

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

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Mailed: November 21, 2014

Opposition No. 91214193

24 Hour Fitness USA, Inc.

v.

Workout Anytime Franchising
Systems, LLC

Elizabeth A. Dunn, Attorney (571-272-4267):

On August 5, 2014, Opposer filed a motion to compel Applicant's initial disclosures, discovery responses, and appearance at a Fed. R. Civ. P. 30(b)(6) deposition.

With the exception of the request for admissions, inasmuch as Applicant did not file a brief in response, the motion to compel is hereby granted as conceded. *See* Trademark Rule 2.127(a); Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 502.04 (2014). 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. If a party on which requests for admission have been served fails to timely respond thereto, the requests will stand admitted by operation of law unless the party is able to show that its failure to timely respond was the result of excusable neglect or unless a motion to withdraw or amend the admissions is filed pursuant to Fed. R. Civ. P. 36(b) and granted by the Board. It is not necessary to file a motion to deem requests for admissions admitted when no response is served, since the admissions are deemed admitted by operation of Fed. R. Civ. P. 36(a). TBMP §407.03.

Accordingly, the Board orders Applicant to serve, within twenty (20) days of the mailing date of this order, initial disclosures, responses without objection on the merits to Opposer's interrogatories and document requests, and to call or email Opposer to schedule the Fed. R. Civ. P. 30(b)(6) deposition.

In the event that Applicant fails to comply as ordered herein, Opposer's remedy may lie in a motion for sanctions, including entry of judgment. *See* Trademark Rule 2.120(g)(1); TBMP § 411.05.

Proceedings are resumed. Discovery, disclosure and trial dates are reset as indicated below:

Expert Disclosures Due	12/3/2014
Discovery Closes	1/2/2015
Plaintiff's Pretrial Disclosures	2/16/2015
Plaintiff's 30-day Trial Period Ends	4/2/2015
Defendant's Pretrial Disclosures	4/17/2015
Defendant's 30-day Trial Period Ends	6/1/2015
Plaintiff's Rebuttal Disclosures	6/16/2015
Plaintiff's 15-day Rebuttal Period Ends	7/16/2015

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.