

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

Baxley

Mailed: June 29, 2007

Opposition No. 91169227

Mi Casa Real Estate Co.

v.

Gelt Industries, Inc. and P &  
R Investment Group, Inc.

**Andrew P. Baxley, Interlocutory Attorney:**

On June 28, 2007, opposer filed a motion to compel discovery and a motion to test the sufficiency of responses to requests for admission.

Inasmuch as applicants have not responded to opposers requests for admission, the motion to test the sufficiency of applicants' responses to requests for admission is in appropriate and therefore denied. Rather, because applicants failed to timely respond to opposer's requests for admissions, those requests stand admitted by operation of law. See Fed. R. Civ. P. 36(a); TBMP Section 407.03 (2d ed. rev. 2004).

The Board turns next to the motion to compel. The record indicates that opposer attempted to obtain responses to its first set of interrogatories and document requests from applicant Gelt Industries, Inc. ("Gelt"), which

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assigned the involved application to P & R Investment Group, Inc. ("P & R") by way of a document that was executed on April 14, 2007 and is recorded with the USPTO's Assignment Branch at Reel 3522/Frame 0886. Although Gelt remains a party to this proceeding, the record does not indicate that opposer attempted to obtain discovery responses from P & R. As assignee and current record owner of the involved application, P & R stands in the shoes of Gelt.<sup>1</sup> See *Gillette Co. v. Kempel*, 254 F.2d 402, 117 USPQ 356 (CCPA 1958). Because opposer did not attempt to obtain discovery responses from P & R, the Board finds that opposer failed to make a good faith effort to resolve the parties' discovery dispute, as required by Trademark Rule 2.120(e)(1), prior to seeking Board intervention.

In view thereof, opposer's motion to compel is denied. Discovery and testimony periods remain as last reset in the Board's April 18, 2007 order.

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<sup>1</sup> P & R is represented by Gelt's former attorney. Inasmuch as Gelt did not appoint a new attorney following the withdrawal of its former attorney, the Board presumes that Gelt is representing itself herein.