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

Proceeding	92055302
Party	Plaintiff District Enterprises, Inc.
Correspondence Address	SZYMON M GURDA CHERSKOV FLAYNIK & GURDA LLC 123 WEST MADISON STREET, SUITE 400 CHICAGO, IL 60602 UNITED STATES jkale@cherskov.com, sgurda@cherskov.com, mail@cherskov.com
Submission	Motion to Reopen
Filer's Name	John Paul Kale
Filer's e-mail	jkale@cherskov.com, sgurda@cherskov.com
Signature	/John Paul Kale/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DISTRICT ENTERPRISES, INC.	)	Serial No.	:77/808,450
Petitioner,	)	Reg. No.	:3,840,150
	)	Date of Filing	:August 19, 2009
v.	)	Registration Date	:August 31, 2010
	)	Cancellation No.	:92055302
INDEPENDENCE TOWING & RECOVERY, INC.	)	Mark	:DR 1942-99
Respondent	)		

PETITIONER'S REPLY IN SUPPORT OF MOTION TO INTRODUCE NEW EVIDENCE

Petitioner, District Enterprises, Inc. ("District"), submits this reply to the response of Registrant, Independence Towing and Recovery, Inc. ("Independence"), regarding District's Motion to Introduce New Evidence. District respectfully submits that its motion should be granted because (1) District was reasonably diligent in searching for and gathering its evidence; (2) the evidence is highly probative of the issues in the case; and (3) with respect to Mr. Becht's testimony, any prejudice suffered by Independence will be of its own causing.

District has moved the Board to reopen the testimony period so that District can submit the newly discovered evidence of Mr. Janik's uniform jacket and Mr. Becht's testimony regarding Daniel Radwanski taking possession of Mr. Becht's District uniform shirts. District explained that the evidence was discovered in early March, 2015, and the instant motion was filed promptly thereafter. In its motion, District argued that it did not know, nor could it have been expected to know, that Mr. Becht and Mr. Janik had kept their uniforms. District also argued that the motion was filed as soon as practicably possible and that any prejudice suffered by Independence with respect to Mr. Becht's testimony was its own fault.

In its Response, Independence argues that District's Motion should be denied because District was not reasonably diligent in obtaining the evidence and because the equities do not favor reopening of the testimony period. Regarding District's diligence in obtaining the evidence, Independence argues: (1) the evidence was always available to District; (2) District did not disclose how it was diligent; and (3) District did not lay the proper foundation for authenticating the photographs of Mr. Janik's jacket. Regarding the equitable considerations of granting the motion, Independence claims that the case is ripe for disposition and that it will face substantial prejudice if District is allowed to introduce the evidence.

According to the Trademark Board Manual of Procedure ("TBMP") § 509.01(b)(2), a party that seeks to introduce newly discovered evidence must show that the evidence could not have been discovered earlier through the exercise of reasonable diligence. The Board will also consider additional factors, such as the

nature and purpose of the evidence, the stage of the proceedings, and the prejudice to the nonmoving party.

I. INDEPENDENCE MISCHARACTERIZES THE NATURE OF THE EVIDENCE THAT DISTRICT SEEKS TO INTRODUCE

The nature of the evidence that District attempts to introduce has a direct bearing on whether the Board should grant District's Motion. The exact nature of the evidence informs at least the following inquiries: whether the evidence is actually newly discovered; to what extent District should have pursued the evidence; and whether the evidence is cumulative. District specifically outlined the nature of the evidence that it attempts to introduce, and it merits introduction under TBMP § 509.01(b)(2).

Independence attempts to trivialize the affidavit testimony of Mr. Becht by describing it simply as cumulative testimony to the effect that he wore a "DR" uniform while working for District (See, e.g., TTABVUE Doc. No. 36 at p. 6). Instead, the evidence proves that Daniel Radwanski deliberately confiscated Mr. Becht's uniform shirts bearing the "DR" initials. The timing of Daniel Radwanski's actions and his knowledge of Mr. Becht's previous employment at District speak substantively to District's fraud claim. Additionally, because this confiscation of Mr. Becht's uniform occurred at around the same time that Independence sent a cease and desist letter to District (See TTABVue Doc. No. 1, ¶ 12), Independence's intent to handicap District's litigation position can reasonably be inferred.

Mr. Becht's affidavit testimony regarding the fact that he wore a "DR" uniform while at District is made merely to provide foundation for his possession of such a uniform during the time period prior to Dennis and Daniel Radwanski's departure from District. If that were the only evidence that Mr. Becht sought to introduce, then his testimony might indeed be cumulative. However, Mr. Becht further states that, while he worked for Independence, Daniel Radwanski took possession of his District uniform shirts under the pretext of investigating the stitching patterns. This evidence is not cumulative or impeaching; it is substantive evidence that highly probative of Independence's fraudulent procurement of its registration.

The affidavit testimony of Mr. Mozdzierz pertained to the uniform jacket of his recently deceased friend, Robert Janik. Mr. Mozdzierz testimony only comes in response to Mr. Janik's death and the subsequent inventory of his belongings. His testimony as to his familiarity with District's uniforms is also not cumulative because it provides a basis as to why he recognized the significance of the uniform found in Mr. Janik's belongings. The exact nature of the evidence District seeks to introduce is that of an actual District uniform as it existed prior to 2008. This type of physical evidence was not available or known to District because of the frequent turnover District experiences with its employees and uniforms. Mr. Mozdzierz's testimony about how and what he knew of District's uniforms is important to lay the foundation for the actual

evidence, namely Mr. Janik's jacket.

Consequently, the alleged cumulative testimony is simply background testimony that is necessary to lay the proper foundation for the introduction of the newly discovered evidence. The actual items of evidence themselves, i.e., Mr. Janik's jacket and Mr. Becht's testimony, are not cumulative. Thus, because the nature of the evidence is an important consideration in the consideration of District's motion, District respectfully requests the Board to eschew Independence's overly simplistic characterization of the evidence.

II. THE EVIDENCE DISTRICT SEEKS TO INTRODUCE IS NEWLY DISCOVERED AND DISTRICT WAS REASONABLY DILIGENT IN SEARCHING FOR THE EVIDENCE.

In order for the Board to entertain a motion to introduce newly discovered evidence, the evidence must, in fact, be newly discovered, and the party seeking to introduce it must have been reasonably diligent in searching for the evidence. See TBMP § 509.01(b)(2). District has satisfied this threshold inquiry.

A. DISTRICT'S EVIDENCE IS NEWLY DISCOVERED BECAUSE DISTRICT WAS NOT AWARE OF ITS EXISTENCE UNTIL MARCH OF 2015

Independence argues that the District's evidence has always been available to it and, therefore, it cannot be considered "newly discovered." Independence's argument misses the point. The term "newly discovered" implies an element of revelation or detection. See Bain v. MJJ Prods., Inc., 751 F.3d 642, 647 (D.C. Cir. 2014) (considering the definition of "discovered" in interpreting the definition of "newly discovered" in the context of a motion under F.R.C.P. 60(b)(2)). Thus, newly discovered evidence is evidence that the movant did not possess or was not aware of at the time of trial.

Whether the evidence existed or was available at the time of the testimony period is irrelevant to the classification of evidence as "newly discovered." The key question is: When did District uncover or find the evidence? The rest is a question of diligence. District made clear that it first became aware of the subject matter of Mr. Becht's testimony in early March, 2015. The same is true of Mr. Janik's uniform jacket. The evidence should be considered "newly discovered" regardless of whether it recently came into being or already existed because, in fact, District just recently discovered the evidence.

Typically, evidence will not be considered newly discovered only when it was known to the movant but the movant chose not to introduce it. In the related context of F.R.C.P. 60(b)(2)[1], examples of evidence that were not considered "newly discovered" include: evidence of which the movant was aware but which he chose not to introduce because of the cost to obtain it (Parrilla-Lopez v. U.S., 841 F.2d 16, 19 (1st Cir. 1988));

[1] Under Federal Rule of Civil Procedure 60(b)(2), a court may award a new trial to consider "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)."

evidence known to the movant but not relied upon because of trial strategy (Waddell v. Hendry County Sheriff's Office, 329 F.3d 1300, 1310 (11th Cir. 2003)); and evidence known to the movant but that he did not have time to obtain prior to trial (Karak v. Bursaw Oil Corp., 288 F.3d 15, 20 (1st Cir. 2002). In all these cases, the movant was aware of the evidence and, for one reason or another, the movant made a deliberate choice not to use it or pursue it. Such is not the case for District. District only recently became aware of the evidence it seeks to introduce, and it promptly moved to have the evidence considered.

Accordingly, the Board should determine that Mr. Janik's uniform jacket and Mr. Becht's testimony are "newly discovered" within the meaning of TBMP § 509.01(b)(2).

B. DISTRICT COULD NOT BE EXPECTED TO KNOW THE IDENTITIES OF EMPLOYEES THAT HAPPEN TO HAVE KEPT THEIR UNIFORMS

Theoretical availability of the evidence primarily bears on the diligence of the party seeking to introduce the evidence. However, Independence's argument with respect to availability again misses the point. Independence repeatedly argues that Mr. Becht and Mr. Janik were available during the testimony period and could have been called upon to testify. Independence makes this argument with the benefit of hindsight. Of course, had District known then what it knows now, District would have called upon these witnesses to testify during the trial period. Nevertheless, a party's diligence is measured according to a reasonable person. Independence does not address whether a reasonable person, absent the benefit of hindsight, would have sought out the testimony of Mr. Becht and Mr. Janik. District contends that a reasonable person would not have.

District did not specifically seek out Mr. Becht's and Mr. Janik's uniforms because they were not supposed to have them. As Mr. Zolner testified, District employees rent their uniforms from a uniform company. See 2/7/14 Deposition of Zolner, p. 19, l. 15 – p. 20, l. 5. District employees do not own their uniforms, and therefore, they are not supposed to take them with them when they leave. That former employees are not supposed to retain their District uniforms speaks to the reasonableness of District in not searching for them. With that expectation in mind, it is easy to see that reasonable diligence *at the time of District's discovery period* did not dictate that District seek out the testimony of Mr. Janik and Mr. Becht.

District should not have been expected to seek the testimony of Mr. Janik because Mr. Janik was employed at District for only a brief period of time (from October 2006 to January 2007). Accordingly, he would not have been the best (or even a good) witness to testify to the adoption of the "DR" mark and its consistent use throughout the years leading up to 2008. Additionally, Mr. Janik left District in 2007 because of his failing health. Thus, it would hardly be reasonable to disturb Mr. Janik for the limited purpose of saying

that he wore a District uniform for three months, especially considering that he was no longer an employee and not in contact with District.

Concerning Mr. Becht, he was with the company longer, but his expected testimony would have been duplicative of Mr. Zolner's testimony given that they started working at District around the same time and were employed at District until at least the departure of Dennis and Daniel Radwanski in 2008. Because District could not have reasonably expected that Mr. Becht turned over to Daniel Radwanski a uniform that he was not supposed to have, reasonable diligence did not dictate that District should have searched for it.

Courts have held that a reasonably diligent person would not be expected to search for something that it believes not to exist. Such was the case in Serio v. Badger Mutual Insurance Co., 266 F.2d 418 (5th Cir. 1959). There, the movants sought to introduce new evidence under Federal Rule of Civil Procedure 60(b)(2). Id. at 420. The movants thought the evidence was destroyed in a fire but subsequently found the evidence in an offsite storage facility. Id. The court determined that a reasonably diligent person would not be expected to search for documents that it believed to be destroyed. Id. at 421. Thus, despite the fact that the documents were always available to the movant, reasonable diligence did not require an extensive search for something that the movant thought was destroyed.

Analogously, District could not be expected to seek out evidence that was not supposed to exist. Again, the nature of the evidence sought to be introduced plays a key role. District is seeking to introduce testimony from Mr. Becht that Daniel Radwanski took possession of his District uniforms during the course of Mr. Becht's employment at Independence. District could not be expected to seek information from him regarding those uniforms since District thought that he had turned them in when he left. Similarly regarding Mr. Janik's uniform jacket, District could not have been expected to seek out a uniform article that it believed to have been turned in upon Mr. Janik's departure from District.

Therefore, the Board should find that District exercised reasonable diligence in seeking its evidence during the discovery and testimony periods. Having already shown that the evidence is "newly discovered," District has satisfied the threshold-level inquiry for the Board to consider the additional factors.

III. THE REMAINING EQUITABLE FACTORS FAVOR THE REOPENING OF THE TESTIMONY PERIOD TO INTRODUCE THE NEWLY DISCOVERED EVIDENCE.

Once the movant has satisfied the threshold inquiry, the Board must also consider additional factors, such as "the nature and purpose of the evidence sought to be brought in, the state of the proceeding, and the prejudice to the nonmoving party." TBMP § 509.01(b)(2). These equitable factors apply differently to Mr. Janik's uniform jacket and Mr. Becht's testimony, but in both cases, the factors favor the reopening of the

testimony period.

To reopen the testimony period to introduce new evidence, the evidence cannot be cumulative or redundant in nature. See Harjo v. Pro-Football, Inc., 45 U.S.P.Q.2d 1789, 1998 WL 90884 at *2 (TTAB 1998). Additionally, the evidence should have "significant probative value" such that it is "likely to cause a different result or affect the outcome of the case." Id. Evidence will not be considered if it is hearsay in nature or it pertains to an unpled defense. See L.C. Licensing, Inc. v. Berman, 86 U.S.P.Q.2d 1883, 2008 WL 835278 at *2 (TTAB 2008). In considering the stage of the proceeding, the Board considers the nonmovant's right to a speedy and inexpensive determination of the proceeding. Harjo, 1998 WL 90884 at *2. The Board also considers "the need for closure once the trial period has been completed." Id. Notwithstanding, a compelling reason to reopen the testimony period could outweigh those concerns. See Canadian Tire Corp., Ltd. v. Cooper Tire & Rubber Co., 40 U.S.P.Q.2d 1537, 1996 WL 657222 at *2 (Com'r Pat. & Trademarks 1996). When considering whether to reopen the testimony period, the ultimate goal is for the outcome of the trial to "reflect the true merits of the case." Serio, 266 F.2d at 421 (discussing the rationale for granting a new trial under F.R.C.P. 60(b)(2)). Finally, "'prejudice to the nonmovant' is prejudice to the nonmovant's ability to litigate the case, e.g., where the movant's delay has resulted in a loss or unavailability of evidence or witnesses which otherwise would have been available to the nonmovant." TBMP § 509.01(b)(1). Prejudice is more than just suffering delay, increased expense, or loss of tactical advantage. See id.

A. THE EVIDENCE THAT DISTRICT SEEKS TO INTRODUCE IS HIGHLY PROBATIVE TO THE MERITS OF THE CASE

With respect to Mr. Janik's uniform jacket, the evidence is an actual article of clothing worn by a District employee prior to his departure from District in January, 2007. This evidence is highly probative of whether other drivers at District wore the "DR" logo on their uniforms. As stated above, such evidence was thought not to exist because of the high turnover in District's uniforms. District's witnesses could only testify as to having worn or seen such uniforms, but none could produce an actual uniform that existed in 2006. Therefore, this is substantive, physical evidence that is not cumulative or redundant. This evidence goes to the heart of the matter and is of the proper type for introduction in a motion to reopen.

Independence argues that much of the testimony regarding Mr. Janik's jacket is hearsay. However, much of the testimony is not actually hearsay because the statements are not being offered for the truth of the matter asserted. See Fed. R. Evid. 801 (stating that hearsay must be a statement that "a party offers in evidence *to prove the truth of the matter asserted* in the statement"). For instance, in Mr. Mozdzierz's affidavit, he states that he was informed by Mr. Janik's family that they found a jacket containing the initials

"DR" and that they contacted him because they knew he worked at District (Declaration of Joseph Mozdzierz ¶¶ 9-11). These statements are not being offered for the truth of the matter asserted; they simply speak to how Mr. Mozdzierz's came to be aware of the jacket. The truth or falsity of these statements is inconsequential because how Mr. Mozdzierz learned of the jacket does not matter. The evidence that District seeks to introduce is the jacket itself, which Mr. Mozdzierz's identifies as being the jacket worn by Mr. Janik while he worked at District. The statements Mr. Mozdzierz makes regarding how he identified the jacket are being offered for their truth, but they are not hearsay because he is speaking from his own personal knowledge and observations.

Typically, when the Board declines to reopen the testimony period because of the hearsay nature of the evidence, the evidence is inherently hearsay. For instance, in L.C. Licensing, Inc. v. Berman, the Board declined to allow the movant to introduce a newspaper article that was hearsay on its face. 86 U.S.P.Q.2d 1883, 2008 WL 835278 at *2 (TTAB 2008) (stating "insofar as the nature of the evidence is concerned, a newspaper article is probative only for what it shows on its face, not for the truth of the matters contained therein"); see also Canadian Tire, 1996 WL 657222 at *2 (also holding that a newspaper article was hearsay in nature and, thus, determining that there was no abuse of discretion to disallow its introduction into evidence). Here, the jacket is not hearsay in and of itself; instead, it is a tangible piece of physical evidence. If the Board decides to grant the motion and reopen the testimony period, Independence will have a chance to object to the foundation of the evidence at that time. Independence will also get a chance to cross-examine the level and extent of Mr. Mozdzierz's knowledge regarding Mr. Janik's jacket. Further still, Independence will get a chance to examine the actual jacket. Thus, the high probative value of this evidence coupled with the low risk of prejudice to Independence supports a finding that this factor favors District.

With respect to Mr. Becht's testimony, it is highly probative of District's fraud claim. Mr. Becht worked at District from 2000 to 2008 while Dennis and Daniel Radwanski were still working there (Declaration of Keith Becht ¶ 3). In 2010, Mr. Becht began working for Independence (Declaration of Keith Becht ¶ 8). In the spring of 2011, Daniel Radwanski asked for the Mr. Becht's uniform shirts from District (Declaration of Keith Becht ¶ 16). This testimony shows that Daniel Radwanski knew that another District employee had a shirt with a "DR" logo. It also establishes that at least one other employee had a shirt with the "DR" logo while Dennis and Daniel Radwanski were still working at District. Finally, the testimony speaks to Daniel Radwanski's knowledge at the time the trademark application was filed. By specifically asking for Mr. Becht's uniform shirts, Daniel Radwanski displayed his knowledge of the widespread use of the "DR" logo—

usage rising to a higher level than the limited commemorative usage that Independence claims.

In light of the foregoing, the first factor favors District because the evidence is highly probative and not cumulative or redundant in nature.

B. DESPITE THE LATE STAGE OF THE PROCEEDING, A MERITORIOUS ADJUDICATION OF THIS CASE DICTATES CONSIDERATION OF DISTRICT'S NEWLY DISCOVERED EVIDENCE

District understands that the proceeding is at a very late stage with only District's Reply Brief due before the case could have been decided. However, the Board has a policy of deciding cases on the merits. See TBMP § 312.02 (discussing setting aside default judgments); see also Hewlett-Packard Co. v. Olympus Corp., 931 F.2d, 1551, 1554 (Fed. Cir. 1991) (mentioning Board's policy of deciding cases on the merits). District's evidence speaks directly to the merits of the case, and a meritorious decision of the case requires consideration of this evidence. District has no reasonable motive for delaying the introduction of this evidence. Independence argues that District's motive was to force Independence into tipping its hand by waiting to reveal this evidence until after Independence's Response Brief was filed. Such a motive is ridiculous. Aside from the incoherent claim that "DR" is descriptive (on which this evidence has no bearing), Independence's stance regarding the use of the "DR" initials has been clear since they answered the cancellation petition. Further, District increases its own costs and time until final adjudication by attempting to introduce this evidence, but District nonetheless seeks to introduce this evidence to ensure a complete factual record for adjudication of this dispute. In short, District would have had nothing to gain and everything to lose by choosing to wait until this stage of proceeding to introduce this highly relevant information. Common sense compels the conclusion that District would not purposely pursue such a risky strategy, especially considering that introduction of this highly probative evidence relies almost solely on the unpredictable balancing of equitable considerations.

Additionally, the timing of this motion was simply unavoidable. Regarding Mr. Janik's jacket, Mr. Janik passed away on January 22, 2015. It is not unreasonable that an inventory of his possessions would have taken slightly over a month to complete. As soon as the evidence was discovered, counsel for District began drafting the motion to introduce it. With respect to Mr. Becht's testimony, Mr. Becht only began working for District again in December, 2014. He was sued under non-compete and non-disclosure clauses contained in his Independence employment contract shortly thereafter. Sometime after returning to work in late January, 2015, Mr. Becht discovered that the present trademark matter was still ongoing. Promptly upon learning this information, he discussed his knowledge of the "DR" shirts with Ms. Radwanski and Mr. Rubin. Again, only

a short time passed to allow for investigation of the facts and drafting of the motion before the motion was filed. Further pertaining to Mr. Becht, Independence failed to fulfill its disclosure obligations under F.R.C.P. 26(a), and thus, District could not avoid the filing of this motion at such a late stage of the proceeding.

A compelling reason why the Board should allow District to reopen the testimony period despite the late stage of the proceeding is that Independence never actually denies Mr. Becht's allegations or questions the authenticity of Mr. Janik's jacket. Instead, Independence disputes Mr. Becht's rationale as to why Daniel Radwanski took Mr. Becht's uniforms, but Independence does not deny that the uniforms were in their possession (See TTABVue Doc. No. 36, p.14). Similarly, with Mr. Janik's jacket, Independence tries to reframe the issue as District's attempt to backdoor the testimony of Mr. Mozdzierz about the widespread usage of the "DR" logo among District employees. Independence does dispute whether Mr. Mozdzierz can provide the proper foundation to introduce the evidence. However, given Independence's clear position that only Dennis and Daniel wore uniforms with the "DR" logo, why has it not challenged any of the factual allegations underpinning the evidence? Rather, it is telling that Independence has reverted to procedural arguments and has been noticeably silent on the actual merits of the evidence.

The compelling nature of the evidence, the interest in a meritorious resolution of this dispute, and the unavoidable timing of the evidences' discovery outweigh Independence's interest in a speedy and inexpensive adjudication of this matter. Thus, the Board should find that this factor also favors District.

C. INDEPENDENCE WILL NOT SUFFER ANY UNDUE PREJUDICE

Regarding the final consideration under TBMP §509.01(b)(2), Independence will not suffer any relevant prejudice because of the reopening of discovery. Independence complains that it will suffer prejudice as a result of the delay in reaching an adjudication. Independence also complains of the potential for increased costs and that District was exposed to its arguments in its Response Brief. However, these complaints are not considered prejudicial. Instead, these complaints are specifically identified in the TBMP as not constituting prejudice, and therefore, the Board should find that the grant of this motion will not prejudice Independence.

Additionally, with respect to the portion of the motion pertaining to Mr. Becht, any prejudice suffered by Independence would be the direct result of their own omissions, namely its failure to disclose Mr. Becht as having discoverable information during initial and pretrial disclosures.

Frequently, Independence states that District failed to fulfill its disclosure duties under F.R.C.P. 26(a). Apparently, Independence concluded that the rule is only for plaintiffs because Independence offers no explanation as to why it failed to disclose Mr. Becht as having discoverable information. Mr. Becht worked at

District for many years with Dennis and Daniel Radwanski. Independence employed Mr. Becht in 2010, and Daniel Radwanski took possession of Mr. Becht's District uniform shirts in 2011. Independence did not disclose Mr. Becht as an employee even though he had been working for Independence for almost two years by the time that the cancellation petition was filed. Because Dennis and Daniel Radwanski knew Mr. Becht retained his District uniforms after departing District and because they took possession of those uniforms, Independence was under an obligation to disclose Mr. Becht as a person likely having discoverable information under F.R.C.P. 26(a). Nevertheless, Independence tries to frame the lack of disclosure as a failure on District's part even though Independence knew the entire subject matter of Mr. Becht's testimony before District did.

Despite Independence's indignant railing against District's disclosures, Independence fails to provide an excuse as to why it failed to disclose Mr. Becht as potentially having discoverable information. Surely, if Independence was interested in a fair and efficient adjudication of this matter, it would have disclosed him. Instead, Independence sued Mr. Becht when he finally came back into contact with District. Nevertheless, Independence cannot fathom how a separate lawsuit designed to prevent contact between District and Mr. Becht might appear to be related to the present cancellation proceeding (See TTABVue Doc. No. 36, p. 14).

Counsel for Independence also bemoans the fact that District did not contact him first about the confiscated shirts. However, Independence's counsel never explains how such a course of action would have timely resolved this issue. District had no guarantee that Independence would have performed an adequate investigation before the deadline for District's Reply Brief. District performed its due diligence in investigating the claim by Mr. Becht before filing the motion, and District was under no obligation to inform Independence of Mr. Becht's contention prior to filing the motion, especially considering that Dennis and Daniel Radwanski would already have been aware of the subject matter of Mr. Becht's testimony.

Because Independence will not suffer any prejudice, the Board should find that this factor also favors District. Furthermore, with respect to Mr. Becht's testimony, any potential for prejudice will be the result of Independence's inadequate disclosures.

IN CONCLUSION, District's motion satisfies the standard for reopening the discovery period to introduce new evidence. Therefore, the Board should grant District's motion.

Respectfully submitted,

April 14, 2015
Date

/Szymon M. Gurda/
Szymon M. Gurda
CHERSKOV FLAYNIK & GURDA, LLC
123 W. Madison St., Suite 400, Chicago, Illinois 60602
Counsel for Petitioner, DISTRICT ENTERPRISES INC.

CERTIFICATE OF SERVICE

A true and correct copy of PETITIONER'S REPLY TO REGISTRANT'S RESPONSE TO MOTION TO INTRODUCE NEW EVIDENCE has been served by U.S. mail on this 14th day of April 2015 to:

Kenneth J. Vanko, Esq.
Clingen Callow & McLean, LLC
2300 Cabot Drive, Suite 500
Lisle, Illinois 60532

and via email to vanko@ccmlawyer.com, ryan@ccmlawyer.com, and eric@ericksonlawgroup.com.

/Szymon M. Gurda/
Szymon M. Gurda
CHERSKOV FLAYNIK & GURDA, LLC
123 W. Madison St.
Suite 400
Chicago, Illinois 60602
Counsel for Petitioner
DISTRICT ENTERPRISES INC.