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

Proceeding	91222019
Party	Plaintiff IAC Search & Media, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IAC SEARCH & MEDIA, INC.,

Opposer,

vs.

STEVE FARLAND,

Applicant.

Opposition No.: 91222019

Application No.: 86/368,333

Mark: ASK THE CHAIRMAN

Filing Date: August 15, 2014

Published for Opposition: January 20, 2015

**OPPOSER IAC SEARCH & MEDIA, INC.'S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

A. INTRODUCTION

On February 22, 2016, Opposer IAC Search & Media, Inc. ("Opposer") filed its *Opposer IAC Search & Media's Motion for Summary Judgment* ("SJ Motion") alleging that there are no genuine issues of material fact and requesting that the Trademark Trial and Appeal Board ("the Board") refuse registration of Applicant Steve Farland's ("Applicant") ASK THE CHAIRMAN mark. Although discovery in this matter closed on January 25, 2016, on March 1, 2016 Applicant served on Opposer *Applicant's First Set of Interrogatories to Opposer* ("Applicant's Interrogatories"), which it subsequently filed with the Board on March 2, 2016. Further, on March 2, 2016, Applicant served its *Objection to Opposer's Motion for Summary Judgment* ("Opposition") on Opposer and subsequently filed the same with the Board on March 3, 2016. Because Applicant's Interrogatories are untimely, are not responsive to the SJ Motion and contravene 37 C.F.R. 2.127(d), Opposer hereby requests that the Board strike

Applicant's Interrogatories and issue an order stating that Opposer need not respond. Further, because Applicant's Opposition does not raise any genuine issues of material fact, Opposer hereby requests that the Board grant Opposer's SJ Motion in its entirety.

B. APPLICANT'S INTERROGATORIES SHOULD BE STRICKEN AS UNTIMELY AND IN VIOLATION OF 37 C.F.R. 2.127(d).

1. Applicant's Interrogatories Were Served After Discovery Closed

"The traditional discovery devices, [including] interrogatories, are available for use only during the discovery period." Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 403.01 (June 2015). Further, "[a] party has no obligation to respond to an untimely request for discovery." *Id.* Discovery in this proceeding closed on January 25, 2016. (TTABVUE No. 2, Notice and Trial Dates Sent; Answer 06/29/2015 Due, p. 3.) Applicant did not serve Opposer with Applicant's Interrogatories until March 1, 2016, more than one month after the close of discovery. (TTABVUE, No. 12, D Opp/Resp to Motion, Cert. of Service.) Applicant's Interrogatories are, therefore, untimely and Opposer is under no obligation to respond.

To the extent that Applicant contends that discovery closed or should have closed on February 24, 2016, Opposer disagrees. On January 11, 2016, Opposer inadvertently filed a Motion for an Extension of Answer or Discovery or Trial Periods with Consent ("Motion for Extension"). (TTABVUE, No. 6, P Mot for Ext W/ Consent.) Although the Motion for Extension was initially granted, setting the deadline for the close of discovery as February 24, 2016 (*Id.*), Opposer informed the Board by motion ("Motion to Reset") on January 22, 2016 that the Motion for Extension should have been filed in another proceeding. Opposer also withdrew the Motion for Extension and asked that the Board vacate its January 11, 2016 Order

granting the Motion for Extension. (TTABVUE, No. 8, P Mot for Ext W/O Consent.) Opposer served the Motion for Reset on Applicant on January 22, 2016. (Id.)

On February 1, 2016, with no opposition from Applicant, the Board granted Opposer's Motion to Reset, reset the deadlines to those established in its initial Notice and Trial Dates, and specifically reset the close of discovery to January 25, 2016. (TTABVUE, No. 9, Board's Order; Withdrawal of Ext Granted.) Applicant subsequently requested that the Board maintain the extended dates set forth in the Motion for Extension, but the Board did not grant this motion. (TTABVUE, No. 10, D Resp to Bd Order/Inquiry.) Thus, as of February 1, 2016, the deadline for completion of discovery was January 25, 2016 and the March 1, 2016 service of Applicant's Interrogatories was untimely.

Notably, even if Applicant's motion to maintain the extended February 24, 2016 discovery deadline had been granted, its service of Applicant's Interrogatories on March 1, 2016 still occurred after the close of discovery.

For the foregoing reasons, Applicant's Interrogatories are untimely under TBMP § 403.01 and Opposer requests that the Board issue an order striking Applicant's Interrogatories in their entirety and stating that Opposer need not respond.

2. Applicant's Interrogatories Violate 37 C.F.R. 2.127(d)

When a motion for summary judgment is filed, "the case will be suspended 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." 37 C.F.R. 2.127(d). Here, once Opposer filed its SJ Motion, no discovery or documents—other than a response to the SJ Motion—could have been served. Applicant's Interrogatories, served after the SJ Motion was filed, are untimely under 37 C.F.R. 2.127(d). Applicant's Interrogatories further violate 37

C.F.R. 2.127(d) because they are not germane to the SJ Motion. Accordingly, Opposer requests that Applicant's Interrogatories be stricken in their entirety without requiring a response from Opposer. Opposer further requests that the Board issue an order suspending this proceeding until it has issued a decision on Opposer's SJ Motion.

C. APPLICANT DID NOT RAISE ANY ISSUES OF MATERIAL FACT

Applicant failed to raise any genuine issues of material fact in its Opposition to Opposer's SJ Motion. (TTABVUE, No. 13, Answer.) Instead, Applicant merely concludes that Opposer's SJ Motion should not be granted and rests this conclusion on largely irrelevant statements. Accordingly, Applicant failed to rebut Opposer's contention that there are no genuine issues of material fact, and Opposer respectfully requests that its SJ Motion seeking refusal of registration of Applicant's trademark ASK THE CHAIRMAN, U.S. App. Ser. No. 86/368,333, be granted in its entirety.

D. CHANGE OF POWER OF ATTORNEY

Opposer notes that during the pendency of this Opposition, it has retained new counsel to represent it in this matter. Pursuant to TBMP § 116.01 and 37 C.F.R. 2.17(c), Opposer respectfully requests that the previous power of attorney be revoked and that the undersigned be granted power of attorney.

E. CONCLUSION


For the foregoing reasons, Opposer respectfully requests that the Board (1) issue an order finding Applicant's Interrogatories untimely and in violation of 37 C.F.R. 2.127 and stating that Opposer need not respond; (2) suspend this proceeding until it has rendered a decision on Opposer's SJ Motion; (3) grant Opposer's SJ Motion in its entirety and refuse

registration of Applicant's trademark ASK THE CHAIRMAN, U.S. App. Ser. No. 86/368,333;
and (4) recognize the undersigned as having power of attorney for Opposer in this matter.

Respectfully submitted,

BAKER & HOSTETLER LLP

Dated: New York, NY
March 16, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER IAC SEARCH & MEDIA, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT has been served on Applicant by mailing said copy on March 16, 2016, via First Class Mail, postage prepaid to:

**Stephen Farland
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Frances Policastro