

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

Mailed: February 7, 2014

Cancellation No. 92057236

Dogfish Head Marketing, LLC

v.

Analog Wine Co., LLC

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of petitioner's motion (filed December 6, 2013) to compel discovery. Respondent filed a brief in response thereto.

The Board finds as an initial matter that petitioner made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention. See Trademark Rule 2.120(e)(1).

To the extent that petitioner seeks a Board order overruling respondent's general objection to petitioner's first set of interrogatories on the ground that those interrogatories exceed the numerical limit of seventy-five, the Board finds that, based solely on interrogatory no. 11, petitioner's interrogatories exceed the numerical limit.¹

¹ Requests for admission are a means of "facilitating the proof at trial by weeding out facts and items of proof over which there is no dispute." *Booth Oil Site Admin. Group v. Safety-Kleen Corp.*, 194 F.R.D. 76, 79 (WDNY 2000). An admission in response to a request for admission "conclusively establishe[s]" the

See Trademark Rule 2.120(d)(1); TBMP Section 405.03(d) (3d ed. rev.2. 2013) and cases cited therein. Accordingly, respondent's general objection is sustained, and the motion to compel is denied with regard to petitioner's interrogatories.

In its motion, petitioner offers to withdraw its interrogatory no. 11 if the Board determines that petitioner's interrogatories exceed the numerical limit. Because the Board has so determined, the offer is accepted. Rather than allow petitioner to serve an amended set of interrogatories, respondent is allowed until thirty days from the mailing date set forth in this order to serve responses to petitioner's interrogatory nos. 1-10.

In respondent's brief in response to the motion to compel, respondent concedes the motion to the extent that petitioner seeks to compel document production. Accordingly, the motion is granted to such extent. Respondent is allowed until thirty days from the mailing date set forth in this order to select, designate and identify the items and documents, or categories of items and documents, to be produced in response to petitioner's first

matter that is subject of that request. Fed. R. Civ. P. 36(b). However, a denial in response to a request for admission is merely a refusal to stipulate to certain matter. *Sinclair Oil Corp. v. Kendrick*, 85 USPQ2d 1032, 1037 fn.8 (TTAB 2007). As such, respondent need not explain its denials of requests for admission and may instead leave matters set forth in the denied requests for proof at trial.

set of document requests and to notify petitioner that the selection, designation and identification of such items and documents has been completed. If the materials are voluminous, respondent may produce a representative sampling and inform petitioner that a representative sampling has been produced. Petitioner is allowed thirty days from receipt of such notice to inspect and copy the produced materials, as provided for in Fed. R. Civ. P. 34(b) and Trademark Rule 2.120(d)(2), unless the parties otherwise agree.² If respondent fails to comply with this order, petitioner's remedy lies in a motion for sanctions, pursuant to Trademark Rule 2.120(g)(1).

Proceedings herein are resumed. Remaining dates are reset as follows.

Expert Disclosures Due	2/27/2014
Discovery Closes	3/29/2014
Plaintiff's Pretrial Disclosures Due	5/13/2014
Plaintiff's 30-day Trial Period Ends	6/27/2014
Defendant's Pretrial Disclosures Due	7/12/2014
Defendant's 30-day Trial Period Ends	8/26/2014
Plaintiff's Rebuttal Disclosures Due	9/10/2014
Plaintiff's 15-day Rebuttal Period Ends	10/10/2014

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

² In Board cases, parties often extend each other the courtesy of producing requested documents by copying the documents and forwarding them to the requesting party at the requesting party's expense. The Board believes this is more efficient and thus encourages this method of producing documents. See TBMP Section 406.04.

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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.