

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: April 2, 2003

Opposition No. 91114018

SEAGATE TECHNOLOGY, INC.

v.

EC-GATE NV

Nancy L. Omelko, Interlocutory Attorney:

This case now comes up on opposer's motion (filed January 6, 2003) to compel discovery responses and opposer's motion (filed February 21, 2003) to use the testimony deposition of Philip Detwiler in support of opposer's motion for summary judgment. Applicant has failed to file a brief in response to opposer's motions. See Trademark Rule 2.127(a).¹

In view of the circumstances set forth in opposer's motion to compel, and because applicant has not responded to the motion, opposer's motion to compel discovery is hereby granted. See Trademark Rules 2.120(e). Inasmuch as applicant failed to timely respond to opposer's first set of interrogatories and first request for production of documents and things prior to the due date, or during a

consented extension period, applicant has waived its right to object to the requests on their merits and must respond to the requests as put. See TBMP §407.01 and cases cited therein.

Accordingly, opposer's motion to compel is granted, and applicant is allowed until **thirty days** from the mailing date stamped on this order to respond to opposer's first set of interrogatories and first set of requests for production of documents and things. Inasmuch as the filing of a motion to compel may technically serve to suspend proceedings, opposer's motion to use the testimony deposition of Philip Detwiler in support of opposer's motion for summary judgment may be considered filed during the suspension period. As such applicant has **twenty days** from the date of this order to file a response, if any, to opposer's motion to use the testimony deposition of Philip Detwiler.

The Board notes that attorney for opposer states in its motion to compel that she was notified that the law firm of Heller Ehrman was no longer representing applicant. The Board has no record that the law firm of Heller Ehrman has filed a request to withdraw as counsel of record for applicant.

¹ Trademark Rule 2.127(a) reads, in relevant part, as follows: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

Proceedings are resumed and testimony periods are reset as follows:

DISCOVERY PERIOD TO CLOSE:	CLOSED
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	June 1, 2003
Testimony period for party in position of defendant to close: (opening thirty days prior thereto)	July 31, 2003
Rebuttal testimony period to close: (opening fifteen days prior thereto)	January 12, 2004

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.

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.