

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

Mailed: September 20, 2012

Cancellation No. 92052146

Corporacion Habanos, S.A. and  
Empresa Cubana del Tabaco,  
d.b.a. Cubatabaco

v.

Juan E. Rodriguez

**M. Catherine Faint,  
Interlocutory Attorney:**

On September 20, 2012, the Board held a telephone conference involving David B. Goldstein, counsel for Corporacion Habanos, S.A. and Empresa Cubana del Tabaco, d.b.a. Cubatabaco ("petitioners"), and Frank Herrera, counsel for Juan E. Rodriguez ("respondent"). Before the Board are petitioners' motions, filed April 5, 2012, to compel discovery responses, and for sanctions. Respondent contested the motions and cross-moved for suspension pending the outcome of another Board proceeding. The motions are contested.

The Board carefully considered the arguments raised, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the parties were each allowed

to make further statements, and the Board made the following findings and determinations.

***A. Address for Respondent's Counsel***

As an initial matter, the Board notes there appears to be some confusion about the correct address for respondent's counsel. The address shown in the electronic file for this case has a P.O. Box, while counsel's response to the motion uses a different address, which also appears to be different from counsel's address in other proceedings before the Board. Counsel has stated that his address is: 1445 N. Congress Ave., Suite 7, Delray Beach, FL 33445.

It is the responsibility of an attorney or party to a proceeding before the Board to ensure that the Board has a current correspondence address, including an e-mail address, if applicable. See TBMP § 117.07 (3d ed. rev. 2012).

Counsel is hereby **ORDERED** to update his correspondence address via the Board's electronic system, ESTTA.

***B. Protective Order***

The stipulated protective agreement filed on May 22, 2012, is noted. The parties are referred, as appropriate, to Trademark Rule 2.126(c) and TBMP §§ 412.02, et seq. (3d ed. rev. 2012).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated

protective agreement.<sup>1</sup> Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

***C. Motion to Compel***

In support of their motion to compel, petitioners contend that on March 6, 2012, respondent served unsworn interrogatory responses and document request responses, and has failed to produce any documents after stating, without objection, including to the stated place of production, that he would produce documents for Request Nos. 2-7, 18-21, 27, and 29-34. Further, petitioners contend that respondent has failed to produce confidential documents in response to Request No. 22; that respondent has not responded to Request No. 26 after petitioners amended the request in an attempt to respond to respondent's "baseless objection" that the request "assumes facts not in evidence;" that respondent's responses to Interrogatory Nos. 3-4 are incomplete; that respondent's only objection to Interrogatory No. 16 is that the information sought is "highly confidential;" that respondent's responses to

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<sup>1</sup> The Board notes that confidential papers can now be filed via ESTTA, the Board's electronic filing facility. <http://estta.uspto.gov>. Pick the "CONFIDENTIAL Opposition, Cancellation or Concurrent Use" form under the "File Documents in a Board Proceeding" option.

Interrogatory Nos. 7-14 are non-responsive; and that respondent's responses to Interrogatory Nos. 20-22 violate Fed. R. Civ. P. 26(g) and require sanctions.

In its response filed May 7, 2012, respondent contends that it has produced via email on April 10, 2012 "an invoice dated 4/16/08 of PINAR DEL RIO products to a store located in New Jersey," together with advertising material showing use of the mark; and on April 9, 2012 counsel emailed several images of the first cigar bands produced by respondent bearing its mark. Respondent's counsel also notes that respondent is still "recovering from a serious medical emergency," and thus respondent would require ten days from the date of any order on this matter to "produce or otherwise supplement its discovery responses."

In reply, petitioners' counsel contends respondent admits it did not produce documents until after the motion to compel was filed, and "baldly misleads the Board" regarding the documents produced as they consist of a "mere 8 pages - 6 photographs of cigars, cigar boxes and labels; 1 advertisement; and a 1-page invoice." Petitioner renews its contention that respondent has not provided any responsive documents to Request Nos. 2-6, 18, 20-21, and 29-34, and for those documents produced, has not claimed that all responsive documents have been produced. Further, petitioners contend that respondent had previously represented that, as of March 6, Abraham Flores

had ultimate responsibility for all things related to the PINAR DEL RIO brand, and had already collected or provided to respondent the documents and things responsive to the document requests, and thus there is no excuse to allege that respondent's serious medical emergency was now a reason for not responding.

**1. Good Faith Effort/Required Responses**

The record herein indicates that petitioners made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention. See Trademark Rule 2.120(e)(1).

A party served with interrogatories and document requests must thoroughly search its records for all information properly sought in those interrogatories and document requests in preparing responses thereto. See *TBMP* § 408.02. In addition, a responding party has a duty to supplement or correct its discovery responses as needed. See Fed. R. Civ. P. 26(e). Further, upon objection by the propounding parties at trial, a responding party may be precluded from relying as evidence upon documents properly requested but not produced during discovery. See Fed. R. Civ. P. 37(c)(1).

While the Board strongly encourages parties to forward discovery documents concurrently with their responses to document requests, parties are not required to do so forward, unless ordered to do so by the Board. See *TBMP* § 406.04(b).

Rather, a responding party must produce responsive discovery documents as they are kept in the usual course of business or must organize and label them to correspond with each document request. See Fed. R. Civ. P. 34(b)(2)(E)(i); TBMP Section 406.04(c). Document production should take place in a manner that allows ample opportunity for trial preparation.

The Board notes that respondent served timely responses to petitioners' interrogatories and to their requests for production of documents and that respondent has objected only to Document Request No. 26, (claiming "facts not in evidence"), and Interrogatory Nos. 6 (claiming attorney-client privilege) and 16 (claiming it seeks confidential and proprietary trade secret information). In view thereof, respondent has waived further objections to the discovery requests. Cf. *Fort Howard Paper Co. v. G.V. Gambina Inc.*, 4 USPQ2d 1552 (TTAB 1987) (objection not waived when responses were served within thirty-five days from mailed discovery requests).<sup>2</sup>

With regard to respondent's responses to petitioners' interrogatories, respondent's attorney signed respondent's interrogatory responses.<sup>3</sup> While respondent's attorney may

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<sup>2</sup> The holding in *No Fear, Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000), is inapposite in this instance because respondent served timely responses to petitioners' discovery requests.

<sup>3</sup> Petitioner contends the interrogatory answers are "unsworn." Apparently respondent's attorney signed the answers, but attached a blank form for notarizing an oath. Fed. R. Civ. P. 33(b)(3) requires that interrogatory answers be "under oath," and in this case the answers were signed by the attorney. The Board construes the answers as sworn, but respondent's counsel is cautioned that if additional interrogatory answers are filed they

answer interrogatories even though he has no personal knowledge of the facts stated therein, his answers, like an officer's answers, must be based on the information available to respondent himself.<sup>4</sup> See *Allstate Insurance Co. v. Healthy America Inc.*, 9 USPQ2d 1663 (TTAB 1988).

Accordingly, the following orders are issued in order to facilitate discovery in this case.

**2. Document Request Nos. 2-7, 18, 27 and 29-34**

For any item or category of documents which is not subject to a stated objection, a proper response to a request for production of documents should state whether the responding party has responsive documents within its possession, custody and control and, unless the request is objected to, in which case the objection must be stated, if there are responsive documents, whether they will be produced or withheld on a claim of privilege. See Fed. R. Civ. P. 34(b)(2)(B); *No Fear*, 54 USPQ2d at 1556. See also *TBMP* § 406.04(c) and 408.02 (3d ed. rev. 2012).

In respondent's responses to document requests, respondent indicated that it: (1) would produce "[d]ocuments thought to be responsive" to Request Nos. 2-7, 18-21, 27 and 29-34; (2)

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must be "under oath" as required by the Rules. See also Fed. R. Civ. P. 11.

<sup>4</sup> An attorney who answers interrogatories on behalf of a corporation may thereafter be exposed to additional discovery and possibly even disqualification. See Patent and Trademark Rule 10.63, and *Allstate Ins. Co.*, 9 USPQ2d 1663.

indicated that Request No. 22 "calls for documents that contain highly confidential and proprietary information;" (3) did not have documents responsive to Request Nos. 1, 8-17, 23-25, and 28; and (4) objected to Request No. 26 as "presuming facts not in evidence."

Respondent appears to have produced some documents since the filing of the motion to compel, but has not indicated in its response to which requests the documents are responsive. Petitioners appear to indicate in their reply brief that respondent has produced documents responsive only to Request Nos. 7 and 19, but alleges the responses are incomplete and that respondent has not indicated whether the documents produced constitute all documents responsive to those requests. Respondent's production of documents made without specifying any requests to which any document is responsive is unacceptable. See Fed. R. Civ. P. 34(b)(2)(E).

After having stated in its initial responses that it would produce "documents thought to be responsive" to Request Nos. 2-7, 18-21, 27 and 29-34, and then producing some documents without indicating to which requests they were responsive, nor indicating whether it has produced all documents in its possession, custody or control, respondent appears to be contradicting its own discovery responses.

In view thereof, because respondent's original response appears contradicted by its response to the motion,

petitioners' motion to compel is **granted to the extent** that respondent is **ORDERED** within **THIRTY DAYS** of this teleconference to supplement its responses to either state unequivocally whether it has no documents in its custody, possession or control that are responsive to Document Request Nos. 2-7, 18-21, 27 and 29-34, or to produce the responsive documents by providing copies to petitioner's counsel.<sup>5</sup> Further, respondent is **ORDERED** within **THIRTY DAYS** of this teleconference to indicate to which Document Requests the documents it has produced are responsive.

**3. Document Request No. 22 and Interrogatory No. 16**

Document Request No. 22 seeks documents, "sufficient to show the blend used in Respondent's cigars" including "the percentage of tobacco grown from 'tobacco seeds...from Pinar del Río..." Interrogatory No. 16 asks for information about the tobacco used in the manufacture of respondent's cigars. Respondent's response to Request No. 22 that the request "calls for documents that contain highly confidential and proprietary information," and its similar responses to Interrogatory No. 16 are essentially refusals to produce the documents or answer interrogatories absent a protective order, and are not well-taken. The Board's standard form protective order has been

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<sup>5</sup> The Board will not compel respondent to produce documents that it does not have in its possession, custody or control. See TBMP § 406.02.

operative throughout this proceeding. See Trademark Rule 2.116(g); *TBMP* § 412.01. In addition, the parties have since entered a signed version of a stipulated protective order.

Accordingly, respondent is **ORDERED** within **THIRTY DAYS** of this teleconference to supplement its responses to Document Request No. 22 and Interrogatory No. 16 to provide responsive confidential documents and information pursuant to the protective order.

**4. Document Request No. 26**

By Document Request No. 26, petitioners originally sought:

[d]ocuments sufficient to disclose any tobacco products that Respondent purchases, produces, distributes or sells under marks or names that include the name of a geographic location in addition to products under the PINAR DEL RIO mark.

Respondent objected that the request "assumes facts not in evidence....There is nothing in the record that confirms that PINAR DEL RIO is a geographic term. Thus the request unfairly attempts to cause Registrant to produce documents that are not appropriately defined at this time..." Petitioner then amended the request to seek:

[d]ocuments sufficient to disclose any tobacco products that Respondent purchases, produces, distributes, or sells under marks or names that include the name of a geographic location.

Respondent did not respond to the amended request.

A discovery request seeking the extent to which a party uses its mark with specific goods is proper to the extent such inquiry involves those goods identified in the involved application or registration. *See, e.g., Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671 (TTAB 1988) (questions concerning specific goods on which opposer uses mark are proper to extent scope of inquiry is limited to those goods identified in application, or involve goods of type marketed by applicant, or mentioned by opposer during discovery). In view thereof, petitioners' motion to compel is **granted** to the extent that respondent is hereby **ORDERED** within **THIRTY DAYS** of this teleconference to respond to amended Document Request No. 26, or to state that it does not have documents responsive to the request.

**5. Responses to Interrogatory Nos. 3-4**

Interrogatory Nos. 3 and 4 ask for the identity of persons, but also ask for statements, as to "the reasons for adopting or selecting the mark," and "when sales [under the mark] began." Respondent did not object to the interrogatories but gave answers only as to the identities of persons. The responses do not appear to fully answer the interrogatories. Information concerning a party's, particularly a defendant's selection and adoption of its involved mark is generally discoverable. *See Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (whether applicant

received opinions concerning adoption of mark is not privileged and applicant must identify person, date and documents relating thereto). Information concerning a party's first use of its involved mark is also discoverable. *See, e.g., Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976) (dates petitioner's plants first began production of goods bearing mark are pertinent to claim of priority).

In view thereof, respondent is **ORDERED** within **THIRTY DAYS** of this teleconference to supplement its responses to Interrogatory Nos. 3 and 4 to answer the interrogatories as put, or to state that he does not have responsive information.

***6. Respondent's Objection to Interrogatory No. 6/Privilege Log***

Interrogatory No. 6 asks respondent to:

Identify each person with information concerning any communications between Respondent and the USPTO concerning the PINAR DEL RIO mark, and state with particularity the contents of such communications.

Respondent responded,

Juan Rodriguez communicated with his attorney Christopher J. Day about his intention to file a federal trademark application for PINAR DEL RIO. **OBJECTION:** All such communications are protected by the Attorney/Client Privilege or Work Product Doctrine. Abe Flores and Juan Rodriguez discussed the federal trademark application process before, during and after the application process.

The answer does not appear to respond to the question. In view thereof, respondent is **ORDERED** within **THIRTY DAYS** of the

date of this teleconference to amend its response to Interrogatory No. 6 to respond to the interrogatory as put.

A party need not provide privileged or protected information or produce privileged or protected documents within the meaning of Fed. R. Civ. P. 26(b)(5) as its right to claim privilege has not been waived. *See, e.g., American Standard, Inc. v. Pfizer*, 3 USPQ2d 1817 (Fed. Cir. 1987); *Norman v. Young*, 422 F.2d 470, 473 (10th Cir. 1970). However, where a claim of privilege has been invoked the party claiming privilege must make the claim expressly and provide a description or privilege log, unless the parties otherwise agree. *See* Fed. R. Civ. P. 26(b)(5)(A)(ii); Trademark Rule 2.116(a). *See also No Fear*, 54 USPQ2d at 1556 ("Any claim that otherwise responsive documents are privileged requires a particularized explanation of the privilege relied on, and a description of the documents which, without revealing the privileged information, is sufficient to allow the inquiring party to assess the applicability of the privilege."). The withholding of such a privilege log may subject a party to sanctions under Rule 37(b)(2) and may be viewed by the court as a waiver of any privilege or protection. *See Banks v. Office of Senate Sergeant-at-Arms ["SAA"]*, 222 F.R.D. 7 (D.D.C. 2004) [internal citations omitted].

In view thereof, respondent is **ORDERED** within THIRTY DAYS of this teleconference to provide a privilege log to

petitioners with respect to any withheld information or documents.

**7. Responses to Interrogatory Nos. 7-14**

Petitioner asserts that the application file shows respondent submitted a statement in response to an Office action that, "[o]ur tobacco seeds come from Pinar del Rio Cuba." Interrogatory Nos. 7-14 seek information about respondent's representation that his "tobacco seeds come from Pinar del Rio Cuba." Respondent answered Interrogatory No. 7, and answered Interrogatory Nos. 8-14 by referring to its answer to Interrogatory No. 7, or to its answer to Interrogatory No. 11, which in turn merely refers back to Interrogatory No. 7.

Respondent's answer to Interrogatory No. 7 is incomplete because it does not identify *any* person with information concerning the claim made by Respondent that the tobacco used in its cigars sold under the mark is grown from tobacco seeds that come from Pinar del Rio Cuba, but it refers to "suppliers." Its answers to Interrogatory Nos. 8-14 are similarly non-responsive, as they do not respond to the questions asked, and are somewhat confusing in their circularity of references.

Respondent is **ORDERED** within **THIRTY DAYS** of the date of this teleconference to answer Interrogatory Nos. 7-14 by providing the specific information requested, or to state that it does not have responsive information.

**8. Sufficiency of Responses to Interrogatory Nos. 20-22/Request for Sanctions**

Interrogatory Nos. 20-22 seek the identities of persons with information concerning respondent's affirmative defenses of laches, unclean hands and standing. In its response to Interrogatory No. 20 respondent answered:

Each person or persons employed by entities that have been involved in litigation against Petitioners would have knowledge of Registrant's basis for its laches defense. Namely, each of these persons would have knowledge of Petitioners' legal actions and delay in bringing legal actions in the United States. Namely, the following persons or companies would have such knowledge:...

Respondent then provided a list of 34 persons (including commercial entities), together with TTAB proceeding numbers, or with application Serial Numbers. The responses to Interrogatory No. 21, seeking persons with information regarding respondent's unclean hands defense, and Interrogatory No. 22, seeking persons with information regarding respondent's defense asserting petitioners' lack of standing, refer back to the response made to Interrogatory No. 20.

Petitioner alleges that the persons named are all "nothing more" than a list pulled off of TTABVue of every person against whom petitioners have over the last 15 years: 1) sought an extension of time to file a notice of opposition, without actually filing an opposition (9 persons); 2) filed a notice of opposition (17 persons); 3) filed a petition to cancel (7

persons); or filed both a notice of opposition and petition to cancel (for different marks) (1 person). Petitioner argues that, with the exception of three clients of respondent's counsel that are on the list,<sup>6</sup> neither respondent nor its counsel made any effort whatsoever to determine if any of these third parties in fact had any relevant information. Petitioner argues this amounts to a blatant violation of Fed. R. Civ. P. 26(g)'s requirement that a party's discovery responses shall be made only "after a reasonable inquiry." Petitioner alleges this is "pure discovery abuse" plainly interposed for the purpose of needlessly increasing the cost of litigation and causing unnecessary delay. Petitioner's counsel declares he contacted attorneys for seven of the persons identified by respondent to inquire whether they had relevant information regarding respondent's defenses, and six responded that they were previously unaware of this TTABIS Proceeding and of respondent, that neither non-party nor its counsel had been contacted by respondent or its counsel, and that the clients did not have any information relevant to this proceeding (one attorney responded that his client was out of the country). Goldstein Decl. ¶ 13, Ex. A.

In response, respondent's counsel argues that he is "baffled" by petitioners' arguments and was under no obligation

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<sup>6</sup> The alleged clients of respondent are Cigar King, Ltd., Guantanamera Cigars, Inc., and Inter-America Cigar Co.

to "interview or interrogate" the litigants that it cited as parties who may have information to support respondent's affirmative defenses. Respondent argues that petitioner attempts to call into question the affirmative defenses in this manner without filing a motion to strike those affirmative defenses.

The signature of an attorney to an interrogatory response is the certification by the attorney that the response is warranted, consistent with the Federal Rules of Civil Procedure, and not interposed for any improper purpose such as to cause unnecessary delay or needlessly increase the cost of litigation, in other words that the attorney has made "a reasonable inquiry into the factual basis of his response..." Fed. R. Civ. P. 26 Advisory Committee's notes, (1983 Amendment Rule 26, Subdivision (g)). A motion for sanctions, however, lies only when the board has entered an order relating to discovery, and that order has been violated. Where a party who has served a request for discovery receives a response thereto which it believes to be inadequate, it must file a motion to challenge the sufficiency of the response, before the Board will hear a motion for sanctions. *Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC*, 88 USPQ2d 1541, 1543 (TTAB 2008) (sanction of dismissal denied as premature when no Board order compelling discovery present); *Seligman & Latz, Inc. v. Merit Mercantile Corp.*, 222 USPQ 720, 723 (TTAB 1984)

(Board will not impose sanction of drawing adverse inferences against party absent motion to compel complete responses and violation of an order compelling answers).

Thus the Board construes this as a motion to compel complete responses to Interrogatory Nos. 20-22, and as such petitioner's motion for sanctions is premature and will be given no consideration.

Having reviewed respondent's interrogatory responses, and petitioner's arguments and submissions, however, the Board finds the answers to be non-responsive. But the Board also notes, under the Rules, petitioner should have received initial disclosures identifying those individuals with discoverable information who may support respondent's claims or defenses.

If counsel for respondent thinks that laches, unclean hands or lack of standing are no longer viable affirmative defenses, then counsel is obligated to amend its answer. The Board would look with disfavor on any gamesmanship in making unnecessary claims and defenses, or pursuit of meaningless discovery. Further, should a party, due to an incomplete search of its records, provide an incomplete response to a discovery request, it may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto (provided that the requesting party raises the matter by objecting to the evidence in question) unless the response is

supplemented in a timely fashion pursuant to Fed. R. Civ. P. 26(e). See *Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 USPQ2d 1789, 1791 (TTAB 2009); *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, 1720 (TTAB 1987). See also *TBMP* § 527.01(e) ("Estoppel Sanction").

Accordingly, petitioner's motion to compel is **granted** to the extent that respondent is **ORDERED** to serve within **THIRTY DAYS** of this teleconference supplemental responses fairly responding to Interrogatory Nos. 20-22. The responses must be under oath and signed, and otherwise be made in compliance with the Rules. Respondent's counsel is cautioned that accuracy in its responses is expected, and that its provision of information in response to discovery is a certification that it has made a conscientious endeavor to understand the questions and to answer those questions fully. 8A Charles Alan Wright, et al ., *Federal Practice & Procedure* § 2177 (3d ed. Westlaw update 2012) (Interrogatory answers sufficient "when the answers as a whole disclose a conscientious endeavor to understand the questions and to answer fully those questions as are proper....").

***D. Cross-Motion to Suspend for Another Board Proceeding***

Respondent cross-moved for suspension pending the disposition of Opposition No. 9115228 between Corporacion Habanos, S.A. and Guantanamo Cigars, Inc. Respondent argues that the proceeding involves at least one of the same parties,

Corporacion Habanos, S.A., and turns on a "the final element of a [§] 2(e)(3) claim."

Petitioner opposes the suspension and argues that there is no case law supporting suspension pending the resolution of an unrelated proceeding involving unrelated marks.

Because the Board, and the parties appearing before it, are interested in the prompt disposition of pleaded claims and defenses, the Board seldom grants a motion to suspend pending the disposition of another unrelated proceeding, unless the motion is consented, unless the Board's consistency and economy dictate such an exception. *See New Orleans Saints, LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1551 (TTAB 2011) (noting Board seldom grants motion to suspend proceedings brought by unrelated plaintiffs, and asserting unrelated claims, absent consent of the parties). The potential prejudice that arises due to the danger that evidence or witnesses may be lost because of such a suspension, works against such a suspension. *See, e.g., Prakash Melwani v. Allegiance Corporation*, 97 USPQ2d 1537, 1541 (TTAB 2010) (in determining whether excusable neglect allows the reopening of testimony periods, the Board considers any prejudice to the non-moving party such as lost evidence or unavailable witnesses).

Here the two proceedings have only one party in common, involve unrelated marks, and while both involve Trademark Act § 2(e)(3) claims, the instant proceeding also involves other

claims, and is still in the discovery stage. The Board does not find that consistency and economy would be served by suspension at this juncture.

In view thereof, respondent's cross-motion to suspend for another proceeding is **denied**.

***E. Duty to Cooperate and to Supplement Responses***

Respondent is reminded of its duty to cooperate and to thoroughly search its records for all information properly sought in discovery, and to provide such information to the requesting party. TBMP §§ 408.01 and 408.02 (3d ed. rev. 2012). A party that has responded to a request for discovery with a response is also under a duty to supplement or correct the response to include information thereafter acquired or uncovered. *Id.* at § 408.03.

***F. Motions to Extend Time***

Petitioner moved for an extension of the discovery period for 120 days. Respondent did not respond to the motion. Respondent moved for an additional 10 days from any ruling on this matter to produce or otherwise supplement its discovery responses.

Petitioner's motion to extend is granted, and dates are reset as set out below. Respondent's motion is moot, inasmuch as the Board has allowed 30 days for respondent to produce and supplement its discovery responses.

***G. Summary***

Respondent's counsel is **ORDERED** to update his mailing address via ESTTA. The parties' signed protective order is noted and its use in this proceeding is approved. Petitioner's motion to compel is granted to the extent that respondent is **ORDERED** within **THIRTY DAYS** of this teleconference to 1) either state unequivocally whether it has no documents in its custody, possession or control that are responsive to Document Request Nos. 2-7, 18-21, 27 and 29-34, or to produce the responsive documents, 2) indicate to which Document Requests the documents it has produced are responsive, 3) supplement its responses to the Document Request No. 22 and Interrogatory No. 16 to provide responsive confidential documents or information pursuant to the protective order, 4) to respond to amended Document Request No. 26, or to state that it does not have documents responsive to the request, 5) to supplement its responses to Interrogatory Nos. 3 and 4 to answer the interrogatories as put, 6) amend its response to Interrogatory No. 6 to respond to the interrogatory as put, 7) answer Interrogatory Nos. 7-14 by providing the specific information requested, or to state that it does not have the information, 8) supplement its responses to fairly respond to Interrogatory Nos. 20-22, and 9) to provide a privilege log with respect to any withheld information or documents for which he asserts a claim of privilege. Petitioner's motion for sanctions is premature and will be given no consideration. Respondent's cross-motion to suspend

for another proceeding is **denied**. Petitioner's motion to extend time is granted. Respondent's motion to extend time to respond is moot.

***H. Proceedings Resumed/Dates Reset***

Proceedings are resumed and dates are reset as set out below.

Expert Disclosures Due	12/19/2012
Discovery Closes	1/18/2013
Plaintiff's Pretrial Disclosures Due	3/4/2013
Plaintiff's 30-day Trial Period Ends	4/18/2013
Defendant's Pretrial Disclosures Due	5/3/2013
Defendant's 30-day Trial Period Ends	6/17/2013
Plaintiff's Rebuttal Disclosures Due	7/2/2013
Plaintiff's 15-day Rebuttal Period Ends	8/1/2013

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 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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