

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: November 10, 2015

Cancellation No. 92058422

NU Science Corporation

v.

Yuyao Deutrel Chemical Science and
Technology Co., Ltd. and Evsfood, Inc.

By the Trademark Trial and Board,

This case now comes up for consideration of Petitioner's motion (filed on June 29, 2015) for sanctions in the form of judgment in Petitioner's favor for Respondents' "failure to cooperate with the Board's Discovery Order dated May 2, 2015." The motion is fully briefed.

By way of background, in its May 2, 2015 order, the Board, among other things, ordered Respondents to produce all documents responsive to Petitioner's Documents Requests served on September 23, 2014 and to contact Petitioner to make arrangements to attend another deposition to answer questions that were not answered during the October 9, 2014 deposition of Mr. Junda Su.

In support of its motion, Petitioner states that Respondents "have deliberately not made their person most knowledgeable available for further questioning in a timely manner, and have continuously failed to produce sufficient

documents to Petitioner's document requests that Respondents have already admitted exist and are capable of production."

A motion for sanctions under Trademark Rule 2.120(g) may be filed when the Board has entered an order relating to discovery and the order has assertedly been violated, to the detriment of the movant. *See* Trademark Board Manual of Procedure (TBMP) § 527 (2014) and the authorities cited therein. Trademark Rule 2.120(g) provides, in relevant part, that if a party fails to comply with an order of the Board relating to discovery, the Board may make any appropriate order, including the entry of default judgment as provided by Fed. R. Civ. P. 37(b)(2).

The Board must determine then whether Respondents' actions with regard to the Board's order compelling discovery responses and attending another deposition are so deficient as to warrant imposition of discovery sanctions under Trademark Rule 2.120(g).

In their brief in response to the motion, Respondents argue that "we are not dealing with a situation where the Respondent has willfully ignored or has otherwise not complied with an Order of the Board. Rather, we are presented with a situation in which good faith efforts have been made to do so but the sufficiency of those efforts are [sic] being challenged by the Petitioner." Respondents state that on June 1, 2015 it served Petitioner its supplemental responses to Petitioner's document requests. Respondents further state that they contacted Petitioner regarding the scheduling of Respondents' subsequent deposition prior to the filing of Petitioner's motion for sanctions.

The supplemental responses served on June 1, 2015 by Respondents are not of record. The Board, therefore, cannot review them. Nevertheless, the Board has carefully considered the arguments in the briefs regarding these responses. The Board has also considered the emails regarding the scheduling of Mr. Su's subsequent deposition. The Board observes that Respondents' attempt to contact Petitioner for the scheduling of the subsequent deposition is an email (sent after the imposed deadline) indicating Mr. Su was in China for "a couple of months" and requesting an extension of the discovery period. The Board finds that, while Applicant has failed to efficiently and timely comply with the Board's order of May 2, 2015, the sanction sought by Petitioner, that of judgment, is not reached by the circumstances presented.

The Board does, however, find it necessary to require Respondents to take the following actions which are punitive in nature:

- (1) Review TBMP Sections 404.03(a)(1), 404.06, 404.08(c), 406, 406.04(c), 408.02, 408.03, 411.04, and 414 by **December 11, 2015** and file a statement with the Board certifying completion of the task;
- (2) Serve Petitioner a new and *complete* set of responses to all Petitioner's September 23, 2014 document requests by **December 11, 2015** and to file a statement with the Board certifying completion of the task; and
- (3) Contact Petitioner's counsel *by telephone* by **December 4, 2015** to schedule a subsequent deposition of Mr. Su and to file a statement with the Board certifying completion of this task and indicating the date and

time set for the deposition. Such deposition must be completed on a date and at a time mutually agreed to by the parties no later than **January 31, 2016**.

In view thereof, the motion for sanctions is granted to the extent modified herein.

Proceedings are hereby resumed.¹ Dates are reset as follows:

Discovery Closes	2/11/2016
Plaintiff's Pretrial Disclosures Due	3/27/2016
Plaintiff's 30-day Trial Period Ends	5/11/2016
Defendant's Pretrial Disclosures Due	5/26/2016
Defendant's 30-day Trial Period Ends	7/10/2016
Plaintiff's Rebuttal Disclosures Due	7/25/2016
Plaintiff's 15-day Rebuttal Period Ends	8/24/2016

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. Trademark Rule 2.125.

¹ The Board observes that in footnote no. 1 of its reply brief, Petitioner indicates there was a civil action involving a court order which may “include the mark at issue.” To the extent Petitioner has not filed a motion in this regard; the Board does not construe this footnote as a motion.