UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: September 30, 2016

Opposition Nos. **91215114 (parent)**
91216395
91218094

Upper Shirley Vineyards, LLC and Shirley Plantation LLC

v.

Stillhouse Vineyards, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

This consolidated matter comes up on Opposers' motion to compel discovery (filed August 19, 2015) and motion for default judgment (filed May 17, 2016). It is noted that Applicant filed its own motion to compel discovery on June 20, 2016, but subsequently (on July 12, 2016) withdrew its motion without prejudice in view of the continued suspension of these proceedings pending disposition of Opposers' motion to compel. *See Decision Granting In Part and Denying In Petition for Disqualification*, 22 TTABVUE 6. In view of this withdrawal, Applicant's motion to compel and filings relating thereto will be given no consideration.

Similarly, Opposers' motion for default judgment will be given no consideration as it too was filed during the suspension period.[1]

Opposers' Motion to Compel

Opposers' motion seeks to compel supplementation of Applicant's responses to Opposers' first sets of interrogatories and document requests. Pursuant to Rule 2.120(e)(1), a motion to compel must be supported by a written statement from the moving party that it has made a good faith effort, by conference or correspondence, to resolve with the other party the issues presented in its motion, and that it has been unable to reach agreement. In reviewing Opposers' motion and the circumstances that led to its filing, the Board does not find that sufficient efforts were made by Opposers to resolve the dispute that is the subject of the motion prior to Opposers seeking Board intervention.

It is noted that Opposers dispatched a deficiency letter to Applicant on May 19, 2015. Shortly thereafter on June 8, 2015, the parties held a telephone conference with the Board to discuss the possibility of utilizing ACR to resolve these proceedings. The Board suspended proceedings and allowed the parties until July 8, 2015, to discuss and file an ACR stipulation with the Board. Opposers filed the stipulation with the Board on July 9,

[1] It should be noted, however, that even if Opposers' motion had been considered by the Board, it would necessarily be denied as there is no basis for moving for default judgment under Fed. R. Civ. P. 55 as against a party that has already entered a responsive pleading.

2015, and the Board approved the stipulation and resumed proceedings on August 4, 2015.

During this time, most of the email correspondence referenced by Opposers in their motion to compel concerned ACR and there was only a single email from July 22, 2015, wherein Opposers advised Applicant that they were "still waiting for your responses to our May 19th request. …Please let us know when we can expect your response." *Motion to Compel*, Exh. J, 18 TTABVUE 59. This appears to be the extent of Opposers' good faith efforts to resolve the parties' discovery dispute. Although Opposers claim that they attempted to reach Applicant's counsel by telephone on June 4, 2015, but were unsuccessful, Opposer's follow-up email that same day merely confirms that Opposers sought to contact Applicant to discuss ACR rather than any outstanding discovery. *See id.*, Exh. H, 18 TTABVUE 54. Indeed, there is nothing to suggest that Opposers made any further effort to resolve the discovery dispute following the June 4 email and leading up to the filing of Opposers' motion to compel on August 19, 2015, even though it appears the parties conferred regarding the various stipulations made in the parties' ACR proposal.

The point of a good faith effort "is to investigate the possibility of resolving the dispute. [Thus,] the good faith efforts of the parties should be directed to understanding differences and actually investigating ways in which to resolve the dispute[;]establishing [good faith] necessitates that the inquiring

party engage in additional effort toward ascertaining and resolving the substance of the dispute." *Hot Tamale Mama … And More, LLC v. SF Inv., Inc.*, 110 USPQ2d 1080, 1081 (TTAB 2014). As such, Board intervention should only be sought in relation to those discovery disputes that the parties have been unable to resolve ***despite their best efforts to do so***. Under this standard, the Board finds that Opposers have failed to discharge the good faith requirement of Trademark Rule 2.120(e)(1) and hereby **DENIES** Opposers' motion to compel.

In the interest of moving these proceedings forward, to the extent that any discovery issues remain concerning any discovery propounded by either party, the parties are hereby ordered to confer regarding such issues within **FIFTEEN DAYS** of the mailing date of this order, with responses, if none have been made, and supplementation, if responses have already been made but determined to be insufficient, to occur within **TWENTY DAYS** of the conference.[2] Any issues that remain, despite the parties' good faith efforts, may be raised by way of a motion to compel by the requesting party.[3] The parties are reminded of their mutual obligations "to make a good faith effort to seek only such discovery as is proper and relevant," *Sentrol, Inc. v. Sentex*

[2] It is expected that each party, in preparation for the meet and confer, will research the merits of their position and will stand ready to present case law and any other authority in support of their position during the meet and confer.

[3] To be clear, any such motion to compel will not be considered without a telephonic conference between the parties discussing each and every discovery request and/or response/production in dispute.

Sys., Inc., 231 USPQ 666, 667 (TTAB 1986), and "to participate in good faith in [the requesting party's] efforts to resolve the matter." *Amazon Techs. Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009). Thus, any future failure by either party to cooperate or to otherwise act in good faith in the discovery process will be looked upon by the Board with extreme disfavor.

Applicant's Legal Representation

Following the disqualification of Philip Carter Strother, Esq., of Strother Law Offices, PLC, as counsel for Applicant, the subsequent attorney of record Jarrod A. Thomas, Esq., also of Strother Law Offices, PLC, departed the firm and apparently discontinued his representation of Applicant. *See Opposers' Notice*, 23 TTABVUE 3. On May 30, 2016, a change of correspondence address was filed on behalf of Applicant identifying M. Justin Griffin, Esq., of Virginia Small Business Law, PLLC, as counsel. Attorney Griffin is recognized as Applicant's counsel and Applicant's correspondence information has been accordingly updated.

Update to ACR

In view of the additional consolidation of Opposition No. 91218094 with Opposition Nos. 91215114 and 91216395 subsequent to the parties' ACR proposal and the Board's granting thereof, the parties are allowed until **THIRTY DAYS** from the mailing date of this order to submit a revised ACR stipulation incorporating Opposition No. 91218094 and proposing an updated ACR schedule.

Proceedings are otherwise **SUSPENDED**.

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