

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

DUNN

Mailed: March 26, 2014

Opposition No. 91212105

LFP IP, LLC

v.

Semetra Brazle

Elizabeth A. Dunn, Attorney:

For the reasons set forth below, the Board will construe opposer's December 19, 2013 filing as a motion for summary judgment based on applicant's admissions.

Proceedings herein are suspended pending disposition of the motion for summary judgment.

In view of applicant's pro se status, and the absence of any indication that the parties have ever communicated, notwithstanding the requirement for discussion of arrangements for disclosures, discovery, and trial during the mandatory discovery conference, the Board provides information on how applicant may withdraw her admissions. Applicant is advised that failure to timely respond to this order may result in entry of judgment and abandonment of her application.

MOTION FOR SANCTIONS IS PREMATURE

Sanctions under Trademark Rule 2.120(g)(1) may be ordered only where a party's failure to make disclosures or serve discovery follows an order of the Board affirming or reiterating the party's obligation to make such disclosures or provide such discovery. The notice of institution of the proceeding does not constitute an order of the Board relating to disclosures within the contemplation of Trademark Rule 2.120(g)(1). Kairos Institute of Sound Healing, LLC v. Doolittle Gardens, LLC, 88 USPQ2d 1541, (TTAB 2008). Opposer's motion for sanctions under Trademark Rule 2.120(g)(1) is the first paper filed in this proceeding since applicant filed her informal answer to the notice of opposition.

Accordingly, opposer's motion for sanctions is premature and will be given no consideration.

MOTION TO COMPEL DENIED FOR LACK OF GOOD FAITH EFFORT TO RESOLVE DISPUTE

A motion to compel disclosure, like a motion to compel discovery, may be filed only after the parties have made a good faith effort to resolve the dispute in accordance with Trademark Rule 2.120(e)(1). Here, counsel for opposer submits a declaration averring that discovery requests were served by mail on November 1, 2013 (making responses due on

Friday, December 6, 2013), and that on Monday, December 9, 2013, without asking applicant whether responses had been sent by mail, opposer informed applicant that opposer would be seeking sanctions or summary judgment based on her failure to respond. This communication demonstrates no effort at cooperation whatsoever, and certainly does not invite any communication regarding arrangements to obtain the discovery to which opposer is entitled. Any good faith under which opposer is acting is notably absent from its letter. *Amazon Technologies Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009) ("In order for the meet and confer process to be meaningful and serve its intended purpose, the parties must present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions).

To the extent that opposer intended its motion to serve as a motion to compel, it is denied for failure to comply with Trademark Rule 2.120(e).

MOTION FOR SUMMARY JUDGMENT BASED ON ADMISSIONS

Requests for admission are intended to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial, the truth of which is known to the parties or can be ascertained by

reasonable inquiry. Wright, Miller, Kane, and Marcus, 8B Fed. Prac. & Proc. Civ. § 2252 (3d ed.). If the party served with requests for admission does nothing, its failure to respond, either to an entire request or to a particular request, is deemed to be an admission of the matter set forth in that request or requests. Fed. R. Civ. P. 36. Here, because applicant's failure to respond to the request for admissions has the legal effect that applicant does not dispute many facts pertinent to opposer's claims, opposer seeks summary judgment.

Applicant is allowed until THIRTY DAYS from the mailing date of this order to file a response to the motion for summary judgment, failing which the motion may be granted as conceded. Trademark Rule 2.128.

WITHDRAWAL OF ADMISSIONS

Under Rule 36(b), the Board may permit withdrawal or amendment of admissions where "the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits." The test for withdrawal or amendment of admissions is based on two prongs: (1) whether the merits of the case will be subserved by allowing withdrawal or amendment of the

admissions, and (2) whether the nonmovant will be prejudiced by allowing withdrawal or amendment of the effective admissions. See *Giersch v. Scripps Networks Inc.*, 85 USPQ2d 1306, 1307-09 (TTAB 2007).

If applicant intends to defend its application and seek adjudication on the merits of opposer's claims, applicant should file a motion to withdraw her admissions promptly, setting out all relevant circumstances.

LEGAL REPRESENTATION STRONGLY RECOMMENDED

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 n.2 (TTAB 2006).

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PROCEEDINGS SUSPENDED

Except as ordered above, any paper filed during the pendency of this motion which is not relevant to the motion for summary judgment based on admissions will be given no consideration. See Trademark Rule 2.127(d).