

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

mcf/tww

Mailed: September 20, 2007

Cancellation No. 92045655

National Center For Fathering,  
Inc.

v.

Father's Day/Mother's Day  
Council Inc.

**Thomas W. Wellington,  
Administrative Trademark Judge:**

Before the Board is petitioner's motion (filed June 26, 2007) to compel discovery responses and to reset trial dates.

Petitioner's motion to reset trial dates is granted as conceded. Trademark Rule 2.127(a). Trial dates are reset to open approximately 60 days after the mailing date of this order (as set forth below).

For the reasons explained below, petitioner's motion to compel is denied as untimely.

Trademark Rule 2.120(e) provides in relevant part that a motion to compel discovery "must be filed prior to the commencement of the first testimony period as originally set

or reset.”<sup>1</sup> There is no provision in the rule for Board discretion. If testimony periods are reset prior to the opening of the plaintiff's testimony period-in-chief, a motion to compel filed before a first trial period opens is timely. However, once the first trial period opens, a motion to compel filed thereafter is untimely, even if it is filed prior to the opening of a rescheduled testimony period-in-chief for plaintiff. *Cf. La Maur, Inc. v. Bagwells Enterprises, Inc.*, 193 USPQ 234, 235 (Comm'r 1976) (extension of testimony period cannot render motion for summary judgment timely when it was filed after opening of first testimony period).

By Board order dated September 7, 2006 in which the Board approved the parties' stipulation to extend trial dates, petitioner's first thirty-day testimony period was reset to close on July 5, 2007. Petitioner filed its motion to compel on June 26, 2007. Inasmuch as petitioner's motion was filed after commencement of the first testimony period (i.e., June 5, 2007), petitioner's motion to compel is untimely.

Trial dates are reset as follows.

30-day testimony period for party in  
position of plaintiff to close:

**November 13, 2007**

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<sup>1</sup> The Rule also requires the moving party to include a copy of the request for discovery and the response thereto. Petitioner did not include these with the motion and declaration and the motion could be denied on these grounds also. We do not reach that issue since the motion is untimely.

30-day testimony period for party in  
position of defendant to close:

**January 12, 2008**

15-day rebuttal testimony period for  
plaintiff to close:

**February 26, 2008**

**NEWS FROM THE TTAB:**

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](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:

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