

ESTTA Tracking number: **ESTTA692021**

Filing date: **08/26/2015**

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

Proceeding	92056168
Party	Plaintiff Legend Pictures LLC
Correspondence Address	CARLA CALCAGNO CALCAGNO LAW PLLC 1250 24TH ST NW , SUITE 300 WASHINGTON, DC 20037 UNITED STATES Carla.calcagno@calcagnolaw.com, cccalcagno@gmail.com, trademarks@canopyparalegal.com
Submission	Motion for Sanctions
Filer's Name	Janet G Ricciuti
Filer's e-mail	ccccalcagno@gmail.com,trademarks@canopyparalegal.com
Signature	/jgr123/
Date	08/26/2015
Attachments	2015-8-26 Motion to Show Cause SCAN.pdf(1118769 bytes)

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

LEGEND PICTURES, LLC)	
Petitioner)	
)	
v.)	Cancellation No. 92056168
)	
QUENTIN DAVIS)	
Respondent)	

**PETITIONER’S MOTION FOR ORDER TO SHOW CAUSE AND FOR
SUSPENSION UNDER TRADEMARK RULE 2.127(A)**

Pursuant to Trademark Rule 2.127(a), Petitioner Legend Pictures, LLC ("Petitioner") moves the Board for an order to show cause and to suspend proceedings. As good cause for this motion, it is believed that Respondent has lost interest in this case.

PROCEDURAL HISTORY

The facts of this case are succinctly outlined in the Board’s latest decision dated July 21, 2015, familiarity with which is presumed.

In its July 21 2015 decision, the Board extended discovery unilaterally for Petitioner. Petitioner was granted 45 days from July 21, 2015 to conduct limited follow-up discovery, including the taking of Respondent’s deposition, on the documents and materials served on Petitioner by Respondent on February 19, 2014.

In its decision, the Board reminded Respondent that “he is expected to cooperate and to respond fully to Petitioner’s follow-up discovery”. The Board also warned

Respondent that should he fail to respond, “including failing to appear at any noticed deposition”, that it would entertain a motion for judgment filed by Petitioner.

Despite this order, Respondent has failed to cooperate in discovery and has failed to respond to all attempts by the Petitioner and the Board to secure Respondent’s attendance at a noticed deposition. This includes Respondent’s failure to comply with the Board’s order that Respondent attend a telephone conference to schedule that deposition. Respondent has been advised in writing that Petitioner would construe Respondent’s silence as a representation that it had lost interest in the case, and still no response has been received.

FACTS

Three weeks before the close of discovery, on August 13, 2015, Petitioner sent an email to Respondent asking Respondent to identify several dates that he could make himself available to be deposed. See attached Exhibit A. This email was directed to both Respondent and his Administrative Assistant at their given addresses as had previously been agreed upon by the parties.¹

Respondent failed to respond to this email.

Consequently, to preserve Petitioner’s position, on August 18, 2015, Petitioner served a Notice of Deposition upon Respondent. The Deposition was noticed for August 28, 2015. See Exhibit B.

¹ At the commencement of this case, and at all times subsequent thereto, the parties have agreed to service of all documents, including discovery requests, by email, at the addresses listed in the Certificate of Service attached hereto. These email addresses resolve to Gloria Walters, Mr. Davis’ Administrative Assistant, and Mr. Davis, respectively.

To ensure Respondent's receipt of that Notice, Petitioner served the Notice of Deposition not only by email, the method of service agreed to by the parties, but also by First Class Mail. The email was duly addressed to both Respondent and his Administrative Assistant as had previously been agreed by the parties. In that same email, Petitioner asked Respondent to acknowledge the email, confirm receipt of the Notice of Deposition, and to immediately advise Petitioner whether Respondent would be attending.

No response was received to this email.

On August 19, 2015, Petitioner sent a third email to Respondent asking Respondent to answer Petitioner's emails as Petitioner was attempting to schedule the deposition. In the email of August 19, 2015, Petitioner specifically stated that if Petitioner did not hear from Respondent and acknowledge that he was indeed attending the scheduled deposition, that Petitioner would assume that Respondent was not going to attend and that he had lost interest in the case. See Exhibit C.

Respondent failed to respond to this third email. Consequently, on August 20, 2015, the undersigned counsel called Respondent at his last given telephone number in his application and left a message requesting that Respondent return Petitioner's calls regarding the deposition.

No response to this call has been received.

On August 20, 2015, Petitioner also contacted the TTAB interlocutory Ms. Elizabeth Winter to request a telephone conference regarding whether Respondent intended to attend the noticed deposition. See Exhibit D.

On August 20, 2015, Ms. Winter sent an email to both Petitioner and Respondent ordering each party to contact her by email not later than Friday, August 21, 2015 to “arrange a mutually convenient time for a brief telephone conference to determine whether Respondent intended to appear at Petitioner’s noticed deposition for August 28, 2015.” See Exhibit D.

Respondent failed completely to respond to Ms. Winter’s order.

ARGUMENT

I. ORDER TO SHOW CAUSE

Petitioner requests that the Board issue an order to show cause why the Board should not enter judgment against Respondent in view of his apparent loss of interest in the case. Respondent has failed to cooperate in discovery. Respondent has ignored three emails, one voice mail and one Board order instructing him to attend a telephone conference to arrange for his deposition. Respondent has ignored these emails, despite being warned by the Board that the failure to attend a deposition could result in judgment and despite being warned by Petitioner that Respondent’s continued silence would be construed as an indication that Respondent has lost interest in this case.

The Board has long held that it has the authority to manage the cases on its docket and enter orders or sanctions where needed. TMBP 527.03. 37 CFR 2.127(a). As the Board has stated, where:

“a party is no longer interested in the case, the Board may, either upon motion by the adverse party or upon its own initiative, issue an order that the party show cause why the

Board should not enter judgment in view of the party's apparent loss of interest in the case. If the party files no response to the order, judgment will normally be entered".

See, TMBP 527.03, 37 CFR 2.127(a).

The interests of justice and judicial efficiency mandate that the Board should issue such an order in this case. Respondent agreed to email service at the addresses indicated in the certificate of service attached to this motion and used in the prior communications. Respondent is required to advise the Board of any change of address. Petitioner has made every attempt to reach Respondent, but Respondent has indicated by his silence and inaction that he has lost interest in this case. Further he has ignored a direct Board order requiring Respondent to attend a telephone conference with the Board to schedule his deposition.

Requiring Petitioner's counsel to travel to Florida, arrange for and pay for a hotel room, a conference room, and court reporter, and expend all the time and money associated with the preparation of a deposition when Respondent has given every indication that he will not attend the noticed deposition would be unfair and prejudicial.

The Board should require Respondent show cause why it should not enter judgment in view of Respondent's apparent lack of interest in the case.

II SUSPENSION OF PROCEEDINGS

As the current motion is potentially dispositive, and in order to preserve Petitioner's position in this case, Petitioner further requests the Board to suspend proceedings pending disposition of this motion. Petitioner's period for discovery is

scheduled to close September 4, 2015. In the event proceedings are resumed, Petitioner requests that the discovery period be unilaterally extended for Petitioner for three weeks beyond the mailing date of the Board's decision to allow Petitioner the same time in discovery as it would have had had Respondent replied to Petitioner's emails and service of deposition notice beginning on August 13, 2015.

III CONCLUSION AND REMEDIES SOUGHT

Respondent has failed to cooperate in discovery and indicated his lack of interest in the case. Petitioner has been unable to secure Respondent's attendance at a regularly noticed deposition. Respondent has not answered any of Petitioner's emails and voice mails and postal communications in its efforts to secure Respondent's attendance at its deposition. Respondent has ignored a Board order requiring secure Respondent's participation in a telephone conference concerning same. By his inaction, Respondent has indicated his lack of interest in this case, and frustrated Petitioner's attempts to conduct further discovery, in direct contravention of the Board's prior order.

Wherefore, Petitioner respectfully requests that the Board issue an order to show cause why default judgment should not be entered against Respondent. While this motion is pending, Petitioner requests that the Board suspend further proceedings in this case and if proceedings are resumed, extend Petitioner's unilateral discovery period by thirty days.

August 26, 2015

Respectfully submitted,

/Carla C Calcagno/

Carla C Calcagno, Esq.
Janet G Ricciuti, Esq.
Attorneys for Petitioner
CALCAGNO LAW PLLC
1250 24th Street NW, Suite 300
Washington DC 20037

Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing

**PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE AND FOR
SUSPENSION UNDER TRADEMARK RULE 2.127(A)**

was served by agreement of the parties on Respondent by mailing a copy of same on this
date to nevisbaby@hotmail.com and tharilest@yahoo.com.

Date: August 26, 2015

/Janet Ricciuti /

EXHIBIT A

From: **Carla Calcagno** carla.calcagno@calcagnolaw.com
Subject: RE: Legend v Davis
Date: August 13, 2015 at 5:21 PM
To: **Gloria W.** rievisbaby@hotmail.com, cccacagno@gmail.com
Cc: **Q D** thanielst@yahoo.com, **Janet Ricciuti** ricciutij@comcast.net

CC

Dear Mr. Davis:

Pursuant to the Board's order, please advise of several dates that you are available for your deposition so that we can schedule it at a mutually convenient time and date. We anticipate that the deposition will take a full day.

Regards

Carla Calcagno

Calcagno Law PLLC
1250 24th Street Street,N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

EXHIBIT B

From: **Carla Calcagno** carla.calcagno@calcagnolaw.com
Subject: RE: Legend v Davis
Date: August 16, 2015 at 5:15 PM
To: **Gloria W.** nevisbaby@hotmail.com, cccacagno@gmail.com
Cc: Q D tharliest@yahoo.com, **Janet Ricciuti** ricciutj@comcast.net

CC

Dear Mr. Davis

As I have not heard from you in response to my email of last week, that is my August 13, 2015 email, I am serving the attached formal notice of deposition. Please confirm receipt and advise me immediately if you will be attending.

Regards

Carla Calcagno

Calcagno Law PLLC
1250 24th Street Street,N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Carla Calcagno [<mailto:carla.calcagno@calcagnolaw.com>]
Sent: Thursday, August 13, 2015 5:20 PM
To: 'Gloria W.'; 'cccacagno@gmail.com'
Cc: 'Q D'; 'Janet Ricciuti'
Subject: RE: Legend v Davis

Dear Mr. Davis

Pursuant to the Board's order, please advise of several dates that you are available for your deposition so that we can schedule it at a mutually convenient time and date. We anticipate that the deposition will take a full day.

Regards

Carla Calcagno

Calcagno Law PLLC
1250 24th Street Street,N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

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

LEGEND PICTURES, LLC)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92056168
)	
QUENTIN DAVIS)	
)	
Respondent)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to the provisions of Trademark Trial and Appeal Board Manual of Procedure (TBMP) Rule 404.05 and Rule 30 of the Federal Rules of Civil Procedure, Petitioner, Legend Pictures, LLC ("Petitioner") will take the deposition of Respondent, Quentin Davis ("Respondent") at Le Meridien Tampa Hotel, Verdict Boardroom, 601 North Florida Avenue, Tampa, Florida, 33602 beginning on August 28, 2015, at 10:00 a.m. and continuing day to day until completed.

NOTICE IS FURTHER GIVEN that Petitioner may videotape the testimony at the above described deposition, in addition to recording this testimony by stenographic method.

Date: August 18, 2015

Respectfully submitted,
/Carla C. Calcagno/
Carla Calcagno
Janet Ricciuti
CALCAGNO LAW PLLC
1250 24th Street, NW
Suite 300
Washington DC 20037
Attorneys for Petitioner
202 466-0544

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 18, 2015 a true and accurate copy of the foregoing:

NOTICE OF DEPOSITION

was served by agreement of the parties on Defendant by electronically mailing a copy of the same to nevisbaby@hotmail.com and tharilest@yahoo.com.

Additionally, a copy was mailed via United States Postal Service, first class mail, with sufficient postage, to Mr. Quentin Davis at P.O Box 47893 Tampa, Fla. 33646.

/Carla C. Calcagno /

Carla C. Calcagno

EXHIBIT C

From: **Carla Calcagno** cccacagno@gmail.com
Subject: RE: Legend v Davis
Date: August 19, 2015 at 3:06 PM
To: **Gloria W.** niveisbaby@hotmail.com, carla.calcagno@calcagnolaw.com
Cc: **Q D** tharlest@yahoo.com, **Janet Ricciuti** ricciutij@comcast.net

CC

Dear Mr. Davis

Could you please respond to the below emails? I am trying to schedule the deposition and to that end determine if you will be attending the noticed deposition. Can you please contact me to confirm that you will be attending?

If I do not hear from you in the affirmative, I will assume that you will not be attending and that you have lost interest in the case.

Regards

Carla Calcagno

Calcagno Law PLLC
1250 24th Street Street,N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Carla Calcagno [<mailto:cccacagno@gmail.com>]
Sent: Tuesday, August 18, 2015 5:17 PM
To: 'Gloria W.'; carla.calcagno@calcagnolaw.com
Cc: 'Q D'; 'Janet Ricciuti'
Subject: FW: Legend v Davis

Dear Mr. Davis,

I am resending this from a different email address to ensure your receipt. Please confirm receipt.

Regards

Carla Calcagno
Calcagno Law PLLC
1250 24th Street Street,N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

EXHIBIT D

From: **Carla Calcagno** carla.calcagno@calcagnolaw.com
Subject: FW: Legend v Davis, Cancellation No 92056168, Request for Board Telephone Conference
Date: August 26, 2015 at 4:38 PM
To: Janet Ricciuti ricciutj@comcast.net

CC

Calcagno Law PLLC
1250 24th Street Street,N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Carla Calcagno [<mailto:carla.calcagno@calcagnolaw.com>]
Sent: Thursday, August 20, 2015 5:54 PM
To: elizabeth.winter@uspto.gov
Cc: 'Gloria W.'; 'Q D'
Subject: Legend v Davis, Cancellation No 92056168, Request for Board Telephone Conference

Dear Ms. Winter

We represent the plaintiff Legend Pictures LLC in this matter. We write concerning our attempts to secure Mr. Davis' attendance at a deposition. We served a notice of deposition on Mr. Davis and his Administrative Assistant, Gloria Walters, at the email addresses given above (the parties had consented to email service at the commencement of this case through these addresses.)

Since August 13, 2015, we have sent several emails, see attached, to Mr. Davis regarding his deposition. We also have telephoned him. Neither Mr. Davis nor Ms. Walters responded to any of those communications.

In our last communication, dated August 19, 2015, we advised Mr. Davis that if we did not hear from him we would assume that he would not be attending the deposition and that he had lost interest in the case

We respectfully request that the Board hold a telephone conference with the parties to determine whether Mr. Davis intends to appear and go forward with this case.

As the deposition is scheduled for Friday August 28, 2015, we respectfully request that the telephone conference be held not later than Monday August 24, 2015.

Thank you.

Calcagno Law PLLC
1250 24th Street Street,N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544

From: **Carla Calcagno** carla.calcagno@calcagnolaw.com
Subject: FW: Legend v Davis, Cancellation No 92056168, Request for Board Telephone Conference
Date: August 26, 2015 at 4:39 PM
To: Janet Ricciuti ricciulj@comcast.net



Calcagno Law PLLC
1250 24th Street Street, N.W.
Suite 300
Washington, D.C. 20037
Tel: 202 466-0544
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Winter, Elizabeth [<mailto:Elizabeth.Winter@USPTO.GOV>]
Sent: Thursday, August 20, 2015 6:26 PM
To: Carla Calcagno; nevisbaby@hotmail.com
Cc: 'Gloria W.'; 'Q D'
Subject: RE: Legend v Davis, Cancellation No 92056168, Request for Board Telephone Conference

Dear Ms. Calcagno and Mr. Davis:

The parties are instructed to contact the undersigned by email no later than Friday, August 21, 2015, to arrange a mutually convenient time to conduct a brief telephone conference with both parties on whether Mr. Davis intends to appear at Petitioner's noticed deposition for August 28, 2015. Please note that I am available to conduct such a conference between 2:00 p.m. and 6:00 p.m. (EST) on Friday, 8/21, and between 10:00 a.m. and 3:00 p.m. on Monday, 8/24.

Thank you for your cooperation in this matter.

Cordially,

/Elizabeth J. Winter/
Interlocutory Attorney
Trademark Trial and Appeal Board
United States Patent and Trademark Office
elizabeth.winter@uspto.gov
Phone: 571-272-9240
Fax: 571-273-9240



From: Carla Calcagno [<mailto:carla.calcagno@calcagnolaw.com>]