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

Proceeding	92056405
Party	Plaintiff B & E Poultry, Inc.
Correspondence Address	STANLEY B KITA HOWSON & HOWSON LLP 501 OFFICE CENTER DRIVE, SUITE 210 FORT WASHINGTON, PA 19034 UNITED STATES sbkita@howsonandhowson.com
Submission	Motion to Strike
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Date	04/25/2013
Attachments	motion.pdf (3 pages)(93598 bytes)

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

B & E POULTRY, INC.	:	
	:	
Petitioner,	:	Cancellation No. 92056405
	:	
v.	:	
	:	
AMERICA LOVES BBQ, LLC,	:	Registration Nos.
	:	: 3,328,627 and 3,328,651
Registrant.	:	

MOTION TO DISMISS RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT FOR NON-COMPLIANCE
WITH 37 C.F.R. §2.127(e) (1)

Background

This Cancellation Proceeding was initiated on November 5, 2012, after several attempts to communicate with Respondent America Loves BBQ's via its counsel of record were unsuccessful. There were subsequent written communications between new counsel and Petitioner's counsel extending the time to Answer while settlement discussions proceeded. The matter is not yet settled. The date for filing an Answer was April 15, 2013.

On April 15, 2013 Respondent filed its Answers, Affirmative Defenses and a Counterclaim against Petitioner seeking to cancel Petitioner's Registration No. 3,382,372 for LOVE ME TENDER. (This Counterclaim is awaiting action by the Trademark Trial and Appeal Board to re-set the dates for an Answer, *inter alia*.)

On April 15, 2013, Respondent, American Loves BBQ, LLC, also filed its Motion for Summary Judgment that Petitioner's Claim for Cancellation is Barred by Laches.

Thus far, Respondent, America Loves BBQ, LLC, has not made any initial disclosures in the Cancellation Proceeding.

Relevant Law

37 C.F.R. §2.127 (e) (1) specifically states that “A party may not file a motion for summary judgment until the party has made its initial disclosures”, except for [reasons not pertinent here].

Argument

Respondent is not in compliance with the cited Rule. It cannot, therefore, properly bring its Motion for Summary Judgment at this time.

Relief Requested

The Motion must be dismissed as premature.

B & E Poultry, Inc.

By: 

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CERTIFICATE OF SERVICE

I, Stanley B. Kita, hereby certify that I caused a true and correct copy of the foregoing B& E Poultry, Inc.'s Motion to Dismiss Respondent's Motion for Summary Judgment for Non-Compliance with 37 C.F.R. §2.127 (e) (1) to be served via electronic transmission and U.S. First Class mail on the following:

Richard D. Harris, Esquire
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this ^{BT} 25 day of April, 2013



Stanley B. Kita