

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

Mailed: March 31, 2010

Opposition No. 91181975

Joanna Villeneuve, and
Melanie Villeneuve

v.

Goldstar Holdings Corp

**Robert H. Coggins,
Interlocutory Attorney:**

This case now comes up on applicant's second motion (filed August 20, 2009) to dismiss the notice of opposition under Fed. R. Civ. P. 12(b)(6), and opposers' cross-motion (filed October 9, 2009) for sanctions.

Procedural History

By way of background, this proceeding was instituted on January 18, 2008. In lieu of an answer, applicant timely filed, on February 27, 2008, its first motion to dismiss under Rule 12(b)(6). The Board granted the motion and allowed opposers time to replead. Opposers filed an amended notice of opposition, and applicant's date on which to answer was set as November 20, 2008. By a series of seven

consented motions (filed between November 19, 2008, and June 22, 2009), applicant successfully extended its time to answer by nine months --until August 20, 2009. In the Board's June 23, 2009 order, which granted applicant's final motion to extend, the Board informed applicant that no further extension or suspension would be granted in the absence of a detailed report indicating what progress had been made in resolving the controversy between the parties. Then, in lieu of an answer or a motion including a progress report on the parties' settlement, applicant filed a second motion to dismiss under Rule 12(b)(6). Proceedings were suspended by the Board, and opposers were granted an extension of time in which to file a brief in opposition to applicant's motion. On October 9, 2009, opposers filed a combined brief in opposition to the outstanding motion and a cross-motion for sanctions.

Motion for Sanctions

By way of the cross-motion for sanctions, opposers move the Board for an order (1) requiring applicant to file an answer to the amended notice of opposition within twenty days, and (2) prohibiting applicant from filing any further dispositive motions until discovery is completed.

Applicant did not respond in any way to the cross-motion for sanctions. That is, applicant filed neither a brief in opposition to the cross-motion nor a reply brief

(in support of the motion to dismiss) which might have addressed the cross-motion.

Trademark Rule 2.127(a) provides, in part, that "[w]hen a party fails to file a brief in response to a motion, the Board may treat the motion as conceded." Inasmuch as applicant did not respond in any way to the cross-motion for sanctions, opposers' cross-motion is granted as conceded to the extent modified herein.

Applicant is allowed until April 20, 2010, in which to file an answer to the amended notice of opposition so that this case may move forward on its merits. Further, applicant must answer and may not file a third motion to dismiss under Rule 12(b)(6). Although the Board does not at this point prohibit applicant from seeking an extension of time to file the answer by April 20th, or from filing potentially dispositive motions prior to the close of discovery, should applicant have a valid basis for doing so, the Board will not hesitate to exercise its inherent authority to sanction either party should later circumstances warrant such an action.

Motion to Dismiss

In view of the grant hereinabove of opposers' motion for sanctions to the extent that applicant is required to file an answer, applicant's second motion to dismiss is deemed moot and will receive no consideration.

Schedule

Proceedings are resumed, and dates are reset on the following schedule.

Time to Answer	4/20/2010
Deadline for Discovery Conference	5/20/2010
Discovery Opens	5/20/2010
Initial Disclosures Due	6/19/2010
Expert Disclosures Due	10/17/2010
Discovery Closes	11/16/2010
Plaintiff's Pretrial Disclosures	12/31/2010
Plaintiff's 30-day Trial Period Ends	2/14/2011
Defendant's Pretrial Disclosures	3/1/2011
Defendant's 30-day Trial Period Ends	4/15/2011
Plaintiff's Rebuttal Disclosures	4/30/2011
Plaintiff's 15-day Rebuttal Period Ends	5/30/2011

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.