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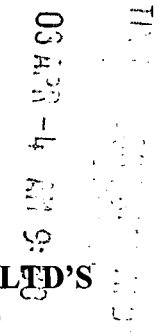

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LEO STOLLER dba Central Mfg., Opposer v. Nissan Jidosha Kabushiki Kaisha dba Nissan Motor Co., Ltd	**NISSAN MOTOR COMPANY, LTD'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL & SUSPEND; DECLARATION OF ROBERT J. SCHULZE** Opposition No. 120,202 Application No. 75/811,242 Mark: SENTRA CA

I. INTRODUCTION

Nissan Jidosha Kabushiki dba Nissan Motor Co., Ltd. ("Nissan") hereby opposes Leo Stoller dba Central Mfg.'s ("Stoller") Motion to Compel and to Suspend ("Motion"). With his Motion, Stoller seeks to compel Nissan to amend its responses to his "First Set of Interrogatories," "Request for Production of Documents and Things," and "First Request for Applicant's Admissions" by a unilateral and artificial deadline, which not only lacks any rationale, but any basis in the Trademark Trial and Appeal Board's ("Board") Rules.[1] More significantly, as Stoller is well aware, Nissan intends to amend its discovery responses by March 31, which will render this Motion moot. Accordinigly, Nissan respectfully requests that Stoller's Motion be denied in its entirety.

II. BACKGROUND

On September 1, 2000, Stoller filed a Petition to Cancel Nissan's longstanding **SENTRA** registration and an Opposition to Nissan's Application for the **SENTRA CA** mark. Stoller contends that Nissan's Application for the **SENTRA CA** mark violated an agreement between him and Nissan entered into in 1988 when Nissan applied for the **SENTRA** trademark and Stoller opposed the application. That Agreement states in pertinent part that Nissan agrees "to use the SENTRA trademark only on automobiles and structural parts therefor." See September 1, 2000 Notice of Opposition and Petition to Cancel, Exhibit 1. Stoller claims that the word "only" modifies "SENTRA trademark" and therefore limits Nissan to using only the word **SENTRA** (and not **SENTRA CA**) on automobiles. Nissan reads the Agreement to limit only the field of "use" of the **SENTRA** trademark and does not prohibit Nissan from applying to register other marks that combine the word **SENTRA** with other words, symbols, or phrases.

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[1] Stoller also seeks to suspend proceedings until the Board decides this Motion.

On October 3, 2000, Stoller propounded his "First Set of Interrogatories," a "Request for Production of Documents and Things," and his "First Request for Applicant's Admissions." On October 23, 2000, Nissan filed a Motion to Dismiss Stoller's Petition to Cancel and his Opposition, the filing of which barred any further submissions to the Board pursuant to 37 C.F.R. § 2.127(d). On November 7, 2000, Nissan served Stoller with timely responses to his discovery.

In February and March 2001, Nissan propounded on Stoller its First Set of Requests for Production of Documents, its First Set of Interrogatories, its First Set of Requests for Admission, and its Second Set of Requests for Production of Documents, and it noticed his deposition. See Declaration of Robert J. Schulze ("Schulze Decl."), ¶ 2.

On February 19, 2002, Stoller lodged with the Board an Amended Notice of Opposition and Amended Petition to Cancel. On February 13, 2003, the Board deemed Stoller's Amended Notice of Opposition and Amended Petition to Cancel the operative pleading in this proceeding and it then dismissed the Petition with prejudice. In the same Order, the Board denied Nissan's Motion to Dismiss Stoller's Opposition, finding that extrinsic evidence may explain the settlement agreement between the parties. The Board, however, struck portions of the Opposition as "immaterial" and "impertinent." Lastly, the Board lifted the stay on filings.

On February 25, 2003, Stoller requested that Nissan amend its discovery responses by March 7, 2003 in light of the Board's February 13, 2003 ruling. See id. at ¶ 3, Exh. A. Stoller also informed Nissan that if it did not comply with his unilateral deadline, he would file a motion to compel. See id. On February 28, 2003, Stoller, for the first time, responded to Nissan's *February 2001* Requests for Admission but no other discovery. See id. at ¶ 4.

On March 5, 2003, Nissan proposed to Stoller that both parties propound new discovery in light of three events subsequent to both parties' original discovery requests which substantially altered those requests: the Board's dismissal of the Petition to Cancel; the Board deeming the Amended Opposition the operative pleading in this proceeding; and the Board's striking of allegations in the Amended Opposition. See id. at ¶ 5, Exh. B. Nissan also informed Stoller that it was amenable to working off his original discovery requests, as long as it received a letter from him withdrawing requests that are no longer relevant to this litigation. See id. Lastly, Nissan informed him that if he contended that all of his discovery was still proper, Nissan still intended to amend its responses but it could not do so by his unilateral deadline. See id. Given that Stoller had still not responded to Nissan's First or Second Sets of Requests for Production or its Interrogatories, Nissan proposed that all parties exchange responses on March 31. See id. On March 6, 2003, Stoller rejected this proposal and demanded amended responses by the next day. See id. On that same day, Nissan reiterated that it intended to amend its discovery responses but could not put together complete responses by his deadline. See id. at ¶ 6, Exh. C On March 7, 2003, Stoller filed this Motion.

On March 12, 2003, Stoller served responses to Nissan's First Set of Requests for Production and its Interrogatories. See id. at ¶ 7. He also served unsigned responses to Nissan's Second Set of Requests for Production. See id. To date, however, Stoller has not produced *any* documents in response to Nissan's twenty-two total requests for production.[2] See id.

III. ARGUMENT

Pursuant to Fed. R. Civ. P. 37 and 37 C.F.R. § 2.120, a party that intends to move to compel discovery responses must first, in good faith, attempt to resolve the discovery dispute

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[2] The vast majority of Stoller's discovery responses are inadequate and Nissan intends to move to compel further responses.

with the other side. See Fed. R. Civ. P. 37(a)(2)(A) (requiring a good faith effort to resolve the dispute outside of court); 37 C.F.R. § 2.120(e) (same). The purpose of the requirement is to facilitate the "resolve [of] discovery disputes by informal means" without burdening the court. Fed. R. Civ. P. 37 (1993 Advisory Committee Notes).

Contrary to the purpose behind Rule 37 and the Board's counterpart, Stoller has rushed to involve the Board in a dispute ripe for resolution between the parties. As a threshold matter, although Stoller certifies in his Motion that he has met and conferred with Nissan in good faith, he has never identified which of Nissan's objections he contends are inappropriate but rather appears to believe they all run afoul of the Rules. Evidencing this approach, Stoller, in his Motion, requests that the Board order Nissan to lift its objections to his discovery because the responses are purportedly "inadequate" and replete with "boilerplate"—but provides no further substantive basis for the Motion. See Motion, p. 1. He leaves to the Board to parse through sixty pages of attachments to determine which objections are proper. This alone warrants summary denial of the Motion.

More significantly, Stoller has never provided Nissan with any rationale—let alone legal basis—for his unilateral March 7 deadline for all amendments to discovery. In fact, Stoller himself did not respond to the bulk of Nissan's February and March 2001 discovery until *after* this date. In a similar vein, Stoller still has not provided Nissan with *any* documents responsive to its First or Second Sets of Requests for Production.

In response to Stoller's demand, Nissan proposed that the parties respond to discovery and/or amend discovery responses by March 31—thirty days after Stoller proclaimed that all discovery was at issue. As it explained to Stoller, Nissan arrived at this date by relying on Trademark Manual of Procedure § 403.03's provision that parties have thirty days to respond to

discovery after service. Nissan, in fact, still intends to amend its discovery by March 31, which will render Stoller's Motion to Compel moot. In short, Stoller's uncompromising position has unnecessarily expended the resources of both the Board and Nissan and his Motion should be denied in its entirety.

IV. CONCLUSION

For the reasons articulated above, Nissan respectfully requests that Stoller's Motion to Compel be denied in its entirety.

Respectfully Submitted,
LATHAM & WATKINS

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