

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

sb/gcp

Mailed: October 22, 2009

Opposition No. 91187847

The Susan G. Komen Breast
Cancer Foundation, Inc.

v.

Christine Machleit and
Matilda Beeler

George C. Pologeorgis, Interlocutory Attorney:

This proceeding is before the Board for consideration of opposer's motion, filed September 22, 2009, to compel discovery and initial disclosures. Applicants have not filed a brief in response to opposer's motion.

In its motion, opposer seeks responses to its first set of interrogatories and first request for production of documents and things. Additionally, opposer seeks to compel applicants' initial disclosures.

Opposer asserts that it served the aforementioned discovery requests upon applicants on August 10, 2009, but has yet to receive any responses thereto. Opposer further

states that the discovery requests were returned to the opposer's counsel on September 15, 2009 by the U.S. Postal Service as "Attempted, Not Known" despite the fact that opposer served its discovery requests upon applicants at their address of record.¹ Moreover, per the Board's institution order, initial disclosures were due by March 13, 2009 but opposer contends that applicant has yet to provide its initial disclosures.

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

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 applicants' failure to respond was the result of excusable neglect, applicants have waived

¹ If applicants have moved from their correspondence address of record, it is their obligation to file a separate written notice of change of address with the Board referencing this proceeding number. Indeed, it is the responsibility of a party to a proceeding before the Board to ensure that the Board has the party's current correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party. See TBMP § 117.07 (2nd ed. rev. 2004).

² 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).

their right to object to opposer's interrogatory and document requests on the merits, and must respond in full and without objection (except for objections based upon privilege), inasmuch as applicants neither timely responded 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)*.³

Applicants are allowed **thirty 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 applicants object to any of the interrogatory and/or document requests based upon privilege, applicants are required to provide opposer with a privilege log within the **thirty days** set forth above. Furthermore, applicants are allowed the same **thirty days** in which to serve their initial disclosures upon opposer. Should applicants fail to serve on opposer the discovery responses and initial disclosures as ordered herein, as well as a privilege log, if

³ 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."

applicable, 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).

Proceedings herein remain ongoing. Discovery is closed. Trial dates, beginning with the deadline for opposer's pretrial disclosures, are reset as follows:

Plaintiff's Pretrial Disclosures	12/1/09
Plaintiff's 30-day Trial Period Ends	1/15/10
Defendant's Pretrial Disclosures	1/30/10
Defendant's 30-day Trial Period Ends	3/16/10
Plaintiff's Rebuttal Disclosures	3/31/10
Plaintiff's 15-day Rebuttal Period Ends	4/30/10

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.