

ESTTA Tracking number: **ESTTA965531**

Filing date: **04/08/2019**

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

Proceeding	91242788
Party	Plaintiff Abercrombie & Fitch Trading Co.
Correspondence Address	MARCUS D PETERSON COOLEY LLP 1299 PENNSYLVANIA AVENUE NW SUITE 700 WASHINGTON, DC 20004 UNITED STATES trademarks@cooley.com, bghajar@cooley.com, mpeterson@cooley.com, eyu@cooley.com 310-883-6400
Submission	Opposition/Response to Motion
Filer's Name	Marcus Peterson
Filer's email	mpeterson@cooley.com, bghajar@cooley.com, trademarks@cooley.com, jalvarez@cooley.com
Signature	/Marcus Peterson/
Date	04/08/2019
Attachments	Opposition to Motion to Quash.pdf(243363 bytes)

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

In the matter of Application Serial Nos. 87/367,487 and 87/355,854
For the Trademarks RUEHL NO.925 in Class 18 and RUEHL NO.925 in Class 25
Published in the Official Gazette on April 3, 2018

ABERCROMBIE & FITCH TRADING CO.)	
)	
Opposer,)	
)	Opposition No. 91242788
v.)	
)	
JMM LEE PROPERTIES, LLC)	
)	
Applicant.)	
_____)	

**OPPOSITION TO APPLICANT’S MOTION TO QUASH OPPOSER’S NOTICE OF
DEPOSITION**

I. INTRODUCTION

On March 28, 2019, Opposer Abercrombie & Fitch Trading Co. (“Opposer”) served a Notice of Deposition of Michael J. Lee (“Mr. Lee”). That same day, Applicant JMM Lee Properties, LLC (“Applicant”) filed its Motion to Quash Opposer’s Notice of Deposition (“Motion”) on the grounds that the notice is for an oral deposition outside of Mr. Lee’s judicial district. The Board should deny Applicant’s Motion because Mr. Lee is one of Applicant’s owners, uses Applicant’s address as his business address, has signed pleadings in this and other Board proceedings using that same California address, and Opposer has noticed Mr. Lee’s deposition within the federal judicial district where Applicant is based. Opposer should not be forced to travel to the state of Washington because Mr. Lee asserts that he lives there and, apparently, has a remote home office there. His deposition should proceed in Santa Monica, California (Los Angeles County), as stated in Opposer’s Notice of Deposition.

II. ANALYSIS

Under Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §404.03(a)(1), “If a proposed deponent residing in the United States is a party, or, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party...the deposition may be taken on notice alone.” Michael Lee, the deponent, is Applicant’s Managing Partner. Under the Rules, Opposer can take the deposition on notice alone and it is not necessary for the parties to agree on the location of the deposition, or for Opposer to issue a subpoena to obtain the witness’s attendance at the deposition. For this reason alone, the Board should dismiss Applicant’s Motion and order Michael Lee to appear for deposition in Santa Monica, California.

Applicant argues that TBMP §404.03(a) applies instead. Under that rule, “[t]he deposition of a natural person shall be taken in the Federal judicial district where the person resides or is regularly employed.” (Emphasis added). Even under that rule, the deposition should be in Santa Monica, California. Applicant does not dispute – and it cannot – that it is located in the federal judicial district where Opposer has noticed Mr. Lee’s deposition. Opposer’s Notice of Deposition states that Mr. Lee’s deposition will be taken at Opposer’s counsel’s office in Santa Monica, California. Applicant’s address, as stated in its application for the marks at issue in this Opposition, as well as in its filings in this Opposition, is 2807 Antigua Dr., Burbank, California, 91504. Applicant’s website lists its location as Burbank, California (Exhibit 1). JMM Lee is registered as a California corporation. Santa Monica and Burbank are both within Los Angeles County, in the Central District of California. As such, Applicant’s location and the location of the noticed deposition are within the same judicial district.

Mr. Lee is “regularly employed by” Applicant and uses Applicant’s address as his business address. He regularly uses Applicant’s address in his business and professional activities. For example, each of Applicant’s submissions to the Board are signed by Mr. Lee with a signature line above Applicant’s Burbank, California address. This is not only Mr. Lee’s practice in this Opposition, but in other proceedings before the Board in which Applicant was a party. *See e.g.*, Opposition Nos. 91239209¹, 91235247², 91231865³, for example. Consistently, Mr. Lee has represented to the Board, and to the public, that Applicant’s location is *his* place of business.

For the purposes of Applicant’s motion, Applicant now contends that Mr. Lee “resides and works in Bellingham, Washington.” Motion, ¶ 2. **Applicant provides no supporting affidavit**, much less any details to support this allegation. Applicant does not suggest, and Opposer is not otherwise informed, that Applicant has any office in Bellingham, Washington. Indeed, its website claims otherwise, *see* Exhibit 1. Applicant’s motion is also devoid of any discussion as to why Mr. Lee’s signature block lists Applicant’s address while Mr. Lee now claims to “work” in Washington. Regardless, *even if* Mr. Lee performs some of JMM Lee’s work activities in Bellingham, TBMP 403.03(a) requires that a deposition be taken in the judicial district where the deponent is “regularly employed,” not where he chooses to do work at times or at his convenience. An Applicant’s owner and managing partner (Mr. Lee) cannot represent to the public that it has a bona fide business in one location (Burbank, California), and then when faced with the prospect of giving testimony in a case, claim that he personally does not do any

¹ Available at <http://ttabvue.uspto.gov/ttabvue/v?qt=adv&procstatus=All&pno=91239209&propno=&qs=&propnameop=&propname=&pop=&pn=&pop2=&pn2=&cop=&cn=>

² Available at <http://ttabvue.uspto.gov/ttabvue/v?qt=adv&procstatus=All&pno=91235247&propno=&qs=&propnameop=&propname=&pop=&pn=&pop2=&pn2=&cop=&cn=>

³ Available at <http://ttabvue.uspto.gov/ttabvue/v?pno=91231865&pty=OPP&eno=4>.

business in California and has a remote “office” in another state. By using Applicant’s address as his business address, Mr. Lee has represented that he is available at that location. It is unreasonable for Mr. Lee to now claim that he “works” exclusively in Washington, when he has repeatedly indicated otherwise.

Apart from the lack of an affidavit supporting it, Applicant’s motion is also conspicuously silent as to how often Mr. Lee travels to Southern California to run and participate in Applicant’s business. It would require an unwarranted assumption to conclude that Mr. Lee has no plans whatsoever to visit Applicant’s operations in Burbank, California over the next several months. As Applicant’s Managing Partner, Mr. Lee presumably travels to Applicant’s business on a regular basis to check on its affairs, meet with vendors, check inventory, and otherwise run the business with his partners (at least one of whom admits he is based in Los Angeles). Fact discovery closes in mid-May, which should allow ample time to schedule that deposition. However, as an accommodation,⁴ Opposer would be willing to extend the discovery schedule and schedule Mr. Lee’s deposition to coincide with his schedule.

III. CONCLUSION

Applicant is based in Los Angeles County. Mr. Lee is regularly employed by Applicant and has consistently represented that his business address is the same as Applicant’s. The Board should deny Applicant’s Motion and order Mr. Lee to sit for a deposition at Opposer’s counsel’s office in Los Angeles (Santa Monica), California, which is in Applicant’s same federal judicial district.

⁴ As Applicant notes in its Motion, Opposer offered a compromise in which its counsel would travel to San Francisco to make any travel more convenient to Mr. Lee. Mr. Lee rejected that compromise.

Dated: April 8, 2019

Respectfully Submitted,

COOLEY LLP

/s/ Marcus Peterson

Bobby Ghajar

Marcus Peterson

COOLEY LLP

1333 2nd Street, Suite 400

Santa Monica, California 90401-4100

Tel: (310) 883 6400

Fax: (310) 883 6500

bghajar@cooley.com

mpeterson@cooley.com

Counsel for Opposer, Abercrombie & Fitch Trading Co.

EXHIBIT 1



JMM Lee Properties,LLC

(206) 850-6596



(index.html)

Home / Contact Us

Contact Us

Your name *

Your email address *


Subject

Message *

Send Message

The Office


Address: Burbank, CA.

 **Phone:** (206) 850-6596

 **Email:** info@jmmlee.com (mailto:info@jmmlee.com)


Business Hours


 Monday - Friday 9am to 5pm


 Saturday - 9am to 2pm

 Sunday - Closed

Contact Us

 **Address:** Burbank, CA.

 **Phone:** (206) 850-6596

 **Email:** info@jmmlee.com (mailto:info@jmmlee.com)

Follow Us



(<https://twitter.com/JMMBrandMan>)

JMM Lee Properties © Copyright 2016. All Rights Reserved.

[Contact \(contact-us.html\)](#)

CERTIFICATE OF SERVICE

I, Marcus Peterson, hereby certify that a true and complete copy of the foregoing **OPPOSITION TO APPLICANT’S MOTION TO QUASH OPPOSER’S NOTICE OF DEPOTISION** has been served on Respondent’s counsel by forwarding said copy On March 28, 2019 via email, to:

Michael J. Lee
JMM Lee Properties LLC
2807 Antigua Dr
Burbank, CA 91504
mlee@jmmlee.com

/s/ Marcus Peterson

Marcus Peterson