UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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mt/gcp

Mailed: March 29, 2016

Opposition No. 91216061

RGB Systems, Incorporated

v.

Axtron Global LLC

George C. Pologeorgis,
Administrative Trademark Judge:

This proceeding now comes before the Board for consideration of Opposer's motion (filed January 19, 2016) to compel responses to Opposer's first set of interrogatories and first set of document requests, as well as deem admitted Opposer's admission requests. Applicant did not file a brief in response thereto within the time provided under Trademark Rule 2.127(a).

Pursuant to Trademark Rule 2.120(e)(1), Opposer's motion to compel 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

[1] The Board also 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).

to Opposer's interrogatory and document requests on the merits, and must respond in full and without objection (except for objections based upon privilege), since 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. Trademark Rule 2.127(a).

Applicant is allowed until **April 28, 2016** in which to serve upon Opposer full and complete answers to all requests for interrogatories and all requests for documents and things, **without objection** (except for objections based upon privilege). 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 by **April 28, 2016**. 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 regard to Opposer's admission requests, the Board notes that the motion to compel procedure is not applicable to requests for admission. *See* TBMP § 523.01 (2015). Notwithstanding, admission requests are deemed admitted by operation of Fed. R. Civ. P. 36(b) if the responding party fails to respond timely to the admission requests, as is the case here.

Trial Schedule

Proceedings are resumed. Discovery is closed. Remaining trial dates are reset as follows:[2]

Plaintiff's 30-day Trial Period Ends	**6/11/2016**
Defendant's Pretrial Disclosures Due	**6/26/2016**
Defendant's 30-day Trial Period Ends	**8/10/2016**
Plaintiff's Rebuttal Disclosures Due	**8/25/2016**
Plaintiff's 15-day Rebuttal Period Ends	**9/24/2016**

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

[2] The Board notes that Opposer's motion to compel indicates that Opposer has already served its pretrial disclosures on Applicant.