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

MW

Mailed: August 15, 2016

Opposition No. 91227888

Cackalacky, Inc.

v.

Terrell T. Rhodes

Michael Webster, Interlocutory Attorney:

The deadline to conduct the mandatory discovery conference under Fed. R. Civ. P. 26(f) was July 25, 2016. On July 28, 2016, Opposer's counsel contacted the Board to request Board participation in the parties' discovery conference.[1] On August 1, 2016, the Board interlocutory attorney contacted the parties by email advising them of his availability and requesting that the parties provide a mutually agreeable date and time to conduct the discovery conference with Board participation. Opposer's counsel provided his availability for the conference; however, Applicant, Terrell Rhodes, responded that his previous legal team had already spoken with Petitioner regarding settlement. The Board attorney then advised Applicant that he was obligated to participate in a discovery conference apart from any discussions regarding

[1] Although the deadline for the discovery conference had passed, the Board accepted Opposer's request because, despite being represented by counsel in settlement discussions, Applicant is appearing pro se in this proceeding.

settlement. In response, Applicant stated that his previous legal team had already spoken with Opposer about "the terms outlined in my answer to the Notice of Opposition."[2] On August 8, 2016, the Board sent an email to the parties setting the date and time for the discovery conference as August 11, 2016, at 10:00 a.m. EST and advising Applicant of the purpose for the discovery conference. Because Applicant did not respond to emails from the Board attorney requesting confirmation of his participation in the conference, the Board attorney left a message for Applicant by telephone. On August 10, 2016, Applicant telephoned the Board and confirmed that he would participate in the discovery conference scheduled for the following day.

On August 11, 2016, the Board attempted to conduct the discovery conference as scheduled. However, Applicant failed to appear for the conference.[3] Under Trademark Rule 2.120(g)(1), "[i]f a party fails to participate in the required discovery conference, . . . the Board may make any appropriate order including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure." Accordingly, Applicant is allowed <u>until THIRTY (30) DAYS from the mailing date of this order</u> to show cause why default judgment should not be entered against Applicant based on his failure to participate in the mandatory discovery conference.[4] *See* Trademark Rule 2.120(g)(1); Fed. R. Civ. P. 37(b).

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[2] Opposer's counsel confirmed that he had only discussed the merits of the issues and possible settlement terms with Applicant's counsel.

[3] The Board provided instructions for the parties to call in to the conference by telephone.

[4] The Board is not required to issue an order compelling participation in the discovery conference prior to the order to show cause. *Patagonia, Inc. v. Azzolini*, 109 USPQ2d 1859, 1862 (TTAB 2014); *Kairos Inst. Of Sound Heling LLC v. Doolittle Gardens LLC*, 88 USQP2d 1541, 1543 n.4 (TTAB 2008).