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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176901
Party	Defendant Jeffrey Lee Kaplan and Ilie Iconcescu
Correspondence Address	Jeffrey Lee Kaplan P.O. Box 11106 Ft Lauderdale, FL 33339-1106 UNITED STATES eggcream@earthlink.net
Submission	Motion to Compel Discovery
Filer's Name	Jeffrey Kaplan
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Signature	/Jeffrey Kaplan/
Date	09/11/2008
Attachments	Motiontocompel.pdf (40 pages)(1680606 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Opposition No. 91176901

Bodyonics, Ltd..

Opposer

v.

Jeffrey Lee Kaplan and Ilie Ioncescu

Applicants

APPLICANT'S MOTION TO COMPEL; MEMORANDUM; DECLARATION OF JEFFREY KAPLAN IN SUPPORT AND CERTIFICATE OF GOOD FAITH ATTEMPT TO RESOLVE DISPUTE

_____/

MOTION TO COMPEL

Pursuant to Rule 37 of the Federal Rules of Civil Procedure Applicants request that this Board compel Opposer to answer Interrogatories and Requests for Production of Documents that were served. In support, Applicants states as follows:

1. Applicants served Interrogatories and Requests for Production of Documents on Opposer on July 21st 2008. (See Attached Exhibit A)

2. On August 21st 2008 Opposer responded and answered only seven (7) out of Seventeen (17) Interrogatories. Opposer objected and did not answer ten (10) Interrogatories. On August 21st 2008 Opposer responded and produced only one (1) Document. Opposer objected and did not produce Documents for eleven (11) Requests for Documents. (See Attached Exhibit B)

3. On August 30th 2008 Applicants faxed and mailed Opposer a six (6) page letter informing the Opposer of the relevance of each Interrogatory and Requests for Production of Documents for use in his Defense of this Opposition Proceeding. (See Attached Exhibit C)

4. On September 10th 2008 Applicants received a letter informing him that Opposer will not answer the requested Interrogatories and Requests for Production of Documents. (See Exhibit D)

Accordingly, Applicants requests an order compelling Opposer to answer the remaining unanswered Interrogatories and to submit the requested Documents as indicated in his Requests for Production of Documents within ten (10) days of the Boards order. Applicants also requests that the Board sanction the Opposer as it sees fit for intentionally delaying this Opposition hearing.

Dated: September 10th 2008

Jeffrey Kaplan, Applicant (Pro se)

MEMORANDUM IN SUPPORT

I. FACTUAL BACKGROUND

On April 15th 2006 Applicants filed an application to register the mark "ENERGY POPPERS" for intent-to use in commerce under the goods and services of: Energy Boosting Nasal Preparations. Applicants mark was subsequently approved for Publication on April 3rd 2007.On April 20th 2007 Opposer filed a Notice of Opposition stating they owned the mark "POPPERS" for use in commerce under the goods and services of: Dietary and Nutritional Supplements. Said Notice of Opposition claimed that Applicants mark will cause confusion in the marketplace and a claim of "Likelihood of Confusion" was argued by the Opposer.

After numerous motions by the Opposer and Applicants, on July 15th 2008 the Board made its rulings and rescheduled the Discovery Period to Close on November 20th 2008. Subsequently the Applicants submitted its First Set of Interrogatories and First Set of Requests for Production of Documents to Opposer on August 21st 2008. On September 21st 2008 Opposer answered only seven (7) out of seventeen (17) Interrogatories and produced only one (1) Document out of eleven (11) requests. Opposer objected on the grounds that the information requested is not reasonably calculated to lead to the discovery of admissible evidence and on that basis is not relevant to these proceedings.

II. ARGUMENT

Under Rule 26(b)(1) "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action". In this matter Opposer is arguing a "Likelihood of Confusion" claim between the two marks. In assessing a Likelihood of Confusion claim, the Board will examine:

(1) the strength of the Opposers mark; (2) the similarity between the parties marks; (3) the similarity of the goods and services offered by the Opposer and the Applicants; (4) the similarity between the retail outlets used by the parties and the customers served by the Opposer and Applicants; (5) the similarity between the types of advertising media used by the parties; (6) the Applicants intent when adopting the mark and (7) actual consumer confusion. See *Alliance Metals Inc of Atlanta v. Hinely Industries, Inc. 222 F. 3d 895,907* (11th Cir. 2000)

Applicants Interrogatories and Requests for Production of Documents as listed below are relevant because the Applicants products are for "Energy Boosting Nasal Preparations" and Opposers products are used for "Dietary and Nutritional Supplements' Upon information and belief the Opposer has stated in his correspondence with the U.S.P.T.O Examiner during his application phase that their product contains no ENERGY producing ingredients. Therefore, for our Defense against a claim of Likelihood of Confusion, all listed Interrogatories and Requests for Production of Documents are clearly relevant and discoverable:

INTERROGATORIES OBJECTED BY OPPOSER

2. Identify all documents involved in the evolution, selection, searching and registration (Federal and or/State) or attempted registration of the name POPPERS including all correspondence with the United States Patent and Trademark office.

Relevance: As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for "dietary supplements". The notice of opposition includes a claim of "Likelihood of Confusion" in the marketplace. One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade and that we cater to a specialized clientle. In addition, upon information and belief the Opposer claimed to the Examiner that their product contains no ENERGY producing ingredients.

All correspondence and Office Actions between the opposer and the examiner in regards to Opposers use of POPPERS in commerce as a "dietary supplement" is relevant and important to our defense especially since our product is not intended to be sold in the same marketplace as the opposers products. The opposer may have documents not provided on the U.S.P.TO. website, therefore we are requesting all of the opposers documents to compare.

4 Identify all documents involved in the selection of the specific ingredients used and publicly listed on the products labels in the evolution, research, development and manufacturing of each product identified by you in the preceding interrogatory.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations".
Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

6. Identify the person or persons who had and have primary responsibility in the evolution, research, development and manufacturing of each of the products identified by you in response to Interrogatory 3.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits the usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion" in the marketplace. One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients in the product and the person who developed the ingredients need to be verified since the opposers products allegedly do not have "energy producing properties".

7. State the name of each ingredient used and publicly listed on the labels in the manufacturing of the products identified by you in response to Interrogatory 3.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

8. State any policy you may have, identifying any documents, concerning use, display and advertising of the name POPPERS.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different marketing and advertising channels of the products. Therefore the above Interrogatory is relevant and required to be answered.

12. In regard to each item identified in your response to Interrogatory 11, state:

    a. The period of time of its use;
    b. The products in connection with which it was used;
    c. For each year the total number used.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade and advertising. Therefore the above Interrogatory is relevant and required to be answered.

13. Identify each advertisement, catalog, brochure or other advertising means by which the name POPPERS has been used by you.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different marketing and advertising of products. Therefore the above Interrogatory is relevant and required to be answered.

14. For each item identified in your response to Interrogatory 13, state:

    (a) The period of time of its use;
    (b) the products in connection with which it was used;
    (c) the publication, if any, or radio station, internet web pages, if any, television station, if any, in which it was published and or on which it was broadcast;
    (d) in the case of brochures and catalogs, to whom such items were sent and when.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade and marketing. Therefore the above Interrogatory is relevant and required to be answered.

15. If you have used an advertising agency or agencies for advertising your POPPERS products, identify such agencies, the agencies individuals primarily responsible for your account and give the periods of time such agencies were responsible for your advertising work.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade and marketing. Therefore the above Interrogatory is relevant and required to be answered.

16. Identify all documents involved in the evolution, selection, searching And registration or attempted registration with the United States Department of Agriculture (U.S.D.A.) and or Food and Drug Administration (F.D.A.) and or any State(s) regulation department for the ingredients in the products identified in your response to Interrogatory 3.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade and marketing to specialized consumers. Therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the Opposers product needs to be verified since it allegedly does not have "energy producing properties".

REQUESTS FOR PRODUCTION OF DOCUMENTS
OBJECTED BY OPPOSER

1. All documents pertaining to the creation and adoption of the mark POPPERS for each good identified in your response to Interrogatory No. 2.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion" in the marketplace. One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade. All correspondence and Office Actions between the opposer and the examiner in regards to your use of POPPERS in commerce as a "dietary supplement" is relevant and important to our defense especially since our product is not intended to be sold in the same marketplace as the opposers products. Upon information and belief Opposer stated to the Examiner that their product contains no ENERGY producing ingredients, The Opposer may have documents not provided on the U.S.P.TO. website. Therefore we are requesting all of the Opposers documents to compare with the U.S.P.T.O. jacket file.

3. All documents pertaining to the selection of the specific ingredients identified in your response to Interrogatory No. 4.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations".Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the Opposers product needs to be verified since it allegedly does not have "energy producing properties".

4 All documents pertaining to the selection of the specific ingredients identified in your response to Interrogatory No. 7.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the Opposers product needs to be verified since it allegedly does not have "energy producing properties".

5. One copy of each different advertisement or promotional material, currently being used and used at any time in the past, that include your use of the mark POPPERS for each good identified by you in your response to Interrogatory No.3.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade and marketing. Therefore the above Interrogatory is relevant and required to be answered.

8. Documents relating to your exhibition of products in connection with the mark POPPERS at trade shows, conventions or similar events.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

9. Documents relating to the evolution, selection and registration or attempted registration as identified by you in response to Interrogatory No. 16.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

10. Documents issued by you in connection with publicity or advertising for products bearing the name POPPERS.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

11. Documents used on the Internet such as your own web page outlines and related web page documents advertising the sale of your products bearing the name POPPERS.

As verified on the notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Opposers response to Interrogatory 3 admits their usage of POPPERS in commerce is strictly for dietary supplements. The notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

III. Conclusion

For the foregoing reasons, Applicants respectfully requests that the Board compel the Opposer to answer the above listed Interrogatories and to Produce the above listed Documents.

Dated: September 10th 2008

Jeffrey Kaplan
POB 11106
Ft. Lauderdale, Fl. 33339
(954) 793-0637

CERTIFICATE OF MAILING

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, this 10th day of September 2008 postage prepaid in an envelope addresses to Jay Geller 2426 W. Olympic Bl. West Tower Suite 4000 Santa Monica, CA 90404.

Jeffrey Kaplan

DECLARATION OF JEFFREY KAPLAN

Jeffrey Kaplan under penalty of perjury of the laws of the United States, declares and states as follows:

1. I am acting pro se in this matter. If called as a witness I would and could testify to the following of my personal knowledge.

2. On July 21st 2008, I served Applicants First Set of Written Interrogatories and First Set of Requests for Production of Documents to Opposer. (Exhibit A Attached) On August 21st 2008, Opposer served their responses to Applicants First Set of Written Interrogatories and First Set of Requests for Production of Documents.(Exhibit B Attached)

3. On August 30th 2008 I served a six page letter detailing my responses to Opposers Objections on the relevance of the Interrogatories and Document Requests. (Exhibit C Attached)

4. On September 10th 2008 I received a letter from Opposer indicating he will not answer the unanswered Interrogatories and he will not send the requested Documents. (Exhibit D Attached)

5. Exhibits A through D attached are true and accurate copies of the discovery that I prepared and served on Opposer and that was received by me from the Opposer.

Dated: September 10th 2008.

Jeffrey Kaplan

CERTIFICATE OF MAILING

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, this 10th day of September 2008 postage prepaid in an envelope addresses to Jay Geller 2426 W. Olympic Bl. West Tower Suite 4000 Santa Monica, CA 90404.

Jeffrey Lee Kaplan
P.O.B. 11106
Ft. Lauderdale, Fl. 33339
(954) 793-0637/ Fax: (954) 486-9558

CERTIFICATE OF GOOF FAITH ATTEMPT
TO RESOLVE DISPUTE

The undersigned Applicant certifies that Applicant and Opposer have been unable to reach an Agreement concerning this dispute and;

1. That on August 30th 2008 Applicant submitted a faxed letter and also mailed a copy via United States Postal Service prepaid and via email to Opposer (Attached as Exhibit C) outlining all his reasons and relevance for Opposer to answer the disputed objections to Applicants Interrogatories and Requests for Production of Documents.

2. That on September 10th 2008 Opposer sent a letter to Applicant confirming that he will not answer the Applicants Interrogatories or provide the documents to which he has objected to.

3. That as of the present date, the Opposer has not yet answered all the Applicants Interrogatories and has not forwarded the Documents requested by the Applicant.

Respectfully submitted,

Applicant: Jeffrey Kaplan, Pro Se

Date: September 10th 2008

CERTIFICATE OF MAILING

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, this 10th day of September 2008 postage prepaid in an envelope addresses to Jay Geller 2426 W. Olympic Bl. West Tower Suite 4000 Santa Monica, CA 90404.

Jeffrey Lee Kaplan
P.O.B. 11106
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(954) 793-0637/ Fax: (954) 486-9558

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Opposition No. 91176901

Bodyonics, Ltd..

Opposer

v.

Jeffrey Lee Kaplan and Ilie Ioncescu

Applicant

APPLICANT'S FIRST SET OF WRITTEN INTERROGATORIES TO REGISTRANT

_____/

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice, Applicant propounds the following interrogatories to Opposer to be answered no later than thirty days after their receipt.

As used herein, the term "document" refers to written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, and includes, but is not limited to letters, notes, memoranda, books, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, advertising or promotional literature, cables or telegrams, tape or other recordings (audio and video), reports, labels and packaging.

To "identify" a document means to provide a brief description of the document sufficient to support a request for production, including the general nature of the subject matter, the date, identification of the author and recipient, if any, and if the document embodies an agreement, the parties to such an agreement.

In answer to these interrogatories requiring the identification of any document or documents, such document or documents may be produced for inspection and copying by you along with the answers to these interrogatories in lieu of identification. Included in the definition of "identify" is the present whereabouts of the document, and the identity of the person by name and address having possession, custody and control of the document.

As used herein, the term "you" refers to the Opposer collectively. To identify a "person" means to state the person's name and business address and, in the case of a natural person, his or her home address and occupation or job title.

1. Identify the person or persons who created the name POPPERS.

2. Identify all documents involved in the evolution, selection, searching and registration (federal and or/state) or attempted registration of the name POPPERS including all correspondence with the United States Patent and Trademark office.

3. On what products, identified by generic type, have you used the name POPPERS.

4. Identify all documents involved in the selection of the specific ingredients used and publicly listed on the products labels in the evolution, research, development and manufacturing of each product identified by you in the preceding interrogatory.

5. When was the name POPPERS first used by you in interstate commerce on each of the products identified by you in response to Interrogatory 3.

6. Identify the person or persons who had and have primary responsibility in the evolution, research, development and manufacturing of each of the products identified by you in response to Interrogatory 3.

7. State the name of each ingredient used and publicly listed on the labels in the manufacturing of the products identified by you in response to Interrogatory 3.

8. State any policy you may have, identifying any documents, concerning use, display and advertising of the name POPPERS.

9. Identify all licenses, or parties you have licensed, or otherwise permitted, to use the name POPPERS, identifying any license agreements.

10. Identify each variation of the name POPPERS, if any, which you have used and identify each person known to you having personal knowledge of the truth of the facts provided in your response.

11. Identify each label, tag, decal, imprint or other means by which the name POPPERS or any variation thereof has been used on any goods sold by you.

12 In regard to each item identified in your response to Interrogatory 11, state:

   a. The period of time of its use;

   b. The products in connection with which it was used;

   c. For each year the total number used.

13. Identify each advertisement, catalog, brochure or other advertising means by which the name POPPERS has been used by you.

14. For each item identified in your response to Interrogatory 13, state:

a. The period of time of its use;

b. the products in connection with which it was used;

c. the publication, if any, or radio station, internet web pages, if any, television station, if any, in which it was published and or on which it was broadcast;

d. in the case of brochures and catalogs, to whom such items were sent and when.

15. If you have used an advertising agency or agencies for advertising your POPPERS products, identify such agencies, the agencies individuals primarily responsible for your account and give the periods of time such agencies were responsible for your advertising work.

16. Identify all documents involved in the evolution, selection, searching and registration or attempted registration with the United States Department of Agriculture (U.S.D.A.) and or Food and Drug Administration (F.D.A.) and or any State(s) regulation department for the ingredients in the products identified in your response to Interrogatory 3.

17 Identify each person who prepared or assisted in the preparation of the responses to these Interrogatories

Dated: July 18th 2008

Jeffrey Lee Kaplan
P.O.B. 11106
Ft. Lauderdale, Fl. 33339
(954) 793-0637/ Fax: (954) 486-9558

CERTIFICATE OF MAILING

It is hereby certified that the attached Interrogatories are being deposited with the U.S. Postal Service this 18th day of July marked first class mail, postage prepaid and certified and are being forwarded to Jay A. Geller, Esq, West Tower Suite 400, 2425 W Olympic Bl. Santa Monica, CA 90404

Jeffrey Kaplan

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Opposition No. 91176901

Bodynics, Ltd.

Opposer

v.

Jeffrey Lee Kaplan and Ilie Ioncescu.

Applicant

APPLICANT'S FIRST SET OF REQUEST FOR PRODUCTION DOCUMENTS TO OPPOSER

_____/

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Rule 2.120 (c) of the Trademark Rules of Practice, Applicant requests the production of the following documents in your possession, custody or control, or to which you have reasonable access, thirty days from receipt of this request, or on the first business day following the expiration of said thirty day period if such expiration dates falls on a weekend or holiday, at the address of: Jeffrey Kaplan, P.O. B. 11106 Fort Lauderdale, Florida 33339 at the hour of 10:00A.M.

As used herein, the following terms have the following meanings:

(a) "Advertising materials" means: Advertisements that have appeared in print in newspapers, magazines and other written publications; story boards for video advertising; videotapes of any video advertisements; scripts for videos and audio advertisements; audio cassettes or other audiotapes for audio advertisements; point of purchase display materials; displays (or photographs thereof if the displays are bulky); shelf cards; shelf talkers; posters; header cards; in store hand out materials for consumers; point of purchase written materials; catalogs; circulars; leaflets; direct mail pieces;

internet web page outlines or actual web page copy printouts; direct mail pieces; and press releases.

(b) "Label" means: All written, printed and/or graphic material on the immediate container of a product.

(c) "Packaging" includes all containers of any product other than the immediate container, including not limited to outer wrappings, unit cartons, packing cartons and shipping cartons; package inserts and package liners.

(d) "Documents" and "correspondence" exclude communications with your attorneys and attorney work product. However, if a claim of privilege or work product is made for any document covered by any of the requests set forth below, please indicate the nature of the document and identify by name, address, occupation, title and business affiliation, the writer, the addressee and all recipients thereof, the general subject matter to which the document relates, and its date.

(e) "You" refers to Opposer collectively.

If you object to a portion of a Request, you are obligated to produce documents in response to any portion of the Request to which no objection has been posed.

Please produce the following:

1. All documents pertaining to the creation and adoption of the mark POPPERS for each good identified in your response to Interrogatory No. 2.

2. Representative exemplars of all labels, currently being used and used at any time in the past, appearing on the immediate container of each and every good you sell, or have sold, in connection with the mark POPPERS and or pertaining to the products

identified in your response to Interrogatory No. 3, Interrogatory No. 10 and Interrogatory No. 11.

3. All documents pertaining to the selection of the specific ingredients identified in your response to Interrogatory No. 4.

4. All documents pertaining to the selection of the specific ingredients identified in your response to Interrogatory No. 7.

5. One copy of each different advertisement or promotional material, currently being used and used at any time in the past, that include your use of the mark POPPERS for each good identified by you in your response to Interrogatory No.3.

6. Representative exemplars of all packaging materials, currently being used and used at any time in the past, that bear the mark POPPERS for each good identified by you in your response to Interrogatory No. 3.

7. Each and every licensing agreement into which you have entered licensing any other person to use the mark POPPERS in connection with any goods and or services.

8. Documents relating to your exhibition of products in connection with the mark POPPERS at trade shows, conventions or similar events.

9. Documents relating to the evolution, selection and registration or attempted registration as identified by you in response to Interrogatory No. 16.

10. Documents issued by you in connection with publicity or advertising for products bearing the name POPPERS.

11. Documents used on the Internet such as your own web page outlines and related web page documents advertising the sale of your products bearing the name POPPERS.

Dated: July 18th 2008

Jeffrey Lee Kaplan
P.O.B. 11106
Ft. Lauderdale,Fl. 33339
(954) 793-0637/ Fax: (954) 486-9558

CERTIFICATE OF MAILING

It is hereby certified that the attached Interrogatories are being deposited with the US Postal Service this 18th day of July marked first class mail, postage prepaid and certified and are being forwarded to Jay A. Geller, Esq, West Tower Suite 400, 2425 W. Olympic Bl. Santa Monica, CA 90404

Jeffrey Kaplan

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bodyonics, Ltd. Opposer, v. Jeffrey Lee Kaplan and Ilie Ioncescu, Applicants	)	Opposition No. 91176901 OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES

1. Mel Rich, 200 Adams Boulevard, Farmingdale, NY.

2. Opposer objects to this request on the ground that the information requested is not reasonably calculated to lead to the discovery of admissible evidence and on that basis is not relevant to these proceedings. Without waiving the foregoing objection, the documents relating to the filing of the application to register the mark POPPERS are avialable from the USPTO website.

3. Dietary supplements.

4. Opposer objects to this interrogatory on the ground that the information requested is not reasonably calculated to lead to the discovery of admissible evidence and on that basis is not relevant to these proceedings.

5. May, 1999.

6. Opposer objects to this interrogatory on the ground that the information requested is not reasonably calculated to lead to the discovery of admissible evidence and on that basis is not relevant to these proceedings.

7. Opposer objects to this interrogatory on the ground that the information requested is not reasonably calculated to lead to

the discovery of admissible evidence and on that basis is not relevant to these proceedings. Without waiving the foregoing objection, the ingredients in the product appear on the product labels produced.

8. Opposer objects to this interrogatory on the ground that it is vague and ambiguous and therefore incapable of being resonded to. Opposer further objects to this interrogatory on the ground that the information requested is not reasonably calculated to lead to the discovery of admissible evidence and on that basis is not relevant to these proceedings.

9. There are no licenses.

10. There are no variations of the name POPPERS. The mark has always been used as POPPERS.

11. See response to request for production of documents for available labels.

12. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings. Without waiving the foregoing objections, with respect to subsection b, see response to Interrogatory No. 3. 3.

13. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

14. See response to Interrogatory No. 13.

15. Opposer objects to this interrogatory on the ground that

the information requested is not reasonably calculated to lead to the discovery of admissible evidence and on that basis is not relevant to these proceedings.

16. Opposer objects to this interrogatory on the ground that the information requested is not reasonably calculated to lead to the discovery of admissible evidence and on that basis is not relevant to these proceedings.

17. Mel Rich. Jay Geller.

Dated: August 21, 2008.

Jay H. Geller
Jay H. Geller, A Professional Corporation
W. Tower, Suite 4000
2425 W. Olympic Bl.
Santa Monica, CA 90404
P: 310-449-1399
F: 310-449-1394
email: jhgeller@aol.com
Attorneys for Opposer

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Ilie Ioncescu and Jeffrey Kaplan at P.O.B. 11106, Ft. Lauderdale, FL 33339 on August 21, 2008.

Jay H. Geller

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bodyonics, Ltd. Opposer, v. Jeffrey Lee Kaplan and Ilie Ioncescu, Applicants	)	Opposition No. 91176901 OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

2. Without reference to Interrogatories No. 3, 10 and 11, Opposer produces herewith the available labels requested. The president of Opposer is being treated for advanced stage esophageal cancer and when he is able to resume his activities, any additional labels will be provided.

3. Please see response to Interrogatory No. 4. In addition, opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

4. Please see response to Interrogatory No. 7. In addition, Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

5. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

6. See response to Request No. 2.

7. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings. Without waiving the foregoing objection(s), there are no documents to produce.

8. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

9. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

10. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant to these proceedings.

11. Opposer objects to this request on the ground that the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and on that basis are not relevant

to these proceedings.

Dated: August 21, 2008.

Jay H. Geller
Jay H. Geller, A Professional Corporation
W. Tower, Suite 4000
2425 W. Olympic Bl.
Santa Monica, CA 90404
P: 310-449-1399
F: 310-449-1394
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Attorneys for Opposer

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Ilie Ioncescu and Jeffrey Kaplan at P.O.B. 11106, Ft. Lauderdale, FL 33339 on August 21, 2008.

Jay H. Geller

EXHIBIT C

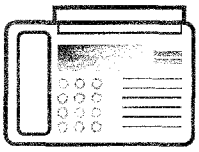
To Mr. Geller re: Energy Poppers Opposition - Letter attached

From:	Jeff <eggcream@earthlink.net>
To:	jhgeller@aol.com
Subject:	To Mr. Geller re: Energy Poppers Opposition - Letter attached
Date:	Aug 30, 2008 9:44 AM
Attachments:	lettertojaygeller.doc

Dear Mr. Geller:
Pursuant to FRCP 37 I have attached a detailed response to your objections regardin the interrogatories and request for production of documents. I have also faxed you a copy and mailed you a hard copy via first class mail. Since you already have had 40 days to respond to my discovery requests I expect the answers and documents with 10 days.
Thank you
Jeff Kaplan.
8/30/08

F A X

Global Beverage Enterprises Inc.
1771 Blount Rd. #203
Pompano Beach, FL 33069
954-974-4086



To: JAY GELLER
Fax number: (310) 449-1394

From: Mr. Jeff Kaplan, Pres
Fax number- (954) 486-9558

Date: 8/30/2008

Regarding:
OPPOSITION "Energy Poppers"

6 Pages + Cover Sheet

Dear Mr. Geller:
Attached please find our letter regarding your objections to our interrogatories
And requests for production of documents.

I await your reply.

Thank you

Jeff Kaplan

8/30/08

Mr. Jay Geller
W. Tower, Suite 4000
2425 West Olympic Bl.
Santa Monica, CA 90404
(310)-449-1399
(310)-449-1394

Re: Inadequate responses to Interrogatories and requests for documents

Dear Mr. Geller:

Pursuant to FRCP 37 I am giving you one last opportunity to have your client answer the following interrogatories and to submit the requested documents. Each Interrogatory you have objected to will be listed below and explained to you why I need it for my defense to your opposition of my mark. The same goes for my requests for production of documents. Please forward me the answers and documents within 10 days.

INTERROGATORIES

2. Identify all documents involved in the evolution, selection, searching and registration (Federal and or/State) or attempted registration of the name POPPERS including all correspondence with the United States Patent and Trademark office.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion" in the marketplace. One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade. All correspondence and Office Actions between the opposer and the examiner in regards to your use of POPPERS in commerce as a "dietary supplement" is relevant and important to our defense especially since our product is not intended to be sold in the same marketplace as the opposers products. The opposer may have documents not provided on the U.S.P.TO. website, therefore we are requesting all of the opposers documents to compare.

4 Identify all documents involved in the selection of the specific ingredients used and publicly listed on the products labels in the evolution, research, development and manufacturing of each product identified by you in the preceding interrogatory.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations".

Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

6. Identify the person or persons who had and have primary responsibility in the evolution, research, development and manufacturing of each of the products identified by you in response to Interrogatory 3.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion" in the marketplace. One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients in the product and the person who developed the ingredients need to be verified since the opposers products allegedly do not have "energy producing properties".

7. State the name of each ingredient used and publicly listed on the labels in the manufacturing of the products identified by you in response to Interrogatory 3.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

8. State any policy you may have, identifying any documents, concerning use, display and advertising of the name POPPERS.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

12. In regard to each item identified in your response to Interrogatory 11, state:

a. The period of time of its use;
b. The products in connection with which it was used;
c. For each year the total number used.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

13. Identify each advertisement, catalog, brochure or other advertising means by which the name POPPERS has been used by you.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

14. For each item identified in your response to Interrogatory 13, state:

(a) The period of time of its use;
(b) the products in connection with which it was used;
(c) the publication, if any, or radio station, internet web pages, if any, television station, if any, in which it was published and or on which it was broadcast;
(d) in the case of brochures and catalogs, to whom such items were sent and when.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

15. If you have used an advertising agency or agencies for advertising your POPPERS products, identify such agencies, the agencies individuals primarily responsible for your account and give the periods of time such agencies were responsible for your advertising work.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

16. Identify all documents involved in the evolution, selection, searching And registration or attempted registration with the United States Department of Agriculture (U.S.D.A.) and or Food and Drug Administration (F.D.A.) and or any State(s) regulation department for the ingredients in the products identified in your response to Interrogatory 3.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents pertaining to the creation and adoption of the mark POPPERS for each good identified in your response to Interrogatory No. 2.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion" in the marketplace. One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade. All correspondence and Office Actions between the opposer and the examiner in regards to your use of POPPERS in commerce as a "dietary supplement" is relevant and important to our defense especially since our product is not intended to be sold in the same marketplace as the opposers products. The opposer may have documents not provided on the U.S.P.TO. website, therefore we are requesting all of the opposers documents to compare.

3. All documents pertaining to the selection of the specific ingredients identified in your response to Interrogatory No. 4.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations".Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

4 All documents pertaining to the selection of the specific ingredients identified in your response to Interrogatory No. 7.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

5. One copy of each different advertisement or promotional material, currently being used and used at any time in the past, that include your use of the mark POPPERS for each good identified by you in your response to Interrogatory No.3.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

8. Documents relating to your exhibition of products in connection with the mark POPPERS at trade shows, conventions or similar events.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

9. Documents relating to the evolution, selection and registration or attempted registration as identified by you in response to Interrogatory No. 16.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered. The ingredients used in the opposers product needs to be verified since it allegedly does not have "energy producing properties".

10. Documents issued by you in connection with publicity or advertising for products bearing the name POPPERS.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

11. Documents used on the Internet such as your own web page outlines and related web page documents advertising the sale of your products bearing the name POPPERS.

As verified on your notice of opposition, Paragraph 3, our mark ENERGY POPPERS is to be used in commerce for "energy boosting nasal spray preparations". Your response to Interrogatory 3 admits your usage of POPPERS in commerce is strictly for dietary supplements. Your notice of opposition includes a claim of "Likelihood of Confusion". One of the defenses among others to a claim of "Likelihood of Confusion" includes proving different channels of trade therefore the above Interrogatory is relevant and required to be answered.

Dated August 30th 2008

Jeffrey Kaplan

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid in an envelope addresses to Jay Geller 2426 W. Olympic Bl. West Tower Suite 4000 Santa Monica, CA 90404. In addition a copy has been faxed to Mr. Geller at (310) 449-1394 and a copy has been emailed to jhgeller@aol.com

Jeffrey Kaplan, August 30th 2008

EXHIBIT D

LAW OFFICES OF
JAY H. GELLER
A PROFESSIONAL CORPORATION
WEST TOWER, SUITE 4000
2425 WEST OLYMPIC BOULEVARD
SANTA MONICA, CALIFORNIA 90404

TELEPHONE
(310) 449-1399
FACSIMILE
(310) 449-1394
E-MAIL
jhgeller@aol.com

September 5, 2008

Mr. Jeffrey Kaplan
P.O.B. 11106
Ft. Lauderdale, FL 33339

Re: ENERGY POPPERS Opposition

Dear Mr. Kaplan:

I have reviewed your justification for the requested discovery and find that the objections were well founded and if you disagree you are free to file a Motion to Compel.

Your justification for the requested discovery is that the channels of trade of the products covered by my client's mark and intended to be covered by your goods is relevant. However, you have not explained how they are relevant nor offered any basis to conclude that channels of trade in this case are relevant. Neither my clients registration nor your application are limited in any way as to channels of commerce. Under trademark law, if there are no limitations of channels or trade in either an issued registration or pending application, it is presumed that ALL channels of trade are covered. Since my clients registration and your application are not limited in any fashion as to channels of trade, all channels of trade are presumed to be relevant and therefore, your attempt to justify this discovery based upon channels of trade is not relevant and the requested information is not likely to lead to the discovery of admissible evidence.

Your statement about ingredients is likewise deficient. The ingredients are on the labels provided and they speak for themselves.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Jay H. Geller

JHG:mk