

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

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Mailed: August 21, 2014

Cancellation No. **92058054**

Morris Visitor Publications, LLC

v.

GMA Accessories, Inc.

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on respondent's motion (filed May 12, 2014) to compel petitioner's responses to respondent's first set of interrogatories. The motion is fully briefed.¹

As last reset, discovery opened on March 31, 2014, and initial disclosures were due no later than April 30, 2014. For *inter partes* cases commenced on or after November 1, 2007, the Board has adopted a modified disclosure and conferencing regime whereby the parties are obliged to conduct a discovery conference and to make initial, expert, and pretrial disclosures. See *Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 72 Fed. Reg. 42242, 42244-47 (August 1, 2007). The timing of a party's initial disclosures is significant in that a party may not propound

¹ Petitioner's change of correspondence (filed March 21, 2014) is noted and entered.

discovery until it has made its initial disclosures. Trademark Rule 2.120(a)(3).

Here, respondent attests that the parties held the mandatory discovery conference on March 19, 2014, and that respondent served its first set of interrogatories on March 31, 2014. *Declaration of Dennison D. Marzocco*, ¶¶ 2-3. However, respondent did not serve its initial disclosures until April 10, 2014. *Opposition to Motion to Compel*, ¶ 4. This is undisputed by respondent. As respondent's interrogatories were served prior to respondent's initial disclosures, petitioner argues that the interrogatories "are premature and invalid." *Id.*, ¶ 9.

Although the interrogatories may have been premature, it was incumbent upon petitioner to timely raise the objection to the interrogatories lest the objection be waived. *See* Fed. R. Civ. P. 33(b)(4). The interrogatories were served on March 31, 2014, by way of the United States Postal Service. Assuming that the interrogatories were served via one of the prescribed methods under Trademark Rule 2.119(c), opposer had until May 5, 2014, to respond. *See* Trademark Rules 2.119(c) and 2.120(a)(3). Petitioner failed to object or otherwise respond to the interrogatories until it served its response to respondent's motion to compel on May 23, 2014. As the objection was not timely raised, it is waived.

Nevertheless, respondent's motion to compel is **DENIED** as respondent has failed to demonstrate that it has made a good faith effort to

resolve the issues presented in its motion. The good faith effort requirement under Trademark Rule 2.120 requires respondent, as the moving party, to make sufficient efforts to obtain the discovery responses it seeks by engaging in meaningful discussions prior to filing a motion to compel. This requirement is not discharged by a unilateral correspondence sent to the non-moving party demanding completed responses. Rather, the Board expects the parties to confer, either telephonically or in person, to discuss each of the discovery requests in dispute in an attempt to resolve or at least narrow the dispute for Board consideration.

With that being said, it is noted that petitioner has represented in its opposition to the motion that it will provide its responses to respondent's first set of interrogatories by June 6, 2014. *Opposition to Motion to Compel*, ¶ 10. If petitioner has not yet done so, petitioner is allowed until **SEPTEMBER 5, 2014**, to serve respondent with its responses.

Dates are **RESET** as follows:

Expert Disclosures Due	12/3/2014
Discovery Closes	1/2/2015
Plaintiff's Pretrial Disclosures Due	2/16/2015
Plaintiff's 30-day Trial Period Ends	4/2/2015
Defendant's Pretrial Disclosures Due	4/17/2015
Defendant's 30-day Trial Period Ends	6/1/2015
Plaintiff's Rebuttal Disclosures Due	6/16/2015
Plaintiff's 15-day Rebuttal Period Ends	7/16/2015

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party

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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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