

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

EJW

Mailed: June 22, 2018

Cancellation No. 92064261

Michael Spitzbarth

v.

John Groat dba Holly Shirt!

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

On November 7, 2017, the Board denied the parties' respective motions for partial summary judgment and, *inter alia*, allowed Respondent twenty days from the date of that order to file a response to Petitioner's motion to compel discovery, which had been filed on August 24, 2017. Respondent did not file a brief in response thereto within the time provided by the Board's order.¹

By his motion to compel, Petitioner seeks an order (i) directing Respondent to serve his responses to Petitioner's First Set of Written Interrogatories and First Set of Requests for Production of Documents and to serve all responsive documents, and (ii) resetting the discovery period for Petitioner to allow his counsel time to review Respondent's responses and to take any oral depositions that may be appropriate.

¹ The Board also notes that Respondent did not submit, as allowed by the Board in its November 7, 2017 order, an amended answer to include a sufficiently pleaded defense regarding Petitioner's bona fide intent to use his mark when he filed his pleaded application.

In view of Respondent's failure to respond to Petitioner's combined motion to compel discovery responses and to reset Petitioner's discovery period, said motion is hereby **granted as conceded**. See Trademark Rule 2.127(a); TBMP § 502.04.

A party that fails to respond to interrogatories or document requests during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); TBMP § 403.03.

Accordingly, Respondent is **ORDERED** to serve, within **THIRTY DAY** days of the mailing date of this order, his responses to Petitioner's First Set of Written Interrogatories and First Set of Requests for Production of Documents, and to serve all responsive documents that Petitioner has requested. Respondent must respond in full and without objection on the merits thereof inasmuch as Respondent failed either to timely respond or to object to Petitioner's discovery requests. *Id.*

In the event that Respondent fails to serve full responses as ordered herein, Petitioner's remedy may lie in a motion for sanctions, as appropriate. See Trademark Rule 2.120(h)(1); TBMP § 411.05.

Proceedings are resumed. The reopened discovery period for Petitioner, the remaining disclosure due dates, and trial dates are reset as indicated below:

Plaintiff's Amended Expert Disclosures Due, if any	8/23/2018
Discovery Closes for Plaintiff	9/22/2018
Plaintiff's Pretrial Disclosures Due	11/6/2018

Plaintiff's 30-day Trial Period Ends	12/21/2018
Defendant's Pretrial Disclosures Due	1/5/2019
Defendant's 30-day Trial Period Ends	2/19/2019
Plaintiff's Rebuttal Disclosures Due	3/6/2019
Plaintiff's 15-day Rebuttal Period Ends	4/5/2019
Plaintiff's Opening Brief Due	6/4/2019
Defendant's Brief Due	7/4/2019
Plaintiff's Reply Brief Due	7/19/2019
Request for Oral Hearing (optional) Due	7/29/2019

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. These include pretrial disclosures, matters in evidence, the manner and timing of taking testimony, 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). 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).

