

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

Mailed: January 11, 2012

Cancellation No. 92053509

Cleveland State University

v.

CampusEAI Consortium

**George C. Pologeorgis,  
Interlocutory Attorney:**

This proceeding is before the Board for consideration of petitioner's motion (filed November 15, 2011) to compel discovery. Respondent has not filed a brief in response to petitioner's motion.

In its motion, petitioner seeks responses to its first set of interrogatories and first request for production of documents and things. Petitioner asserts that it served the aforementioned discovery requests upon respondent on September 10, 2011, but has yet to receive any responses thereto.

Pursuant to Trademark Rule 2.120(e)(2), petitioner's motion to compel is timely.<sup>1</sup>

Moreover, a party that fails to respond to a request for discovery, and is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel, to have forfeited its right to object to the discovery requests on their merits. Inasmuch as nothing in the record indicates that respondent's failure to respond was the result of excusable neglect, respondent has waived its right to object to petitioner's interrogatory and document requests on the merits (except to the extent noted below), and must respond in full and without objection (except for objections based upon privilege), since respondent neither timely responded nor objected to petitioner's discovery requests. *See No Fear, Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

Accordingly, petitioner's motion to compel is granted, in part, and denied, in part, as set forth below. *See* Trademark Rule 2.127(a).<sup>2</sup>

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<sup>1</sup> The Board finds that petitioner has demonstrated a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1).

<sup>2</sup> Trademark Rule 2.127(a) reads, in relevant part: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

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.

Additionally, respondent must provide verification of the responses ordered above.

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. Further, to the extent

respondent claims that a responsive document to the above-identified document requests has been lost or destroyed, respondent must set forth the contents of such document, the location of any copies, the date of loss or destruction, the name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

To the extent respondent objects to any of the interrogatory and/or document requests based upon privilege, respondent is required to provide petitioner with a privilege log within the **thirty days** set forth above.

While respondent has forfeited its right to object to petitioner's discovery requests on the merits, the Board, in its discretion, nonetheless denies petitioner's motion to compel with regard to Document Request Nos. 9 and 30. Document request No. 9 is overly broad, cumbersome, and seeks information beyond the scope of this proceeding. Document Request No. 30 impermissibly requests respondent to produce documents which identify its customers. See TBMP Section 414(3) (3d ed. 2011).

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

sustaining the petition to cancel. See Trademark Rule 2.120(g)(1).

Proceedings are hereby resumed. Discovery is closed. Trial dates, beginning with the close of petitioner's testimony period, are reset as follows:

Plaintiff's 30-day Trial Period	
Ends	3/23/2012
Defendant's Pretrial	
Disclosures	4/7/2012
Defendant's 30-day Trial Period	
Ends	5/22/2012
Plaintiff's Rebuttal	
Disclosures	6/6/2012
Plaintiff's 15-day Rebuttal	
Period Ends	7/6/2012

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.