UNITED STATES PATENT AND TRADEMARK OFFICE
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Baxley

April 1, 2020

Opposition No. 91238706

Xiang Yin He Chang Tuan Inc.

v.

Edison Chinese Chorus Inc. AKA Xiang Yin Chorus or Xiang Yin He Chang Tuan

Andrew P. Baxley, Interlocutory Attorney:

In a January 29, 2020 order, 38 TTABVUE, the Board denied the parties' cross-motions for summary judgment and reset dates.[1] On March 30, 2020, Applicant filed (1) a motion for judgment on the pleadings, 39 TTABVUE, (2) a first motion to compel responses to the second set of interrogatories that it served on June 19, 2019, 40 TTABVUE, and (3) a second motion to compel service of corrected sets of document

[1] Proceedings herein were suspended between June 26, 2019 and January 29, 2020 pending the Board's decision on the parties' cross-motions for summary judgment. *See* Trademark Rule 2.127(d). Although not expressly stated in the January 29, 2020 order, the Board generally allows parties until thirty days from the date of resumption to serve responses to any outstanding written discovery requests. *Cf.* Trademark Rule 2.120(a)(3) (responses to discovery requests are due by thirty days from the date of service). Accordingly, the parties were allowed until February 28, 2020 to respond to any written discovery requests that were outstanding at the time the January 29, 2020 order was issued.

requests, 41 TTABVUE[2]. Opposer responded to the second motion to compel. The Board, in its discretion, elects to decide the motions to compel now.

The Board finds that Applicant did not make good faith efforts to resolve the parties' disputes prior to filing the motions to compel, as required by Trademark Rule 2.120(f)(1). Applicant does not indicate that it made any effort to meet and confer with Opposer prior to filing the first motion to compel. *See Hot Tamale Mama...and More, LLC v. SF Invs., Inc.*, 110 USPQ2d 1080, 1081-82 (TTAB 2014). Accordingly, the first motion to compel is denied without prejudice.

With regard to the second motion to compel, Applicant's only efforts to resolve the parties' dispute consist of noting the typographical error at issue in both of Opposer's sets of document requests in Applicant's responses thereto. 41 TTABVUE 12 and 40. The Board expects Applicant to "engage in additional effort toward ascertaining and resolving the substance of the dispute." *Hot Tamale Mama...and More, LLC,* 110 USPQ2d at 1081. While the lack of a good faith effort provides a sufficient basis for denial of Applicant's second motion to compel, the Board also notes the following with regard to that motion.

The second motion to compel is based on an obvious typographical error that Opposer made in the preamble of its first and second sets of document requests. In both preambles, Opposer mistakenly referred to "Opposer Columbia Trading Corp. ('Columbia')." 41 TTABVUE 4 and 34. Opposer confirmed in its brief in response that

[2] Applicant's motions are not formatted in accordance with Trademark Rule 2.126(a). In particular, they are not double-spaced and do not appear to be in at least an 11-point font. The Board expects the parties to properly format their submissions in this case.

the references to Columbia Trading Corp. were indeed typographical errors. 43 TTABVUE 2.

"The Board expects each party to every case to use common sense and reason when faced with what the circumstances clearly show to be a typographical error." *Cadbury UK Ltd. v. Meenaxi Enter., Inc.*, 115 USPQ2d 1404, 1407 (TTAB 2015). Both sets of document requests are correctly captioned and otherwise identify the parties correctly throughout. 41 TTABVUE 4-11 and 34-39. Applicant clearly knew or should have known who was serving the document requests notwithstanding the obviously inadvertent reference to "Columbia Trading Corp." Moreover, Applicant served substantive responses to those document requests.[3] 41 TTABVUE 12-23 and 40-45. Based on the foregoing, the Board finds that requiring Opposer to serve corrected sets of its document requests is unnecessary, and the second motion to compel is denied.

Proceedings herein are **suspended** as of the March 30, 2020 filing of Applicant's motion for judgment on the pleadings. *See* Trademark Rule 2.127(d). Because that motion relies upon matters outside of the pleadings, it is actually a renewed motion for summary judgment and will be treated accordingly. *See* TBMP §§ 503.04 and 504.03 (2019). Remaining briefing of that motion is therefore due in accordance with Trademark Rule 2.127(e)(1). Any submission filed during the pendency of that motion which is not relevant thereto will receive no consideration.

[3] Applicant is reminded that it has an obligation to supplement or correct those responses as necessary. *See* Fed. R. Civ. P. 26(e)(1).