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

MBA

Mailed: August 9, 2009

Opposition No. 91183799
Cancellation No. 92049767

Pure Entertainment, LLC

v.

Butter Licensing, LLC

Michael B. Adlin, Interlocutory Attorney:

On July 31, 2009, the Board issued an order granting in part applicant's cross-motion for discovery under Fed. R. Civ. P. 56(f). Pursuant to the order, applicant is allowed to take one deposition of opposer, under Fed. R. Civ. P. 30(b)(6), on certain topics and only those certain topics.

On August 7, 2009, at applicant's request, the Board conducted a teleconference with the parties to hear: (1) applicant's oral motion to take the allowed deposition in New York, New York; and (2) applicant's oral motion for reconsideration of the decision to allow applicant to take only one, rather than two, depositions. Debra Brown, Jerome Hafter and Anne Turner appeared on opposer's behalf and Kenneth Sussmane and Craig Spierer appeared on applicant's behalf. Both motions are contested.

Turning first to where the deposition should be conducted, applicant argued that the parties previously had an agreement, prior to opposer's filing of its motion for summary judgment, to conduct the deposition of Oliver Paine, opposer's "owner and member," in New York. However, opposer eventually cancelled the deposition, in its own words "due to a family emergency of Opposer's counsel and Opposer's intent to move for summary judgment." Applicant contends that opposer should be held to its prior agreement that the deposition would take place in New York, and argues alternatively that the deposition should be conducted in San Francisco, California, where opposer and Mr. Paine, who will be opposer's designee under Rule 30(b)(6), are based.

In response, opposer contends that the parties did not have a final agreement to conduct the deposition in New York, and that even if they did, the filing of opposer's motion for summary judgment effectively terminated any such agreement. Opposer offered, however, to have the deposition take place in Mississippi, where its attorneys are located.

During the teleconference, the Board cited TBMP § 404.03(a) (2d ed. rev. 2004), which provides that the deposition "shall be taken in the Federal judicial district where the person resides or is regularly employed or at any place on which the parties agree by stipulation." Notwithstanding this general rule, the Board informed the

parties that it would entertain a motion by applicant to participate in the deposition by telephone. See, Hewlett-Packard Co. v. Healthcare Personnel Inc., 21 USPQ2d 1552 (TTAB 1991). Applicant opted not to make such a motion, however, and instead continued to argue that the deposition should take place in New York, or, in the alternative, San Francisco.

Because there is no agreement between the parties, and no request by applicant to take the deposition by telephone, applicant's motion to conduct the deposition in New York and opposer's informal request to conduct it in Mississippi are both **DENIED**. TBMP § 404.03(a). The deposition shall take place in San Francisco, id., on a date and time of the parties' choosing.

Turning next to applicant's motion for reconsideration of the Board's decision to allow it to take only one deposition, a motion for reconsideration "may not properly be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in a brief on the original motion." TBMP § 518. Instead, a motion for reconsideration "should be limited to a demonstration that based on the facts before it and the applicable law, the Board's ruling is in error and requires appropriate change." Id.

Applicant failed to establish that the Board's ruling was in error. Rather, applicant simply reiterated the points made in its original motion, claiming that because opposer's motion for summary judgment is supported by the testimony of two declarants, applicant should be permitted to depose them both. However, the topics about which applicant is permitted to inquire are uncomplicated, straightforward and readily known to or learnable by opposer's Rule 30(b)(6) designee. Furthermore, during the teleconference, opposer represented that its designee will be prepared to discuss in detail all of the allowed topics for discovery. Accordingly, applicant's motion for reconsideration is hereby **DENIED**.

The parties are reminded that any disputes regarding the allowed discovery shall be brought promptly to the attention of the Board via a telephone call placed by both parties (together) to the interlocutory attorney responsible for this proceeding, failing which the Board may decline to provide any requested relief. Dates remain as set in the Board's order of July 31, 2009.

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