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

Baxley

Mailed: September 3, 2015

Cancellation No. 92059099
Cancellation No. 92059167

Carnevor, Inc.

v.

Dog Haus LLC

Andrew P. Baxley, Interlocutory Attorney:

On July 17, 2015, Respondent filed a motion for entry of sanctions under Trademark Rule 2.120(g),[1] or, in the alternative, to compel appearance of Petitioner and its agents Kasha Shahabi and Fareh Sameh for discovery depositions under Trademark Rule 2.120(e)(1). Although Petitioner did not file a brief in response thereto, the Board, in its discretion, declines to grant the motion as conceded. *See* Trademark Rule 2.127(a).

To the extent that Respondent seeks entry of sanctions under Trademark Rule 2.120(g)(2), the record indicates that Petitioner did not expressly state that its principals will not appear for discovery depositions. Rather, the record indicates that Petitioner's attorney, in a July 7, 2015 e-mail to Respondent's attorney, indicated that he was involved with a trial in a case in the United States District

[1] In particular, Respondent asks that the Board dismiss the cancellation with prejudice and prohibit Petitioner from introducing evidence in support of its claims in the cancellation and in d efense of the counterclaim.

Court for the District of Columbia and offered to reschedule the proposed discovery depositions for August 2015, after its attorney completed that trial.[2] Accordingly, the motion for sanctions under Rule 2.120(g)(2) is premature and will receive no consideration. *See* TBMP § 527.01(b).

To the extent that Respondent seeks to compel the appearance of Petitioner's principals for discovery depositions, the Board finds that Petitioner made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention in compliance with Trademark Rule 2.120(e)(1). Under the circumstances, a review of the relevant history of these proceedings is warranted.

In an October 22, 2014 order, the Board consolidated proceedings herein and reset the discovery period to close on April 18, 2015. On April 8, 2015, Petitioner filed a consented motion to suspend these proceedings for ninety days, which was granted in an order issued on that day.[3] Accordingly, proceedings herein were suspended for settlement negotiations between April 8, 2015 and July 7, 2015, subject to either party's right to request resumption at any time.[4] Neither party

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[2] Respondent appears to have unilaterally set deposition dates in its notices of deposition. As a matter of convenience and courtesy and to avoid scheduling conflicts, parties should attempt to schedule depositions by agreement rather than have the deposing party unilaterally set a deposition date. See *Sunrider Corp. v. Raats*, 83 USPQ2d 1648, 1654 (TTAB 2007) (parties have a duty to cooperate inresolving conflicts in the scheduling and taking of depositions); TBMP § 404.01.

[3] Contrary to Respondent's assertion, the Board did not extend dates in the April 8, 2015 order.

[4] The June 12, 2015 order in Cancellation No. 92059167 was based on a consented motion to extend that was unnecessarily and improperly filed in the Board file for that proceeding. As indicated in the October 22, 2014 order, the Board file for these consolidated proceedings is kept in the Board file for the parent case, i.e., Cancellation No. 92059099. Although the April 8, 2015 consented motion to suspend and electronic form order identified only

requested resumption while proceedings were suspended, and Respondent did not seek reconsideration of the April 8, 2015 order. *See* Trademark Rule 2.127(b); TBMP § 518. Thus, during that time period, discovery activities herein were suspended so that the parties could concentrate on efforts to settle this case. Respondent filed its motion on the closing date of the discovery period under the schedule adopted by way of the April 8, 2015 order.

Notwithstanding the suspension of these proceedings between April 8, 2015 and July 7, 2015, Respondent, on March 25, 2015, noticed discovery depositions of Petitioner under Fed. R. Civ. P. 30(b)(6) and Petitioner's agents for April 10, 2015. In view of the April 8, 2015 order, those depositions were improperly noticed to be taken outside of the discovery period. *See* Trademark Rule 2.120(d); TBMP § 404.01 (discovery depositions must be taken during the discovery period).

Respondent, on June 19, 2015, while proceedings remained suspended, then noticed discovery depositions of Petitioner under Fed. R. Civ. P. 30(b)(6) and Petitioner's agents for July 10, 2015. Those depositions were improperly noticed while these proceedings were suspended for settlement negotiations. Respondent should not have served any notices of discovery deposition until proceedings resumed, either by request of one of the parties or by operation of the April 8, 2015 order. *See* TBMP § 510.03(b). Accordingly, the motion to compel is denied.

Cancellation No. 92059099 in the captions thereof, that motion to suspend and order applied to both consolidated proceedings. Accordingly, the June 12, 2015 order is hereby vacated.

Proceedings herein are resumed. The Board, in exercising its inherent authority to control the scheduling of cases on its docket, finds that, in view of the parties' dispute regarding Respondent's efforts to take discovery depositions and Petitioner's attorney's involvement in other litigation in the waning days of the discovery period, there is good cause to extend the discovery period briefly for both parties.[5] *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. ColliSpolentini Spoletoducale SCRL*, 59 USPQ2d 1383, 1383-84 (TTAB 2001) (the press of other litigation may constitute good cause to extend). Petitioner and Respondent are directed to schedule discovery depositions of Petitioner and its agents at a mutually convenient time prior to the reset close of the discovery period. If Petitioner does not cooperate in so scheduling, the Board will entertain a renewed motion to compel. Remaining dates are reset as follows.

Discovery closes:	September 30, 2015
Petitioner's pretrial disclosures due:	November 14, 2015
Petitioner's 30-day testimony period as plaintiff in the cancellation to close:	December 29, 2015
Respondent's pretrial disclosures due:	January 13, 2016
Respondent's 30-day testimony period as defendant in the cancellation and as plaintiff in the counterclaim to close:	February 27, 2016

[5] The record indicates that, in response to Petitioner's interrogatories, Respondent served a general objection based on an excessive number of interrogatories under Trademark Rule 2.120(d)(1). *See* TBMP § 405.03(d) regarding counting interrogatories in Board *inter partes* proceedings.

Petitioner's pretrial disclosures for rebuttal in the cancellation and as defendant in the counterclaim due:	March 13, 2016
Petitioner's 30-day testimony period as defendant in the counterclaim and for rebuttal as plaintiff in the cancellation to close:	April 27, 2016
Respondent's rebuttal disclosures as plaintiff in the counterclaim due:	May 12, 2016
Respondent's 15-day rebutal testimony period as plaintiff in the counterclaim to close:	June 11, 2016
Brief for petitioner as plaintiff in the cancellation due:	August 10, 2016
Brief for respondent as defendant in the cancellation and as plaintiff in the counterclaim due:	September 9, 2016
Brief for petitioner as defendant in the counterclaim and reply brief, if any, as plaintiff in the cancellation due:	October 9, 2016
Reply brief, if any, for respondent as plaintiff in the counterclaim due:	October 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. 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.