

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

RK

Mailed: July 10, 2013

Opposition No. 91200575

Hershey Chocolate &  
Confectionery Corporation and  
The Hershey Company

v.

Kenneth B. Wiesen

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

This matter comes up on applicant's motion (filed January 11, 2013) to compel further responses and production from opposers to a number of applicant's interrogatory and document requests. The motion is fully briefed.

By his motion, applicant seeks to compel further responses to portions of his Amended First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and Second Set of Requests for Production of Documents and Things. Trademark Rule 2.120(e)(1) dictates that a motion to compel discovery "must 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 or the attorney therefor the issues

presented in the motion but the parties were unable to resolve their differences." Further, two oral hearings were held in this matter on March 6 and October 4, 2012, during which the Board made explicit that a showing of good faith will not be found absent a meeting or telephone conference between the parties and/or counsel to discuss and attempt to resolve any discovery related dispute. See Board orders dated March 8 and October 10, 2012.

Notwithstanding these explicit requirements, applicant has failed to meet or otherwise confer with opposing counsel to resolve the discovery disputes that are the subject of his motion to compel. Indeed, opposers' counsel invited applicant to confer on the outstanding discovery issues on numerous occasions yet applicant failed to confer or even attempt to confer with counsel. The purpose of a meeting or conference is to facilitate discussion and compromise as to each party's position on the discovery in dispute which normally is difficult to accomplish solely via correspondence. While applicant argues that his correspondence to opposers' counsel were "repeat and replete attempts to get Opposer to budge of of [sic] their continued refusal to budge from their decision not to disclose," the majority of those correspondences occurred prior to the Board's October 10, 2012, order wherein the Board specifically required "a good faith meeting between the

parties to try to resolve the discovery dispute." Board's order of October 10, 2012, p. 8 n.1. Applicant's subsequent correspondence of October 26, 2012, which simply copied the majority of its July 6, 2012, correspondence fails to meet this good faith requirement.

Accordingly, applicant's motion to compel is hereby **DENIED**. Proceedings herein are **RESUMED** and dates are **RESET** as follows:

Plaintiff's 30-day Trial Period Ends	8/23/2013
Defendant's Pretrial Disclosures Due	9/7/2013
Defendant's 30-day Trial Period Ends	10/22/2013
Plaintiff's Rebuttal Disclosures Due	11/6/2013
Plaintiff's 15-day Rebuttal Period Ends	12/6/2013

**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 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.

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