

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

Baxley

Mailed: September 4, 2008

Opposition No. **91176744**

DC Comics and Marvel
Characters, Inc.

v.

Michael Craig Silver

Andrew P. Baxley, Interlocutory Attorney:

On July 3, 2008, opposers filed a motion to compel discovery. Although no response to that motion is of record, the Board, because the motion tests the sufficiency of individual discovery responses, elects to decide opposers' motion on the merits.¹ See Trademark Rule 2.127(a).

The Board notes initially that opposers made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention. See Trademark Rule 2.120(e)(1). Applicant's responses to opposers' document request nos. 1-14, 16-30, and 35 consist of unclear, but identical responses which appear to indicate that applicant is withholding under a claim of "[w]ork product" privilege

¹ The "motion for default judgment" that opposers filed on August 29, 2008 is actually one in which opposers ask the Board to grant opposers' motion to compel as "uncontested." Such motion is inappropriate and will receive no consideration.

handwritten notes to himself which were prepared on February 24, 2006 in connection with his involved trademark application and which are not responsive to any document request. Inasmuch as applicant appears to contend that the notes at issue are not responsive to any of the document requests at issue, these responses are unacceptable.² See Fed. R. Civ. P. 34(b); TBMP Section 406.04(b) (2d ed. rev. 2004). Applicant's responses to opposer's interrogatory nos. 1-27 also consist of unclear, but identical responses which appear to indicate that applicant is withholding all responsive information under a claim of "[w]ork product" privilege.³ It is clear from these responses that applicant has failed to make a good faith effort to satisfy opposers' discovery needs. See TBMP Section 408.01 (2d ed. rev. 2004).

In view thereof, the motion to compel is granted. Applicant is directed to serve amended responses to interrogatory nos. 1-27 and document request nos. 1-14, 16-30, and 35 within thirty days of the mailing date set

² Applicant should respond by indicating whether responsive documents exist and, if so, that inspection and related activities will be permitted, unless the responding party objects to the request, in which case any objection shall be specified. See Fed. R. Civ. P. 34(b); TBMP Section 406.04(b).

³ Applicant should respond by providing the information sought in the interrogatories that it believes to be proper, and stating his specific objections to those interrogatories which he believes to be improper. See TBMP Section 526 (2d ed. rev. 2004).

forth in this order. See TBMP Section 414 regarding the discoverability of various types of information in Board *inter partes* proceedings. Applicant is allowed until thirty days from the mailing date set forth in this order to select, designate and identify the items and documents, or categories of items and documents, to be produced in response to document request nos. 1-14, 16-30, and 35, and to notify opposers that the selection, designation and identification of such items and documents has been completed. Opposers are allowed until thirty days from receipt of notification from petitioner that the items or documents have been selected, designated and identified to inspect and copy the produced materials, as provided for in Fed. R. Civ. P. 34(b) and Trademark Rule 2.120(d)(2), unless the parties otherwise agree.

Proceedings herein are resumed. The discovery period remains closed. Testimony periods are reset as follows.

Plaintiff's 30-day testimony period to close: **December 2, 2008**

Defendant's 30-day testimony period to close: **January 31, 2009**

Plaintiff's 15-day rebuttal testimony period to close: **March 17, 2009**

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.

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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.