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

Proceeding	91214960
Party	Plaintiff Cobra Golf Incorporated
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Submission	Other Motions/Papers
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Date	05/29/2014
Attachments	Motion to Compel Appearance.doc.pdf(163405 bytes )

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

COBRA GOLF INCORPORATED	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91214960
	)	Application No. 86072020
JONATHAN MYERS,	)	
	)	
Applicant.	)	

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**OPPOSER’S MOTION TO COMPEL APPLICANT’S APPEARANCE  
AT A DISCOVERY CONFERENCE**

Pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523 *et sec.*, Opposer Cobra Golf Incorporated (“Opposer”) hereby requests the Board order Applicant Jonathan Myers (“Applicant”) to appear for the required discovery conference. The deadline for the discovery conference as set by the Board was April 29, 2014. Opposer has sought on multiple occasions to coordinate a time for the conference with Applicant to no avail. Having received no cooperation or response from Applicant, and so as to meet its own obligations to this Board, Opposer seeks the Board’s assistance in compelling Applicant to appear at the required discovery conference.

Opposer first advised Applicant of its concerns with respect to Serial No. 86072020 with a letter dated January 17, 2014. After receiving no response to its initial letter, Opposer was forced to file the present opposition on February 18, 2014, shortly after the application published. Thereafter, Applicant agreed to discuss amicable settlement. After multiple phone conversations between Applicant and Opposer’s counsel, written terms were sent to Applicant March 5, 2014, and Applicant responded on March 9, 2014. Opposer’s latest settlement terms were sent to Applicant on April 18, 2014, noting that the discovery conference deadline was coming and that if settlement could not be reached, the parties would need to set a time for the

conference. Applicant was advised of the date set for the discovery conference through the Board's scheduling order and by reminders provided by Opposer.. After receiving no response, Opposer followed up in writing April 25, 2014. The deadline for the discovery conference was April 29, 2014. Thus, despite multiple written and telephone reminders, both prior to and following April 29, 2014, Opposer has received no response from Applicant with regard to either settlement or a discovery conference since March 9, 2014.

While Opposer was willing to hold the discovery conference after April 29 to accommodate Applicant and avoid the present motion and has reached out to Applicant to that end, Opposer must respectfully request the Board compel Applicant to coordinate with Opposer to set, and consequently to appear at, a discovery conference pursuant to 37 C.F.R. § 2.120(a)(2) and TBMP § 401.01. Both parties bear a burden in conducting a discovery conference. TBMP § 408.01(a); *Promgirl Inc. v. JPC Co.*, 94 U.S.P.Q.2d 1759, 1762 (T.T.A.B. 2009). Opposer submits it has more than met its burden to coordinate with Applicant through multiple written and telephonic reminders. However, Applicant has not met its burden as it has not responded in any way. Opposer requests the Board thus compel Applicant's appearance. *Id.*; *see also Patagonia, Inc. v. Azzolini*, 109 U.S.P.Q.2d 1859 1862-63 (T.T.A.B. 2014) (entering judgment against applicant as a sanction for repeatedly refusing to cooperate with opposer and the Board).

Opposer submits that the Board's involvement in such a conference is not necessary, so long as Applicant cooperates in setting and participating in a discovery conference under the Board's rules. However, to the extent the Board may find its involvement to further the Board's interest in moving this matter forward, Opposer welcomes the Board's involvement. Whether or not the Board chooses to participate in the discovery conference, Opposer respectfully requests

the Board compel Applicant to participate pursuant to 37 C.F.R. § 2.120(a)(2) and (e) and TBMP §§ 401.01 and 523.

Respectfully submitted,

Date: May 29, 2014

By:



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**CERTIFICATE OF ELECTRONIC FILING**

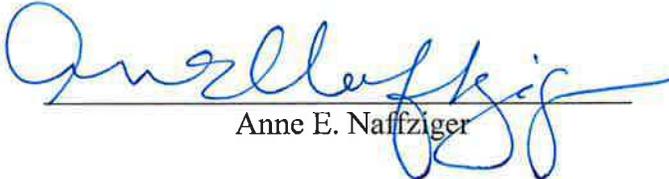
I hereby certify that the attached Opposer's Motion to Compel Applicant's Appearance at a Discovery Conference was filed electronically with the Trademark Trial and Appeal Board on May 29, 2014.

  
Anne E. Naffziger

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Opposer's Motion to Compel Applicant's Appearance at a Discovery Conference was served by First Class Mail to the following address on May 29, 2014:

Jonathan Myers  
5820 Hersholt Ave.  
Lakewood, CA 90712

  
Anne E. Naffziger