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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**

Opposer

v.

The Wine Group LLC

Applicant

) **IN THE UNITED STATES**
) **PATENT AND TRADEMARK OFFICE**
)
)
) **TRADEMARK TRIAL AND APPEAL BOARD**
)
)
) **APPL. NO. 85/736,374**
)
) **OPPOSITION NO. 91208855**
)

OPPOSER’S REPLY IN MOTION TO STRIKE
APPLICANT’S RESPONSE TO MOTION TO COMPEL

Greater Louisville Convention and Visitor’s Bureau (“Louisville”, “Opposer”, or “Plaintiff”), by and through its below-identified attorneys, hereby replies in its motion to strike The Wine Group LLC’s (“Wine Group”, “Applicant”, or “Defendant”) untimely response to Louisville’s motion to compel, and states as follows:

I. Wine Group’s Purported Reason For Its Untimely Response Does Not Ring True.

Wine Group states that a docketing error caused its untimely response – i.e., that Louisville’s motion to compel was docketed as a discovery request. Appl.’s Resp. at 2. However, this does not ring true. Before filing the motion to compel, Louisville sent Wine Group multiple letters concerning Wine Group’s unproduced documents (Mot. at Exh. 16-17 et al.), and these letters would have alerted Wine Group that a motion to compel was imminent.

Moreover, after the motion to compel was filed, the Board promptly suspended proceedings and sent a copy of the suspension order to Wine Group. Bd.’s 11/15/13 order. The Board’s order specifically mentions the recently-filed motion to compel – and even if it had not, it is common knowledge that such suspensions result from motions, and not from

discovery requests which are not even filed with the Board. Thus, the Board's suspension order provided Wine Group with additional notice of the motion to compel.

Further, Wine Group has provided no evidence to support the purported misdocketing of the motion to compel, such as a declaration or affidavit from Wine Group counsel's docketing clerk, or a copy of the mistaken docketing entry.

II. Wine Group Filed No Time Extension Motion With Its Untimely Response to Louisville's Motion to Compel.

Rule 2.127(a) states: "... a brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board". Here, the Board did not specify another time; the time has not been extended by stipulation of the parties; and importantly, Wine Group did not file a motion for an extension of time.

Fed. R. Civ. P. 6 (b)(1)(B) also states: "When an act may or must be done within a specified time, the court may, for good cause, extend the time ... on motion made after the time has expired if the party failed to act because of excusable neglect." Here, Wine Group's response was made after the time had expired, and yet it filed no time extension motion.

Wine Group alleges that it did not file a time extension motion because it did not realize its docketing error until it received Louisville's reply in the motion to compel. Appl.'s Resp. at 2. However, this is incorrect. Wine Group's response to Louisville's motion to compel clearly states at page 1, line 23 to page 2, line 4 that "[the Board] denied [Wine

Group's] motion on November 3, 2013 ... Opposer filed this motion ten (10) days later". Thus, when it filed its response to Louisville's motion to compel, Wine Group already knew that Louisville's motion had been filed on November 13 and that its response was thus untimely. Yet it filed no time extension motion.

III. Louisville Clearly Made a Good Faith Effort to Resolve the Discovery Dispute Before Filing Its Motion to Compel.

Wine Group states that it is "curious" that Louisville's reply in its motion to compel did not further address Louisville's good faith efforts to resolve the discovery dispute. Appl.'s Resp. at 2. Such a remark is in the nature of a surreply by Wine Group to Louisville's motion to compel, which is improper under Rule 2.127(a).

This said, Louisville's reply in its motion to compel is not curious at all. Louisville's motion to compel already contained a plethora of sworn statements and exhibits demonstrating that it made multiple good faith attempts to resolve the discovery dispute, to no avail. Louisville has clearly met the standard of Rule 2.120(e), which require that the moving party make "a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences".

CONCLUSION

For the above reasons and those stated in the motion, Louisville's motion to strike Wine Group's untimely response 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 the Motion to Strike, and referenced attachments, if any, were deposited with the United States Postal Service as first-class mail addressed to:

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03 January 2014

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