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

Proceeding	91219179
Party	Defendant United Yacht Transport LLC dba United Yacht Transport
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,

Opposer,

vs.

**Opposition No. 91219179
Serial No. 86031633**

UNITED YACHT TRANSPORT LLC,

Applicant.

**APPLICANT'S REPLY TO OPPOSER'S MEMORANDUM
OF LAW IN OPPOSITION TO MOTION TO COMPEL**

The central premise of the opposition—that the Applicant, United, somehow can be denied the right to discovery relevant to its key defense simply because the Opposer, Spliethoff, asserts it should prevail—has no basis in the rules governing the discovery process. Relying entirely on unauthenticated documents, and without the benefit of sworn testimony and cross examination, Spliethoff summarily contends it has already disproved the key abandonment defense in this proceeding, barring United's right to discovery into the necessary elements. But parties are permitted to take discovery “regarding any nonprivileged matter that is relevant to any party's claim or defense.” TBMP 402.01; Fed. R. Civ. P. 26(b). And that is precisely what United has moved to compel.

In this proceeding, United contends that Spliethoff's predecessors abandoned any rights in the “United Yacht Transport” mark, which requires proof that a party discontinued use of the mark and that the party intended not to resume use. 15 U.S.C. § 1127. To support the second element of the abandonment defense, United requested discovery related to numerous statements Spliethoff and its predecessors made to third parties which placed the mark in a negative light. (United's Second Requests for Production Nos. 24, 25; Subpoena to Sevenstar No. 1). Rather

than developing any argument that such statements would not be relevant to the ‘intent not to resume use’ element, Spliethoff instead argues that it somehow already disproved the ‘discontinuance’ element. Without citing any authority, Spliethoff seeks to impose a two-tiered proceeding, in which United has the “burden of proving” the first element before it is even entitled to discovery into the second. (Opp. p. 8). Such a proposal flies in the face of the discovery process.

Further, Spliethoff’s contention that its predecessors resumed use of the mark overlooks that “use in commerce” must be “bona fide” use and not “merely to reserve a right in the mark.” 15 U.S.C. § 1127. Clemens van der Werf was head of a group that was proposing to acquire Dockwise while, at the same time, he was the CEO of Dockwise. Van der Werf’s group planned to call the new company United Yacht Transport, and Van der Werf even had the name “United Yacht Transport” painted on the side of certain vessels. Ultimately the transaction did not close, and the name was removed. As discussed in the moving papers, United has requested discovery relevant to whether this alleged resumption of use constituted “bona fide” use, including the reason Van der Werf had “United Yacht Transport” painted on the sidewall of the Dockwise vessels that his new company planned to acquire, whether Dockwise ever intended to use the mark for its own services, and whether Dockwise intended for the public to associate the mark with Dockwise’s services.

Spliethoff suggests that Request numbers 24 and 25 of United’s Second Requests for Production and Request Number 1 of the subpoena to Sevenstar “are not limited to asking for documents such as marketing plans or announcements made by Spliethoff or posted online by Spliethoff which pertain to the use of the mark.” (Opp. p. 10). But this is not a reason to deny the motion. To the extent the Board finds the request overbroad, such documents can be carved out

of an order compelling their production.

With respect to Request number 10, Spliethoff represents that it has produced the responsive documents in its possession. Yet, Spliethoff fails to explain how it has access to some, but not all, responsive documents from Dockwise's records, emails, and electronically stored documents relating to Dockwise's yacht transport business.

Finally, with respect to Requests 6 and 7 to Van der Werf, Spliethoff argues that the severance agreement with Dockwise is not relevant to the issues in this proceeding. However, as explained in the motion to compel, United has been informed and believes that Van der Werf was terminated for improper actions during the negotiation period with Dockwise, including attempting to change the Dockwise branding before the transaction closed, and using Dockwise funds in the rebranding, rather than funds from his new group that was the proposed purchaser in the transaction. The severance agreement, to the extent it contains such information, is relevant to this proceeding and should be produced. Regardless, it should be produced due to the failure to raise a timely objection.

Conclusion

For the reasons stated in its moving papers and above, United respectfully requests that its motion to compel be granted.

Respectfully submitted,

BUSH ROSS, P.A.

Dated: December 21, 2015

By: /s/ Bryan D. Hull

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer has been served on J. Michael Pennekamp and Sandra I. Tart by mailing said copy on December 21, 2015, via First Class Mail, postage prepaid to: J. Michael Pennekamp and Sandra I. Tart, FOWLER WHITE BURNETT, P.A., Espirito Santo Plaza, Fourteenth Floor, 1395 Brickell Avenue, Miami, Florida 33131, and by email to: jpennekamp@fowler-white.com and start@fowler-white.com.

Signature: /s/ Bryan D. Hull
Date: December 21, 2015