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



08-20-2003

U.S. Patent & TMOt/TM Mail Ropt Dt. #22

DROWNING POOL, LLC, a Texas Limited
Liability Company,

Opposer,

v.

DROWNING POOL, a California
partnership.

Applicant.

Opposition No. 91154398

Mark: DROWNING POOL

Serial No. 76/287792

Filed: July 20, 2001

Published: November 12, 2002

08-20-2003
U.S. PATENT & TRADEMARK OFFICE

STIPULATION AND [PROPOSED] ORDER

RE: EXTENSION OF DISCOVERY AND TRIAL DATES

AND APPLICANT'S MOTION TO COMPEL

The parties have resolved Applicant's Motion to Compel Responses to First Set of Discovery. Subject to the approval of the Trademark Trial and Appeal Board, Applicant Drowning Pool, a California partnership ("Applicant") and Opposer Drowning Pool LLC ("Opposer") hereby STIPULATE to the following in this opposition:

1. Opposer hereby concedes Applicant's motion to compel responses to first set of discovery requests. Opposer will answer Applicant's First Set of Interrogatories and First Set of Document Requests in writing by **August 29, 2003**. Opposer's answers will be provided without objection except as to the Attorney-Client privilege and the Attorney Work Product Doctrine, if any. A privilege log will accompany any response containing an objection based on one of these

privileges. Opposer will produce all responsive documents and things, other than those protected by the attorney-client privilege or work product doctrine, at Opposer's own expense at the office of Applicant's counsel by **September 5, 2003**.

2. The following new dates are proposed:

The Period for Discovery to Close: **September 29, 2003**

Testimony Period for party in position of plaintiff to close: (opening forty-five days prior thereto) **December 19, 2003**

Testimony period for party in position of defendant to close: (opening thirty days prior thereto) **February 20, 2004**

Rebuttal Testimony period to close: (opening fifteen days prior thereto) **March 26, 2004**

The parties request that the testimony period for the party in the position of plaintiff consist of a total of forty-five (45) days because it encompasses the Thanksgiving weekend and because counsel for Opposer has a court appearance specially set for the week prior to Thanksgiving.

3. In addition to the standard time allotted for responses to interrogatories and responses to requests for document production, Applicant is not required to respond to any discovery from Opposer unless and until Applicant has received written answers without objection (except as provided above) to Applicant's first set of discovery and Opposer has produced all responsive documents (except as provided above) in response to Applicant's First Set of Document Requests.

4. Opposer may not conduct depositions of Applicant or any of Applicant's partners during the discovery period. Opposer may conduct depositions of third-party witnesses solely for

the purpose of obtaining production of documents and things and authenticating same. No further questioning of third-party witnesses during the discovery period is permitted. This does not preclude Opposer from conducting testimony depositions of Applicant or any third party witnesses during Opposer's testimony or rebuttal periods.

5. Applicant may conduct depositions during the discovery period and/or its testimony period.

This request is being made on behalf of both Opposer and Applicant. This request is being submitted in triplicate. It is asked that a copy indicating the action taken be returned to the undersigned attorneys at the addresses given below:

IT IS SO STIPULATED.

Respectfully submitted,

Dated: 8/18/2003

By: Gordon E. Gray III
Gordon E. Gray III
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Dated: 8/18/2003

By: J. Rodgers Lunsford III
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Attorney for Opposer

signed with
authorization
by telephone
J.R.L.

[PROPOSED] ORDER

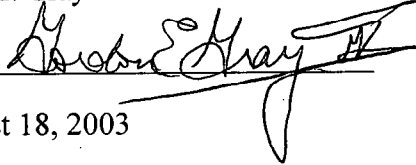
GOOD CAUSE APPEARING THEREFOR, THE STIPULATION AND ORDER RE APPLICANT'S MOTION TO COMPEL IS APPROVED AND ADOPTED. IT IS SO ORDERED.

Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Box TTAB, Arlington, Virginia 22202-3513 on August 18, 2003.

By: Gordon E. Gray III

Signature: 

Date: August 18, 2003