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

Mailed: January 27, 2012

Opposition No. **91192706**

Berta Hesen-Minten

v.

Emma L. Petersen and Susan L. Aucoin

Ann Linnehan, Attorney

The Board notes that the by order of the Board issued on May 24, 2011, the parties are not to file *any further papers* (excluding testimony and/or other evidence at trial, stipulations, and their final briefs on the case) without prior leave of the Board.[1] To the extent opposer did not seek prior leave before filing her motion on November 1, 2011, the motion will receive no consideration from the Board.

The papers filed by opposer on January 24, 2012 were filed in contravention of the suspension order of October 20, 2012 and will receive no further consideration.

This case now comes up for consideration of opposer's motion (filed October 1, 2011) to compel discovery. Applicant has filed a brief in response.

[1] This order does not include a non-moving party's response brief to a motion.

As a preliminary matter, the Board once again notes that a party may represent itself in an ex parte or inter partes proceeding before the Board, or the party may be represented by an attorney or other authorized representative. See TBMP Section 114.01 (3d ed. 2011). The only non-lawyers permitted to represent others in trademark cases before the Office, including proceedings before the Board, are those who are recognized to practice before the Office in trademark cases prior to January 1, 1957. See TBMP Section 114.04. Hence, to the extent Ms. Roberta Kasnick Rippenberger is not a lawyer she is not entitled to act as opposer's counsel (including communicating with the interlocutory attorney) in this proceeding or to sign and file papers on opposer's behalf.[2]

In support of her motion, opposer argues that applicants have not answered the discovery requests she allegedly served on August 11, 2011. She contends that the applicants "are doing their usual stalling in this case." Applicant indicates that she contacted the above signed interlocutory attorney and was "given permission" to submit her initial disclosures after the Board's order of May 24, 2011 denying applicants' motion for summary judgment.

[2] She may, however, act as a domestic representative. But a domestic representative may not represent a party in a Board proceeding. See TBMP Section 117.06 (3d ed 2011). Nor may she file submissions on behalf of the party. See TBMP Section 117.08.

Applicant further states that she "submitted" her initial disclosures "under Notices of Reliance, #36-40 in the case history."

In response, applicants contend that initial disclosures were due on January 1, 2011; that opposer's initial disclosures were "untimely submitted" and they were "over six months tardy"; and that applicants are not obligated to respond to opposer's discovery requests.

Trademark Rule 2.120(a)(2) provides that "[i]nitial disclosures must be made no later than thirty days after the opening of the discovery period." Such rule further provides that "[d]isclosure deadlines and obligations may be modified upon written stipulation approved by the Board, or upon motion granted by the Board, or by order of the Board." Trademark Rule 2.120(a)(3) provides that "[a] party must make its initial disclosures prior to seeking discovery…."

In this instance, opposer failed to comply with these rules and accordingly her motion to compel is denied. Opposer's argument that she somehow received permission from the interlocutory attorney during a telephone call to "submit" her initial disclosures is not well-taken.[3] The

[3] The Board observes that its order of March 3, 2011 noted that opposer, in the caption of her brief filed on January 22, 2011, indicated that applicant failed to respond to multiple initial disclosure requests. The Board further notes that after reviewing the brief it appeared to the Board that opposer seemed to confuse the purpose of initial disclosures.

interlocutory attorney does not recall a discussion with opposer, Ms. Hesen-Minten, in which the Board actually granted opposer permission to serve such disclosures without complying with the relevant rules and the appropriate need to file a stipulation or motion. Neither does the interlocutory attorney recall a discussion in which opposer was told to "submit" her initial disclosures (hence allegedly prompting opposer to file such disclosures under "Notice of Reliance, #36-40 in the case history"). Indeed, Trademark Rule 2.120(j)(8) states that "written disclosures or disclosed documents, requests for discovery, responses thereto…should not be filed with the Board" except under very limited circumstances (none of which would apply here).[4] Either way, opposer is not relieved of her obligation to comply with the rules.[5]

The motion to compel is denied.

Proceedings are hereby resumed. Dates are reset as follows:

Discovery Closes	**2/24/2012**
Plaintiff's Pretrial Disclosures	**4/9/2012**
Plaintiff's 30-day Trial Period Ends	**5/24/2012**
Defendant's Pretrial Disclosures	**6/8/2012**

[4] The Board notes that in its order of October 20, 2011, the Board indicates that the "notices of reliance" referenced by opposer would receive no consideration from the Board.

[5] The Board once again reminds the parties that strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Defendant's 30-day Trial Period Ends	**7/23/2012**
Plaintiff's Rebuttal Disclosures	**8/7/2012**
Plaintiff's 15-day Rebuttal Period Ends	**9/6/2012**

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.l25.

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.l29.