

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

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Mailed: October 21, 2017

Opposition No. 91232419

Dr Pepper / Seven Up, Inc.

v.

Asmodus Inc.

Ann Linnehan, Interlocutory Attorney

On August 22, 2017, Opposer filed a motion to compel discovery. Applicant did not file a brief in response thereto within the time provided under Trademark Rule 2.127(a).

Opposer seeks an order directing Applicant to respond to discovery requests.

The motion to compel discovery is hereby granted as conceded. *See* Trademark Rule 2.127(a); TBMP § 502.04.

A party that fails to respond to interrogatories or document requests during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); TBMP § 403.03.

Accordingly, Applicant is directed to serve, within THIRTY DAYS of the mailing date of this order, responses to Opposer's document requests and interrogatories.

Applicant must respond in full and without objection on the merits thereof inasmuch as Applicant failed either to timely respond or to object to said discovery requests. *Id.*

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(h)(1); TBMP § 411.05.

Proceedings are resumed. Discovery, disclosure, and trial dates are reset as indicated below:

Expert Disclosures Due	12/22/2017
Discovery Closes	1/21/2018
Plaintiff's Pretrial Disclosures Due	3/7/2018
Plaintiff's 30-day Trial Period Ends	4/21/2018
Defendant's Pretrial Disclosures Due	5/6/2018
Defendant's 30-day Trial Period Ends	6/20/2018
Plaintiff's Rebuttal Disclosures Due	7/5/2018
Plaintiff's 15-day Rebuttal Period Ends	8/4/2018
Plaintiff's Opening Brief Due	10/3/2018
Defendant's Brief Due	11/2/2018
Plaintiff's Reply Brief Due	11/17/2018
Request for Oral Hearing (optional) Due	11/27/2018

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).