ESTTA Tracking number: **ESTTA31980**

Filing date: **05/03/2005**

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

Proceeding	91155188
Party	Plaintiff Joe J. Alfaro, Jr. ,
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Date	05/03/2005
Attachments	Opp_Reply_Motion_Oral.pdf (3 pages)

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

JOE J. ALFARO, JR. Opposer, vs. GUY A. HOFFMANN, Applicant.	Opposition No.: 91155188 IN RE: Serial No.: 78/110,344 Mark: SUPERFREAKS FUNKY DISCO REVUE

REPLY BRIEF IN SUPPORT OF MOTION TO TAKE TESTIMONY OF APPLICANT BY ORAL EXAMINATION

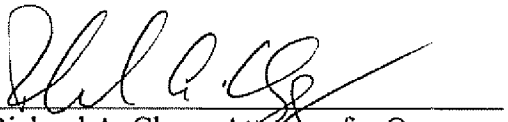
In his opposition brief, Applicant suggests that he should be allowed to present his testimony through written questions because (1) Opposer can call him as a "rebuttal" witness to ask live questions, and (2) because Applicant does not want to pay the costs of presenting live testimony.

As to the first point, it is absurd to suggest that Opposer should be required to call Applicant as a "rebuttal" witness to "rebut" his own testimony from his case-in-chief. The cases that Applicant cites do not suggest or mandate any such procedure. Calling Applicant twice – once as a direct witness and once as a "rebuttal" witness – would waste everyone's time and money, and would further burden the parties and the Board with a complicated, redundant and mixed record of his testimony. Opposer would double the normal costs – once in preparing written cross-examination questions during Applicant's direct testimony period, and once in preparing to question Applicant at a live rebuttal deposition. Applicant should testify once, and should be fully cross-examined at that time through live questions.

As to the second point, Applicant is unabashedly asking the Board to shift the costs of Applicant's testimony onto the Opposer, because Applicant does not want to pay those costs.[1] Such a cost-shifting approach is not fair or reasonable or supported by the law. Applicant applied to register the name of the SUPERFREAKS band after he was fired from the band, knowing that the application would be vigorously contested and opposed. He voluntarily chose to initiate this dispute and should not be heard to complain about the costs.

Opposer has presented a legitimate explanation of why Applicant's testimony should be taken through oral examination rather than written questions. Applicant has not addressed any of Opposer's substantive arguments; he has merely proposed a complicated, unwieldy and inefficient procedure for shifting the costs of his testimony onto Opposer, another individual with limited funds. Opposer stepped up to the plate when it was his turn to testify, paying the costs and subjecting himself to live cross-examination by Applicant's counsel. It is Applicant's turn to do the same now. Opposer should not have to pay for the right to conduct a meaningful cross-examination of Applicant. The Board should grant Opposer's motion.

Dated: May 3, 2005

By: 

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[1] Even if Applicant's financial situation was somehow relevant to the issue of how his testimony should be taken, there is no competent evidence in the record on that issue. Applicant did not submit any declaration or financial statement. His attorney submitted a declaration that is based solely on hearsay and speculation.

CERTIFICATE OF SERVICE

I hereby certify that, on May 3, 2005, a true and correct copy of the foregoing REPLY BRIEF IN SUPPORT OF MOTION TO TAKE TESTIMONY OF APPLICANT BY ORAL EXAMINATION was served on Applicant's counsel, via First Class Mail, postage prepaid, at the following address:

Leonard H. Mandel, Esq.
3034 North 151st Lane
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Dated: 5/3/05