

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

Mailed: November 30, 2006

Opposition No. 91161747

Opposition No. 91163495

P. C. Richard & Son Long  
Island Corp

v.

SnoWizard Holdings, Inc.

Cheryl Goodman, Interlocutory Attorney:

This case now comes up on opposer's motion to compel, filed July 25, 2006 and resubmitted on August 10, 2006 and applicant's request, filed August 9, 2006 and August 26, 2006 that the motion not be considered due to it failing to comply with the Trademark Rules.<sup>1</sup> These matters have been briefed by the parties.

With regard to the question of whether opposer has complied with the Trademark Rules regarding length of the brief and font size, while the Board agrees with applicant that the originally filed motion to compel was over long, the Board finds that the resubmitted brief is in compliance with the Rules. Therefore, the Board will consider the motion to compel. Additionally, the Board will consider applicant's alternative preliminary response to the motion,

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<sup>1</sup> Opposer's motion to suspend proceedings is moot.

filed in the alternative, and no further submissions from the parties will be required.

First, to the extent that opposer is seeking documents through the interrogatories, opposer's motion to compel is denied as it is inappropriate to propound a request for production of documents through interrogatories.

Second to the extent that opposer seeks written responses with regard to its document requests, opposer's motion to compel is denied as it is inappropriate to propound an interrogatory request through a request for production.

Third, to obviate any confidentiality concerns with regard to any of the responsive documents or any interrogatory responses, the Board is imposing its standardized protective agreement on the parties. The provisions of the attached agreement now bind the parties.<sup>2</sup>

Accordingly, in view of the imposition of the standardized protective agreement, applicant's confidentiality objections are overruled.<sup>3</sup>

Fourth, the Board finds opposer's interrogatory and document requests relevant, and therefore, to the extent

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<sup>2</sup> As the parties can see from the terms of the protective agreement, they are free to agree to modifications or seek modifications by motion to the Board. If the parties wish the terms of the protective agreement to extend beyond the conclusion of this proceeding, the parties should sign the agreement and file a copy thereof with the Board.

that applicant has objected on the basis of relevance, these objections are overruled.

Turning first to the interrogatories, the Board finds the following:

Interrogatory No. 8

The identification of documents with regard to an interrogatory request is neither privileged nor confidential. Opposer's motion to compel is granted to the extent that applicant should provide more detailed information about the search conducted in 2000 or 2001 and its form (e.g., search report, company/individual that conducted the search). The parties are advised that with regard to a trademark search, comments or opinions of attorneys would not be discoverable regarding the search, unless waived. TBMP Section 414.

Interrogatory No. 11

In its motion to compel, opposer has modified this interrogatory, in view of applicant's initial response. In view thereof, opposer's motion to compel is granted to the extent that applicant should provide the dollar amount spent since January 2001 in paying in-house employees for work involving advertising and promotional expenses.

Interrogatory No. 12

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<sup>3</sup> Customer names and customer lists remain confidential and are not discoverable even under the protective agreement. See TBMP Section 414.

Answering interrogatories often requires the party to identify written documents. The Board does not find this interrogatory request unduly burdensome. In view thereof, opposer's motion to compel a better response to this interrogatory is granted to the extent that applicant should identify specific documents containing applicant's mark.

Interrogatory No. 16

In view of the imposition of the standardized protective agreement, applicant's objection to this interrogatory is overruled. Accordingly, opposer's motion to compel a better response to this interrogatory is granted.

Interrogatory No. 20

The date and identity of an individual who conducted a search or investigation on behalf of applicant of its adoption, use, or registrations of its trademarks, service mark or trade name is discoverable and is not privileged. On the other hand, comments or opinions of attorneys would not be discoverable regarding the search or investigation, unless waived.

In view thereof, opposer's motion to compel is granted to the extent that applicant must provide a better response by identifying the date a search or investigation was conducted as well as the individual who conducted the search or investigation. Additionally, if the finding of the

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search is not in the nature of a comment or opinion of an attorney, this information must be included in the supplemental response.

Interrogatory No. 26

This interrogatory essentially seeks a privilege log for any withheld documents from the request for production. The Board does not find this interrogatory request unduly burdensome nor does the Board find that this information is protected by privilege. In view thereof, opposer's motion to compel is granted as to this interrogatory request.

Interrogatory No. 27

The identity of the individuals who participated in the preparation of responses to these interrogatories is relevant and not privileged, and applicant has not supported its objection of undue burden. In view thereof, opposer's motion to compel is granted with regard to this request.

Interrogatory No. 29

Opposer's motion to compel is granted to the extent that applicant should specify the dates in which it has used the trade channels: "place of business, telephone and the Internet" for "distributing" its services.

Interrogatory No. 30

Applicant's objection of undue burden is unsupported and the Board finds this request relevant. In view thereof,

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