

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

Mailed: December 31, 2008

Opposition No. 91180471

Marc Vianello

v.

Sandra L. Nudelman

George C. Pologeorgis, Interlocutory Attorney:

This case now comes up on opposer's motion, filed October 9, 2008 and revised on October 21, 2008, to compel applicant to answer opposer's second request for production. Applicant has failed to file a brief in response to opposer's motion. Accordingly, opposer's motion to compel discovery is hereby granted as conceded. See Trademark Rule 2.127(a).

Applicant is allowed until thirty days of the mailing date of this order to respond to opposer's second set of document requests. Moreover, these responses must be made in full and without objection because applicant failed either to timely respond or to object to opposer's discovery requests. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000). Should applicant fail to provide the ordered responses, then opposer's remedy will lie in a motion for

entry of sanctions, in the form of entry of judgment sustaining the opposition. See Trademark Rule 2.120(g)(1).

Proceedings are hereby resumed. The discovery period is reset as indicated below for the limited purpose of allowing opposer to take follow-up discovery, if necessary. Applicant is precluded from propounding any discovery at this juncture. Trial dates are also reset as follows:

DISCOVERY PERIOD TO CLOSE: (limited to opposer's follow-up discovery, if necessary)	3/1/2009
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	5/30/2009
Testimony period for party in position of defendant to close:(opening thirty days prior thereto)	7/29/2009
Rebuttal testimony period to close: (opening fifteen days prior thereto)	9/12/2009

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.

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.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>