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

Proceeding	91216585
Party	Defendant Thatch, LLC
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Date	01/15/2016
Attachments	Registrant-Applicant's Response to Motion to Quash Depo Redacted 1-15-16.pdf(658262 bytes) Declaration of DRS ISO Response Motion to Quash Depo Redacted 1-15-16.pdf(177888 bytes) Declaration of Andy Spade ISO Response Motion to Quash Depo Redacted 1-15-16.pdf(143349 bytes)

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

In the matter of Application Serial No. 85/932,097

Mark: PATIO BY THE SPADES

Kate Spade LLC,	Opposer,
	v.
Thatch, LLC	Applicant.

Opposition No.: 91216585

In the matter of Registration No. 3,647,470 and Serial No. 86/179,137

Marks: THE SPADES (DESIGN) and THE SPADES

Kate Spade LLC,	Petitioner/Opposer,
	v.
The Spades Trademark Company, LLC	Registrant/Applicant.

**Cancellation No.: 92059594 and
Opposition No.: 91217168**

**Hearing Date: January 15, 2016
Time: 1:00 EST**

**REGISTRANT/APPLICANTS' RESPONSE
TO MOTION TO QUASH DEPOSITION NOTICES**

This is a consolidated action by Petitioner/Opposer Kate Spade LLC (“KSLLC”), the owner of numerous registrations in the name “Kate Spade,” against two companies – The Spades Trademark Company, LLC and Thatch, LLC (together referred to as the “Applicants”) – that are controlled by the *founders and namesakes* of KSLLC, Ms. Kate Spade and Mr. Andy Spade, seeking to prevent Applicants, and ostensibly Kate and Andy Spade, from registering and using

marks containing the words “The Spades.” Applicants hereby respond to KSLLC’s Motion to Quash Notices of Deposition of Craig Leavitt and Deborah Lloyd, each of whom is an officer and director of KSLLC. KSLLC’s motion is a feeble and transparent attempt to delay these proceedings and prevent Applicants from conducting discovery to which they are absolutely entitled. KSLLC’s argument that these deponents do not have personal or relevant knowledge of the facts of these cases - which involve its well-known founders and namesake considering to launch a new business that may be competitive with KSLLC and using a name which KSLLC claims is confusingly similar to its own name - is both ludicrous and contrary to the evidence produced so far in the discovery in this case. These proposed deponents are well aware of the facts of this case and their testimony will lead to discoverable and admissible evidence. In addition, the deposition notices were timely served with sufficient notice so that the depositions would be concluded before the close of Applicants’ discovery. KSLLC’s motion should be denied in its entirety.

Applicants request that the Board extend the deadline for Applicants’ discovery so that the noticed depositions may be scheduled and taken, and extend all subsequent dates accordingly to allow the parties to conclude discovery and prepare for trial.

BACKGROUND AND DISCUSSION

The Board’s Order dated November 25, 2015 provided that these consolidated proceedings were to be suspended through December 21, 2015 and that discovery was to close for the Applicants on January 5, 2016. Accordingly, on December 21, 2015, Applicants timely served on KSLLC by overnight delivery with a courtesy copy to KSLLC’s counsel by email, a Notice of Deposition for each of Craig Leavitt, the Chief Executive Officer of KSLLC, and Deborah Lloyd, the Chief Creative Officer of KSLLC, for January 5, 2016 at 9:00am and

1:00pm respectively. The depositions were set on the same day because it is expected that they will each take about three hours. (See Declaration of Douglas R. Schwartz in Support of Registrant/Applicants' Response to Motion to Quash Deposition Notice (the "Schwartz Declaration"), Paragraph 3.)

Andy Spade was questioned by KSLLC's counsel and testified in his deposition in this case as to several conversations he had with Craig Leavitt regarding REDACTED. (See Schwartz Declaration, Paragraph 5 and Exhibit A, containing excerpts from Andy Spade's deposition; and the Declaration of Andrew Spade in Support of Registrant/Applicants' Response to Motion to Quash Deposition Notice (the "Spade Declaration"), Paragraph 4.) In one of those conversations, Mr. Leavitt told Andy Spade REDACTED. (Id.) Andy Spade and Craig Leavitt also exchanged emails on at least three occasions regarding these very same topics. (See Schwartz Declaration, Paragraph 6 and Exhibit B; and Spade Declaration, Paragraph 4 and Exhibit A). On July 2, 2014, Mr. Leavitt personally informed Andy Spade by email that REDACTED. On December 18, 2014, Mr. Leavitt emailed to Andy Spade, among other things, "REDACTED." Thus, it is abundantly clear that Mr. Leavitt has been personally involved in this matter on behalf of KSLLC from its very inception and has actual, unique and superior knowledge of the facts in this case, and that his deposition will lead to and result in admissible evidence.

Deborah Lloyd is the Chief Creative Director at KSLLC, and works closely with Craig Leavitt on matters involving brands and intellectual property. In this capacity, Ms. Lloyd oversees all creative aspects of the Kate Spade brands and is in charge of all new brands and brand extensions. Ms. Lloyd is involved in every decision at KSLLC regarding product design, product naming and branding, product plans, brand strategies, new brands, expansion of brands

and products, marketing and advertising, and consumer strategies. (See, Spade Declaration, Paragraph 3). Ms. Lloyd is thus the best person at KSLLC to depose regarding KSLLC's plans for other brands that are potentially confusing with the Applicants' marks, proposed uses by KSLLC of marks that may include "the Spades" or variations thereof, product plans, expansion of product plans, alleged harm to KSLLC's marks related to Applicants' marks, marketing, advertising and sales of KSLLC's goods, and branding and consumer strategies. It is highly likely in her capacity as an officer and director with specific duties involving branding issues that she has had relevant and non-privileged conversations with Craig Leavitt and others regarding these matters and has personal and relevant knowledge as to the facts. Applicants certainly have good cause to take the deposition of Deborah Lloyd and probe further as these matters to which she has personal and relevant knowledge and which will lead to and result in admissible evidence.

ARGUMENT

1. **The Proposed Depositions are Proper Because the Deponents have Actual Knowledge of Relevant Facts and Matters.**

Federal Rules of Civil Procedure, Rule 30(a)(1) and TBMP 404.02 provide that a party may depose "any person, including a party." Federal Rules of Civil Procedure, Rule 26(b) provides that litigants may obtain discovery regarding "any nonprivileged matter that is relevant to any party, claim or defense," with the test for relevancy being any matter that is "reasonably calculated to lead to the discovery of admissible evidence." TBMP 406.06(a) provides that "If the party is a corporation, organization, partnership association or other juristic person, Fed. R. Civ. P. 30(b)(1) allows an adverse party to notice the deposition of a particular officer, director, or managing agent of a party organization," and that the "deposition of a named officer, director, or managing agent of a party organization in his or her organizational capacity, just like a Fed. R.

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