

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

Mailed: February 2, 2012

Opposition No. 91202203

LEGO Juris A/S

v.

Shuang SA

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

After several unsuccessful attempts to schedule the discovery conference, counsel for opposer telephoned the Board on February 1, 2012, pursuant to TBMP § 408.01(a) (3d ed. 2011), to request help in scheduling the discovery conference.¹ In an effort to set up the conference, the Board immediately telephoned and emailed counsel for applicant, who promptly responded.

By way of the email response, counsel for applicant stated that (1) applicant made an earlier attempt to settle

¹ Although the deadline for the conference had passed, and the better practice would have been for opposer to contact the Board at least ten days prior to the conference deadline, *see* Trademark Rule 2.120(a)(2) and TBMP § 401.01 (3d ed. 2011), the Board exercised its discretion to take up the matter. *See Promgirl, Inc. v. JPC Co.*, 94 USPQ2d 1759, 1762 (TTAB 2009) (where parties at impasse, Board may participate and reset conference for later date).

this matter with opposer but opposer declined the offer², (2) counsel has just returned from a one-month trip abroad and has not been in the office, (3) applicant himself has been traveling abroad, and (4) counsel has not received instruction from his client to proceed further with the opposition, and is therefore not in a position to take any further action in this matter.³

Discovery Conference

Pursuant to Trademark Rule 2.120(a)(2), the parties are required to hold a discovery conference to discuss the subjects set forth in Fed. R. Civ. P. 26(f) and in the institution order of the case. TBMP § 401.01 (3d ed. 2011); and "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42242, 42245 and 42252 (August 1, 2007). Each party has a duty to cooperate and conduct the discovery conference in a timely fashion. See *e.g.*, *Promgirl, Inc. v. JPC Co.*, 94 USPQ2d 1759 (TTAB 2009) (shared responsibility to schedule and hold conference which must include not just settlement but all topics outlined in Fed. R. Civ. P. 26 and

² When responding to the Board's telephone inquiry about all previous contact or attempted contact between the parties, opposer stated that settlement communication had occurred.

³ Inasmuch as the email string between the Board and applicant was merely procedural in nature (i.e., for the sole purpose of scheduling a conference) it will not be uploaded into this proceeding.

the institution order); *Guthy-Renker Corp. v. Michael Boyd*, 88 USPQ2d 1701, 1703 (TTAB 2008) ("it is the equal responsibility of both parties to ensure that the discovery conference takes place by the assigned deadline"); and *Influence Inc. v. Zuker*, 88 USPQ2d 1859, 1860 n.2 (TTAB 2008) (holding discovery conference is a mutual obligation).

Show Cause

In view thereof, applicant is allowed until thirty days from the date of this order in which to show cause why judgment should not be entered against applicant for his refusal to schedule or participate in the discovery conference, and for his otherwise apparent loss of interest in this proceeding. Trademark Rule 2.120(g)(1); and TBMP §§ 401.01 and 527.03.

Suspension

Proceedings are suspended pending a response from applicant.