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

Baxley

Mailed: June 8, 2010

Opposition No. **91166487**

Hasbro, Inc.

v.

Creative Action, LLC

Andrew P. Baxley, Interlocutory Attorney:

On June 7, 2010, opposer filed a motion to have the requests for admission declared moot or, in the alternative, to accept the responses thereto that opposer served on June 1, 2010 and filed as an exhibit to that motion. In the interest of clarifying the status of the requests for admission prior to any further briefing on the motion for summary judgment on the counterclaim that applicant filed on May 27, 2010, the Board determined that opposer's motion should be resolved by telephone conference. See Trademark Rule 2.120(i)(1); TBMP Section 502.06(a) (2d ed. rev. 2004). On June 8, 2010, such conference was held between opposer's attorney Kim J. Landsman, applicant's attorney Wayne D. Porter, Jr., and Board attorney Andrew P. Baxley.

Applicant served the requests for admission at issue on December 3, 2009. After opposer filed a motion for leave to file an amended notice of opposition on December 23, 2009,

the Board issued an order suspending proceedings herein on January 4, 2009, thirty-one days after applicant served its requests for admission. The Board resumed proceedings in a May 13, 2009 order, wherein, among other things, it granted opposer's motion for leave to file an amended notice of opposition.

Applicant, prior to filing an answer to the amended notice of opposition wherein it restates its counterclaim, then filed the aforementioned motion for summary judgment on the counterclaim that was included in its answer to the original notice of opposition. A cursory review of the motion for summary judgment indicates that applicant relies in part upon admissions allegedly made by opposer as a result of opposer's alleged failure to timely respond to applicant's requests for admission by May 17, 2010, four days after the resumption of proceedings. See Trademark Rules 2.119(c) and 2.120(a). Opposer then served its responses to those requests for admission on June 1, 2010.

When resuming proceedings following a suspension period that ends prior to the commencement of trial, the Board generally does not limit a party's time to serve responses to outstanding discovery requests to the time to serve that was remaining at the time proceedings were suspended. Rather, when proceedings are resumed following such a suspension, the Board generally allows parties thirty days

from the date of resumption to serve such discovery responses. See, e.g., Board orders in this case dated August 4, 2006, March 5, 2007, September 7, 2007, and October 23, 2008. Although the Board's May 13, 2010 order did not expressly state that the parties were allowed thirty days to serve responses to outstanding discovery requests, the Board finds that applicant's position that opposer's responses to its requests for admission were due by May 17, 2010, four days after resumption of proceedings, is unreasonable.[1] In keeping with the Board's general practice and its practice throughout this proceeding, the Board would have treated any discovery responses served within thirty days of the resumption of proceedings, i.e., on or prior to June 12, 2010, as timely served.[2]

In view thereof, the motion to accept opposer's responses to the requests for admission is granted.[3]

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[1] The Board notes that the filing of the motion for summary judgment could have been treated as tolling general discovery obligations. See *Leeds Technologies Limited v. Topaz Communications Ltd.,* 65 USPQ2d 1303 (TTAB 2002); TBMP Section 510.03(a). If either party had any question as to the due date for discovery responses following the issuance of the May 13, 2010 order, the Board could have resolved any such question via telephone conference prior to the filing of applicant's motion for summary judgment.

[2] Moreover, the Board tends to be somewhat liberal in granting motions to amend or withdraw admissions. See Fed. R. Civ. P. 26(b); TBMP Section 525.

[3] Opposer's motion to have applicant's requests for admission declared moot is itself moot and will receive no consideration.

Opposer's responses to applicant's requests for admission are accepted as timely served.

To the extent that applicant relied upon its requests for admissions deemed admitted in support of its motion for summary judgment, any further briefing in connection with applicant's motion for summary judgment should be based on applicant's requests for admission and opposer's responses thereto. Opposer is allowed until July 1, 2010, i.e., thirty-five days from the May 27, 2010 service date of the motion for summary judgment, to serve a brief in response to the motion for summary judgment. Applicant's reply brief is due in accordance with Trademark Rules 2.119(c) and 2.127((e)(1).

Proceedings herein otherwise remain suspended in accordance with the June 3, 2010 order.