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

Proceeding	91251383
Party	Plaintiff Riviana Foods Inc.
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Submission	Motion for Discovery Sanctions
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Attachments	Motion for Judgment as a Sanction.pdf(51368 bytes)

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

RIVIANA FOODS INC.,

Opposer,

v.

YANMAR CO., LTD.,

Applicant.

Opposition No. 91251383

Serial No. 79238398

Mark: RICE GELÉE & Design

**OPPOSER'S MOTION FOR JUDGMENT AS A SANCTION
FOR APPLICANT'S REFUSAL TO PROVIDE DISCOVERY**

Opposer respectfully moves the Board, pursuant to 37 C.F.R. § 2.120(h)(2), for judgment in favor of Opposer as a sanction for Applicant's refusal to respond to Opposer's discovery requests. The grounds for this motion are set forth below.

FACTUAL BACKGROUND

On March 5, 2020, Opposer served Opposer's Initial Disclosures, Opposer's First Set of Interrogatories (Nos. 1-40), and Opposer's First Set of Requests for Production of Documents and Things (Nos. 1-22) on Applicant. Copies of Opposer's First Set of Interrogatories (Nos. 1-40) and Opposer's First Set of Requests for Production of Documents and Things (Nos. 1-22) are attached as Exhibits A and B, respectively.

At the request of Applicant, Opposer has granted three extensions of time, totaling 240 days, for Applicant to respond to Opposer's discovery requests. Applicant has not objected or responded to any interrogatory or request for production propounded by Opposer.

On December 9, 2020, nine days after the extended deadline for Applicant's responses had passed, Opposer's counsel called Applicant's counsel to request Applicant's responses to Opposer's discovery requests. During that telephone conference, Applicant's counsel informed Opposer's counsel that no responses would be forthcoming.

ARGUMENT

A motion for sanctions under 37 C.F.R. § 2.120(h)(2) is available for interrogatories and requests for production of documents and things and is appropriate where the party from whom discovery is sought (1) has failed to respond and (2) has informed the party seeking discovery that no response will be made. *See* TBMP 527.01(b) (2020). The sanctions that may be entered by the Board include judgment against the disobedient party. *Id.*

In view of the facts set forth above, Opposer has met the requirements for entry of judgment in its favor as a sanction under 37 C.F.R. § 2.120(h)(2) for Applicant's refusal to provide discovery. Accordingly, this motion should be granted.

Respectfully submitted,

Date: January 19, 2021

/Ronald E. Shapiro/

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OPPOSER’S FIRST SET OF INTERROGATORIES (NOS. 1-40)

Opposer submits the following interrogatories to Applicant under Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice. Each interrogatory is to be answered separately, fully, in writing, and under oath within 30 days after service upon Applicant.

DEFINITIONS AND INSTRUCTIONS

I. Unless otherwise clearly indicated by the context, the following definitions are applicable to the terms used herein:

A. “Applicant” or “you” means Yanmar Co., Ltd., its employees, agents, attorneys, representatives, licensees, and any predecessors, subsidiaries, parent entities, affiliates, and persons in privity with any of them in connection with the subject matter of this proceeding.

B. “Opposer” means, Riviana Foods Inc., its employees, agents, attorneys, representatives, licensees, and any predecessors, subsidiaries, parent entities, affiliates, and persons in privity with any of them in connection with the subject matter of this proceeding.

C. “Person” means any natural person, corporation, association, firm, partnership, proprietorship, or business or legal entity.

D. “Document” means mean any writing, recording, photograph, or other document within the scope of Rule 1001 of the Federal Rules of Evidence or Rule 34 of the Federal Rules of Civil Procedure, including, but not limited to, written, printed, typed, electronically stored, magnetically stored, optically stored, and visually or aurally reproduced material of any kind, whether or not privileged. The term “document” includes both the original of a document and all distinct copies thereof, including, but not limited to, copies that are distinct due to the presence of notes made on or attached to the document. A draft of a document is to be considered a separate document.

E. “Communication” means any transmission or conveyance of information.

F. “Identify”:

1. When used in reference to a natural person, the term “identify” means to state his or her full name, present or last known address, and present or last known business affiliation;

2. When used in reference to a corporation or other entity, the term “identify” means to state the full name and address of the entity, to describe its form (i.e., corporation, partnership, etc.), to state when it was formed, to specify the state, province, or country under whose laws it is organized, and to identify its subsidiary or affiliated entities;

3. When used in reference to a document, the term “identify” means to state its nature, title (if any), author, sender, recipient, date of preparation, present location, and custodian. When this information is readily discernible from a document, a copy of that document may be furnished in lieu of identification;

4. When used in reference to a communication other than a document, the term “identify” means to state the date, nature, and subject matter of the communication,

whether it was recorded, and the identities of the transmitter, the recipient, and any witnesses; and

5. When used in reference to an intangible thing or a tangible thing other than a document, the term “identify” means to provide a complete description, including its common designation, its distinguishing characteristics, and any trademarks associated with it;

and

6. When used in reference to a legal proceeding, the term “identify” means to state the name and number of the proceeding and the name of the tribunal in which the proceeding is pending or before which the proceeding was brought.

G. “Opposer’s Mark” means the mark RICE-GEL, which is registered in the U.S. Patent and Trademark Office under Registration No. 1507392.

H. “Applicant’s Mark” means the mark



as shown in U.S. Trademark Application Serial No. 79238398.

I. The terms “sale,” “sell,” and “sold” refer to the transfer or distribution of goods by any means, whether or not a charge is made or a payment is received.

J. “Applicant’s Goods” means the goods specified in U.S. Trademark Application Serial No. 79238398.

K. The term “commerce” means all commerce which may lawfully be regulated by Congress.

L. The singular form of any word includes the plural and vice versa.

M. The masculine form of any word includes the feminine and vice versa.

N. The conjunctive “and” includes the disjunctive “or” and vice versa.

II. Unless otherwise clearly indicated by the context, the following interrogatories are to be construed to pertain to persons, things, events, and activities within the United States, and are not to be construed to pertain to persons, things, events, or activities outside the United States.

III. The following interrogatories require responses that are accurate and complete as of the date on which they are made and are to be treated as continuing. Any additional information discovered by Applicant after service of its answers should be furnished to Opposer by supplemental answers promptly after its discovery.

IV. If a privilege is claimed with respect to any information, document, or thing, or if an interrogatory is not answered in full for reasons other than a claim of privilege, state fully the grounds for the claim of privilege or for the failure to answer the interrogatory in full, answer the interrogatory to the extent to which it is not objected, and identify all information, documents, and things with respect to which a privilege is claimed.

INTERROGATORIES

1. Describe the nature of Applicant’s business.
2. Identify the persons who are most knowledgeable about Applicant’s past, present, or planned use of Applicant’s Mark.
3. Identify each person involved with the creation of Applicant’s Mark.

4. For each person identified in response to Interrogatory No. 3, describe the person's involvement in the creation of Applicant's Mark.
5. Identify each person involved with the selection and adoption of Applicant's Mark.
6. For each person identified in response to Interrogatory No. 5, describe the person's involvement in the selection and adoption of Applicant's Mark.
7. Describe the facts, circumstances, and processes that led to the selection and adoption of Applicant's Mark, including, but not limited to, the reasons for selection, the date of adoption, the meaning or impression intended to be conveyed, and the basis for any assumption that the intended meaning or impression would be conveyed.
8. Identify all documents and things that relate to the selection, adoption, or decision to use Applicant's Mark.
9. State the common commercial name of each product on or in connection with which you are using, have used, or intend to use Applicant's Mark in commerce.
10. For each product identified in response to Interrogatory No. 9 for which you are using Applicant's Mark in commerce, state the date on which you first used Applicant's Mark in commerce and, if applicable, the date on which you ceased using Applicant's Mark in commerce.
11. For each product identified in response to Interrogatory No. 9, identify the channels of trade through which you are marketing, have marketed, or intend to market the product.
12. For each product identified in response to Interrogatory No. 9, describe the manner in which you are marketing, have marketed, or intend to market the product.

13. For each product identified in response to Interrogatory No. 9, describe each class of purchasers to whom the product is, has been, or will be offered for sale.
14. State the price of each product or service identified in response to Interrogatory No. 9 for which you are using Applicant's Mark in commerce.
15. Identify representative publications and media in which you have advertised Applicant's Mark or any product associated with Applicant's Mark.
16. Describe any plans by Applicant to expand the channels of trade for Applicant's Goods.
17. Describe the target market for Applicant's Goods.
18. Describe the demographics, including, but not limited to, age and gender, of the purchasers or potential purchasers of Applicant's Goods.
19. Describe the manner in which Applicant uses or intends to use Applicant's Mark in advertising.
20. Describe the manner in which Applicant advertises or intends to advertise Applicant's Goods.
21. Identify all websites and social media sites on which Applicant has promoted or intends to promote Applicant's Mark or Applicant's Goods.
22. Identify all retailers and distributors of Applicant's Goods.
23. Describe all instances of actual confusion of which you are aware that involve Applicant's Mark and Opposer's Mark.
24. Identify every person authorized by Applicant to use Applicant's Mark.
25. State the date on which you became aware of Opposer's Mark.
26. Describe the circumstances under which you became aware of Opposer's Mark.

27. Identify each person connected with you who was involved in your discovery of Opposer's Mark.

28. Identify all communications concerning Opposer's Mark received by you, but intended for Opposer.

29. State the facts that you contend support the allegations in each of the defenses set forth in the Answer, Defenses and Counterclaims filed by Applicant in this proceeding.

30. Identify all documents that you contend support the allegations in each of the defenses set forth in the Answer, Defenses and Counterclaims filed by Applicant in this proceeding.

31. State the facts that you contend support the allegations in each of the counterclaims set forth in the Answer, Defenses and Counterclaims filed by Applicant in this proceeding.

32. Identify all documents that you contend support the allegations in each of the counterclaims set forth in the Answer, Defenses and Counterclaims filed by Applicant in this proceeding.

33. Identify all surveys, opinion polls, or research studies relating to Applicant's Mark or Opposer's Mark that you have conducted or caused to be conducted or of which you have knowledge.

34. Identify all documents that pertain to Applicant's claim of a bona fide intention to use Applicant's Mark in commerce.

35. Identify each person whom you expect to call as a witness in the trial or hearing of this matter, and, for each person identified, describe the subject matter regarding which he or she is expected to testify.

36. Identify all trade shows, conferences, or expositions attended by Applicant at which goods were promoted under Applicant's Mark.

37. Identify all documents and things that you plan to introduce into evidence during Applicant's trial period in this proceeding.

38. To the extent not already done, identify all documents and things that relate to any fact or matter stated in response to any of these interrogatories and, with respect to each document or thing, specify the interrogatory or interrogatories to which it relates.

39. Identify each person who has personal knowledge of the facts stated in response to each of these interrogatories, and indicate, with respect to each person, the subject matter about which he or she has personal knowledge.

40. Identify each person who participated in the preparation of the answers to these interrogatories, and indicate, with respect to each person, the answer or answers to which he or she contributed and the subject matter contributed.

Date: March 5, 2020

/Ronald E. Shapiro/

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1300 Pennsylvania Avenue NW Suite 700
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Opposer's First Set of Interrogatories (Nos. 1-40) has been served on Applicant's attorneys at their address of record by email on the date written below.

Date: March 5, 2020

/Ronald E. Shapiro/
Ronald E. Shapiro

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RIVIANA FOODS INC.,

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Serial No. 79238398

Mark: RICE GELÉE & Design

**OPPOSER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1-22)**

Opposer submits the following requests for production of documents and things to Applicant under Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice. Opposer requests Applicant to produce the documents and things specified in these requests for inspection and copying by Opposer's attorneys at the offices of, Shapiro and Silverstein PLLC, 1300 Pennsylvania Avenue NW Suite 700, Washington, DC 20004, within 30 days after service upon Applicant.

DEFINITIONS

The definitions contained in Opposer's First Set of Interrogatories (Nos. 1-40) are applicable to these requests.

INSTRUCTIONS

I. All documents and things produced in response to these requests shall be separated and identified by the request or requests to which they pertain.

II. If production of any document or thing is refused under an objection or a claim of privilege:

A. Identify the document or thing with respect to which the objection or claim of privilege pertains;

B. State fully the grounds for the objection or the claim of privilege; and

C. Identify each person who has knowledge relating to the content or nature of the document or thing and, with respect to each person identified, specify the subject matter to which his or her knowledge pertains.

REQUESTS FOR PRODUCTION

1. All documents and things that refer or relate to the creation, consideration, selection, or adoption of Applicant's Mark in connection with any goods, including, without limitation, any communication between you and any consultant, design firm, advertising agency, advertising medium, supplier, or printer.

2. Samples of all advertisements, promotional materials, packages, and point-of-sale displays relating to each product on or in connection with which you have used Applicant's Mark.

3. All documents and things that refer or relate to any survey, poll, focus group, or market research concerning this proceeding, Applicant's Mark, or any goods sold, offered for sale, or intended to be sold under Applicant's Mark.

4. All documents and things that refer or relate to any trademark search concerning Applicant's Mark.

5. All opinion letters that refer or relate to Applicant's Mark.

6. All documents and things that refer or relate to a likelihood of confusion, mistake, or deception or any instance of actual confusion, mistake, or deception involving Opposer's Mark or Applicant's Mark.

7. All documents and things that refer or relate to Opposer or Opposer's Mark.

8. All documents and things that refer or relate to the selection or retention of any expert by or for the benefit of Applicant in connection with this proceeding.

9. All documents and things that refer or relate to the opinion of any expert or to the advice of any expert consulted or retained by or for the benefit of Applicant in connection with this proceeding.

10. Documents sufficient to prove that Applicant had a bona fide intention to use Applicant's Mark in commerce on the filing date of U.S. Trademark Application Serial No. 79238398.

11. All documents referring or relating to any advertising agency or other person that Applicant has used or intends to use in advertising or promoting Applicant's Goods or Applicant's Mark.

12. All documents relating to the types of stores or channels of trade or distribution through which Applicant's Goods have been or will be sold.

13. All documents relating to the characteristics, demographics, or classes of persons to whom Applicant's Goods are sold or intended to be sold.

14. All documents relating to the target market or anticipated target market for Applicant's Goods.

15. Documents sufficient to identify all retailers and distributors of Applicant's Goods.

16. All documents and things that refer or relate to Opposer or Opposer's Mark.
17. All documents and things that refer or relate to the selection or retention of any expert by or for the benefit of Applicant in connection with this proceeding.
18. All documents and things that refer or relate to the opinion of any expert or to the advice of any expert consulted or retained by or for the benefit of Applicant in connection with this proceeding.
19. All documents and things identified by Applicant in response to Opposer's First Set of Interrogatories (Nos. 1-40) and not otherwise covered by these requests.
20. All documents and things, other than those produced in response to any of these requests, which Applicant intends to introduce into evidence or upon which Applicant otherwise intends rely in connection with this proceeding.
21. All documents and things identified in your Initial Disclosures.
22. All documents relating to Applicant's policies regarding retention, storage, filing and/or destruction of documents.

Date: March 5, 2020

/Ronald E. Shapiro/
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Opposer's First Set of Requests for Production of Documents and Things (Nos. 1-22) has been served on Applicant's attorneys at their address of record by email on the date written below.

Date: March 5, 2020

/Ronald E. Shapiro/
Ronald E. Shapiro

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Opposer's Motion for Judgment as a Sanction for Applicant's Refusal To Provide Discovery has been served on Applicant's attorneys at their address of record by email on the date written below.

Date: January 19, 2021

/Ronald E. Shapiro/
Ronald E. Shapiro