

ESTTA Tracking number: **ESTTA1361421**
Filing date: **05/28/2024**

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

Proceeding no.	92077133
Party	Defendant Reader Bee, LLC
Correspondence address	ZEPHYR ANDREW ECOTECH LAW GROUP PC 5 THIRD STREET SUITE 700 SAN FRANCISCO, CA 94103 UNITED STATES Primary email: zephyr.andrew@ecotechlaw.com Secondary email(s): dara.tabesh@ecotechlaw.com, lbayley@giplaw.com, mmurphy@giplaw.com, dhwang@giplaw.com, docketdc@giplaw.com, eenglish@giplaw.com 415-503-9164
Submission	Other Motions/Submissions
Filer's name	Lydia Bayley
Filer's email	lbayley@giplaw.com, mmurphy@giplaw.com, dhwang@giplaw.com, eenglish@giplaw.com, docketdc@giplaw.com
Signature	/Lydia Bayley/
Date	05/28/2024
Attachments	2024.05.28 Motion to Deem Registrant's Requests for Admission Conclus ively Admitted.pdf(948289 bytes)

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

Beereaders, Inc., Petitioner,)	
)	
v.)	Cancellation No. 92077133
)	
Reader Bee, LLC, Registrant.)	
)	

**MOTION TO DEEM REGISTRANT’S REQUESTS FOR
ADMISSION CONCLUSIVELY ADMITTED**

Registrant Reader Bee, LLC (“Registrant”) hereby files this Motion to Deem Registrant’s Requests for Admission Conclusively Admitted for Petitioner Beereader, Inc.’s (“Petitioner”) failure to respond within 30 days as required by Fed. R. Civ. P. 36 and TBMP § 407.03.

BACKGROUND

Registrant served its initial disclosures and first set of discovery requests on Petitioner, including the Requests for Admission attached hereto (the “RFAs”), on March 18, 2024. *See* Exhibits A and B.

On April 17, 2024, the day Petitioner’s responses to Registrant’s discovery requests were due, Petitioner requested a thirty (30) day extension to respond to the requests. Counsel for Registrant agreed. *See* Exhibit C.

The extended deadline for Petitioner to respond to Registrant’s discovery requests was May 17, 2024. Petitioner did not seek a further extension to respond or otherwise contact counsel for Registrant. As of the date of this Motion, Petitioner has not responded to the RFAs or served its responses or objections to Registrant’s other first set of discovery requests.

Registrant therefore moves to enforce Fed. R. Civ. P. 36 and TBMP § 407.03 such that

the RFAs are deemed conclusively admitted by Petitioner.

ARGUMENT

A. The Requests for Admission Are Conclusively Admitted

The RFAs are admitted by the plain language of Rule 36 and are conclusively established.

Fed. R. Civ. P. 36(a)(3) states:

“A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.”

The TTAB Manual of Procedure is also clear that “[r]esponses to requests for admission must be served within 30 days after the date of service of the requests.” TBMP § 407.03(a).

B. Petitioner’s Pattern of Neglect and Delay

Petitioner’s failure to respond to Registrant’s discovery requests demonstrates its continued failure to prosecute the cancellation action that it brought (the “Cancellation”). The Board should not allow Petitioner to withdraw the admissions because this is the latest in Petitioner’s pattern of neglect and delay.

For example, the Board previously entered a Notice of Default against Petitioner for failure to answer Registrant’s Amended Counterclaims or to move for an extension of time to answer the Counterclaims. *See* 42 TTABVUE. The Board granted Petitioner’s motion to set aside the Notice of Default, accepting Petitioner’s claim that it incorrectly docketed the dates in the Board’s April 26, 2023 scheduling order. *See* 43 TTABVUE 3.

Petitioner *also* did not comply with the Board’s February 21, 2024 Scheduling Order and did not serve its initial disclosures when they were due by March 18, 2024. *See* 53 TTABVUE 1. Instead, after multiple requests from Registrant to comply with the Board’s Order, Petitioner

finally served its initial disclosures on April 30, 2024 – more than a month after they were due. See Exhibits D and E. Registrant timely complied with the Board’s Scheduling Order and made its initial disclosures on March 18, 2024.

Petitioner has not only failed to respond to the RFAs but also has not responded to Registrant’s First Set of Interrogatories or Requests for Production of Documents as required. Petitioner has not sought an extension to respond to any of the pending discovery.

Petitioner’s intent to unduly prolong this Cancellation as a tactic was made clear in the Parties’ March 6, 2024 discovery conference. In rejecting Registrant’s proposal for Accelerated Case Resolution (ACR) pursuant to TBMP § 702.04 Counsel for Petitioner stated that the Cancellation is “a marathon, not a sprint” and they were “not going to make it short.”

Petitioner is apparently not interested in prosecuting the action that it filed. Petitioner is “dragging its feet” to avoid resolution of the dispute while hoping to force Registrant to give up. The admissions will promote resolution of the Cancellation on the merits and narrow the issues.

CONCLUSION

WHEREFORE, Registrant respectfully requests that the board grant this Motion to Deem Registrant’s Requests for Admission Conclusively Admitted pursuant to Fed. R. Civ. P. 36 and TBMP § 407.03.

Dated: May 28, 2024

Respectfully submitted,

/s/Michael T. Murphy

Michael T. Murphy

Daniel Hwang

Lydia Bayley

Global IP Counselors, LLP

1233 20th Street NW, Suite 600

Washington, D.C. 20036

(202) 293-0585

Attorneys for Registrant Reader Bee, LLC

CERTIFICATE OF SERVICE

I am a citizen of the United States of America over the age of 18 and not a party to the within proceedings. My business address is 1233 20th Street NW, Suite 600, Washington, D.C., 20036.

On May 28, 2024, the foregoing **MOTION TO DEEM REGISTRANT’S REQUESTS FOR ADMISSION CONCLUSIVELY ADMITTED** was served on representatives for the Registrant shown below via **EMAIL**:

Zheng Andy Liu
Aptum Law
1875 S Grant Street, Suite 520
San Mateo, CA 94402
United States
andy.liu@aptumlaw.us
robert@waterstoneedge.com
jmcgahey70@icloud.com
andy@quan.legal

Executed on May 28, 2024, in Chicago, Illinois.

/s/Lydia Bayley
Lydia Bayley

Exhibit A

Beereaders, Inc. v. Reader Bee, LLC - TTAB No. 92077133 - Initial Disclosures & Discovery Requests

Lydia Bayley <lbayley@giplaw.com>

Mon 3/18/2024 9:18 PM

To:Andy.Liu@aptumlaw.us <Andy.Liu@aptumlaw.us>;robert@waterstoneedge.com <robert@waterstoneedge.com>;jmcgahey70@icloud.com <jmcgahey70@icloud.com>;andy@quan.legal <andy@quan.legal>
Cc:Michael Murphy <MMurphy@giplaw.com>;Daniel Hwang <DHwang@giplaw.com>;Emily English <eenglish@giplaw.com>

📎 4 attachments (850 KB)

2024.03.18 Registrant's Initial Disclosures.pdf; 2024.03.18 Registrant's First Set of Interrogatories to Petitioner.pdf; 2024.03.18 Registrant's First Set of RFPs to Petitioner.pdf; 2024.03.18 Registrant's First Set of RFAs to Petitioner.pdf;

Counsel,

Please see attached:

1. Reader Bee's Initial Disclosures;
2. Reader Bee's First Set of Interrogatories;
3. Reader Bee's First Set of Requests for Production; and
4. Reader Bee's First Set of Requests for Admission.

Thank you,
Lydia Bayley

Associate Attorney
Global IP Counselors, LLP
1233 20th Street, NW, Suite 600, Washington, D.C. 20036
lbayley@giplaw.com | (202) 292-2219
Admitted only in Illinois

Exhibit B

3. “The Cancellation” or “these proceedings” shall mean Cancellation No. 92077133, the above-captioned proceeding before the Trademark Trial and Appeal Board.

4. “Third party” shall mean any party that is not the Registrant or Petitioner in the Cancellation.

5. “The Petition” shall mean the Second Amended Petition to Cancel filed on July 28, 2022, as 29 TTABVUE in the Cancellation.

6. “Reader Bee’s Answer and Counterclaims” shall mean the Amended Answer to Beereaders’ Second Amended Petition to Cancel and Amended Counterclaims for Cancellation of Beereaders’ Registration No. 6,743,304 filed on June 5, 2023, as 41 TTABVUE in the Cancellation.

7. “Beereaders’ Answer and Defenses” shall mean the Answer and Affirmative Defenses to Reader Bee’s Counterclaims filed on August 2, 2023, as 43 TTABVUE 17-22 in the Cancellation.

8. “The READER BEE Mark” shall mean the trademark that is the subject of U.S. Trademark Registration No. 4,642,327.

9. “The READER BEE Logo” shall mean the trademark that is the subject of U.S. Trademark Registration No. 4,642,328.

10. “The BEEREADERS Word Mark” shall mean the trademark that is the subject of U.S. Trademark Registration No. 6,743,304.

11. “The BEEREADERS Design Mark” shall mean the trademark that is the subject of U.S. Trademark Application Serial No. 97/270,803.

12. “The Trademark Assignment” shall mean the agreement between Learning Circle Kids, LLC and Reader Bee, LLC executed on December 22, 2020, shown at 12 TTABVUE,

Exhibit J, assigning the entire interest and goodwill in U.S. Trademark Application No. 86/063,555 (Reg. No. 4,642,327) for the READER BEE Mark from Learning Circle Kids, LLC to Reader Bee, LLC.

13. “The IP License” shall mean the agreement between Learning Circle Kids, LLC and Reader Bee, LLC executed on December 22, 2020, shown at 22 TTABVUE, Exhibit A, granting Learning Circle Kids, LLC an exclusive and non-transferable license to various intellectual property owned by Reader Bee, LLC including U.S. Trademark Application No. 86/063,555 (Reg. No. 4,642,327) for the READER BEE Mark.

14. “Discovery Requests” shall mean Registrant’s interrogatories, requests for production, and requests for admission.

15. The terms “document” and “Electronically Stored Information” (or “ESI”) have the full meanings ascribed to them in Fed. R. Civ. P. 34 and include all writings and records of every kind or description, however produced or reproduced, whether in hard copy or electronic form, whether draft or final, and whether original or reproduction, in the possession, custody or control of you or your attorneys, agents, representatives or assigns. Any document or item of ESI that contains any notation, addition, comment or marking of any kind that makes it different from the original in any way is a separate document or item of ESI.

16. “Communication” means any conversation, discussion, letter, memorandum, email, text message, meeting, note, or other transfer of information whether written, oral, or by any other means and includes any documents which abstract, digest, transcribe, or record any such communication.

17. The terms “person,” “persons,” or “people” include not only natural people but also firms, partnerships, corporations, joint ventures, sole proprietorships, associations and business

enterprises, as well as all divisions, subdivisions, bureaus, offices, departments or other units thereof.

18. The terms “concerning,” “regarding,” “related to,” “refer to,” “relating,” or “referring to” will be used in their broadest sense and shall mean directly or indirectly mentioning or describing, pertaining to, constituting, evidencing, being connected with, or reflecting upon a stated subject matter, including but not limited to the particular category of information requested.

19. “Day” or “date” shall mean the exact day, month, and year if ascertainable, or if not, the best available approximation (including relationship to other events).

20. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

21. The word “any” means all and the word “all” means any. The words “any” and “all” shall be construed as necessary to make a request inclusive rather than exclusive.

22. The singular shall be deemed to include the plural, and the plural shall be deemed to include the singular as necessary to make the request inclusive rather than exclusive.

INSTRUCTIONS

1. In responding to these requests for admission, you should disclose all information available to you and all persons acting on your behalf, including your members, consultants, investigators, accountants, employees, agents and legal assistants.

2. These requests shall be deemed to seek admissions or denials based on information known to Petitioner as of the date of the service of the responses thereto. To the extent that the response to any of these requests needs to be supplemented pursuant to Rule 26(e)(2) of the Federal Rules of Civil Procedure by the acquisition or generation of documents or information by Petitioner subsequent to such date, Petitioner is hereby requested to serve supplemental responses.

3. If you qualify your response or deny only part of the request, specify the part admitted and qualify or deny the rest.

4. To the extent that any proper name used herein is incorrect, it is to be construed as the correct proper name if the correct proper name is reasonably identifiable from the name used.

5. Your obligation under these requests for admission shall be continuing, such that you must disclose any information called for herein that becomes available to you or any person acting on your behalf at any time after you first respond to these requests for admission. If you believe any of these requests for admission are ambiguous, identify the ambiguity and set forth the construction chosen or used in responding to the request for admission.

REQUESTS FOR ADMISSION

1. Admit that Beereaders was aware of the READER BEE Mark before adopting the BEEREADERS Word Mark and BEEREADERS Design Mark.

2. Admit that Beereaders was aware of the READER BEE Mark before filing applications to register the BEEREADERS Word Mark and BEEREADERS Design Mark with the United States Patent and Trademark Office.

3. Admit that the term “BEEREADERS” is a transposition of “READER BEE.”

4. Admit that the goods and services offered in connection with the BEEREADERS Word Mark and BEEREADERS Design Mark are the same or overlap with the goods and services offered in connection with the READER BEE Mark.

5. Admit that Beereaders’ did not use the term “BEEREADERS” in the United States prior to February of 2020.

6. Admit that Beereaders’ did not use the term “BEEREADERS” in the United States prior to February of 2019.

7. Admit that Reader Bee’s use of “READER BEE” pre-dates Beereaders’ use of “BEEREADERS.”

8. Admit that Beereaders petitioned to cancel the READER BEE Mark based in part on an alleged false suggestion of a connection under §2(a) of the Lanham Act although Beereaders does not and cannot claim prior use of the BEEREADERS Word Mark or the BEEREADERS Design Mark.

9. Admit that Beereaders petitioned to cancel the READER BEE Mark based in part on abandonment based on nonuse and was aware that Registrant’s READER BEE products or software applications were available on the Apple App Store.

10. Admit that the READER BEE Mark maintains incontestable status on the Principal Register pursuant to 15 U.S.C. § 1065 and any petition to cancel Reader Bee’s U.S. Trademark Registration No. 4,642,327 for the READER BEE Mark based on any alleged prior use is therefore barred.

11. Admit that the Trademark Assignment states that it assigns the entire interest in the READER BEE Mark “and the goodwill of the business symbolized thereby” to Reader Bee.

12. Admit that the IP License was executed for and on behalf of Reader Bee, LLC and Learning Circle Kids, LLC by the same individual, Sherrilyn Fisher.

13. Admit that Beereaders Inc. was not a Mexican company or did not have its principal place of business in the country of Mexico at the time of filing its applications to register the BEEREADERS Word Mark and BEEREADERS Design Mark.

Dated: March 18, 2024

Respectfully submitted,

/s/Michael T. Murphy
Michael T. Murphy

mmurphy@giplaw.com

Daniel Hwang

dhwang@giplaw.com

Lydia Bayley

lbayley@giplaw.com

Global IP Counselors, LLP

1233 Twentieth Street NW, Suite 600

Washington, D.C. 20036

(202) 293-0585

Attorneys for Registrant Reader Bee, LLC

CERTIFICATE OF SERVICE

I am a citizen of the United States of America, and I am employed in Washington, D.C. I am over the age of 18 and not a party to the within action. My business address is 1233 20th Street NW, Suite 600, Washington, D.C., 20036.

On **March 18, 2024**, I served the foregoing **REGISTRANT'S FIRST SET OF REQUESTS FOR ADMISSION TO PETITIONER** on counsel shown below via **EMAIL**:

Zheng Andy Liu
Aptum Law
1875 S Grant Street, Suite 520
San Mateo, CA 94402
United States
andy.liu@aptumlaw.us
robert@waterstoneedge.com
jmccahey70@icloud.com
andy@quan.legal

Executed on March 18, 2024, in Chicago, Illinois.

/s/ Lydia Bayley
Lydia Bayley

Exhibit C

Re: Beereaders, Inc. v. Reader Bee, LLC - TTAB No. 92077133 - Initial Disclosures & Discovery Requests

Lydia Bayley <lbayley@giplaw.com>

Wed 4/17/2024 3:44 PM

To: Robert Mazzola <robert@waterstoneedge.com>

Cc: Andy.Liu@aptumlaw.us <Andy.Liu@aptumlaw.us>; jmcgahey70@icloud.com <jmcgahey70@icloud.com>; Michael Murphy <MMurphy@giplaw.com>; Daniel Hwang <DHwang@giplaw.com>; Emily English <eenglish@giplaw.com>

1 attachments (82 KB)

ttabvue-92077133-CAN-53.pdf;

Robert,

We agree to a 30-day extension for BeeReader to respond to the discovery requests we served on March 18, 2024.

We also note that we have not yet received Beereaders' initial disclosures, which were due a month ago per the attached order. Please advise when we can expect Beereaders initial disclosures.

Regards,
Lydia Bayley

Associate Attorney
Global IP Counselors, LLP
1233 20th Street, NW, Suite 600, Washington, D.C. 20036
lbayley@giplaw.com | (202) 292-2219
Admitted only in Illinois

From: Robert Mazzola <robert@waterstoneedge.com>

Sent: Wednesday, April 17, 2024 3:32 PM

To: Lydia Bayley <lbayley@giplaw.com>

Cc: Andy.Liu@aptumlaw.us <Andy.Liu@aptumlaw.us>; jmcgahey70@icloud.com <jmcgahey70@icloud.com>; Michael Murphy <MMurphy@giplaw.com>; Daniel Hwang <DHwang@giplaw.com>; Emily English <eenglish@giplaw.com>

Subject: Re: Beereaders, Inc. v. Reader Bee, LLC - TTAB No. 92077133 - Initial Disclosures & Discovery Requests

□

Hi Lydia,

We respectfully request an additional 30 days to respond to these requests.

We would be happy to extend the same courtesy once discovery is propounded upon Reader Bee.

Best,

Robert

--

Robert Mazzola

ATTORNEY & FOUNDER

[tel://+16504300435]+1 (650) 430-0435

robert@waterstoneedge.com

1860 Howe Ave. Suite 100, Sacramento, CA 95825



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On Mon, Mar 18, 2024 at 7:18PM Lydia Bayley <lbayley@giplaw.com> wrote:

Counsel,

Please see attached:

1. Reader Bee's Initial Disclosures;
2. Reader Bee's First Set of Interrogatories;

3. Reader Bee's First Set of Requests for Production; and
4. Reader Bee's First Set of Requests for Admission.

Thank you,
Lydia Bayley

Associate Attorney
Global IP Counselors, LLP
1233 20th Street, NW, Suite 600, Washington, D.C. 20036
lbayley@giplaw.com | (202) 292-2219
Admitted only in Illinois

Exhibit D

Re: Beereaders, Inc. v. Reader Bee, LLC - TTAB No. 92077133 - Initial Disclosures & Discovery Requests

Lydia Bayley <lbayley@giplaw.com>

Tue 4/30/2024 3:06 PM

To: Robert Mazzola <robert@waterstoneedge.com>

Cc: Andy.Liu@aptumlaw.us <Andy.Liu@aptumlaw.us>; jmcgahey70@icloud.com <jmcgahey70@icloud.com>; Michael Murphy <MMurphy@giplaw.com>; Daniel Hwang <DHWang@giplaw.com>; Emily English <eenglish@giplaw.com>

Robert,

We have still not received Beereaders' initial disclosures.

Please let us know when you will be providing them.

Regards,
Lydia Bayley

Associate Attorney
Global IP Counselors, LLP
1233 20th Street, NW, Suite 600, Washington, D.C. 20036
lbayley@giplaw.com | (202) 292-2219
Admitted only in Illinois

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Sent: Wednesday, April 17, 2024 3:44 PM

To: Robert Mazzola <robert@waterstoneedge.com>

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Subject: Re: Beereaders, Inc. v. Reader Bee, LLC - TTAB No. 92077133 - Initial Disclosures & Discovery Requests

□

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Please advise when we can expect Beereaders initial disclosures.

Regards,
Lydia Bayley

Associate Attorney
Global IP Counselors, LLP
1233 20th Street, NW, Suite 600, Washington, D.C. 20036
lbayley@giplaw.com | (202) 292-2219
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From: Robert Mazzola <robert@waterstoneedge.com>

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Cc: Andy.Liu@aptumlaw.us <Andy.Liu@aptumlaw.us>; jmcgahey70@icloud.com <jmcgahey70@icloud.com>; Michael Murphy <MMurphy@giplaw.com>; Daniel Hwang <DHWang@giplaw.com>; Emily English <eenglish@giplaw.com>

Subject: Re: Beereaders, Inc. v. Reader Bee, LLC - TTAB No. 92077133 - Initial Disclosures & Discovery Requests

□

Hi Lydia,

We respectfully request an additional 30 days to respond to these requests.

We would be happy to extend the same courtesy once discovery is propounded upon Reader Bee.

Best,

Robert

--

Robert Mazzola
ATTORNEY & FOUNDER

[tel://+16504300435]+1 (650) 430-0435
robert@waterstoneedge.com
1860 Howe Ave. Suite 100, Sacramento, CA 95825



WATERSTONE EDGE

The content of this email is confidential and/or privileged and is intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

On Mon, Mar 18, 2024 at 7:18PM Lydia Bayley lbayley@giplaw.com> wrote:
Counsel,

Please see attached:

1. Reader Bee's Initial Disclosures;
2. Reader Bee's First Set of Interrogatories;
3. Reader Bee's First Set of Requests for Production; and
4. Reader Bee's First Set of Requests for Admission.

Thank you,
Lydia Bayley

Associate Attorney
Global IP Counselors, LLP
1233 20th Street, NW, Suite 600, Washington, D.C. 20036
lbayley@giplaw.com | (202) 292-2219

Admitted only in Illinois

Exhibit E


Re: Beereaders, Inc. v. Reader Bee, LLC - TTAB No. 92077133 - Initial Disclosures & Discovery Requests

Liu, Zheng <bjliuZheng@gmail.com>

Tue 4/30/2024 11:55 PM

To: Lydia Bayley <lbayley@giplaw.com>

Cc: robert@waterstoneedge.com <robert@waterstoneedge.com>; Michael Murphy <MMurphy@giplaw.com>; Daniel Hwang <DHwang@giplaw.com>; Emily English <eenglish@giplaw.com>

 1 attachments (155 KB)

2024.03.pdf;

Some people who received this message don't often get email from bjliuZheng@gmail.com. [Learn why this is important](#)

Counsel,

Please see attached:

On Mon, Mar 18, 2024 at 7:18PM Lydia Bayley <lbayley@giplaw.com> wrote:

Counsel,

Please see attached:

1. Reader Bee's Initial Disclosures;
2. Reader Bee's First Set of Interrogatories;
3. Reader Bee's First Set of Requests for Production; and
4. Reader Bee's First Set of Requests for Admission.

Thank you,
Lydia Bayley

Associate Attorney
Global IP Counselors, LLP
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lbayley@giplaw.com | (202) 292-2219

Admitted only in Illinois