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

Proceeding	91213584
Party	Defendant Toys Tekk
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Submission	Opposition/Response to Motion
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Date	10/16/2014
Attachments	Opp.Motion.Comp.Ext.pdf(67020 bytes)

Serial No. **85867803**

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

Jaguar Land Rover Limited,)	
)	Serial No. 85867803
Opposer,)	Opposition No. 91213584
)	
v.)	
)	
Toys Tekk Corporation,)	
)	
Applicant.)	

**APPLICANT’S NON-OPPOSITION TO MOTION TO EXTEND DISCOVERY
AND TRIAL DATES AND OPPOSITION TO MOTION TO COMPEL**

Applicant, Toys Tekk Corporation, (“Applicant”), hereby consents, and offers to stipulate Opposer JLR’s Motion to Extend Discovery and Trial Dates, (“Motion to Extend”), opposes Opposer’s Motion to Compel, and request a deferred on ruling on Motion to Compel pending ruling on Motion to Extend, on the following grounds:

1. Opposer purposely waited for two and half months, till the eve of discovery cut-off to file its Motion to Compel, without good faith to meet and confer, seeks to prejudice Applicant, seeks to evade laws on discovery, particularly the requirement to meet and confer, and seeks to rip unfair, and unjust advantage, over Applicant.

2. If the Board grants Motion to Extend, it will provide additional time to meet and confer and likely to moot the Motion to Compel. In addition, it will also provide Applicant to

propound reciprocal discovery requests on the same issue, in order to waive objections on most of the discovery requests at dispute. Further, substantial amount of discovery requests at dispute concern trade secret and confidential information, it will also provide Applicant an opportunity to seek a protective order to guard confidentiality.

WHEREFORE, Applicant respectfully requests the Board to rule Opposers' motions as follows:

1. To grant the extension requested; and
2. To defer ruling on Motion to Compel.

Dated: October 15, 2014

Respectfully submitted,

By: /Shun C. Chen/
Shun C. Chen
Attorney for Applicant

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**BRIEF IN SUPPORT OF APPLICANT’S OPPOSITION TO
MOTION TO COMPEL**

I.

INTRODUCTION

The Motion to Compel was filed, and timed, solely for the purpose of intimidation and harassment. It is yet another large company singled out a small company to seek to intimidate it into submission.

Through counter-claims filed herein, and discovery conducted thereunder, Opposer failed to show it actually used its mark in commerce, on toy vehicles, particularly remote control toy vehicles. Opposer sought to monopolize the generic word “rover.” Opposer knew larger players selling remote controlled toy vehicles, using the word “rover” on Amazon, by Brokstone and other larger toy sellers, but feared to annoy them.

The Opposer's marks did not include remote controlled toy vehicles. The only issue in this proceeding is whether Applicant's proposed mark will cause likelihood of confusion, and nothing more. Therefore, Opposer's only claim is on the legal issue of likelihood of confusion.

II.

ARGUMENT

A. THE BOARD SHOULD DEFER RULING ON MOTION COMPEL:

Applicant submitted response to the disputed discovery requests on July 5, 2014. Opposer sat on it and took no action. Until the eve of discovery cut-off, September 27, 2014, Opposer merely sent a letter identifying the requests at dispute, but failed to provide any fact, argument, and authority on its position. Applicant simply did not have enough time to evaluate the dispute and took any action before discovery cut-off. Opposer completely failed the requirement to meet and confer in good faith. 37 CFR § 2.120(e).

Most of the disputed requests seeking Applicant's trade, marketing, and sales information. Such information is highly secretive and confidential. When Opposer raised the dispute, Applicant simply could not have any time to seek an order to guard the confidentiality. Opposer never offered any stipulation to enter into a protective order. Fed R. Civ. P. 26(c); *Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861, 1862 (TTAB 2001).

After reviewing Opposer's argument, and authority, contained in the Motion to Compel, first the first time, Applicant believes the most viable method to resolve the dispute is to propound reciprocal requests, to withdraw certain objections, to supplement its responses, and to produce pertinent documents. However, without an extension of discovery, this option is not

viable. If sales and marketing information is relevant, Opposer has equal duty to produce such information so the Board can make a decision based on clear picture of the use of the disputed trademarks, or in lack thereof, and not on distorted and one-side information. Without an extension of discovery cut-off, Opposer would use discovery cut-off as a sword and hide behind it.

Applicant hereby requests the Board to defer ruling on Motion to Compel, and if the Board inclines to rule on the Motion to Compel, to allow Applicant time to file supplemental opposition.

B. OPPOSER FAILED TO CONFINE ITS DISCOVERY REQUESTS TO THE CLAIM AND DEFENSE OF THIS PROCEEDING:

The scope of discovery is relevant to the issue and defense, unless a motion is granted to expand to the subject matter. TBMP §402.01 Fed. R. Civ. P. 26(b)(1). Opposer did not file any motion to enlarge the scope of discovery.

Certain requests are patently irrelevant and constitute harassment. For example, Interrogatory No. 16 and document request No. 31, asking Applicant to disclose whether a third party is related to Applicant, without any factual support, and in violation of TBMP §414(14). The trademark standard in European Union is vastly different. The proceeding in the European Union is not on record. Any ruling therein has no bearing on this proceeding. *The Phillies v. Philadelphia Consolidated Holding Corp.*, 107 USPQ2d 2149, 2152 (TTAB 2013).

Also, certain requests to produce sales documents are extremely burdensome, and oppressive, because many Applicant's sales were through Internet. See, *Sunkist Growers, Inc. v.*

Benjamin Ansehl Co., 229 USPQ 147, 148 (TTAB 1985).

III.

CONCLUSION

Applicant respectfully requests the Board to grant an extension of discovery, to allow time to meet and confer, to allow Applicant to file reciprocal discovery requests, and to have time to review and/or supplement its responses. Applicant also requests the Board to defer ruling on Motion to Compel to allow Opposer to comply with its mandatory duty to meet and confer.

Dated: October 15, 2014

Respectfully submitted,

By: /Shun C. Chen/
Shun C. Chen
Attorney for Applicant

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CERTIFICATE OF SERVICE

I, Shun C. Chen, hereby certify that I served the

**APPLICANT'S OPPOSITION TO MOTION TO COMPEL AND
MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

in a sealed envelope, on October 16, 2014, by first-class mail, with postage fully affixed thereon, and deposited in the United States Postal Service Depository in Irvine, California, to

Brooks Kushman P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075

The foregoing documents is also transmitted the aforesaid counsel by e-mail.

This certificate of service is signed on October 16, 2014.

/Shun C. Chen/
Shun C. Chen