UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

CME

Mailed: February 13, 2015

Opposition No. 91212653

Nautica Apparel, Inc.

v.

Majestique Corporation

Christen M. English, Interlocutory Attorney:

On October 31, 2014, Opposer filed a motion to compel Applicant to respond to its interrogatories and document requests. In its motion, Opposer acknowledges that Applicant served discovery responses on July 7, 2014, but argues that the responses are deficient. *See* Motion, pp. 2-3.

Trademark Rule 2.120(e)(1) requires that a motion to compel include copies of the requests for discovery *and the responses thereto*. TBMP § 523.02 (2014). Although Opposer filed copies of its interrogatories and document requests, and its motion references the purported deficiencies in Applicant's responses, Opposer did not file copies of Applicant's actual written responses and any profer of production. As a result, the Board is not able to effectively rule on the merits of Opposer's motion. *See Helene Curtis Indus., Inc. v. John H. Breck, Inc.,* 183 USPQ 126 (TTAB 1974).

Accordingly, Opposer is allowed until **March 10, 2015** to submit to the Board copies of Applicant's responses to Opposer's interrogatories and

document requests, failing which, Opposer's motion to compel will be given no further consideration.

The Board gives no consideration to Applicant's cross-motion to compel as the motion is not accompanied by Applicant's discovery requests or Opposer's responses thereto. Trademark Rule 2.120(e)(1). Moreover, Applicant's allegation that "[a]ll efforts to obtain Opposer's Answer to the discovery have been to no avail" is not sufficient to demonstrate that Applicant made a good faith effort to resolve its discovery dispute with Opposer prior to filing its cross-motion to compel. Trademark Rule 2.120(e)(1); *see also* TBMP § 523.02.

The Board also gives no consideration to Applicant's cross-motion "to dismiss" as the motion is devoid of any allegations that Opposer has failed to adequately plead its standing or a claim upon which relief can be granted.[1] *See* TBMP § 503.02. In addition, there is no basis for construing Applicant's cross-motion as a motion for summary judgment because Applicant has not attached any evidence to its motion. Nor is there a basis to construe Applicant's cross-motion as a motion for sanctions for failure to comply with a discovery order as the Board has not yet issued any such order.[2]

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[1] In addition, a motion to dismiss must be filed before or concurrently with a party's answer. Fed. R. Civ. P. 12(b); *see also* TBMP § 503.01 ("The defense of failure to state a claim upon which relief can be granted may be raised after an answer is filed, provided that it is raised by some means other than a motion to dismiss."). Applicant filed its answer in this proceeding on October 31, 2013.

[2] To the extent Applicant may have intended to seek Rule 11 sanctions on the ground that Opposer's motion to compel is frivolous, Applicant's cross-motion fails to establish – or even mention – that Applicant has complied with the safe harbor provision of Fed. R. Civ. P. 11(c)(2).

Proceedings remain suspended pursuant to the Board's order of November 5, 2014.

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