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

Proceeding no.	91267937
Party	Plaintiff Alpha Kappa Alpha Sorority
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of **STROLL TO THE POLLS** Ser. No. 90/012,428

Alpha Kappa Alpha Sorority	)	
	)	
Opposer,	)	
	)	
	)	Opposition No. 91,267,937
	)	
v.	)	
	)	
	)	
Stroll to the Polls, Inc.	)	
	)	
Applicant.	)	
_____	)	

REPLY IN SUPPORT OF MOTION TO QUASH NOTICE OF DEPOSITION OF GLENDA GLOVER AND FOR A PROTECTIVE ORDER

Without conducting any other discovery whatsoever, Stroll to the Polls, Inc. ("STTP") jumped straight to noticing the deposition of Alpha Kappa Alpha Sorority's ("AKA") highest-ranking officer: its International President and CEO, Dr. Glenda Glover. Dr. Glover provided a sworn declaration testifying that she has no unique, personal knowledge related to AKA's or third parties' use of the political slogan "Stroll to the Polls," and nothing in STTP's response brief contradicts that testimony. STTP has therefore failed to meet its burden and a protective order should be issued shielding Dr. Glover from a deposition whose sole purpose is to burden and harass.

I. ARGUMENT

A. STTP Bears the Burden of Proving Dr. Glover Has Unique, Personal Knowledge Relevant to This Proceeding.

STTP claims AKA has "not met its burden of showing extraordinary circumstances" to justify prohibiting the deposition of Dr. Glover.[1] Applicant's Response in Opposition of Opposer's Motion to Quash Notice of Deposition of Glenda Glover and for a Protective Order, 28 TTABVUE ("Resp. Br.") 7. But that is not the standard.

The apex doctrine, which STTP does not contest applies to Dr. Glover (*see* Resp. Br.), "supplies an additional layer of protection for senior corporate executives subject to depositions. Under this doctrine, unless the executive has unique evidence, personal knowledge of the claims at issue, and other witnesses are incapable of providing testimony about the conduct alleged, executives are safeguarded from depositions." *Harapeti v. CBS Television Stations Inc.*, No. 21 MISC. 680 (PAE), 2021 WL 3932424, at *2 (S.D.N.Y. Sept. 2, 2021) (internal citations omitted).

Accordingly, some courts have held that the burden of establishing that an apex witness has relevant, unique personal knowledge falls wholly on the party seeking the deposition. *See, e.g., City of Sterling Heights Gen. Employees' Ret. Sys. v. Prudential Fin., Inc.*, No. 212CV5275MCALDWDNJ, 2015 WL 9434782, at *2 (E.D. Cal. Dec. 24, 2015) ("Under [the apex] doctrine, the burden is shifted to the party seeking the deposition to show that it is warranted . . ."); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12CV03844JST

[1] STTP also argues that AKA must show "a clearly defined and serious injury will result if the information sought by discovery is disclosed." Resp. Br. 8. But AKA's motion is not about withholding certain information; it is about preventing the burdensome, harassing deposition of its highest-level executive, who has no unique, personal knowledge regarding this matter. Moreover, the cases STTP cites in support of its claim are inapposite. They all pertain to the standard required to seal confidential documents, not the standard required to prohibit a deposition. *See* cases cited at Resp. Br. 8.

(MEJ), 2014 WL 5387936, at *1 (N.D. Cal. Oct. 21, 2014), *citing Groupion, LLC v. Groupon, Inc.*, 2012 WL 359699, at *2 (N.D. Cal. Feb. 2, 2012) ("a party seeking to depose a high-ranking corporate official bears the burden of demonstrating that (1) the deponent has unique first-hand, non-repetitive knowledge of facts at issue in the case," and (2) "the party seeking the deposition has exhausted other less intrusive discovery methods.").

Other courts have held that the initial burden of proving the apex deponent's unique, personal knowledge falls on the party seeking deposition. Only if that prerequisite is satisfied does the burden switch to the apex witness to demonstrate that they lack relevant knowledge.[2] *See, e.g., Tierra Blanca Ranch High Country Youth Program v. Gonzales*, 329 F.R.D. 694, 697–98 (D.N.M. 2019), *objections overruled*, No. 215CV00850KRSGBW, 2019 WL 1487241 (D.N.M. Apr. 4, 2019).

As discussed below, because STTP has failed to set forth any evidence that Dr. Glover has unique, personal knowledge relevant to the use of the political slogan "stroll to the polls," it has failed to meet its burden under either standard.

B. Dr. Glover Lacks Unique, Personal Knowledge Relevant to This Proceeding.

In order to justify deposing Dr. Glover, STTP must prove she has unique, personal knowledge relevant to this proceeding. "This is an essential component of the standard for an apex deposition—unique personal knowledge by the high corporate official, unavailable from less intrusive discovery, including interrogatories and the depositions of lower-level employees." *Celerity, Inc. v. Ultra Clean Holding, Inc.*, No. C 05-4374MMC(JL), 2007 WL 205067, at *4 (N.D. Cal. Jan. 25, 2007).

[2] AKA is not aware of any Trademark Trial and Appeal Board or Federal Circuit precedent on point.

Dr. Glover has already testified under oath that she has no unique, personal knowledge regarding the use of "stroll to the polls." 25 TTABVUE 24-25. Nothing in STTP's response brief contradicts that testimony.

STTP states that, "Madam Supreme Basileus Glenda Glover is the Chief and ONLY spokesperson for the Sorority. Therefore, Dr. Glover is the only representative of Opposer who can provide direct testimony as to the proceedings of the Directorate over many years as well as the detailed nature of the programs instituted in 2018 at her direction." Resp. Br. 5. (Ex. G). But STTP has taken this statement out of context. The statement was made in reference to AKA's position against taking stances in political matters in order to maintain their tax-exempt status. *Id*. The statement does not mean that no one other than Dr. Glover is permitted to speak on behalf of the sorority with respect to *any* matter. Indeed, as AKA indicated in their Initial Disclosures, Cynthia D. Howell, AKA's Executive Director, is the person most likely to have knowledge related to this matter. 25 TTABVUE 20. STTP represented in its brief that it would be noticing the deposition of Ms. Howell soon. Resp. Br. 5, n.1.

STTP also claims Dr. Glover has unique, personal knowledge because the AKA Constitution and Bylaws require that the Directorate "deliberate with respect to all policies and problems of the organization; approve the proposed program of the Boule; and administer the business of the Sorority when the Boule is not in session." Resp. Br. 5. This may be the case, but it has nothing to do with whether Dr. Glover has any knowledge regarding AKA's or third parties' use of the phrase "stroll to the polls."

The same is true for STTP's argument that "Dr. Glover is the only representative of AKA that serves as a member of the [Council of Presidents] of the [National Pan-Hellenic Council] and, therefore, she is the only representative of AKA who can testify as to the proceedings of the

COP and NPHC." Resp. Br. 6. But STTP has not presented any evidence that use of "stroll to the polls" has ever been discussed by the COP or NPHC. And again, Dr. Glover has already testified under oath that she has no unique, personal knowledge regarding this topic. 25 TTABVUE 24-25.

C. STTP Has Not Exhausted Less Burdensome Discovery Means

STTP claims that "formal exhaustion" of less burdensome discovery methods is not "an absolute requirement." Resp. Br. 6. But even the single case STTP cites in support of its argument describes the exhaustion of less burdensome discovery methods as an "important consideration" in determining whether an apex witness must sit for a deposition. *Id.* As of the date of AKA's opening brief, STTP had not conducted any discovery whatsoever other than noticing the deposition of Dr. Glover, AKA's highest-ranking officer. 25 TTABVUE 8.

STTP also argues that "due to the public disclosure of certain documents and procedures by AKA and the NPHC, conducting other means of discovery prior to noticing the deposition of Dr. Glover was not necessary in order to determine that Dr. Glover has unique first-hand, non-repetitive knowledge of facts critical to this case." Resp. Br. 7. But STTP has failed to set forth any specific facts that contradict Dr. Glover's sworn testimony that she has no unique, personal knowledge regarding use of the phrase "stroll to the polls." The public availability of AKA's Constitution and Bylaws and NPHC's Constitution, Bylaws and Standing Rules, which are presumably the public "documents and procedures" to which STTP refers, say nothing about whether Dr. Glover is familiar with AKA's or any third party's use of the phrase "stroll to the polls." And her sworn declaration proves she does not.

D. Limiting the Time or Scope of the Deposition Would Not Prevent Harm to Dr. Glover.

STTP requests, in the alternative, that the Board issue a protective order merely to "limit the time or subject matter of the deposition, rather than taking the step of prohibiting the deposition in its entirety." Resp. Br. 9. But placing limitations on the deposition would not prevent harm to Dr. Glover.[3] The harm comes from being forced to take time out of her busy schedule to prepare for and attend a deposition regarding topics on which she has no unique, personal knowledge. Dr. Glover should not be required to shoulder this undue burden.

II. CONCLUSION

For the reasons outlined above and in AKA's opening brief, AKA respectfully asks the board to quash the Notice of Deposition of Glenda Glover and issue a protective order preventing that deposition from taking place.

Dated: June 6, 2022

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
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[3] The Declaration of Ramona Prioleau, at paragraph 31, states that, "on information and belief, Dr. Glover has available dates for a deposition between the [sic] May 16 and July 6, 2022", citing Exhibit L. 28 TTABVUE 17. Exhibit L is a page from AKA's website that indicates International and Regional Conferences will take place from July 7-July 9, 2022. 28 TTABVUE 79. Nothing in Exhibit L demonstrates that Dr. Glover is available to be deposed between May 22 and July 6, 2022.

Attorneys for Opposer,
Alpha Kappa Alpha Sorority

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY IN SUPPORT OF MOTION TO QUASH NOTICE OF DEPOSITION OF GLENDA GLOVER AND FOR A PROTECTIVE ORDER was served upon the counsel for Stroll to the Polls, Inc. identified below by email on June 6, 2022:

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