

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

vb

Mailed: August 25, 2011

Opposition No. 91198552

Raising Cane's USA, LLC

v.

Fifty-Six Hope Road Music
Limited

Cancellation No. 92053461

Fifty-Six Hope Road Music
Limited

v.

Raising Cane's USA, LLC

Andrew P. Baxley, Interlocutory Attorney:

The stipulated protective agreement that Fifty-Six Hope Road Music Limited ("Fifty-Six") filed on August 19, 2011 is noted and its use in this proceeding is approved. The parties are referred, as appropriate, to TBMP Sections 412.03 (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board), and 412.05 (Handling of Confidential Materials by Board) (3d ed. 2011).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing Trademark Rules 2.27(d) and (e),

which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

On August 19, 2011, Raising Cane's USA, LLC ("Raising Cane") filed a combined motion for summary judgment and to compel discovery. Although time to respond to the motion to compel has not expired, the Board, in its discretion, elects to decide the motion to compel at this time. See Trademark Rule 2.127(a).

Although the Board's standard protective order has been operative throughout this proceeding under Trademark Rule 2.116(g), the parties had been negotiating an alternative protective agreement between the service of Fifty-Six's discovery responses on June 10, 2011 and August 16, 2011. By filing the motion to compel three days after completion of negotiations for the alternative protective agreement, Raising Cane failed to allow Fifty-Six a meaningful opportunity to produce confidential discovery documents under that alternative protective agreement prior to seeking Board intervention. In addition, although Raising Cane contends that Fifty-Six improperly objected to interrogatory nos. 2, 3, 5, 11, and 25 on the ground that the interrogatories and subparts at issue exceed the number of interrogatories allowed in these proceedings under Trademark

Rule 2.120(d), the parties' e-mail exchanges do not indicate that the alleged impropriety of these objections was specifically discussed prior to the filing of the motion to compel. Based on the foregoing, the Board finds that Raising Cane did not make a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1). Accordingly, the motion to compel is denied without prejudice.

Because Raising Cane's motion for summary judgment is potentially dispositive of these consolidated proceedings, the Board deems the filing of motion for summary judgment to have tolled general discovery herein. See Trademark Rule TBMP Section 528.03 (3d ed. 2011). Nonetheless, to assist the parties in resolving discovery issues should the motion for summary judgment be denied, the Board notes the following.

Prior to this order, the Board's standard protective order had been operative herein. See Trademark Rule 2.116(g). The standard protective order has been replaced by the parties' alternative protective agreement in this order. Accordingly, Fifty-Six should not withhold properly sought discovery documents on the ground of confidentiality. Regarding Raising Cane's contention that Fifty-Six has not produced any other documents responsive to Raising Cane's

document requests, there is no specific deadline by which a party must produce discovery documents. See Fed. R. Civ. P. 34(b); Trademark Rule 2.120(d)(2); TBMP Section 406.04(b). Rather, a party responding to document requests must state whether or not it has in its possession, custody or control documents which are responsive to the request at issue and, if so, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection must be stated. See Fed. R. Civ. P. 34(b); TBMP Section 406.04(c). If the motion for summary judgment is denied, the parties should work together to schedule inspection or production of discovery documents to allow ample time for trial preparation.

Regarding Fifty-Six's objections to interrogatory nos. 2, 3, 5, 11, and 25 on the ground that the subparts of these interrogatories "cause[] the number of interrogatories propounded by [Raising Cane] to exceed the number allowed by [Trademark Rule] 2.120(d)," this objection is improper as a response to an individual interrogatory. Rather, if a party responding to interrogatories in a Board proceeding believes that the number of interrogatories exceeds the limit of seventy-five as set forth in Trademark Rule 2.120(d)(1), the responding party should serve a general objection based on the excessive number of interrogatories and should not serve

answers and specific objections to the individual interrogatories. See TBMP Section 405.03(e).

Proceedings herein are suspended pending disposition of Raising Cane's motion for summary judgment. See Trademark Rule 2.127(d). Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration.