

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: May 5, 2014

Cancellation No. 92057182

Stephen R. Enos

v.

Pasquale Rotella and Insomniac Holdings, LLC

**Robert H. Coggins,
Interlocutory Attorney:**

Now before the Board is respondent Insomniac Holdings, LLC's ("Insomniac") combined motion to compel and to extend (filed April 22, 2014).

Telephone Conference

The Board exercised its discretion to quickly decide the motion by telephone, and at approximately 2:00 p.m. EDT on May 5, 2014, the Board convened a telephone conference to resolve the outstanding motion. Participating in the conference were Christopher Varas, counsel for respondent Insomniac; Colin Hardacre, counsel for respondent Pasquale Rotella; Christopher Rudd, counsel for petitioner Stephen R. Enos; and the above-signed Board attorney responsible for resolving interlocutory disputes in this case.

Inasmuch as the Board conducted the conference prior to the time in which petitioner might otherwise have filed a written brief in opposition to the motion, petitioner was allowed time to provide an oral brief in opposition. The Board

carefully considered the supporting motion, brief, and oral comments and questions made by all parties in coming to a determination of the outstanding motion. The Board presumes familiarity with the issues, and for the sake of efficiency this order does not summarize the parties' arguments or comments or the analysis explained by the Board during the telephone conference. Instead, this order lists the decisions made by the Board.

Answers

The Board noted respondents' respective answers, filed April 17, 2014.

Lead Correspondent for Respondents

The Board inquired about a lead correspondent for respondents. Respondents agreed that Mr. Varas will be the lead correspondent to receive paper copies of Board orders, while both Messrs. Varas and Hardacre will receive electronic copies of Board orders.

Settlement

The Board inquired about the possibility of settlement. Each party stated that, while settlement is always possible, there was no current settlement proposal under consideration. Petitioner and respondent Rotella stated that the parties were "far apart" when they last discussed the issue.

Motion to Compel

The Board found that Insomniac had made a good faith effort, as required by Trademark Rule 2.120(e)(1), to resolve the discovery dispute raised in the motion. Inasmuch as petitioner stated that he knows the cell phone numbers, but not the

addresses, of the declarants (i.e., Dedmon, Font, Graham, Hamilton, Park, and Tate), the motion to compel was granted to the extent that petitioner was ordered to provide Insomniac with the declarants' telephone numbers. Fed. R. Civ. P. 26(a)(1)(A)(i) and 26(e)(1). Petitioner is allowed five days to provide the numbers to respondent Insomniac in writing (which may be via email).

Motion to Extend

The motion to extend was granted to the extent that the close of discovery was reset to September 2, 2014. While petitioner consented during the conference to a sixty-day extension, the Board reset dates in contemplation of the possibility that Insomniac may need to perform its own research to locate the addresses of the declarants.

Schedule

Proceedings were not suspended. Dates were reset on the following schedule.

Expert Disclosures Due	8/3/2014
Discovery Closes	9/2/2014
Plaintiff's Pretrial Disclosures	10/17/2014
Plaintiff's 30-day Trial Period Ends	12/1/2014
Defendant's Pretrial Disclosures	12/16/2014
Defendant's 30-day Trial Period Ends	1/30/2015
Plaintiff's Rebuttal Disclosures	2/14/2015
Plaintiff's 15-day Rebuttal Period Ends	3/16/2015

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

Cancellation No. 92057182

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.

Cooperation

The Board commended the parties on their prior cooperation in discovery, and reminded the parties that continued cooperation would be expected. TBMP § 408.01. The Board thanked the parties for their quick availability and participation in the phone conference.