

ESTTA Tracking number: **ESTTA903111**

Filing date: **06/14/2018**

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

Proceeding	91225576
Party	Plaintiff Cards Against Humanity, LLC
Correspondence Address	ELEANOR M LACKMAN COWAN DEBAETS ET AL 41 MADISON AVE FL 38 NEW YORK, NY 10010 UNITED STATES Email: elackman@cdas.com, mlewis@cdas.com, managingclerk@cdas.com
Submission	Other Motions/Papers
Filer's Name	Eleanor M. Lackman
Filer's email	elackman@cdas.com
Signature	/Eleanor M. Lackman/
Date	06/14/2018
Attachments	CAH v. VSC - Request to remove trial brief (A122499x9F203).pdf(92129 bytes)

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

CARDS AGAINST HUMANITY, LLC,

Opposer,

- *against* -

VAMPIRE SQUID CARDS, LLC,

Applicant.

Opposition No.: 91225576

**URGENT REQUEST TO REMOVE
APPLICANT'S TRIAL BRIEF FROM
PUBLIC ACCESS AND MOTION FOR
SANCTIONS**

Opposer Cards Against Humanity, LLC (“Opposer”) respectfully requests that the Trademark Trial and Appeal Board (“Board”) remove the Trial Brief of Applicant Vampire Squid Cards, LLC (“Applicant”), filed on June 9, 2018 (56 TTABVUE), from public access as soon as practicable, and to change the status of the Trial Brief as “CONFIDENTIAL,” as it contains information designated by Opposer as “TRADE SECRET / COMMERCIALY SENSITIVE” in accordance with the parties’ Stipulated Protective Order (5 TTABVUE). In addition, Opposer respectfully requests that the Board apply sanctions against Applicant and its counsel because its public disclosure of Opposer’s highly sensitive information, together with its failure to remove such information from public access in a timely manner, amounts to bad faith.

I. APPLICANT’S TRIAL BRIEF CONTAINS OPPOSER’S HIGHLY SENSITIVE INFORMATION AND SHOULD THUS BE REMOVED FROM PUBLIC ACCESS

Applicant’s Trial Brief contains numerous references to information designated as “TRADE SECRET / COMMERCIALY SENSITIVE” pursuant to the parties’ Stipulated Protective Order (5 TTABVUE), which governs this proceeding. By way of example, the Trial Brief contains financial information relating to the business of Opposer (which is a private company) (*see, e.g.*, 56 TTABVUE 19, 38), and excerpts from the parties’ proposed confidential license agreement and related settlement communications (*see, e.g., id.* at 17-18, 44). Applicant’s unauthorized public disclosure violates the terms of the Stipulated Protective Order, as well as Rule 408 of the Federal Rules of Evidence, and is likely to cause significant harm to Opposer.

Opposer provided notice to Applicant and requested that Applicant immediately withdraw this version of the Trial Brief from public access by email yesterday, June 13, 2018, at 11:04 a.m. PT.¹ After several hours with no response, Opposer's counsel made multiple attempts to contact Applicant's counsel by phone to discuss, but the calls were not returned. When Applicant's counsel finally responded, yesterday evening at 5:27 p.m. PT, he did not take steps to effect removal of the Trial Brief, but instead suggested that the parties discuss the situation. The Trial Brief remains publicly available as of the time of this filing. Applicant's unreasonable delay in taking action suggests that a bad-faith motive underlies the public disclosure of Opposer's confidential information.

Accordingly, given the potential harm to Opposer resulting from Applicant's unauthorized disclosure, Opposer seeks the Board's assistance in removing the Trial Brief from the docket.

II. APPLICANT AND ITS COUNSEL SHOULD BE SANCTIONED FOR ITS BAD-FAITH PUBLIC DISCLOSURE, AND FAILURE TO TIMELY REMOVE, OPPOSER'S HIGHLY SENSITIVE INFORMATION

Applicant and its counsel should be sanctioned for their bad-faith conduct pursuant to the Board's inherent authority to sanction and/or Rule 11 of the Federal Rules of Civil Procedure. *See NSM Resources Corp. v. Microsoft Corp.*, 113 U.S.P.Q.2d 1029, 1038 (T.T.A.B. 2014) (entering sanction of entry of judgment for bad-faith litigation under both the Board's inherent authority to sanction and Rule 11); *Central Manufacturing Inc. v. Third Millennium Technology Inc.*, 61 U.S.P.Q.2d 1210, 1215 (T.T.A.B. 2001) (applying sanction for bad-faith conduct under the Board's inherent authority to sanction, regardless of whether sanctions available under Fed. R. Civ. P. 11); *Carrini Inc. v. Carla Carini S.R.L.*, 57 U.S.P.Q.2d 1067, 1071-72 (T.T.A.B. 2000) (opposer's conduct did not "fall within reach" of Rule 11 but resulted in judgment under Board's inherent power to sanction).

Applicant publicly filed its Trial Brief with actual knowledge of the highly confidential nature of the financial and settlement-related information contained therein. The financial information contained in

¹ Applicant should have filed this unredacted version of the Trial Brief under seal. A redacted version of the Trial Brief covering the protected information may be publicly filed.

the Trial Brief is taken directly from the portions of Ms. Bane’s testimonial deposition that were marked “TRADE SECRET / COMMERCIALLY SENSITIVE” and filed under seal. Applicant’s disclosure of the settlement-related information is also particularly egregious, considering Opposer explicitly advised Applicant that the documents and communications from which it quotes must be shielded from public access in connection with a prior filing. For this reason, Applicant filed Exhibit Nos. 1, 4, and 5 to Mr. Kohler’s testimonial deposition under seal. Applicant’s bad-faith motive in disclosing this information is underscored by its unreasonable delay in removing this information from public access upon Opposer’s request.

Accordingly, Opposer respectfully requests that the Board apply sanctions against Applicant and its counsel.

Dated: New York, New York
June 14, 2018

Respectfully Submitted,

COWAN, DEBAETS, ABRAHAMS
& SHEPPARD LLP

By: /Eleanor M. Lackman/
Eleanor M. Lackman
Marissa B. Lewis
41 Madison Avenue, 38th Floor
New York, New York 10010
Tel: (212) 974-7474
Fax: (212) 974-8474
elackman@cdas.com
mlewis@cdas.com

Attorneys for Opposer Cards Against Humanity, LLC

CERTIFICATE OF SERVICE

I, Marissa B. Lewis, hereby certify that a true and complete copy of the foregoing document has been served on counsel of record for applicant Vampire Squid Cards, LLC by emailing said copy on June 14, 2018 to the following:

Thomas E. Moore (tmoore@rroyselaw.com)
Royse Law Firm PC
149 Commonwealth Dr. Ste. 1001
Menlo Park, California 94025

By: /Marissa B. Lewis/