

ESTTA Tracking number: **ESTTA618002**

Filing date: **07/28/2014**

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

Proceeding	91212112
Party	Plaintiff Quintessential Brands S.A.
Correspondence Address	RACHEL BLUE MCAFEE & TAFT 1717 S BOULDER SUITE 900 TULSA, OK 74119 UNITED STATES rachel.blue@mcafeetaft.com, diane.goswick@mcafeetaft.com
Submission	Other Motions/Papers
Filer's Name	Jessica L. John Bowman
Filer's e-mail	jessica.johnbowman@mcafeetaft.com, rachel.blue@mcafeetaft.com, diane.goswick@mcafeetaft.com
Signature	/Jessica L. John Bowman/
Date	07/28/2014
Attachments	MOTIONTOREOPEN91212112.pdf(5142982 bytes)

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

In re Application Serial No. 85/859,169
Filing Date: February 25, 2013



Mark:
Published in the *Official Gazette*: July 23, 2013

QUINTESSENTIAL BRANDS S.A.,)	
)	
Opposer,)	Opposition No. 91212112
)	
JORDAN GERBERG,)	
)	
Applicant.)	

**OPPOSER QUINTESSENTIAL BRANDS’S
OPPOSED MOTION TO REOPEN TIME TO FILE
MOTION TO COMPEL AND BRIEF IN SUPPORT**

Quintessential Brands, S.A. (“Opposer”) hereby requests that the board enter an order reopening the period in which Opposer may file its Motion to Compel and resetting the beginning of Opposer’s testimony period for September 26, 2014 or later. In support of this opposed¹ Motion, Opposer states as follows:

I. BACKGROUND

1. Opposer served its first set of discovery requests on Applicant on April 1, 2014.
2. Applicant served its initial responses to Opposer’s first set of discovery requests on May 6, 2014.

¹ Opposer has contacted counsel for Applicant on three occasions in an attempt to obtain an agreement regarding the requested extension, but has received no statement of agreement or objection from Applicant. Accordingly, it is assumed that Applicant opposes this Motion.

3. After Opposer informed Applicant of the deficiency of the original responses, Applicant provided supplemental responses on May 16, 2014.

4. On May 28, 2014, Opposer notified Applicant that its objections to two of Opposer's discovery requests were without merit, and requested a substantive response. *See* Ex. 1. Opposer received no supplemental response from Applicant, nor did Opposer receive any indication that Applicant was willing to discuss the discovery dispute.

5. On June 11, 2014, Opposer again notified Applicant that its objections to two of Opposer's discovery requests were without merit, and requested a substantive response. *See* Ex. 2. No substantive response was provided. Applicant gave no indication that it was willing to discuss the discovery dispute with Opposer.

6. On July 24, 2014, Opposer sent a third e-mail notifying Applicant that its objections to two of Opposer's discovery requests were without merit, and requested a substantive response. *See* Ex. 3. No substantive response was provided. Once again, Applicant gave no indication that it was willing to discuss the discovery dispute with Opposer.

7. Opposer has also attempted to contact counsel for Applicant by phone in an attempt to resolve this discovery dispute. Opposer has been unable to reach counsel for Applicant by telephone.

8. On July 11, 2014, Opposer asked Applicant whether it would object to an extension of remaining deadlines pending the resolution of the discovery disputes still remaining. Counsel for Applicant indicated that Applicant would "possibly" agree to such an extension. When Opposer again sought information related to the requested extension on July 15, 2014, no response was received. *See* e-mail string dated July 11 through July 15, Ex. 4.

9. Counsel for Opposer has attempted to contact counsel for Applicant by phone regarding the requested extension, but has been unable to reach Applicant's counsel by telephone.

10. The first testimony period began Friday, July 25, 2014. According to TBMP 523.02, Opposer was required to file its Motion to Compel before the commencement of the first testimony period. *See* 37 C.F.R. 2.120(e).

11. Opposer inadvertently failed to file its Motion to Compel before the July 25, 2014 deadline. Opposer's failure to file prior to July 25, 2014 is due, in large part, to its inability to obtain any response from counsel from Applicant regarding the discovery dispute, its inability to meet and confer with Applicant regarding the merits of that dispute, and Applicant's refusal to respond to Opposer's request regarding an extension of pending deadlines while that dispute remains pending.

II. ARGUMENTS AND AUTHORITIES

When considering whether time should be reopened or a deadline should be reset, the Board should consider all relevant circumstances, including (1) the risk of prejudice to Applicant, (2) the length of the delay, (3) the reason for the delay, and (4) whether Opposer has acted in good faith. *See* TBMP 509.01; *Pumpkin, Ltd. v. The Seed Corps.*, 43 USPQ2d 1582 (TTAB 1997).

In this case, all of these factors favor the entry of an order reopening the time period in which Opposer may file its Motion to Compel and resetting the deadlines for the testimonial period. First, there is no risk of prejudice to Applicant, as Opposer has repeatedly reminded Applicant of his obligations to respond to the outstanding requests. Indeed, less than two weeks before the testimony period commenced, Applicant indicated a willingness to

discuss an extension of the remaining deadlines. *See* Ex. 4. The requested extension will have no meaningful effect on Applicant's ability to defend this action. *See Pumpkin Ltd.*, 43 USPQ2d at 1587 (“[I]t does not appear from this record that applicant's ability to defend against opposer's claims has been prejudiced by opposer's failure to adhere to the trial schedule.”). Second, the length of the delay is minimal: Opposer has missed the deadline to file its Motion to Compel by only two business days. Third, although Opposer's failure to file the Motion to Compel was due to an oversight, Opposer would certainly have filed its Motion much sooner had it received any substantive responses from Applicant, or had Applicant provided a direct answer to Opposer's two requests for an extension of the remaining deadlines. Thus, the delay at issue in this case is directly attributable to Applicant's failure to meaningfully engage Opposer with respect to this discovery dispute and other matters. Finally, Opposer is filing this motion in good faith because it believes the withheld information to be relevant to the opposition proceeding.

In this case, each of the four factors set forth above favors the entry of an order reopening the time period in which Opposer may file its Motion to Compel, particularly in view of Opposer's repeated attempts to work with Applicant to amicably resolve the discovery and scheduling issues in dispute, and Applicant's refusal to communicate with Opposer. Accordingly, the Board should grant the short extension requested, permit Opposer to file its Motion to Compel, and reset the beginning of the testimony period for September 26, 2014 or some other date following the resolution of Opposer's Motion to Compel.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the board enter an order reopening the period in which Opposer may file its Motion to Compel and resetting the beginning of Opposer's testimony period for September 26, 2014 or later.

Dated: July 28, 2014

Respectfully submitted,



Rachel Blue
Jessica L. John Bowman
McAFEE & TAFT
1717 S. Boulder, Suite 900
Tulsa, Oklahoma 74119
Telephone: (918) 574-3007
Facsimile: (918) 574-3107
E-Mail: Rachel.Blue@mcafeetaft.com
E-Mail: Jessica.JohnBowman@mcafeetaft.com

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of OPPOSER QUINTESSENTIAL BRANDS'S OPPOSED MOTION TO REOPEN TIME TO FILE MOTION TO COMPEL AND BRIEF IN SUPPORT was served upon Applicant by e-mail and by mailing the same, postage prepaid, on this 28th day of July, 2014, to:

Matthew H. Swyers
344 Maple Avenue West, Suite 151
Vienna, VA 22180



Rachel Blue
Jessica L. John Bowman
McAFEE & TAFT
1717 S. Boulder, Suite 900
Tulsa, Oklahoma 74119
Telephone: (918) 574-3007
Facsimile: (918) 574-3107
E-Mail: Rachel.Blue@mcafeetaft.com
E-Mail: Jessica.JohnBowman@mcafeetaft.com

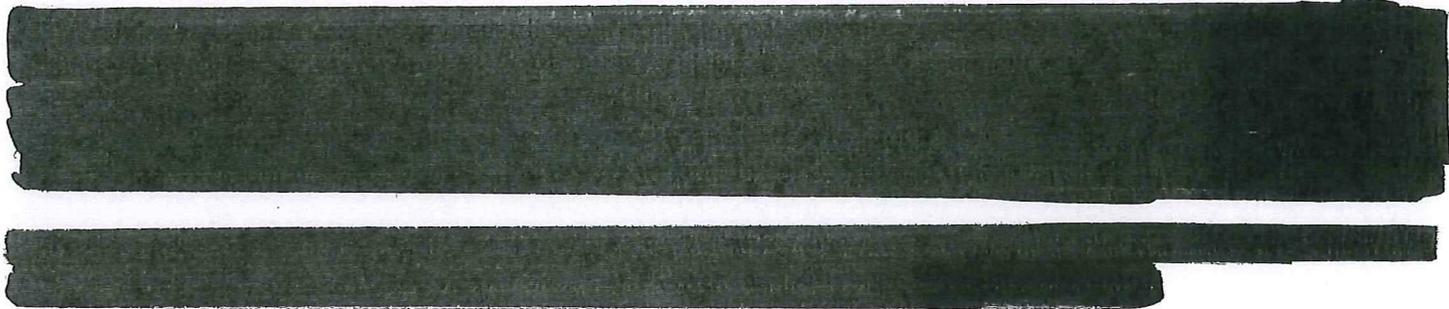
Attorney for Opposer

JohnBowman, Jessica

From: JohnBowman, Jessica
Sent: Wednesday, May 28, 2014 11:05 AM
To: 'mswyers@thetrademarkcompany.com'
Cc: 'Valerie Kuhar'; Blue, Rachel; Goswick, Diane
Subject: Quintessential v. Gerberg
Attachments: RE: Quintessential Brands S.A. vs. Gerberg, Jordan

Mr. Swyers,

First, thank you for your supplemental responses to our discovery requests. We ask that you please reconsider your objections and refusal to answer Interrogatory No. 10 and Request for Production No. 9, both of which were objected to on relevance grounds. The subject matter of Interrogatory No. 10 concerns whether and the extent to which Applicant's Mark has been licensed or assigned to others, the identity of those individuals who may use Applicant's Mark, the goods and services on which Applicant's Mark may be used, and the extent of control exercised over Applicant's Mark, among other things. These issues are certainly relevant to the opposition proceeding at issue. Likewise, Request for Production No. 9 seeks documents relating to the selection, design, adoption, and proposed use of Applicant's Mark; these documents are certainly relevant to this opposition proceeding. We must insist on an answer to these discovery requests.



Thank you for your time and attention to this matter.

Best Regards,

Jessica

Jessica John Bowman
ATTORNEY

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jessica.johnbowman@mcafeetaft.com

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JohnBowman, Jessica

From: JohnBowman, Jessica
Sent: Wednesday, June 11, 2014 3:40 PM
To: 'mswyers@thetrademarkcompany.com'
Cc: 'Valerie Kuhar'; Blue, Rachel; Goswick, Diane
Subject: RE: Quintessential v. Gerberg

Mr. Swyers,

We have not yet received your response to either our request that you supplement your answers to the discovery requests identified below, or [REDACTED]. Please advise us of your client's position with respect to these requests.

Thank you,

Jessica

From: JohnBowman, Jessica
Sent: Wednesday, May 28, 2014 11:05 AM
To: 'mswyers@thetrademarkcompany.com'
Cc: 'Valerie Kuhar'; Blue, Rachel; Goswick, Diane
Subject: Quintessential v. Gerberg

Mr. Swyers,

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[REDACTED]

[REDACTED]

Thank you for your time and attention to this matter.

Best Regards,

Jessica



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ATTORNEY

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JohnBowman, Jessica

From: JohnBowman, Jessica
Sent: Thursday, July 24, 2014 4:55 PM
To: 'mswyers@thetrademarkcompany.com'
Cc: 'Valerie Kuhar'; Blue, Rachel; Goswick, Diane
Subject: Quintessential v. Gerberg: Supplemental Discovery Responses
Attachments: 7.24.2014 OPPOSER_S SUPPLEMENTAL RESPONSES TO 1ST REQ FOR PRODUCTION OFpdf; 7.24.2014 OPPOSER_S SUPPLEMENTAL RESPONSES TO 1ST INTERROGATORIES 91212112.PDF

Mr. Swyers,



Also, we are still awaiting a response to our May 28, 2014 request that you supplement your discovery responses, as set forth below. Please advise as to your position concerning this request.

Thank you,

Jessica

From: JohnBowman, Jessica
Sent: Wednesday, June 11, 2014 3:40 PM
To: 'mswyers@thetrademarkcompany.com'
Cc: 'Valerie Kuhar'; Blue, Rachel; Goswick, Diane
Subject: RE: Quintessential v. Gerberg

Mr. Swyers,

We have not yet received your response to either our request that you supplement your answers to the discovery requests identified below, . Please advise us of your client's position with respect to these requests.

Thank you,

Jessica

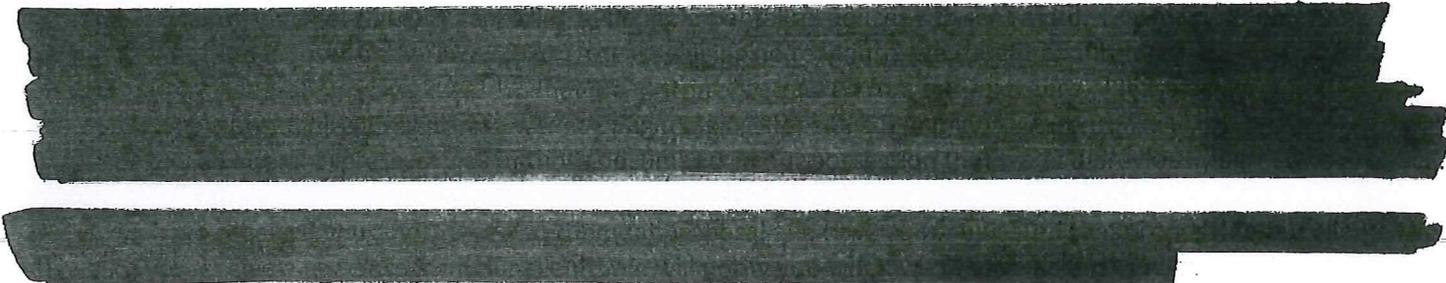
From: JohnBowman, Jessica
Sent: Wednesday, May 28, 2014 11:05 AM
To: 'mswyers@thetrademarkcompany.com'
Cc: 'Valerie Kuhar'; Blue, Rachel; Goswick, Diane
Subject: Quintessential v. Gerberg.

Mr. Swyers,



First, thank you for your supplemental responses to our discovery requests. We ask that you please reconsider your objections and refusal to answer Interrogatory No. 10 and Request for Production No. 9, both of which were objected to on relevance grounds. The subject matter of Interrogatory No. 10 concerns whether and the extent to which Applicant's

Mark has been licensed or assigned to others, the identity of those individuals who may use Applicant's Mark, the goods and services on which Applicant's Mark may be used, and the extent of control exercised over Applicant's Mark, among other things. These issues are certainly relevant to the opposition proceeding at issue. Likewise, Request for Production No. 9 seeks documents relating to the selection, design, adoption, and proposed use of Applicant's Mark; these documents are certainly relevant to this opposition proceeding. We must insist on an answer to these discovery requests.



Thank you for your time and attention to this matter.

Best Regards,

Jessica

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JohnBowman, Jessica

From: JohnBowman, Jessica
Sent: Tuesday, July 15, 2014 3:54 PM
To: 'Matthew H. Swyers'
Cc: Blue, Rachel; Goswick, Diane; ValerieK@TheTrademarkCompany.com
Subject: RE: Quintessential v. Gerberg: Pretrial disclosures
Attachments: NOVAGRAAF_ 7.15.2014 OPPOSER_S PRETRIAL DISCLOSURES (V. GERBERG) FINAL.PDF

Matthew:

[REDACTED]

We would like to discuss with you the possibility of further extending the remaining deadlines while the parties continue to [REDACTED] and resolve the outstanding discovery disputes. Please let me know whether your client would be amenable to such an extension. In the interim, I have attached our preliminary pretrial disclosures. Please let me know if you have any questions.

Thank you,

Jessica

From: Matthew H. Swyers [mailto:m^swyers@thetrademarkcompany.com]
Sent: Friday, July 11, 2014 2:29 PM
To: JohnBowman, Jessica
Cc: Blue, Rachel; Goswick, Diane; ValerieK@TheTrademarkCompany.com
Subject: RE: Quintessential v. Gerberg: Pretrial disclosures
Importance: High

FRE 408 Applies

Jessica:

Possibly. However, before agreeing to the same I would like to propose [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Kindly let me know by the 15th [REDACTED]. If not, we will revisit the requested extension.

Thank you,

Matthew H. Swyers

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From: JohnBowman, Jessica [<mailto:Jessica.JohnBowman@mcafeetaft.com>]
Sent: Friday, July 11, 2014 11:06 AM
To: 'mswyers@thetrademarkcompany.com'; 'Valerie Kuhar'
Cc: Blue, Rachel; Goswick, Diane
Subject: Quintessential v. Gerberg: Pretrial disclosures

Mr. Swyers,

As we are still in the process of resolving a few discovery issues, would you be amenable to a thirty-day extension of the remaining deadlines?

Please let me know and we will prepare the stipulated extension.

Thank you,

Jessica

Jessica John Bowman
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