

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Lw/CH

December 6, 2024

Opposition No. 91284805

Candle Science, LLC

v.

Grace Tingting Fu

Charles H. Hiser IV, Interlocutory Attorney:

In the Board's October 31, 2024 order Applicant was allowed twenty days to file a response to Opposer's April 12, 2024 motion to compel discovery. Applicant did not file a response to Opposer's motion to compel discovery. Accordingly, the motion is granted as conceded. *See* Trademark Rules 2.120(e) and 2.127(a).

Applicant is allowed until **thirty days from the date of this order** to serve on Opposer complete and verified responses to Opposer's Interrogatory Nos. 5, 7, 13, 16, 22, 23, and 28, and (ii) produce responsive documents to Opposer's Request for Production Nos. 11, 22, 23, and 33. Applicant must answer all said discovery without objection inasmuch as Applicant failed to either timely respond or object to Opposer's discovery requests, and thus has waived the right to make objections on the merits of the discovery. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

In the event Applicant fails to serve the ordered responses, Opposer's remedy will lie in a motion for entry of sanctions, including in the form of entry of judgment, as appropriate. *See* Trademark Rule 2.120(h).

I. Schedule

Proceedings are hereby resumed and discovery and trial dates are reset as indicated below:

Expert Disclosures Due	1/6/2025
Discovery Closes	2/5/2025
Plaintiff's Pretrial Disclosures Due	3/22/2025
Plaintiff's 30-day Trial Period Ends	5/6/2025
Defendant's Pretrial Disclosures Due	5/21/2025
Defendant's 30-day Trial Period Ends	7/5/2025
Plaintiff's Rebuttal Disclosures Due	7/20/2025
Plaintiff's 15-day Rebuttal Period Ends	8/19/2025
Plaintiff's Opening Brief Due	10/18/2025
Defendant's Brief Due	11/17/2025
Plaintiff's Reply Brief Due	12/2/2025
Request for Oral Hearing (optional) Due	12/12/2025

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

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.¹ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

❖ Information Regarding Legal Representation

It is noted that Applicant intends to represent herself in this proceeding. While Patent and Trademark Rule 11.14 permits a party domiciled in the United States to

¹ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.

represent herself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 114.02 (2021).

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature_____

Date _____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>, the TTABVUE system for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at https://www.uspto.gov/sites/default/files/documents/Standard%20Protective%20Order_02052020.pdf.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006); *see also Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020, at *1 (TTAB 2020) (noting that compliance with the Trademark Rules of Practice, and where applicable, the Federal Rules of Civil Procedure and the Federal Rules of Evidence, is required of all parties even those who assume the responsibility and risk of representing themselves).