

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

Mailed: October 29, 2012

Opposition No. 91207365

El Encanto, Inc.

v.

Hatch Chile Company, Inc.

**Robert H. Coggins,  
Interlocutory Attorney:**

On October 10, 2012, applicant filed what it titled a "motion to dismiss." A reading of the motion reveals that it is more in the nature of a motion for summary judgment on the issue of opposer's standing than a motion to dismiss for failure to state a claim. Applicant's motion argues the merits of opposer's standing instead of merely arguing that the allegations of standing are insufficient. Specifically, applicant argues that opposer lacks standing due to an agreement between the parties.

Except for assertions of claim or issue preclusion or lack of jurisdiction by the Board, a motion for summary judgment may not be filed until the moving party has made its initial disclosures. Trademark Rule 2.127(e)(1).

Applicant filed its motion for summary judgment on October

10, 2012, on the basis of applicant's standing. The deadline for making initial disclosures is January 17, 2013. The motion fails to allege that applicant made its required initial disclosures prior to filing the motion. See *Compagnie Gervais Danone v. Precision Formulations, LLC*, 89 USPQ2d 1251, 1255 at fn. 7 (TTAB 2009). Inasmuch as applicant's motion was filed prior to the deadline for initial disclosures (and even prior to the deadlines to answer and for the mandatory discovery conference), the Board presumes that applicant has not yet made its initial disclosures. In view thereof, the motion is premature and will be given no consideration.

Dates remain as set by the Board's October 9, 2012 institution order. Accordingly, answer is due November 18, 2012.