

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

Qinetiq Limited,

Petitioner,

v.

Kinetic Marketing Inc.

Registrant.

Cancellation No. 92045288

TTAB

REGISTRANT'S REPLY TO PETITIONER'S MOTION TO COMPEL

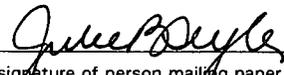
Petitioner has filed a Motion requesting that the Board compel Registrant to respond to Petitioner's interrogatories, certain document requests and requests for admission. Registrant respectfully requests that the Motion to Compel be denied. Registrant intends to fully and completely respond to all outstanding Discovery issues, including addressing issues related to the Protective Order. Further, Registrant has never refused to produce documents and Petitioner's characterization of same is unwarranted and unsupported by the record.

**CERTIFICATE OF MAILING**

Date of Deposit : April 17, 2006

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

**JULIE B. SEYLER**

  
(signature of person mailing paper or fee)

04-21-2006

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

The sole reason that Registrant has not responded to the outstanding Discovery is because Petitioner filed a Motion requesting that this cancellation be consolidated with two other proceedings. The Trademark Trial and Appeal Board has not yet acted on this Motion. The Board's decision will have a substantive impact on all matters related to Discovery and therefore the decision not to respond was not intentional nor "tactical". Rather it was a practical and good faith response predicated by the filing of Petitioner's motion.

A brief summary of the procedural history of the cancellation to date will explain why Registrant has consistently acted in good faith in not completing the responses to Petitioner's discovery requests.

- 1. The filing of the Motion to Consolidate by Petitioner changed the substantive grounds of the cancellation action on a material level. Consequently, registrant could not respond to Discovery.**

On March 3, 2006, Petitioner filed a Motion to Consolidate this cancellation action with Opposition No. 91168895 and Cancellation No. 92045572. On March 23, 2006, Registrant objected to the Motion to Consolidate on the ground that the issues in the cancellation (alleged non-use of the mark on computers) were unrelated to the opposition (likelihood of confusion between cameras).

In addition, Registrant objected to the Motion on the basis of timeliness. Registrant had not yet filed an Answer in Cancellation No. 92045572.

Registrant also requested that the Board stay all term dates with respect to both parties' responses to outstanding Discovery requests. Petitioner seeks to characterize Registrant's delay in responding in a negative light. However, as noted in Registrant's reply to the Motion to Consolidate, Registrant believes, in good faith, that given the nature of all three proceedings, it

requires clear guidance from the Board as to how the matters are to be handled prior to trial and during trial before it can respond to Petitioner's discovery. As a result thereof, it is requested that the Motion to Compel be denied.

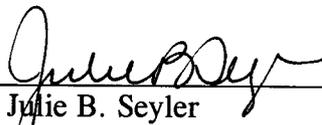
**2. Petitioner's reference to proceedings not involving the petitioner and registrant should be stricken from the record.**

In its Motion to Compel, Petitioner refers to another matter involving Registrant and a third party unrelated to Petitioner. Not only does that proceeding have no bearing on this case, but the procedural history in that case has no parallel to the facts herein. Registrant has consistently and timely responded to all documents and correspondence received from Petitioner. It is submitted that Petitioner's arguments are inappropriate and it is respectfully requested that all references to any proceeding not involving the parties herein be stricken from the record.

**3. Registrant will fully and completely respond to Discovery after the Board has decided on the Motion to Consolidate.**

Registrant is not seeking to delay proceedings or frustrate Petitioner. It has consistently acted timely and in good faith and will continue to do so.

Respectfully submitted,

By   
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*Attorneys for Registrant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Registrant's Reply to Petitioner's Motion to Compel was served by first class mail, postage prepaid, this 17<sup>th</sup> day of April, 2006 upon the following:

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JULIE B. SEYLER