

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

Mailed: March 3, 2014

Opposition No. 91204897  
(**Parent Case**)  
Opposition No. 91204941

John G. Marino

v.

Laguna Lakes Community  
Association, Inc.

**George C. Pologeorgis,  
Interlocutory Attorney:**

These consolidated proceedings now come before the Board for consideration of opposer's fifth motion to compel filed on February 25, 2014 in the parent case of this consolidated proceeding, i.e., Opposition No. 91204897.<sup>1</sup> By way of its latest motion, opposer also seeks an extension of the close of the discovery period. In lieu of filing a written response to the motion, applicant requested a telephone conference with the above-signed

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<sup>1</sup> The Board notes that opposer filed an identical motion to compel on February 19, 2014 in the child case of this consolidated proceeding, i.e., Opposition No. 91204941. Opposer is reminded that it should only file papers in the parent case of this consolidated proceeding pursuant to the Board's August 27, 2012, consolidation order. Inasmuch as the motion to compel filed in the child case is identical to the one filed in the parent case, the motion to compel filed in the child case will be given no further consideration.

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interlocutory attorney to entertain the merits of opposer's latest motion to compel. The Board granted the request for a telephone conference.

The parties agreed to hold a telephone conference at 4:30 p.m., Eastern Time on Thursday, February 27, 2014. The conference was held as scheduled among Scott M Behren, as counsel for opposer, W. Scott Harders, as counsel for applicant, and George C. Pologeorgis, as a Board attorney responsible for resolving interlocutory disputes in this case.

The Board carefully considered the arguments raised by the parties during the telephone conference, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the Board made the following findings and determinations:

#### **Opposer's Motion to Compel**

For the reasons discussed below, opposer's motion to compel and to extend the close of discovery filed on February 25, 2014 in Opposition No. 91204897 of this consolidated case is **DENIED**.

#### **Background**

On August 23, 2013, opposer took the discovery depositions of three of applicant's Board of Directors, namely, Jeff Kelly, Mary Ann Coward, and Allen Hajicek, as well as the 30(b)(6) deposition of applicant, namely, Patrick Tardiff.

On October 11, 2013, opposer filed a motion seeking to compel the discovery deposition of applicant's counsel, Donna Flammang or, alternatively, a 30(b)(6) witness knowledgeable of certain topics identified in opposer's 30(b)(6) deposition notice.

By order dated February 3, 2014, the Board, *inter alia*, granted opposer's October 11, 2013, motion to compel solely to the extent that applicant was required to produce another 30(b)(6) witness who has sufficient knowledge regarding (1) applicant's first use of its subject marks, and (2) information regarding any transfer/assignments of the subject marks by Transeastern Homes or any TOUSA entity to applicant by March 5, 2014.

We now turn to opposer's latest motion to compel filed on February 25, 2014. By way of this latest motion to compel, opposer requests that the Board compel applicant to produce a 30(b)(6) witness who has sufficient knowledge, not only regarding the topics approved by the Board in its February 2, 2014, order, but additional topics identified by opposer for the first time.

Initially, the Board notes that, pursuant to the Board's August 15, 2013 order, opposer failed to contact the assigned interlocutory attorney in order to obtain permission to file its latest motion to compel entertained herein. Further, the Board notes that opposer has been in possession of the discovery transcripts of Jeff Kelly, Mary Ann Coward, and Allen Hajicek, as well as applicant's 30(b)(6) witness, Patrick Tardiff, at least since September

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2013. To the extent opposer believed that the testimony of any of the aforementioned deponents was deficient in any manner, opposer should have requested that the Board compel applicant to produce another 30(b)(6) witness who had knowledge of all the disputed topics in its motion to compel filed on October 11, 2013. Opposer, however, inexplicably failed to do so and cannot now be heard to complain about any deficiencies in testimony above and beyond those topics identified in its motion to compel filed on October 11, 2013.

Because the Board highly discourages piecemeal litigation and inasmuch as opposer could have sought the relief it is now requesting in its previous motion to compel and since opposer failed to comply with the requirements of the Board's August 15, 2013, order, opposer's February 25, 2014 motion to compel and to extend the close of discovery is **DENIED**.

The parties are now precluded from filing any further motions to compel in this consolidated case.

Trial dates for these consolidated proceedings remain as reset by Board order dated February 3, 2014.