

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: February 20, 2015

Opposition No. 91200832

Opposition No. 91200146

Briggs & Stratton Corporation

v.

Honda Giken Kogyo Kabushiki Kaisha
(Honda Motor Co., Ltd.)

Cheryl S. Goodman, Administrative Trademark Judge:

This case comes up on opposers' motion, filed October 10, 2014, to compel. The motion is fully briefed.

The Board presumes the parties' familiarity with the facts and arguments presented and does not recount them here.

The Board finds that the parties made a good faith effort to resolve the dispute with regard to fifth request for production nos. 62-64, 67-69, 72-74, 76-80, 81, 84-86 via e-mail correspondence.

Fifth request for production nos. 64, 69, 74, 78, 81 and 86¹

¹ These requests were narrowed by opposers to horizontal shaft engines with high-mount air cleaner covers sold by six identified third parties.

The motion to compel is moot as to requests for production nos. 64, 69, 74, 78, 81 and 86 relating to the purchase, inspection and testing of third party engines.

Fifth requests for production nos. 62, 63, 67, 68, 72, 73, 76, 77, 79, 80, 84, and 85²

Each of these requests uses the language “all documents referring or relating” and “including but not limited to”. The Board finds these requests facially overbroad and unduly burdensome on their face. A party resisting facially overbroad or unduly burdensome discovery need not provide specific detailed support. *Mackey v. IBP, Inc.*, 167 FRD 186, 197 (D. Kan. 1996). Accordingly, applicant’s objections as to overbreadth and undue burden are sustained, and the motion to compel is denied as to these requests.

Fifth request for production nos. 58, 59, 60

While the evidence of good faith effort as to these requests was extremely minimal, to move the matter forward, the Board shall consider these requests.

Fifth request for production no. 58

This request seeks all documents referring or relating to the design of the external appearance of the Honda GP 160 or GP200 engine. Although opposers assert that the documents they seek are those “that show technical justifications for incorporating the proposed mark into GP engines” including

² These requests were narrowed by opposers to horizontal shaft engines with high-mount air cleaner covers sold by six identified third parties.

“similarities and differences,” as drafted, this request goes well beyond that encompassing non-relevant documents and information.

Accordingly, the motion to compel is denied as to this request.

Fifth request for production nos. 59 and 60

Opposer argues that these requests are relevant to secondary meaning to the extent there are discoverable documents that evidence a “desire to distinguish the GP Engines from the Proposed Mark.”

The Board finds opposers’ claims of relevance of these requests in connection with secondary meaning of the involved mark purely speculative.

Accordingly, the motion to compel is denied as to these requests.

In summary, the motion to compel is moot as to fifth requests for production nos. 64, 69, 74, 78, 81 and 86; the motion to compel is denied as to fifth request for production nos. 58, 59, 60, 62, 63, 67, 68, 72, 73, 76, 77, 79, 80, 84, and 85.

Proceedings are resumed.

Dates are reset as follows:³

Plaintiff's Pretrial Disclosures Due	3/20/2015
Plaintiff's 30-day Trial Period Ends	5/4/2015
Defendant's Pretrial Disclosures Due	5/19/2015
Defendant's 30-day Trial Period Ends	7/3/2015
Plaintiff's Rebuttal Disclosures Due	7/18/2015

³ Discovery has closed in this case but the parties agreed to the taking of the deposition of witnesses in Japan after the close of discovery. See 19 TTABVUE. At the time of the October 10, 2014 motion to compel, the deadline for pretrial disclosures was set for January 5, 2015. It is unclear from the parties’ filings whether the depositions of the witnesses in Japan have been completed during the pendency of the motion to compel. If the parties need additional time to depose the witnesses located in Japan, then they should file an appropriate extension of the trial schedule.

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.