

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

Baxley

Mailed: January 22, 2018

Opposition No. 91231574

Institut National de l'Origine et de la Qualite

v.

The Osage Group

Andrew P. Baxley, Interlocutory Attorney:

Pursuant to the Board's September 26, 2017 order, proceedings herein were suspended for settlement negotiations through December 25, 2017 with Opposer's pretrial disclosures due December 26, 2017. Notwithstanding such suspension, Opposer, on November 21, 2017, filed a combined motion to compel discovery and to extend the discovery period for Opposer only.

The record herein indicates that Opposer served discovery requests on April 25, 2017; that the parties agreed to extend Applicant's time to serve discovery responses shortly after the May 25, 2017 due date therefor and twice more, in "late June 2017" and "September 2017;" and that the parties sought and received a ninety day suspension on September 26, 2017, which ran through December 25, 2017. Because the Board expects parties to focus on settlement efforts, rather than moving forward with trial preparation, during a suspension for settlement negotiations, the Board

deems the suspension for settlement negotiations to have tolled Applicant's time to serve discovery responses until after the end of the suspension period.

Accordingly, the motion to compel is denied as premature.¹ Applicant is allowed until thirty days from the mailing date set forth in this order to serve discovery responses and to produce documents responsive to Opposer's document requests.²

The discovery period closed in this case on August 13, 2017. Accordingly, the motion to extend discovery is actually one to reopen discovery. *See* Fed. R. Civ. P. 6(b)(1)(B); TBMP § 509.01(b). That motion is granted as conceded. *See* Trademark Rule 2.127(a). The discovery period is reopened for Opposer only. Dates herein are reset as follows.

Opposer's Expert Disclosures Due	2/21/2018
Opposer's Discovery Closes	3/23/2018
Plaintiff's Pretrial Disclosures Due	5/7/2018
Plaintiff's 30-day Trial Period Ends	6/21/2018
Defendant's Pretrial Disclosures Due	7/6/2018
Defendant's 30-day Trial Period Ends	8/20/2018
Plaintiff's Rebuttal Disclosures Due	9/4/2018
Plaintiff's 15-day Rebuttal Period Ends	10/4/2018
Plaintiff's Opening Brief Due	12/3/2018
Defendant's Brief Due	1/2/2019
Plaintiff's Reply Brief Due	1/17/2019

¹ A suspension for settlement negotiations is subject to either party's right to request resumption at any time. *See* TBMP § 510.02(a). Instead of filing a motion to compel, Opposer should have filed a motion to resume proceedings and to reopen discovery to allow Applicant time to serve discovery responses prior to the close of the reopened discovery period. *See Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986).

² In view of such denial, this order is not one relating to discovery, as contemplated by Trademark Rule 2.120(h)(1). *See* TBMP § 527.01(a). Thus, if Applicant fails to comply with this order, Opposer's remedy is to file a renewed motion to compel.

Request for Oral Hearing (optional) Due 1/27/2019

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, the manner and timing of taking testimony, matters in evidence, 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).