

ESTTA Tracking number: **ESTTA126905**

Filing date: **02/26/2007**

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

Proceeding	91159665
Party	Defendant Judd, Randy Judd, Randy 1041 South Military Dr. Salt Lake, UT 84105
Correspondence Address	Jason R. Jones Thorpe, North & Western 8180 South 700 East, Suite 200 Sandy, UT 84070-0562 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Jason R. Jones
Filer's e-mail	jones@tnw.com, winesett@tnw.com, rich@tnw.com, pogue@tnw.com
Signature	/s/ Jason R. Jones
Date	02/26/2007
Attachments	brief in response to opposer's motion.PDF (4 pages)(102460 bytes)

Mark: XOCOLATE
U.S. Trademark Application Serial No. 78/164,521

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

SONAFI, S.A.)	
)	
Opposer,)	
)	
v.)	
)	
RANDY JUDD,)	Opposition No. 91/159,665
)	
Applicant.)	
)	
)	
)	

**APPLICANT’S BRIEF IN RESPONSE TO OPPOSER’S MOTION THAT DEPOSITION
OF MR. JUDD, IF TAKEN, BE TAKEN ORALLY**

Applicant hereby files this brief in response to Opposer’s Motion, dated February 6, 2007, that Deposition of Mr. Judd, if Taken, be Taken Orally.

ARGUMENT

Opposer has moved the Board to order that the testimony deposition of Randy Judd not be taken by written deposition, and that if taken, should be taken orally.

Pursuant to 37 CFR 2.123(a)(1), Opposer may file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination.

Certificate of Electronic Filing
I hereby certify that this paper is being deposited via electronic filing on February 26, 2007 with the TTAB, address of: TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria VA 22313-1451

By: /s/ Stacia Pentz
Stacia Pentz

However, Opposer has failed to show “good cause” why Randy Judd’s testimony should be taken by oral examination.

All of Opposer’s arguments are merely broad unsupported assertions. For example, Opposer has stated that Applicant’s notice of written testimony is “vexatious, voluminous, and harassment” and “egregious.” Opposer does not make any reference to even a single written question propounded by Applicant to explain why it feels its cross-examination would be compromised. Applicant believes that Opposer’s mere broad assertions are insufficient to support a showing of “good cause.”

Applicant believes that testimony by written questions is appropriate under the circumstances. The primary purpose of this testimony is to authenticate documents produced to Opposer during the discovery period so that the Board may consider them as “evidence”. In fact, almost all of the questions (21-131) are merely for the purpose of authenticating those produced documents. As such, there are only 20 questions (1-20) that ask for testimony other than authentication of documents. As can be seen from Exhibit A of Opposer’s motion, these questions are very simple and straightforward questions. These twenty questions are such that cross-examination would either be unnecessary or so straightforward that conducting testimony by written questions would not compromise Opposer’s cross-examination. Moreover, since Opposer chose not to depose or take direct testimony of Randy Judd, Applicant sees little benefit in conducting cross-examination orally since such testimony is limited to the information requested on direct.

Applicant believes that it would be wasteful to go to the great expense of testimony by oral deposition merely to authenticate documents and to ask the very few substantive testimony questions.

In the event that the Board grants Opposer's request for oral testimony, Applicant requests that the Board order Opposer to pay the costs associated therewith (i.e. court reporter fees and costs of written transcripts).

Accordingly, for the reasons stated above, Applicant requests that the Board deny Opposer's Motion that Deposition of Mr. Judd, if Taken, be Taken Orally.

DATED this 26th day of February, 2007.

Respectfully submitted,

/s/ Jason R. Jones

Jason R. Jones
Attorney for Applicant
THORPE NORTH AND WESTERN, LLP
P.O. Box 1219
Sandy, UT 84091-1219
Telephone (801) 566-6633
Fax (801) 566-0750

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing APPLICANT'S BRIEF IN RESPONSE TO OPPOSER'S MOTION THAT DEPOSITION OF MR. JUDD, IF TAKEN, BE TAKEN ORALLY was served on Opposer's counsel by depositing said true and correct copy with the United States Postal Service, First Class Mail, postage prepaid, this 26th day of February, 2007, in an envelope addressed to Opposer's attorney of record as follows:

Robert V. Vickers
Fay, Sharpe, Fagan, Minnich & Mckee, LLP
1100 Superior Ave. - Seventh Floor
Cleveland, Oh 44114-2579
Fax: (216) 623-0407

/s/ Stacia Pentz