

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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General Contact Number: 571-272-8500

BUO

Mailed: September 28, 2015

Opposition No. 91213527 (Parent)

Cancellation No. 92059629

Cancellation No. 92059455

Omaha Steaks International, Inc.

v.

Greater Omaha Packing Co., Inc.

Benjamin U. Okeke, Interlocutory Attorney:

Applicant's motion to compel, filed August 26, 2015, is **GRANTED** as conceded, because Opposer failed to respond thereto. Trademark Rule 2.127(a); *Central Mfg., Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001); *Boston Chicken, Inc. v. Boston Pizza Int'l, Inc.*, 53 USPQ2d 1053 (TTAB 1999).

Accordingly, Opposer is ordered to: (i) serve, no later than **THIRTY DAYS** from the mailing date of this order, supplemental responses, without objection on the merits,¹ to Applicant's Request for Production of Documents and Things, served June 25 and 29, 2015, (ii) serve supplemental responses to Requests Nos. 2-9, 11-14

¹ 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. *See No Fear*, 54 USPQ2d at 1554.

and 16 of Applicant's June 10, 2015 Request for Production of Documents and Things, and (iii) serve all responsive documents at Opposer's own expense.² *See, No Fear, Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000).

In the event Opposer fails to respond to Applicant's discovery requests as ordered herein, Opposer may be subject to sanctions, potentially including entry of judgment against it. Trademark Rule 2.120(g); Fed. R. Civ. P. 37(b)(2).

Additionally, Applicant's Requests for Admission served June 25, 2015, are deemed **ADMITTED**, inasmuch as Opposer failed to timely respond thereto. *See* Fed. R. Civ. P. 36(a)(3).

The proceeding is **RESUMED**, and the remaining discovery, disclosure, and trial dates are reset as follows:

Discovery Closes	10/24/2015
Plaintiff's Pretrial Disclosures	12/8/2015
Plaintiff's 30-day Trial Period Ends	1/22/2016
Defendant's Pretrial Disclosures	2/6/2016
Defendant's 30-day Trial Period Ends	3/22/2016
Plaintiff's Rebuttal Disclosures	4/6/2016
Plaintiff's 15-day Rebuttal Period Ends	5/6/2016

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 taking of testimony. Trademark Rule 2.125.

² Opposer is reminded that its obligation to conduct a thorough search of its records and produce any responsive materials includes a search of electronically stored information. Electronically stored information may be produced in the form specified by the request. If no specification is made, Opposer must produce the electronically stored information in the form in which it is ordinarily maintained, or in a reasonably usable form. *See* Fed. R. Civ. P. 34(b)(2)(E)(ii). Fed. R. Civ. P. 34(a) "requires that, if necessary, a responding party 'translate' information it produces into a 'reasonably usable' form." However, the option to produce in a reasonably usable form does not mean that a responding party is free to convert electronically stored information from the form in which it is maintained to a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently in the litigation.

Opposition No. 91213527

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