UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

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Mailed: March 1, 2004

Opposition No. 91153141

Motion Picture Association of America, Inc.

v.

Respect Sportswear, Inc.

Albert Zervas, Interlocutory Attorney

This case now comes up on opposer's motion (filed May 8, 2003)[1] to quash applicant's Fed. R. Civ. P. 30(b)(6) notice of deposition[2] (dated April 30, 2003).[3] (It appears that the deposition did not take place.) According to

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[1] The Board regrets the delay in acting on opposer's motion.

[2] Applicant served a first notice of deposition on April 16, 2003, and an "Amended Notice to Take Deposition" on April 30, 2002. Because the second notice of deposition states that it is an amended notice of deposition, the first notice of deposition is quashed.

[3] The Board has considered applicant's reply and opposer's response, but has not considered applicant's surreply because the Trademark Rules of Practice do not provide for the filing of surreply briefs, and in fact, state that such papers will not be considered. See Trademark Rules 2.127(a).

Additionally, applicant's communication (filed December 17, 2003) is given no consideration. The Board notes, however, that Mr. Valenti, to whom applicant refers in his communication, has not been designated as opposer's Rule 30(b)(6) deponent. Rule 30(b)(6) imposes on a party the obligation to select the individual witness -- the party seeking discovery is not permitted to insist that it choose a specific person to testify.

opposer, the notice of deposition is defective in that it (a) states that the place of the deposition is New York City and not the place where its likely witnesses are regularly employed; and (b) "does not state with 'reasonable particularity' the topics on which Opposer is to be deposed."

The notice of deposition in question seeks testimony "by any person having knowledge of the circumstances herein, with that witness being examined on his/her knowledge of this proceeding, the answers to Opposer's Interrogatories and Document Response [sic], and other matters material and relevant to these proceedings … at the offices of Simon V. Haberman [in] New York …."

Location of Deposition

Opposer maintains, in relevant part, that its principal place of business is Encino, California, not New York; that it has designated Ms. Joan Graves, who resides in California and is regularly employed at opposer's offices in Encino, California, as its witness with knowledge concerning the opposition; that the person or persons with knowledge concerning the opposition are regularly employed in California; and that the deposition would have to take place in California. Further, opposer maintains that although it does have an office in Yonkers, New York, none of its employees in Yonkers are knowledgeable of this proceeding or

any issue that is conceivably relevant to this proceeding; and that the notice failed to state with particularity the topics on which opposer was to be deposed.

In response, applicant argues, inter alia, that "Applicant is a small clothing manufacturer with sales of less than half a million dollars in 2002, and as a result of this proceedings, Applicant faces possible dissolution"; and that it has "ceased selling its trademarked products and presently has been left with an inventory of approximately $70,000.00 of its products, which it has been unable to sell." In support of its arguments, applicant has filed an affidavit of its President, Kishan Kriplani, who adds that after applicant stopped using the trademark, its "sales plummeted to almost nil"; that applicant "is very small, and on the verge of closing, making it quite burdensome and inequitable to pay the cost of my attorney going to California to examine documents or to depose Opposer's witnesses, or to retain another attorney there."

According to 8A, Wright, Miller and Marcus, *Federal Practice and Procedure: Civil* § 2112 (1994):

> The deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business. This is subject to modification, however, when justice requires.
>
> An important question in determining where to hold the examination is the matter of expense.

Opposer's likely Rule 30(b)(6) witness resides and is employed in California, and opposer represents that California is opposer's principal place of business. As noted, the deposition of a corporation should ordinarily be taken at its principal place of business. The Board has not been persuaded that applicant's assertions of financial harm require that the deposition take place in New York, and that opposer should suffer the travel expenses of its Rule 30(b)(6) witness(es). Thus, the Board concludes that the Rule 30(b)(6) deposition need not be taken in New York, as is stated in the notice of deposition.

Subject matter of deposition

Fed.R.Civ.P. 30(b)(6) provides:

> A party may in the party's notice and in a subpoena name as the deponent a … private corporation … and describe with **reasonable particularity** the matters on which examination is requested. (Emphasis added.)

The Board concludes that the notice of deposition served on April 30, 2003 does not state with reasonable particularity the factual matters for which deposition testimony is sought.[4]

Conclusion

In view of the foregoing, opposer's motion to quash is granted and the Amended Notice of Deposition served April

[4] Of note, is the open-ended phrase in the notice of deposition, "and other matters material and relevant to these proceedings."

30, 2003 is quashed. Applicant may, however, serve another Rule 30(b)(6) notice of deposition which complies with the Federal Rules of Civil Procedure and this order.[5]

Discovery and trial dates

Opposer has sought an extension of the discovery and trial dates by thirty days from the date the Board issues a decision on opposer's motion, and applicant has joined in opposer's request to extend. Accordingly, trial dates, including the close of discovery, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	April 15, 2004
30-day testimony period for party in position of plaintiff to close:	July 14, 2004
30-day testimony period for party in position of defendant to close:	September 12, 2004
15-day rebuttal testimony period for plaintiff to close:	October 27, 2004

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.l25.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b).

[5] The parties are encouraged to consider taking any Rule 30(b)(6) deposition by telephone. See Fed. R. Civ. P. 30(b)(7), providing that parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone.

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.