

Exhibits

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

CHESAPEAKE BANK (VA),

Opposer

v.

CHESAPEAKE BANK (MD)
(CHESAPEAKE BANK OF
MARYLAND)

Applicant

Opposition No. 114, 353

APPLICANT'S MOTION TO STRIKE

Applicant, Chesapeake Bank (MD), pursuant to the Federal Rules of Civil Procedure and Rule 718 of the Trademark Trial and Appeal Board, hereby moves the Honorable Board to strike evidence submitted by Opposer in support of its Motion for Summary Judgment.

The twelve declarations submitted by Opposer, attached hereto as Exhibit S-1.

Applicant moves that the Board strike these declarations on grounds that these comprise a survey, that the survey was not properly disclosed during the discovery period, that the declarations are not made in the person's own words but in fact are form documents created by Opposer's counsel, and that Applicant is denied the opportunity to examine these declarant-witnesses to ascertain the truthfulness and first hand knowledge of each declaration's contents.

First, these declarations are in fact a disguised survey purporting to represent consumer awareness of certain facts. Applicant posed the following Interrogatory in 2000, a true copy of which is attached as Exhibit S-2.

Interrogatory No. 14

Identify all surveys conduct by or on behalf of Opposer pertaining or relating to Opposer's Marks by date, title, and company or other entity or person conducting the survey, and person requesting the survey.

Response

To the best of Opposer's knowledge, no such surveys exist.

Applicant is entitled to examine those responsible for this survey to learn how the survey was created, how the people were identified, the basis of choosing which people would present declarations, and other factors that indicate the reliability and validity of survey evidence.

Second, because Opposer failed to identify these declarations during the discovery period, which it is obliged to do, Opposer should not now be permitted to rely on these as evidence of any proposition. Opposer is estopped from submitting this survey after the close of discovery.

Third, a plain facial review of the declarations reveals they are all form documents with some blanks filled in. This includes the form statements regarding the use of any mark in commerce, which cannot be said to be in the declarant's own words.

Fourth, the plain language of 37 CFR §2.123(e)(3), as reproduced in the TTAB Rules of Practice, Chapter 700, is that every adverse party shall have full opportunity to cross-examine each witness. Opposer carefully denies Applicant this opportunity, which has added importance because the contents of some declarations indicate negative personal feelings towards the Maryland location of Applicant that may bias the declarations.

reply brief submitted by Opposer in support of its Motion for Protective Order. The rules of the TTAB do not provide for a reply brief to any motion. In addition, the material contained in the reply is unrelated to Applicant's need to obtain documents and testimony from Opposer or to Opposer's request for a protective order.

Opposer's Hunt Declaration Exhibits I and J

Opposer's Hunt Declaration Exhibits I and J are inadmissible as compilations prepared especially for litigation. These are not records maintained in the ordinary course of business. To the extent the Hunt Declaration Exhibits I and J are material to the Board's decision in this case, the witness should offer testimony on how these were constructed, with Applicant having the right to cross-examine the witness with regard to their formulation and basis.

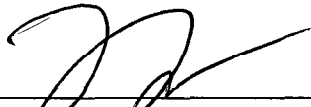
Wherefore, Applicant respectfully moves the Board to strike the declarations and the Hunt Declaration Exhibits I and J from the record.

Respectfully submitted

CHESAPEAKE BANK OF MARYLAND

Date: May 28, 2002

By:



Fredric D. Abramson
Co-counsel for Applicant

Leonard Bloom & Associates, LLC
401 Washington Ave., Suite 905
Towson, MD 21204
Tel: 410-337-2295

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S MOTION TO STRIKE has been mailed, first class postage prepaid to counsel for Opposer, Richard A Flynt, Esquire, Roylance, Abrams, Berdo & Goodman, L.L.P., 1300 19th St., N.W., Suite 600, Washington, DC 20026, this 28th day of May, 2002.



Fredric D. Abramson

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

CHESAPEAKE BANK (VA),

Opposer

v.

CHESAPEAKE BANK (MD)
(CHESAPEAKE BANK OF
MARYLAND)

Applicant

Opposition No. 114, 353

APPLICANT'S MOTION TO STRIKE

Applicant, Chesapeake Bank (MD), pursuant to the Federal Rules of Civil Procedure and Rule 718 of the Trademark Trial and Appeal Board, hereby moves the Honorable Board to strike evidence submitted by Opposer in support of its Motion for Summary Judgment.

The twelve declarations submitted by Opposer, attached hereto as Exhibit S-1.

Applicant moves that the Board strike these declarations on grounds that these comprise a survey, that the survey was not properly disclosed during the discovery period, that the declarations are not made in the person's own words but in fact are form documents created by Opposer's counsel, and that Applicant is denied the opportunity to examine these declarant-witnesses to ascertain the truthfulness and first hand knowledge of each declaration's contents.

First, these declarations are in fact a disguised survey purporting to represent consumer awareness of certain facts. Applicant posed the following Interrogatory in 2000, a true copy of which is attached as Exhibit S-2.

Interrogatory No. 14

Identify all surveys conduct by or on behalf of Opposer pertaining or relating to Opposer's Marks by date, title, and company or other entity or person conducting the survey, and person requesting the survey.

Response

To the best of Opposer's knowledge, no such surveys exist.

Applicant is entitled to examine those responsible for this survey to learn how the survey was created, how the people were identified, the basis of choosing which people would present declarations, and other factors that indicate the reliability and validity of survey evidence.

Second, because Opposer failed to identify these declarations during the discovery period, which it is obliged to do, Opposer should not now be permitted to rely on these as evidence of any proposition. Opposer is estopped from submitting this survey after the close of discovery.

Third, a plain facial review of the declarations reveals they are all form documents with some blanks filled in. This includes the form statements regarding the use of any mark in commerce, which cannot be said to be in the declarant's own words.

Fourth, the plain language of 37 CFR §2.123(e)(3), as reproduced in the TTAB Rules of Practice, Chapter 700, is that every adverse party shall have full opportunity to cross-examine each witness. Opposer carefully denies Applicant this opportunity, which has added importance because the contents of some declarations indicate negative personal feelings towards the Maryland location of Applicant that may bias the declarations.

reply brief submitted by Opposer in support of its Motion for Protective Order. The rules of the TTAB do not provide for a reply brief to any motion. In addition, the material contained in the reply is unrelated to Applicant's need to obtain documents and testimony from Opposer or to Opposer's request for a protective order.

Opposer's Hunt Declaration Exhibits I and J

Opposer's Hunt Declaration Exhibits I and J are inadmissible as compilations prepared especially for litigation. These are not records maintained in the ordinary course of business. To the extent the Hunt Declaration Exhibits I and J are material to the Board's decision in this case, the witness should offer testimony on how these were constructed, with Applicant having the right to cross-examine the witness with regard to their formulation and basis.

Wherefore, Applicant respectfully moves the Board to strike the declarations and the Hunt Declaration Exhibits I and J from the record.

Respectfully submitted

CHESAPEAKE BANK OF MARYLAND

Date: May 28, 2002

By:



Fredric D. Abramson
Co-counsel for Applicant

Leonard Bloom & Associates, LLC
401 Washington Ave., Suite 905
Towson, MD 21204
Tel: 410-337-2295

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S MOTION TO STRIKE has been mailed, first class postage prepaid to counsel for Opposer, Richard A Flynt, Esquire, Roylance, Abrams, Berdo & Goodman, L.L.P., 1300 19th St., N.W., Suite 600, Washington, DC 20026, this 28th day of May, 2002.



Fredric D. Abramson