

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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December 20, 2021

Opposition No. 91267879

*The National Grange of the Order of Patrons
of Husbandry*

v.

HerdDogg, Inc.

Jill M. McCormack, Interlocutory Attorney:

On November 24, 2021, Opposer filed a motion to compel discovery responses and document production. (5 TTABVUE). On December 14, 2021, Applicant filed a brief in opposition to the motion to compel. (6 TTABVUE). On December 17, 2021, Applicant filed a motion to compel discovery responses and document production. (7 TTABVUE).

As an initial matter, Opposer's motion to compel did not include proof of service on Applicant as required by Trademark Rule 2.119(a)-(b). 37 C.F.R. § 2.119(a)-(b). Trademark Rule 2.119(a) states that every submission filed in an inter partes proceeding must be served upon the other party or parties, and proof of such service must be made before the submission will be considered. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 113.02 (2021). The Board may decline to read or consider any future submission filed by Opposer in this proceeding

which does not include proof of service.¹ Despite the foregoing, because Applicant filed its response to the motion within the timeframe provided by Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a), the Board will exercise its discretion to consider Opposer's motion to compel.

In addition, “[a] motion to compel discovery shall include . . . a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents, electronically stored information, or tangible things that were not produced for inspection and copying.” Trademark Rule 2.120(f)(1), 37 C.F.R. § 2.120(f)(1). Here, Applicant did not include copies of the relevant discovery requests with its motion to compel. Accordingly, Applicant's motion to compel is DENIED WITHOUT PREJUDICE to its ability to file, upon resumption of proceedings, a renewed motion that provides the Board with copies of the disputed discovery.

Proceedings are SUSPENDED pending disposition of Opposer's motion to compel, except as discussed below. The parties should not file any paper that is not germane to the motion to compel. *See* Trademark Rule 2.120(f)(2).

The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of the motion to compel disclosure or discovery shall not toll the time for a party to comply with any initial

¹ The Board informed the parties of the rules governing service and the service requirement in the notice of institution. Trademark Rule 2.119(b) sets forth the manner of service. *See also* TBMP § 113.04.

disclosure requirement, or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If the motion to compel was filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board. *See* Trademark Rule 2.120(f)(2); TBMP § 523.01.

The motion to compel will be decided in due course.