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

Proceeding	91211530
Party	Plaintiff J-Lynn Entertainment, LLC
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Date	06/07/2014
Attachments	Op- poser's_Response_to_Applicant's_rejection_of_motion_to_compel_Opposition_ 91211530 .pdf(403978 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Registration No. 3682041
For the mark ADVENTURES OF SHADOW,

J-Lynn Entertainment, LLC,	:	
	:	
Petitioner,	:	
	:	Opposition No. 91211530
	:	(Parent)
	:	
vs.	:	Cancellation No. 92056491
	:	(Child)
William T. Odonnell,	:	
	:	
Registrant.	:	

**OPPOSER’S REPLY IN SUPPORT OF ITS MOTION TO COMPEL DISCOVERY AND
MOTION TO EXEND OR RE-OPEN OPPOSER’S DISCOVERY PERIOD**

Opposer J-Lynn Entertainment LLC, respectfully submits its reply in support of its motion to compel. The Applicant’s opposition to J-Lynn Entertainment’s motion to compel takes the position that discovery should be overly contentious and that both the Federal Rules and J-Lynn Entertainment’s document requests should be easily fulfilled by the Applicant William T Odonnell if he had indeed had truly been selling items during his claimed first use in commerce and had never abandoned or not used the mark from that time until present day. Since the Applicant failed to supply the Opposer’s second request for a Written Discovery and failed to supply documentation supporting the Applicant’s sales records of his mark in commerce, in addition to the applicant objecting to most of the Opposer’s request in the first Written Discovery Request (SEE Exhibit 1); The Opposer J-Lynn Entertainment believes these revelations support its acquisitions that the Applicant was not using his mark prior to these proceedings being filed.

J-Lynn Entertainment also believes it is common practice for the Applicant’s counsel The Trademark Company, PLLC to not supply or object to discovery requests. The Federal Rules contemplate a more

expansive obligation and collaborative approach. By filing its motion to compel, J-Lynn Entertainment is merely attempting to discover documents that are highly relevant and important to this opposition, and Applicant's unwillingness to cooperate with both the letter and spirit of the discovery rules is hindering that fact finding. J-Lynn Entertainment's motion should be granted so that the merits of this case may be properly heard and unaltered evidence can be seen. The fact that the applicant has altered its materials in the first Written Discovery request and reducing images to such a small size that they cannot be properly evaluated J-Lynn Entertainment questions the authenticity of any evidence or exhibits supplied by the applicant during these proceedings and asks the Board to take extreme caution and care when examining the Applicant.

Factual Review

J-Lynn Entertainment served its First Requests for Written Discovery on Applicant on June 18, 2013, which requested for the Applicant to produce relevant documents. The Applicant responded to a majority of the requests that were served on June 18th, 2013 by claiming that "Registrant objects to the instant request on the grounds that it is overly broad and burdensome." J-Lynn Entertainment also discovered that materials namely the water bottle logo and orders from the Costco photo center had been altered. Order's had the Costco Photo Center labels removed which J-Lynn Entertainment believes it was an attempt to hide the fact they were personal holiday gifts ordered by the Applicant and not items manufactured to be sold in commerce. J-Lynn Entertainment had brought up these revelations of the fact via telephone to the applicant's counsel Matthew W Sywers of the Trademark Company. J-Lynn Entertainment also made additional notifications of these alterations that were made via email to Matthew W Sywers, other The Trademark Company staff, the applicant William T Odonnel himself. As a result a second Written Discovery Request was made by J-Lynn Entertainment which was served on July 30th 2013. Both through email and telephone J-Lynn Entertainment granted extensions to the Applicant's counsel, under one claim that the Applicant's father had been ill and for a claim not stated. Other attempts via telephone and email in relation to discovery and settlement have been ignored by the Applicant and his counsel. The Applicant's unfounded objections and failure to produce documents, J-Lynn

Entertainment (Opposer) was forced to file the instant motion to compel. For the reasons stated in the motion to compel and reiterated in this reply, J-Lynn Entertainment's motion to compel should be granted by the board.

Argument

Pursuant to Fed. R. Civ. P. 37, 37 C.F.R. § 2.120(e), and TBMP 523.01, a party may move to compel discovery if there is a failure to produce documents. The purpose of discovery is to provide a mechanism for making relevant information available to the litigants. Thus in the spirit of the rules is violated when advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and illuminate the issues. *See Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. for Dist. of Mont.*, 408 F.3d 1142, 1148-49 (9th Cir. 2005). The Applicant refused to produce responsive documents to J-Lynn Entertainment's first Written Discovery Request and has completely failed or refused to supply any response to J-Lynn Entertainment's second request for Written Discovery which has prompted J-Lynn Entertainment to file a motion to compel. The Applicant responds to J-Lynn Entertainment's motion to compel by stating that he has produced all responsive documents, J-Lynn Entertainment disagrees and can supply the Applicant's limited response to the first Written Discovery request which will show the Applicant has failed to supply sufficient responses at the Board's request. J-Lynn Entertainment has supplied evidence that the applicant has modified and/or altered material supplied in the first Written Discovery which prompted the request for a second Written Discovery by its first request for motion to compel. Either the Applicant is unwilling to perform a diligent search as required by the law and spirit of discovery, or Applicant's deliberately avoiding to supply the requests either because the Applicant can't supply the documents or knows documents will prove that the Applicant's marks are subject to cancellation due to fraud, abandonment, and non-use. We now believe the Applicant maybe taking pictures and creating material that was created well after these proceedings were filed to pass as if it was legitimate evidence that the Applicant had been using his mark and never abandoned it since his first stated use in commerce for each category of goods and services since the Applicant has not sent any pre-

trial disclosures other than some material he sent during the first discovery request. Either way, the Applicant's failure to participate and actions of submitting altered materials in the discovery process until he is forced to do so by motion practice should not be tolerated by the Board.

In response to J-Lynn Entertainment's motion to compel the Applicant alleges that he has produced responses to the first set of Written Discovery requests. J-Lynn Entertainment argues that most of the requests were objected to and denied. After the second Written Discovery J-Lynn Entertainment gave the applicant two extensions to provide documents. The Applicant claims that the Opposer failed to satisfy its obligation to make good faith efforts to resolve the discovery issues. This is not the case, J-Lynn Entertainment has made various attempts about the requests, the Applicant by way of his counsel either ignored or came up with excuse to why the documents had not been sent yet. J-Lynn Entertainment would like to highlight that the Applicant's counsel Matthew H Swyers of The Trademark Company has made common practice to avoid and not supply requested documents not only in this case but other cases where the oppose had to file a Motion to Compel (SEE Entry 14 Motion to compel OPP# 91212121 Junkfood Clothing Company LLC vs Junk Hippy LLC, Entry 5 Motion to compel OPP# 91211977 Roots Canada LTD vs Christopher R. Kopacz, Entry 10 Motion to compel OPP# 91211882 Knowledgent Group Inc vs Greg Searle DBA, Knowledgent PTY LTD, Entry 7 Motion to compel OPP# 91211383 Rovio Entertainment, LTD vs Prashant Shinde).

Conclusion

For the foregoing reasons, the Trademark Trials and Appeals Board should grant J-Lynn Entertainment's (Opposer's) Motion pursuant to Fed. R. Civ. P.37, 37 C.F.R. § 2.120(e), and TBMP 523.01 and enter an order compelling Applicant to produce responsive and unaltered documents to the above referenced Requests for Production of Documents from the Opposer's Written Discovery requests.

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Registration No. 3682041
For the mark ADVENTURES OF SHADOW,

J-Lynn Entertainment, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92056491
	:	Opposition No. 91211530
William T. Odonnell,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I respectfully submitted a copy on this June 7, 2014, to the Trademark Trial and Appeal Board and to be served, via first class mail, postage prepaid, upon:

Matthew H. Swyers
The Trademark Company
2703 Jones Franklin Road, Suite 206
Cary, NC 27518

The Trademark Company
344 Maple Avenue West, PMB 151
Vienna, VA 22180

/Neadom T Medina/
Neadom T Medina

J-Lynn Entertainment LLC
Member
PO BOX 12365
Mill Creek, WA 98082
440-610-5827

request.

3. Copies of manufacturer shipment invoices to Mr. Odonnell for all products sold prior to 8-29- 2007 to present day.

Response: Registrant objects to the instant requests on the grounds that it is overly broad and burdensome. Subject to said objections, Registrant attaches documents that are responsive to this request.

4. Copies of customer shipment invoices for in state and out of state transactions for Adventure of Shadow products starting at 8-29-2007 to present day.

Response: Registrant objects to the instant requests on the grounds that it is overly broad and burdensome. Subject to said objection, responsive documents, if any, beyond those already attached will be supplemented at a reasonable time prior to trial.

5. Copies of sales receipts for Adventures of Shadow products sold with physical commercial address and sale dates listed on receipts starting on 8-29-2007 to present day.

Response: Registrant objects to the instant requests on the grounds that it is overly broad and burdensome. Subject to said objection, responsive documents, if any, beyond those already attached will be supplemented at a reasonable time prior to trial.

6. Copies of reports of interstate sales starting at 8-29-2007 to present day.

Response: Registrant objects to the instant requests on the grounds that it is overly broad and burdensome. Subject to said objection, responsive documents, if any, beyond those already attached will be supplemented at a reasonable time prior to trial.

7. Copies of official reporting documents from state and Federal taxes paid to the state of California and the IRS from the sales of these products since 8-29-2007 to present day.

Response: See attached. Further responsive documents, if any, beyond those already attached will be supplemented at a reasonable time prior to trial.

8. List of all stores and retailers throughout the United States that have sold Adventures of Shadow products from 8-29-2007 to present day.

Response: Registrant objects to the instant requests on the grounds that it is overly broad and burdensome. Subject to said objection, responsive documents, if any, beyond those already attached will be supplemented at a reasonable time prior to trial.

Respectfully submitted this 23rd day of July, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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Vienna, VA 22180

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Counsel for Registrant

