**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
General Email: TTABInfo@uspto.gov

Baxley

March 7, 2019

Opposition No. 91241706

*RLP Ventures, LLC*

*v.*

*The Skanner Foundation*

Andrew P. Baxley, Interlocutory Attorney:

Notwithstanding Applicant's failure to respond thereto, Opposer's motion (filed February 4, 2019) to compel discovery is denied without prejudice based on Opposer's failure to make a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention.[1] *See* Trademark Rule 2.120(f)(1).

The record indicates that, following Opposer's service of its discovery requests on September 20, 2018, Applicant's former attorneys withdrew from this proceeding on October 22, 2018, the last day on which Applicant could timely respond to those requests. *See* Trademark Rule 2.196. In a December 10, 2018 order, the Board allowed the parties until January 9, 2019 to serve responses to any outstanding written discovery requests. 7 TTABVUE 1.

[1] Although Applicant did not respond to that motion, the Board elects to decide that motion on the merits. *See* Trademark Rule 2.127(a); TBMP § 502.04.

Opposer re-sent its interrogatories and document requests on January 17, 2019 and requested responses thereto by January 21, 2019, 8 TTABVUE 41.[2] Opposer sent a follow-up letter on January 30, 2019, 8 TTABVUE 44, and filed its motion five days later.

In view of the withdrawal of Applicant's former attorney and the fact that more than four months remain in the discovery period when the motion to compel was filed,[3] the more reasonable course of action would have been for Opposer to hold off from filing its motion until both a full response period, i.e., thirty days from January 17, 2019, and allow time to make a good faith effort after the expiration of that response period had lapsed. *See Hot Tamale Mama...and More, LLC v. SF Inv., Inc.*, 110 USPQ2d 1080, 1082 (TTAB 2014). So allowing would have given Opposer ample time in which to obtain discovery from Applicant and take follow-up discovery prior to the close of the discovery period.

To the extent that Opposer seeks an order compelling initial disclosures, Opposer was allowed until thirty days from the September 18, 2018 due date for those initial disclosures, i.e., until October 18, 2018, to file a motion to compel initial disclosures. *See* Trademark Rule 2.120(f)(1). To the extent that Opposer requests a Board order barring Applicant from serving discovery requests in view of its failure to serves initial disclosures, that request is denied. Rather, by operation of Trademark Rule 2.120(a)(3), Applicant "must make its initial disclosures prior to seeking discovery."

[2] The weekend of January 19-21, 2019 was a holiday weekend. *See* Trademark Rule 2.196.
[3] Under the December 10, 2018 order, the discovery period was reset to close on June 14, 2019.

Proceedings herein are resumed. Applicant is allowed until **thirty days** from the date of this order to serve responses to Opposer's interrogatories and document requests. Remaining dates are reset as follows.

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| Expert Disclosures Due | 7/3/2019 |
| Discovery Closes | 8/2/2019 |
| Plaintiff's Pretrial Disclosures Due | 9/16/2019 |
| Plaintiff's 30-day Trial Period Ends | 10/31/2019 |
| Defendant's Pretrial Disclosures Due | 11/15/2019 |
| Defendant's 30-day Trial Period Ends | 12/30/2019 |
| Plaintiff's Rebuttal Disclosures Due | 1/14/2020 |
| Plaintiff's 15-day Rebuttal Period Ends | 2/13/2020 |
| Plaintiff's Opening Brief Due | 4/13/2020 |
| Defendant's Brief Due | 5/13/2020 |
| Plaintiff's Reply Brief Due | 5/28/2020 |
| Request for Oral Hearing (optional) Due | 6/7/2020 |

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).