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

Mailed: October 22, 2008

Opposition No. 91168756
Opposition No. 91171997
Opposition No. 91171998
Opposition No. 91171999
Opposition No. 91172000
Opposition No. 91172002
Opposition No. 91172004
Opposition No. 91172006
Opposition No. 91172557

Federation Des Industries de la Parfumerie

v.

Ebel International Limited

George C. Pologeorgis, Interlocutory Attorney:

These consolidated proceedings now come up for consideration of opposer's motion to compel filed on September 28, 2007. The motion is fully briefed.

The Board, in its discretion, suggested that the issues raised in the aforementioned motion should be resolved by telephonic conference as permitted by TBMP § 502.06 (2nd ed. rev. 2004). The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold a telephone conference at 3:00 p.m., Eastern Time on Tuesday, September 14, 2008. The

conference was held as scheduled among Julie Seyler and John Choi, as counsel for Federation Des Industries de la Parfumerie, Efrain Brito and Leo Lughlin, as counsel for Ebel International Limited, and George C. Pologeorgis, as a Board attorney responsible for resolving interlocutory disputes in this case.

The Board carefully considered the arguments raised by the parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the Board made the following findings and determinations:

Initially, the Board finds that opposer's motion is timely and that opposer has made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1).

Opposer's Motion to Compel

To the extent that applicant has not, to date, used any of the subject marks of these consolidated proceedings in commerce, opposer's motion to compel is denied. However, to the extent that applicant has used any of the subject marks in commerce to date, then opposer's motion is granted to the extent set forth below.

Interrogatory No. 9

Motion granted to the extent that applicant must state the sales, in dollars and units, for all goods sold under each of the subject marks in these consolidated proceedings for the past five years, by month.

Interrogatory No. 10(ii)

Motion granted to the extent that applicant must identify the amount of money, in dollars, expended for advertising and promotion of goods bearing the subject marks of these consolidated proceedings in the United States since the date of first use, by year. To the extent that applicant cannot identify the advertising and promotional expenditures for each of the subject marks by year, applicant may provide the

total advertising and expenditures for all the subject marks in the United States by year since the date of first use.

Interrogatory No. 30

Motion granted to the extent that applicant must state the total sales in dollars and total units sold in the United States of applicant's goods bearing the mark "L'BEL," in whole or in part, but excluding the term PARIS for the past five years, by year, in the field of cosmetics and personal care items.

Document Request No. 30

Motion is granted to the extent that applicant must produce a representative sampling of documents sufficient to show the total sales in dollars and total units sold in the United States of applicant's goods bearing the mark "L'BEL," in whole or in part, but excluding the term PARIS for the past five years, by year, for goods in the field of cosmetics and personal care items.

Document Request No. 31

Motion is granted to the extent that applicant must produce a representative sampling of documents sufficient to show the total money spent by applicant on advertising in the

United States in connection with applicant's goods in the field of cosmetics and personal care items that are used in association with applicant's marks bearing the term "L'BEL," in whole or in part, but excluding the term PARIS, for the past five years, by year.

In view of the above, applicant is allowed **thirty days (30)** days from the mailing date of this order in which to comply with the foregoing.

Moreover, to the extent that the instant order compels applicant to produce a representative sampling of documents or a representative identification in response to a particular document or interrogatory request, applicant is advised that it may only rely upon at trial the representative sampling of documents it produces or representative sampling identification it provides. In other words, documents or information which may be responsive but are not produced or provided may not be relied upon by applicant during testimony or at final briefing.

Similarly, in the event applicant fails to provide opposer with full and complete responses to the outstanding

discovery, as required by the instant order, applicant will be barred from relying upon or later producing documents or facts at trial withheld from such discovery. *See* Fed. R. Civ. P. 37(c)(1).[1]

Finally, the parties are advised that the Board's standard protective order is imposed on this proceeding, effective, August 31, 2007, pursuant to the Board's new rules. *See* "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42242 (Aug. 1, 2007).

Proceedings herein are resumed. Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	**12/22/2008**
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	**3/22/2009**
Testimony period for party in position of defendant	**5/21/2009**

[1] If applicant fails to comply with this order, opposer's remedy lies in a motion for sanctions, pursuant to Trademark Rule 2.120(g)(1). Furthermore, the parties are reminded that a party that has responded to a discovery request has a duty to supplement or correct that response. See Fed. R. Civ. P. 26(e).

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to close:(opening thirty days prior thereto)

Rebuttal testimony period to close: **7/5/2009**
(opening fifteen days prior thereto)

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.

The Board thanks the parties' respective counsel for their participation and cooperation.

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NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint

of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm