

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

Mailed: October 3, 2003

Opposition No. 91124261

VELOTREND

v.

CAMPAGNOLO SRL

Nancy L. Omelko, Interlocutory Attorney:

Now for the Board's consideration in this case is applicant's combined motion (filed May 12, 2003) to compel responses to its first set of interrogatories, to compel production of documents, and for a protective order. Opposer has filed a response to this combined motion. Opposer's consented motion (filed May 28, 2003) for an extension of time in which to respond to applicant's combined motion is hereby granted.

Interrogatories

Applicant's motion to compel responses to its first set of interrogatories was filed in response to opposer's general objection to applicant's interrogatories on the ground of excessive number. See Trademark Rule 2.120(d)(1). Applicant's motion to compel included a copy of the set of the involved interrogatories, as well as a written statement that applicant had made a good faith effort to resolve with

the other party's attorney the issues presented in the motion. See Trademark Rules 2.120(d)(1) and 2.120(e); and TBMP § 406.03(e).

Opposer argues that the motion to compel should be denied because the number of interrogatories exceed the limit.

Trademark Rule 2.120(d)(1) establishes that "the total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts". In determining whether a set of interrogatories exceeds this limit, each subdivision of separate questions, whether set forth as a numbered or lettered subpart, or as a compound question or a conjunctive question, such as "sales and advertising" or "adoption and use," is counted as a separate interrogatory. See *Jan Bell Marketing Inc. v. Centennial Jewelers Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990). On the other hand, an interrogatory that requests only information with respect to one issue may simply be counted as one interrogatory. See, Carla Calcagno, *Tips from the TTAB: Discovery Practice under Trademark Rule 2.120(d)(1)*, 80 TMR 285, 288-89 (1990). The introductory instructions or preamble to a set of interrogatories will not be counted by the Board as

interrogatories or subparts for purposes of determining whether the limit has been exceeded. TBMP § 406.03(d).

Applying the guidelines above to applicant's interrogatories, and looking at the substance of the interrogatories, the Board finds that the interrogatories do not exceed the limitation imposed by Trademark Rule 2.120(d)(1). Accordingly, applicant's motion to compel is granted and opposer is allowed until **thirty days** from the date of this order to answer applicant's first set of interrogatories.

Documents

Turning now to applicant's motion to compel production of documents at applicant's office. In response, opposer states that the only reference anywhere to production of documents is applicant's demand, in its motion (but not the supporting memorandum) that documents be produced "at the office of Applicant's counsel". Opposer argues that there is no absolute right to have production take place at the office of applicant's counsel, and applicant cites no authority or reason for that demand.

Applicant's motion is denied and opposer has **thirty days** from the date of this order to produce the requested documents "at the place where the documents and things are usually kept...." See Trademark Rule 2.120(d)(2).

Protective Order

Turning now to applicant's motion for a protective order in which applicant requests that the Board allow applicant 21 days from the date of this order to respond to opposer's discovery requests. Applicant argues that since applicant was first in making its discovery requests, opposer should be required to submit responses before applicant.

In response, opposer argues that applicant's request for a protective order must be denied and correctly notes that there is no right of response based on "priority". See TBMP Sec 403.03; and further claims that applicant is already in default of its obligations and has waived its right to raise objections, having provided no response whatsoever prior to the deadline, as extended by opposer, and applicant must respond to opposer's discovery, in full. Applicant's motion is denied and applicant is allowed until **thirty days** from the date of this order to respond in full to opposer's discovery requests.

Accordingly, except as indicated above, discovery is closed, proceedings herein are resumed and dates are reset as follows:

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| THE PERIOD FOR DISCOVERY TO CLOSE: | CLOSED |
| 30-day testimony period for party in position of plaintiff to close: | February 1, 2004 |
| 30-day testimony period for party in position of defendant to close: | April 1, 2004 |

15-day rebuttal testimony period
to close:

May 16, 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.