

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: November 4, 2014

Opposition No. 91213331

(**Parent Case**)

Opposition No. 91213378

Rhythm Holding Limited

v.

Rhythm Interactive, Inc.

**George C. Pologeorgis,
Interlocutory Attorney:**

These consolidated proceedings now come before the Board for consideration of Opposer's motion (filed September 19, 2014) to compel responses to Opposer's second set interrogatories, second set of requests for production of documents, and requests for admission. Applicant has not filed a brief in response to Opposer's motion.

In its motion, opposer seeks responses to the written discovery identified above. Opposer asserts that it served the aforementioned discovery requests upon Applicant on August 4, 2014, but has yet to receive any responses thereto.

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Pursuant to Trademark Rule 2.120(e)(2), Opposer's motion is timely.¹

Moreover, a party that fails to respond to a request for discovery, and is unable to show that its failure was the 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 interrogatory and document requests on the merits, and must respond in full and without objection (except for objections based upon privilege), inasmuch as Applicant neither timely responded nor objected to Opposer's discovery requests. *See No Fear, Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

Accordingly, Opposer's motion to compel is **GRANTED** as conceded to the extent noted below. *See* Trademark Rule 2.127(a).²

Applicant is allowed **thirty (30) days** from the mailing date of this order in which to serve upon Opposer full and complete responses to Opposer's second set of interrogatories, as well as produce non-privileged responsive documents to all of Opposer's second set of requests for production of documents, **without objection** (except for objections based upon privilege).

¹ The Board finds that Opposer has demonstrated 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."

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To the extent Applicant objects to any of the interrogatory and/or document requests based upon privilege, Applicant is required to provide Opposer with a privilege log within the same **thirty days** set forth above. Should Applicant fail to serve on Opposer the discovery responses as ordered herein, as well as a privilege log, if applicable, the Board will entertain a motion for sanctions in the form of entry of judgment against Applicant. See Trademark Rule 2.120(g)(1).

With respect to the portion of Opposer's motion which addresses requests for admissions, the requests stand admitted inasmuch as Applicant neither served written responses nor objected thereto. Fed. R. Civ. P. 36(a). Any matter admitted under this rule is conclusively established. TBMP § 407.04 (2014).

Trial Schedule

These consolidated proceedings are hereby resumed. Remaining trial dates for this consolidated case are reset as follows:

Discovery Closes	11/5/2014
Plaintiff's Pretrial Disclosures Due	12/20/2014
Plaintiff's 30-day Trial Period Ends	2/3/2015
Defendant's Pretrial Disclosures Due	2/18/2015
Defendant's 30-day Trial Period Ends	4/4/2015
Plaintiff's Rebuttal Disclosures Due	4/19/2015
Plaintiff's 15-day Rebuttal Period Ends	5/19/2015

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within

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thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.