

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

Skoro

Mailed: March 13, 2009

Cancellation No. 92047661

Live Ventures Inc.

v.

Saroj International, Inc.

**Before Hairston, Kuhlke and Ritchie,
Administration Trademark Judges.**

This case comes up on petitioner's second motion for discovery sanctions in the form of judgment, filed January 15, 2009, for registrant's alleged non-compliance with the Board's December 12, 2008 order compelling complete discovery responses. Registrant has responded.

Petitioner states that pursuant to the Board's December order, registrant had twenty days, until January 2, 2009, within which to serve signed copies of its discovery responses; supplement responses and copy all documents and send them to petitioner by email. Petitioner's counsel states that the responses were not received, causing him to send emails to opposing counsel on January 5 and 6, 2009 indicating the responses had not been received. On January 8, 2009 petitioner received a response from registrant's counsel, dated December 31, 2008, stating the documents had

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been transmitted in accordance with the Board's order. There was a subsequent exchange of emails and petitioner stated that it had still not received discovery responses. Finally, on January 12, 2009 petitioner received all discovery responses through Federal Express.

Registrant's counsel states that he sent the discovery responses by email on December 31, 2008, which consisted of more than 500 pages, and had no indication that the transmission did not go through. On January 8, 2009, upon return from the holidays, counsel learned the discovery had not been received. He tried to resend it and again the transmission failed. He requested that petitioner agree to send the discovery by Federal Express, which he did. The Federal Express package was delivered on January 12, 2009. Registrant contends that it is in compliance with the Board's December 12, 2008 order.

The Board agrees that registrant is in substantial compliance with the Board's order and therefore petitioner's second motion for discovery sanctions is denied. Petitioner has received the required discovery responses, albeit ten days late and through a different means. Thus, the sanction of judgment is not warranted under these circumstances.

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It is also noted that through these motions, the parties have agreed to extend the discovery period.¹ That request is granted and the dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:	June 15, 2009
30-day testimony period for party in position of plaintiff to close:	August 14, 2009
30-day testimony period for party in position of defendant to close:	October 13, 2009
15-day rebuttal testimony period for plaintiff to close:	November 27, 2009

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.

¹ Petitioner states it wants discovery extended to enable it to file a motion for summary judgment based on priority and fraud. Petitioner is advised that motions for summary judgment are considered timely up until the opening of the first testimony period. See Trademark Rule 2.127(e)(1). Registrant states it wants time to compel petitioner to answer its outstanding discovery requests. Petitioner is advised that it is not relieved of its responsibility to timely respond to registrant's discovery. Discovery in proceedings before the Board is not governed by any concept of priority of discovery or disposition as may exist under the rules of practice of some state or local courts. Rather, a party is under an obligation to respond to an adversary's requests for discovery during the time allowed therefore under the applicable rules, irrespective of the sequence of discovery, or of an adversary's failure to provide discovery. See *Miss American Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067 (TTAB 1990).

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Briefs shall be filed in accordance with Trademark Rules 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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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

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/stdnagmnt.htm>

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