

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

Mailed: April 9, 2008

Opposition No. 91163791

Big O Tires, Inc.

v.

Wheel Specialties, Ltd.

**M. Catherine Faint,
Interlocutory Attorney:**

This case now comes up on opposer's motion to test the sufficiency of applicant's responses to opposer's admission requests, filed February 12, 2008.¹ Applicant has filed a response in opposition thereto, and opposer filed a reply brief.

Opposer argues that applicant's responses to its admission Requests Nos. 1, 3-5, 12-14 and 21-23 are "self-contradictory" in light of applicant's admissions to opposer's Requests Nos. 6-8 wherein applicant admitted having actual knowledge of opposer and opposer's stores, and having visited opposer's stores.

Applicant has clearly denied the subject Requests. Applicant argues that its admissions to having actual

¹ Opposer also moved for proceedings to be suspended. It is the normal practice for the Board to suspend for consideration of

knowledge of opposer and opposer's stores prior to selection of applicant's mark, and having visited opposer's stores, does not mean that applicant also had actual knowledge of opposer's marks.

When a party's response to a request for admission is clear, the propounding party may not challenge the response on the ground that the evidence does not support it. See 8A Charles A. Wright, Arthur R. Miller, and Richard L. Marcus, *Federal Practice and Procedure Civ. 2d* §2263 (WESTLAW 2008 update). Applicant's responses to opposer's requests for admissions are sufficient on their face and appear to comply with the requirements of Fed. R. Civ. P. 36(a) to specifically admit or deny a request for admission.

Accordingly, opposer's motion is denied.

Opposer also moved for a 60-day extension of the discovery period to follow any supplementation or amendment the Board may order. As the motion to test the sufficiency of responses is denied, the motion for an extension is also denied. The discovery period was closed prior to the filing of opposer's motion. The Board further notes that there have been numerous requests for extension of time filed since the Board's order of September 20, 2006. Accordingly, no further requests for extension of time may be filed, and

motions to test the sufficiency of responses, and a suspension order issued on March 12, 2008. See Trademark Rule 2.120(h)(2).

this case will be set for trial in accordance with the schedule set out below.

DISCOVERY PERIOD TO CLOSE:

Closed

30-day testimony period for party in position of plaintiff to close:

June 8, 2008

30-day testimony period for party in position of defendant to close:

August 7, 2008

15-day rebuttal testimony period for plaintiff to close:

September 21, 2008

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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
