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

Proceeding	91191556
Party	Defendant Betty Rides Inc.
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Date	07/22/2010
Attachments	MOTION TO QUASH DEPOSITION NOTICE OR IN THE ALTERNATIVE MOTION FOR A PROTECTIVE ORDER.PDF (4 pages)(127211 bytes)

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

ARCHIE COMIC PUBLICATIONS, INC., Opposer, v. BETTY RIDES, INC., Applicant.	**MOTION TO QUASH DEPOSITON NOTICE OR IN THE ALTERNATIVE MOTION FOR A PROTECTIVE ORDER** Opposition No. 91191556 (Application Ser. No. 77/456,294)

MOTION TO QUASH DEPOSITION NOTICE OR IN THE ALTERNATIVE MOTION FOR A PROTECTIVE ORDER

Opposer Archie Comic Publications, Inc. seeks a 30(b)(6) deposition of Applicant Betty Rides on a mere six days notice and on the last day of discovery. Six days notice is unreasonable notice and the Board should quash the notice or enter a protective order that Applicant Betty Rides need not appear for this late-noticed deposition. An expedited ruling is requested given the short notice provided by Opposer.

Opposer initiated this Opposition almost a year ago on August 19, 2009. Over the past months, the parties have exchanged written discovery and Applicant Betty Rides noticed Archie Comics' 30(b)(6) corporate deposition on May 26, 2010.[1] Now, on the afternoon of Tuesday, July 20, 2010, Opposer noticed a 30(b)(6) deposition of Applicant Betty Rides for Monday, July 26, 2010, the last day of discovery. Despite having a year to think about

[1] Opposer has not yet provided a date for its witness(es) to appear, stating that its witness(es) have not been available, but that they will provide availability soon. Accordingly, Applicant Betty Rides sought Opposer's stipulation that the deposition noticed on May 26, 2010 and then again on July 14, 2010, proceed outside the discovery period. That Stipulation has been filed.

whether it wanted to take a deposition, and despite Betty Ride's deposition notice months earlier, which should have reminded Opposer that it might want to notice a deposition if it wanted to take one, Opposer never mentioned prior to July 20, 2010, that it intended to take a discovery deposition of Applicant. Now it wants a deposition on six days notice.

Betty Rides objected to Opposer's Notice of Deposition on July 20, the same day the notice was emailed to counsel, and demanded that Opposer withdraw its facially invalid notice. Opposer refused, and Betty Rides, in good faith, attempted to confer with Opposer in an effort to resolve this dispute without the need for Board action. No resolution was reached.

Applicant Betty Rides now moves that Opposer's deposition notice be quashed, or in the alternative, moves for a protective order that Applicant Betty Rides need not appear for this late-noticed deposition, because the notice is deficient for failing to provide "reasonable notice." *See* TMPB Section 404.04 & Fed. R. Civ. P. 30(b) ("A party desiring to take the deposition of any person upon oral examination ***shall give reasonable notice*** in writing to every other party to the action.").[2]

Dated: July 22, 2010

Respectfully submitted,

BETTY RIDES, INC.

By: _____

Ramon A. Klitzke II, OSB # 802889
Kristin L. Cleveland, OSB # 001318

[2] Opposer stated during meet and confers that it will move to extend the discovery deadline, and in fact did so today, July 22, 2010. To the extent that Opposer argues that the present motion is moot, as Opposer will simply re-notice the deposition, with reasonable notice, in the extended timeframe, Applicant notes that it objects to such an extension, as there is no reason that Opposer could not have served a deposition notice (or other discovery) earlier. *Cf.* TMBP Section 403.04 ("Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period.").

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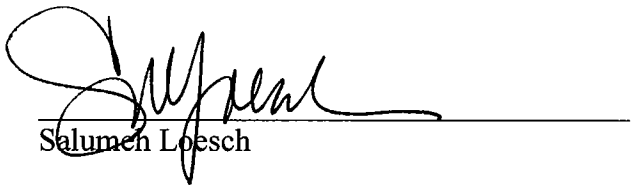
Attorneys for Applicant Betty Rides, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of July, 2010, a true and correct copy of the foregoing **MOTION TO QUASH DEPOSITON NOTICE OR IN THE ALTERNATIVE MOTION FOR A PROTECTIVE ORDER** was served on Opposer's Attorneys by first class mail, postage prepaid, to:

Jess M. Collen
Oren Gelber
Matthew C. Wagner
Jenny T. Slocum
Collen IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, NY 10562



Salumeh Loesch