

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

RK

Mailed: July 19, 2013

Cancellation No. 92055358

Under Armour, Inc.

v.

Urban Asphalt Skatewear

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

On July 2, 2013, the Board denied respondent's motion for summary judgment and reset the remaining dates in this proceeding beginning with petitioner's pretrial disclosures (deadline reset to July 18, 2013). On July 15, 2013, respondent filed a motion to compel petitioner's responses to respondent's first sets of interrogatories and document requests.<sup>1</sup> As respondent's discovery requests were served on November 26, 2012, petitioner's responses thereto were due on December 31, 2012. However, it appears from email correspondence between the parties that petitioner's time to respond to the discovery requests was extended to January 30, 2013.

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<sup>1</sup> As originally set, discovery closed on November 25, 2012. However, since the close of discovery fell on a Sunday, respondent's discovery requests, which were served on November 26, 2012, are timely. See Trademark Rule 2.196.

On January 8, 2013, respondent filed its motion for summary judgment and proceedings herein were suspended on March 7, 2013. Due to the suspension, or rather, in anticipation of, petitioner deferred its discovery responses until after the disposition of the motion for summary judgment.

Less than two weeks after the Board's disposition of the motion for summary judgment, respondent filed its motion to compel asserting that petitioner has failed to provide discovery responses. The motion is hereby **DENIED**.

A motion to compel must be supported by a written statement from the moving party that such party, or its attorney, has made a good faith effort, by conference or correspondence, to resolve with the other party, or its attorney, the issues presented in its motion, and has been unable to reach agreement. See Trademark Rule 2.120(e)(1); and TBMP § 523.02 (2013). This good faith requirement is not discharged by a simple email requesting responses nor the mere recitation of a good faith effort in the motion. Respondent, as the moving party, is required to make an effort to obtain the discovery responses it seeks by engaging in meaningful discussions prior to filing a motion to compel. There is nothing in the record, and respondent does not contend otherwise, that upon disposition of the motion for summary judgment, it renewed its efforts to

obtain discovery responses from petitioner. Rather, the basis of the motion is that the motion for summary judgment was denied and that respondent has yet to receive any discovery responses. Under these circumstances, applicant failed to discharge its good faith requirement as required under Trademark Rule 2.120(e).

This is not to say that petitioner is free from its discovery obligations. Petitioner acknowledged receipt of the discovery requests and represented (or at the very least, led respondent to believe) that its attention to its discovery responses would resume upon disposition of the motion for summary judgment. Accordingly, petitioner is allowed until **August 16, 2013**, to respond to respondent's outstanding discovery requests. The parties are reminded that cooperation and good faith dealing are expected from the parties in resolving discovery issues. Any future motion to compel, if any, will not be considered absent a telephonic conference between the parties discussing each and every discovery request or response/production in dispute.

Dates are **RESET** as follows:

Plaintiff's Pretrial Disclosures Due	<b>8/30/2013</b>
Plaintiff's 30-day Trial Period Ends	<b>10/14/2013</b>
Defendant's Pretrial Disclosures Due	<b>10/29/2013</b>
Defendant's 30-day Trial Period Ends	<b>12/13/2013</b>
Plaintiff's Rebuttal Disclosures Due	<b>12/28/2013</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>1/27/2014</b>

**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 taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 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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