

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: September 20, 2006

Opposition No. 91163791

BIG O TIRES, INC.

v.

WHEEL SPECIALTIES, LTD.

Thomas W. Wellington
Interlocutory Attorney,
Trademark Trial and Appeal Board:

This case now comes up on (1) opposer's motion (filed January 30, 2006) to compel applicant to serve amended and/or supplemental responses to opposer's interrogatories, requests for production of documents, and to test the sufficiency of applicant's responses to requests for admission;¹ (2) applicant's motion (filed February 21, 2006) to compel opposer to serve amended and/or supplemental responses to applicant's interrogatories and requests for production of documents;² and the parties' stipulate protective agreement (dated March 9, 2006) filed with the Board.

¹ Opposer also moves to reset the discovery deadline so that the parties would have an additional sixty (60) day discovery period. In its reply brief, opposer requests that said extension only be applicable to opposer.

Both Trademark Rules 2.120(e) and 2.120(h) provide, respectively, that a motion to compel and motion to determine the sufficiency of response to a request for admission must be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion, and has been unable to reach agreement.

In support of their respective motions, the parties state that they have made good faith efforts to resolve their discovery disputes prior to filing the motions to compel. However, based on the record before us, it appears that each party only made a good faith effort to obtain what it alleges are shortcomings in the other party's discovery responses. Accordingly, we find that a true good faith effort has not been made by either party to resolve all outstanding discovery issues, as contemplated by Trademark Rules 2.120(e) and 2.120(h). The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those that do not. TBMP § 408.01 (2d ed. rev. 2004) [duty to cooperate].

Accordingly, the parties' respective motions are denied without prejudice. Instead, the parties are hereby ordered to meet and confer to discuss all of their respective

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outstanding discovery issues. The parties have ample time (see rescheduled discovery deadline and trial dates below) to make serious attempts to resolve their discovery disputes. Should the parties fail to resolve their differences and file a renewed or amended motion to compel or motion to determine the sufficiency of answers, the moving party must include a statement with said motion that details the topics discussed during the 'meet and confer' session.

The stipulated protective agreement filed on March 14, 2006 is noted. The parties are referred, as appropriate, to TBMP § 416 (2d ed. rev. 2004) regarding signature of protective order, filing confidential materials with board, and handling of confidential materials by board. The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

Opposer's motion to extend the discovery period is granted to the extent that the discovery deadline (and trial dates) are rescheduled below. Opposer's request, contained

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in its reply brief, that the discovery period be applicable only to opposer is denied.

Accordingly, proceedings herein are resumed and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE: **12/20/06**

Thirty (30) day testimony period for party in position of plaintiff to close: **3/20/07**

Thirty (30) day testimony period for party in position of defendant to close: **5/19/07**

Fifteen (15) day rebuttal testimony period to close: **7/3/07**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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