

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

am

Mailed: January 30, 2015

Opposition No. 91213249

E. & J. Gallo Winery

v.

Autentica Tequilera S.A. DE C.V.

**M. Catherine Faint,
Interlocutory Attorney:**

On November 10, 2014, opposer filed a motion to compel discovery. Applicant did not file a brief in response thereto within the time provided under Trademark Rule 2.127(a).

Opposer seeks an order directing applicant to respond to opposer's First Set of Requests for Production of Documents and Things and First Set of Interrogatories.

A party that fails to respond to interrogatories or document requests during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); TBMP § 403.03.

The motion to compel discovery is hereby granted as conceded, **to the extent that** applicant is directed to serve, within **thirty days** of the mailing date of this order, its responses to opposer's First Set of Requests for Production of Documents and Things and First Set of Interrogatories. Applicant must respond in full and without objection on the merits thereof inasmuch as applicant failed either to timely respond or to object to said discovery requests.¹ *See* Trademark Rule 2.127(a); TBMP § 502.04.

In the event that applicant fails to serve full responses as ordered herein, opposer's remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(g)(1); TBMP § 411.05.

Proceedings are resumed. Trial dates are reset as indicated below:

Expert Disclosures Due	3/12/2015
Discovery Closes	4/11/2015
Plaintiff's Pretrial Disclosures	5/26/2015
Plaintiff's 30-day Trial Period Ends	7/10/2015
Defendant's Pretrial Disclosures	7/25/2015
Defendant's 30-day Trial Period Ends	9/8/2015
Plaintiff's Rebuttal Disclosures	9/23/2015
Plaintiff's 15-day Rebuttal Period Ends	10/23/2015

¹ The Board has previously distinguished objections on the merits of a discovery request from other types of objections:

Objections going to the merits of a discovery request include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. In contrast, claims that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information.

No Fear, 54 USPQ2d at 1554.

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
