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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91245118
Party	Plaintiff Audemars Piguet Holding SA
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Submission	Request for Reconsideration of Non-Final Board Order
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<b>Audemars Piguet Holding S.A.</b>	)	<b>IN THE UNITED STATES</b>
	)	<b>PATENT AND TRADEMARK OFFICE</b>
<b>Plaintiff/Opposer</b>	)	
	)	<b>TRADEMARK TRIAL AND APPEAL BOARD</b>
<b>v.</b>	)	
	)	
<b>Oakcoins</b>	)	<b>APPL. NO. 87/838,976</b>
	)	
<b>Defendant/Applicant</b>	)	<b>OPPOSITION NO. 91245118</b>
_____	)	

**REQUEST FOR RECONSIDERATION AND STAY OF ORDER ON MOTION TO COMPEL**

Pursuant to 37 CFR § 2.127(b), Audemars Piguet Holding S.A. (“Audemars Piguet”, “Opposer”, or “Plaintiff”) hereby respectfully requests reconsideration of the Board’s July 14, 2021 order denying *with prejudice* Audemars Piguet’s motion to compel responses to interrogatories and requests for production from Oakcoins (“Oakcoins”, “Defendant”, or “Applicant”). Audemars Piguet respectfully requests that the order be stayed and proceedings suspended until the request for reconsideration is decided, with dates being reset at that time. In support of this request, Audemars Piguet states as follows:

**I. SUSPENSION OF PROCEEDINGS & RESETTING OF DATES**

Pursuant to Rule 2.120(e)(2), Audemars Piguet respectfully requests that proceedings be suspended as of the filing date of this motion, and that discovery, disclosure, and trial dates be reset when the motion is decided as per usual Board practice. Audemars Piguet first served these discovery requests in April 2020, and has not received any responses even after all this time. Audemars Piguet is being prejudiced by the wasting away of its opportunity to do follow-up discovery based on the basic information sought in the motion to compel. For these reasons, it is

appropriate to stay the order and suspend proceedings until the request for reconsideration is decided, and reset deadlines at that time.

**II. THE BOARD ALREADY FOUND THAT OAKCOINS HAD NOT RESPONDED TO AUDEMARS PIGUET’S DISCOVERY REQUESTS, AND ORDERED OAKCOINS TO DO SO.**

In its August 24, 2020 order granting Audemars Piguet’s previous motion to compel, the Board ordered Oakcoins “to serve, within **THIRTY (30) DAYS** of the mailing date of this order, responses to Opposer’s previously served requests for production.” 37 TTABVUE 2 (emphasis in original). The Board correctly stated:

“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**. Further, Applicant must affirmatively state whether responsive documents exist or not, and if responsive documents are served, Applicant must indicate which documents are responsive to which request(s) for production.” 37 TTABVUE 2-3 (emphasis supplied).

Regarding Audemars Piguet’s interrogatories, the Board ordered Oakcoins to:

“[S]erve complete responses to Opposer’s previously served interrogatories, if it has not already done so, within **THIRTY (30) DAYS** from the mailing date of this order.<sup>5</sup> Applicant is advised that this particular order does not make its late responses timely; rather, it merely provides a specific deadline for Applicant to serve its late responses on Opposer’s counsel.” 37 TTABVUE 3 (emphasis in original).

The Board also suggested, regarding default judgment if Oakcoins did not obey the August 24, 2020 order:

“In the event that Applicant fails to serve full responses as ordered herein, Opposer’s remedy may lie in a motion for sanctions, including for entry of judgment against Applicant, as appropriate.” *Id.*

### **III. NOTHING HAS CHANGED SINCE THEN.**

Oakcoins did not obey the Board’s order, and still failed to serve responses to Audemars Piguet’s interrogatories and production requests. 38 TTABVUE 2; *See also* 42 TTABVUE 3-4, 7-8. Accordingly, Audemars Piguet moved for default judgment, as the Board had suggested. 38 TTABVUE. Oakcoins’s only response to the default judgment motion was to submit three unlabeled images and a single page of unlabeled text. 39 TTABVUE. Oakcoins did not even try to explain why it had failed to serve responses to Audemars Piguet’s interrogatories and production requests. *Id.*

Under no stretch of the imagination could Oakcoins’s response to the default judgment motion be considered as responding in full to Audemars Piguet’s production requests or answering its interrogatories, as the Board had ordered. 37 TTABVUE 2-3. Oakcoins’s response to the default judgment motion certainly does not meet the requirements for interrogatory and production request responses set forth in the Trademark Rules and the Federal Rules of Civil Procedure – requirements which the Board had ordered Oakcoins to meet. *See* Board orders at 2 TTABVUE 6, 11 TTABVUE 5-8, 28 TTABVUE 9, and 37 TTABVUE 2. *See also* 33 TTABVUE 1, note 1.

Importantly, Oakcoins’s response to the default judgment motion also did not meet the substance of Audemars Piguet’s discovery requests. Audemars Piguet’s interrogatories contain specific and relevant questions concerning Oakcoins’s use of the opposed mark, and Oakcoins has not answered these questions. 42 TTABVUE 9-17. Some examples

follow: Interrogatory 10 asks for U.S. dollar sales for each good/service on which Oakcoins has used its mark. 42 TTABVUE 12. Interrogatory 12 asks Oakcoins to describe the trade channels through which goods/services are provided under its mark. *Id.* Interrogatory 33 asks Oakcoins to describe any adversarial proceedings in a judicial forum involving its mark. 42 TTABVUE 15. Interrogatory 37 asks for the date of first use in commerce for each good listed in Oakcoins's mark. 42 TTABVUE 16.

Regarding Audemars Piguet's production requests, these also contain specific and relevant requests for documents, and Oakcoins's response to the default judgment motion does not respond to these requests or provide the requested documents. 42 TTABVUE 18-34. Some examples follow: Request for Production 13 asks for documents and things sufficient to identify the annual revenue for each good sold under Oakcoins's mark. 42 TTABVUE 24. Request for Production 16 asks for documents and things sufficient to identify each type of media Oakcoins uses to promote its mark. 42 TTABVUE 25. Request for Production 18 asks for documents and things concerning the amount of money spent by authorized users of Oakcoins's mark to promote the mark. *Id.* Request for Production 32 asks for documents and things sufficient to identify each entity that Oakcoins has engaged to promote its mark. 42 TTABVUE 28. Request for Production 37 asks for documents and things sufficient to identify each retail distribution point through which goods under Oakcoins's mark are provided. 42 TTABVUE 29.

There are of course many other examples of discovery requests – both interrogatories and production requests – that Oakcoins's response to the default judgment motion does not answer. 42 TTABVUE 9-34. Moreover, Oakcoins did not affirmatively state for each production request whether responsive documents exist or not, as the Board

had also ordered. 37 TTABVUE 3. Further, Oakcoins did not indicate which documents are responsive to which requests for production, as the Board had also ordered. *Id.*

In sum, after the Board’s August 24, 2020 order stating that Oakcoins had not responded to Audemars Piguet’s production requests and ordering it to do so in full, and also ordering it to answer Audemars Piguet’s interrogatories, Oakcoins only put forth a single submission – i.e., its response to the default judgment motion. That submission did not change anything, because it did not satisfy the order and did not respond in full to Audemars Piguet’s discovery requests.

**IV. THE BOARD’S CONCLUSION REGARDING OAKCOINS’S RESPONSE TO PRODUCTION REQUEST 20 IS INCORRECT. IT ALSO DOES NOT CURE OAKCOINS’S LACK OF RESPONSE TO THE OTHER PRODUCTION REQUESTS AND THE INTERROGATORIES.**

The Board’s July 14, 2021 order cites the Board’s conclusion “that Applicant had responded in full to Opposer’s overly broad request for production no. 20, namely, ‘all documents and things concerning Applicant’s mark’.” 44 TTABVUE 2. However, such a conclusion is fundamentally unsupported by the facts and the law. As discussed above, none of Oakcoins’s submissions to the Board meet the requirements for production request responses set forth in the Trademark Rules and the Federal Rules of Civil Procedure – requirements which the Board had ordered Oakcoins to meet. Oakcoins has provided Audemars Piguet with no production request responses besides these insufficient submissions to the Board.

Moreover, even assuming *arguendo* that Oakcoins had responded in full to production request 20, there are many other specific production requests that Oakcoins has

not responded to. Examples of such production requests are given above in section III, and other examples are apparent from an examination of Audemars Piguet's production requests. 42 TTABVUE 18-34.

Indeed, Oakcoins could not possibly have responded in full to production request 20, which asks for all documents and things concerning its mark, when Oakcoins has not provided the specific documents asked for in production requests 13, 16, 18, 32, 37, and others.

Further, again assuming *arguendo* that Oakcoins had responded in full to production request 20, that does not affect or cure Oakcoins's failure to answer Audemars Piguet's interrogatories. As discussed above, none of Oakcoins's submissions to the Board meet the requirements for interrogatory responses set forth in the Trademark Rules and the Federal Rules of Civil Procedure – requirements which, again, the Board had ordered Oakcoins to meet. Oakcoins has provided Audemars Piguet with no interrogatory responses besides these insufficient submissions to the Board.

**V. OAKCOINS HAS CHOSEN NOT TO PARTICIPATE MEANINGFULLY IN THIS PROCEEDING, AND SHOULD NOT RECEIVE PREFERENTIAL TREATMENT.**

Besides refusing to respond to Audemars Piguet's interrogatories and production requests, Oakcoins has not met its obligations in many other ways. Oakcoins did not file a proper answer to the Notice of Opposition (8 TTABVUE), forcing Audemars Piguet to file a motion to strike the improper answer. 9 TTABVUE. Oakcoins never filed a response to the motion to strike – and thereafter made multiple sporadic and bizarre submissions to the Board which also failed to meet the requirements for an answer, and

which were submitted without asking for leave to amend. 16 TTABVUE; 18 TTABVUE; 20 TTABVUE; 22 TTABVUE; 26 TTABVUE. Audemars Piguet was forced to file motions to strike these submissions, which it did not want to do, just in case the Board might somehow consider one of these submissions to be an answer. 17 TTABVUE; 19 TTABVUE; 21 TTABVUE; 23 TTABVUE; 27 TTABVUE.

Oakcoins has not served any discovery requests, and did not even make the Initial Disclosures required by Trademark Rule 2.120(a)(2)(ii) and Fed. R. Civ. P. 26(a). After Audemars Piguet served its interrogatories and production requests on April 3, 2020, Oakcoins refused to respond to them, forcing Audemars Piguet to file a motion to compel. 34 TTABVUE. Oakcoins made yet another bizarre and non-responsive submission to the Board. 35 TTABVUE. The Board then granted the motion to compel. 37 TTABVUE. Oakcoins refused to obey, and still refused to provide interrogatory answers and production request responses in full as ordered. Oakcoins also did not respond to any of Audemars Piguet's letters concerning its lack of response to the discovery requests.

This forced Audemars Piguet to file the renewed motion to compel, which Oakcoins did not even respond to. Given the circumstances, a renewed motion to compel certainly cannot be considered harassment. Instead, Audemars Piguet simply wants Oakcoins to answer its interrogatories and respond to its production requests in full, which the Board already ordered it to do. 37 TTABVUE.

The order reiterates that "Applicant is required to comply with the Board's rules" – but then indicates that it is sufficient for Oakcoins to merely try to comply with the rules, and "try to respond to Opposer's discovery." 44 TTABVUE 2. This gives Oakcoins preferential treatment, and is unfair to Audemars Piguet.



**CONCLUSION**

For all the above reasons, the order denying Audemars Piguet's motion to compel should be reconsidered, and the motion should be granted. It would fundamentally prejudice Audemars Piguet to have to proceed without the basic discovery information sought in its motion to compel.

Respectfully submitted,

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Certificate of Service: I certify that on the date below, the foregoing request for Reconsideration and referenced attachments, if any, were served by e-mail on the applicant OAKCOINS at the following correspondence email address:

coins@oakcoins.com

30 July 2021

/John A. Galbreath/  
John A. Galbreath