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

Proceeding	91208855
Party	Plaintiff Greater Louisville Convention & Visitors Bureau
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Greater Louisville Convention and Visitors Bureau) IN THE UNITED STATES
) PATENT AND TRADEMARK OFFICE
)
Opposer)
) TRADEMARK TRIAL AND APPEAL
BOARD)
v.)
)
The Wine Group LLC) APPL. NO. 85/736,374
)
Applicant) OPPOSITION NO. 91208855
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**OPPOSER’S REPLY IN MOTION TO COMPEL
PRODUCTION OF DOCUMENTS AND THINGS**

Greater Louisville Convention and Visitor’s Bureau (“Louisville”, “Opposer”, or “Plaintiff”), by and through its below-identified attorneys, hereby replies in its motion to compel production of documents and things by The Wine Group LLC’s (“Wine Group”, “Applicant”, or “Defendant”).

As an initial matter, Wine Group’s response to Louisville’s motion to compel was untimely, and contemporaneously with this reply, Louisville has moved to strike the untimely response. However, in an abundance of caution, Louisville also states as follows:

I. Wine Group’s Statements That It Has Always Intended To Produce Its Documents, And Has Never Refused To Do So, Are Disingenuous.

Wine Group states throughout its response that it has always intended to produce its documents, and has never refused to do so. However, this is incorrect. As set forth in Louisville’s motion, Louisville served requests for production of documents and things on Wine Group on June 13, 2013, or more than six months ago. If Wine

Group genuinely intended to produce its documents, it could have done so anytime within the past six months.

But to date, Wine Group has not produced its documents – either by sending copies to Louisville, or by permitting Louisville to inspect the documents where they are kept – despite Louisville’s many attempts to get them to do so.

Wine Group’s assertion that Louisville is trying to force Wine Group to permit inspection of its documents where they are kept is also incorrect. Indeed, the only reason Louisville asked to inspect Wine Group’s documents in place is because Wine Group stated in its July 14, 2013 letter that it would retain its responsive documents where they were located, and that “If I must come to Louisville, then you must come to Northern California”. Mot. at Exhibit 3, p. 1, para. 4.

Moreover, in its motion to compel, Louisville specifically states that Wine Group can choose to permit inspection of its responsive documents, or alternatively, can choose to send its responsive documents to Louisville. Mot. at 3. Wine Group has chosen to do neither of these two alternatives.

II. Wine Group’s Attempt to Link the Disposition of Its Discovery Requests to Louisville With the Disposition of Louisville’s Discovery Requests to Wine Group Is Improper.

In its response, Wine Group repeatedly attempts to link the disposition of its discovery requests to Louisville with the disposition of Louisville’s discovery requests to Wine Group, as a purported reason for Wine Group’s non-production of documents. However, this is improper, because this motion to compel concerns Louisville’s

document requests, whereas Wine Group's previous motion to compel concerned Wine Group's document requests.

The two are different matters. As stated in TBMP 408.01, "Discovery before the Board is not governed by the concept of priority of discovery -- that is, a party is not relieved of its discovery obligations, including its duty to cooperate, in spite of the fact that an adverse party wrongfully may have failed to fulfill its own obligations." See also *Miss America Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067 (TTAB 1990) (citing Fed. R. Civ. P. 26(d) and *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626 (TTAB 1986)).

Thus, even if Louisville had failed to fulfill its discovery obligations (which was not the case), Wine Group cannot use that as an excuse for not fulfilling its own discovery obligations.

CONCLUSION

For all the above reasons, Louisville's motion to compel should be granted.

Respectfully submitted,

/John A. Galbreath/

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Certificate of Service: I certify that on the date below, the foregoing Reply in Motion to Compel Production of Documents and Things, and referenced attachments, if any, were deposited with the United States Postal Service as first-class mail addressed to:

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17 December 2013

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