

ESTTA Tracking number: **ESTTA451877**

Filing date: **01/18/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195328
Party	Defendant Hard Candy, LLC
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Submission	Opposition/Response to Motion
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Date	01/18/2012
Attachments	Hard Candy Opp to Motion to Compel.pdf (3 pages)(33319 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HardCandy Cases, LLC.,

Opposer,

v.

Hard Candy, LLC,

Applicant

In Re: Application Serial No. 77700557
For the Mark: Hard Candy
Published in the Official Gazette: 02/16/09

Opposition No.91195328

RESPONSE IN OPPOSITION TO MOTION FOR ORDER TO COMPEL DISCOVERY

Applicant, HARD CANDY, LLC (“Hard Candy”) by and through undersigned counsel, hereby responds in opposition to Opposer’s Motion for Order to Compel Discovery.

Hard Candy and its predecessors have been selling HARD CANDY branded products in commerce, including cosmetics, fragrances, skin care and other products since 1995. Hard Candy currently owns U.S. trademark registration nos. 3,696,602, 1,987,262, 2,150,397, 2,666,792, 2,666,793, 2,343,732, 2,552,029, 2,567,186, and 2,362,340, all of which use the mark HARD CANDY, or some variation or abbreviation thereof.

On March 27, 2009, Hard Candy filed a Section 1(b), intent to use application with the US Patent and Trademark Office (“USPTO”) for the mark HARD CANDY under international class 009 consumer electronics, Serial no. 77/917,147. At the time of the application at issue, Hard Candy had, and continues to have, a bona fide intent to expand its brand into various additional markets, including consumer electronics. The application is part of a now ongoing effort to use the HARD CANDY mark in Class 009 in commerce, as described in its application.

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Opposer filed a “shot-in-the-dark” Notice of Opposition baldly alleging that Hard Candy did not have a bona fide intent to use the HARD CANDY mark at the time it filed the application at issue. Instead of serving discovery related to the only issue in the case: whether Hard Candy had the bona fide intent to use the HARD CANDY mark in international class 009 consumer electronics, Opposer instead engaged in an egregious “fishing expedition” in hopes to uncover something, anything, upon which to base its opposition. In a clear effort to harass Applicant, **Opposer served 175 Requests for Production**, the vast majority of which ask for documents related to every other trademark application Applicant has ever filed. As detailed in Applicant’s responses and objections, these requests are unduly burdensome, overbroad, irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. It is clear that the purpose of this Request is to harass Applicant, to seek confidential commercial information about a competitor, and is simply an impermissible fishing expedition.

Similarly, the interrogatories posed by Opposer seek confidential commercial information regarding all of Applicant’s business, and not even limited to the application being opposed. The interrogatories presented are overbroad and seeks irrelevant information, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. Opposer’s motion to compel should be denied.

Additionally, Opposer’s motion to compel should be denied as Opposer’s counsel did not make a good faith effort to meet and confer prior to filing the underlying motion. As detailed in Opposer’s Memorandum of Points and Authorities in Support of its Motion, Mr. West sent a meet and confer letter, asking the undersigned to respond by December 27, 2011. The undersigned was on a pre-planned family vacation to Israel. On December 24, 2011, from Israel, the undersigned advised Mr. West via email that he was out of the country and unavailable to

have a meaningful meet and confer until his return the first week of January. This was apparently not acceptable to Mr. West as he immediately filed a motion to compel, without participating in a meet and confer conference, as is required.

For the reasons set forth herein, and as detailed in Applicant's responses and objections to Applicant's 180 discovery requests, Opposer's Motion for Order to Compel Discovery should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was served on this 18th day of January, 2012, by United States mail and, as a courtesy, via email upon:

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