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

Proceeding	91205910
Party	Plaintiff Romney for President, Inc.
Correspondence Address	Charles F. Marshall, David W. Sar Brooks, Pierce, McLendon, Humphrey et al P.O. Box 26000 Greensboro, NC 27420 UNITED STATES cmarshall@brookspierce.com, dsar@brookspierce.com
Submission	Motion to Compel Discovery
Filer's Name	David W. Sar
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Signature	/DavidWSar/
Date	02/21/2013
Attachments	RFP Motion to Compel Initial Disclosures.pdf (5 pages)(18788 bytes) RFP Motion to Compel Initial Disclosures Ex A.pdf (1 page)(77332 bytes) RFP Motion to Compel Initial Disclosures Ex B.pdf (1 page)(79538 bytes)

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

In re Application Serial No. 85447381
For the Mark: BELIEVE IN AMERICA
Filed: October 14, 2011
Published for Opposition: March 6, 2012

In re Application Serial No. 85452544
For the Mark: BELIEVE IN AMERICA
Filed: October 20, 2011
Published for Opposition: March 6, 2012

ROMNEY FOR PRESIDENT, INC.,

Opposer,

v.

CHRIS ARMES,

Applicant.

Opposition No. 91205910

OPPOSER ROMNEY FOR PRESIDENT, INC.’S
MOTION TO COMPEL APPLICANT TO PROVIDE INITIAL DISCLOSURES

COMES NOW Opposer Romney for President, Inc. (“RFP”), by and through undersigned counsel, and respectfully moves the Trademark Trial and Appeal Board (the “Board”) — pursuant to 37 C.F.R. § 2.120(e) — to compel Applicant Chris Armes (“Armes”) to provide initial disclosures in accordance with the Trademark Rules of Practice and Federal Rules of Civil Procedure. Such disclosures are long overdue and, despite its good faith efforts, RFP has been unable to obtain the disclosures from Armes. In support of this Motion, RFP states the following, which embodies RFP’s brief in support of this Motion pursuant to 37 C.F.R. § 2.127(a):

1. On July 3, 2012, the Board issued a notice to the parties that included a trial order setting, *inter alia*, the deadlines for the discovery conference and disclosures in this proceeding (the “Scheduling Order”).
2. Under the Scheduling Order, the parties were required to participate in a discovery conference on or before September 11, 2012, and each party was required to provide the

other with its initial disclosures on or before October 11, 2012.

3. Consistent with the Scheduling Order, the parties participated in a discovery conference by telephone on September 7, 2012.

4. Also consistent with the Scheduling Order, and in accordance with the Trademark Rules of Practice and Federal Rules of Civil Procedure, RFP provided its initial disclosures to Armes via email and United States Mail, postage prepaid, on October 11, 2012.

5. Armes did not provide any initial disclosures to RFP on or before the deadline set by the Board. To this day, Armes has still not provided any such disclosures. More than three months have elapsed since the deadline set in the Scheduling Order passed on October 11, 2012.

6. After having not received any initial disclosures from Armes, undersigned counsel for RFP contacted counsel for Armes by email on January 21, 2013, inquiring about the status of the disclosures. A copy of such email is attached hereto as **Exhibit A**.

7. Counsel for Armes never responded to the Exhibit A email.

8. Subsequently, on February 4, 2013, RFP served certain discovery requests on Armes. In an email transmitting courtesy copies of the requests to counsel for Armes, counsel for RFP again requested initial disclosures from Armes. A copy of that email is attached hereto as **Exhibit B**.

9. Counsel for Armes never responded to the Exhibit B email.

10. On the basis of its repeated efforts to contact Counsel for Armes regarding Armes's failure to provide any initial disclosures, RFP states that it has in good faith attempted to resolve the issue now before the Board. Nonetheless, the parties have been unable to resolve their differences in this regard.

11. On account of Armes's complete lack of response to the Exhibit A email, lack of response to the Exhibit B email, and the lengthy delay in providing any initial disclosures to RFP, counsel for RFP believes further efforts to resolve this issue with counsel for Armes would be futile. As such, counsel for RFP believes this matter now requires intervention by the Board.

12. The deadline for the close of discovery, as established in the Scheduling Order, is March 10, 2013; as such, the discovery period has not yet closed and this Motion is timely under 37 CFR § 2.120(e)(1).

13. The relief herein sought by RFP is available. *See* 37 CFR § 2.120(e)(1) (“If a party fails to make required initial disclosures . . . the party entitled to disclosure or seeking discovery may file a motion to compel disclosure”); *see also* TBMP § 411.01 (“In inter partes proceedings commenced on or after November 1, 2007, if a party fails to provide any adverse party with required initial disclosures or expert testimony disclosures, the adverse party may file a motion to compel.”).

WHEREFORE, Opposer RFP respectfully prays that the Board:

1. Enter an Order, pursuant to 37 CFR § 2.120(e)(1), compelling Armes to provide its initial disclosures to RFP in accordance with the Trademark Rules of Practice and the Federal Rules of Civil Procedure;

2. Enter an Order, in accordance with 37 CFR § 2.120(e)(2), suspending this proceeding with respect to all matters not germane to the Motion now before the Board (except only for those matters not suspended or tolled by this Motion, under 37 CFR § 2.120(e)(2), which matters include Armes's obligation to respond to all outstanding discovery requests and any motions to compel such responses); and

3. Grant RFP such other relief as the Board deems appropriate in the circumstances.

This is the 21st day of February, 2013.

/CharlesFMarshall/

Charles F. Marshall

N.C. State Bar No. 23297

/DavidWSar/

David W. Sar

N.C. State Bar No. 23533

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Attorney(s) for Opposer

Romney for President, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing document (OPPOSER ROMNEY FOR PRESIDENT, INC.'S MOTION TO COMPEL APPLICANT TO PROVIDE INITIAL DISCLOSURES) has been served on counsel for Applicant Chris Armes, by mailing said copy on this date, via First Class Mail, postage prepaid, and by email, to:

Christopher J. Hussin
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Attorney for Applicant

This is the 21st day of February, 2013.

/DavidWSar/
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*Attorney(s) for Opposer
Romney for President, Inc.*

EXHIBIT A

From: Charles Marshall
Sent: Monday, January 21, 2013 6:22 PM
To: 'Christopher J. Hussin'
Cc: David Sar
Subject: RE: RFP - Armes

Hi Chris. I'm just following up on this open matter. Your client did not serve his initial disclosures as required - we need him to do that immediately so we can do the discovery that we'll need to do in short order. Thanks. Charles

Charles Marshall
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EXHIBIT B

From: David Sar
Sent: Monday, February 04, 2013 11:19 AM
To: 'chussin@boardmanclark.com'
Cc: Charles Marshall
Subject: TTAB Opposition No. 91205910

Chris,

Attached are scanned copies of discovery requests which have been served today.

Additionally, we have not received Mr. Armes' initial disclosures. Please provide them.

--David

David W. Sar
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