

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

Mailed: July 6, 2005

Opposition No. 91155188

Joe J. Alfaro, Jr.

v.

Guy A. Hoffman

Cindy B. Greenbaum, Attorney:

This case now comes up on (1) opposer's motion to take applicant's testimonial deposition by oral examination, (2) opposer's motion to extend his time to serve cross questions,¹ and (3) opposer's motion to suppress applicant's responses to written questions. The parties have fully briefed the issues, and the Board has considered all replies.² See Trademark Rule 2.127(a).

As background, applicant's testimony period (as last reset) was scheduled to close on April 26, 2005. On March 31, 2005, applicant timely filed a notice that applicant's testimonial deposition would be taken upon written question at the office of a notary public in Temecula, California.

¹ Applicant does not object to opposer's motion to extend.

² The Board notes that applicant's filings uniformly are single-spaced, rather than double-spaced, as Trademark Rule 2.126(a)(1) requires. Applicant is advised that the Board may not consider future submissions from applicant that do not comply with Trademark Rule 2.126(a)(1).

On April 21, 2005 (with a certificate of mailing dated April 13, 2005), opposer timely filed a motion to take applicant's testimonial deposition by oral examination, and a motion to extend opposer's time to submit written testimony questions.³ Applicant filed his written deposition questions and responses on April 14, 2005. In response, on April 27, 2005, opposer filed a motion to suppress applicant's deposition responses.

As an initial matter, the Board notes that applicant prematurely filed his written deposition responses before opposer's time had passed either to submit cross questions or file a motion to take applicant's testimony by oral examination. See Trademark Rule 2.124(d)(1). Moreover, applicant's written deposition responses do not comply with the provisions of Trademark Rule 2.124(f). Specifically, there is no transcript of applicant's questions and answers, and no indication that applicant actually answered the questions before an appropriate officer, as Trademark Rule 2.123(e) requires. Accordingly, opposer's motion to suppress applicant's written responses is granted.

The Board now turns to opposer's motion to take applicant's deposition by oral examination. Trademark Rule 2.123(a) provides that the testimony of witnesses in inter

³ The Board was unaware of opposer's motions when the Board issued the April 19, 2005 order.

partes cases may be taken by depositions upon written questions. Further, the rule provides that:

[i]f 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, 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.

Applicant has not stated that he will not be present within the United States at the relevant time. In fact, the deposition notice provides that applicant will be at the offices of a notary public in Temecula, California at the time of the deposition. Therefore, the issue to be decided is whether opposer has established the requisite good cause. See *Century 21 Real Estate Corp. v. Century Life*, 15 USPQ2d 1079 (TTAB 1990), corrected 19 USPQ2d 1479 (TTAB 1990).

A review of the written questions establishes that applicant seeks to testify to the very issues comprising the grounds for the notice of opposition. It would be unfair to deprive opposer of the opportunity to orally cross-examine the witness on these matters, or to force opposer to absorb the cost of deposing the same witness during opposer's rebuttal period.

In addition, as noted above, applicant has noticed his deposition to occur in Temecula, California. The record does not show that it would be significantly less convenient, or would involve any financial hardships, for

applicant to appear for live testimony at that same location.

In view of the facts and circumstances of this case, opposer has demonstrated good cause so as to justify that applicant's testimony be taken orally. Accordingly, opposer's motion to take the oral deposition of Guy A. Hoffman is granted. The parties may, of course, stipulate that the deposition will be conducted telephonically, rather than in person, if they so desire.

In view thereof, opposer's motion to extend his time to submit cross questions is moot.

Proceedings are resumed. The close of remaining testimony dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE: **CLOSED**

Thirty-day testimony period for party in position of plaintiff to close: **CLOSED**

Thirty-day testimony period for party in position of defendant to close: **August 31, 2005**

Fifteen-day rebuttal testimony period to close: **October 15, 2005**

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 2.125.

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Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.