

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
General Email: TTABInfo@uspto.gov

mw/am

April 4, 2022

Cancellation No. 92074565

MD Audio Engineering, Inc.

v.

Murvin D Persaud

Michael Webster, Interlocutory Attorney:

On February 22, 2022, Petitioner filed a motion to compel discovery. Petitioner seeks and order compelling Respondent to serve responses to Petitioner's interrogatories and document requests and produce requested documents. Respondent failed to file a brief in response to the motion within the time provided under Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a).

Initially, the Board finds that Petitioner has made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention and that the motion to compel is timely. *See* Trademark Rule 2.120(e)(1).

In view of Respondent's failure to file a brief in response to the motion to compel, Petitioner's motion is hereby **granted** as conceded to the extent set forth below. *See* Trademark Rule 2.127(a); *see also* TBMP § 502.04 (2021).

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 allowed until **THIRTY (30) DAYS** from the mailing date of this order to produce non-privileged responsive documents to each of Petitioner's document requests and to provide responses to each of Petitioner's interrogatory requests. Respondent must respond in full and without objection on the merits (except for objections based on privilege) inasmuch as Respondent failed either to timely respond or to object to said discovery requests. *No Fear, Inc., supra*.

If there are no responsive, non-privileged documents in Respondent's possession, custody or control which are responsive to any of Petitioner's document requests, Respondent must so state affirmatively in its response to the corresponding document request.

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

Proceedings are resumed. Trial dates are reset as follows:

Expert Disclosures Due	5/27/2022
Discovery Closes	6/26/2022
Plaintiff's Pretrial Disclosures Due	8/10/2022
Plaintiff's 30-day Trial Period Ends	9/24/2022
Defendant's Pretrial Disclosures Due	10/9/2022
Defendant's 30-day Trial Period Ends	11/23/2022

Plaintiff's Rebuttal Disclosures Due	12/8/2022
Plaintiff's 15-day Rebuttal Period Ends	1/7/2023
Plaintiff's Opening Brief Due	3/8/2023
Defendant's Brief Due	4/7/2023
Plaintiff's Reply Brief Due	4/22/2023
Request for Oral Hearing (optional) Due	5/2/2023

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, the manner and timing of taking testimony, matters in evidence, 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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable.

Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.¹ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

¹ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.