

ESTTA Tracking number: **ESTTA1063391**

Filing date: **06/22/2020**

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

Proceeding	92073088
Party	Plaintiff Cozy Corner Diner & Pancake House Inc.
Correspondence Address	VANGELIS ECONOMOU ECONOMOU IP LAW 1150 WILMETTE AVE, SUITE C WILMETTE, IL 60091 UNITED STATES Van@EconomouIP.com 847-644-3500
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Vangelis Economou
Filer's email	Van@EconomouIP.com
Signature	/Vangelis Economou/
Date	06/22/2020
Attachments	Motion to Compel.pdf(41173 bytes) EXHIBIT A - Requests to Admit 04-10-2020.pdf(110618 bytes) EXHIBIT B.pdf(5144 bytes)

STATEMENT OF FACTS

1. The subject cancellation proceeding was filed on January 3, 2020.
2. The USPTO Trademark Trial and Appeal Board (TTAB) instituted this cancellation proceeding on January 3, 2020, setting the pleading and discovery schedule.
3. Respondent's Affirmative Defenses were filed on February 7, 2020. Respondent has not then nor to date provided proper Answers to the allegations made in the Petition filed on January 3, 2020, as is required by the Code of Federal Regulations (Fed.R.Civ.P.), namely 37 CFR. §2.106(b)(2), which states in relevant part:

“An answer shall state in short and plain terms the applicant’s defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. . .”

and the TTAB Manual of Procedure §311.02, et seq.
4. Following the filing of the Affirmative Defenses without an Answer on February 7, 2020, Petitioner’s undersigned counsel discussed a possible resolution with Respondent’s attorney of record. Pursuant to agreement in that discussion, Petitioner’s Attorney forwarded a draft Concurrent Use Agreement to counsel for Respondent in early February 2020, including several amendments to same requested by Respondent’s counsel. Nothing further was heard regarding the draft agreement until the Initial discovery conference on March 3, 2020.
5. The initial Discovery conference was due by March 13, 2020. A discovery conference was held between counsel for Petitioner and Respondent on March 3, 2020, as required by the Scheduling Order. The discovery conference was directed to any possibility of conciliation, including an attempt to enter into a concurrent use agreement, a draft of which had been forwarded to Respondent’s counsel, and to the form and content of any discovery requests the parties intended to serve.
6. The Discovery period opened on March 13, 2020.
7. Petitioner timely served its Initial Disclosures and served several discovery requests upon Petitioner on April 10, 2020 both by e-mail and US First Class delivery. These included several Interrogatories, Requests for Document Production and

Requests to Admit. The Request to Admit being germane to the Motion to Deem the Request for Admission Admitted, a copy is attached hereto as Exhibit A.

8. Respondent forwarded to Petitioner' undersigned counsel its Initial Disclosures on April 12, 2020.

9. No responsive answers to any of the Discovery Requests were received within the period set forth for such responses pursuant to the Federal Rules of Civil Procedure (Fed.R.Civ.P.). Responses were due by May 10, 2020, within a period of thirty days of the dates on which they were served by e-mail.¹

10. In an effort to resolve with the other party or the attorney therefor the discovery issues presented in this motion, Petitioner's attorney has made a good faith effort, by conference or correspondence, to resolve the lack of **any** response to the Discovery requests. On May 14, 2020, in the effort to resolve the differences in the discovery dispute, Petitioner's undersigned attorney sent an e-mail to Respondent's counsel of record requesting whether responses to the Discovery Requests were forthcoming, and advising that a motion to compel responses would follow in the event that such responses were not received. A copy of said e-mail is attached as Exhibit B.

11. As of the service date of this motion to compel, at least a month after the May 14, 2020 e-mail, neither Petitioner nor its undersigned attorney of record has ever received either any type of response to the Discovery requests or a response to the May 14, 2020 e-mail, despite being given ample opportunity to do so.

12. Discovery is scheduled to close on September 9, 2020.

ARGUMENT

The objective of the disclosure regime is to accelerate the exchange of basic information about the matter before the TTAB and to eliminate the paperwork involved in requesting such information.² The TTAB normally expects each party to cooperate in

¹ Fed.R.Civ.P. Rules 33(b)(2), 34(b)(2)(A) and 36(a)(3).

² See Fed.R.Civ.P. 26(g); *Johnson Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d1719 (TTAB 1989); *Bison Corp. v. Perfecta Chemie B. v.*, 4 USPQ2d 1718,1720 (TTAB 1987); *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666 (TT AB 1986).

the discovery process and to make a good faith effort to satisfy the discovery requests of its opponent.³ A party upon whom discovery is served cannot impede the progress of its opponent's discovery by failing to respond in a timely manner.

Petitioner has provided ample opportunity to Respondent to comply with its discovery requests, which as of the service date of this Motion are over two months overdue. As set forth above, Petitioner made a good faith effort to resolve differences between the parties in this discovery dispute. However, Respondent has made no response of any kind either to the initial discovery requests (April 10, 2020) or to the follow up e-mail demand for compliance (May 12, 2020). Further delay on the part of Respondent to avoid compliance with its discovery obligations has hampered and continues to hamper Petitioner's valid attempts to discover the facts of this case prior to trial.

REQUEST FOR RELIEF

WHEREFORE Petitioner respectfully requests an order from this Honorable Board to compel responses to its valid and pending discovery requests and an order limiting the grounds of objections thereto that can be made by Respondent thereto; and

WHEREFORE Petitioner further requests a determination by this Honorable Board that Petitioner's Requests to Admit served on April 10, 2020 (Exhibit A attached hereto) be deemed admitted by Respondent in the absence of any good or valid reason for the delay in responding to the Requests to Admit. Further, the Board deeming the requests admitted would promote the presentation of the merits of the action and would not prejudice the requesting party in defending the action on the merits.

³ See, e.g., Fed. R. Civ. P. 26(g)(1); TTABMP §408.01(c)

No fees are believed due.

Dated: June 22, 2020

Respectfully submitted,

Cozy Corner Diner and Pancake House Inc.

by: *Vangelis Economou*

Vangelis Economou, Esq.

Economou IP Law

1150 Wilmette Ave, Suite C

Wilmette, IL 60091

Attorneys for Cozy Corner Diner & Pancake House Inc.

Tel: 847-644-3500

e-mail address: Van@EconomouIP.com

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2020, a true and complete copy of the foregoing **MOTIONS TO COMPEL DISCOVERY AND TO DEEM ADMITTED REQUEST FOR ADMISSIONS** has been served by forwarding said copy by email on the owner of record of Registration No. 5,743,604 through the below listed opposing attorneys, counsel of record:

Andre B. Mathis, Esq.
Butler Snow LLP
6075 Poplar Avenue, Suite 500
Memphis, TN 38119

e-mail: Andre.Mathis@butlersnow.com

/Vangelis Economou/
Vangelis Economou

EXHIBIT A

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

Cozy Corner Diner & Pancake House Inc.)	Proceeding No: 92/073,088
)	
Petitioner-Applicant,)	Trademark: Cozy Corner Restaurant
)	Inc. Bar-B-Q (word mark)
v.)	
)	Registration No. 5,743,604
Cozy Corner Restaurants Inc.)	
)	
Respondent-Registrant.)	

PETITIONER'S FIRST REQUESTS FOR ADMISSION UNDER RULE 36

Pursuant to the TTAB Scheduling Order dated January 3, 2020, and further to Rule 36 of the Federal Rules of Civil Procedure (FRCP), Petitioner COZY CORNER DINER & PANCAKE HOUSE INC. ("COZY ORNER DINER") propounds the below REQUESTS FOR ADMISSION and serves same on Respondent Cozy Corner Restaurants Inc. ("Respondent") within the time period prescribed by said Rule.

Request for Admission 1:

Respondent did not commence use of the mark COZY CORNER prior to September 1, 1996.

Request for Admission 2:

Respondent admits that there is not now nor has been in the past any likelihood of confusion between the COZY CORNER marks as used by Respondent and by Petitioner COZY ORNER DINER.

Request for Admission 3:

Respondent admits that any likelihood of confusion between the COZY CORNER marks as used by Respondent and by Petitioner COZY ORNER DINER are highly unlikely by virtue of the geographical separation of about 750 miles of their respective locations.

Request for Admission 4:

Respondent admits that it does not open any of its locations for breakfast.

Request for Admission 5:

Respondent admits that it opens its locations daily only after 10:30 am.

Request for Admission 6:

Respondent did not advertise its restaurant services under its registered Mark **COZY CORNER RESTAURANTS INC. BBQ** or equivalent form prior to September 1, 1996.

Request for Admission 7:

Respondent does not now nor ever has used the registered mark "**COZY CORNER RESTAURANT INC. BAR-B-Q**" in the trademark sense to advertise its business.

Request for Admission 8:

Respondent did not incorporate its corporate name Cozy Corner Restaurants Inc. prior to July 30, 2001.

Request for Admission 9:

Respondent did not incorporate its corporate name Cozy Corner Restaurants Inc. prior to September 1, 1996.

Request for Admission 10:

The attached Exhibit A accurately reflects Respondent's current corporate status with the Tennessee Secretary of State.

Dated: April 10, 2020

Respectfully submitted,

Cozy Corner Diner and Pancake House Inc.

by: /Vangelis Economou/

Vangelis Economou, Esq.

Economou IP Law

1150 Wilmette Ave, Suite C

Wilmette, IL 60091

Attorneys for Cozy Corner Diner & Pancake House Inc.

Tel: 847-644-3500

e-mail address: Van@EconomouIP.com

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2020, a true and complete copy of the foregoing PETITIONER'S REQUEST OF ADMISSION UNDER RULE 36 has been served by forwarding said copy via first class mail and email on the owner of record of Registration No. 5,743,604 through the below listed opposing attorneys counsel of record:

Andre B. Mathis, Esq.
Butler Snow LLP
6075 Poplar Avenue, Suite 500
Memphis, TN 38119

e-mail: Andre.Mathis@butlersnow.com

/Vangelis Economou/
Vangelis Economou

EXHIBIT A



Tre Hargett
Secretary of State

Division of Business Services
Department of State
State of Tennessee
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

Filing Information

Name: **COZY CORNER RESTAURANTS, INCORPORATED.**

General Information

SOS Control # 000411950 Formation Locale: TENNESSEE
Filing Type: For-profit Corporation - Domestic Date Formed: 07/30/2001
07/30/2001 1:42 PM Fiscal Year Close 12
Status: Active
Duration Term: Perpetual

Registered Agent Address

LEOTA N V BRADLEY
735 N PARKWAY
MEMPHIS, TN 38105-2033

Principal Address

735 N PARKWAY
MEMPHIS, TN 38105-2033

The following document(s) was/were filed in this office on the date(s) indicated below:

<u>Date Filed</u>	<u>Filing Description</u>	<u>Image #</u>
01/21/2020	2019 Annual Report	B0804-2924
09/23/2019	Application for Reinstatement	B0761-2522
	Filing Status Changed From: Inactive - Dissolved (Administrative) To: ACTIVE	
	Inactive Date Changed From: 08/06/2019 To: No Value	
09/17/2019	2018 Annual Report	B0757-8071
08/06/2019	Dissolution/Revocation - Administrative	B0717-8545
	Filing Status Changed From: Active To: Inactive - Dissolved (Administrative)	
	Inactive Date Changed From: No Value To: 08/06/2019	
06/01/2019	Notice of Determination	B0624-7800
02/23/2018	Application for Reinstatement	B0502-6864
	Filing Status Changed From: Inactive - Dissolved (Administrative) To: ACTIVE	
	Inactive Date Changed From: 08/06/2017 To: No Value	
02/21/2018	2017 Annual Report	B0502-2056
11/25/2017	2016 Annual Report	B0459-7991
	Principal Address 1 Changed From: 745 N PARKWAY To: 735 N PARKWAY	
	Registered Agent Physical Address 1 Changed From: 745 N PKWY To: 735 N PARKWAY	
	Registered Agent Physical Postal Code Changed From: 38105 To: 38105-2033	
08/06/2017	Dissolution/Revocation - Administrative	B0425-1446

Filing Information

Name: **COZY CORNER RESTAURANTS, INCORPORATED.**

Filing Status Changed From: Active To: Inactive - Dissolved (Administrative)

Inactive Date Changed From: No Value To: 08/06/2017

06/01/2017	Notice of Determination	B0400-3974
06/23/2016	2015 Annual Report	B0264-9141
06/01/2016	Notice of Determination	B0255-8499
11/03/2015	Application for Reinstatement	B0165-1737

Filing Status Changed From: Inactive - Dissolved (Administrative) To: ACTIVE

Inactive Date Changed From: 08/21/2006 To: No Value

11/03/2015	2014 Annual Report	B0165-1736
11/03/2015	2013 Annual Report	B0165-1735
11/03/2015	2012 Annual Report	B0165-1734
11/03/2015	2011 Annual Report	B0165-1733
11/03/2015	2010 Annual Report	B0165-1732
11/02/2015	2009 Annual Report	B0165-1731
11/02/2015	2008 Annual Report	B0165-1729
11/02/2015	2007 Annual Report	B0165-1728
11/02/2015	2006 Annual Report	B0165-1724
11/02/2015	2005 Annual Report	B0165-1723

Principal Address 1 Changed From: 745 NORTH PKWY To: 745 N PARKWAY

Principal Postal Code Changed From: 38105 To: 38105-2033

Principal County Changed From: No value To: SHELBY COUNTY

08/21/2006	Dissolution/Revocation - Administrative	ROLL 5835-B
06/14/2006	Notice of Determination	ROLL 5809
08/11/2005	2004 Annual Report	5531-1059
06/14/2005	Notice of Determination	ROLL 5484
01/29/2004	2003 Annual Report	5020-0440
03/13/2003	2002 Annual Report	4752-2733
Registered Agent Changed		
07/30/2002	2001 Annual Report	4564-0114
Registered Agent Changed		
06/21/2002	Notice of Determination	ROLL 4538
07/30/2001	Initial Filing	4255-1616

Active Assumed Names (if any)

Date Expires

EXHIBIT B