

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: April 9, 2006

Opposition No. **91159046**

NCE RESOURCES GROUP INC.

v.

RESMARK EQUITY PARTNERS, LLC

Peter Cataldo, Interlocutory Attorney

This case now comes before the Board for consideration of opposer's second combined motion to compel, to test the sufficiency of applicant's responses to admission requests, and to allow opposer additional time in which to serve follow-up discovery. Applicant filed cross-motion to suspend proceedings pending the outcome of settlement negotiations between the parties. In addition, opposer filed a reply brief which the Board has exercised its discretion to entertain. See Trademark Rule 2.127(a).

The Board has carefully considered the arguments of both parties with regard to the above motions. However, an exhaustive review of those arguments would only serve to delay the Board's disposition of these matters.

Motion to Compel

The Board turns to opposer's motion to compel.¹ In this instance, the Board finds that the motion to compel complies with the special requirements of Trademark Rule 2.120(e). See also *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626 (TTAB 1986); and *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448 (TTAB 1979). In addition, the Board finds that opposer has made a good faith effort to resolve with applicant the instant discovery dispute and has been unable to reach agreement. See *Id.*

At issue herein are opposer's first set of interrogatories and first set of requests for production, served upon applicant on May 27, 2004. It is noted that in opposition to opposer's first motion to compel responses to these same discovery requests, applicant filed an untimely response which the Board nonetheless exercised its discretion to consider. It is further noted that in the Board's October 4, 2005 order denying on procedural grounds opposer's first motion to compel, the Board found, *inter alia*, "that by making the blanket assertion that all of opposer's discovery requests are 'overly broad, burdensome and harassing, are outside the scope of the issue here and not submitted in good faith,' applicant has disregarded its

¹ As a preliminary matter, the motion is timely inasmuch as it was filed prior to the opening of opposer's first testimony period as reset. See Trademark Rule 2.120(e).

discovery obligations in this proceeding." Finally, the Board notes that applicant has failed to respond substantively to opposer's instant motion to compel, arguing instead that the instant proceeding should be suspended.

Thus, upon review of opposer's discovery motion as well as the procedural history of this case, it is apparent that applicant has failed to discharge its obligation to respond to opposer's discovery requests, served nearly two years ago. It further is apparent that applicant has failed to timely or substantively address the issues raised by opposer in its discovery motions. In short, applicant's conduct throughout discovery indicates a pattern of non-compliance and delay.

In view of the foregoing, opposer's motion to compel is hereby **granted** as indicated below.

Motion to Test Sufficiency of Admissions

With regard to opposer's current motion to test the sufficiency of applicant's responses to its admission requests, the Board finds that opposer has satisfied the special requirements of Trademark Rule 2.120(h), and, moreover, has made a good faith effort to resolve the instant discovery dispute with applicant prior to seeking the Board's intervention. See Trademark Rule 2.120(h). See also TBMP §524.02 (2d ed. rev. 2004) and the authorities cited therein.

In addition, and as noted above, the Board again finds that aside from its blanket objections to opposer's admission requests, served nearly two years ago, applicant has made no discernable effort to discharge its discovery obligations in this proceeding. Further, aside from its belated response to opposer's first set of discovery motions, applicant makes no attempt to justify or otherwise explain its delay and non-compliance in this matter.

In view of the foregoing, and in accordance with the above analysis regarding opposer's second motion to compel, opposer's motion to test the sufficiency of applicant's answers to its admission requests is **granted** as indicated below.

Motion to Extend Time for Opposer's Follow-Up Discovery

Based upon the showing made therein, opposer's motion for additional time in which to conduct follow-up discovery is granted to the extent that the close of the discovery period is reset at the end of this order. The discovery period will remain closed for applicant.

Cross-Motion to Suspend

The Board now turns to applicant's cross-motion for further suspension of this proceeding pending the outcome of continuing settlement negotiations between the parties. It is well settled that the Board may suspend proceedings for purposes of settlement negotiations, subject to the right of

either party to request resumption at any time. See Trademark Rule 2.117(c). See also TBMP §510.03 (2d ed. rev. 2004) and the authorities cited therein.

In this case, the Board has granted three consented requests to extend or suspend dates, including applicant's time to respond to opposer's discovery requests, since July 2004. Thus, it appears from the procedural history of this case that the parties have attempted to reach settlement for over one and one-half years. During that time, opposer has attempted in addition to secure applicant's discovery responses. Nonetheless, in spite of the parties' progress in their negotiations, the case remains pending and opposer's discovery requests remain unanswered. The case has not otherwise moved forward. In addition, opposer indicates its strong opposition to further delay predicated upon settlement negotiations, despite its belief that the case ultimately may be settled.

In view of the foregoing, applicant's motion to suspend is hereby **denied**.

In further view thereof, the parties are advised that the Board will not grant further requests to suspend or extend dates herein unless stipulated to by the parties and accompanied by a showing of good cause therefor.

Discovery Responses and Reminders

In view of the Board's determination above, applicant is allowed until THIRTY DAYS from the mailing date hereof in which to serve its responses, without objection, to opposer's first set of interrogatories, requests for production, and requests for admission.

Applicant is cautioned that in the event it fails to comply with this order, the Board may entertain a formal motion for sanctions under Trademark Rule 2.120(g).

Applicant further is cautioned that the Board will look with disfavor upon requests to extend its time to respond to opposer's discovery requests, absent a stipulation thereto by opposer.

The parties are reminded that if proper discoverable matter is withheld during discovery, the withholding party may be precluded from relying on such information and from adducing testimony with regard thereto during its testimony period. See *Shoe Factory Supplies Co. v. Thermal Engineering Company*, 207 USPQ 517 (TTAB 1980); and *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, at fn.5 (TTAB 1988).

Dates Reset

Trial dates, beginning with the close of discovery solely for opposer, are reset as indicated below.

DISCOVERY PERIOD TO CLOSE: **7/1/06**
(for opposer **only**)

Testimony period for party in position of plaintiff **9/29/06**
to close: (open for thirty days)

Testimony period for party in position of **11/28/06**
defendant
to close: (open for thirty days)

Rebuttal testimony period to close: **1/12/07**
(open for fifteen days)

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.