

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

EJW

Mailed: February 4, 2014

Opposition No. 91209816

Quantum Test Prep

v.

Solomon Berman

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This case now comes up before the Board for consideration of applicant's motion (filed September 4, 2013) to compel opposer's discovery responses and applicant's fully briefed motion (filed November 7, 2013) to strike opposer's response to applicant's motion to compel.¹ Inasmuch as the motion to strike relates to the

¹ The Board also notes the parties' submission (filed September 26, 2013) requesting entry of the parties' agreed protective order. The agreed protective order is entered and made of record. Trademark Rule 2.116(g), 37 C.F.R. § 2.116(g).

The parties are referred, as appropriate, to TBMP §§ 412.03 (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board), 412.05 (Handling of Confidential Materials by Board).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

motion to compel, the Board turns first to the motion to strike.

Motion to Strike

Applicant requests that the Board strike opposer's response to applicant's motion to compel because it was not timely filed. Specifically, applicant's motion was filed on September 4, 2013; therefore, a response was due no later than September 24, 2013. See Trademark Rules 2.119(c) and 2.127(a). However, opposer served and filed its responsive brief on October 31, 2013, over one month late. In said motion, opposer discusses, *inter alia*, opposer's hardship in gathering information sought by applicant because opposer is comprised of two individuals who have been occupied with schools and universities "during a time during which is the busiest time for such organizations gearing up for educational activities" (response at 1). No mention is made regarding the untimeliness of opposer's response to applicant's motion. In view of the foregoing, the Board finds that opposer's response does not establish excusable neglect for the late-filed response to applicant's motion. See Fed. R. Civ. P. 6(b). Accordingly, applicant's motion to strike is granted, and opposer's response to the motion to compel is hereby stricken and will not be considered. See Fed. R.

Civ. P. 12(f); and Trademark Rules 2.116(a) and 2.127(a). See also *Saint-Gobain Corporation v. Minnesota Mining and Mfg. Company a/k/a 3M*, 66 USPQ2d 1220, 1221 (TTAB 2003) (untimely reply brief received no consideration); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (applicant's response to opposers' cross motion for judgment untimely and given no consideration); and *M-Tek Inc. v. Cvp Systems Inc.*, 17 USPQ2d 1070, 1072 (TTAB 1990) (the petitioner not having set forth any circumstances constituting excusable neglect for its failure to seek further leave of the Board at the proper time, untimely testimony deposition stricken and given no consideration).

Motion to Compel

Although the Board has stricken opposer's responsive brief to the motion to compel, the Board does not treat the motion as conceded. Opposer states in its response to the motion to strike that opposer served applicant with supplemental responsive documents on October 14, 2013, and again on November 5, 2013, and that the motion to compel is moot. Applicant did not file a reply contradicting opposer's statements. In view thereof, the Board deems applicant's motion to compel to be moot and will give it no further consideration.

Additionally, should any dispute remain between the parties with respect to applicant's propounded discovery, applicant is **ORDERED** to contact the assigned Interlocutory Attorney before filing any new motion to compel.

Proceeding Resumed; Trial Dates Reset

This proceeding is resumed. Trial dates are reset as shown in the following schedule:

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| Discovery Closes | 2/25/2014 |
| Plaintiff's Pretrial Disclosures Due | 4/11/2014 |
| Plaintiff's 30-day Trial Period Ends | 5/26/2014 |
| Defendant's Pretrial Disclosures Due | 6/10/2014 |
| Defendant's 30-day Trial Period Ends | 7/25/2014 |
| Plaintiff's Rebuttal Disclosures Due | 8/9/2014 |
| Plaintiff's 15-day Rebuttal Period Ends | 9/8/2014 |

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. See Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

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