

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

CME

Mailed: September 22, 2014

Opposition No. 91213573

The BioSolve Company

v.

Biocenosis Solutions, Inc.

**Christen M. English, Interlocutory Attorney:**

This case now comes up on Opposer's motion to compel, filed August 14, 2014. Applicant opposes the motion.

Pursuant to Trademark Rule 2.120(e)(1), a party seeking to compel discovery is required to demonstrate that prior to filing its motion, it made a good faith effort, by conference or correspondence, to resolve the issues presented in its motion and that the parties were unable to resolve their differences. *See* TBMP § 523.02 and cases cited in footnote 2 therein (2014). An important purpose of this rule "is to relieve the Board of the burden of ruling on motions to compel in proceedings where the parties can resolve their discovery disputes if they make a good faith effort to do so." *Hot Tamale Mama...and More, LLC v. SF Invs., Inc.*, 110 USPQ2d 1080, 1081 (TTAB 2014).

Opposer asserts that it served its first set of document requests on January 19, 2014 and its first set of interrogatories on February 3, 2014; that

Applicant has not responded to these requests; and that Opposer has made a good faith effort to resolve the issues presented in its motion with Applicant because it “has given Applicant ample time to respond to the [discovery] Requests.” Motion, p. 2. The Board is incredulous that Opposer would assert that simply waiting and taking no affirmative action whatsoever could constitute a good faith effort to resolve its discovery dispute with Applicant. Moreover, it is clear from Applicant’s response that there exists a misunderstanding about Applicant’s discovery obligations. Applicant communicated to Opposer its belief that the parties agreed to suspend Applicant’s duty to respond to Opposer’s discovery requests while the parties pursued settlement negotiations. That Opposer apparently disagrees with Applicant’s understanding is not enough. Opposer must attempt to resolve this misunderstanding and may only bring a motion to compel if Opposer is unable to resolve the issue after a good faith effort to do so. Given that Opposer has not shown that it made any effort to resolve its discovery dispute with Applicant, much less a good faith effort,<sup>1</sup> Opposer’s motion to compel is

**DENIED.**<sup>2</sup>

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<sup>1</sup> Indeed, there is no evidence that Opposer’s counsel had any conversations with his client to determine (i) whether, as Applicant’s counsel alleges, the parties agreed at a business level to suspend Applicant’s deadline to respond to Opposer’s discovery requests or (ii) why Applicant might believe this to be the case.

<sup>2</sup> Applicant’s request in the last paragraph of its response that proceedings be suspended pending the disposition of another of Applicant’s applications will be given no consideration as the Board generally does not consider “motions” embedded in other filings.

Opposer is warned to refrain from filing any further motions that unnecessarily tax the Board's resources.

Proceedings are resumed and dates are reset as follows:

Discovery Closes	<b>9/29/2014</b>
Plaintiff's Pretrial Disclosures Due	<b>11/13/2014</b>
Plaintiff's 30-day Trial Period Ends	<b>12/28/2014</b>
Defendant's Pretrial Disclosures Due	<b>1/12/2015</b>
Defendant's 30-day Trial Period Ends	<b>2/26/2015</b>
Plaintiff's Rebuttal Disclosures Due	<b>3/13/2015</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>4/12/2015</b>

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

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