

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

vW

Mailed: April 27, 2017

Opposition No. 91229583

Monster Energy Company

v.

NutraClick, LLC

Elizabeth A. Dunn, Attorney (571-272-4267):

On March 24, 2017, Opposer filed a motion to compel Applicant's responses to Opposer's first set of interrogatories and first set of requests for production of documents (collectively "the discovery requests"). Applicant did not file a brief in response to Opposer's motion within the time provided under Trademark Rule 2.127(a).

Opposer's motion is timely and Opposer has demonstrated a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention. Trademark Rule 2.120(f)(1).

In its motion to compel, Opposer seeks an order directing Applicant to respond to Opposer's discovery requests. In view of Applicant's failure to respond to the motion, the motion is **granted** as conceded. See Trademark Rule 2.127(a); TBMP § 502.04.

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 its merits. Because Applicant neither timely responded nor objected to Opposer's discovery requests, Applicant has waived its right to object to the discovery requests on the merits, and must respond in full and without objection ((except for objections based upon privilege). *See No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); *see also* TBMP § 405.04(a) and 406.04(a).

Accordingly, Applicant must, within **THIRTY (30) DAYS** from the mailing date of this order, serve upon Opposer full and complete answers to each of Opposer's discovery requests, without objection on the merits, and must produce responsive, non-privileged documents within its possession, custody, or control within the same thirty days.

In the event that Applicant fails to serve full responses as ordered herein, Opposer's remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(g).

Proceedings are resumed and dates are reset as follows.

Expert Disclosures Due	5/27/2017
Discovery Closes	6/26/2017
Plaintiff's Pretrial Disclosures Due	8/10/2017
Plaintiff's 30-day Trial Period Ends	9/24/2017
Defendant's Pretrial Disclosures Due	10/9/2017
Defendant's 30-day Trial Period Ends	11/23/2017
Plaintiff's Rebuttal Disclosures Due	12/8/2017
Plaintiff's 15-day Rebuttal Period Ends	1/7/2018

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, matters in evidence, the manner and timing of taking testimony, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).