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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205827
Party	Plaintiff Sturgis Motorcycle Rally, Inc.
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Submission	Motion to Compel Discovery
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Date	05/21/2013
Attachments	2013-05-21 Opposer's Motion to Compel Discovery.pdf(174887 bytes)

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_____)	
Sturgis Motorcycle Rally, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91205827
)	
Charles Nucci,)	
)	
Applicant.)	
_____)	

OPPOSER’S MOTION TO COMPEL DISCOVERY

Opposer, Sturgis Motorcycle Rally, Inc. (“SMRI” or “Opposer”), pursuant to 37 C.F.R. § 2.120(e) and Trademark Board Manual of Procedure (“TBMP”) § 523.01, moves the Trademark Trial & Appeal Board (“Board”) to compel written discovery from Mr. Charles Nucci (“Mr. Nucci” or “Applicant”).

I. RELEVANT HISTORY

On April 5, 2013, SMRI served the following discovery requests on Mr. Nucci under a cover letter from SMRI’s counsel, Jason Sneed (attached to the Declaration of Jason M. Sneed, hereinafter “Sneed Decl.”, at Exhibit A-1 thereto):

- *First Set of Interrogatories of SMRI to Applicant Charles Nucci* (hereinafter “Interrogatories”, attached to Sneed Decl. at Exhibit A-2 thereto); and,
- *First Request for the Production of Documents and Things of SMRI to Applicant Charles Nucci* (hereinafter “Requests for Production”, attached to Sneed Decl. at Exhibit A-3 thereto).

Each of the aforementioned requests contained a certificate of service dated Friday, April 5, 2013 and signed by SMRI’s counsel, Mr. Sneed. (Interrogatories, at 11; Requests for Production, at 9).

Discovery closed in this proceeding on Saturday, April 6, 2013. (Doc. No. 5).

II. STANDARD FOR A MOTION TO COMPEL

Under 37 CFR § 2.120(a)(3), written discovery requests may be served through the last day of the discovery period, even though the answers thereto will not be due until after the discovery period has closed. *See also* TBMP § 405.01 (pertaining to interrogatories); TBMP § 406.01 (pertaining to requests for production). Responses to written discovery must be served no later than 30 days after service of the discovery. 37 CFR § 2.120(a)(3). Five additional days are provided if discovery is served via first-class mail. 37 CFR § 2.119(c).

A party has a duty to cooperate with regard to written discovery. TBMP § 408.01. If a party fails to respond to a request for written discovery, the party seeking discovery may file a motion to compel discovery. 37 CFR § 2.120(e); TBMP § 523.01. Absent a showing of excusable neglect, the Board may determine that a responding party has forfeited its right to object to the merits of an interrogatory by failing to respond within the appropriate time. Fed.R.Civ.P. 33(b)(2); TBMP § 405.04(a). The same applies to requests for production. Fed.R.Civ.P. 34(b)(2)(A); TBMP § 406.04(a).

As set forth above, SMRI served the Interrogatories and the Request for Production on April 5, 2013, before the close of the discovery period. Therefore, SMRI's written discovery requests are timely. As SMRI's requests were served via first-class mail, Mr. Nucci had five additional days to respond pursuant to 37 CFR § 2.119(c), making the responsive date May 10, 2013. However, Mr. Nucci has served no response to the requested discovery. (Sneed Decl., at ¶4).

Pursuant to 37 CFR § 2.120(e) and TBMP § 523.02, Charles Landrum, of counsel to SNEED PLLC, contacted counsel for Applicant, Mr. Ian Boyd, regarding Applicant's failure to respond. (Declaration of Charles M. Landrum III, hereinafter "Landrum Decl.", at ¶4). Mr. Boyd

could not provide a date certain by which Applicant would respond to the requested discovery. (Id., at ¶5). When Mr. Landrum asked the reason for the failure to respond, Mr. Boyd responded that Applicant had been “focused” on the motion to stay proceedings, (Id., ¶6), which motion was filed six days *after* the discovery responses were due. (Doc. No. 9).

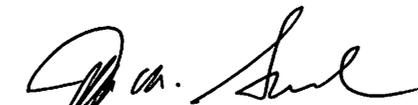
Applicant’s responses are overdue by eleven days. Applicant has communicated that he does not presently know when responses will be served. Further, there is no evidence that Applicant’s failure to respond is due to excusable neglect, particularly in light of Mr. Nucci’s counsel’s explanation that Applicant was spending its time on an unrelated motion to stay proceedings. Accordingly, Opposer filed the instant motion to compel Applicant’s responses to the requested written discovery.

III. CONCLUSION

Opposer has served written discovery in a timely fashion. Applicant did not respond within the required time and still has not responded. Applicant’s responses are eleven days late. Opposer hereby requests that the Board enter an order compelling Applicant to respond to SMRI’s Interrogatories, as set forth in Exhibit A-2, and to produce documents requested by SMRI’s Request for Production, as set forth in Exhibit A-3, without objection and without delay, and for such other and further relief as the Board deems just and reasonable.

Dated: May 21, 2013

Respectfully Submitted,



Jason M. Sneed, Esq.

SNEED PLLC

610 Jetton St., Suite 120-107

Davidson, North Carolina 28036

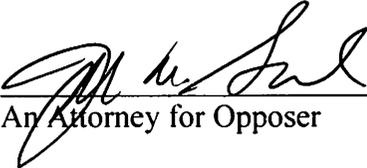
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*Attorney for Opposer,
Sturgis Motorcycle Rally, Inc.*

Certificate of Consultation

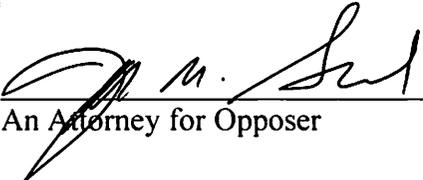
The undersigned counsel of record hereby certifies that Opposer, through counsel, has made a good faith effort, by conference and correspondence, to resolve with Applicant the issues presented in the motion but the parties were unable to resolve their differences.


An Attorney for Opposer

Certificate of Service

The undersigned counsel of record hereby certifies that a copy of the foregoing *Opposer's Motion to Compel Discovery* was served by placing a copy in U.S. Mail, postage prepaid, this 21st day of May, 2013 and addressed to the following:

Ian K. Boyd
Harvey Siskind LLP
Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
Attorney for Applicant


An Attorney for Opposer