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

wellington

Mailed: July 25, 2006

Opposition No. 91159302

INNOVA ELECTRONICS CORPORATION

v.

LION'S WHEEL INDUSTRIAL CORP.

Before Seeherman, Bucher, and Cataldo, Administrative Trademark Judges.

By the Board:

This case now comes up on a motion filed on December 21, 2005 by opposer for sanctions in the form of judgment against applicant under Trademark Rule 2.120(g). In support of the motion, opposer states that applicant failed to comply with the Board's September 17, 2005 discovery order compelling applicant to provide further responses to certain discovery requests propounded by opposer.

In response to opposer's motion, applicant acknowledges that it did not comply with the Board's discovery order but argues that "[opposer's] motion should be denied since Lion's Wheel's or current and/or former counsel of record never received any notice of the Trademark Trial and Appeal Board (TTAB) order granting Opposer's Motion to Compel."

Applicant further states that "had such order been communicated to Lion's Wheel, said order would have been complied with by Lion's Wheel." And, applicant's counsel requests a copy of the Board's discovery order be sent to him so that applicant may "comply with the order in question."

Trademark Rule 2.120(g)(1) provides that if a party fails to comply with an order of the Board relating to discovery, the Board may enter appropriate sanctions, including entering judgment against the disobedient party. See TBMP Section 527.01 and authorities cited therein. Default judgment, however, is considered a harsh sanction and is usually only justified when no less drastic remedy would be effective and there is a strong showing of willful evasion. See TBMP § 527.01 (2d ed. rev. 2004) and authorities cited therein.

Initially, we note that applicant does not argue that it did not receive opposer's motion to compel that gave rise to the Board's discovery order, nor does applicant provide any reason for its failure to respond to said motion. We further note that the Board's discovery order, granting the opposer's motion to compel as conceded, was not returned to the Board as "undeliverable." And, even upon learning of the Board's discovery order, applicant did not make any

attempt to satisfy the outstanding discovery requests that are the subject of the underlying discovery dispute.[1]

Based on the record before us, it is clear that applicant's conduct in this matter has not been exemplary. However, it is not possible to conclude that this conduct rises to the level of willful evasion or warrants a sanction of default judgment. Applicant's stated excuse that it did not receive the Board's discovery order, absent any evidence to the contrary, is accepted. Accordingly, opposer's motion for sanctions is denied.

A copy of the Board's September 17, 2005 order is attached to applicant's copy of this order.[2] Applicant is allowed twenty days from the mailing date of this order to comply with the discovery order. However, the discovery order is amended to the extent that applicant must now respond to the outstanding discovery requests as put, and without objection.

At the time of the filing of the motion for sanctions, discovery and opposer's testimony period had closed and approximately four days remained in applicant's testimony

[1] Applicant could also have easily retrieved a copy of the Board's discovery order via the USPTO website, www.uspto.gov

[2] As noted in the preceding footnote, Board orders, as well as copies of all papers filed in a proceeding, may be viewed at the USPTO website. Accordingly, if applicant requires a copy of any additional papers, it should obtain them from the website. Moreover, it is suggested that applicant routinely check the website to be sure that there are no outstanding orders from the Board, or other papers with which applicant must comply or to which it must respond.

period. Because of applicant's failure to comply with the Board's September 17, 2005 discovery order, opposer was not given the benefit of having applicant's discovery responses prior to its testimony period. We are therefore reopening opposer's testimony period and rescheduling the trial dates as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	September 22, 2006
30-day testimony period for party in position of defendant to close:	November 21, 2006
15-day rebuttal testimony period to close:	January 5, 2007

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.l25.

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.l29.

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