UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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mbm

Mailed: November 14, 2017

Opposition No. 91235147

Fabricut, Inc.

v.

Noel Edward Harvey

Mary Beth Myles, Interlocutory Attorney:

This proceeding now comes up on Opposer's motion (filed November 13, 2017) to compel Applicant's responses to discovery and Applicant's production of documents.

To the extent Opposer seeks an order compelling Applicant's responses to interrogatories and Applicant's production of documents, the motion is timely, as it was filed prior to the deadline for pretrial disclosures. *See* Trademark Rule 2.120(f)(1). As a threshold matter, however, the Board will evaluate whether Opposer has satisfied its obligation under Trademark Rule 2.120(f)(1) to make a good faith effort to resolve the discovery dispute herein prior to seeking Board intervention. Trademark Rule 2.120(f)(1) provides in pertinent part:

> A motion to compel…must be supported by a showing from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences.

The Board finds that, based on the record, Opposer has not satisfied its obligation under Trademark Rule 2.120(f)(1) to make a good faith effort to resolve the discovery dispute herein prior to seeking the Board's intervention. Specifically, Opposer indicates that (1) Applicant's responses to discovery were due November 6, 2017; (2) Opposer sent an email to Applicant on November 7, 2017 advising that responses were overdue and providing until November 10, 2017 for Applicant to serve responses; (3) Applicant responded on November 8, 2017 and stated that Applicant was "working on the responses." (5 TTABVUE 32); (4) Opposer filed its motion to compel on November 13, 2017. Opposer does not contend that it responded to Applicant's November 8, 2017 email or otherwise attempted any further contact after the November 8, 2017 email.

A single email is insufficient to satisfy the good faith effort requirement under Trademark Rule 2.120(f)(1). *See Hot Tamale Mama…and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080, 1081-82 (TTAB 2014) (discussing generally good faith effort requirement; finding single email exchange between the parties insufficient to establish good faith effort as it was incumbent upon applicant to make at least one additional inquiry). Here, although Applicant's responses to discovery were outstanding, Applicant did indicate that it would be providing responses. Opposer's single email, without more, such as a follow-up email or telephone call, is insufficient to satisfy the requirement of Trademark Rule 2.120(f)(1) that Opposer make "a good faith effort" to resolve the issues raised in Opposer's motion. *See Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626, 632 (TTAB 1986) ("applicant

failed to meet the prerequisite imposed by Trademark Rule 2.120[e]" where the only evidence of applicant's efforts submitted in support of the motion to compel was a single letter to opposer complaining of the insufficiency of opposer's responses).

The parties are reminded that the purpose of discovery is to advance the case so that it may proceed in an orderly manner within reasonable time constraints. To this end, the parties must adhere to the strictures set forth in *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666 (TTAB 1986), and repeated below:

> [E]ach party and its attorney has a duty not only to make a good faith effort to satisfy the discovery needs of its opponent but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the case. Moreover, where the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement. Inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.

Under the circumstances of this proceeding, the Board finds that Opposer failed to satisfy (or failed to articulate its satisfaction of) the good faith effort requirement of Trademark Rule 2.120(f)(1) for the reasons set forth above. Accordingly, Opposer's motion to compel is **DENIED without prejudice**.

In consequence of the above, the parties are directed to work together to resolve their discovery problems, in the spirit of good faith and cooperation, which is required of all litigants in Board proceedings.

Dates remain as set in the Board's June 20, 2017 institution order.