

ESTTA Tracking number: **ESTTA1260526**

Filing date: **01/18/2023**

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

Proceeding no.	92080178
Party	Plaintiff Roadget Business Pte, Ltd.
Correspondence address	SUSAN L HELLER GREENBERG TRAUIG LLP 18565 JAMBOREE ROAD, SUITE 500 IRVINE, CA 92612 UNITED STATES Primary email: gtipmail@gtlaw.com Secondary email(s): hellers@gtlaw.com, nyleng@gtlaw.com, lee-jen@gtlaw.com, woodwardcraigl@gtlaw.com, Christine.Zgombic@gtlaw.com 949-732-6810
Submission	Motion to Compel Discovery or Disclosure
Filer's name	Molly R. Littman
Filer's email	gtipmail@gtlaw.com, hellers@gtlaw.com, nyleng@gtlaw.com, lee-jen@gtlaw.com, molly.littman@gtlaw.com
Signature	/Molly R. Littman/
Date	01/18/2023
Attachments	Motion to Compel Initial Disclosures.pdf(416437 bytes)

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

In the matter of Registration No. 5,122,844
Mark: PETSINC
Registered: January 17, 2017

Roadget Business Pte, Ltd.,

Petitioner,

v.

Cancellation No. 92080178

Dongguan Zhichen Rubber Products Co. Ltd.,

Respondent.

PETITIONER'S MOTION TO COMPEL INITIAL DISCLOSURES

Pursuant to Federal Rule of Civil Procedure 37, TBMP § 523.03, and 37 C.F.R. 2.120(f), Petitioner Roadget Business Pte, Ltd. (“Roadget Business” or “Petitioner”) moves the Board for an order compelling Respondent Dongguan Zhichen Rubber Products Co., Ltd (“Respondent”) to provide Petitioner its initial disclosures. Respondent’s refusal to cooperate and to provide its initial disclosures has stunted discovery and prevented Petitioner from obtaining information necessary to move this litigation forward. Accordingly, Respondent should be compelled to serve its initial disclosures.

FACTUAL BACKGROUND

Petitioner initiated this Cancellation on July 21, 2022 seeking to cancel Respondent’s registration for the mark PETSINC (the “Contested Mark”) (Reg. No. 5,112,844) (hereinafter, the “Contested Registration”) in its entirety on the bases that (1) Respondent has not used the mark in commerce; (2) Respondent fraudulently obtained the Contested Registration; and (3) Respondent did not have any ownership, use, and/or entitlement to the Contested Mark at any time prior to or

on December 6, 2014 and/or the filing date of the application for the Contested Registration. 1 TTABVUE. Respondent failed to file a timely answer on or before August 31, 2022, and on September 10, 2022, the Board issued a Notice of Default. 4 TTABVUE. On September 26, 2022, Respondent filed its Answer, 5 TTABVUE, and the Board reset the discovery schedule on October 20, 2022, 6 TTABVUE. Per the Board's October 20, 2022 Order, the parties' deadline to serve initial disclosures was December 19, 2022. *Id.*

Roadget Business timely served its initial disclosures on Respondent on December 19, 2022. *See* Declaration of Gregory Nysten ("Nysten Decl.") ¶ 2. Respondent did not serve its initial disclosures. *Id.* ¶ 3. Counsel for Roadget Business emailed Respondent's counsel on January 11, 2023 inquiring of the status of the initial disclosures. *Id.* ¶ 4, Ex. A. In their email, Roadget Business' counsel stated "If [Respondent] does not intend to serve initial disclosures, please consider this email an effort to meet and confer regarding a motion to compel their production, which we intend to file before the deadline of January 18, 2023." *Id.* ¶ 5. After not receiving any response from opposing counsel for nearly a week, Roadget Business' counsel again emailed Respondent's counsel on January 17, 2023. *Id.* ¶ 6, Ex. A. Again, Roadget Business demanded Respondent serve its initial disclosures and advised Respondent's counsel if the initial disclosures were not served on January 17, 2023, Roadget Business would file a motion to compel the following day. *Id.* ¶ 7.

Shortly after receiving the email from Roadget Business' counsel on January 17, 2023, Respondent's counsel called counsel for Roadget Business explaining that Respondent was not responding to counsel's calls or email, and therefore, he must withdraw from the case. *Id.* ¶ 8. During the January 17, 2023 call, Roadget Business' counsel explained that Roadget Business would therefore have no choice but to file a motion to compel. *Id.* ¶ 9. After the call concluded,

Respondent's counsel followed up by email confirming that he was filing a motion to withdraw. *Id.* ¶ 10, Ex. A. Roadget Business' counsel sent an email in response the same day, confirming that Roadget Business was filing its motion to compel and that the meet and confer regarding that issue had been concluded. *Id.* ¶ 11. Respondent's counsel subsequently filed a Motion to Withdraw. 7 TTABVue. As of the time of this filing, the Board has not yet ruled on Respondent's counsel's Motion to Withdraw.

Respondent's blatant refusal to cooperate in discovery has severely prejudiced Roadget Business and unnecessarily delayed the proceeding. Roadget Business has been unable to investigate the facts underlying its claims and Respondent's defenses.

Given the nature and extent of Respondent's failure to cooperate in this most basic discovery, Roadget Business requests that the Board compel Respondent to, within seven (7) days, serve Respondent's initial disclosures.

LEGAL ARGUMENT

Under Fed. R. Civ. P. 26(a)(1) and 37 C.F.R. § 2.120(a)(2)(ii), "[i]nitial disclosures must be made no later than thirty days after the opening of the discovery period." A party failing to make initial disclosures may be subject to a motion to compel, and ultimately, a motion for discovery sanctions. 37 C.F.R. § 2.120(f)(1). *See also Kairos Institute of Sound Healing. v. Doolittle Gardens, LLC*, 88 U.S.P.Q.2d 1541 (TTAB 2008). A motion to compel is timely if it is filed within thirty days after the deadline therefor. *Id.*

Roadget Business hereby files this timely Motion to Compel Initial Disclosures as permitted by Federal Rule of Civil Procedure 37 and Trademark Rule 2.120(f)(1). Because Respondent has not complied with discovery whatsoever – and has shown a pattern of ignoring the Board's deadlines – Respondent must be compelled to serve its initial disclosures.

CONCLUSION

For these reasons, Roadget Business hereby requests that the Board grant Roadget Business' Motion to Compel Initial Disclosures.

Respectfully submitted,

Dated: January 18, 2023

GREENBERG TRAURIG, LLP

/Susan L. Heller/

Susan L. Heller

Gregory Nylén

Sang Eun Lee

Molly R. Littman

18565 Jamboree Road, Suite 500

Irvine, CA 92612

Tel: (949) 732-6810

hellers@gtlaw.com

nyleng@gtlaw.com

leejen@gtlaw.com

molly.littman@gtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel Initial Disclosures has been served on DONGGUAN ZHICHEN RUBBER PRODUCTS CO., LTD. by electronic mail at the following:

Kevin O'Keefe

81 70 St.

Brooklyn, New York 11209

Kok12721@outlook.com

Dated: January 18, 2023

/Molly R. Littman/

Molly R. Littman

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

In the matter of Registration No. 5,122,844
Mark: PETSINC
Registered: January 17, 2017

Roadget Business Pte, Ltd.,

Petitioner,

v.

Cancellation No. 92080178

Dongguan Zhichen Rubber Products Co. Ltd.,

Respondent.

**DECLARATION OF GREGORY NYLEN IN SUPPORT OF PETITIONER ROADGET
BUSINESS PTE, LTD.'S MOTION TO COMPEL INITIAL DISCLOSURES**

I, Gregory Nylén, hereby declare the following:

1. I am an attorney at the law firm of Greenberg Traurig, LLP, and am currently representing Petitioner Roadget Business Pte, Ltd. (“Roadget Business”) in the above-referenced Cancellation. I provide this Declaration in support of Roadget Business’ Motion to Compel Initial Disclosures:

2. Roadget Business timely served its initial disclosures on Respondent Dongguan Zhichen Rubber Products Co., Ltd (“Respondent”) on December 19, 2022.

3. Respondent did not serve its initial disclosures.

4. Counsel for Roadget Business emailed Respondent’s counsel on January 11, 2023 inquiring of the status of the initial disclosures. Attached hereto as **Exhibit A** is a true and correct copy of email communications between counsel for Roadget Business and Respondent’s counsel dated December 19, 2022 through January 17, 2023.

5. In their email, Roadget Business' counsel stated "If [Respondent] does not intend to serve initial disclosures, please consider this email an effort to meet and confer regarding a motion to compel their production, which we intend to file before the deadline of January 18, 2023."

6. After not receiving any response from opposing counsel for nearly a week, Roadget Business' counsel again emailed Respondent's counsel on January 17, 2023.

7. Again, Roadget Business demanded Respondent serve its initial disclosures and advised Respondent's counsel if the initial disclosures were not served on January 17, 2023 Roadget Business would file a motion to compel the following day.

8. After receiving the email from Roadget Business' counsel on January 17, Respondent's counsel called counsel for Roadget Business on January 17, 2023 explaining that Respondent was not responding to counsel's calls or email, and therefore, he must withdraw from the case.

9. During the call, Roadget Business' counsel explained that Roadget Business would therefore have no choice but to file a motion to compel.

10. After the call concluded, Respondent's counsel followed up by email confirming that he was filing a motion to withdraw.

11. Roadget Business' counsel sent an email in response the same day, confirming that Roadget Business was filing its motion to compel and that the meet and confer regarding that issue had been concluded.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: January 18, 2023

/Gregory Nylan/
Gregory Nylan

EXHIBIT A

From: [Nylen, Gregory \(OfCnl-OC-LT\)](#)
To: [Kevin O'Keefe; KOK12721@OUTLOOK.COM](#)
Cc: [Heller, Susan L. \(Shld-OC-IP-Tech\); Littman, Molly R. \(Assoc-MSP-IP-Tech\); Lee, Sang Eun Jennice \(Assoc-DAL-IP-Tech\)](#)
Subject: RE: PETSINC- Petitioner's Initial Disclosures
Date: Tuesday, January 17, 2023 11:37:27 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Mr. O'Keefe:

This will confirm that we met and conferred by telephone this morning regarding this matter, that you confirmed that your client is not responding to emails and calls, and that you are going to have to file a motion to withdraw as a result. I confirmed that given the circumstances, my client has no choice but to move to compel, and we consider the meet and confer to have been completed.

Gregory Nylen
Of Counsel

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GT GreenbergTraurig

Co-host



From: Kevin O'Keefe <kok1949@outlook.com>
Sent: Tuesday, January 17, 2023 9:28 AM
To: Nylen, Gregory (OfCnl-OC-LT) <nyleng@gtlaw.com>; KOK12721@OUTLOOK.COM
Cc: Heller, Susan L. (Shld-OC-IP-Tech) <HellerS@gtlaw.com>; Littman, Molly R. (Assoc-MSP-IP-Tech) <Molly.Littman@gtlaw.com>; Lee, Sang Eun Jennice (Assoc-DAL-IP-Tech) <Jennice.Lee@gtlaw.com>
Subject: RE: PETSINC- Petitioner's Initial Disclosures

EXTERNAL TO GT

Dear Mr. Nylen,

I will withdraw from the case. The client has not responded to my calls and emails.

Best regards,
/Kevin O'Keefe/
Kevin P. O'Keefe, Esq.
370 Bay Ridge Ave., Brooklyn, NY 11220
(929)578-1357
kok1949@outlook.com

From: nyleng@gtlaw.com <nyleng@gtlaw.com>
Sent: Tuesday, January 17, 2023 12:06 PM
To: KOK12721@OUTLOOK.COM; kok1949@outlook.com
Cc: HellerS@gtlaw.com; Molly.Littman@gtlaw.com; Jennice.Lee@gtlaw.com
Subject: RE: PETSINC- Petitioner's Initial Disclosures

Mr. O'Keefe:

I am following up on my email below. We are now drafting our motion to compel service of initial disclosures, which as I note in my email of last week is due tomorrow. Unless we receive your client's disclosures **today**, we will file our motion tomorrow. Please advise.

Gregory Nylén
Of Counsel

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Co-host



From: Nylén, Gregory (OfCnl-OC-LT)
Sent: Wednesday, January 11, 2023 1:52 PM
To: Lee, Sang Eun Jennice (Assoc-DAL-IP-Tech) <Jennice.Lee@gtlaw.com>;
KOK12721@OUTLOOK.COM; kok1949@outlook.com
Cc: Heller, Susan L. (Shld-OC-IP-Tech) <HellerS@gtlaw.com>
Subject: RE: PETSINC- Petitioner's Initial Disclosures
Importance: High

Mr. O'Keefe:

We have not received initial disclosures from your client Dongguan Zhichen Rubber Products Co., Ltd., which were due on December 19, 2022. Please let us know immediately when we can expect those disclosures. If your client does not intend to serve initial disclosures, please consider this email an effort to meet and confer regarding a motion to compel their production, which we intend to file before the deadline of January 18, 2023.

Gregory Nylén
Of Counsel

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Co-host



From: Lee, Sang Eun Jennice (Assoc-DAL-IP-Tech) <Jennice.Lee@gtlaw.com>
Sent: Monday, December 19, 2022 8:50 AM
To: KOK12721@OUTLOOK.COM; kok1949@outlook.com
Cc: Heller, Susan L. (Shld-OC-IP-Tech) <HellerS@gtlaw.com>; Nysten, Gregory (OfCnl-OC-LT) <nyleng@gtlaw.com>; Trademark Registration (178669.012300.ACTIVE@DMS-NACOM.gtlaw.com) <178669.012300.ACTIVE@DMS-NACOM.gtlaw.com>
Subject: PETSINC- Petitioner's Initial Disclosures

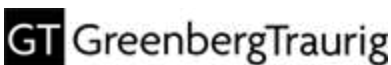
Dear Mr. O'Keefe:

We represent Roadget Business Pte, Ltd. We are attaching a copy of the Petitioner's Initial Disclosures, which is being also followed by First Class Mail, postage prepaid, in an envelope as shown on the attached.

Best regards,
Jennice

Sang Eun "Jennice" Lee
Associate

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2020 and 2022
LAW FIRM OF THE YEAR
Trademark Law

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