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

wbc

Mailed: April 18, 2018

Cancellation No. 92065051

Master Inspector Certification Board, Inc.

v.

Phillip Nathan Thornberry

Wendy Boldt Cohen, Interlocutory Attorney:

By way of background, Respondent originally filed a motion to compel with respect to its requests for admission on November 17, 2017. *See* 16 TTABVUE. The Board's order of February 6, 2018 noted that the motion to compel procedure is not applicable to requests for admission and would therefore be given no further consideration. 20 TTABVUE 1-2. Without alleging any additional steps have been taken since the filing of the motion to compel, Respondent filed a motion to test the sufficiency of Petitioner's responses to Respondent's requests for admission arguing the requests should be deemed admitted because Petitioner's responses were untimely. 22 TTABVUE. The motion is contested by Petitioner.[1]

A motion to determine the sufficiency of responses to requests for admission must be supported by a written statement from the moving party that such party or its

[1] The Board has considered the parties' submissions and presumes the parties' familiarity with the factual bases for the motion and does not recount them here except as necessary to explain the Board's order.

attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion, and has been unable to reach agreement. *See* Trademark Rules 2.120(i)(1); TBMP § 524.02 (June 2017). "The good faith efforts of the parties should be directed to understanding differences and actually investigating ways in which to resolve the dispute." *Hot Tamale Mama … and More, LLC v. SF Invs., Inc.,* 110 USPQ2d 1080, 1081 (TTAB 2014); *see MacMillan Bloedel Ltd. v. Arrow-M Corp.*, 203 USPQ 952, 953 (TTAB 1979). "In determining whether a good faith effort to resolve the discovery dispute has been made, the Board may consider, among other things, whether the moving party has investigated the possibility of resolving the dispute, whether, depending on the circumstances, sufficient effort was made towards resolution, and whether attempts at resolution were incomplete." TBMP § 523.02. "Where it is apparent that the effort toward resolution is incomplete, establishing the good faith effort that is a prerequisite for a motion to compel necessitates that the inquiring party engage in additional effort toward ascertaining and resolving the substance of the dispute." *Hot Tamale Mama,* 110 USPQ2d at 1081.

In support of Respondent's efforts to resolve the parties' dispute in good faith, Respondent alleges, *inter alia*, that it sent one email to Petitioner regarding discovery responses on November 10, 2017; and in response thereto, Petitioner sent an email the same day noting that it would "contact [Respondent] next week regarding the First Set of Discovery." 22 TTABVUE 26-27. Respondent then filed its original motion

on November 17, 2017. *See* 16 TTABVUE. The instant motion does not indicate that any further attempts to resolve the parties' conflict were made. *See* 22 TTABVUE.

Based on the foregoing, it does not appear that Respondent provided Petitioner with a meaningful opportunity to resolve the parties' dispute prior to seeking Board intervention. Petitioner contacted Respondent noting it would contact Respondent about discovery responses. Instead of waiting to seek if the promised discovery responses or further communication from Petitioner would indeed be provided, Respondent chose to instead file a motion to compel. These actions do not persuade the Board that Respondent made sufficient efforts to resolve the parties' dispute prior to filing its motion to compel and subsequent motion to test the sufficiency of responses to the requests for admission. Indeed, on the record before the Board, the parties were in communication with each other about the discovery dispute; the apparent lack of impasse indicates that Respondent's efforts toward resolution were incomplete and insufficient. Further, the Board notes that Petitioner provided responses to the requests for admission on November 28, 2017. *See* 25 TTABVUE 7-25.

In view thereof, the Board hereby **denies** Respondent's motion. *See* Trademark Rule 2.120(i)(1). The Board expects the parties to cooperate with one another in the discovery process and looks with extreme disfavor on those who do not. *Id.*; *see Panda Travel Inc. v. Resort Option Enterprises, Inc.*, 94 USPQ2d 1789, 1791 (TTAB 2009); *Amazon Technologies Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009).

In its response to Respondent's motion, Petitioner moved to withdraw any admissions deemed admitted and for the Board to accept its responses to Respondent's requests for admission, attached to Petitioner's brief. *See* 24 TTABVUE 2-5; Fed. R. Civ. P. 6(b)(1)(B) and 36(b). Inasmuch as Respondent has not responded to Petitioner's motion, the motion is **granted** as conceded. To the extent any requests for admission were deemed admitted, the admissions are hereby withdrawn and Petitioner's responses attached to its brief are made of record. *See* 25 TTABVUE 7-28.

Proceedings are resumed. Dates are reset as follows:

Expert Disclosures Due	April 21, 2018
Discovery Closes	May 21, 2018
Plaintiff's Pretrial Disclosures Due	July 5, 2018
Plaintiff's 30-day Trial Period Ends	August 19, 2018
Defendant's Pretrial Disclosures Due	September 3, 2018
Defendant's 30-day Trial Period Ends	October 18, 2018
Plaintiff's Rebuttal Disclosures Due	November 2, 2018
Plaintiff's 15-day Rebuttal Period Ends	December 2, 2018
BRIEFS SHALL BE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	January 31, 2019
Defendant's Main Brief Due	March 2, 2019
Plaintiff's Reply Brief Due	March 17, 2019

In each instance, a copy of the transcript of any oral 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. An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.