

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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JMM

March 6, 2019

Opposition No. 91224000

Spiritline Cruises LLC

v.

Tour Management Services, Inc.

Elizabeth A. Dunn, Administrative Trademark Judge:

This case now comes before the Board for consideration of Applicant's motion to strike Opposer's notice of reliance as untimely. The motion is fully briefed.

RELEVANT FACTS

On September 18, 2018, in the middle of Applicant's trial period, the parties filed a stipulated motion for extension of time to add three days to all remaining deadlines. (60 TTABVUE). On September 24, 2018, the Board granted the stipulation and reset the date for the end of Opposer's rebuttal trial period as Saturday, November 17, 2018 in accord with the stipulation (61 TTABVUE). On Monday, November 19, 2018, Opposer filed a notice of reliance which attached two exhibits (73 TTABVUE), and Applicant now moves to strike that notice of reliance as untimely.

APPLICABLE LEGAL PRINCIPLES

An adverse party may move to strike a notice of reliance, in whole or in part, on

the ground that the notice of reliance does not comply with the Board's procedural requirements. *Panda Travel Inc. v. Resort Option Enterprises Inc.*, 94 USPQ2d 1789, 1793 (TTAB 2009); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992). "A notice of reliance shall be filed during the testimony period of the party that files the notice." See Trademark Rule 2.122(g), 37 C.F.R. § 2.122(g).

Pursuant to Trademark Rule 2.121(a), 37 C.F.R. § 2.121(a), "[t]he deadlines for pretrial disclosures and the testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board." Pursuant to Trademark Rule 2.196, 37 C.F.R. § 2.196:

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or regulation by or under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday or a Federal holiday.

"When the final calendar day of a set period does not fall on a business day but on a Saturday, Sunday or Federal Holiday, Trademark Rule 2.196 provides for an extension of the otherwise expired period to the next business day." *Sunrider Corp. v. Raats*, 83 USPQ2d 1648, 1653 n.8 (TTAB 2007).

DISCUSSION

Because the last day of Opposer's rebuttal testimony period fell on Saturday, November 17, Trademark Rule 2.196 permitted Opposer to file its evidence on Monday, November 19. Applicant is mistaken in, and cites no legal support for, its contention that whether the parties filed a stipulation with the trial dates which the Board adopted in its order, or the Board generated the trial dates sua sponte, makes

a difference to application of Trademark Rule 2.196. As stated in Trademark Rule 2.121(a), rescheduling may occur either way.

The parties are advised that this proceeding is governed by the Trademark Rules of Practice, including Trademark Rule 2.196, and precedential decisions by the Board. “[T]he TBMP is merely advisory and is not binding upon the Board.” *Barclays Capital Inc. v. Tiger Lily Ventures Ltd.*, 124 USPQ2d 1160, 1167 n.15 (TTAB 2017). Even if Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 112 (2018)¹ were the appropriate, binding authority here, it is consistent with Trademark Rule 2.121 and 2.196 in noting that only the Board sets the schedule.

DECISION

Opposer’s notice of reliance was timely filed, and Applicant’s motion to strike Opposer’s notice of reliance is **denied**.

PROCEEDINGS RESUMED

Proceedings herein are resumed and remaining dates are reset as follows:

Plaintiff’s Opening Brief Due	4/26/2019
Defendant’s Brief Due	5/26/2019
Plaintiff’s Reply Brief Due	6/10/2019
Request for Oral Hearing (optional) Due	6/20/2019

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

¹ TBMP § 112 states:

If, *as set by the Board*, the close of a testimony period falls on a Saturday, Sunday, or federal holiday within the District of Columbia, testimony depositions may be taken, testimony declarations and affidavits may be filed, and other evidence may be offered, on the next business day. (*emphasis added*).

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completion of the taking of testimony. Trademark Rule 2.125. An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.