

TTAB

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

CME

Mailed: April 16, 2015

Opposition No. 91214578

#85956925

LeMans Corporation

v.

LeMar Xavier Lewis

Christen M. English, Interlocutory Attorney:

On January 30, 2015, the Board issued an order (“Prior Order”) granting as conceded Opposer’s motion to compel (filed December 17, 2014) and ordering Applicant “to serve no later than thirty days ... full and complete responses, without objection, to opposer’s first set of interrogatories and first [set of] requests for production of documents and things.” TTABVue # 26. On March 2, 2015 -- the last day of Applicant’s period to comply with the Prior Order¹ -- Applicant’s counsel of record filed a mandatory motion to withdraw, indicating that Applicant had discharged counsel. *See* TTABVue # 27. On March 4, 2015, the Board issued an order granting the motion to withdraw and allowing Applicant thirty days to appoint new counsel or to file a paper stating that Applicant chooses to represent himself in this proceeding. *See* TTABVue # 28. On April 3, 2015, Applicant filed a

¹ The thirty-day deadline set by the Prior Order ended on Sunday, March 1, 2015. Accordingly, Applicant had until Monday, March 2, 2015, to comply with the Prior Order. Trademark Rule 2.196; *see also* TBMP § 112 (2014).



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paper indicating that he intends to represent himself in this proceeding. See TTABVUE # 29. The Board has updated its records accordingly.²

Given that Applicant's attorney withdrew from representation on Applicant's last day to comply with the Prior Order, the Board allows Applicant **TWENTY DAYS** from the mailing date of this order to comply with the Prior Order, to the extent that the Prior Order is modified herein.³ Specifically, within **TWENTY DAYS** from the mailing date of this order, Applicant is ordered to serve on Opposer: (1) written and verified *supplemental* responses to Opposer's first set of interrogatories, *without objections on the merits*;⁴ (2) written *supplemental*

² Applicant's address of record is now:

33 West Trade Street
Unit 100
Charlotte, North Carolina 27708

However, the accuracy of this address is uncertain. During a telephone conference on October 17, 2014, Applicant provided the Board with a similar address differing only by suite number and zip code:

33 West Trade Street
Suite 2100
Charlotte, North Carolina 28202

Internet records identify the correct zip code as 28202, which is the zip code that Applicant provided during the October 17, 2014 telephone conference.

Applicant has previously failed to maintain an accurate address with the Board. See Board's order of October 17, 2014, p. 2. Applicant is reminded that if he fails to maintain an accurate address with the Board, default judgment may be entered against him. See *id.*

³ The Board modifies its Prior Order because the Prior Order did not take into account Opposer's supplemental filing of December 31, 2014 showing that Applicant served responses to Opposer's first sets of interrogatories and document requests on December 18, 2014 and produced some responsive documents.

⁴ "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

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responses to Opposer's first set of document requests *without objections on the merits*; and (3) all responsive documents by copying them at Applicant's own expense and delivering them to Opposer. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1556 (TTAB 2000); TBMP § 406.04 (2014). To the extent Applicant already has produced documents responsive to a particular document request or responsive documents do not exist, Applicant shall so state in his supplemental response.

In view hereof, Opposer's motion for sanctions is moot and will be given no consideration.⁵ If, however, Applicant fails to comply with this order, the Board will entertain a renewed motion for sanctions. *See* Trademark Rule 2.120(g); Fed. R. Civ. P. 37(b)(2).

Proceedings herein shall remain suspended until May 15, 2015, and then shall resume on the following schedule:

Expert Disclosures Due	7/20/2015
Discovery Closes	8/19/2015
Plaintiff's Pretrial Disclosures Due	10/3/2015
Plaintiff's 30-day Trial Period Ends	11/17/2015
Defendant's Pretrial Disclosures Due	12/2/2015
Defendant's 30-day Trial Period Ends	1/16/2016
Plaintiff's Rebuttal Disclosures Due	1/31/2016
Plaintiff's 15-day Rebuttal Period Ends	3/1/2016

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 Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

⁵ Even if Opposer's motion for sanctions were not moot it would be given no consideration because it was filed during suspension of the proceedings.

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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.
