

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: June 21, 2017

Opposition No. 91234467

Blue Ivy

v.

BGK Trademark Holdings, LLC

**Robert H. Coggins,
Administrative Trademark Judge:**

On June 21, 2017, at 2:00 p.m. EDT, the Board exercised its discretion to conduct a telephone conference to resolve Opposer's motion (filed May 17, 2017) for early discovery. *See* 4 TTABVUE (motion) and 6 TTABVUE (brief in opposition). Participating in the conference were Ryan Hatch, counsel for Opposer; Laura Washington, counsel for Applicant; and the above-signed Board judge. The Board appreciates the professionalism of the parties during the conference.

Inasmuch as the conference was held prior to the time in which Opposer might otherwise file a written reply brief in support of the motion, Opposer was given (and took) the opportunity during the conference to provide an oral reply. The Board presumes familiarity with the issues, and for the sake of efficiency this order does not summarize the parties' arguments or statements raised in the filings or during the conference. Instead, this order summarizes the decisions made by the Board.

Motion for Early Discovery

The motion for early discovery was **granted** to the extent that discovery was immediately opened for the limited purpose of seeking discovery of Jonathan Schwartz, the signatory of subject application Serial No. 86883293. This early discovery of Mr. Schwarz is limited to two of the three grounds for opposition, namely, that Applicant did not have a bona fide intent to use the mark in connection with the identified goods and services as of the filing date of the application (i.e., first ground for opposition), and that Applicant committed fraud during the prosecution of the subject application based on Applicant's alleged lack of bona fide intent to use the mark in commerce (i.e., third ground for opposition).

Deposition of a non-party witness residing in the United States may be taken by subpoena under Fed. R. Civ. P. 45, or on notice alone if the non-party witness agrees to appear voluntarily. *See* TBMP §§ 404.02 and 404.03(a)(2) (June 2017). *See also* TBMP § 406.01 (Requests for production of documents and things may not be served on a non-party; but, if a discovery deposition deponent is a non-party witness residing in the United States, production of designated documents by the witness at the deposition may be obtained by means of a subpoena duces tecum.). The responsibility rests wholly with the party taking discovery to secure the attendance of a proposed non-party deponent. Trademark Rule 2.120(b). 35 U.S.C. § 24 allows Opposer to compel nonparties like Mr. Schwartz to appear and testify at a deposition. *See El Encanto, Inc. v. Hatch Chile Co.*, 825 F.3d 1161, 119 USPQ2d 1139, 1141 (10th Cir. 2016). *See also* Fed. R. Civ. P. 30(a)(1) and 45.

Schedule

Discovery is **open** for the sole purpose of seeking discovery of Mr. Schwartz. All other dates **remain** as set.