

ESTTA Tracking number: **ESTTA760262**

Filing date: **07/25/2016**

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

Proceeding	91227227
Party	Plaintiff North American Beverages, LLC
Correspondence Address	JOHN A POWELL NAMAN HOWELL SMITH & LEE PLLC 400 AUSTIN AVE 8TH FL, P O BOX 1470 WACO, TX 76703-1470 UNITED STATES roseann.keeler@bigred.com
Submission	Motion to Compel Discovery
Filer's Name	John A. Powell
Filer's e-mail	powell@namanhowell.com
Signature	/John A. Powell/
Date	07/25/2016
Attachments	04022977.PDF(158981 bytes )

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

NORTH AMERICAN BEVERAGES, LLC, §  
§  
Opposer, §  
§  
v. §  
§  
TOTO LIMITED, §  
§  
Applicant. §

Opposition No. 91227227  
Application No. 86721140

**OPPOSER’S MOTION TO COMPEL APPLICANT’S INITIAL DISCLOSURES**

Opposer North American Beverages, LLC (“Opposer”) submits this Motion to Compel Applicant Toto Limited’s (“Applicant”) Initial Disclosures as required by Rule 26(a)(1) of the Federal Rules of Civil Procedure. Opposer has made repeated good faith efforts to obtain Applicant’s Initial Disclosures but Applicant has failed to comply with its obligation to provide its Initial Disclosures. Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120(e), Opposer respectfully requests that the Board compel Applicant’s Initial Disclosures for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

Dated: July 25, 2016



John A. “Andy” Powell  
USPTO Reg. No. 71,533  
Texas Bar No. 24029775  
Naman, Howell, Smith & Lee, PLLC  
P.O. Box 1470  
Waco, TX 76703-1470  
(254) 755-4100

ATTORNEY FOR OPPOSER  
NORTH AMERICAN BEVERAGES, LLC

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing was served on Applicant's attorneys of record listed below by certified mail, return receipt requested and by courtesy electronic mail copy on this 25th day of July, 2016.

Mr. Justin R. Young  
DINEFF TRADEMARK LAW LTD.  
160 N. Wacker  
Chicago, Illinois 60606  
Phone: (312) 338-1000  
E-mail: [jyoung@dineff.com](mailto:jyoung@dineff.com)

  
\_\_\_\_\_  
John A. "Andy" Powell

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

**NORTH AMERICAN BEVERAGES, LLC,** §  
§  
**Opposer,** §  
§  
v. §  
§  
**TOTO LIMITED,** §  
§  
**Applicant.** §

**Opposition No. 91227227  
Application No. 86721140**

**OPPOSER’S MEMORANDUM IN SUPPORT OF ITS  
MOTION TO COMPEL APPLICANT’S INITIAL DISCLOSURES**

Opposer North American Beverages, LLC (“Opposer”) submits this Memorandum in Support of its Motion to Compel Applicant Toto Limited’s (“Applicant”) Initial Disclosures as required by Rule 26(a)(1) of the Federal Rules of Civil Procedure. Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(e), and for the reasons set forth herein, Opposer respectfully moves the Trademark Trial and Appeal Board (“Board”) for an Order to Compel Applicant to serve Applicant’s Initial Disclosures.

37 C.F.R. § 2.120(e)(1) dictates that “[i]f a party fails to make required initial disclosures... the party entitled to disclosure... may file a motion to compel disclosure.” It then requires “[a] motion to compel initial disclosures... be supported by a written statement from the moving party that such party or attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences.” *Id.*

The Board set the deadline for the parties to serve their Initial Disclosures on July 14, 2016. Opposer timely served its Initial Disclosures on Applicant. Opposer’s counsel has repeatedly requested Initial Disclosures from Applicant’s counsel. Applicant’s counsel has

declined to reply to these requests in any form. Despite the good faith efforts made by Opposer's counsel to correspond and confer with Applicant's counsel, Applicant has failed to comply with its obligation to provide its Initial Disclosures.

On Thursday, July 14th 2016, counsel for Opposer timely sent Opposer's Initial Disclosures via courtesy email and certified mail, return receipt requested. Applicant's Initial Disclosures were requested in the body of the courtesy email to Applicant's counsel to which Opposer's Initial Disclosures were attached. On July 22, 2016, more than a week after the due date for Initial Disclosures to be served had passed, Opposer's counsel sent a follow up email again requesting Applicant's Initial Disclosures be sent immediately. To date, Applicant's counsel refuses to respond, much less provide Opposer with Applicant's Initial Disclosures.

Opposer is being prejudiced by this delay and is unable to move forward with written discovery. Therefore, Opposer respectfully requests that the Board enter an Order to Compel Applicant to serve its Initial Disclosures immediately.

Respectfully submitted,

Dated: July 25, 2016



John A. "Andy" Powell  
USPTO Reg. No. 71,533  
Texas Bar No. 24029775  
Naman, Howell, Smith & Lee, PLLC  
P.O. Box 1470  
Waco, TX 76703-1470  
(254) 755-4100

ATTORNEY FOR OPPOSER  
NORTH AMERICAN BEVERAGES, LLC

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing was served on Applicant's attorneys of record listed below by certified mail, return receipt requested and by courtesy electronic mail copy on this 25th day of July, 2016.

Mr. Justin R. Young  
DINEFF TRADEMARK LAW LTD.  
160 N. Wacker  
Chicago, Illinois 60606  
Phone: (312) 338-1000  
E-mail: [jyoung@dineff.com](mailto:jyoung@dineff.com)

  
\_\_\_\_\_  
John A. "Andy" Powell