

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: March 29, 2018

Opposition No. 91226828

Domaine du Grand Cros

v.

Jules Taylor Holdings Limited

Andrew P. Baxley, Interlocutory Attorney:

On October 13, 2017, Applicant filed a notice of discovery deposition upon written questions of Julian Faulkner (“Faulkner”). On November 1, 2017, Applicant filed a “motion to strike or in the alternative for a protective order or extension of time.” The motion has been fully briefed.

The Board treats the filing of Opposer’s motion as having tolled Opposer’s time for serving cross-questions and objections to Applicant’s direct examination questions. Accordingly, the motion for a protective order is moot.

To the extent that Opposer seeks to strike the notice of deposition, one does not strike a notice of deposition upon written questions. *Cf.* TBMP §§ 506, 517, 532, 533 and 539 (June 2017) (motions to strike a pleading, brief in connection with a motion, evidence, or brief on the case). Rather, Opposer’s motion is one to quash the notice of the discovery deposition upon written questions of Julian Faulkner based on insufficient notice and will be treated accordingly. *See* TBMP § 521.

The notice of deposition at issue states in relevant part as follows:

PLEASE TAKE NOTICE that applicant Jules Taylor Holdings Limited (Jules Taylor), by their undersigned attorneys, will take the deposition of Mr. Julian Faulkner, Rd 13 F-83660 Carnoules, France, upon written question of which a copy is attached herewith as Exhibit A, and such cross-questions as may be duly served, pursuant to Federal Rules of Civil Procedure 31 and 37 CFR 2.124. **The deposition will be taken before an officer authorized to administer oaths.** Said deposition is to continue from day to day until completed.

(emphasis added).

Opposer contends that Applicant's notice of deposition at issue is defective because it states only that the deposition shall be taken before "an officer authorized to administer oaths," instead of setting forth the name or descriptive title of the officer before whom the deposition will be taken, in compliance with Trademark Rule 2.124(c). Opposer contends that the requirement for providing the "descriptive title of the officer before whom the deposition will be taken" should be interpreted as providing an appropriate title such as the title of the United States Consular Officer where the person to be deposed resides. Accordingly, Opposer asks that the Board require Applicant to serve a new notice of deposition upon written questions of Faulkner and reset time for serving cross-questions.

In opposition, Applicant contends the notice of deposition complies with Trademark Rule 2.124(c) and Fed. R. Civ. P. 28(a) and that Opposer's ability to object the qualifications of the officer before whom the deposition will be taken are unaffected. In particular, Applicant contends that intends to hold the deposition at the United States Consulate General in Marseille and have a United States Consular Officer administer the oath, but cannot take the deposition until it first secures

French Central Authority approval; that such approval requires a final list of questions; that once the French Central Authority approves the deposition, Applicant will schedule the deposition for a mutually agreed upon date. However, Applicant contends that it cannot be assured of a specific date or United States Consular Officer administering the oath. Applicant further states that once it receives the details regarding the deposition, it will freely provide Opposer with the specificity it requests.

In reply, Opposer contends, among other things, that it is relying on the plain language of Rule 2.124(c); that, because Fed. R. Civ. P. 28(b)(1)(C) states that depositions can be taken before “a person authorized to administer oaths,” Rule 2.124(c) would be meaningless if it could be satisfied merely by stating that a deposition upon written questions will be taken before an officer authorized to administer oaths.

Under Trademark Rule 2.124(a), a deposition upon written questions may be taken before any person before whom depositions may be taken as provided by Fed. R. Civ. P. 28. Under Fed. R. Civ. P. 28(b)(1)(C), a deposition may be taken in a foreign country “on notice, before **a person authorized to administer oaths** either by federal law or by the law in the place of examination.” (emphasis added). A party may take a deposition upon written questions of an adverse party upon notice. *See* Trademark Rule 2.124(b)(2). Every notice of deposition upon written questions under Rule 2.124(b) “shall be accompanied by the name or descriptive title of the officer before whom the deposition is to be taken.” Trademark Rule 2.124(c).

Rule 2.124(c) requires only stating the “name or descriptive title of the officer before whom the deposition will be taken.” That rule does not require a formal title of the officer at issue. Bearing in mind that Applicant has indicated that it cannot take the deposition at issue without first (1) completing the list of questions, (2) obtaining approval of the French Central Authority, and (3) scheduling the deposition with the United States Consular Office, the Board finds that Applicant’s statement in the notice of deposition that “[t]he deposition will be taken before an officer authorized to administer oaths” is sufficient, subject to Applicant’s duty to promptly provide Opposer with more specific information regarding the identity of that officer upon receipt thereof. *Cf.* Fed. R. Civ. P. 26(e)(1) (party has an ongoing duty to correct or supplement discovery responses).

Providing the specific information that Opposer asserts is necessary would appear to be impossible this early in the deposition upon written questions process because Applicant may not be able to provide the formal title of the officer before whom the deposition will be taken until it seeks to schedule a time and place for the discovery deposition at issue with the United States Consular Office after having obtained approval of the French Central Authority. Thus, requiring such information in the initial notice of deposition could effectively prevent Applicant from taking discovery depositions upon written questions in this case.¹ So long as Applicant provides

¹ Opposer brought this proceeding and, in so bringing, should have foreseen depositions in connection therewith. Because Opposer is located in France, it should have foreseen that those depositions would be upon written questions. *See* TBMP § 404.03(c).

further identifying information upon receipt thereof,² Opposer will have ample time prior to the taking of the Faulkner deposition to object to the taking of that deposition because of a disqualification of the officer before whom the deposition is to be taken. *See* TBMP § 404.08(b).

Based thereon, Opposer's motion to quash is denied. Opposer is allowed until twenty days from the mailing date set forth in this order to serve cross-questions and objections to Applicant's direct questions. Remaining questions and objections in connection with the Faulkner deposition upon written questions are due in accordance with Trademark Rule 2.124(d)(1). Proceedings herein are otherwise suspended pending completion of the Faulkner deposition upon written questions.

² The Board expects parties to cooperate in the discovery process. *See* TBMP § 408.01.