

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: May 20, 2016

Opposition No. 91221324

Nintendo of America, Inc.

v.

Mario Jones

Andrew P. Baxley, Interlocutory Attorney:

Proceedings herein are suspended pending the Board's decision on Opposer's second motion (filed May 19, 2016) to compel discovery. This suspension does not toll the time for the parties to comply with any disclosure requirement or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. *See* Trademark Rule 2.120(e)(2).

In the second motion to compel, Opposer requests that Applicant be compelled to serve responses to its second sets of interrogatories and document requests and to produce documents responsive to those document requests by May 27, 2016, the date for which Opposer has noticed a discovery deposition of Applicant. The Board, in granting a motion to compel, typically allows a responding party thirty days to serve the discovery responses at issue. *See, e.g., Cadbury UK Ltd. v. Meenaxi Enter., Inc.*, 115 USPQ2d 1404, 1408 (TTAB 2015) (thirty days to serve responses and produce responsive documents); *RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.*, 106 USPQ2d 1492, 1496 (TTAB 2013) (thirty days to produce expert witness report

or delete named witness from expert disclosures); *Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1911 (TTAB 2011) (thirty days to produce documents). Although Opposer noticed Applicant's discovery deposition for eight days after the filing of the second motion to compel, the Board finds that such notice does not warrant varying from the Board's general practice.¹ Accordingly, this request is denied.

¹ If necessary and appropriate, the Board can extend the close of discovery for Opposer only to allow Opposer time to take a discovery deposition of Applicant after time for Applicant's compliance with any order granting the second motion to compel has lapsed. *See* TBMP § 403.04. Under the circumstances, Opposer may want to withdraw the notice of Applicant's discovery deposition for May 27, 2016.