

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

October 23, 2023

Cancellation No. 92080626

California Wheel Distributor Inc

v.

Peregrine Automotive, LLC

William D. Jackson, Interlocutory Attorney:

On September 12, 2023, Respondent filed a motion to compel discovery. Petitioner did not file a brief in response thereto within the time provided under Trademark Rule 2.127(a). However, on October 2, 2023, Petitioner served its responses to Respondent's discovery requests.

In its reply brief Respondent argues that Petitioner's responses are inadequate. With regard to Petitioner's interrogatory responses, Respondent argues that they were not verified by Petitioner as required by Fed. R. Civ. P. 33(b)(5), nor were they answered separately and fully in writing under oath as required by Fed. R. Civ. P. 33(b)(3).

With regard to Petitioner's responses to Respondent's requests for production, Respondent argues that Petitioner has not produced any documents. Respondent also notes that several of Petitioner's responses indicate that documents will be produced

“to the extent that they exist and can be located after a reasonable search,” which “reveals that Petitioner still has not searched for responsive documents more than two months after the Requests were served.”

Respondent seeks an order directing Petitioner to serve its written responses to its first set of interrogatories and all documents that are responsive to its first requests for production. Petitioner has not opposed the motion.

The motion to compel discovery is hereby granted as conceded. *See* Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a); TBMP § 502.04.

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, as is the case here, 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, Petitioner is directed to serve, within **twenty (20) days** of the mailing date of this order, verified responses to Respondent’s first set of interrogatories in compliance with Fed. R. Civ. P. 33(b)(3) and (5), and responses to Respondent’s first set of requests for production of documents. Petitioner must respond in full and without objection on the merits thereof inasmuch as Petitioner failed either to timely respond or to object to said discovery requests. *Id.* To the extent Petitioner objects to any of Respondent’s interrogatory or document requests based on privilege, Petitioner is also required to provide Respondent with a privilege log within the same 20 days provided above.

In the event that Petitioner fails to serve full responses as ordered herein, Respondent's remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(h)(1), 37 C.F.R. § 2.120(h)(1); TBMP § 411.05.

Proceedings are resumed. Discovery, disclosure, and trial dates are reset as indicated below:

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|---|------------|
| Expert Disclosures Due | 11/10/2023 |
| Discovery Closes | 12/10/2023 |
| Plaintiff's Pretrial Disclosures Due | 1/24/2024 |
| Plaintiff's 30-day Trial Period Ends | 3/9/2024 |
| Defendant's Pretrial Disclosures Due | 3/24/2024 |
| Defendant's 30-day Trial Period Ends | 5/8/2024 |
| Plaintiff's Rebuttal Disclosures Due | 5/23/2024 |
| Plaintiff's 15-day Rebuttal Period Ends | 6/22/2024 |
| Plaintiff's Opening Brief Due | 8/21/2024 |
| Defendant's Brief Due | 9/20/2024 |
| Plaintiff's Reply Brief Due | 10/5/2024 |
| Request for Oral Hearing (optional) Due | 10/15/2024 |

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

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final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).