

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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CME/nmt

Mailed: September 8, 2016

Opposition No. 91214578 (parent)
Opposition No. 91226723
Cancellation No. 92063552

LeMans Corporation

v.

LeMar Xavier Lewis

Christen M. English, Interlocutory Attorney:

On August 31, 2016, LeMans's Corporation ("LeMans") filed a motion for summary judgment¹ on grounds that: (1) the applications involved in the above-captioned opposition proceedings are *void ab initio* because the involved marks were not in use with the involved goods as of the filing date of the applications; and (2) the mark subject to the registration involved in the above-captioned cancellation proceeding has been abandoned.

¹ LeMans buried in its motion a statement that it considers its motion for summary judgment "to be an appropriate vehicle for the Board to implement sanctions for Respondent's failure to comply with the March 2, 2016 Board [discovery] Order." 67 TTABVUE 14, n. 3. The Board does not consider motions embedded in other filings, and as such, this argument will be given no further consideration. If Opposer wished for sanctions, it should have filed a motion for sanctions.

With a few exceptions not applicable here,² a party may not file a motion for summary judgment until after the party has served its initial disclosures. Trademark Rule 2.127(e)(1). The initial disclosure deadline has passed in parent Opposition No. 91124578; however, in Opposition No. 91226723 and Cancellation No. 92063552, the initial disclosure deadline is not until October 21, 2016, and LeMans has not indicated in its motion whether it has served its initial disclosures in the child proceedings.

Accordingly, LeMans is allowed until FIFTEEN DAYS from the mailing date of this order to file a paper with the Board demonstrating that it has served initial disclosures in the child cases, failing which LeMans's motion for summary judgment will be considered only with respect to parent Opposition No. 91214578.³

² A party may file a motion for summary prior to serving its initial disclosures if the motion is based on lack of jurisdiction, res judicata or collateral estoppel. Trademark Rule 2.127(e)(1).

³ If LeMans demonstrates that it served initial disclosures in the child cases, but did so after filing its motion for summary judgment, it must include in its filing a request to renew its motion for summary judgment with respect to the child cases, failing which the motion will be given no consideration with respect to the child proceedings.

The Board notes Mr. Lewis's responses to LeMans's motion for summary judgment, filed September 2, 2016 and September 6, 2016 in child Cancellation No. 92063552 at 19-21 TTABVUE. **Mr. Lewis is reminded that all papers should be filed only in parent Opposition No. 91214578.**