UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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EJW/ey

Mailed: October 14, 2015

Opposition No. 91219403 (parent)
Opposition No. 91221395

Margaritaville Enterprises, LLC

v.

Rachel A Bevis DBA Rachel A Bevis

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Applicant's Motion to Compel

This case now comes up for consideration of Applicant's contested motion (filed September 29, 2015) to compel Opposer's pretrial disclosures, and on Opposer's cross-motions to strike a portion of Applicant's motion and for sanctions. On October 13, 2015, the Board, by the assigned Interlocutory Attorney (Elizabeth J. Winter), conducted a telephone conference with the parties (Rachel Bevis, *pro se*, Applicant; and Joel Feldman of Greenberg Traurig LLP for Opposer) regarding the motions. This order summarizes the conference and sets forth the Board's orders regarding the parties' motions.

As last reset in the Board's order mailed on June 11, 2015,[1] the due date for serving pretrial disclosures was set to November 29, 2015. Applicant asserts that

[1] The Board's order mailed on August 17, 2015, retained the trial dates set forth in the June 11, 2015 order.

Opposer's pretrial disclosures are late because those disclosures were due on September 10, 2015. Applicant also asserts that this is not the first time that the deadline requirements have not been met by Opposer.

As pointed out by Opposer in its response, Applicant is apparently relying on the original trial schedule in this proceeding, which was set forth in the institution order mailed on November 19, 2014. The trial schedule in that order indeed set forth September 10, 2015 as the due date for serving pretrial disclosures. However, the trial schedule in these proceedings has long since been changed to the schedule set forth in the Board's June 11, 2015 order, which also discussed the parties' discovery conference and the consolidation of these proceedings. Inasmuch as Applicant's motion is based on an inoperative schedule and pretrial disclosures are not yet due, Applicant's motion is premature and is **denied**.

Turning to Opposer's cross-motions, the Board **denied** Opposer's motion to strike Applicant's assertion that Opposer had been delinquent with respect to two deadlines in this matter. Nonetheless, the Board finds no information in the record to indicate that Opposer has been delinquent with respect to any deadline in these proceedings. First, as explained above, pretrial disclosures are not yet due, therefore, Opposer has not failed to timely serve those disclosures. As to the alleged second incident, Opposer recalled that during a prior teleconference, Applicant had expressed concern regarding the date on which Opposer's responses to Applicant's discovery must be served. Specifically, Applicant thought that Opposer's discovery responses must be *received* by Applicant by the applicable deadline. In view thereof,

the Board emphasized that discovery responses must only be *served* (*i.e.*, mailed or otherwise delivered under Trademark Rule 2.119) by the applicable deadline; therefore, as long as Opposer mailed its responses by the appropriate deadline, its responses were not late.

The Board warned Applicant to be careful as to allegations she makes in her motions or other presentations to the Board. **Applicant is also reminded that under Rule 11 of the Federal Rules of Civil Procedure, Applicant is certifying that all claims and other legal contentions asserted in a motion are warranted by existing law or by a nonfrivilous argument for the extension, modification, or reversal of existing law**. *See* Fed. R. Civ. P. 11. *See also Central Mfg. Inc. v. Third Millennium Tech., Inc.*, 61 USPQ2d 1210 (TTAB 2001) ("the Rule 11 certification standard for a party is the same as that for an attorney.").

With respect to Opposer's cross-motion for sanctions, said motion is **granted**. Inasmuch as Applicant has filed two motions in these proceedings without a proper basis, Applicant was **ORDERED** to first contact the assigned Interlocutory Attorney to obtain her consent before filing any unconsented motion with the Board. *See Carrini, Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067 (TTAB 2000).

Initial Disclosures for 91221395

Applicant was **ORDERED** to serve on Opposer's counsel within FIFTEEN (15) DAYS from the mailing date of this order her initial disclosures for the child proceeding, Opposition No. 91221395.

Proceedings Suspended

Proceedings are **SUSPENDED** pending disposition of Opposer's motion for summary judgment (filed September 24, 2015). Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).

In addition to tolling the time to respond to outstanding discovery requests, suspension of proceedings tolls the time for parties to make required disclosures. *See* TBMP § 528.03.

The motion for summary judgment will be decided in due course.

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