

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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October 16, 2023

Opposition No. 91274162

*Wrangler Apparel Corp.*

*v.*

*Balance Athletica, LLC*

**Ann Linnehan, Interlocutory Attorney**

On October 1, 2023, Opposer notified the Board of its disclosure to Applicant of plans to use expert testimony. Accordingly, proceedings herein are suspended pending the parties' compliance with Fed. R. Civ. P. 26(a)(2) and the exchange of discovery limited to planned expert testimony, including that of any rebuttal expert. Trademark Rule 2.120(a)(2)(iii).<sup>1</sup>

To the extent that the use of experts did not form part of the parties' discovery conference discussions, the parties shall promptly confer on the arrangements for the completion of disclosures relating to planned expert testimony, including any

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<sup>1</sup> Trademark Rule 2.120(a)(2) states, in part:

Upon disclosure by any party of plans to use expert testimony, whether before or after the deadline for disclosing expert testimony, the Board may issue an order regarding expert discovery and/or set a deadline for any other party to disclose plans to use a rebuttal expert.

testimony by a rebuttal expert, and for exchanging and responding to discovery requests, if any, related to the identified experts. Such discussions should also encompass stipulations regarding the introduction into evidence of the testimony of expert witnesses, for example, whether in lieu of testimony, the parties introduce the expert report(s), whether the expert testimony may be provided by affidavit or declaration<sup>2</sup>, or whether the witnesses will present testimony and discuss exhibits in testimony depositions.

Federal Rule 26(a)(2) provides that a party planning to use an expert solely to contradict or rebut an adverse party's expert must disclose such plans within thirty days of the adverse party's prior disclosure. However, Trademark Rule 2.120(a)(2)(iii) also provides that the Board may set a deadline for disclosing plans to use a rebuttal expert. Accordingly, if Applicant has not already complied with the requirements of the federal rule, it is allowed **until 20 days** from the date of this order to disclose any planned rebuttal expert testimony.

Federal Rule 26(a)(2) also details what information and materials must be provided for a party to satisfy its disclosure obligation with respect to experts.

Upon the completion of expert discovery and the service of information required by Federal Rule 26(a)(2), the parties must inform the Board so that proceedings may be resumed.

Upon the resumption of proceedings, the period for discovery will be reset.

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<sup>2</sup> Parties that stipulate that the testimony of a witness may be introduced by affidavit or declaration may also reserve the right to conduct in-person cross-examination, if necessary.