

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

Mailed: January 30, 2013

Opposition No. 91201666

Cutlery and More, LLC

v.

Desalla Trading Company

**M. Catherine Faint,
Interlocutory Attorney:**

This case now comes up on opposer's motion, filed May 23, 2012, to compel more complete responses to opposer's first set of interrogatories Nos. 1-23 and 25; to produce documents responsive to opposer's document request Nos. 1-20; to compel more complete responses to opposer's first request for admissions Nos. 1-20 and to construe the requested admissions as admitted; and to reset discovery and testimony dates.¹

In its motion, opposer alleges that it timely served discovery on applicant on March 1, 2012 consisting of opposer's first set of interrogatories; first request for production of documents and things;

¹ Any delay in responding is regretted.

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and first request for admissions; that on April 5, 2012 applicant served its responses that refused to answer interrogatories and request for admissions based on "frivolous objections," and stating certain interrogatories and requests for admissions "will be supplemented at a reasonable time prior to the trial of this matter;" and failed to produce any documents stating that "requested documents will be supplemented at a later date." Opposer attempted to resolve the dispute through correspondence sent April 12, 2012 and phone messages left on May 2, 2012 and May 16, 2012, but contends that applicant's counsel has not responded. Applicant also has not responded to opposer's motion.

In view of the circumstances set forth in opposer's motion to compel, and because applicant has not responded to the motion, opposer's motion to compel discovery is **granted** as to opposer's first set of interrogatories and first request for production of documents and things. See Trademark Rule 2.120(e).

Further, the Board finds that applicant's "responses" to opposer's request for admissions are essentially non-responsive in that applicant failed to give clear, specific answers that fairly respond

to the substance of the matter as required by Fed. R. Civ. P. 36. In view thereof, opposer's motion to deem its first request for admissions is granted to the extent that applicant is allowed until **TWENTY DAYS** from the mailing date of this order to serve proper answers in accordance with Rule 36, failing which the matters will be deemed admitted. See Fed. R. Civ. P. 36. See also 8B Wright, Miller, Kane and Marcus, *Fed. Prac. & Proc.* 3d § 2263 (Westlaw update 2012).

The Board also addresses some additional matters.

General objections

Applicant objected to all twenty-five interrogatory requests and all twenty document requests as "overly broad and burdensome," and states that all of the interrogatories (except for No. 24), and all of the requests for admission "will be supplemented at a reasonable time." Objections to discovery requests must be specific to the requests for which the objections are being interposed. That is, in addition to posing the objection, the objecting party must explain why the objection applies to the discovery request at issue. See 8B *Fed. Prac. & Proc. Civ.* 3d §§ 2173 and 2213 (Westlaw

update 2012). As a consequence, very little, if any, consideration will be given by the Board to general objections or to a rote listing of objections. This is so because the Board cannot guess why a particular objection or set of objections may apply. Thus, no further consideration is given to any listing of objections that have not been adequately explained with respect to the discovery responses that are in dispute.

Duty to respond/Duty to cooperate

A party served with a request for discovery has a duty to cooperate and to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request. A party that has responded to a request for discovery with a response is also under a duty to supplement or correct the response to include information thereafter acquired or uncovered. A responding party who, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto

(provided that the requesting party raises the matter by objecting to the evidence in question) unless the response is supplemented in a timely fashion pursuant to Fed. R. Civ. P. 26(e). *See also* TBMP 408.01-.03 (3d ed. rev. 2012).

Time to respond and other information

Applicant is allowed until **TWENTY DAYS** from the mailing date of this order in which to supplement its responses to opposer's first set of interrogatories and first request for production of documents, failing which, opposer may seek appropriate sanctions, including entry of judgment against applicant. *See* Trademark Rule 2.120(g)(1). Applicant is allowed until **TWENTY DAYS** from the mailing date of this order to serve proper answers to opposer's first request for admissions in accordance with Rule 36, failing which the matters will be deemed admitted. *See* Fed. R. Civ. P. 36.

The Board's standard protective order is in place in this case governing the exchange of confidential and proprietary information and materials.²

Applicant is not required to produce privileged documents or provide privileged information, as its right to claim privilege has not been waived. *See e.g., American Standard, Inc. v. Pfizer*, 3 USPQ2d 1817 (Fed.

Cir. 1987). However, where a claim of privilege is invoked, a party must make the claim expressly and provide a description or privilege log, unless the parties otherwise agree.

Motion to Extend/Dates Reset

Opposer's motion to extend discovery and reset all other dates is **granted**. Proceedings herein are resumed and trial dates, including the close of discovery, are reset as follows:

Discovery Closes	3/24/2013
Plaintiff's Pretrial Disclosures	5/8/2013
Plaintiff's 30-day Trial Period	6/22/2013
Ends	
Defendant's Pretrial Disclosures	7/7/2013
Defendant's 30-day Trial Period	8/21/2013
Ends	
Plaintiff's Rebuttal Disclosures	9/5/2013
Plaintiff's 15-day Rebuttal Period	10/5/2013
Ends	

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

² The order may be viewed online at:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>.

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