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TTAB Enters Judgment Based on Finding of Willful Evasion

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This article explores a recent Trademark Trial and Appeal Board (TTAB) precedential ruling, which holds that failure to comply with TTAB's orders, misrepresentations to the board, and a pattern and practice of avoiding discovery obligations can lead to the drastic remedy of dispositive sanctions.

In *Fifth Generation Inc. v. Titomirov Vodka LLC*, Fifth Generation, owner of Tito's brand vodka, challenged two applications and a trademark registration owned by Titomirov Vodka, arguing that the company concealed evidence that materially prejudiced Fifth Generation's ability to prosecute its merits. To establish that Dr. Titomirov's representations were an attempt to evade discovery, Fifth Generation identified critical evidence that included social media images of Dr. Titomirov that supported its argument. In response, Titomirov filed motions for extension and a request for a phone conference that demonstrated to TTAB a "…willful evasion of Titomirov's discovery obligations."

The decision that followed, to enter judgment under Trademark Rule 2.120(h) "based on Titomirov's disregard of prior Board orders, misrepresentations to the Board concerning Titomirov's residence in the United States, and a continuing pattern of frustrating Fifth Generation's prosecution of the case," provides cautionary guidance on how seemingly innocuous information posted on social media and the internet can affect the outcome of a case.

Read, "TTAB Enters Judgment Based on Finding of Willful Evasion," in its entirety.

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