

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

EJW

Mailed: July 25, 2017

**Opposition No. 91227647 (parent)**

*Funkhouser Vegosen Liebman & Dunn Ltd.*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227650**

*Nossaman LLP*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227651**

*GrayRobinson, P.A.*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227673**

*Tannenbaum Helpern Syracuse &  
Hirschtritt LLP*

*v.*

*The Craft Beer Attorney, APC*

Opposition Nos. 91227647, 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, and 91227783

**Opposition No. 91227681**

*Lehrman Beverage Law, PLLC*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227689**

*Davis Wright Tremaine LLP*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227691**

*Ward and Smith PA*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227703**

*Strike & Techel LLP*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227705**

*Martin Frost & Hill PC*

*v.*

*The Craft Beer Attorney, APC*

**Opposition No. 91227706**

*Spaulding Mccullough & Tansil LLP*

*v.*

*The Craft Beer Attorney, APC*

and

**Opposition No. 91227783**

*Wendel Rosen Black & Dean LLP*

*v.*

*The Craft Beer Attorney, APC*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

At the request of counsel for Opposer Funkhouser Vegosen Liebman & Dunn Ltd. (Steven Klein), on July 25, 2017, the Board (by Interlocutory Attorney Elizabeth Winter) conducted a telephone conference with the parties (represented by Glenn Rice, Steven Klein, and Robert Lehrman for their respective Opposers and Karen Hawkes for Applicant) regarding the impasse between the parties concerning the scheduling of Opposer's noticed depositions. *See* Trademark Rule 2.120(j)(1); TBMP § 502.06(a) (June 2017). This order summarizes the conference and the Board's order in connection with said notices of deposition.

By way of background, on July 17, 2017, Opposer served two notices of deposition on Candace L. Moon, individually and as principal for The Craft Beer Attorney, APC, requesting that the depositions be conducted during the week of August 7, 2017, when the discovery period was set to close. Previously, in response to the notices, Applicant

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had informed Mr. Klein that Ms. Moon was unavailable until September, but that Applicant's counsel would be willing to schedule the deposition outside of the discovery period.<sup>1</sup> During the conference, Ms. Hawkes reiterated Applicant's willingness to appear after the end of August, and provided the following dates for conducting the deposition: September 5, 6, 7 or 8, 2017. Applicant also expressed its position that Opposers had delayed in scheduling the depositions, given that discovery opened last year. Mr. Klein pointed out that the proceeding had been suspended for a period of ninety days for the parties to negotiate settlement.

Fed. R. Civ. P. 30(b)(1), applicable to discovery depositions and to these proceedings under Trademark Rule 2.116(a), requires that a party seeking to take a deposition upon oral examination give "reasonable notice" to every other party to the action. *Sunrider Corp. v. Raats*, 83 USPQ2d 1648, 1653 (TTAB 2007). Whether notice is reasonable is determined under the individual circumstances of each case. *See Duke University v. Haggard Clothing Co.*, 54 USPQ2d 1443, 1444 (TTAB 2000) (internal citations omitted). Here, Opposer gave Applicant fourteen days notice of the depositions. In view thereof, the Board finds that Opposer's notices of deposition were reasonable and sufficient. *See, e.g., Penguin Books Ltd. v. Eberhard*, 48 USPQ2d 1280, 1284 (TTAB 1998) (one day notice was found reasonable); *Hamilton Burr Publishing Co. v. E.W. Comm., Inc.*, 216 USPQ 802, 804-05 n.6 (TTAB 1982) (two days notice found reasonable). Additionally, there is no evidence in the record

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<sup>1</sup> Discovery depositions must be conducted during the discovery period. Trademark Rule 2.120(a)(3).

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indicating that Opposers have improperly delayed seeking discovery or otherwise acted in bad faith, such as by filing an unreasonable number of requests for extension of time or not responding to Applicant's discovery requests. Accordingly, the Board determined that the discovery period should be extended through September 8, 2017, for Opposers only, to accommodate Applicant's schedule and availability for the depositions. The parties are expected to cooperate and to conduct the noticed depositions by the close of the reset discovery period. Trial dates are reset as shown in the following schedule:<sup>2</sup>

<b>Discovery Closes for Applicant</b>	<b>8/7/2017</b>
<b>Discovery Closes for Opposers</b>	<b>9/8/2017</b>
<b>Plaintiff's Pretrial Disclosures Due</b>	<b>10/23/2017</b>
<b>Plaintiff's 30-day Trial Period Ends</b>	<b>12/7/2017</b>
<b>Defendant's Pretrial Disclosures Due</b>	<b>12/22/2017</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>2/5/2018</b>
<b>Plaintiff's Rebuttal Disclosures Due</b>	<b>2/20/2018</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>3/22/2018</b>
<b>Plaintiff's Opening Brief Due</b>	<b>5/21/2018</b>
<b>Defendant's Brief Due</b>	<b>6/20/2018</b>
<b>Plaintiff's Reply Brief Due</b>	<b>7/5/2018</b>
<b>Request for Oral Hearing (optional) Due</b>	<b>7/15/2018</b>

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<sup>2</sup> The expert disclosures due date is not reset insofar as the date, July 8, 2017, preceded the date of the conference.

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Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125, 37 C.F.R. §§ 2.121-2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a), 37 C.F.R. § 2.129(a).



**NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017**

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and *ex parte* appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website:  
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:  
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule:  
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>

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- A chart summarizing the affected rules and changes:  
[http://www.uspto.gov/sites/default/files/documents/RulesChart\\_12\\_9\\_16.pdf](http://www.uspto.gov/sites/default/files/documents/RulesChart_12_9_16.pdf)

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.