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Filing date: **08/28/2015**

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

Proceeding	91207357
Party	Plaintiff Chicago Cubs Baseball Club, LLC, Washington Nationals Baseball Club, LLC
Correspondence Address	LISA M WILLIS COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES lmr@cll.com, jmn@cll.com, trademark@cll.com, las@cll.com
Submission	Motion to Compel Discovery
Filer's Name	Lindsay M. Rodman
Filer's e-mail	trademark@cll.com, jmn@cll.com, lmr@cll.com, mlk@cll.com
Signature	/Lindsay Rodman/
Date	08/28/2015
Attachments	Wisteez Motion to Compel.pdf(612984 bytes)

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

In re Application Serial No. 85/381,990 and 85/382,135
Filed: July 27, 2011
For Marks: W and Design and WISTEEZ and Design
Published in the Official Gazette: April 10, 2012

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CHICAGO CUBS BASEBALL CLUB, LLC and :
WASHINGTON NATIONALS BASEBALL CLUB, : Opposition No. 91207357
LLC, :
Opposers, :
v. :
WISTEEZ, LLC, :
Applicant. :
-----X

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER’S MOTIONS TO COMPEL INITIAL DISCLOSURES AND TO SUSPEND

Upon the annexed Declaration of Lindsay M. Rodman and the exhibits thereto, Opposer hereby moves for an order pursuant to 37 C.F.R. §2.120(e), T.B.M.P. § 523 and Fed. R. Civ. P. 37(a), compelling Applicant to respond to Initial Disclosures. As grounds for the motion to compel, Opposer states that Applicant has failed to serve Initial Disclosures despite follow-up efforts by Opposer to obtain the Initial Disclosures or a response from Applicant’s counsel as to its intentions to serve Initial Disclosures.

Pursuant to 37 C.F.R. § 2.120(e), and in light of the scheduled expert disclosures deadline of November 13, 2015, Opposer also requests that this matter be suspended and that the discovery and trial periods be reset once the Board decides this motion.

MEMORANDUM IN SUPPORT OF MOTIONS

STATEMENT OF FACTS

The facts on which this motion is based are set forth fully in the accompanying declaration of Lindsay M. Rodman (“Rodman Decl.”) and are summarized briefly here for the Board’s convenience.

Opposer initiated this proceeding by filing a Notice of Opposition on October 8, 2012 against Application Serial Nos. 85/381,990 and 85/382,135 filed by Wisteez, LLC (“Applicant”)



seeking to register the W and design mark as shown here:

and the WISTEEZ



and design mark as shown here:

, respectively (“Applicant’s Marks”)

for “collectible trading cards; printed collector cards made primarily of paper but also including metal” in International Class 16 and for “playing cards” in International Class 28. Rodman Decl.

¶ 2. The Notice of Opposition alleged that registration of Applicant’s Marks were likely to result in confusion with Opposer’s marks. Rodman Decl. ¶ 3.

On April 17, 2015, the parties held their discovery conference and agreed that they would not be waiving Initial Disclosures. Rodman Decl. ¶ 4. On July 16, 2015, Opposer served

Applicant with Initial Disclosures via e-mail as consented to by Applicant's counsel since Applicant's counsel no longer has a valid mailing address. Rodman Decl. ¶ 4.

On August 14, 2015, about a month after the Initial Disclosures deadline and not having yet received Applicant's Initial Disclosures, Opposer's counsel sent Applicant's counsel an e-mail advising her that Applicant's Initial Disclosures had not been received and asking when Applicant intended to serve them. Rodman Decl. ¶ 5 and Exhibit A. Opposer's counsel gave a deadline of August 21, 2015 to respond to the e-mail, but Applicant's counsel did not reply. Rodman Decl. ¶ 5

On August 24, 2015, Opposer's counsel sent a follow-up e-mail to Applicant's counsel regarding Initial Disclosures and explained the need to file a motion to compel if Initial Disclosures are not served. Rodman Decl. ¶ 6 and Exhibit B. Applicant's counsel responded on August 25, 2015 and, at that time did not indicate any intention to serve Initial Disclosures. Rodman Decl. ¶ 6 and Exhibit B. She also said we could file a motion to compel if we thought that was necessary. Rodman Decl. ¶ 6 and Exhibit B.

To date, Applicant has not served Initial Disclosures nor has Applicant otherwise informed Opposer's counsel as to a date by which Opposer should expect to receive Applicant's Initial Disclosures, leaving Opposer with no choice but to make this motion to compel. Rodman Decl. ¶ 7.

ARGUMENT

OPPOSER'S MOTION TO COMPEL SHOULD BE GRANTED

A motion to compel should be granted where, as here, after a movant has made a good faith effort to resolve the matter and a party refuses to provide timely discovery, including Initial Disclosures. 37 C.F.R. §2.120(e); TBMP 523; Kairos Institute of Sound Healing LLC v.

Doolittle Gardens LLC, 88 USPQ2d 1541, 1543 (T.T.A.B. 2008). Motions to compel Initial Disclosures must be made during the discovery period, such as in this case. Luster Products Inc. v. Van Zandt, 104 USPQ2d 1877, 1878-79 (T.T.A.B. 2012). An order compelling Applicant to serve Initial Disclosures is plainly warranted here. Applicant has neither served its Initial Disclosures nor indicated that it has an intention to do so.

Opposer is entitled to Initial Disclosures in order to pursue this opposition and submit appropriate evidence in support of its claims. As set forth above and in the attached Declaration of Lindsay M. Rodman, before filing this motion, Opposer, by its attorneys, made good faith efforts to resolve these issues. Nevertheless, Applicant has failed to serve Initial Disclosures leaving Opposer no choice but to seek the Board's assistance in compelling Applicant's response.

For the foregoing reasons, Opposer respectfully requests that the Board issue an order compelling Applicant to serve Initial Disclosures. Opposer further requests that this matter be suspended and that the discovery and trial periods be reset once the Board decides this motion.

Dated: New York, New York
August 28, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Lindsay M. Rodman/
Mary L. Kevlin
Richard S. Mandel
Lindsay M. Rodman

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WASHINGTON NATIONALS BASEBALL CLUB, : Opposition No. 91207357
LLC, :
Opposers, :
v. :
WISTEEZ, LLC, :
Applicant. :
-----X

**DECLARATION OF LINDSAY M. RODMAN IN SUPPORT OF
OPPOSER’S MOTIONS TO COMPEL AND SUSPEND**

LINDSAY M. RODMAN, pursuant to 28 U.S.C. §1746, declares:

1. I am an attorney with Cowan, Liebowitz & Latman, P.C., attorneys for Opposer.

I submit this declaration in support of Opposer’s Motion to Compel Initial Disclosures and to Suspend.

2. Opposer initiated this proceeding by filing a Notice of Opposition on October 8, 2012 against Application Serial Nos. 85/381,990 and 85/382,135 filed by Wisteez, LLC



(“Applicant”) seeking to register the W and design mark as shown here: and



the WISTEEZ and design mark as shown here: _____, respectively,

(“Applicant’s Marks”) for “collectible trading cards; printed collector cards made primarily of paper but also including metal” in International Class 16 and for “playing cards” in International Class 28.

3. The Notice of Opposition alleged that Applicant’s Marks were likely to result in confusion with Opposer’s marks.

4. During the discovery conference held on April 17, 2015, the parties agreed that they would not be waiving Initial Disclosures, but agreed to extend the deadline to July 16, 2015. On July 16, 2015, Opposer served Applicant with Initial Disclosures via e-mail to the following address: kreddick@rediplaw.com since Applicant’s counsel no longer has a valid mailing address and indicated consent to serve her by e-mail.

5. On August 14, 2015, about a month after the Initial Disclosures deadline and not having yet received Applicant’s Initial Disclosures, Opposer’s counsel sent Applicant’s counsel an e-mail advising her that Applicant’s Initial Disclosures had not been received and asking when Applicant intended to serve them. Opposer’s counsel gave a deadline of August 21, 2015 to respond to the e-mail. Applicant’s counsel did not reply. A true and redacted copy of that email (including the portion dealing with Initial Disclosures) is attached hereto as Exhibit A.

6. Having received no response, on August 24, 2015, Opposer’s counsel sent a follow-up e-mail to Applicant’s counsel regarding Initial Disclosures and explained the need to file a motion to compel if Initial Disclosures are not served. Applicant’s counsel responded on

August 25, 2015 concerning possible settlement, but did not state that there was an intention to serve Initial Disclosures and to file a motion to compel if that was necessary. Applicant's counsel was hopeful settlement may be reached. A true and redacted copy of those emails are attached hereto as Exhibit B.

7. To date, Applicant has not served Initial Disclosures, nor has Applicant otherwise informed Counsel herein of a date as to which Opposer could expect to receive Applicant's Initial Disclosures despite good faith efforts to resolve the matter.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT, EXECUTED ON AUGUST 28, 2015 AT NEW YORK, NEW YORK.


LINDSAY M. RODMAN

EXHIBIT A

Rodman, Lindsay M.

From: Rodman, Lindsay M.
Sent: Friday, August 14, 2015 9:45 AM
To: 'Kimberly Reddick'
Cc: Kevlin, Mary
Subject: W (Wisteez)

Dear Kim,

You had previously declined to waive Initial Disclosures, which were due on July 16, 2015. Therefore, on July 16, 2015, we served you with Opposer's Initial Disclosures as required by the Board. However, we never received Initial Disclosures from you. Please let us know whether you will be serving us with Applicant's Initial Disclosures very soon, and if so, when. If we do not hear from you by August 21, 2015, we will have no choice but to move to compel.

Best,

Lindsay

Lindsay M. Rodman, Esq.
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EXHIBIT B

Rodman, Lindsay M.

From: Rodman, Lindsay M.
Sent: Monday, August 24, 2015 4:57 PM
To: 'Kimberly Reddick'
Cc: Kevlin, Mary
Subject: FW: W (Wisteez)

Dear Kim,

We are following-up on our e-mail below regarding Initial Disclosures. Although we requested that you respond by Friday, August 21st, we have heard nothing from you. Accordingly, we have no choice but to prepare and file a motion to compel.

Best,

Lindsay

Lindsay M. Rodman, Esq.

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Rodman, Lindsay M.

From: Kimberly Reddick <kreddick@rediplaw.com>
Sent: Tuesday, August 25, 2015 11:40 AM
To: Rodman, Lindsay M.
Cc: Kevlin, Mary
Subject: Re: W (Wisteez)

Hi Lindsey.

As far as the motion to compel, feel free to do so if you feel it is necessary. I would imagine the matter will be settled before a response is due. Nevertheless, please forward a courtesy copy via email.

Sincerely,

Kim

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 28, 2015, I caused a true and correct copy of the foregoing Opposer's Motions to Compel Initial Disclosures and to Suspend and supporting Declaration of Lindsay M. Rodman to be sent via e-mail to Applicant's Attorney and Correspondent of Record, Kimberly Reddick at kreddick@rediplaw.com.

Dated: New York, New York
August 28, 2015

/Lindsay M. Rodman/
Lindsay M. Rodman