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

DUNN

Mailed: December 12, 2006

Opposition No. 91164764

Brink's Network, Incorporated

v.

The Brinkmann Corporation

Elizabeth A. Dunn, Attorney:

This case comes before the Board on opposer's motion to compel, filed December 8, 2005. The delay in acting upon this matter is regretted.

On December 8, 2005, opposer filed a motion to compel applicant to respond to opposer's document request, to designate dates that applicant would produce a witness in response to opposer's notice of deposition, and to respond to opposer's draft protective order.[1] In response applicant alleges that non-privileged documents have been produced in response to opposer's document request, that applicant has designated a witness for deposition, and that applicant has responded to opposer's draft protective order. On February

[1] On October 18, 2005, the parties stipulated to an extension of discovery until December 21, 2005.

7, 2006, opposer notified the Board that the parties had resolved their dispute to the extent that opposer no longer sought supplemental responses to Document Request No. 4 or a response to its proposed protective order. On July 27, 2006, the parties filed a signed copy of the stipulated protective order.

As a preliminary matter the Board notes that opposer has complied with the special requirements for a motion to compel by providing copies of both the discovery requests and responses, and by including documentation demonstrating opposer's good faith effort to resolve the discovery issues without Board intervention. *See* Trademark Rule 2.120(e).

A. OPPOSER'S DOCUMENT REQUEST

In support of its motion to compel production of documents without objection, opposer contends that on September 6, 2005, opposer served applicant with its document request; that on October 11, 2005, applicant served responses which stated that in each instance applicant would produce responsive documents but that confidential documents would not be produced until the Board approved a protective agreement; that on October 19, opposer requested by email production of the non-privileged documents; that on October 27, 2005, opposer sent another email request for the promised production of documents, noting that opposer had received no response to its first request; that on November

1, 2006, applicant informed opposer that applicant was "following up with our client on document production"; that on November 9, 2005, opposer sent a third email request for production of documents; that as of December 8, 2005, the filing date of the motion to compel, applicant had failed to produce any responsive documents; and that the motion to compel responses without objection should be granted.

In opposition to the motion to compel production of documents without objection applicant contends that the motion should be denied because applicant served non-confidential documents responsive to the September 6, 2006 request on December 28, 2005.

We note that the Board's rules clearly provide for service of discovery responses within thirty days of service of the discovery request, and that applicant does not dispute that responsive documents were not served within that timeframe. Moreover, applicant does not argue that any extension of time in which to respond to the document requests was necessary or requested. In fact, applicant does not dispute that opposer's three written communications requesting the promised documents were met with a single vague statement that counsel would "follow up" with the client. Finally, it is clear that applicant did not make any apparent effort to satisfy its discovery obligations until opposer had not only been put to the time and expense

of multiple requests but the time and expense of filing the motion to compel.

In these circumstances it is clear that applicant has not complied with its discovery obligations, and opposer's motion to compel production of documents without objection is granted.

In view of opposer's supplement to the motion, applicant does not have to provide responses to Document Request No. 4 without objection. Applicant is allowed until twenty days from the mailing date of this order to provide responses to opposer's discovery requests, except Document Request No. 4, without objection, failing which the Board will entertain a motion for discovery sanctions.

PRODUCE WITNESS FOR FED. R. CIV. P. 30(B)(6) DEPOSITION

In support of its motion to compel applicant to provide notice of at least two proposed dates for deposition, opposer contends that on September 19, 2005, opposer served applicant with a notice of taking a Fed. R. Civ. P. 30(b)(6) discovery deposition on October 19, 2005; that on October 7, 2005, applicant informed opposer that its Executive Vice President was not available on that date; that on October 12, 2005, applicant served opposer with a response which objected to the time and proposed scope of the deposition; that on October 19, opposer requested by email production of

a witness for a deposition rescheduled for November 21, 2005; that on October 27, 2005, opposer sent another email request regarding the rescheduled deposition, noting that opposer had received no response to its first request; that on November 1, 2006, applicant informed opposer that applicant was "following up with our client" on the proposed new deposition date; that on November 9, 2005, opposer sent a third email request regarding the rescheduled deposition; that as of December 8, 2005, the filing date of the motion to compel, applicant had failed to agree to a deposition date; and that the motion to compel applicant to provide notice of at least two proposed dates for deposition should be granted.

In opposition to the motion to compel, applicant contends that the motion should be denied because on December 28, 2005 applicant notified opposer that its designated Fed. R. Civ. P. 30(b)(6) witness is generally available in January 2006.

As with the production of documents, we find that applicant's designation of the witness and available date of deposition is too little, too late. Opposer should not have been put to the time and expense of multiple requests and filing a motion to compel to obtain the requested discovery. In these circumstances, opposer's motion to compel applicant to provide notice of at least two proposed dates for

deposition is granted. Specifically, within the two weeks following applicant's service of documents as ordered above applicant is to provide opposer with two proposed dates for deposition of the designated Fed. R. Civ. P. 30(b)(6) witness, failing which the Board will entertain a motion for sanctions.

Discovery and trial dates are reset below.

DISCOVERY PERIOD TO CLOSE:	**February 15, 2007**
Thirty-day testimony period for party in position of plaintiff to close:	**May 16, 2007**
Thirty-day testimony period for party in position of defendant to close:	**July 15, 2007**
Fifteen-day rebuttal testimony period to close:	**August 29, 2007**

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