

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
TTAB Assistance Center: 571-272-8500
General Email: TTABInfo@uspto.gov

JLE/kk

March 14, 2023

Opposition No. 91276027

Motus, LLC

v.

*Luxury Automotive Transportation Services,
LLC*

Jennifer L. Elgin, Interlocutory Attorney:

On February 11, 2023, Opposer filed a motion to compel discovery. Applicant did not file a brief in response thereto within the time provided under Trademark Rule 2.127(a).

Opposer seeks an order directing Applicant to answer interrogatories and produce documents in response to Opposer's discovery requests, and deem Opposer's requests for admission admitted. The motion to compel discovery is hereby **granted** as conceded. *See* Trademark Rule 2.127(a); TBMP § 502.04.

A party that fails to respond to interrogatories or document requests during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); TBMP § 403.03.

Accordingly, Applicant is directed to serve, within **twenty days** of the mailing date of this order, responses to Opposer's interrogatories and produce documents responsive to Opposer's First Set of Combined Discovery Requests with Requests to Admit. 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. *Id.* In the event that Applicant fails to serve full responses as ordered herein, Opposer's remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(h)(1); TBMP § 411.05.

Further, Fed. R. Civ. P. 36(a)(3) provides that requests for admissions are deemed admitted unless written answers or objections thereto are received by the requesting party within thirty days of service of the requests. Because Applicant did not respond to Opposer's requests for admission, they are deemed admitted by operation of law. *See* Fed. R. Civ. P. 6(b) and 36(a); *see also Giersch v. Scripps Networks, Inc.*, 85 USPQ2d 1306 (TTAB 2007) and *Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.*, 14 USPQ2d 2064 (TTAB 1990) (if a party upon whom requests for admission have been served fails to timely respond thereto, the requests will stand admitted unless the party is able to show that its failure to timely respond was the result of excusable neglect; or unless a motion to withdraw or amend the admissions is filed pursuant to Fed. R. Civ. P. 36(b), and granted by the Board).

Proceedings are **resumed**. Discovery, disclosure, and trial dates are reset as indicated below:

Expert Disclosures Due
Discovery Closes

4/14/2023
5/14/2023

Plaintiff's Pretrial Disclosures Due	6/28/2023
Plaintiff's 30-day Trial Period Ends	8/12/2023
Defendant's Pretrial Disclosures Due	8/27/2023
Defendant's 30-day Trial Period Ends	10/11/2023
Plaintiff's Rebuttal Disclosures Due	10/26/2023
Plaintiff's 15-day Rebuttal Period Ends	11/25/2023
Plaintiff's Opening Brief Due	1/24/2024
Defendant's Brief Due	2/23/2024
Plaintiff's Reply Brief Due	3/9/2024
Request for Oral Hearing (optional) Due	3/19/2024

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, matters in evidence, the manner and timing of taking testimony, 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).