

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

wbc

Mailed: January 28, 2013

Opposition No. 91200786

United Global Media Group, Inc.

v.

Bonnie Tseng

**Andrew P. Baxley, Interlocutory Attorney:**

On November 15, 2012, applicant filed a "motion to compel full responses to request for admissions." Opposer filed a brief in response thereto.

The motion to compel procedure is inapplicable to requests for admission. See TBMP Section 523.01 (3d ed. rev. 2012). Applicant's motion is actually one to test the sufficiency of responses to requests for admission and will be treated accordingly. See Trademark Rule 2.120(h); TBMP Section 524.

Applicant contends that she served opposer with requests for admission on October 15, 2012 and received responses thereto on November 14, 2012, the penultimate day of the discovery period. Applicant further alleges that opposer's "responses as denials or objections are wholly inadequate and lack fact or truth," and that, because discovery was set to close on November 15, 2012, she had "no choice but to compel

complete and factual answers." Accordingly, applicant asks that the Board compel amended responses to applicant's requests for admission.

In response, opposer contends it provided sufficient responses to thirty-one of applicant's thirty-three requests for admissions, and that it objected to the remaining two requests, request nos. 32 and 33, because those requests are "incomprehensible." Accordingly, opposer asks that the Board deny applicant's motion.

In requests for admission, a party asks its adversary to stipulate to certain matters to reduce issues for trial. Fed. R. Civ. P. 36(a) requires that the answering party admit or deny the matter set forth in the requests for admission, or detail the reasons why the party can do neither. Responding parties may object to requests for admission, but the grounds for such objections must be stated. Fed. R. Civ. P. 36(a)(5). An admission in response to a request for admission "conclusively establishe[s]" the matter that is subject of that request. Fed. R. Civ. P. 36(b). However, a denial in response to a request for admission is merely a refusal to stipulate to certain matter, thus leaving that matter to be resolved on the merits. See *Sinclair Oil Corp. v. Kendrick*, 85 USPQ2d 1032, 1036 fn.8 (TTAB 2007).

A motion to test the sufficiency of responses to admission requests is solely a test of the legal sufficiency of those responses. See Fed. R. Civ. P. 36(a); Trademark Rule 2.120(h). Disagreements regarding the veracity of such responses are matters to be determined at trial and are not properly the subject of a motion to test their sufficiency. See *National Semiconductor Corp. v. Ramtron Int'l Corp.*, 265 F.Supp.2d 71 (D.D.C. 2003). Generally, if there is an admission or denial, the Board will not find the response to be insufficient even if the responding party included an explanation or clarification of the admission or denial, or admitted after first denying. See TBMP Section 524.01.

Trademark Rule 2.120(h)(1), requires that a motion to test the sufficiency of responses to requests for admission be supported by a written statement from the moving party that such party has made a good faith effort, by conference or correspondence, to resolve with the other party the issues presented in the motion and has been unable to reach an agreement. See TBMP Section 524.02.

Applicant, in her motion, alleges she made "a good faith effort to obtain valid information" but was unable to reach an agreement with opposer before the close of discovery. However, applicant fails to specify the steps that she took

to resolve the parties' dispute prior to filing her motion. Conclusory statements regarding a good faith effort without any specific description of activities undertaken to resolve the parties' discovery dispute fall short of the requisite good faith effort.<sup>1</sup> See *Amazon Technologies v. Wax*, 93 USPQ2d 1702 (TTAB 2009).

In addition, applicant served thirty-three requests for admission and now seeks further responses to thirty-one of them. The excessive number of requests for admission at issue indicates that applicant failed to make a good faith effort to resolve the parties' dispute prior to seeking Board intervention. See *Sentrol, Inc. v Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986). Moreover, by filing the motion one day after receiving the responses to requests for admission that are the subject thereof, applicant did not allow opposer an opportunity to correct alleged deficiencies in opposer's responses prior to seeking Board intervention.

Based on the foregoing, the Board finds that applicant failed to make the requisite good faith effort to resolve the issues raised by her motion prior to involving the Board in

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<sup>1</sup> Additionally, applicant's assertion that, because she received the responses to requests for admission at issue on the penultimate day of the discovery period, she had "no choice" but to file her motion is not well-taken. A motion to test the sufficiency of responses to requests for admission need only be filed prior to the commencement of the first testimony period. See Trademark Rule 2.120(h)(1); TBMP Section 524.03.

the parties' dispute.<sup>2</sup> Accordingly, the motion to test the sufficiency of opposer's responses to requests for admissions is denied.

Proceedings herein are resumed.<sup>3</sup> Remaining dates are reset as follows:

Discovery Closes	1/31/2013
Plaintiff's Pretrial Disclosures	3/17/2013

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<sup>2</sup> In any event, a cursory review of opposer's responses to applicant's requests for admission indicates that opposer admitted or denied applicant's request for admissions nos. 1-19, 21-31 and 33, subject to objections with regard to the vast majority of those requests.

In request no. 20, applicant asks opposer to "[a]dmit that [o]pposer cannot provide evidence of confusion" between the marks at issue herein. The Board construes this request as asking opposer to admit that opposer cannot provide any evidence of actual confusion between the marks at issue. Opposer's response to this request, however, is with regard to likelihood of confusion, rather than actual confusion, between the marks at issue and is therefore nonresponsive. This statement is merely advisory and should not be treated as an order compelling discovery under Trademark Rule 2.120(g)(1). However, opposer is reminded that it has a duty to supplement or correct discovery responses. See Fed. R. Civ. P. 26(e).

In request no. 32, applicant asks opposer to "[a]dmit that [a]pplicant has never expressed intent to harm [o]pposer or benefit from [o]pposer's marks on the basis of confusion with any of [o]pposer's marks." The Board construes this request as essentially asking opposer to admit that applicant has not expressed malice toward opposer or intent to cause confusion between applicant's involved mark and opposer's pleaded marks. However, it does not follow that, because opposer lacks of knowledge of any such intent, no such intent exists. Further, information regarding whether or not applicant "expressed intent to harm [o]pposer or benefit from [o]pposer's marks" is more conveniently obtained from applicant's own records. See Fed. R. Civ. P. 26(b)(2)(C)(1). In any event, while evidence of bad faith adoption typically will weigh against an applicant, good faith adoption of a mark typically does not aid an applicant defending a likelihood of confusion claim. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991).

<sup>3</sup> Although proceedings herein were not suspended until after the close of the discovery period, applicant's motion was filed on the closing date of the discovery period. Accordingly, the parties will be allowed a minimal discovery period.

Plaintiff's 30-day Trial Period Ends	5/1/2013
Defendant's Pretrial Disclosures	5/16/2013
Defendant's 30-day Trial Period Ends	6/30/2013
Plaintiff's Rebuttal Disclosures	7/15/2013
Plaintiff's 15-day Rebuttal Period Ends	8/14/2013

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 the taking of testimony. See Trademark Rule 2.125, 37 C.F.R. Section 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.