

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: May 29, 2009

Cancellation No. 92049674

BLAIN SUPPLY, INC.

v.

HOME COURT INTERNATIONAL 2002, LTD.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

In accordance with the Board's order dated September 10, 2008, initial disclosures were due November 26, 2008 and the discovery period was set to close on April 25, 2009. This case now comes up on petitioner's motion, filed April 15, 2009, to compel respondent to produce its initial disclosures and its responses to petitioner's first set of interrogatories and first request to produce documents. Respondent filed a response and petitioner replied thereto.

Petitioner served its written discovery requests on December 1, 2008. There are twenty-two numbered interrogatory requests and two numbered document requests. In support of its motion, petitioner argues that it asked respondent several times to serve its initial disclosures and to serve discovery responses and that respondent has failed to do so.

In response, respondent argues that it did not intentionally withhold any information from petitioner because it voluntarily produced documents to petitioner before any discovery requests were

served. According to respondent, the documents it sent to petitioner provide evidence of its ongoing use of the mark. Respondent indicates the documents were provided in order to expeditiously resolve this cancellation proceeding but the parties have not been able to settle the matter. Respondent states it provided initial disclosures on April 21, 2009 and served responses to petitioner's written discovery requests on May 4, 2009. Thus, according to respondent, petitioner's motion is now moot.

In reply, petitioner points out that respondent admits it provided initial disclosures and discovery responses months after the due dates. Petitioner characterizes the discovery responses as consisting of "objections and evasive answers."¹ Petitioner argues that, although respondent indicated it would produce further documents, no additional documents have been produced. Petitioner states it intends to work with respondent to obtain the documents it needs before conducting depositions. Petitioner expresses its belief that another motion to compel may be necessary to address respondent's objections and failure to produce documents.

In view of the service of initial disclosures and discovery responses, petitioner's motion to compel is now moot. Nonetheless, respondent's initial disclosures and discovery responses are tardy. Although respondent hoped the matter would settle early, and asked what additional information petitioner needed, petitioner consistently asked that initial disclosures be provided and that

¹ The responses are not of record.

responses be made to its discovery requests. Thus, respondent's delinquency in providing the initial disclosures and discovery responses was dilatory.

The parties are reminded that the Board's standardized protective order is in place governing the exchange of proprietary information and materials. Trademark Rule 2.116(g). Thus, any objections based on the confidential or proprietary nature of the information or documents sought are resolved. To the extent respondent has not produced responsive documents, respondent is allowed until **THIRTY DAYS** from the mailing date of this order in which to do so. If there are no further responsive documents, respondent must so state. The parties are directed to TBMP §414 (2d ed. rev. 2004) for an extensive, though not exhaustive, guideline of discovery topics.² If respondent believes that its discovery responses should be amended, it is allowed until **THIRTY DAYS** from the mailing date of this order in which to do so.³ The parties are reminded of their duties to cooperate, search records and supplement (as appropriate) in the discovery process. TBMP §408 (2d ed. rev. 2004).

Proceedings are resumed. Respondent's answer, filed May 15, 2009, to the amended petition to cancel is noted and entered.

Operative dates are reset as follows:

Expert Disclosures Due	7/2/2009
Discovery Closes	8/1/2009

² Section 414(7) is no longer operative.

³ The time frames set in this paragraph are for scheduling purposes only and are not orders compelling discovery responses.

Plaintiff's Pretrial Disclosures	9/15/2009
Plaintiff's 30-day Trial Period Ends	10/30/2009
Defendant's Pretrial Disclosures	11/14/2009
Defendant's 30-day Trial Period Ends	12/29/2009
Plaintiff's Rebuttal Disclosures	1/13/2010
Plaintiff's 15-day Rebuttal Period Ends	2/12/2010

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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