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

Proceeding	91215114
Party	Plaintiff Upper Shirley Vineyards, LLC and Shirley Plantation LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SHIRLEY PLANTATION, LLC,
UPPER SHIRLEY VINEYARDS, LLC,
and
CHARLES H. CARTER,

Opposers,

v.

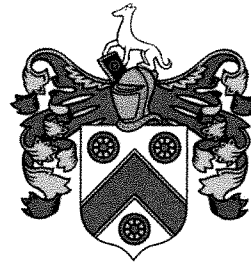
STILLHOUSE VINEYARDS, LLC

Applicant.

Opposition No.: 91215114 (parent)
91216395
91218094

Application Nos.: 85/947562
85/121979
86/129686

Marks: SHIRLEY PLANTATION
SHIRLEY



OPPOSERS' MOTION FOR LEAVE TO FILE BRIEF AND BRIEF

Opposers hereby respectfully request leave of the Board to file a brief, opposing Applicant's motion to compel, given the suspended status of these consolidated oppositions. Throughout these proceedings Applicant has shown, and continues to show, a lack of respect for these proceedings with its repeated delays, disobedience to Board orders and now improper filings. As set forth more fully below, Opposers submit that Applicant has violated the suspension orders of the Board, 37 C.F.R. §2.127(d), and the meet and confer obligations set forth in 37 C.F.R. §2.120(e). While Opposers stand ready and willing to participate in further discovery, Opposers believe that the orders of suspension and 37 C.F.R. §2.127(d) prevent it. Opposers request that Applicant's motion to compel be denied without prejudice in view of the suspension of the pending proceedings.

I. BACKGROUND

1. Applicant served a First Set of Discovery requests in these proceedings on July 20, 2015.
2. Opposers requested an extension from Applicant on August 12, 2015 (not “August 18, 2014” as Applicant asserts).
3. Opposers did not receive a response from Applicant and, because of the impending deadline, Opposers filed for an extension without consent on August 18, 2015.
4. On August 19, 2016 Applicant responded to Opposers’ extension request consenting to an extension until September 10, 2015.
5. The parties filed a Stipulated Extension of Time on August 28, 2015.
6. The Board issued an order September 8, 2015 suspending the proceedings, pending a decision on the Petition to Disqualify Mr. Philip Strother filed on September 1, 2015.
7. On November 18, 2015, the Board issued an order (the “November 18 order”) disqualifying Mr. Strother and requiring Applicant to perform a number of actions including outlining what steps would be taken to screen Mr. Strother from information and documents. The Board stated that the “proceedings otherwise remain suspended”. Additionally, the Board acknowledged and granted the extension.
8. To date, Applicant has still not outlined what steps have been taken and put in place to screen Mr. Strother in order to comply with the November 18 order.
9. Additionally, the Motion for Default Judgment is still pending and is unresolved.
10. On June 23, 2016, Opposers wrote a letter to Applicant addressing the improperly filed Motion to Compel Discovery and requested Applicant to withdraw the improper motion.
11. To date, Opposers have had no response of any kind from Applicant on the June 23rd letter and no withdrawal has been filed.

II. APPLICANT'S MOTION IS IMPROPER--THE PROCEEDINGS ARE SUSPENDED

Applicant served a First Set of Discovery requests in these proceedings on July 20, 2015. The parties stipulated to an extension to respond to Applicant's discovery requests until September 10, 2015. On September 8, 2015, the Board issued an order suspending the proceedings pending its decision on the Motion to Disqualify Applicant's counsel. The Board's November 18 order disqualifying Mr. Strother stated that the "proceedings otherwise remain suspended" and provided time for Applicant to comply with the November 18 order. Applicant has yet to comply with the November 18 order. Further, no subsequent Board order has lifted the suspension. Therefore, the proceedings were suspended prior to Opposers' deadline to respond of September 10, 2015 and have remained suspended, largely due to Applicant's failure to comply with Board orders and refusal to act. In view of the suspension of proceedings, Opposers are not required to turn over discovery at this time. Applicant's Motion to Compel Discovery is improper as contrary to the orders of suspension and should be denied.

III. APPLICANT'S MOTION IS IMPROPER UNDER 37 C.F.R. §2.127(d)

Applicant's Motion to Compel Discovery is similarly improper as contrary to 37 C.F.R. §2.127(d). According to the plain language of 37 C.F.R. §2.127(d), the filing of any motion which is potentially dispositive of the proceeding results in a suspension of the proceeding by the Trademark Trial and Appeal Board "with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise specified in the Board's suspension order." To date, Applicant has still not complied with the November 18 order: for this and additional reasons stated in the motion, Opposers' filed a Motion for Default Judgment on May 17, 2016. The Board has made no decisions on the Motion for Default Judgment; therefore, pursuant to 37 C.F.R. §2.127(d) alone, the consolidated oppositions would be suspended pending the Board's decision on the Motion for Default Judgment. Applicant's Motion to Compel Discovery is therefore improper under 37 C.F.R. §2.127(d).

IV. APPLICANT'S MOTION IS IMPROPER FOR FAILURE TO MEET AND CONFER

Applicant's Motion to Compel Discovery was also filed without satisfying the meet and confer obligations set forth in 37 C.F.R. §2.120(e). Applicant states in its motion that "Applicant has made a good faith effort to resolve;" however, Opposers maintain that there was no effort, let alone a "sincere" one, to attempt to resolve this matter prior to filing the motion. Applicant sent a single email demanding discovery, sent at time when no discovery was due. There was not even the simplest of courteous or professional follow-up. While Opposers stand ready and willing to participate in further discovery, Opposers believe that the orders of suspension and 37 C.F.R. §2.127(d) prevent it. Had Applicant simply picked up the phone, Opposers would have informed Applicant that the proceedings were in fact suspended and would have explained all of the foregoing.

V. CONCLUSION

For all the reasons stated above, Applicant's Motion to Compel Discovery filed June 20, 2016 is improper.

WHEREFORE Opposers respectfully request that Applicant's Motion to Compel be denied without prejudice.

Date: July 5, 2016

Respectfully submitted,



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CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby certifies that on this 5th day of July 2016, the foregoing *OPPOSERS' MOTION FOR LEAVE TO FILE BRIEF AND BRIEF* was deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website at <http://estta.uspto.gov/>.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of July 2016, the foregoing *OPPOSERS' MOTION FOR LEAVE TO FILE BRIEF AND BRIEF* was served upon Applicant by delivering a true and correct copy of same to counsel for Applicant electronically and via first class mail, as follows:

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Date: July 5, 2016



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