UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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November 13, 2023

Opposition No. 91281446

MVNTN Owner LLC

v.

Bona Fide Live, Inc.

Ann Linnehan, Interlocutory Attorney

This case now comes up for consideration of Opposer's motion (filed August 23, 2023) to compel Applicant (1) to produce documents responsive to Opposer's Request for Production Nos. 43 and 44; and (2) to produce a Rule 30(b)(6) witness to testify regarding Topic 14 of Opposer's Rule 30(b)(6) Notice of Deposition.[1]

As a preliminary matter, the Board finds that Opposer has made a good-faith effort under the circumstances, pursuant to Trademark Rule 2.120(f), to resolve the present discovery disputes prior to seeking the Board's intervention.

The document requests (and the responses) at issue read as follows:

[1] 9 TTABVUE. In this order, the Board cites to the proceeding record by the TTABVUE docket entry number and TTABVUE page number, in accordance with the guidance provided in TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 106.03, 702.05 and 801.01 (2023). The Board expects that the parties will use this method of citing to the record throughout this proceeding.

> OPPOSER'S REQUEST NO. 43: Documents and communications sufficient to reflect all statements and representations Applicant made to solicit funds in connection with Applicant's GoFundMe campaign to raise money to purchase the Exit/In music venue property (https://www.gofundme.com/f/preserve-exit-in).
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> APPLICANT'S RESPONSE TO REQUEST NO. 43: Applicant objects to this request as overbroad, unduly burdensome, irrelevant to any claims or defenses and unlikely to lead to the discovery of admissible evidence.
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> OPPOSER'S REQUEST NO. 44: With respect to Applicant's GoFundMe campaign to raise money to purchase the Exit/In music venue property (https://www.gofundme.com/f/preserve-exit-in), documents sufficient to reflect the amounts of money collected from the campaign, how such funds have been spent to date, and the current status of any remaining funds raised in connection with the campaign.
>
> APPLICANT'S RESPONSE TO REQUEST NO. 44: Applicant objects to this request as overbroad, unduly burdensome, irrelevant to any claims or defenses and unlikely to lead to the discovery of admissible evidence.

The topic regarding the Rule 30(b)(6) witness and Opposer's notice of deposition topic (and Applicant's objection) reads as follows:

> TOPIC 14: The circumstances of each of Applicant's and Chris Cobb's departures from the property located at 2208 Elliston Place, Nashville, Tennessee 37203 in the leadup to the expiration of Applicant's lease to the property at the end of 2022, and any events or allegations thereafter relating to such departures.
>
> OBJECTION TO TOPIC 14: [Applicant] objects to this Topic as overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of

In support of its motion, Opposer states that "[i]n its February 6, 2023 responses and objections [to Opposer's document requests], Applicant objected to and indicated that it would not search for or produce any documents responsive to Opposer's

Requests for Production Nos. 43 and 44."[2] Opposer indicates that "Applicant's counsel did not articulate how Opposer's documents requests relating to Opposer's GoFundMe campaign supposedly were overbroad or unduly burdensome, but instead relied on their supposed irrelevance to the issues in this proceeding."[3] Opposer states that "Applicant's counsel took the same position with respect to Topic No. 14 in Opposer's deposition notice" and "Applicant's counsel confirmed that Applicant would not be providing documents relating to its GoFundMe campaign and would not produce a witness for Rule 30(b)(6) Topic No. 14."[4]

In response, Applicant argues that "Opposer seeks to compel discovery on two subjects lacking any relevance to any issue in this opposition, and that, in any event, has already been sought by Opposer in a lawsuit for damages filed by Opposer against [Applicant] in Tennessee state court."[5] Specifically, Applicant contends that "Opposer's opposition is based solely on likelihood of confusion under Section 2(d) of the Lanham Act and fraud based on an alleged lack of trademark ownership" but that "Opposer in this Motion seeks to compel discovery on two issues that have nothing whatsoever to do with trademark ownership (a threshold requirement on which Opposer bears the burden of proof) or likelihood of confusion."[6]

In reply, Opposer states "discovery into Applicant's activities regarding these aspects of the venue plainly are relevant to this proceeding, particularly because

[2] *Id.* at 5.
[3] *Id.* at 7.
[4] *Id.*
[5] 11 TTABVUE 2.
[6] *Id.* at 5.

Applicant's intent is so central to Opposer's fraud and non-ownership claims."[7] Opposer further asserts that "[t]here is no additional burden in providing the requested discovery in this proceeding, and Applicant provides no precedent whatsoever to support its assertion that providing discovery in one litigation exempts that party from providing such discovery in another action."[8]

The Board has carefully reviewed the arguments of the parties and has determined that granting the motion to compel is appropriate. Each of the documents and Topic 14 are relevant to the claims and defenses of this particular proceeding. In this case, non-ownership is a claim. Information concerning a party's selection and adoption of its involved mark is generally discoverable (particularly of a defendant). See TBMP §414(4). Information concerning or relating to Applicant's attempts (a GoFundMe campaign) to purchase rights in the subject mark from Opposer's predecessor instead of Opposer and information concerning the circumstances of Applicant's departure from the venue at issue upon the expiration of its lease and license is discoverable. Applicant's objections to the requests and Topic 14 are overruled.

In view of the above, Applicant is hereby ordered to provide full and complete responses to Opposer's Request for Production Nos. 43 and 44 within **THIRTY days** of the date set forth in the caption of this order and to produce a Rule 30(b)(6) witness to testify regarding the Topic 14 of Opposer's Rule 30(b)(6) Notice of Deposition within **FORTY-FIVE days** of the date set forth in the caption of this order.

[7] 12 TTABVUE 2.
[8] *Id.* at 6.

Proceedings are hereby resumed. Discovery remains otherwise closed. Dates are reset as follows:

Plaintiff's Pretrial Disclosures Due	1/20/2024
Plaintiff's 30-day Trial Period Ends	3/5/2024
Defendant's Pretrial Disclosures Due	3/20/2024
Defendant's 30-day Trial Period Ends	5/4/2024
Plaintiff's Rebuttal Disclosures Due	5/19/2024
Plaintiff's 15-day Rebuttal Period Ends	6/18/2024
Plaintiff's Opening Brief Due	8/17/2024
Defendant's Brief Due	9/16/2024
Plaintiff's Reply Brief Due	10/1/2024
Request for Oral Hearing (optional) Due	10/11/2024

Important Trial and Briefing Instructions

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. 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). **Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing.** *See* TBMP § 801.03. 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).