

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

Mailed: November 24, 2009

Opposition No. 91183588

Young & Co.'s Brewery Plc,

v.

Shandong Joyoung Household
Electrical Appliances Co.,
Ltd.

George C. Pologeorgis, Interlocutory Attorney:

This proceeding is before the Board for consideration of opposer's motion, filed October 14, 2009, to compel discovery. Applicant has not filed a brief in response to the motion.

In its motion, opposer seeks responses to its first set of interrogatories and first request for production of documents and things. Opposer asserts that it served the aforementioned discovery requests upon applicant on June 5, 2009, but has yet to receive any responses thereto.

Pursuant to Trademark Rule 2.120(e)(2), opposer's motion is timely.¹

¹ The Board finds that opposer has demonstrated a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1).

Moreover, a party that fails to respond to a request for discovery, and is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel, to have forfeited its right to object to the discovery requests on their merits. Inasmuch as nothing in the record indicates that applicant's failure to respond was the result of excusable neglect, applicant has waived its right to object to opposer's interrogatories and document requests on the merits, and must respond in full and without objection, inasmuch as applicant neither timely responded to nor objected to opposer's discovery requests. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

Accordingly, opposer's motion to compel is **granted** both on the merits and as conceded. See Trademark Rule 2.127(a).²

Applicant is allowed **thirty (30) days** from the mailing date of this order in which to serve upon opposer full and complete answers to all requests for interrogatories and all requests for documents and things, without objection (except for objections based upon privilege). To the extent applicant objects to any of the interrogatory and/or document requests based upon privilege, applicant is

² Trademark Rule 2.127(a) reads, in relevant part: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

required to provide opposer with a privilege log within the thirty days set forth above.

Should applicant fail to serve on opposer the responses as ordered, the Board will entertain a motion for sanctions in the form of entry of judgment sustaining the opposition. See Trademark Rule 2.120(g) (1).

Trial dates, beginning with the close of discovery, are reset as follows:

Discovery Closes	1/15/2010
Plaintiff's Pretrial Disclosures	3/1/2010
Plaintiff's 30-day Trial Period Ends	4/15/2010
Defendant's Pretrial Disclosures	4/30/2010
Defendant's 30-day Trial Period Ends	6/14/2010
Plaintiff's Rebuttal Disclosures	6/29/2010
Plaintiff's 15-day Rebuttal Period Ends	7/29/2010

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.