

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

Mailed: July 24, 2013

Opposition No. 91203706

Chatham Imports, Inc.

v.

Washington Place LLC

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of  
1) opposer's February 27, 2013 motion to compel discovery, and  
2) applicant's March 19, 2013 cross-motion to compel discovery.  
The motions have been fully briefed.

Opposer's motion to compel discovery

Twelve days after applicant's service of its responses to  
opposer's interrogatories, opposer presented its position  
detailing perceived deficiencies in applicant's responses by  
way of a November 21, 2012 letter to counsel for applicant.  
Opposer received applicant's December 7, 2012 detailed letter  
in response, sent a January 17, 2013 letter responding to  
applicant and requesting supplemental responses, and received  
applicant's January 29, 2013 letter in response. Subsequent to  
these communications, opposer filed its motion to compel.

The Board finds that by way of the substance of said  
communications, as well as the promptness with which opposer

initiated communication and attempted resolution of the issues it now raises in its motion to compel, opposer satisfied the requirement as set forth in Trademark Rule 2.120(e)(1) to make a good faith effort to resolve the discovery dispute prior to filing its motion.

Turning to the discovery dispute, Trademark Rule 2.120(d)(1) provides, in pertinent part:

The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, ... If a party upon which interrogatories have been served believes that the number of interrogatories exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, *the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.* (emphasis added)

The Board's directive is clear with respect to the response that is required when a party alleges that it has been served an excessive number of interrogatories. Specifically, if a party on which interrogatories have been served believes that the number of interrogatories served exceeds the limit specified in Trademark Rule 2.120(d)(1), and wishes to object to the interrogatories on this basis, the party must, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. See TBMP §§ 405.03(e) and 410 (2013). See also

*Amazon Technologies v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009).

The record indicates that applicant's response to opposer's first set of interrogatories comprises general objections which do not include an objection based on an excessive number of interrogatories, substantive responses and/or objections to each interrogatory with the exception of Interrogatory Nos. 8 and 9, and the following objection to Interrogatory Nos. 8 and 9:

Applicant hereby incorporates by reference all of its General Objections. Applicant further objects to this Interrogatory because Applicant's response would exceed the numerical limit of seventy-five (75) interrogatories that 37 CFR § 2.120(d)(1) imposes on Opposer.

Applicant's asserted objection to two of opposer's interrogatories, based on its belief that opposer had served more than seventy-five interrogatories, was improper. Applicant's remedy was to serve a general objection as required in such situation under Trademark Rule 2.120(d)(1) and prevailing authorities. Accordingly, by way of its failure to do so, applicant waived its right to object to the interrogatories on the assertion that the total number of interrogatories exceed that allowed under Trademark Rule 2.120(d)(1). The objection based on excessive number of interrogatories was improper and has no effect. For completeness, the Board also notes that in *inter partes*

proceedings, it does not allow a party to elect to take what it believes is a "more productive route to move forward in discovery," as applicant asserts it did (see applicant's brief, p. 6).

In view of these findings, opposer's motion to compel discovery is granted. Applicant is allowed until thirty (30) days from the mailing date of this order in which to serve full and complete responses to opposer's Interrogatory Nos. 8 and 9.<sup>1</sup>

Applicant's cross-motion to compel discovery

Applicant seeks an order compelling opposer to serve a supplemental response to Interrogatory No. 32, which reads:

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<sup>1</sup> For completeness, the Board notes that the total number of interrogatories served in opposer's first set of interrogatories does not exceed seventy-five. See TBMP § 405.03 (2013). Also, to the extent that the parties dispute the relevance of Interrogatory Nos. 8 and 9, the Board notes that the grounds for opposition to application Serial No. 77962565 and for a counterclaim for cancellation of opposer's Registration No. 3829294 are priority and likelihood of confusion under Trademark Act Section 2(d), and finds that the interrogatories seek information that is relevant to both priority and to several factors that are considered in the likelihood of confusion analysis. Said interrogatories set forth inquiries which are regularly posed in Board proceedings involving Section 2(d) claims going to the registrability of marks. See TBMP § 402.01 (2013). Lastly, to the extent that applicant believes responding to Interrogatory Nos. 8 and 9 would be unduly burdensome, the Board finds that, given that both a claim and counterclaim are at issue, responding would not be unduly burdensome. As appropriate, applicant may avail itself of the option to provide an adequate representative sampling of the information sought in Interrogatory Nos. 8 and 9, or a conscientiously-selected amount which is nevertheless sufficient to meet opposer's discovery needs. See TBMP § 402.02 (2013). Applicant is advised to utilize this option only if absolutely necessary, and to do so judiciously.

"[I]dentify the meaning, definition and connotation of Opposer's Mark." In its cross-motion, applicant does not set forth what conference or correspondence it engaged in which was directed to resolving the disputed issue prior to filing its cross-motion. In its brief in opposition to *opposer's* motion to compel, applicant references its January 29, 2013 letter to counsel for opposer (applicant's brief, p. 6, fn. 5). Inasmuch as the January 29, 2013 letter was included in applicant's brief in opposition to opposer's motion, the Board has considered it.

In said letter, applicant set forth its perceived deficiency in the objection and response which opposer served to Interrogatory No. 32. However, the record does not evidence any further communication or conference, subsequent to said letter, which was directed to the dispute at issue in the cross-motion, namely, the response to Interrogatory No. 32. In view thereof, applicant did not satisfy the requirement to make a good faith effort to resolve the discovery dispute presented in its cross-motion prior to filing said motion. See Trademark Rule 2.120(e)(1). See also TBMP § 523.02 (2013).

In view thereof, applicant's cross-motion to compel discovery is denied.

Schedule

Proceedings are hereby resumed. As noted in the March 20, 2013 order, the stipulation filed March 1, 2013 is granted. Expert disclosure, discovery and trial dates are now reset as follows:

Expert Disclosures Due	August 23, 2013
Discovery Closes	September 22, 2013

Chatham as plaintiff in the opposition, defendant in counterclaim, and plaintiff in counter-counterclaim: Pretrial Disclosures due	November 6, 2013
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Chatham 30-day testimony period to close	December 21, 2013
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Washington Place as defendant in the opposition, plaintiff in counterclaim, and defendant in counter-counterclaim Pretrial Disclosures due	January 5, 2014
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Washington Place 30-day testimony period to close	February 19, 2014
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Chatham Rebuttal Disclosures Due	March 6, 2014
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Chatham 30-day testimony period and rebuttal testimony to close	April 20, 2014
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Washington Place Rebuttal Disclosures Due	May 5, 2014
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Washington Place 15-day rebuttal period to close	June 4, 2014
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BRIEFS SHALL BE FILED AS FOLLOWS:

Brief for Chatham in the opposition and counter-counterclaim due	August 3, 2014
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Brief for Washington place in the counterclaim due	September 2, 2014
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Brief for Chatham in counter-counterclaim, and reply brief, if any, in the opposition due	October 2, 2014
Reply brief, if any, for Washington place in the counter-counterclaim due	October 17, 2014

If the parties stipulate to any extension or suspension of these dates, or a portion thereof, their motion must set forth their proposed schedule in the format shown above. The parties were advised of this requirement in the Board's June 5, 2012 order; despite this, applicant failed to comply in the filing of the December 14, 2012 consented motion (automatically granted by the Board's ESTTA system on December 18, 2012, and therefore not reviewed by Board personnel prior to issuance of the granting order). The Board expects compliance with this directive in any future filings seeking an extension or suspension of dates.

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.