



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
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Audemars Piquet Holding S.A.

v.

Haas Outdoors, Inc.

Opposition Nos. 91242213 and 91242238
Application Serial Nos. 87821623 and 87821622
On Petition to the Director
Filed: July 7, 2021

Decision

On July 7, 2021, Audemars Piquet Holding S.A. (“Opposer”) petitioned the Director of the United States Patent and Trademark Office (“Director”) to reverse the Trademark Trial and Appeal Board’s (“Board”) June 30, 2021 interlocutory order denying Opposer’s motion for reconsideration of the Board’s February 9, 2021 order (“Denial of Reconsideration”). The underlying February 9, 2021 order struck Opposer’s motions to compel and granted Applicant Haas Outdoors, Inc.’s (“Applicant”) motion for sanctions (“Sanctions Order”). The Director has authority to review the Petition under 37 C.F.R. §§ 2.146(a)(3) and (e)(2). The petition is denied.¹

FACTS²

These consolidated cases are contentious and, not coincidentally, almost three and one-half years old, largely due to continuous, unnecessary and apparently tactical discovery disputes instigated by Opposer and related motion practice focused on scheduling and procedure. The result has been not only delay, but also acrimony and

¹ Authority to decide any trademark petitions to the Director under 37 C.F.R. § 2.146 was delegated to the Commissioner for Trademarks. Subsequently, authority to decide petitions to the Director under 37 C.F.R. §§ 2.146(e)(2), involving review of Board interlocutory orders, and review of requests to waive the Trademark Rules of Practice relating to Board cases, was delegated to the Chief Administrative Trademark Judge.

² This decision recites only the facts relevant to the petition.

undue burden on the Board reminiscent of other cases in which Opposer engaged in similar conduct and maneuverings.

These cases made little progress in their first year, due in large part to a number of disputes and motions, leading to the Board's July 14, 2019 order. That order granted Applicant's motion to compel after Opposer had improperly raised boilerplate, general objections (which it later withdrew) and attempted to produce responsive documents in a manner which would burden and impose a high cost on Applicant. Opposer was also found to have "failed to state unequivocally whether responsive, non-privileged documents exist," and to have responded to Applicant's discovery in a manner which "suggests that Opposer has not actually searched for responsive documents." Thus, the Board pointed out that if Applicant had attempted to inspect and copy responsive documents in the manner Opposer proposed, it could have been an expensive "wild goose chase." Ultimately, Opposer was ordered to produce documents responsive to certain requests by photocopying and forwarding them to Applicant. The Board also found Opposer's privilege log "vague and uninformative," and otherwise improper, and ordered Opposer to amend the log. The order concluded as follows: "In the event that Opposer fails to serve full responses to Applicant's particular document requests as ordered herein, Applicant's remedy may lie in a motion for sanctions, as appropriate."

On December 26, 2019, the Board denied Opposer's motion to reconsider the July 14, 2019 order, and granted in part Opposer's simultaneously-filed motion to compel. In denying reconsideration, the Board pointed out that Opposer's motion in large part merely reargued Opposer's response to Applicant's motion to compel, and that Opposer improperly used the motion to introduce new evidence. It also pointed out that Opposer, contrary to law and the July 14, 2019 order, "maintained its position that it is permissible to not unequivocally state whether any responsive documents actually exist." Finally, Applicant was ordered to supplement some of its discovery responses.

Opposer next moved to compel Applicant to comply with the Board's July 14, 2019 order and for sanctions for Applicant's alleged noncompliance. On June 27, 2020 the Board found that "Opposer is [now] requesting more than (sic) it asked for in the interrogatory and more than the Board ordered," while at the same time Applicant failed to provide some of the information it was ordered to provide (although this was a "minor issue"). Ultimately, the Board ordered Applicant to provide some additional information and otherwise denied Opposer's motion.

Opposer quickly moved, again, to compel Applicant to provide additional information, in response to which Applicant cross-moved to not only strike the motion to compel, but also for a protective order, which the Board construed as a motion for sanctions. The Board's Sanctions Order found Applicant's construed cross-motion for sanctions

“germane” to Opposer’s motion, because it related to the discovery requests at issue in Opposer’s motion, and thus considered both motions.

On the merits, the 31 page Sanctions Order began by pointing out that: (1) “pursuing discovery when involved in a Board proceeding does not give a party or its counsel license to mak[e] excessive demands, harass and bully the adverse party or tax the Board’s resources;” and (2) “the scope of discovery in Board proceedings is generally narrower than in court proceedings.” The Sanctions Order next laid out in exhaustive detail Opposer’s “willful pattern of harassment of Applicant during discovery, which has consumed unnecessarily Applicant’s resources and negatively impacted those of the Board.” Opposer’s conduct is summarized in chart form, in a manner which highlights “the inexorable and bad faith conduct of Opposer’s counsel,” and illustrates how Opposer’s actions stalled and then essentially ended this case’s progression to trial. Among other things: Opposer’s correspondence with Applicant was “duplicative,” “piecemeal” and “unclear”; Opposer failed to cooperate by requesting information “not proportional” to the needs of this relatively simple case; Opposer rehashed demands Applicant had previously addressed; Opposer did not sufficiently respect Applicant’s pandemic-related concerns and “badgered” Applicant; and Opposer filed an unnecessary second motion to compel. The Sanctions Order ultimately concluded that Opposer “has failed to comply with its obligation to cooperate during discovery.” Moreover, the Sanctions Order pointed out that Opposer has engaged in similar conduct in other Board proceedings.³

The Board therefore granted Applicant’s construed motion for sanctions. As a result, Opposer was found to have “waived any further objections to Applicant’s responses to Opposer’s discovery.” Furthermore, Applicant’s discovery responses were found to be sufficient, Opposer was prohibited from serving any additional discovery or discovery-related motions and the discovery period was closed. The Sanctions Order also found “that Applicant has substantially complied with Opposer’s discovery requests,” and denied Opposer’s motion to compel.

Finally, in its Denial of Reconsideration of the Sanctions Order, the Board found that Opposer was merely and impermissibly rearguing points made in its motion to compel and response to the construed motion for sanctions. Furthermore, Opposer failed to establish that there was any error in the Sanctions Order.

In its Petition to the Director, Opposer seeks review of both the Sanctions Order and the Denial of Reconsideration. It argues that its motion to compel should have been granted on the merits, and that Applicant’s construed cross-motion for sanctions should have been denied on procedural and substantive grounds.

³ See *e.g.* March 5, 2020 and July 14, 2021 orders in Opposition No. 91245118.

DISCUSSION

Standard of Review

Parties to Board proceedings may petition the Director to review an interlocutory Board order on a procedural matter. TTAB MANUAL OF PROCEDURE (TBMP) §§ 901.02(a), 905 (2021); TMEP § 1704 (2021). Here, Opposer invokes the Director's supervisory authority under Trademark Rule 2.146(a)(3). The Director will reverse an interlocutory Board order only upon a showing of clear error or abuse of discretion. *Kimberly Clark Corp. v. Paper Converting Ind., Inc.*, 21 USPQ2d 1875, 1877 (Comm'r Pats. 1991); *Paolo's Associates Ltd. P'ship v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r Pats. 1991); *Jonergin Co. Inc. v. Jonergin Vermont Inc.*, 222 USPQ 337 (Comm'r Pats. 1983); *Riko Enterprises, Inc. v. Lindsley*, 198 USPQ 480 (Comm'r Pats. 1977).

The Petition is Untimely With Respect to the Sanctions Order

"A petition from an interlocutory order of the [Board] must be filed by not later than thirty days after the issue date of the order from which relief is requested." Trademark Rule 2.146(e)(2). Thus, in order to obtain review of the Sanctions Order, Opposer was required to file its petition by March 11, 2021. Petitioner did not do so until almost four months later, however. The petition is accordingly denied to the extent it seeks review of the Sanctions Order.⁴

There Was No Clear Error or Abuse of Discretion in the Denial of Reconsideration

"[T]he premise underlying a motion for ... reconsideration ... is that, based on the facts before it and the prevailing authorities, the Board erred in reaching the order or decision it issued. Such a motion may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in a brief on the original motion. Rather, the motion should be limited to a demonstration that based on the facts before it and the applicable law, the Board's ruling is in error and requires appropriate change." TBMP § 518. *See also Guess? IP Holder L.P. v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

Here, Opposer's motion for reconsideration of the Sanctions Order consisted primarily of reargument and failed to establish that the Sanctions Order was in error. Therefore, as explained below, Opposer's petition is denied.

⁴ Although the Petition is untimely with respect to the Sanctions Order, the Sanctions Order is the subject of the request for reconsideration, and therefore has been considered and discussed in deciding the Petition.

Opposer first argues that its motion to compel should have been granted. It claims that Applicant “has itself confirmed that it has documents responsive” to Production Requests 34, 36, 37 and 41, and that Applicant “has provided inconsistent and contradictory responses regarding its licensees AVT Leather and MMT Group/Southern Design.” It also claims that Applicant failed to produce its documents as kept in the ordinary course of business, and therefore Applicant should be compelled to produce an “index/correspondence table.” This is mere reargument of points made in Opposer’s August 11, 2020 motion to compel, and thus not a basis for reconsidering the Sanctions Order. In any event, as found in the Sanctions Order “Applicant had responded fully to Opposer’s document request Nos. 34, 36, 37 and 41, and to the inquiry regarding AVT Leather,” and “the record indicates that in addition to producing two tables earlier in the proceedings ... Applicant also served the documents at issue as they are kept in the usual course of business.” As stated in the Sanctions Order: “Merely because Opposer did not obtain the specific documents it wanted does not mean that Applicant has not been responsive. In fact, in this instance, the Board finds that Applicant has substantially complied with Opposer’s discovery requests.”

Opposer next asserts that the Board should not have considered Applicant’s construed motion for sanctions because Applicant failed to meet and confer before filing it, and because it was filed while the proceedings were suspended and is not germane to Opposer’s motion to compel. However, as pointed out in the Denial of Reconsideration, the Board construed Applicant’s motion as one for sanctions, for which a “certification of good faith is not required,” and in any event Opposer failed to raise the meet and confer issue when it responded to Applicant’s motion. As also pointed out in the Denial of Reconsideration, Opposer’s allegation that Applicant’s motion violated the suspension order and was not germane to Opposer’s motion is merely rearguing points Opposer made in its original response to Applicant’s motion. In any event, as the Board held in the Sanctions Order, Applicant’s construed motion for sanctions “relates to Opposer’s conduct related to its discovery requests that are the subject of the motion to compel,” and is therefore germane to Opposer’s motion.

Finally, Opposer argues that Applicant’s motion should have been denied on the merits. While this section of the petition is long, it is not new; rather, it merely rehashes many of the arguments Opposer has made over the years. These arguments were properly rejected and sanctions were properly granted, as explained herein, in the Sanctions Order, the Denial of Reconsideration and several of the earlier orders in this case.

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