

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: September 10, 2012

**Opposition No. 91200197  
(parent case)**

Sigler Companies, Inc.  
v.  
TSDC, LLC

Opposition No. 91201807  
Opposition No. 91201812  
Opposition No. 91201815  
Opposition No. 91201819  
Opposition No. 91201820  
Opposition No. 91201821  
Opposition No. 91201822  
Opposition No. 91201825  
Opposition No. 91201826

TSDC, LLC  
v.  
Sigler Companies, Inc.

Jennifer Krisp, Interlocutory Attorney:

This consolidated proceeding is before the Board for consideration of Sigler Companies, Inc.'s ("Sigler") motion (filed May 25, 2012; supplemented June 21, 2012) to compel discovery. The motion has been fully briefed.<sup>1</sup>

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<sup>1</sup> The Board notes the consented motion filed June 29, 2012, automatically granted on the same date via the Board's online ESTTA system. To the extent that said stipulation sought to extend discovery and trial periods, it was procedurally improper in view of the Board's June 14, 2012 order suspending proceedings under Trademark Rule 2.120(e)(2). To the extent that said stipulation granted TSDC, LLC ("TSDC") until July 2, 2012 to file a brief in opposition to the motion to compel, the consented motion is noted and is granted.

The Board may, upon its initiative, resolve a motion filed in an inter partes proceeding by telephone conference. See Trademark Rule 2.120(i)(1); TBMP § 502.06(a). See also *Byer California v. Clothing for Modern Times Ltd.*, 95 USPQ2d 1175 (TTAB 2010) (motion to compel decided by teleconference). On September 6, 2012 the Board convened a telephone conference to resolve the issues presented in the motion. Participating were counsel for Sigler, Sarah Gayer, Esq., counsel for TSDC, Ronald Coleman, Esq., and the assigned interlocutory attorney.

The Board has reviewed the parties' arguments and submissions, but for efficiency does not restate them herein in their entireties. This order summarizes the Board's analysis and findings based on the briefs, and on statements and clarifications provided by counsel during the conference.

As an initial matter, the Board finds that Sigler satisfied its obligation to make a good faith effort to resolve the issues presented in its motion prior to seeking the Board's intervention and resolution. See Trademark Rule 2.120(e)(1); TBMP § 523.02.

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TSDC's July 5, 2012 motion to extend until July 13, 2012 its time to file its brief, is granted as conceded.

Inasmuch as the Board encourages parties to inform it in the event that issues raised in a motion to compel are subsequently resolved, the Board notes that Sigler's June 21, 2012 supplemental motion to compel supersedes its May 25, 2012 motion,

Turning to the merits of the motion to compel, Sigler seeks an order compelling TSDC to serve supplemental responses with respect to various interrogatories.

**Interrogatories Nos. 2, 35, 36 and 44**

Sigler argues, *inter alia*, that the interrogatories collectively seek the names of the entities who have ever used the designations FIGHT LIKE A GIRL CLUB CLAIM YOUR POWER and/or FIGHT LIKE A GIRL. The record indicates that none of these interrogatories (*e.g.* Interrogatories 2, 35 and 36) in point of fact requests the identification of each entity which has used the subject marks, and that TSDC's responses and supplemental responses set forth answers to the information which Sigler did request. The responses and supplemental responses themselves - such as TSDC's reference to its formation on April 1, 2010, subsequent to dates of use included in response to other interrogatories - first raised the issues of which specific entities used the designations and/or the issue of chain of title.

Similarly, Sigler seeks an order directing that TSDC explain the difference between what TSDC characterizes as ornamental use and trademark use. However, Sigler's interrogatories did not actually request such an explanation, and the response it now seeks is derived and

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except where otherwise specifically indicated by Sigler in its supplemental motion. See TBMP § 523.02.

formulated from having reviewed certain terminology that TSDC used in its supplemental responses (e.g. TSDC's responses to Interrogatory Nos. 35 and 36).

Thus, the information Sigler seeks to compel is predicated not on insufficient responses to the discovery it served, but rather on portions of TSDC's responses and supplemental responses which simply raise further issues of fact that Sigler now deems relevant to its case and appropriate for discovery. In view thereof, the motion to compel is denied.

**Interrogatory No. 14**

Sigler states that certain wording which TSDC used in its supplemental response to Interrogatory 14(b) is unclear, and seeks an order compelling it to explain such terms and phrases, asserting that the interrogatory was not answered in full. However, the record indicates that TSDC served a detailed response which sufficiently sets forth that which Sigler requested, namely, the manner in which its products and services are distributed. Sigler's determination that it wants further information, and its request for an order compelling such information - for instance, information regarding what TSDC identified as "related logo" and "referral commissions" - emanates not from an insufficient response, but rather from terminology TSDC used and specific entities it named in its response.

Inasmuch as the Board is hesitant to compel responses that were not requested, the motion to compel is denied.

**Interrogatory No. 39**

Sigler seeks an order compelling TSDC to identify the date on which the designation FIGHT LIKE A GIRL acquired secondary meaning. In opposition, TSDC maintains that what Sigler seeks is beyond the scope of the interrogatory as it was posed, and that it need not assert a specific date on which its mark acquired distinctiveness inasmuch as this is a question of fact for which there is no required bright line or date certain.

The Board generally recognizes that the scope of discovery is broad. See TBMP § 402.01. However, the response that TSDC served fairly and sufficiently provides the information which Sigler requested. To the extent that Sigler now seeks more specifics underlying TSDC's theory of its case, and of its application of law to the alleged facts with respect to the issue of acquired distinctiveness, this is an issue about which TSDC will principally be left to its proofs and evidence at trial. As a practical matter, the nature of the issue of acquired distinctiveness is such that the Board will make a determination on the basis of the totality of relevant and proper evidence.

In view of these findings, the motion to compel is denied.

**Requests for Production of Documents**

Sigler asserts that TSDC's document production is inadequate, citing certain instances in which it maintains that no documents have been produced to support information that TSDC provided in response to interrogatories. For example, it argues that although TSDC alleges use since December of 2006, it has not produced documents from that time period.

TSDC acknowledges that it did not serve responses in a timely fashion due to an administrative error in its office, and could not serve the declaration of its principal due to her unavailability. TSDC acknowledges that it did serve objections and responses concurrently with its brief in opposition to the motion to compel.

During the conference, the Board reminded counsel for TSDC of the continuing duty to supplement responses, as appropriate, and that this duty prevails apart from the motion to compel. See TBMP § 408.03. Turning to the record, TSDC objected to certain requests on the ground that the request is overly broad and unduly burdensome. To the extent that TSDC has not produced responsive documents on the basis of this objection, its objection is overruled. In cases where complete compliance with a particular request would be unduly burdensome, TSDC may comply by providing a representative sampling of the documentation sought, or some

other reduced amount which is nevertheless sufficient to meet Sigler's discovery needs. See TBMP § 402.02.

Sigler's assertions that it is entitled to a supplemental document production which addresses alleged use by entities and licensees which TSDC named in its responses to various interrogatories (e.g. Interrogatory No. 44), and which addresses an alleged transfer of intellectual property rights (e.g. Interrogatory No 44), is well taken. Sigler's remaining assertions that the document production requires supplementation are also well taken.

In view of these findings, the motion to compel is granted. Accordingly, TSDC is allowed until thirty days from the date of the conference in which to serve supplemental responses to Sigler's document requests.

As a final matter, although the record does not reflect that information and documents have been improperly withheld, during the conference the Board stressed that either party's attempt to introduce or rely on responsive information, documents or things that were not produced during discovery may result in the Board's imposition of the estoppel sanction. That is, a party who responds to a request for discovery by indicating that it does not have the information sought, or by stating objections thereto, may be barred by its own action from later introducing the information sought in the request as part of its evidence on

the case. See *Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 USPQ2d 1789 (TTAB 2009); *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1896 n.5 (TTAB 1988).

**Schedule**

Proceedings are resumed. To the extent that Sigler, by way of its July 3, 2012 motion (captioned "Sigler's Second Supplement to Motion to Compel"), requests a reset discovery and trial schedule that distinguishes the parties' respective deadlines for the parent and non-parent cases, said motion is granted. Furthermore, it is generally Board procedure to reset dates in this manner for consolidated proceedings in which, as here, the parties are in reversed positions.

During the conference, counsels set forth an oral consented motion to extend the close of discovery to December 31, 2012. Said motion was granted. Accordingly, expert disclosure, discovery and trial dates are hereby reset as follows:

Expert Disclosures Due	December 1, 2012
Discovery Closes	December 31, 2012
Plaintiff's Pretrial Disclosures due [parent case]	February 14, 2013
30-day testimony period for plaintiff's testimony to close [parent case]	March 31, 2013

Plaintiff's Pretrial Disclosures due [non-parent cases]	April 15, 2013
30-day testimony period for defendant [parent case] and plaintiff [non- parent cases] to close	May 30, 2013
Defendant's [non-parent cases] and Plaintiff's [parent case] Rebuttal Disclosures Due	June 14, 2013
30-day testimony period for defendant [non-parent cases] and rebuttal testimony for plaintiff [parent case] to close	July 29, 2013
Plaintiff's Rebuttal Disclosures [non-parent case] Due	August 13, 2013
15-day rebuttal period for plaintiff [non-parent case] to close	September 12, 2013

**BRIEFS SHALL BE DUE AS FOLLOWS:**

Brief for plaintiff [parent case] due	November 11, 2013
Brief for defendant [parent case] and plaintiff [non-parent cases] due	December 11, 2013
Brief for defendant [non-parent cases], and reply brief, if any, for plaintiff [parent case] due	January 10, 2014
Reply brief, if any, for plaintiff [non-parent cases] due	January 25, 2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.