

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

WINTER

Mailed: July 21, 2015

Cancellation No. 92056168

*Legend Pictures LLC*

*v.*

*Quentin Davis*

**Before Taylor, Ritchie, and Lykos,  
Administrative Trademark Judges.**

**By the Board:**

This case now comes up for consideration of Petitioner's uncontested motion (filed August 25, 2014<sup>1</sup>) for reconsideration of our decision mailed on July 26, 2014, regarding Petitioner's motion (filed April 22, 2014) for sanctions and motion (filed March 10, 2014) to unilaterally extend the discovery period for Petitioner.

In the motion for reconsideration, Petitioner requests that the Board clarify or modify its July 26, 2014 order regarding the estoppel sanction or, in the alternative, grant Petitioner's motion to extend discovery unilaterally for Petitioner which was previously denied. Before we address the merits of Petitioner's motion, it is appropriate to first review the history of Petitioner's discovery efforts and our orders related to Petitioner's discovery.

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<sup>1</sup> The delay in addressing Petitioner's motion is regretted.

By way of background, Petitioner served interrogatories and requests for production of documents on Respondent on March 14, 2013, approximately two months prior to the close of the discovery period as originally set. After Respondent refused to respond to Petitioner's discovery requests, Petitioner filed a motion to compel and the Board, in its order dated September 4, 2013, required Respondent to answer, without objection, Petitioner's interrogatories (nos. 1-21), to answer and produce all documents responsive to all of Petitioner's production requests (nos. 1-39<sup>2</sup>), and to produce a privilege log (28 TTABVUE 5-6). Respondent then filed a petition to the Director which was denied, and thereafter the Board allowed Respondent until January 22, 2014, to respond to Petitioner's discovery as discussed in its September 4, 2013 order (35 TTABVUE 1). On January 23, 2014, Respondent served largely unresponsive responses to Petitioner's interrogatories; and on February 19, 2014, Respondent served on Petitioner objections to Petitioner's requests for production nos. 2, 3, 4, 5, 6(a), 7, 12-29, and 31-39, as well as limited materials responsive to Petitioner's production request no. 5 and which purport to show use of Respondent's mark with the identified services.<sup>3</sup> Respondent also failed

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<sup>2</sup> The requirement to respond without objection pertained to all of the document requests except for nos. 1, 6(b), 8-11, and 30, to which Respondent was required to provide written responses (28 TTABVUE 5-6).

<sup>3</sup> Respondent produced the following documents prior to the filing of Petitioner's motion for sanctions: Exhibits A and B, blank screen shots with the words LEGENDARY PRODUCTIONS; Exhibits C through E: videos of girls waking, or sitting or running through a hallway; Exh. G: a person jumping up and down in a gym; Exh. H: three audio notes, heard in front of a blank screen showing the wording LEGENDARY PRODUCTIONS; Exh. I: a business card which lists the services in the registration at issue; Exh. J: a disabled link to a social media site.

to produce any other responsive documents and did not produce a privilege log. Pursuant to the Board's January 7, 2014 order, the discovery period closed on March 8, 2014. On April 22, 2014, Petitioner filed its motion for discovery sanctions, requesting default judgment be entered against Respondent.

In view of Respondent's failure to respond to Petitioner's discovery requests as ordered by the Board in our July 26, 2014 order, we imposed the estoppel sanction, stating that Respondent cannot submit at trial or rely on as evidence at trial, any information or documents that were the subject of Petitioner's discovery requests, but which were not served on Petitioner prior to the filing of Petitioner's motion for sanctions (49 TTABVUE 4-5). Respondent was also reminded that if he should find additional information or materials that are responsive to Petitioner's discovery, Respondent should promptly supplement his responses.<sup>4</sup> We also determined that neither party had shown good cause for an extension of the discovery period and denied Petitioner's motion for a unilateral extension of the discovery period.

Regarding the estoppel sanction, Petitioner first seeks clarification as to whether Respondent will be able to "rely on [his produced] documents at trial by introducing his self-serving statements as to what these documents are ...." Petitioner further adds that it needs to ascertain "when the documents were actually produced" and "when[,] if any[,] were offered for distribution or distributed" (Petitioner's emphasis). Additionally, Petitioner requests that the Board either bar Respondent from introducing the documents first produced on February 19, 2014, a

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<sup>4</sup> Such supplementation would nonetheless fall under the bar wherein Respondent is estopped from relying on information or materials served after the filing of the motion for sanctions.

date after the second deadline set by the Board regarding Opposer's discovery, or bar Respondent from introducing his own statements as to what the materials are, when they were produced, and when and/or if any of said materials were offered for distribution or distributed. Any other order, Petitioner argues, rewards Respondent for his improper conduct, prejudices Petitioner, and will encourage parties to ignore Board orders.

As to Petitioner's motion in the alternative to extend discovery, because Respondent has not provided any information on when the materials were produced or when Respondent distributed the materials or offered them for distribution, by not extending discovery for Petitioner to determine these facts by deposition, Petitioner argues that the Board has prejudiced Petitioner's ability to make its case in chief. In view thereof, Petitioner requests that the Board reconsider its decision so that Petitioner can determine the nature of Respondent's materials and address the validity of those materials.

Petitioner's motion for clarification and reconsideration is **granted** to the following extent. First, we clarify our order regarding the estoppel sanction by reiterating that Respondent cannot submit at trial or rely on as evidence at trial any information, documents or materials that are responsive to Petitioner's discovery requests, but which were served on Petitioner on or after the filing date of Petitioner's motion for sanctions, *i.e.*, April 22, 2014. Therefore, to the extent

Respondent properly introduces at trial the materials produced to Petitioner on February 19, 2014, the estoppel sanction will not apply.<sup>5</sup>

Second, we grant Petitioner's motion in the alternative to extend discovery solely for Petitioner and solely for its enumerated purpose. In view thereof, Petitioner is allowed until **FORTY-FIVE (45) DAYS** from the mailing date of this order to conduct limited follow-up discovery, including the taking of Respondent's deposition, on the documents and materials served on Petitioner by Respondent on February 19, 2014. In particular, Petitioner may inquire as to the nature of Respondent's documents, materials and website, when they were produced, and when and/or if any of said documents, materials and website were offered for distribution, distributed or used.

We remind Respondent that he is expected to cooperate and to respond fully to Petitioner's follow-up discovery. Should Respondent fail to respond to Petitioner's follow-up discovery, including failing to appear at any noticed deposition, we will entertain a motion for judgment filed by Petitioner.

Proceeding Resumed; Trial Dates Reset

This proceeding is resumed. The discovery period is reopened for Petitioner only for the limited purpose of obtaining information on the documents and materials

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<sup>5</sup> To the extent Petitioner requests that the Board preemptively bar Respondent's testimony or briefing, the Board will not entertain motions *in limine*. See *Greenhouse Systems Inc. v. Carson*, 37 USPQ2d 1748, 1750 (TTAB 1995). Clearly, the documents and materials produced by Respondent are not the type of documents that can be introduced at trial under notice of reliance. Rather, the documents may be made of record only with appropriate identification and authentication during the course of a testimony deposition. That being said, we point out that the Board is quite capable of determining the appropriate weight to accord testimony and evidence submitted in support of a party's position.

proffered by Respondent on February 19, 2014, as specifically set forth above. Trial dates are reset as shown in the following schedule:

<b>Discovery Closes Solely for Petitioner</b>	<b>9/04/2015</b>
<b>Plaintiff's Pretrial Disclosures Due</b>	<b>10/19/2015</b>
<b>Plaintiff's 30-day Trial Period Ends</b>	<b>12/03/2015</b>
<b>Defendant's Pretrial Disclosures Due</b>	<b>12/18/2015</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>2/01/2016</b>
<b>Plaintiff's Rebuttal Disclosures Due</b>	<b>2/16/2016</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>3/17/2016</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 the taking of testimony. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

