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

Proceeding	91197504
Party	Plaintiff Omega SA (Omega AG) (Omega Ltd.)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: ALPHA PHI OMEGA and design
Opp. No.: 91197504 (Parent)
Serial No.: 77950436

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: AΦΩ
Opp. No.: 91197505 (Child)
Serial No.: 77905236

OPPOSER'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION

Opposer requests partial reconsideration of the Board's May 31, 2014 Order with respect to three of Applicant's Admission Requests—Request No. 3, Request No. 4 and Request No. 14.

REQUEST NO. 3: Admit that Opposer has no evidentiary basis to dispute that the word "Omega" has been continuously used in the United States as part of the name of various Greek letter social, professional, or honorary fraternities or sororities since prior to the introduction into the United States by or on behalf of Opposer or Opposer's predecessor(s) in interest of any product bearing any of the marks upon which the Opposition is based.

REQUEST NO. 4: Admit that Opposer has no evidentiary basis to dispute that the Greek Alphabet letter, Ω, has been continuously used in the United States as part of the Greek letter designation of Greek letter social, professional, or honorary fraternities or sororities since prior to the introduction into the United States by or on behalf of Opposer or Opposer's predecessor(s) in interest of any product bearing any of the marks upon which the Opposition is based.

REQUEST NO. 14: Admit that Opposer has no evidentiary basis to dispute that various Greek letter social, professional, or honorary fraternities or sororities with the word “Omega” in their name have continuously marketed and/or approved others to market on their behalf products bearing insignia containing the word “Omega” or the Greek Alphabet letter, Ω, dating back prior to the introduction into the United States by or on behalf of Opposer or Opposer’s predecessor(s) in interest of any product bearing any of the marks upon which the Opposition is based.

Due to the compound and ambiguous nature of Applicant’s Requests for Admission Nos. 3, 4, and 14, the Board should reconsider its May 31, 2014 Order (D.E. 55) requiring Opposer to respond. In the alternative, Opposer should be allowed to provide qualified responses based on its reasonable interpretation of the Requests.

I. ARGUMENT

The language of Applicant’s Admission Request Nos. 3, 4 and 14 is both compound and indefinite. The imprecise language used and multiple subparts in each question make a single unqualified response misleading and impossible.

A. The Compound Nature of Applicant’s Request Nos. 3, 4 and 14 Makes an Unqualified Response Impossible

The compound nature of Request Nos. 3, 4 and 14 makes it impossible for Opposer to provide unqualified responses.

Admission requests are designed to limit factual issues in a case. Fed. R. Civ. P. 36(a)(4). As such, the requesting party bears the burden of setting forth its requests simply, directly, not vaguely or ambiguously, and in such a manner that they can be answered with a simple admit or deny without an explanation. *James v. Maguire Corr. Facility*, 2012 U.S. Dist.

LEXIS 128534, *10 (N.D. Cal. Sept. 10, 2012). Requests for admissions should not contain “compound, conjunctive, or disjunctive . . . statements.” *U.S. ex rel. England v. Los Angeles County*, 235 F.R.D. 675, 684 (E.D. Cal. 2006). Applicant’s drafting of Request Nos. 3, 4, and 14 falls far short of these requirements for proper admission requests.

These Requests have multiple subparts, each meriting its own separate response. An unqualified response to one subpart may not be the same as a response to another subpart of the same request. Therefore, without qualifiers as part of Opposer’s response, a response may be misleading. If there is an emphasis as to any specific subpart, it is unclear to Opposer.

Opposer reasonably interprets these three requests as seeking responses to at least four parts:

- 1) Omega has been continuously used in the United States;
- 2) As part of the Greek letter
 - a) social,
 - b) professional,
 - c) honorary,fraternities and sororities;
- 3) And used
 - a) prior to the introduction,
 - b) into the United States,
 - c) by Opposer;
- 4) Of any product bearing Opposer’s marks.

For example, Opposer is aware that there are fraternities and sororities using the word “Omega” and/or the Greek alphabet letter Ω , and as such could admit this portion of the

Requests. However, Opposer lacks knowledge, after a reasonable inquiry of its own records, as to whether such fraternities and sororities are social, professional or honorary in nature, and thus would need to qualify its response to these Requests accordingly. The Board's requirement that Opposer provide an unqualified response conflicts with Opposer's ability and obligation to provide an accurate response.

Due to the compound nature of these Requests, the Board should reconsider its May 31, 2014 Order granting Applicant's Motion to Compel and requiring Opposer to respond to Requests for Admission Nos. 3, 4, and 14 with unqualified responses. *Johnson v. Mission Support*, 2013 U.S. Dist. LEXIS 11314, *16-17 (D. Utah Jan. 28, 2013) (denying motion to compel response to plaintiff's admission request on the ground that it is so compound that it is difficult to understand and because plaintiff's explanation of the request differed from the plain meaning of the request); *Heggem v. Monroe Corr. Complex*, 2013 U.S. Dist. LEXIS 6126, *14-15 (W.D. Wash. Jan. 14, 2013) (granting a protective order where a request for admission was found to be compound and not subject to an admission or denial); *Cooper v. Sely*, 2013 U.S. Dist. LEXIS 55192 (E.D. Cal. Apr. 16, 2013) (denying Plaintiff's Motion to Compel responses due to compound, vague and ambiguous requests for admission); *Brown v. Hertz*, 2011 U.S. Dist. LEXIS 127226, *7-8 (S.D. Ill. Nov. 3, 2011) (finding request to admit improperly sets forth multiple requests to admit in violation of Fed. R. Civ. P. 36).

In the alternative, Opposer should be permitted to provide its reasonable interpretation of these Requests and responding to these Requests in accordance with such interpretation, in accordance with the purpose of such Admission Requests and the Board's own discovery rules. See TBMP §§ 407.02 and 407.03(b) and Fed. R. Civ. P. 36(a)(4).

B. Conjunctive, Vague, Indefinite Language in Applicant's Requests Would Render Any Unqualified Responses Misleading

In addition to the compound nature of the requests, further ambiguities are caused by the indefinite terms used by Applicant in its Requests. As a result, any unqualified responses that might be offered to these Requests are sure to be misleading. For example, Applicant begins its Requests with the indefinite phrase "Admit that Opposer has no evidentiary basis to dispute that. . ." There is ambiguity as to what constitutes an "evidentiary basis." Does a lack of documentary evidence suffice form an evidentiary basis to dispute the underlying assertion made in Applicant's Requests?

Furthermore, Requests Nos. 3, 4 and 14, refer to "*various* Greek letter social, professional, or honorary fraternities or sororities," or to "Greek letter social, professional, or honorary fraternities or sororities," *collectively*, without further specification (emphasis added). Different facts for each fraternity or sorority may impact Opposer's response to these Requests.

Due to this vague and ambiguous language of the requests, Opposer needs to provide proper qualifications setting its reasonable interpretations of these ambiguities to avoid misleading responses.

II. CONCLUSION

As explained above, Admission Request Nos. 3, 4 and 14 are compound and indefinite. As a result, any unqualified response will inevitably be misleading due to the defective wording of the requests themselves. Therefore, the Board should reconsider and reverse the portion of its

May 31, 2014 Order (D.E. 55) which directs Opposer to respond to Applicant's Request for Admission Nos. 3, 4, and 14. Alternatively, the Board should modify its Order to permit Opposer to provide a qualified response based on its reasonable interpretation of the requests.

Respectfully Submitted,

By: Oren Gelber

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Date: August 11, 2014
JAL/TPG/OG/KAM:

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED THROUGH THE ELECTRONIC SYSTEM FOR TRADEMARK TRIAL AND APPEALS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

COLLEN IP

By: Oren Gelber Date: August 11, 2014
Oren Gelber

CERTIFICATE OF SERVICE

I, Thomas Gulick, hereby certifies that a copy of the foregoing **Opposer's Reply in Support of Motion for Reconsideration** was served by First Class U.S. Mail, postage prepaid on this 11th Day of August, 2014 upon

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