November 13, 2014

Cancellation No. 92054050

Univision Communications
Inc.

v.

Unimundo Corp dba Unimundotv

Elizabeth A. Dunn, Attorney (571-272-4267):

On October 16, 2014, Petitioner filed a notice of the trial deposition upon written questions of Marcus Fontaine, President and Chief Executive Officer of Respondent, to take place on November 20, 2014.¹

¹ To the extent that the notice does not refer to a subpoena compelling the appearance of the adverse witness, the Board assumes that Respondent has agreed to appear voluntarily to testify. *See Health-Tex Inc. v. Okabashi (U.S.) Corp.*, 18 USPQ2d 1409, 1410 (TTAB 1990) (after unsuccessfully attempting to take testimony deposition on written questions of adverse party's officer on notice alone, opposer obtained subpoena from U.S. district court ordering appearance); *Consolidated Foods Corp. v. Ferro Corp.*, 189 USPQ 582, 583 (TTAB 1976) (it is incumbent on deposing party to have a subpoena issued from the U.S. district court where witness is located and have same properly served on witness with sufficient time to apprise him that he is under order to appear). *See also Stockpot, Inc. v. Stock Pot Restaurant, Inc.*, 220 USPQ 52, 55 n.7 (TTAB 1983) (no adverse inference can be drawn from adverse party's failure to appear and produce requested documents at testimony deposition where party attempted to secure attendance by notice alone), *aff'd*, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984).

As reset by the Board's September 23, 2014 order, Petitioner's testimony period opened October 26, 2014, and any notice of deposition on written questions should have been filed during the ten days from the opening of Petitioner's trial period to November 4, 2014. See Trademark Rule 2.124(b)(1) ("A party desiring to take a testimonial deposition upon written questions shall serve notice thereof upon each adverse party within ten days from the opening date of the testimony period of the party who serves the notice.")² See *Marshall Field & Co. v. Mrs. Field's Cookies*, 17 USPQ2d 1652 (TTAB 1990) (As reset, testimony period of Mrs. Field's Cookies expires June 4, 1990, and notices of thirteen testimonial depositions to be taken upon written questions served May 15, 1990 found timely).

Because the proper time for filing the notice of deposition has passed, and Petitioner cannot cure its premature filing, the Board will not strike the notice of deposition served October 16, 2014.

However, because Respondent may have believed that the early notice of deposition on written questions would be struck as untimely, and because the early service may have put into question when any motion contesting the notice would be due, if Respondent wishes to move for the deposition of Mr. Fontaine, a party located in the United States, to be taken by oral

from

preposition \ 'frəm, 'främ also fəm\

1 a—used as a function word to indicate a starting point of a physical movement or a starting point in measuring or reckoning or in a statement of limits <came here from the city> <a week from today> <cost from \$5 to \$10>

b—used as a function word to indicate the starting or focal point of an activity <called me from a pay phone> <ran a business from her home>

Merriam-Webster ONLINE Dictionary, <http://www.merriam-webster.com/dictionary/>

examination, it may do so from the time this order issues until November 19, 2014. See Trademark Rule 2.123(a)(1) (“If a party serves notice of the taking of a testimonial deposition upon written questions of a witness who is, or will be at the time of the deposition, present within the United States or any territory which is under the control and jurisdiction of the United States, any adverse party may, within fifteen days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination.”).

Proceedings herein are suspended pursuant to Trademark Rule 2.124(d)(2) in order to allow the parties sufficient time in which to complete the testimony upon written questions.

Petitioner shall promptly advise the Board of the completion of the testimony upon written questions in order that the Board can reschedule the remaining trial dates (commencing with Respondent’s trial period) in this consolidated case.

The parties are advised that procedures applicable to depositions on written questions are set forth in Trademark Trial and Appeal Board Manual of Procedure (TBMP) §702.02(g)(2014).