

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

RK

Mailed: March 11, 2014

Cancellation No. **92055558**

Economy Rent-A-Car, Inc.

v.

Emmmanouil Kokologiannis and
Sons, Societe Anonyme of
Trade, Hotels And Tourism S.A.
"with the business title
"Scala" "Pangosmio"

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on respondent's renewed motion (filed November 29, 2013) for leave to serve additional interrogatories exceeding the limit. The motion is contested.

As last reset, discovery closed on May 7, 2013. Respondent previously filed a motion for leave to serve additional interrogatories on July 2, 2013, as part of a motion to compel interrogatories and production of documents. By the Board's order of November 4, 2013, respondent's motion for leave was given no consideration as respondent failed to comply with Trademark Rule 2.120(d)(1). Nevertheless, the Board allowed respondent until December 3, 2013, to serve petitioner with a revised set of interrogatories so as not to exceed the overall numerical limit, bearing in mind that respondent had

propounded sixty interrogatories through its third set of interrogatories (as counted by the Board). Respondent appears to have misunderstood this directive. Rather than propound its remaining interrogatories up to the seventy-five interrogatory limit, respondent has renewed its motion for leave to serve additional interrogatories exceeding said limit.

The Board's order permitting respondent to serve a revised set of interrogatories up to the interrogatory limit outside of the discovery period was an exercise of the Board's discretion and was not intended to afford respondent an opportunity to "cure" the procedural defect in its first motion for leave. Considering that discovery has already closed, respondent's motion is untimely. That a motion for leave to serve additional interrogatories should be filed prior to the close of discovery should be apparent from the good cause standard under which such motions are granted. To permit a party to file such a motion after the close of discovery and take discovery pursuant thereto would essentially allow that party to circumvent the showing of excusable neglect required to reopen discovery. In view thereof, respondent's motion for leave to serve additional interrogatories is hereby **DENIED**.

Although petitioner suggests that respondent's motion was motivated by "a dilatory objective," the Board is not convinced that such is the case. The Board will therefore permit respondent one final opportunity to propound a revised set of

interrogatories up to the seventy-five limit. It is advised that respondent confer with petitioner to ensure that the revised set of interrogatories is within the limit and served no later than **MARCH 28, 2014**.¹ Petitioner's responses thereto shall be due in accordance with Trademark Rule 2.120(a)(3).

Proceedings herein are **RESUMED** and trial dates are **RESET** as follows:

Plaintiff's 30-day Trial Period Ends	6/26/2014
Defendant's Pretrial Disclosures Due	7/11/2014
Defendant's 30-day Trial Period Ends	8/25/2014
Plaintiff's Rebuttal Disclosures Due	9/9/2014
Plaintiff's 15-day Rebuttal Period Ends	10/9/2014

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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¹ Although not encouraged, should the parties be unable to agree on how to count a particular interrogatory, the parties are advised to call the above-signed interlocutory attorney for resolution no later than March 21, 2014.