UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: October 12, 2007

Cancellation No. 92042082

Four Seasons Dairy, Inc.

v.

International Gold Star Trading Corp.

Andrew P. Baxley, Interlocutory Attorney:

On May 21, 2007, the Board issued an order wherein, among other things, it granted both petitioner's motion to compel discovery and respondent's motion to be allowed to serve discovery responses with objections. In that order, respondent was allowed thirty days to serve responses to petitioner's first set of interrogatories and first set of document requests. Respondent was also allowed thirty days to select, designate and identify the items and documents, or categories of items and documents, to be produced in response to petitioner's first set of document requests and to notify petitioner that the selection, designation and identification of such items and documents has been completed, and petitioner was allowed thirty days from receipt of notification from respondent that the items or documents have been selected, designated and identified to inspect and copy the produced materials, as provided for in

Fed. R. Civ. P. 34(b) and Trademark Rule 2.120(d)(2), unless the parties otherwise agree.

This case now comes up for consideration of: (1) petitioner's motion (filed July 31, 2007) for entry of discovery sanctions against respondent for alleged failure to produce documents in compliance with the May 21, 2007 order; and (2) respondent's cross-motion (filed August 13, 2007) to compel production of documents responsive to its first set of "discovery demands."

The Board turns first to respondent's motion to compel. As an initial matter, the Board finds that respondent made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1).[1]

Petitioner's assertion that respondent has somehow "waived, relinquished and abandoned" any right to receive documents in response to respondent's first set of discovery requests is without basis. Contrary to petitioner's assertion, the Board's denial of respondent's motion to reopen the discovery period merely precluded the parties from serving further discovery requests herein. See Trademark Rule 2.120(a). Such denial did not relieve the

[1] Inasmuch as petitioner included copies of its responses to respondent's first set of discovery requests as exhibits to the motion for discovery sanctions, respondent was not required to file copies thereof in support of its motion to compel. See Trademark Rule 2.120(e)(1).

parties from their ongoing outstanding discovery duties.[2] See Fed. R. Civ. P. 26(e). Further, contrary to petitioner's assertion, the fact that the Board granted petitioner's motion to compel is wholly irrelevant to petitioner's ongoing discovery obligations. See TBMP Section 403.03 (2d ed. rev. 2004).

Rather, the Board, notes that, although the discovery period in this case closed on December 30, 2003, trial has yet to commence because, between February 2004 and February 2007, the parties sought and obtained numerous extensions of testimony periods based on settlement negotiations, which were ultimately unsuccessful. Under the circumstances, a finding that respondent has in any way waived, relinquished or abandoned any right to receive documents requested in discovery would run contrary to the Board's policy of encouraging parties to settle Board *inter partes* cases. See, e.g., *MWS Wire Industries, Inc. v. California Fine Wine Co., Inc.*, 797 F.2d 799, 230 USPQ 873 (9th Cir. 1986).

In view thereof, respondent's motion to compel is granted. Petitioner is allowed until thirty days from the

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[2] Petitioner is reminded that, when a party, without substantial justification, fails to disclose information required, or fails to amend or supplement a prior response, as required, that party may be prohibited from using as evidence the information not so disclosed. See Fed. R. Civ. P. 37(c)(1). The Board expects parties to cooperate in the discovery process and looks with disfavor upon those who do not. See TBMP Section 408.01 (2d ed. rev. 2004).

mailing date set forth in the caption of this order to select, designate and identify the items and documents, or categories of items and documents, to be produced in response to respondent's first set of "document demands" and to notify respondent that the selection, designation and identification of such items and documents has been completed.[3] Respondent is allowed until thirty days from receipt of notification from petitioner that the items or documents have been selected, designated and identified to inspect and copy the produced materials, as provided for in Fed. R. Civ. P. 34(b) and Trademark Rule 2.120(d)(2), unless the parties otherwise agree.

The Board turns next to petitioner's motion for entry of discovery sanctions. The Board's May 21, 2007 order directed respondent to prepare responsive documents for production by petitioner and notify petitioner that such preparation was complete by not later than June 20, 2007. In view of the June 20, 2007 letter from respondent's attorney to petitioner's attorney ("the June 20, 2007 letter"), which petitioner included as an exhibit to its

[3] If the materials are voluminous, petitioner may produce a representative sampling and so inform respondent that a representative sampling has been produced. See TBMP Section 402.02 (2d ed. rev. 2004).

motion, the Board finds that respondent substantially complied with the May 21, 2007 order.[4]

Accordingly, petitioner's motion for discovery sanctions is denied. Petitioner is allowed until thirty days to inspect and copy the produced materials, as provided for in Fed. R. Civ. P. 34(b) and Trademark Rule 2.120(d)(2), unless the parties otherwise agree.

Proceedings herein are resumed. Discovery and testimony periods are reset as follows.

Plaintiff's 30-day testimony period to close:	**January 11, 2008**
Defendant's 30-day testimony period to close:	**March 11, 2008**
Plaintiff's 15-day rebuttal testimony period to close:	**April 25, 2008**

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

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[4] Petitioner's assertion that respondent's attorney, in the June 20, 2007 letter, conditioned its compliance with the May 21, 2007 order on petitioner's production of documents responsive to respondent's first set of discovery demands is not well-taken. Respondent's attorney merely proposed in that letter that the parties exchange all outstanding discovery documents simultaneously.

New TTAB rules

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm