

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Baxley

Mailed: March 10, 2015

Opposition No. 91215734

Assa Realty, LLC

v.

The Solution Group Corp

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of Opposer's motion (filed December 1, 2014) to accept its late responses to requests for admission. Applicant has filed a brief in response thereto.

Applicant served its first set of requests for admission on Opposer by electronic mail on October 3, 2014. Accordingly, Opposer's responses thereto were due by November 3, 2014. *See* Trademark Rules 2.120(a)(3) and 2.196. Opposer served its responses on November 14, 2014, eleven days late.

Under Fed. R. Civ. P. 36(a)(3), "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." *See also* Trademark Rule 2.120(a)(3). However, under Fed. R. Civ. P. 36(b), the Board "may permit withdrawal or amendment [(1)] if it would promote the presentation of the merits of the

action and [(2)] if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.”

As the Board stated in *Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.*, 14 USPQ2d 2064, 2065 (TTAB 1990):

Rule 36(a) is designed to facilitate proofs and speed trial, but where the failure to timely respond to a request for admissions has a harsh result, Rule 36(b) provides a method for obtaining relief. The notes of the Advisory Committee on Rules state that Rule 36(b) emphasizes the importance of having the action resolved on the merits, while at the same time assuring each party that justified reliance on the admission in preparation for trial will not operate to his prejudice.

The decision to allow withdrawal of admissions is at the Board’s discretion. *See Giersch v. Scripps Networks Inc.*, 85 USPQ2d 1306, 1308 (TTAB 2007).

With respect to the first prong of the test for allowing withdrawal or amendment of admissions under Rule 36(b), we find that the merits of the action will be subserved by allowing amendment of the default admissions. In particular, we note that the vast majority of those admissions go to conclusions of fact and law regarding use of the pleaded CASSA mark on the services identified in Opposer’s pleaded use-based application, e.g., admit “[t]hat Opposer has not used, the designation ‘CASSA’ by itself for lease of real estate in interstate commerce in [2012-14]” (request nos. 1 through 3).

As for the second prong, although Applicant has argued that it will be prejudiced by allowing the amended admissions in that so allowing may require Applicant to file a motion to compel discovery, any potential prejudice to Applicant caused by our allowing Opposer to amend its admissions is in

large part remedied by extending a brief discovery period to permit follow-up discovery based on the amended admissions.¹ The Board notes that, on December 4, 2014, i.e., after Opposer's motion was filed, Opposer filed a consented motion to extend the discovery period, which the Board granted in a December 4, 2014 order.

In view thereof, Opposer's motion for leave to amend its admissions is hereby granted under Rule 36(b) is granted.² Accordingly, Opposer's default admissions are hereby supplanted by those the responses that Opposers served on Applicant on November 14, 2014.

Proceedings herein are resumed. Remaining dates are reset as follows.

Expert Disclosures Due	4/20/2015
Discovery Closes	5/20/2015
Plaintiff's Pretrial Disclosures Due	7/4/2015
Plaintiff's 30-day Trial Period Ends	8/18/2015
Defendant's Pretrial Disclosures Due	9/2/2015
Defendant's 30-day Trial Period Ends	10/17/2015
Plaintiff's Rebuttal Disclosures Due	11/1/2015
Plaintiff's 15-day Rebuttal Period Ends	12/1/2015

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

¹ To the extent that Applicant alleges that certain of Opposer's interrogatory and document request responses are insufficient, Applicant's remedy is to file a motion to compel discovery after having made a good faith effort to resolve the parties' discovery dispute. *See* Trademark Rule 2.120(e)(1); TBMP § 523 (2014).

(b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129. If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

² Accordingly, the Board declines to reach whether or not Opposer's failure to respond in a timely manner to the requests for admission was the result of excusable neglect. *See* Fed. R. Civ. P. 6(b)(1)(B); TBMP §§ 509.01(b) and 525.