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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: September 11, 2017

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

*Upper Shirley Vineyards, LLC and
Shirley Plantation LLC*

v.

Stillhouse Vineyards, LLC

Opposition No. **91218094**

*Shirley Plantation LLC and
Charles H. Carter*

v.

Stillhouse Vineyards, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

On September 8, 2017, at the request of Opposers, the Board held a telephone conference to resolve certain discovery related issues between the parties. Michael W. Vary, Esq. and Kristen M. Hoover, Esq., of McCarthy, Lebit, Crystal & Liffman Co., LPA appeared as counsel for Opposers and Justin Griffin, Esq., of Virginia Small Business Law, PLLC appeared as counsel for Applicant.

As last reset in the Board's order of August 11, 2017, discovery was scheduled to close on October 10, 2017. Opposers contend that there are deficiencies in

Applicant's production of documents, that Opposers attempted to meet and confer with Applicant concerning these deficiencies but were refused unless Opposers first produced documents in response to Applicant's document requests, and that Applicant's supplemental production is necessary prior to the scheduled deposition of Applicant's representative on September 20, 2017.

For its part, Applicant contends that Opposers have over-designated their discovery responses as confidential thereby limiting counsel's ability to communicate with Applicant and effectively prepare Applicant's case, that such over-designation was not in good faith, that counsel for Opposers has refused to put Opposers' discovery concerns in writing despite repeated requests from Applicant, and that Opposers' discovery responses to Applicant's discovery requests are overdue.

As noted during the conference, each party has a duty to make a good faith effort to satisfy the discovery needs of its adversary as well as a duty to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. A party's failure to cooperate as such in the discovery process is viewed by the Board with extreme disfavor.

Here, the parties have given little reason why they cannot work out their discovery dispute which, at this point, is more about scheduling and a willingness to cooperate and communicate with one another rather than any substantive aspect of the parties' discovery requests/responses or Opposers' designations of

confidentiality¹ since the parties have yet to meet and confer on any perceived deficiencies. Since the parties are far from concluding discovery, it appears necessary to modify the current ACR schedule to impose a more detailed discovery schedule to bring discovery to an orderly close and usher these proceedings into the final briefing stage of ACR. To that end, the parties have agreed to and the Board has approved the following discovery schedule:

Applicant to propound additional written discovery requests	9/8/2017
Opposers to produce outstanding documents for Applicant	9/15/2017
Deadline for first meet and confer on outstanding discovery	9/22/2017
Exchange of outstanding discovery responses by parties and Opposers' responses to Applicant's additional discovery requests of 9/8/2017 due	10/13/2017
Deadline to propound follow up discovery	10/27/2017
Deadline for depositions	12/11/2017
Deadline for final meet and confer on outstanding discovery	12/22/2017
Deadline for motion to compel	1/8/2018

As noted during the conference, should neither party file a motion to compel, January 8, 2018, will correspond to the close of discovery in the parties' ACR schedule and will serve as the date from which Opposers are to calculate the due date for the submission of their summary judgment brief and supporting evidence as well as the remaining dates in the ACR schedule.

¹ In this regard, Opposers' concern that documents produced and information provided in response to Applicant's discovery requests will not be sufficiently shielded from Applicant because counsel for Applicant is located in the same building as Applicant, despite counsel's representation that neither he nor his firm is related to Applicant, is, without more, unwarranted and does not justify designating non-confidential information as confidential. As confirmed by Opposers' counsel, Opposers will review and redesignate their discovery responses and documents as necessary. After redesignation, should Applicant wish to challenge any remaining designations, Applicant is expected to initiate the meet and confer process by providing written notice of each challenged designation by specifically identifying the confidential information or restriction on access in dispute and describing the basis for each challenge in the written notice. Of course, Opposers, as the designating parties, bear the ultimate burden of proving that the information should be protected.

Opposition Nos. 91215114 (parent), 91216395 and 91218094

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