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

Proceeding	92053509
Party	Plaintiff Cleveland State University
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Date	03/19/2012
Attachments	Petitioner's Opposition to Registrant's Motion.PDF (10 pages)(26208 bytes) DMJ SuppDecl 487500_1 (3).PDF (3 pages)(26688 bytes)

("February Motion"). This combined motion was based on information recently obtained during fact discovery annexed to the Declaration of Diane M. Jacquinet (Dkt. # 8) which was filed concurrently with the February Motion.

On February 22, 2012, the Board allowed Registrant "until March 12, 2012 in which to file a response to petitioner's alternative motion for discovery sanctions in the form of judgment." See Dkt. #9, p. 2.

On September 10, 2011, Petitioner sought discovery from Registrant and submitted to Registrant a First Set of Interrogatories ("Interrogatories) and a First Request for Production of Documents and Things ("Requests"). Registrant's responses to the discovery requests were initially due on or by October 15, 2011. Registrant responded to Petitioner's Requests For Admissions on October 10, 2011. See, Dkt. # 8 Decl.- Exh. A. Discovery closed on September 20, 2011.

On November 15, 2011, Petitioner filed a Motion to Compel Discovery. In ruling on Petitioner's Motion, the Board rendered a decision on January 11, 2012 wherein it ordered:

Respondent is allowed **thirty (30) days** from the mailing date of this order in which to serve upon petitioner full and complete answers to petitioner's Interrogatory Nos. 1-3 and 5-38, without objection (except for objections based upon privilege).

With regard to Interrogatory No. 4, petitioner's motion to compel is granted to the extent that respondent is compelled, within the same thirty days provided above, to state the date when registrant first began using the term UNIVERSITY OF CLEVELAND as a service mark in connection with education services, namely providing university level instruction and courses.

See Dkt. #7, p. 3; and

Respondent is also allowed **thirty (30) days** from the mailing date of this order in which to serve upon petitioner responsive documents to petitioner's Document Request Nos. 1-8, 10-29, 31-38, without objection (except for objections based upon privilege).

If there are no responsive, non-privileged documents in respondent's custody, possession or control which are responsive to any of the aforementioned document requests, respondent must so state in its response to the corresponding document request.

See Dkt. #7, p. 3.

On February 10, 2012, Registrant provided responses to the Interrogatories and responses to the Requests [Dkt. # 8 Decl.- Exhs. B and C].

As noted in the February Motion, Petitioner's responses to discovery were seriously deficient. Registrant failed to comply with the Order by providing improper responses and exhibiting uncooperative behavior.

In the Order, the Board also stated: "Additionally, respondent must provide verification of the responses ordered above." [Dkt. #7, p. 3]. Despite, a request from counsel for Petitioner, [Dkt. # 8 Decl. - Exhs. D - F], Registrant did not provide a verification of the responses, but simply provided an electronic signature by Registrant's in-house counsel. On February 21, 2012, Registrant supplied a verification signed by Arun Kumar Chopra, stating that he had read the responses to Petitioner's Combined (*sic*) Set of Interrogatories and Request for Production of Documents propounded upon Registrant, and found the same to be true to the best of his knowledge and belief [Supp. Jacquinot Decl. Exh. A].

Finally, in the Order, the Board noted "[s]hould respondent fail to serve on petitioner the discovery responses as ordered herein, as well as a privilege log, if applicable, the Board will entertain a motion for sanctions in the form of entry of judgment sustaining the petition to cancel" [Dkt. #7, p. 4]. Registrant failed to comply with the Order by providing improper responses and exhibiting uncooperative behavior.

On March 12, 2012, the due date for Registrant's response to the Motion for Sanctions, Registrant filed a Registrant's Motion For Enlargement Of Time To File A Response To Petitioner's Alternative Motion For Discovery Sanctions In The Form Of Judgment [Dkt. #10]. In addition, Registrant filed an Affidavit of Arun Kumar Chopra, identified as CFO of Registrant, stating that Registrant had recently discovered information needed to supplement the previously produced discovery responses and required more time to locate and produce the information and documentation. [Dkt. #10].

II. STATEMENT OF FACTS

With particular respect to Petitioner's opposition to the Registrant's Motion For Enlargement Of Time To File A Response To Petitioner's Alternative Motion For Discovery Sanctions In The Form Of Judgment, the following facts are not in dispute:

1. Pursuant to the Board's January 11, 2012 Order, Registrant was allowed thirty (30) days from the mailing date of the Order in which to serve upon petitioner *full and complete answers to petitioner's Interrogatory Nos. 1-3 and 5-38, without objection* (emphasis added) [Dkt. # 7].

2. Pursuant to the Board's January 11, 2012 Order, Respondent was allowed thirty (30) days from the mailing date of the Order in which to serve upon petitioner *responsive documents to petitioner's Document Request Nos. 1-8, 10-29, 31-38, without objection* (emphasis added) [Dkt. # 7].

3. Registrant did not provide full and complete answers to the propounded interrogatories.

4. Registrant did not provide Petitioner with responsive document to the propounded document requests.

5. Registrant did not provide verification of the responses to the Interrogatories as required by the Order until after the February Motion was filed [Supp. Jacquinet Decl. Exh. A].

6. Pursuant to the Board's January 11, 2012 Order, the Board stated: "Should respondent fail to serve on petitioner the discovery responses as ordered herein, as well as a privilege log, if applicable, the Board will entertain a motion for sanctions in the form of entry of judgment Cancellation No. 92053509 sustaining the petition to cancel." [Dkt. #7]. In total disregard of this very clear threat, Registrant flaunted the Board's authority and provided total non-responsive and slipshod responses to Petitioner's propounded discovery.

7. Registrant did not respond to Petitioner's Motion for Discovery Sanctions in the Form of Judgment as required by the February 22, 2012 Board Order [Dkt. # 9].

8. Rather, Registrant attempted an end-around by claiming that it now has discovered information for responding to propounded discovery which it had in its possession since September 10, 2010, after providing a verification on February 21, 2012 that the response were true. Note that the party signing the Verification gave his name as Arun Kumar Chopra, yet he claimed that the answers to Interrogatory No 1. which states that the CFO is Arun Kumar and Interrogatory No. 2 identifies an individual named Arun Chopra as involved in promoting the services and offerings of Registrant [Dkt. # 8 Decl. - Exh. G] are true.

9. Registrant was given thirty days to provide appropriate answers to the propounded interrogatories and document production request that it had already held for four months. It is nothing short of delay and a total disregard for the seriousness of this proceeding and disrespect for the Board that Registrant asks for additional time.

As discussed below, Registrant should be denied additional time to comply with the February 22, 2012 Order and most certainly should not be permitted to supplement its already submitted discovery responses. Additionally, in the interest of judicial economy and to avoid the wasted expenditure of further resources in this case, Sanctions in the form of entry of judgment sustaining the Petition to Cancel under Trademark Rule 2.120(g)(1) should be granted for Registrant's disregard for not one, but two, separate Board Orders.

III. LEGAL ANALYSIS

A. *Response to Registrant's Motion For Enlargement of Time*

According to the TBMP §509.01(a) “[a] motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient. Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor.” Registrant attempts to show that there is good cause by claiming that new information has come to light. These statements are disingenuous. Registrant has had the discovery requests since September 10, 2011. Registrant responded to the Requests for Admissions on October 10, 2011. One is hard pressed to understand how new evidence relating to the use of

Registrant's trademark that would conflict with Registrant's prior discovery responses could now suddenly come to light some six months later.

Petitioner's claim that it has "requested ZERO continuances in this matter for a total of ZERO days thus far" [Dkt #10] is an attempt at sleight of hand. Registrant refused to answer outstanding discovery, forcing Petitioner to file a Motion to Compel, and then produced no responsive documents and ridiculously brief and non-responsive answers to interrogatories. Registrant now requests further time to respond to an outstanding order. It is hard to fathom how this is not a delay, regardless of whether or not Registrant previously "requested" these delays.

Simply put, Registrant has not shown demonstrated good cause for delaying its response to Petitioner's Alternative Motion for Discovery Sanctions in the Form of Judgment. See, *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1373 (TTAB 2001) (opposers had not come forward with "detailed facts" required to carry their burden explaining their inaction).

B. *Registrant Should Not Be Given Leave to Supplement Its Discovery Responses With Information That Conflicts With Registrant's Prior Responses*

Registrant was under a Board Order to produce documents and respond to outstanding interrogatories. These requests were made over six months ago. Petitioner had to resort to a Motion to Compel to get any movement out of Registrant. When faced with the January 11, 2012 Order, Registrant produced, on the very last day possible at 4:56 p.m. and 4:58 p.m., unauthenticated and seriously deficient responses to the outstanding discovery, even though it was ordered by the Board to provide full and complete responses. Petitioner had no choice but to move for Sanctions in the

form of Judgment particularly in view of Registrant's admissions that it has not used its mark in the United States and has no documentary evidence of any use.

After Petitioner filed the Combined Motion to Amend the Pleadings and for Summary Judgment and in the Alternative for Sanctions, Registrant produced an Authentication signed by an individual not fully identified in the responses. Now Registrant seeks to not only extend the time to respond to the Motion For Sanctions but seeks to produce apparently responsive answers and documents to the discovery requests propounded over six months ago. Apparently, Registrant intends to rely on these supplemental and contradictory responses to support its claimed use and non-abandonment of its mark and refute any claim of likelihood of confusion.

Similar to the fact pattern in *HighBeam Marketing LLC v. Highbeam Research LLC*, 85 USPQ2d 1902 (TTAB 2008), Registrant has failed to produce any realistic discovery responses or documentation until faced with a Motion to for Discovery Sanctions, and even then, cannot seem to meet the deadlines imposed by the Board. Registrant's actions "demonstrate an intent to obstruct [Petitioner's] receipt of information and documents that the Board had already determined" must be produced. *Id.* at 1905. Thus, as in *HighBeam*, Registrant must be precluded from using as evidence at trial (should the Board not grant judgment for Petitioner in response to its earlier filed Motions) any information or documents related to its use of the mark, its non-abandonment of the mark. Nor should Registrant be given leave to use this supplemental evidence in an effort to oppose Petitioner's Combined Motion For Leave To File Amended Petition To Cancel And For Summary Judgment and/or Sanctions For Failure To Comply With A Board Discovery Order. In the event that this matter

proceeds to trial, Registrant should be restricted to introducing at trial, only the information and documents that were provided to Petitioner in the Registrant's response to Requests for Admissions on October 10, 2011 and the responses to Petitioner's discovery requests to which Registrant responded on February 10, 2012.

IV. CONCLUSION

For all of the foregoing reasons, Petitioner, Cleveland State University, respectfully requests that:

(a) Registrant's Motion for Enlargement of Time to File a Response to Petitioner's Alternative Motion for Discovery Sanctions in the Form of Judgment be denied; and

(b) Registrant be sanctioned by entering judgment in Petitioner's favor, or, alternatively, be estopped from introducing any evidence that it has used, or intends to resume use of, Registrant's Mark in connection with the services identified in Registrant's Registration, all pursuant to 37 C.F.R. §2.120(g) and TBMP §527.01.

Respectfully submitted,
Cleveland State University

Date: March 19, 2012

By: /s/Colleen Flynn Goss
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2012, the foregoing PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION FOR ENLARGEMENT OF TIME TO FILE A RESPONSE TO PETITIONER'S ALTERNATIVE MOTION FOR DISCOVERY SANCTIONS IN THE FORM OF JUDGMENT was served via email, with consent, on Michael C. DeJohn, counsel for Registrant at Michael_dejohn@campuseai.org.

/s/ Colleen Flynn Goss
Colleen Flynn Goss, Esq.
Attorney for Petitioner

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

_____)	
Cleveland State University,)	Cancellation No. 92053509
)	Reg. No. 3,735,435
Petitioner,)	Trademark: UNIVERSITY OF CLEVELAND
v.)	
)	
CampusEAI Consortium,)	
)	
Registrant.)	
_____)	

SUPPLEMENTAL DECLARATION OF DIANE M. JACQUINOT

I, **Diane M. Jacquinot**, declare and state as follows:

1. I am a paralegal with the firm of Fay Sharpe LLP, attorneys for Petitioner, Cleveland State University and, as such, I am fully familiar with the facts and circumstances of this matter.

2. I make this Supplemental Declaration to authenticate materials that will be used in Petitioner's Opposition to Registrant's Motion for Enlargement of Time to File a Response to Petitioner's Alternative Motion for Discovery Sanctions in the Form of Judgment.

3. Attached to this Declaration as Exhibit A is a verification of Registrant's responses to Petitioner's Combined Set of Interrogatories and Request for Production of Documents which was served upon Petitioner, via e-mail, on February 21, 2012. . This document was saved in our firm Filesite® document management software when it was received.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Cleveland, Ohio on March 19, 2012.

/s/ Diane M. Jacquinot
Diane M. Jacquinot

Jacquinet Supplemental
Declaration

Exhibit A

IN THE STATE OF OHIO }
COUNTY OF CUYAHOGA }

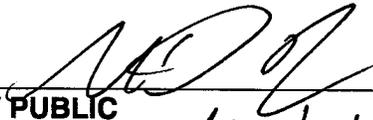
VERIFICATION

I, the undersigned, Arun Kumar Chopra, do hereby state that I have read the foregoing responses to Petitioner's Combined Set of Interrogatories and Request for Production of Documents propounded upon Registrant, and find the same to be true to the best of my knowledge and belief.



Arun Kumar Chopra

SWORN TO and subscribed before me, a duly authorized Notary Public in and for the State of Ohio, on this the 21st day of February, 2012



NOTARY PUBLIC

Michael C. DeJohn, Esq.

ORC 147.03

My commission does not expire