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

Proceeding	91212112
Party	Defendant Jordan Gerberg
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Submission	Opposition/Response to Motion
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Date	03/02/2015
Attachments	Motion for Leave and Opposition to Motion to Compel.pdf(272984 bytes)

Compel will not cause a delay in this proceeding, nor will it cause undue prejudice upon Opposer. As such, for good cause shown, Applicant, by counsel, respectfully requests the Board accept Applicant's Opposition to Opposer's Motion to Compel attached hereto as Exhibit A.

Conclusion

WHEREFORE for good cause considered, Applicant, by counsel, respectfully requests that the Board grant Applicant's Motion For Leave to File Late Applicant's Opposition to Opposer's Motion to Compel in the instant case and accept Applicant's Opposition to Opposer's Motion to Compel attached hereto as Exhibit A.

Respectfully submitted this 2nd day of March, 2015.

THE TRADEMARK COMPANY, PLLC

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EXHIBIT A

4. On or about August 27, 2013 Applicant filed its Answer and Ground of Defense in response to Opposer's Notice of Opposition.

5. On or about October 30, 2013 the parties conducted the Discovery Conference in this matter.

6. On or about November 18, 2014 Applicant served its initial disclosures on Counsel for Opposer.

7. On or about January 9, 2014 Applicant served its First Requests for Production of Documents, First Requests for Interrogatories and Supplemental Initial Disclosures to Counsel for Opposer.

8. On or about January 16, 2014 Applicant served its First Requests for Admissions to Counsel for Opposer.

9. On or about February 10, 2014 Opposer served its Responses to Applicant's First Requests for Production of Documents and Applicant's First Requests for Interrogatories and Applicant's First Set of Admissions to Counsel for Applicant.

10. On or about April 1, 2014 Opposer served its First Requests for Production of Documents and First Requests for Interrogatories and First Requests for Admissions to Counsel for Applicant.

11. On or about April 28, 2014 Counsel for Applicant filed a thirty (30) day Motion to Extend all dates in the instant proceeding with consent of Opposer as the parties were not able to complete discovery and were involved in settlement discussions at the time of filing said consent motion.

12. The Board granted the stipulated extension of all dates in the instant proceeding on or about April 28, 2014 extending the discovery deadline until on or about May 28, 2014.

13. On or about May 6, 2014 Applicant served its Responses to Opposer's First Requests for Production of Documents and First Requests for Interrogatories and First Requests for Admissions to Counsel for Opposer.

14. On or about May 16, 2014 Applicant served its Supplemental Responses to Opposer's First Requests for Production of Documents and First Requests for Interrogatories.

15. On or about May 27, 2014 Opposer served its Second Request for Requests for Production of Documents and Second Requests for Interrogatories to Counsel for Applicant.

16. On or about June 2, 2014 Applicant received Opposer's Supplemental Responses to Applicant's First Set of Requests for Production of Documents.

17. On or about July 1, 2014 Applicant served its responses to Opposer's Second Set of Requests for Production of Documents and Second Requests for Interrogatories to Counsel for Opposer.

18. On or about July 15, 2014 Opposer served its Pretrial Disclosures on Counsel for Applicant.

19. On or about July 23, 2014 Applicant filed a Motion for Summary Judgment pursuant to TBMP § 528 *et seq* on the grounds that there are no genuine issues of material fact as to Opposer's claim of a likelihood of confusion between the party's marks herein. In reply to the Opposer's brief

20. On or about August 20, 2014 Opposer filed an Opposition to Applicant's Motion for Summary Judgment.

21. On or about September 4, 2014 Applicant filed a Reply in Support of Applicant's Motion for Summary Judgment.

22. On or about January 16, 2015 the Board entered an Order denying Applicant's Motion for Summary Judgment in this matter and resetting the trial dates in this matter.

23. On or about February 4, 2015 Opposer filed a Motion to Compel seeking an Order from the Board compelling Applicant to supplement its responses to Opposer's Interrogatory Request No. 10 and Opposer's Request for Production of Document No. 9.

24. The deadline for Applicant to file an Opposition to Opposer's Motion to Compel was February 24, 2015.

Response

In response to the specifically enumerated interrogatory request and document request subject of the Opposer's Motion to Compel, Applicant States as follows:

Opposer's Interrogatory Request No. 10: Identify all licenses, assignments or other agreements concerning or relating to Applicant's Mark.

RESPONSE: Notwithstanding Applicant's objection previously asserted, Applicant responds to the instant request and states that Applicant has not used Applicant's Mark for Applicant's Goods in commerce in the United States. Applicant filed Applicant's Trademark Application Serial No. 85/859,169 for Applicant's Mark on an intent-to-use basis. Based on the foregoing, the information requested by Opposer in the instant interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Opposer's Document Request No. 9: Produce all documents which record, refer to, or relate to the selection, design, adoption, proposed use of, decision to use, and first use of Applicant's Mark and/or any mark including the letter "Q", including samples of any names, designations and/or other marks considered and rejected.

RESPONSE: Notwithstanding Applicant's objection previously asserted, Applicant responds to the instant request and states that Applicant has provided all documentation in its possession responsive to the instant document request in Applicant's Supplemental Responses to Opposer's Requests for Production of Documents, Document No. 00008, served to Opposer on or about May 16, 2014. Applicant's Document No. 00008 is a design logo in color that Applicant considered but ultimately decided to not use.

Based on the foregoing, Applicant respectfully submits that Opposer's Motion to Compel should be rendered moot inasmuch as Applicant has provided its complete responses to Opposer's Discovery Requests subject of Opposer's Motion to Compel.

Conclusion

WHEREFORE Applicant respectfully request the Board enter an order accepting Applicant's Opposition to Opposer's Motion to Compel and denying the instant motion to compel subject to Opposer's review and right to revisit the same should it deem any of the responses attached hereto to remain insufficient.

DATED this 2nd day of March, 2015.

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