

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

Mailed: August 6, 2013

Opposition No. 91204122

Empire State Building Company  
L.L.C.

v.

Michael Liang

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

This case now comes up on opposer's motion, filed June 6, 2013, to compel applicant to answer opposer's first set of interrogatories and first set of document requests, served February 19, 2013. Applicant has failed to file a brief in response to opposer's motion. See Trademark Rule 2.127(a).<sup>1</sup>

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 responses is granted. See Trademark Rule 2.120(e).

Applicant is allowed until **THIRTY DAYS** from the mailing date of this order in which to respond to opposer's first set of interrogatories and first set of document requests, without objection on the merits, failing which a motion for sanctions

will be entertained by the Board.<sup>2</sup> See Trademark Rule 2.120(g)(1).

Proceedings are resumed, and dates are reset below.

Discovery Closes	<b>CLOSED</b>
Plaintiff's Pretrial Disclosures Due	9/20/2013
Plaintiff's 30-day Trial Period Ends	11/4/2013
Defendant's Pretrial Disclosures Due	11/19/2013
Defendant's 30-day Trial Period Ends	1/3/2014
Plaintiff's Rebuttal Disclosures Due	1/18/2014
Plaintiff's 15-day Rebuttal Period Ends	2/17/2014

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.

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<sup>1</sup> Trademark Rule 2.127(a) reads, in relevant part, as follows: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

<sup>2</sup> Objections going to the merits of a discovery request include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. In contrast, claims that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information. The Board generally is not inclined to hold a party to have waived the right to make these claims, although such claims must be made expressly. *No Fear v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).