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

Proceeding no.	91291363
Party	Plaintiff Boy Scouts of America
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Date	09/12/2025
Attachments	BSA Reply ISO Motion to Compel - 91291363.pdf(128111 bytes) MES Declaration iso BSA Reply ISO Motion to Compel - 91291363.pdf(102421 bytes)

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

In re Application Serial No. 97825971
for the mark "QUEER SCOUT"

Boy Scouts of America, Opposer, v. Toro International, LLC Applicant.	: : : : : : : : : :	Opposition No. 91291363

REPLY IN SUPPORT OF OPPOSER'S MOTION TO COMPEL APPLICANT'S SUBSTANTIVE RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Opposer Boy Scouts of America ("Opposer" or "BSA") files this Reply in Support of its Motion to Compel Applicant's Substantive Responses to Opposer's First Set of Requests for Production of Documents and Things ("Motion"), filed on August 13, 2025.[1] *See* 26 TTABVUE.

I. INTRODUCTION

Applicant's Opposition to BSA's Motion further evidences the bad-faith conduct of Applicant and its counsel. Instead of responding to the merits of BSA's Motion, Applicant's counsel blatantly misrepresents the substance of counsel's meet-and-confer, which was scheduled solely to address Applicant's meritless General Objection to BSA's Document Requests. Incredibly, Applicant falsely claims that BSA did not comply with the meet-and-confer requirement for its Motion because it did not agree during the meet-and-confer to

[1] All capitalized terms used herein have the same meanings as set forth in BSA's Motion. *See* 26 TTABVUE.

defer and/or suspend Applicant's discovery obligations until after the disposition of an as-of-yet unfiled motion for summary judgment (of which neither BSA nor its counsel had any knowledge prior to the meet-and-confer) **months before the close of discovery**. Compounding its misconduct, Applicant then improperly seeks to introduce and litigate the merits of an unfiled dispositive motion to the Board as an additional excuse for its failure to satisfy its discovery obligations.

The Board should not countenance Applicant's misconduct. As set forth below, BSA satisfied the meet-and-confer obligation for its Motion. Further, Applicant has failed to offer any justification or legal support for its General Objection. Accordingly, BSA respectfully requests that the Board enter an Order overruling the General Objection and compelling Applicant to (1) provide full and complete substantive responses, without objection, to the Document Requests and (2) produce all responsive documents in its possession, custody, and control within thirty (30) days of date of the Order.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On July 11, 2025, BSA's counsel sent Applicant's counsel a discovery deficiency letter requesting a meet-and-confer to discuss potential resolution of the dispute relating to Applicant's General Objection to BSA's Document Requests. 26 TTABVUE at Ex. 1, ¶15. Resolution of Applicant's General Objection was the **sole** intended topic of the meet-and-confer. *See* accompanying Supplemental Declaration of Attorney Melissa E. Scott ("Supp. Scott Decl."), at ¶¶7-8. Prior to the meet-and-confer, Applicant's counsel did not indicate an intention to raise any additional topics for discussion. *Id.* at ¶9.

BSA's counsel started the meet-and-confer by asking Applicant's counsel if he planned to maintain his assertion that Document Request No. 2, which sought all non-

privileged documents Applicant relied on, reviewed, discussed, or consulted in preparing its Answers to BSA's Interrogatories, counted as 34 separate Document Requests. *Id.*, at ¶11. Applicant's counsel advised BSA's counsel that, because of the wording of Document Request No. 2, he intended to maintain his position. *Id.*, at ¶12.

Considering this response, BSA's counsel tried to "cut to the chase" and asked Applicant's counsel if he intended to change his position on his counting method for **any** of BSA's Document Requests and/or withdraw the General Objection. *Id.*, at ¶13. At this point, out of the blue, Applicant's counsel announced that he intended to imminently file a summary judgment motion (even though months remained in the discovery period) and demanded that BSA agree to defer Applicant's obligation to respond to the Document Requests until the Board disposed of Applicant's unfiled motion. *Id.*, at ¶14. Incredibly, Applicant's counsel then stated his intention to base Applicant's motion on "hundreds" of documents that Applicant had not yet produced because of its General Objection, but that are responsive to BSA's Document Requests. *Id.*, at ¶15.

BSA's counsel advised Applicant's counsel that BSA would not agree to defer Applicant's obligation to respond to the Document Requests (which were served nearly 3 months earlier) until the Board disposed of an as-of-yet unfiled motion. *Id.*, at ¶16. She further advised Applicant's counsel that she believed such a motion lacked merit given the fame of BSA's marks, as acknowledged in other cases, and noted that such a motion was improper given that several months remained in the discovery period. *Id.*, at ¶17.

Applicant's counsel asked BSA's counsel what discovery BSA could possibly obtain from Applicant relevant to the fame of BSA's marks. *Id.*, at ¶18. BSA's counsel noted that, for starters, Applicant could produce the "hundreds" of documents it claims it

has showing alleged "dilution" of BSA's marks—which are responsive to BSA's Document Requests. *Id.*, at ¶19. BSA's counsel also advised Applicant's counsel that several months remained in the discovery period and that BSA had a right to introduce its own evidence concerning the fame of its marks. *Id.*, at ¶20.

As Applicant acknowledges, BSA's counsel then insisted on discussing Applicant's counting method as to each Document Request to try to resolve the outstanding discovery dispute. 28 TTABVUE, Kapteyn Decl., at ¶9. Alternatively, BSA's counsel requested that Applicant's counsel acknowledge that the parties could not resolve the dispute. *Id.*; *see also* Supp. Scott Decl., at ¶¶21-23. Applicant's counsel declined to review the counting method for each Document Request and agreed that the parties could not resolve the dispute if BSA refused to defer Applicant's discovery obligations. Supp. Scott Decl., at ¶¶21-23.

III. LEGAL ARGUMENT

The Board should grant BSA's Motion in its entirety. Contrary to Applicant's claim, BSA's counsel undertook sufficient efforts to attempt the resolve the discovery dispute at issue in BSA's Motion—Applicant's own Opposition acknowledges this. Further, Applicant failed to offer any substantive response to the merits of BSA's Motion, instead relying on its fabricated claims about the substance of counsel's meet-and-confer.

The Board should also disregard Sections III.B-C of Applicant's Opposition. Those Sections relate solely to the merits of BSA's dilution and fame claims and a **nonexistent** dispositive motion—neither of which are at issue in BSA's Motion. Indeed, Applicant's counsel should be admonished for attempting to improperly litigate the merits of BSA's claims and a non-existent dispositive motion in response to a motion to compel.

A. Opposer's Meet-And-Confer Satisfied the Board's Requirements.

Applicant first argues the Board should deny BSA's Motion because BSA's efforts to resolve the discovery dispute allegedly failed to satisfy Board standards. Applicant's argument fails for at least the following reasons.

First, while applicable Board Rules impose on parties an obligation to undertake good faith efforts to resolve a discovery dispute before filing a motion to compel, they do not require the efforts to be successful. If such were the case, motions to compel would never be filed.

Second, Applicant's argument that the record does not reflect an "unresolvable situation" is demonstrably false and is refuted by its own counsel's declaration. On July 11, 2025, BSA's counsel sent Applicant's counsel a **7-page, single-spaced letter** detailing at length the deficiencies in Applicant's counting method and requesting a meet-and-confer to attempt to resolve the discovery dispute. *Id.*, at Ex. 8. BSA's counsel also attached as Exhibit 2 to the deficiency letter a table setting forth a detailed explanation of the counting method BSA applied to the Document Requests. *Id.*, at Ex. 8, *at its* Ex. 2.

On August 13, 2025, counsel held a telephonic meet-and-confer to attempt to resolve the discovery dispute. *Id.*, at Ex. 1, at ¶16. As explained above, BSA's counsel began the discussion with an attempt to resolve the dispute as to Document Request No. 2. Supp. Scott Decl., at ¶11. Applicant's counsel advised that, because of the wording of Document Request No. 2, he intended to maintain his position. *Id.* at ¶12.

To avoid wasting time, BSA's counsel asked Applicant's counsel if he intended to change his position on his counting method for **any** of BSA's Document Requests and/or withdraw the General Objection. *Id.* at ¶13. Instead of answering the question, Applicant's

counsel unexpectedly announced his previously undisclosed intention to file a summary judgment motion, even though several months of discovery remained. *Id.* at ¶14. He then demanded that BSA agree to defer Applicant's discovery obligations until after the Board disposed of Applicant's as-of-yet unfiled motion. *Id.*

Notwithstanding the fact that Applicant's counsel blindsided BSA's counsel with its "summary judgment" announcement during a meet-and-confer on a discovery dispute, it is indisputable that BSA had **no** obligation to accede to Applicant's counsel's demand. No dispositive motion was pending and BSA had served its Document Requests **months earlier**. Further, BSA is entitled to responses to its outstanding Document Requests.

It was improper for Applicant's counsel to attempt to condition providing Applicant's discovery responses to BSA on a requirement that BSA agree to defer receipt of those responses until after the Board ruled on an as-of-yet unfiled dispositive motion. Indeed, Applicant's counsel's demand was even more inappropriate given his stated intention to base the dispositive motion on documents that Applicant had not produced because of the General Objection but that were responsive to BSA's Document Requests. *See* 26 TTABVUE, Ex. 1, at ¶21.

Regardless, Applicant's counsel acknowledges that, after discussing Applicant's purportedly forthcoming dispositive motion, **BSA's counsel insisted that they discuss each Document Request in dispute**. 28 TTABVUE, Kapteyn Decl. at ¶ 9. Alternatively, BSA's counsel requested that Applicant's counsel acknowledge that the parties could not resolve the dispute. *Id.*; Supp. Scott Decl., at ¶¶21-23.

Applicant's counsel declined to review the counting method for each Document Request, stating Applicant would not withdraw its General Objection unless BSA agreed

to defer production of Applicant's responses until after the disposition of its forthcoming dispositive motion. Supp. Scott Decl. at ¶¶21-23. BSA, acting well within its rights, refused to agree to Applicant's demand. *Id.* at ¶24.

BSA's counsel sent a detailed discovery deficiency letter setting forth its position with respect to the merits of Applicant's General Objection, requested a meet-and-confer, and attempted to resolve the dispute by reviewing each disputed Document Request with Applicant's counsel during a telephonic meet-and-confer. In short, BSA satisfied its meet-and-confer obligation.

It was Applicant's counsel who refused to discuss the Document Requests, instead demanding that BSA agree to defer Applicant's discovery obligations until after disposition of an as-of-yet unfiled motion. Applicant cannot rely on its own counsel's refusal to discuss the disputed Document Requests unless BSA acceded to his demand to now argue that BSA failed to adequately satisfy the meet-and-confer requirements. It was because of **Applicant's counsel's demand** that this became an "unresolvable situation."

Considering that BSA satisfied the meet-and-confer requirement, and Applicant chose not to offer any substantive arguments in response to the merits of BSA's Motion, the Board should grant BSA's Motion in its entirety.

B. Sections III.B-C Of Applicant's Opposition Have No Relevance To The Merits Of BSA's Motion And Should Be Disregarded.

In Sections III.B-C of its Opposition, Applicant attempts to justify its demand that BSA agree to defer Applicant's discovery obligations until after disposition of an unfiled dispositive motion by citing the purported merits of this nonexistent motion and attempting to "litigate" the merits of BSA's claims regarding the fame of its marks. These arguments are improper, and the Board should disregard them.

As an initial matter, the Board suspended proceedings pending the disposition of BSA's Motion noting: "The parties should not file any submission **that is not germane to the motion to compel**." 27 TTABVUE (emphasis added). Applicant cites no authority for the proposition that it need not respond to outstanding discovery if it intends to file a future dispositive motion. *See* 28 TTABVUE. It cannot because there is none. Further, it also cites no authority for the proposition that BSA must defer Applicant's discovery obligations if Applicant states an intention to file a future dispositive motion. Again, it cannot because there is none. Neither the merits of a nonexistent motion nor BSA's claim of fame are relevant to the disposition of BSA's Motion. Thus, the inclusion of such arguments in Applicant's Opposition is procedurally and substantively improper.

While BSA does not "take the bait" and address such issues in this Reply, it does note that: (1) several months remain in discovery; (2) "fame [of a mark] is a question of fact that requires a case by case analysis;" (3) Applicant's counsel stated its intention to base its dispositive motion on documents that it has not produced but that are responsive to BSA's Document Requests; and (4) in appropriate circumstances (such as those here), Federal Rule of Civil Procedures 56(d) permits the Board to defer considering a motion for summary judgment, deny it, and/or allow the nonmoving party time to obtain additional discovery necessary to respond to the motion. *See Pumpernickel Assocs., LLC v. Ningbo Panera Lighting Co., Ltd.*, 2025 WL 985438 (TTAB Mar. 18, 2025) (non-precedential) (fame of a mark is a factual question); TBMP § 528.06 (Request for Discovery to Respond to Summary Judgment); 26 TTABVUE, Ex. 1 at ¶ 21.

IV. CONCLUSION

For the reasons stated above, and in BSA's Motion (*see* 26 TTABVUE), the Board

should grant BSA's Motion in its entirety. Accordingly, Opposer requests that the Board enter an Order overruling the General Objection and compelling Applicant to (1) provide full and complete substantive responses, without objection, to the Document Requests and (2) produce all responsive documents in its possession, custody, and control within thirty (30) days of date of the Order.

Dated: September 12, 2025

/Melissa E. Scott/

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

In re Application Serial No. 97825971
for the mark "QUEER SCOUT"

Boy Scouts of America,	:	Opposition No. 91291363
Opposer,	:	
v.	:	
Toro International, LLC	:	
Applicant.	:	

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Reply in Support of Opposer's Motion to Compel Applicant's Substantive Responses to Opposer's First Set of Requests for Production of Documents and Things, accompanying Declaration of Attorney Melissa E. Scott, and all related exhibits on Applicant's counsel of record on the date identified below via email addressed as follows:

jeremy@kwlaw.com
nick@kwlaw.com

Dated: 12 September 2025

/-d-/
Deanna M. McGregor

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

In re Application Serial No. 97825971
for the mark "QUEER SCOUT"

Boy Scouts of America,	:	Opposition No. 91291363
Opposer,	:	
v.	:	
Toro International, LLC	:	
Applicant.	:	

SUPPLEMENTAL DECLARATION OF ATTORNEY MELISSA E. SCOTT IN SUPPORT OF OPPOSER'S MOTION TO COMPEL APPLICANT'S SUBSTANTIVE RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

I, Melissa E. Scott, Esquire, hereby declare and state as follows:[1]

1. I am an adult citizen of the United States residing in the Commonwealth of Pennsylvania.

2. I am a Partner with the law firm of Fox Rothschild LLP, having my principal office at 747 Constitution Drive, Suite 100, Exton, Pennsylvania 19341.

3. I am a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania, holding license number 93420 therein.

4. I am also a member in good standing of the Bar of the Supreme Court of the State of New Jersey, holding license number 015762004 therein.

[1] All capitalized terms used herein have the same meanings as set forth in BSA's Motion to Compel Applicant's Substantive Responses to Opposer's First Set of Requests for Production of Documents and Things. *See* 26 TTABVUE.

5. I, together with my co-counsel, Gary A. Hecht, Esq., represent Opposer Boy Scouts of America ("BSA"), in the above-captioned matter.

6. I hereby submit this Supplemental Declaration in support of the Reply in Support of Opposer's Motion to Compel Applicant's Substantive Responses to Opposer's First Set of Requests for Production of Documents And Things ("Motion").

7. On July 11, 2025, in response to Applicant's General Objection to BSA's Document Requests, I sent a deficiency letter identifying the flaws in Applicant's counting methodology, setting forth BSA's own counting methodology (which identified a total of 52 Document Requests including subparts), and requesting a meet-and-confer to discuss potential resolution of the discovery dispute. *See* 26 TTABVUE, Ex. 8.

8. Resolution of Applicant's General Objection was the sole intended topic of the meet-and-confer.

9. At no point before the meet-and-confer did Applicant's counsel notify me of any intention to raise additional topics for discussion during the meet-and-confer.

10. On August 13, 2025, I held a telephonic meet-and-confer with Applicant's counsel Jeremy Kapteyn, Esq. ("Attorney Kapteyn").

11. I began the meet-and-confer by asking Attorney Kapteyn if he planned to maintain his position that BSA's Document Request No. 2, which sought all non-privileged documents Applicant relied on, reviewed, discussed, or consulted in preparing its Answers to BSA's Interrogatories, counted as 34 separate Document Requests.

12. Attorney Kapteyn stated that, because of the wording of Document Request No. 2, he intended to maintain his position.

13. In view of this response, I tried to "cut to the chase" and asked Attorney

Kapteyn if he intended to change his position on his counting method for any of BSA's Document Requests and/or withdraw Applicant's General Objection.

14. At this point, Attorney Kapteyn suddenly announced that he intended to imminently file a summary judgment motion and demanded that BSA agree to defer Applicant's obligation to respond to the Document Requests until the Board disposed of Applicant's dispositive motion.

15. Attorney Kapteyn further stated his intention to base Applicant's motion on "hundreds" of documents that Applicant had not yet produced because of its General Objection, but that are responsive to BSA's Document Requests.

16. I advised Attorney Kapteyn that BSA would not agree to defer Applicant's obligation to respond to the Document Requests, which were served nearly 3 months earlier, until the Board disposed of an as-of-yet unfiled motion.

17. I further advised Attorney Kapteyn that I believed such a motion lacked merit given the fame of BSA's marks, as acknowledged in other cases, and noted that such a motion was improper given that several months remained in the discovery period.

18. Attorney Kapteyn asked me what discovery BSA could possibly obtain from Applicant relevant to the fame of BSA's marks.

19. I explained that, at a minimum, Applicant could produce the "hundreds" of documents he claimed it has showing purported "dilution" of BSA's marks—which are responsive to BSA's Document Requests.

20. I further advised Attorney Kapteyn that several months remained in the discovery period and that BSA had a right to introduce its own evidence concerning the fame of its marks.

21. At this point during the meet-and-confer, I insisted that Attorney Kapteyn and I discuss Applicant's counting method as to each of the disputed Document Requests to try to resolve the outstanding discovery dispute.

22. Alternatively, if Applicant was unwilling to change its position on its counting methods, I asked that Attorney Kapteyn acknowledge that the parties could not resolve the discovery dispute relating to the General Objection.

23. Attorney Kapteyn declined to review the disputed Document Requests, agreeing that the parties could not resolve the discovery dispute if BSA refused to defer Applicant's discovery obligations until after the Board's disposition of Applicant's as-of-yet unfiled motion for summary judgment.

24. I told Attorney Kapteyn that BSA would not agree to his demand and the meet-and-confer concluded.

25. I hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true.

26. I understand that false statements and the like so made herein are punishable by fine, or imprisonment, or both under 18 U.S.C. § 1001, *et seq.*, and further understand that such statements may jeopardize BSA's position in this proceeding.

Dated: September 12, 2025

/Melissa E. Scott/

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