

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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am

June 27, 2022

Cancellation No. 92077557

*DISH Network LLC*

*v.*

*Onstreaming LLC*

**J. Krisp, Interlocutory Attorney:**

**Petitioner's Motion to Compel**

Petitioner's motion (filed May 23, 2022) to compel discovery, and to extend discovery and trial dates, is hereby granted as conceded. *See* Trademark Rule 2.127(a).

In its motion, Petitioner argues that Respondent has forfeited its right to object to the discovery requests on the merits. 12 TTABVUE 3. Indeed, 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 **ten (10) days of the date of this order** to serve responses to Petitioner's first set of interrogatories and first set of requests for production. Respondent must respond in full and without objection on the merits thereof inasmuch as Respondent failed to timely respond or to object to said discovery requests. *Id.*

If Respondent has no responsive documents in its possession, custody, or control that are responsive to a particular request, Respondent must affirmatively state so in its response to that request. To the extent the production of documents to any particular request is voluminous, Respondent may produce a representative sampling of the documents requested; however, any such representative sampling must be sufficient to meet Petitioner's discovery needs. TBMP § 414.

In the event that Respondent fails to respond to Petitioner's discovery requests as directed in this order, Petitioner's remedy may lie in a motion for sanctions, including the sanction of judgment in its favor, as appropriate. Trademark Rule 2.120(h)(1); TBMP § 411.05.

## **Schedule**

Proceedings are hereby resumed. Discovery and trial dates are reset as follows:

Expert Disclosures Due	8/27/2022
Discovery Closes	9/26/2022
Plaintiff's Pretrial Disclosures Due	11/10/2022
Plaintiff's 30-day Trial Period Ends	12/25/2022
Defendant's Pretrial Disclosures Due	1/9/2023
Defendant's 30-day Trial Period Ends	2/23/2023
Plaintiff's Rebuttal Disclosures Due	3/10/2023
Plaintiff's 15-day Rebuttal Period Ends	4/9/2023
Plaintiff's Opening Brief Due	6/8/2023
Defendant's Brief Due	7/8/2023

Plaintiff's Reply Brief Due  
Request for Oral Hearing (optional) Due

7/23/2023  
8/2/2023

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:**

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Parties are strongly encouraged to check the entire document before filing.<sup>1</sup> 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.

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<sup>1</sup> To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.