

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

Mailed: February 22, 2011

Opposition No. 91194085

Mothers Against Drunk Driving

v.

Yolanda Renee Crawford

**George C. Pologeorgis,
Interlocutory Attorney:**

This proceeding is before the Board for consideration of opposer's motion, filed January 12, 2011, to compel discovery. Applicant has not filed a brief in response to opposer's motion.

In its motion, opposer seeks responses to its first set of interrogatories, first request for production of documents and things, and first request for admissions.¹ Opposer asserts that it served the aforementioned discovery requests upon applicant on November 15, 2010, but has yet to receive any responses thereto.

¹ The filing of a motion to compel is an unnecessary response to a party's failure to serve responses to a request for admission. Such requests stand admitted unless the party is able to show that its failure to timely respond was the result of excusable neglect; or unless a motion to withdraw or amend the admissions is filed pursuant to Fed. R. Civ. P. 36(b), and granted by the Board. See TBMP § 411.02 (2nd ed. rev. 2004).

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 applicant's failure to respond was the result of excusable neglect, applicant has waived its 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 applicant 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

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

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).

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."

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 required to provide opposer with a privilege log within the **thirty days** set forth above. Should applicant fail to serve on opposer the discovery responses as ordered herein, as well as a privilege log, if 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).

With respect to the portion of opposer's motion which addresses requests for admissions, as noted above, the requests stand admitted inasmuch as applicant neither served written responses nor objected thereto. Fed. R. Civ. P. 36(a). Any matter admitted under this rule is conclusively established. TBMP § 407.04 (2nd ed. rev. 2004).

Proceedings are hereby resumed. Discovery is closed. Trial dates, beginning with the deadline for opposer's pretrial disclosures,⁴ are reset as follows:

⁴ The Board notes that opposer filed its motion to compel subsequent to the deadline for its pretrial disclosures as set forth in the Board's March 10, 2001 institution order. However, inasmuch as the discovery compelled herein may affect opposer's litigation strategy in this case, the Board, in its discretion, has reset the deadline for opposer's pretrial disclosures.

Plaintiff's Pretrial Disclosures	4/8/2011
Plaintiff's 30-day Trial Period Ends	5/23/2011
Defendant's Pretrial Disclosures	6/7/2011
Defendant's 30-day Trial Period Ends	7/22/2011
Plaintiff's Rebuttal Disclosures	8/6/2011
Plaintiff's 15-day Rebuttal Period Ends	9/5/2011

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