

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

MBA

Mailed: May 20, 2010

Opposition No. 91190654

OMS Investments, Inc.

v.

Hidden Creations

Michael B. Adlin, Interlocutory Attorney:

On April 30, 2010, opposer filed a motion to suspend this proceeding in favor of a civil action, on May 12, 2010 applicant filed its response to the motion and on May 17, 2010 applicant filed a motion to compel. On May 18, 2010, the Board held a teleconference with the parties to discuss the motions. Shannon S. King appeared on opposer's behalf and Gail E. Smith appeared on pro se applicant's behalf.

During the teleconference, the Board acknowledged applicant's consent to the motion to suspend conditioned on the reopening of discovery in this proceeding. However, as explained during the teleconference, reopening discovery is not possible based on applicant's response, because opposer has not consented to reopening discovery nor has applicant attempted to establish excusable neglect. Under the circumstances, and recognizing applicant's recent health

issues, the Board generously provided applicant the option of simply consenting to the requested suspension without condition, or responding to opposer's motion to suspend on the merits. Applicant chose to file a response to opposer's motion on the merits, and the response is due **no later than June 8, 2010, and this deadline will not be extended.** As set forth in the Board's order of September 30, 2009, applicant is expected and required to comply with all Board rules and procedures, and applicant's inability or unwillingness to retain counsel will not be accepted as an excuse for delay.

As also discussed during the teleconference, applicant's motion to compel will be given no consideration. The motion is not "supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences," as required by Trademark Rule 2.120(e)(1). Applicant's motion also fails to include "a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection

and copying," again in violation of Trademark Rule 2.120(e)(1).¹

Dates remain as set in the Board's order of July 30, 2009. Applicant's amended motion for extension, filed April 27, 2010, is noted, and will be addressed in the Board's order on opposer's motion to suspend.

¹ Applicant's motion to "compel" responses to its requests for admission is also improper. TBMP § 524 (2d ed. rev. 2004).