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

Mailed: January 28, 2007

Opposition No. 91171180

Go Fast Sports & Beverage Company

v.

Power Brands International, LLC.

David Mermelstein, Administrative Trademark Judge:

Now before the Board is applicant's January 25, 2006, motion to compel discovery.

Prior to filing a motion to compel discovery, a party must make – and certify that it has made – a good faith effort to resolve the dispute. Trademark Rule 2.120(e)(1). This is not a mere technical or *pro forma* requirement to be checked off on the way to the courthouse. As a general matter, discovery in a proceeding before the TTAB should be conducted without the involvement of the Board, unless the parties have reached an impasse which they are unable to resolve, despite having made genuine efforts to do so. The requirement for the movant to make such efforts (and to certify that it has done so) is to ensure that the parties have already taken reasonable steps which are calculated to resolve the problem prior to seeking Board involvement.

Here, opposer's discovery responses were originally due on or about December 15, 2006, although the parties agreed that applicant was allowed an extension of time to respond until January 14, 2007. On January 22, when no discovery responses had been received, applicant states that it sent opposer a letter demanding a response by noon the next day. Applicant made no further effort to follow up, and this motion ensued.

A single letter demanding a response in 24 hours is not the kind of good faith effort to resolve the proceeding contemplated by Trademark Rule 2.120(e)(1). While we generally take a dim view of parties which fail to respond to discovery without good cause, the movant bears the burden of trying to resolve the matter before adding to the Board's workload. It would seem that a reasonable attempt at resolution in this case would have been to allow a realistic time to respond to a letter, followed by at least a brief telephone conversation.

We hasten to add that while it is the movant's burden to make the initial effort, both parties are under a duty to reasonably cooperate in discovery matters. If the movant has made reasonable efforts to resolve the matter, it will not be prevented from invoking the Board's assistance by the non-movant's refusal to discuss the issue.

All of this is, of course, aside from the merits of the dispute. If opposer has indeed failed to respond to applicant's discovery without good cause, we strongly suggest that it remedy that failure as soon as possible. It was opposer which filed this proceeding, and its (alleged) failure to abide by the Board's rules may not fare as well if its recalcitrance results in the filing of another motion to compel, this time supported by a proper good-faith effort.[1]

In view of the foregoing, applicant's motion to compel is DENIED without prejudice.

The parties are reminded that a motion to compel discovery must be filed prior to the commencement of the first trial period. Trademark Rule 2.120(e)(1).

All dates remain as previously set.

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[1] Applicant has also asked the Board to enter a protective order. While we certainly may do so, it seems premature when – so far as we know – neither party has requested disclosure of confidential or proprietary information, nor has there been an objection to discovery on that basis. As with other discovery issues, the provisions of an acceptable protective order should be the subject of discussion between the parties in the first instance, although we will entertain a motion for a protective order if necessary and if the parties are unable to reach agreement.