

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

Mailed: March 30, 2014

Opposition No. 91208855

Greater Louisville Convention  
& Visitors Bureau

v.

The Wine Group LLC

**George C. Pologeorgis,  
Interlocutory Attorney:**

This case now comes before the Board for consideration of (1) opposer's motion (filed November 13, 2013) to compel, and (2) opposer's motion (filed December 17, 2013) to strike applicant's response to opposer's motion to compel as untimely.

**Opposer's Motion to Strike**

We first turn to opposer's motion to strike. Inasmuch as opposer served its motion to compel by first-class mail on November 13, 2013, applicant was allowed until December 3, 2013 to file a brief in response thereto. *See* Trademark Rules 2.127 and 2.119(c). Because applicant did not file its brief in response until December 13, 2013, applicant must show that its failure to act in a timely manner was the result of excusable neglect. *See Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993); *Pumpkin, Ltd. v.*

*The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997); Fed. R. Civ. P. 6(b)(2); TBMP §§ 509.01(b) and 507 (3d ed. rev. 2 2013).

Applicant contends that it failed to file its brief in response to opposer's motion to compel because it set an incorrect due date for such brief in its docketing calendar. However, docketing errors are within a party's reasonable control, and failure to take timely action because of them does not constitute excusable neglect. *See Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000); *Pumpkin, Ltd. v. The Seed Corps*, *supra*.

Accordingly, opposer's motion to strike applicant's response to opposer's motion to compel is **GRANTED**. Applicant's response has received no consideration in the Board's decision on opposer's motion to compel. However, because applicant clearly does not concede opposer's motion to compel, the Board has decided the motion on the merits.<sup>1</sup>

### **Opposer's Motion to Compel**

We now turn to opposer's motion to compel. In support thereof, opposer maintains that on June 13, 2013 opposer served its first request for production of documents upon applicant. Opposer further contends that applicant responded to these requests on July 15, 2013, promising to produce documents for at least Document Requests Nos. 3, 12, 18 and 62. Opposer argues that after several good faith attempts to arrange the inspection of documents responsive to

---

<sup>1</sup> Inasmuch as applicant's response has not been considered, the Board has not considered opposer's reply brief in support of its motion to compel.

opposer's document requests, applicant has failed to provide or agree upon dates when such inspection of documents may take place.

Initially, based upon the record, the Board finds that opposer has made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention and that opposer's motion to compel is timely. *See* Trademark Rule 2.120(e)(1).

As to the merits of opposer's motion to compel, the motion is **GRANTED** to the extent set forth below:

First, applicant's general objections and specific objections to opposer's Document Request Nos. 3, 12, 18, and 62 are overruled.<sup>2</sup> The Board finds that the aforementioned documents requests (1) are clearly relevant to the issues in this proceeding, (2) are not overly broad or burdensome, and (3) are not vague or ambiguous.

Second, applicant is allowed until **thirty (30) days** from the mailing date of this order in which to produce non-privileged responsive documents to opposer's Document Request Nos. 3, 12, 18 and 62 without objection, except objections based upon privilege, if applicable. Applicant may either copy and produce the documents by first-class mail or allow opposer to inspect documents at applicant's place of business. Whichever manner applicant wishes to produce

---

<sup>2</sup> The Board notes that opposer, in its motion papers, has only specifically identified Document Requests Nos. 3, 12, 18, and 62 to be at issue. Accordingly, the Board has entertained opposer's motion to compel solely in regard to these aforementioned document requests. To the extent there was a dispute regarding any other document requests, opposer should have specifically identified these requests in its motion papers.

documents pursuant to this order, applicant must do so within the time provided above.

To the extent applicant has failed to produce non-privileged responsive documents to any of the above-identified document requests and/or refused to respond to any of these document requests based upon its objections to the requests (which have now been overruled by this order, except for objections based upon privilege), applicant is ordered to produce such withheld documents within the same **thirty days** provided above.

If there are no responsive, non-privileged documents in applicant's possession, custody or control which are responsive to any of the above-identified document requests, applicant must so state affirmatively in its response to the corresponding document request. To the extent applicant has already produced documents responsive to any of the above-identified document requests, applicant must so state in its response to the particular document request and identify, by bates number, the documents which are responsive to each request.

Additionally, applicant is required to provide opposer a privilege log within the same **thirty (30) days** provided above to the extent that applicant claims privilege to any of opposer's discovery requests, if it has not already done so.

In the event applicant fails to provide opposer with full and complete responses to the outstanding discovery, as required by this order, applicant

will be barred from relying upon or later producing documents or facts at trial withheld from such discovery. *See* Fed. R. Civ. P. 37(c)(1).<sup>3</sup>

**Trial Schedule**

Proceedings herein are resumed. Discovery remains open. Trial dates, beginning with the deadline for expert disclosures, are reset as follows:

Expert Disclosures Due	<b>July 1, 2014</b>
Discovery Closes	<b>July 31, 2014</b>
Plaintiff's Pretrial Disclosures Due	<b>September 14, 2014</b>
30-day testimony period for plaintiff's testimony to close	<b>October 29, 2014</b>
Defendant/Counterclaim Plaintiff's Pretrial Disclosures Due	<b>November 13, 2014</b>
30-day testimony period for defendant and plaintiff in the counterclaim to close	<b>December 28, 2014</b>
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	<b>January 12, 2015</b>
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	<b>February 26, 2015</b>
Counterclaim Plaintiff's Rebuttal Disclosures Due	<b>March 13, 2015</b>
15-day rebuttal period for plaintiff in the counterclaim to close	<b>April 12, 2015</b>
Brief for plaintiff due	<b>June 11, 2015</b>
Brief for defendant and plaintiff in the counterclaim due	<b>July 11, 2015</b>
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	<b>August 10, 2015</b>
Reply brief, if any, for plaintiff in the counterclaim due	<b>August 25, 2015</b>

---

<sup>3</sup> If applicant fails to comply with this order, opposer's remedy lies in a motion for sanctions, pursuant to Trademark Rule 2.120(g)(1). Furthermore, the parties are reminded that a party that has responded to a discovery request has a duty to supplement or correct that response. *See* Fed. R. Civ. P. 26(e).

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.