

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

Mailed: October 7, 2015

Opposition No. 91224043

Demeter Association, Inc.

v.

Byodyne, LLC

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of Applicant's motion (filed October 5, 2015) for summary judgment regarding Opposer's asserted claim of likelihood of confusion. Opposer filed its response to Applicant's motion on October 6, 2015.

Decision

Except for assertions of claim or issue preclusion or lack of jurisdiction by the Board, a motion for summary judgment may not be filed until the moving party has made its initial disclosures. Trademark Rule 2.127(e)(1). As noted above, Applicant filed its motion for summary judgment on October 5, 2015, a date prior to the deadline for initial disclosures. The motion fails to allege that Applicant made its required initial disclosures prior to the filing of the motion. *See Compagnie Gervais Danone v. Precision Formulations, LLC*, 89 USPQ2d 1251, 155 fn. 7 (TTAB 2009). Inasmuch as Applicant's motion was filed prior to the deadline for initial disclosures

(and prior to the deadline for filing its answer and for the mandatory discovery conference), the Board presumes that Applicant has not yet made its initial disclosures.

In view thereof, Applicant's motion for summary judgment is premature and will be given no further consideration.

Trial Schedule

Trial dates remain as set forth in the Board's September 25, 2015, institution order.

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 Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.