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

Proceeding	91251473
Party	Plaintiff Afyon Et ve Et Mamulleri Sanayi ve Ticaret Limited Sirketi
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AFYON ET VE ET MAMULLERI SANAYI VE TICARET LIMITED SIRKETI, Opposer, v. CUMHURIYET MEATS, Applicant	x x x x x x x x	Opp. No. 91/251,473 App. No. 88/284,023

OPPOSER'S REPLY BRIEF IN SUPPORT OF

OPPOSER'S MOTION TO COMPEL DISCOVERY

Applicant Cumhuriyet Meats filed and served a Declaration of Bradley S. Rothschild, Esq. in Support of Applicant's Opposition to Motion to Compel Discovery and Applicant's Cross Motion to Extend the Discovery Period" (the "Rothschild Declaration") on August 3, 2020. Opposer Afyon Et Ve Et Mamulleri Sanayi Ve Ticaret Limited Sirketi (" Opposer") hereby files and serves its brief in reply.

INTRODUCTION

Opposer submits that Applicant did not accompany its Declaration with a brief as is required under applicable rules. Opposer further submits that Applicant, has inappropriately raised objection to Opposer's discovery requests by doing so in the Rothschild Declaration without having replied to the discovery requests, has blatantly mischaracterized the facts and the clear statements of Opposer's correspondence in evidence, and delayed in entering the appearance of counsel in order to further delay providing already belated responses to Opposer's discovery requests. Applicant essentially wants to restart the discovery phase of the proceedings from the beginning and disregard months of inaction and unresponsiveness solely because Applicant was *pro se* and decided to engage counsel at the last moment. Opposer requests that the Board grant Opposer's Motion to Compel, ordering Applicant to provide its responses without objections within two (2) weeks of the Board's decision, and requiring Applicant to serve

any discovery requests on Opposer within the same two (2) week period or only after Applicant has served its responses. Opposer further requests a finding that Applicant's neglect of its discovery obligations was not excusable and that Applicant forfeited its rights to object to the discovery requests on their merits. Alternatively, Opposer requests that the Board enter the sanction of an order to show cause as to why default judgment dismissal and abandonment of Applicant's application should not be entered. Opposer requests this alternate remedy in view of Applicant's willful and conscious refusal to respond to Opposer's discovery requests, Applicant's inappropriate discovery objections by motion, Applicant's counsel's intentionally false statements of fact, and Applicant's continued delay tactics.

ARGUMENT

Applicant has not filed and served a brief in opposition of Opposer's Motion to Compel.

Every motion must embody or be accompanied by a brief. 37 C.F.R. §2.127(a). TBMP 502.02(b). When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. [id]. Applicant has filed and served only a Declaration, and has not filed any brief in response to the motion. The Board may therefore treat Opposer's motion as conceded. Applicant requests that the Board do so.

Applicant has inappropriately raised objection to Opposer's Interrogatories in Response to Opposer's Motion to Compel.

Even if the Board generously determines to recognize the Rothschild Declaration as Applicant's brief, the Declaration inappropriately raises objections to Opposer's discovery requests, specifically the First and Second Set of Interrogatories, in the context of a motion.

The Board has clearly delineated that in *inter partes* proceedings it is generally inappropriate for a party to respond to discovery requests by filing a motion attacking them. TBMP §§ 405.04(b) (interrogatories), 406.04(c) (requests for production). The

responding party is expected to provide the information sought in the requests or portions of requests that it believes to be proper, and state its objections to those that it believes to be improper. TBMP § 410. *See Emilio Pucci International BV v. Rani Sachdev* (TTAB 2016). When a party, in good faith, believes the interrogatories with which it has been served exceed the limit and the party is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections, serve a general objection on the ground of their excessive number. Trademark Rule 2.120(d)(1); TBMP § 405.03(e). The purpose behind this requirement is to advance the discussion between the parties as to the number and scope of the interrogatories, and to encourage them to discuss their respective counting methods and earnestly attempt to resolve any dispute. It also provides the receiving party an opportunity to persuade the serving party to reformulate and re-serve the interrogatories, to the satisfaction of the receiving party, regardless of any differences in the respective methods for counting the interrogatories. This practice has been in place for over two decades and articulated in the TBMP for many years. *See* TBMP §410, and accompanying notes.

Here, Applicant has never before mentioned any concerns with the discovery requests until Opposer was forced to file its motion to compel as the Pre-trial Disclosures deadline approached. Applicant has also not provided any indication of how he determined Opposer's 44 interrogatories to which Applicant did not respond exceed 75, or Opposer's second set of 10 interrogatories, to which Applicant did not respond, resulting in 54 total, exceed 75. The Rothschild Declaration states, for the first time, Applicant's allegation that "Opposer has exceeded the number of interrogatories permitted under 37 C.F.R. §2.120(d), when each subpart is counted in accordance with the Rule" and that "Applicant objects to Opposer's Interrogatories on this basis, and Opposer should be required [to] reserve revised Interrogatories in accordance with 37 C.F.R. §2.120(d)". These objections were made for the first time despite the Board's policy that raising such objection in the context of a motion is not an appropriate manner

in which a party may object to discovery with which it has been served.

The Rothschild Declaration complaining that the number of interrogatories is excessive when Applicant has made no effort to resolve the dispute is an entirely unworkable and impracticable approach that reflects a disregard for the affirmative duty to cooperate in the discovery process under TBMP §408.01. *See Panda Travel Inc. v. Resort Option Enter. Inc.,* 94 USPQ2d 1789, 1791 (TTAB 2009) (parties have a duty to cooperate in discovery).

Applicant has therefore waived its objection as to the excessive number because it did not serve timely general objections to Opposer's First Set of Interrogatories or to Opposer's Second Set of Interrogatories as required by the TBMP, and Opposer respectfully requests that the Board so rule.

The Rothschild Declaration Makes False or Misleading Statements of Fact.

The Rothschild Declaration is a false or misleading communication in that it contains material misrepresentations of fact. Inasmuch as the assigned Board attorney has the authority to act upon on motions not actually or potentially dispositive of a proceeding, the assigned Board attorney has the discretion to issue sanctions addressing party conduct with respect to motions not actually or potentially dispositive of a proceeding. See 37 C.F.R. § 2.127(c).

The Rothschild Declaration attests that the statements made therein are "true and correct" and does so "under penalties of perjury". However, the Declaration falsely states that Applicant "made efforts to respond to discovery demands, which Opposer purportedly finds deficient". Opposer submits that Applicant's purported response to Opposer's First Request for Production of Documents was grossly deficient as a matter of law. It comprised no responsive documents or opportunity to view same, and could not be characterized as an "effort" by any stretch of the imagination. As a reminder, Applicant's purported response to Opposer's First Requests for Production of Documents consisted of a single three-page document, including the Certificate of Service, with five

numbered paragraphs that did not appear to correspond to any numbering in Opposer's discovery request. The document summarily stated that: 1) all evidence supporting the application was already of record, 2) none of Applicant's officers travelled to Turkey in the last 5 years, 3) Applicant had no affiliation with any company selling products with a similar name on amazon.com, 4) Applicant's application is for the word mark CUMHURIYET along, and 5) Opposer had no U.S. presence at the time of Applicant's filing of its application. *See* Asbell Dec. ¶¶16-18. Moreover, it cannot be disputed that Applicant made no further efforts to cure the obvious deficiencies in its response to Opposer's First Requests for Production or to respond to any of Opposer's other discovery requests despite numerous efforts by Opposer to obtain Applicant's compliance. Applicant's counsel's statement that Applicant "made efforts to respond to discovery demands" is at best a gross misstatement and misrepresentation.

The Rothschild Declaration falsely states that Opposer "would only agree to an arrangement where Opposer had to accept Applicant's discovery responses as *sufficient*, and *within a week*" (emphasis added). Opposer's counsel's email of July 24, 2020, 10:19 pm states "We further consider that your client should be required to respond to our discovery requests before serving new discovery requests on our client because under the circumstances, your client's resources should be dedicated to addressing what is well past due rather than delaying further because your attention is diverted to what new information and evidence you hope to gain from our client. We consider that if your client belatedly responds to all of our discovery requests by August 7, 2020, you could serve discovery to which our client could respond before the close of the period." See Asbell Dec. Exhibit M. Nothing in the correspondence states a requirement that Applicant's discovery be deemed sufficient before Applicant could serve new discovery requests on Opposer. Opposer further notes that the proposed deadline of August 7, 2020 would have allowed Applicant two (2) full weeks to deliver its belated discovery responses, not just one week as stated by Applicant. Perhaps Applicant's counsel

considers that his time spent on vacation should not count, but he has clearly misrepresented Opposer's stated requirements.

Moreover, Opposer's counsel's email of July 27, 2020, 12:09 pm states that "we have discussed the matter with our client, and they will agree to a 90-day extension provided that you agree to serve complete responses to all of our discovery requests by August 7, 2020, which is 15 days from the date your entered your appearance in the proceeding." See Asbell Dec. Exhibit N. Again, nothing in Opposer's counsel's email stated a requirement that Opposer deem the responses sufficient before Applicant could serve new discovery requests, and again, Opposer's offer gave Applicant more than one (1) week. Applicant has misrepresented the facts of Opposer's proposals to resolve Applicant's discovery default and enable reasonable discovery by both parties.

The Rothschild Declaration incorrectly states that he "was retained to represent Applicant in the instant opposition proceeding on July 23, 2020, and immediately entered [his] appearance." However, as Opposer's Motion points out, Opposer received an email from Mr. Aaron Bayram, Esq. on July 1, 2020 stating that Mr. Bayram "and another attorney will jointly represent Nema Food for this case. We will file our appearances today. We will reply to your request swiftly." See Asbell Dec. Exhibit H. Opposer notes that Nema Food is the same as or closely related to Cumhuriyet Meats. Opposer submits that every email message sent by Applicant's counsel to Opposer's counsel copied Mr. Bayram. Mr. Bayram has also been copied on correspondence from Opposer's counsel, and he has not raised any objection to such correspondence or otherwise requested that it be directed elsewhere. There is an established relationship between Mr. Aaron Bayram of John Onal & Associates, P.C. and Mr. Bradley Rothschild of the Law Offices of Bradley S. Rothschild, LLC, as may be evidenced from co-pending opposition number 91250014 and Opposer's counsel's own experience working on the other side of matters in which Mr. Bayram and Mr. Rothschild served as co-counsel. Opposer's counsel submits that the other attorney referenced in Mr. Bayram's email was Bradley

Rothschild, and that Mr. Rothschild was aware of this matter and his client's default well before July 23, 2020 and at least as early as July 1, 2020. As such, Applicant's counsel's Declaration falsely states that Mr. Rothschild was retained on July 23, 2020. His false statement at least suggests an intention to mislead the Board as to the extent of his awareness of deadlines in this proceeding and the amount of time he had to work with his client to provide the belated discovery responses.

CONCLUSION

Applicant delayed and defaulted in its discovery responses and substantially delayed in engaging counsel in defense of the opposition. Applicant inappropriately raised objection to some of Opposer's discovery requests in the context of Opposer's motion to compel, while still never making any commitment to curing Applicant's defaults. Applicant's counsel also delayed in formally appearing before the Board and made misstatements and misrepresentations to the Board.

For the reasons set forth above, Opposer' s Motion to Compel Discovery and Motion to Extend the Discovery Period should be granted. Alternatively, a default judgment should be entered against Applicant or a show cause order should be issued against Applicant as to why a default judgment should not be entered against Applicant.

Respectfully submitted,

Offit Kurman, P.A.
Attorneys for Opposer
Afyon Et Ve Et Mamulleri Sanayi Ve Ticaret Limited Sirketi

Date: 08/22/2020

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CERTIFICATE OF TRANSMISSION

I, Matthew D. Asbell, hereby certify that copies of the foregoing **OPPOSER'S REPLY BRIEF IN SUPPORT OF OPPOSER'S MOTION TO COMPEL** are being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: August 22, 2020

Matthew D. Asbell

CERTIFICATE OF SERVICE

I, Matthew D. Asbell, hereby certify that copies of the foregoing **OPPOSER'S REPLY BRIEF IN SUPPORT OF OPPOSER'S MOTION TO COMPEL** were served on the person(s) listed below by email on the date indicated below:

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Dated: August 22, 2020

Matthew D. Asbell