

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

gcp/jk

Mailed: February 27, 2008

Opposition No. 91175449

PPG INDUSTRIES OHIO, INC.

v.

PPG DIRECT MERCHANT INC.

George C. Pologeorgis, Interlocutory Attorney:

This case is now before the Board on opposer's motion, filed August 21, 2007, to compel discovery, wherein opposer seeks responses to interrogatories, responses to requests for production of documents and things, and requests for admissions. Pursuant to Trademark Rule 2.120(e)(2), opposer's motion is timely.¹ Applicant did not file a brief in response to the motion. Accordingly, opposer's motion is granted as conceded. See Trademark Rule 2.127(a).²

A party which fails to respond to a request for discovery, and is unable to show that its failure was the

¹ The Board finds that opposer made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1).

² Trademark Rule 2.127(a) reads, in relevant part: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

result of excusable neglect, may be found, upon motion to compel, to have forfeited its right to object to the discovery requests on their merits. Inasmuch as nothing in the record indicates that applicant's failure to respond was the result of excusable neglect, applicant has waived its right to object to opposer's interrogatories and document requests on the merits, and must respond in full and without objection because applicant neither timely responded to nor objected to opposer's discovery requests. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000).

Accordingly, opposer's motion to compel is granted both on the merits and as conceded. Applicant is allowed thirty (30) days from the date of this order in which to serve upon opposer full and complete answers to all interrogatories and all document requests, without objection. Should applicant fail to provide the ordered responses, the Board will entertain a motion for sanctions in the form of entry of judgment sustaining the opposition. See Trademark Rule 2.120(g)(1).

With respect to that portion of opposer's motion to compel which addresses requests for admissions, the requests stand admitted inasmuch as applicant neither served written answers nor objected thereto. Fed. R. Civ. P. 36(a). Any matter admitted under this rule is conclusively established. TBMP §407.04 (2d ed. rev. 2004).

Proceedings are hereby resumed. Discovery was closed when proceedings were suspended pending disposition of opposer's motion to compel. However, a limited discovery period is reset as indicated below for the sole purpose of allowing opposer to take follow-up discovery, if necessary. Applicant is precluded from propounding any discovery at this juncture. Limited discovery, and trial dates, are reset as follows:

LIMITED THREE WEEK DISCOVERY PERIOD TO OPEN ON **3/28/08** AND TO CLOSE ON **4/18/08**:

(limited to opposer's follow-up discovery only)

Testimony period for party in position of plaintiff **7/10/2008** to close: (opening thirty days prior thereto)

Testimony period for party in position of defendant **9/8/2008** to close: (opening thirty days prior thereto)

Rebuttal testimony period to close: **10/23/2008**
(opening fifteen days prior thereto)

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.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>