

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 4179235
Mark: NITEYE

_____)	
NITE IZE, INC.,)	
)	
Petitioner,)	Cancellation No. 92059235
)	
v.)	
)	
ZHANGWEI MO,)	
)	
Respondent.)	
_____)	

PETITIONER'S COMBINED MOTION TO COMPEL AND MOTION TO EXTEND
DISCOVERY AND TRIAL DATES

Petitioner Nite Ize, Inc. ("Petitioner" or "Nite Ize"), through undersigned counsel, respectfully moves the Board for an order compelling Respondent Mo, Zhangwei ("Respondent") to respond to various parts of Petitioner's First and Second Sets of Requests for Admission, First and Second Sets of Interrogatories, and First Set of Requests for the Production of Documents pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice.

In addition, Petitioner requests an extension of the discovery period to allow for additional time to review the complete responses requested herein to the discovery requests served. Petitioner also requests that the testimony period be re-set to follow the close of discovery.

Such order is believed to be appropriate because Respondent has provided incomplete responses that do not address material issues related [REDACTED]

[REDACTED]

Counsel for Petitioner has corresponded with Respondent in good faith and attempted

to resolve the lack of information provided, but it is unclear whether Respondent will provide substantial responses to many of the discovery requests.

I. Background

Previously, Petitioner petitioned to cancel Registration No. 4,179,235 for the mark "NITEYE." On January 15, 2015, Petitioner served a First Set of Interrogatories and a First Set of Requests for Admissions. On August 14, 2015, Petitioner served a Second Set of Interrogatories and a Second Set of Requests for Admissions, and First Set Of Requests For The Production Of Documents And Things.

After it was clear response would not be provided in a timely fashion, Petitioner and Respondent agreed on multiple extensions, on or about September 4, 2015, October 9, 2015, November 11, 2015, and December 7, 2015.

Partial responses were provided by Respondent on November 12, 2015. These responses were not complete in that they included foreign language documents that needed to be translated. Translations were provided on December 16, 2015.

On January 4, 2016, Petitioner inquired concerning the sufficiency of the responses and the possibility for another extension to respond concerning the sufficiency of the responses. It is unclear whether additional and meaningful responses will be provided by Respondent. Respondent's counsel indicated that he had been instructed to respond informally.

II. Motion to Compel

Petitioner has made a good faith effort to work with Respondent and provide additional time for response. But at this point, Respondent has provided only partial information on many aspects of the interrogatories and document requests. The information provided is not closely related to many of the aspects that are important to the determination of the case.

Petitioner believes that due to Respondent's untimely response, Respondent has forfeited the right to object to discovery on the merits. See TBMP §§ 403.03 and 407.01, citing *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (TTAB 1987);

Luehrmann v. Kwik Kopy Corp., 2 U.S.P.Q.2d 1303 (TTAB 1987). However, Petitioner has objected to many of Petitioner's requests and provided only partial response, largely not related to the issues in this proceeding.

Importantly, related to the following interrogatories, requests for admission, and requests for production, Respondent provided incomplete or non-existent response.

[REDACTED]

[REDACTED]

The response provided by Respondent is as follows:

[REDACTED]

[REDACTED]

The request of this interrogatory is actually narrowly tailored, not overly broad. Petitioner is seeking information concerning when and how the product portrayed in the specimen submitted for registration of the mark was used. Respondent should be compelled to fully answer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

The response provided by Respondent is as follows:

[REDACTED]

[REDACTED]

Response to this request for production is key to the case at hand. [REDACTED]

[REDACTED]

Respondent should be compelled to answer the discovery requests completely, especially those highlighted above and not merely provide [REDACTED]

[REDACTED]

III. Motion to Extend

In accordance with Fed. R. Civ. P. 6(b), Petitioner hereby moves the Board for a sixty (60) day extension of the discovery period for the limited purpose of allowing Petitioner time to review Respondent's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary. Petitioner also requests an extension of the testimony periods. Petitioner has made a good faith effort to work with Respondent, yet responses provided to discovery requests are lacking as well as significantly delayed. Finally, Petitioner does not seek an extension for the purposes of delay, but rather to fairly complete discovery.

IV. Conclusion

For the reasons stated above, Petitioner respectfully requests that the Board grant Petitioner's motion to compel and order Respondent to respond to completely to Petitioner's First and Second Sets of Requests for Admission, First and Second Sets of Interrogatories, and First Set of Requests for the Production of Documents. Petitioner also respectfully requests that the Board grant Petitioner's motion for an extension of the discovery period for the to pursue follow-up discovery if necessary and that the testimony period be re-set to follow close of discovery.

Dated January 11, 2016

Respectfully submitted,
Haynes and Boone LLP

By:



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CERTIFICATE OF SERVICE

The undersigned certifies that on this 11th day of January 2016, a copy of the foregoing **PETITIONER'S COMBINED MOTION TO COMPEL AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES** was served by e-mail to the following:

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