

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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jv

August 29, 2025

Opposition No. 91287091 (parent case)
Cancellation No. 92084919

Big Heart Pet, Inc.

v.

Spectrum Brands Pet LLC

Jacob Vigil, Interlocutory Attorney:

This case comes before the Board for consideration of Applicant's motion (filed April 3, 2025) to compel supplemental discovery responses. The motion is fully briefed.¹

The Board has considered the parties' briefs and arguments, addresses the record only to the extent necessary to set forth its analysis and findings, and does not repeat or address all of the parties' arguments. *See Guess? IP Holder LP v. Knowlux LLC*, Can. No. 92060707, 2015 TTAB LEXIS 482, at *5 (TTAB 2015).

I. Applicant's Motion to Compel

By way of its motion, Applicant seeks to compel the following: (1) Opposer's supplemental responses to revised Interrogatory Nos. 7, 10, 32-34; and (2) Opposer's

¹ Opposer's filing regarding rebuttal expert disclosure (filed May 2, 2025) is noted. 24 TTABVUE.

supplemental response and production of documents in response to Document Request Nos. 4-6, 12, 13, 15, 16, and 18-22.

As an initial matter, the Board finds that Opposer's motion is timely inasmuch as it was filed prior to the day of deadline for Opposer's pretrial disclosures. *See* Trademark Rule 2.120(f)(1), 37 C.F.R. § 2.120(f)(1).

A. Background

Applicant served its First Set of Interrogatories and First Requests for Production of Documents and Things on November 20, 2023. 21 TTABVUE 19-36.² Opposer responded thereto on December 20, 2023. *Id.* at 38-40, 45-74. In response to Opposer's general objection, Applicant served a revised First Set of Interrogatories on January 17, 2024. *Id.* at 76-84. Opposer responded thereto on February 16, 2024. *Id.* at 86-135. On March 18, 2024, Applicant sent a letter to Opposer via email to summarize the alleged deficiencies in the responses to the interrogatories and document requests. *Id.* at 137-149. On July 19, 2024, Opposer served supplemental responses to the revised First Set of Interrogatories. *Id.* at 151-207. On November 8, 2024,³ Applicant sent Opposer an email identifying categories in which it believes Opposer's

² Citations to the record in this order are to TTABVUE, the Board's electronic docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry. The parties should cite to the record using TTABVUE throughout this proceeding.

³ Also on November 8, 2024, Opposer filed a motion to compel discovery. 11 TTABVUE. The Board suspended proceedings pending consideration of Opposer's motion. 12 TTABVUE. On February 22, 2025, the Board decided Opposer's motion and resumed proceedings. 16 TTABVUE.

supplemental discovery responses and document production are deficient. 23 TTABVUE 12.

Applicant argues that there were additional communications regarding the alleged deficiencies between the parties on February 28, 2025, March 7, 2025, and March 24, 2025. 21 TTABVUE 4. On April 2, 2025, Opposer informed Applicant that it was preparing supplemental responses. 23 TTABVUE 9 (¶ 3). In Applicant's recounting of the communication, Opposer claimed it would provide further discovery on April 4, 2025 or April 7, 2025.⁴ 21 TTABVUE 4. Applicant filed the instant motion on April 3, 2025 because "Opposer has had substantial time and opportunity to provide further discovery based on Applicant's concerns, and has shown a persistent failure to meet its own deadlines in the past." *Id.* at 4-5. Opposer subsequently served supplemental discovery responses on April 23, 2025. 23 TTABVUE 16-114.

B. Good-Faith Effort

A party seeking to compel discovery must show that it made a good faith effort to resolve the issues presented in the motion, and that the parties were unable to resolve their differences. *See* Trademark Rule 2.120(i)(1); *see also Hot Tamale Mama...and More, LLC v. SF Invs., Inc.*, Opp. No. 91209030, 2014 TTAB LEXIS 93, at *3 (TTAB 2014); TBMP § 523.02. Indeed, the Board expects the parties to cooperate with one another in the discovery process, and "engage in meaningful efforts" to resolve any discovery disputes that may arise. *Hot Tamale Mama*, 2014 TTAB LEXIS 93, at *7

⁴ Applicant's motion claims the communication took place on April 1, 2025. 21 TTABVUE 4.

n. 3; *Sentrol, Inc. v. Sentex Sys., Inc.*, Opp. No 91070689, 1986 TTAB LEXIS 94, at *5 (TTAB 1986) (each party must make its best effort to resolve discovery disputes).

Applicant's efforts to resolve the discovery conflict between the parties falls short of the good-faith effort requirement. Although it has been a considerable amount of time since the original discovery requests were served, the parties have cooperated during that time by revising the requests and providing supplemental responses. "The record does not reflect an unresolvable situation – such as would have been the case if opposer were a defiant adversary who simply refused to engage in discovery or to provide applicant with any answer regarding the failure to serve discovery responses." *Hot Tamale Mama*, 2014 TTAB LEXIS 93, at *8. Here, no more than two days before the motion to compel was filed, Opposer informed Applicant that it was preparing supplemental responses, and in Applicant's telling, stated that it would provide the supplemental responses in less than a week. Rather than wait that reasonable period of time, Applicant filed the instant motion to compel, and in so doing, failed to satisfy the good-faith-effort requirement of Trademark Rule 2.120(e)(1).

Accordingly, the motion to compel is **denied without prejudice**.

II. Duty to Cooperate

The parties are again reminded that they have a duty to make a good faith effort to satisfy the legitimate discovery needs of their adversary, and the Board expects the parties to cooperate with one another in the discovery process. *See Sentrol, Inc.*, 1986 TTAB LEXIS 94, at *5; *Johnston Pump/General Value Inc. v. Chromalloy Am.*

Corp., Opp. No. 91076991, 1988 TTAB LEXIS 63, at *7 (TTAB 1988); TBMP § 408.01.

The parties have a duty to seek only such discovery as is proper and relevant to the specific issues involved in the proceeding. *See Sentrol Inc.*, 1986 TTAB LEXIS 94, at *5.

Further, the parties are under an equal obligation to participate in good faith to resolve any current or future discovery disputes, in order to resolve issues by agreement or at least narrow and focus the matters in controversy before Board resolution is sought. Uncooperative behavior during the discovery process is not well-taken. *See Amazon Techs. Inc. v. Wax*, Opp. No. 91187118, 2009 TTAB LEXIS 712, at *8-10, 1705 (TTAB 2009).

III. Proceedings Resumed

Proceedings are resumed. The proceeding schedule is reset as set forth below.

Discovery Closes	9/29/2025
Plaintiff's Pretrial Disclosures Due	11/13/2025
Plaintiff's 30-day Trial Period Ends	12/28/2025
Defendant's Pretrial Disclosures Due	1/12/2026
Defendant's 30-day Trial Period Ends	2/26/2026
Plaintiff's Rebuttal Disclosures Due	3/13/2026
Plaintiff's 15-day Rebuttal Period Ends	4/12/2026
Plaintiff's Opening Brief Due	6/11/2026
Defendant's Brief Due	7/11/2026
Plaintiff's Reply Brief Due	7/26/2026
Request for Oral Hearing (optional) Due	8/5/2026

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, 37 C.F.R. §§ 2.121-2.125. 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), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).