

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

Mailed: April 5, 2012

Opposition No. 91200084

Lifetech Resources, LLC

v.

Myskin, Inc.

**Robert H. Coggins,  
Interlocutory Attorney:**

Motion to Compel

On March 22, 2012, opposer filed a combined motion to compel applicant's discovery responses and to suspend.

Trademark Rule 2.120(e)(1) requires that a motion to compel discovery be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party the issues presented in the motion but has been unable to reach agreement. Although opposer included such a statement in its motion, opposer did not support the statement with any documentary evidence.

In view of circumstances of this case; where applicant's discovery responses were allegedly due March 12, 2012, opposer filed this motion only ten days after that deadline, opposer alleged that it sent correspondence to applicant by email and

express mail, there is no indication that the parties have agreed to use email communication, opposer did not include with the motion copies of the email or express mail correspondence, opposer did not indicate the dates on which it sent the email or express mail correspondence, and opposer did not allege that it telephoned applicant to follow-up or even allowed applicant a sufficient time to respond to opposer's email or express mail; it appears that opposer rushed to file this motion, and did not make a sufficient effort that would rise to the good faith standard. In view thereof, opposer's motion to compel is denied without prejudice for failure to make a good faith effort to resolve the discovery issues prior to seeking Board intervention. See, e.g., *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626, 632 (TTAB 1986) (party failed to submit documentary evidence of good faith).

Schedule

In view of the denial of the motion to compel, the Board need not suspend proceedings. However, inasmuch as the motion was filed fourteen days ago, dates are reset on the following schedule which returns the parties to the time available when the motion was filed.

Discovery Closes	<b>Closed</b>
Plaintiff's Pretrial Disclosures	<b>4/5/2012</b>
Plaintiff's 30-day Trial Period Ends	<b>5/20/2012</b>
Defendant's Pretrial Disclosures	<b>6/4/2012</b>

Defendant's 30-day Trial Period Ends	7/19/2012
Plaintiff's Rebuttal Disclosures	8/3/2012
Plaintiff's 15-day Rebuttal Period Ends	9/2/2012

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 2.125. 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 2.129.

Late Answer

Answer was due in this case on July 11, 2011; however, applicant did not file an answer until July 13, 2011. Inasmuch as the answer was only two days late, opposer did not object to the delay, it has now been over eight months since the answer was filed, and it is the policy of the law to decide cases on their merits, the Board exercises its discretion to set aside applicant's technical default and to accept the late answer. Fed. R. Civ. P. 55(c).