

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**BLACK & DECKER U.S., INC.,**

**Plaintiff,**

v.

**No. 07-1201**

**TIMOTHY C. SMITH**

**Defendant.**

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**ORDER DENYING DEFENDANT TIMOTHY C. SMITH'S MOTION TO COMPEL  
RESPONSES TO HIS FIRST SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION SUBMITTED ON JULY 18, 2008 AND TO IMPOSE SANCTIONS**

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Before the Court is Defendant Timothy C. Smith's Motion to Compel Responses to his First Set of Interrogatories and Requests for Production Submitted on July 18, 2008 and to Impose Sanctions. (D.E. # 114). The instant motion was referred to United States Magistrate Judge Charmiane G. Claxton for determination. For the reasons set forth herein, Defendant's motion is DENIED.

**I. Factual Background**

This case arises from allegations that Defendant misappropriated confidential information while employed by Plaintiff and provided it to Plaintiff's competitor, Techtronic Industries, Co., Ltd. ("TTI"), where Defendant is currently employed. On November 15, 2007, Plaintiff filed a Complaint alleging violations of the Computer Fraud and Abuse Act (Count 1), Tennessee Uniform Trade Secrets Act (Count 2), Tennessee Personal and Commercial Computer Act (Count 3), breach of contract (Count 4), breach of duty of loyalty and/or fiduciary duty (Count 5), misappropriation

and/or misuse of confidential and proprietary information (Count 6), and unfair competition and unfair trade practice (Count 7).

On July 18, 2008, Defendant served his First Set of Interrogatories and Requests for Production, which are at issue in the instant motion. The parties agree that Plaintiff's responses were initially due on or about August 20, 2008. However, on August 13, 2008, the District Court granted Plaintiff's Motion for Leave to Appeal to the Sixth Circuit (hereinafter, "Interlocutory Appeal"). The final sentence of the District Court's Order permitting the Interlocutory Appeal stated as follows: "The proceedings in this Court are stayed pending the Sixth Circuit decision as to whether it will permit an appeal." Order Granting Motion for Leave to Appeal, Aug. 13, 2008, at 7.

On August 20, 2008, Plaintiff requested a two-day extension to respond to the discovery requests, but later explained that it had not yet noticed the stay imposed by the District Court's Order permitting the Interlocutory Appeal. On August 21, 2008, the parties exchanged e-mail communications regarding the impact of the Court's stay. Pl.'s Memo. in Opposition to Def.'s Mot. to Compel, Exh. A. In these communications, Plaintiff's counsel asks, "if stayed, I guess we don't even need to respond to your discovery, do we?" Id. As Defendant's counsel does not initially respond to this question, Plaintiff's counsel states that it "will not produce the discovery since the case is stayed and we can discuss further at conf[erence] with judge as to what to do thereafter." Id. Defendant's counsel then responds, "No problem." Id.

On August 27, 2008, the Court held a telephonic status conference in this case and the companion case against TTI ("TTI litigation"). At the status conference before United States Magistrate Judge Tu M. Pham, the Court consolidated both cases for purposes of discovery. The

parties also discussed bifurcation of the discovery process, due primarily to Plaintiff's request for a preliminary injunction and the desire to expedite discovery related solely to that request. Following the conference, the Court entered a Minute Entry in the case which stated as follows: "Court will lift the Stay in Smith case for the purpose of preparing matter for the 12/8/2008 Hearing [on the Motion for Preliminary Injunction] before Judge Pham, as to other issues, parties can proceed with that discovery." Minute Entry, Aug. 27, 2008.

On October 2, 2008, the parties in this case and the TTI litigation participated in a second status conference before United States District Judge J. Daniel Breen, and the Amended Scheduling Order was finalized. According to the Amended Scheduling Order, discovery in this case and TTI litigation would be bifurcated into two distinct phases. Phase I was ordered to be conducted from September 8, 2008 through November 10, 2008 and was to allow for limited discovery "on issues relating to the Plaintiff's request for the issuance of a Preliminary Injunction." Amended Scheduling Order at 2. Phase II was to be conducted from December 12, 2008 through July 1, 2009, and was to allow full discovery "on all other issues for trial on the merits in both the Smith Action and the TTI action." Id. The Amended Scheduling Order provided that Defendant, during Phase II, would be "permitted to serve written discovery as permitted by the applicable rules." Id. at 4.

During this October 2, 2008 status conference, Defendant contended that Plaintiff remained obligated to respond to the written discovery filed in advance of the consolidation and bifurcation of discovery. Plaintiff responded that it believed that no responses were due to the previously served discovery, given the parameters of the bifurcated discovery schedule established at the status conference. United States District Judge J. Daniel Breen indicated that any concern regarding the previously served discovery should be addressed by filing a motion with the Court. No motion was

filed at that time or immediately thereafter. The Amended Scheduling Order was entered on October 8, 2008. On October 30, 2008, the Amended Scheduling Order was modified to delay the commencement of Phase II of discovery until January 15, 2009.

On January 16, 2006, the United States Court of Appeals for the Sixth Circuit denied Plaintiff's Interlocutory Appeal. Following the denial of the Interlocutory Appeal, Defendant's counsel contacted Plaintiff's counsel to request responses to Defendant's written discovery. Plaintiff's counsel reiterated its position that its responses were not delinquent due to the stay and due to Defendant's failure to file any motion with the Court regarding its concerns. However, notwithstanding its position, Plaintiff responded on February 5, 2008 that Defendant "can re-serve it and/or we will agree to respond to it in 30 days." Pl.'s Resp., Exh. B.

On February 11, 2009, Defendant filed the instant Motion to Compel. On February 24, 2009, Plaintiff responded, arguing that it had not failed to appropriately respond to Defendant's discovery requests. Plaintiff further stated in its Response that it had agreed to provide the requested discovery in advance of the filing of Defendant's motion and that "[Defendant] will likely receive [Plaintiff's] responses before his Motion to Compel is fully briefed, and almost certainly before this Court has had an opportunity to consider its merits." Pl.'s Resp. at 8. On March 9, 2009, Plaintiff served the requested discovery responses upon Defendant. On March 17, 2009, Defendant filed a Reply in Support of the instant motion, in which he stated that the discovery responses had yet to be received. On March 21, 2009, Defendant filed a Supplement to his Reply clarifying that Plaintiff's discovery responses were in fact served upon Defendant on March 9, 2009; however, Defendant advised the Court that he "maintains his request for the other relief sought in his Motion to Compel." Def.'s Supplement of Reply at 1.

## II. Analysis

The first issue presented is Defendant's Motion to Compel Responses to his First Set of Interrogatories and Requests for Production. Since the filing of the instant motion, Defendant has advised the Court that Plaintiff provided all documents requested in the instant motion on March 9, 2009. Accordingly, the Court finds that the instant motion to compel is DENIED AS MOOT.

Despite Plaintiff's compliance with the discovery requests, Defendant seeks that this Court consider his motion for sanctions and for attorneys' fees and costs. Specifically, Defendant requests that the Court impose the following: (1) sanction Plaintiff by staying discovery as to Defendant and extend the discovery deadlines for Defendant; (2) sanction Plaintiff by prohibiting Plaintiff from objecting to Defendant's First Set of Interrogatories and Requests for Production; (3) admonish Plaintiff that additional sanctions may follow for any future discovery misconduct; and, (4) award Defendant attorneys' fees and costs incurred by the filing of the instant motion.

A trial court should only grant a stay of discovery upon the moving party's showing of good cause and reasonableness. See, e.g. Simpson v. Specialty Retail Concepts, Inc., 121 F.R.D. 261, 263 (M.D. N.C. 1988). "In ruling upon a motion to stay, the Court is required to weigh the burden of proceeding with discovery upon the party from whom the discovery is sought against the hardship which would be worked by a denial of discovery." Nabi Biopharm. v. Roxane Labs., Inc., No. 2:05-cv-0889, 2006 U.S. Dist. LEXIS 76514, at \*3 (S.D. Ohio Oct. 20, 2006). A court may order sanctions against any party which fails to respond to properly served interrogatories or requests for inspection. Fed. R. Civ. P. 27(d)(1)(A)(ii). The sanctions permitted for failure to respond include "prohibiting the disobedient party from supporting or opposing designated claims or defenses" and "staying further proceedings until the order is obeyed." Fed. R. Civ. P. 37(b)(2)(A)(ii) & (iv). If

the Court finds that a party failed to respond to properly served discovery, the Court must require “the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(d)(3).

Upon consideration of Defendants’ request for sanctions and attorneys’ fees, the Court finds it compelling that Defendant did not file a motion following the October 2, 2008 status conference, which Judge Breen advised would be the proper method of raising concerns regarding the response deadlines. Even more compelling to the Court is that Plaintiff had agreed to respond to Defendant’s discovery requests before Defendant filed the instant motion. See Pl.’s Resp. at 4 & Exh. B. Accordingly, the Court finds that no good cause exists to stay discovery as to Defendant, to extend Defendant’s discovery deadlines, or to impose any other sanctions as permitted under Rule 37. Additionally, the Court finds that neither sanctions nor an award of attorneys’ fees and costs are appropriate in the instant case, as Defendant failed to obtain clarification regarding when the responses should be provided and as Plaintiff affirms that it attempted in good faith to comply with the Court’s amended discovery schedule. Pl.’s Resp. at 7. Therefore, Defendant’s motion is hereby DENIED.

### **III. Conclusion**

For the reasons set forth herein, Defendant’s Motion to Compel Responses to his First Set of Interrogatories and Requests for Production Submitted on July 18, 2008 and to Impose Sanctions (D.E. # 114) is DENIED.

**IT IS SO ORDERED** this 23rd day of June, 2009.

s/ Charmiane G. Claxton  
CHARMIANE G. CLAXTON  
UNITED STATES MAGISTRATE JUDGE