

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

Bodyonics, Ltd.)	
)	Opposition No. 91176901
Opposer,)	
)	
vs.)	OPPOSITION TO MOTION
)	TO COMPEL AND REQUEST
Jeffrey Lee Kaplan and Ilie)	FOR SANCTIONS
Ioncescu,)	
)	
Applicants.)	

Applicants have filed a Motion to Compel Responses to Interrogatories and Requests for Production. Their basic claim is that channels of commerce are one factor in the "likelihood of confusion" analysis and, with no supporting evidence whatsoever, they claim that their product is not intended to be sold in the same marketplace as Opposer's products yet, again, they provide no basis whatsoever for this claim. This is the sole and entire basis for their Motion to Compel. They cite no other reason (other than an totally unsupported argument about ingredients discussed below).

Since their application does not limit or specify the channels of trade in which they intend their product to move, and the registration owned by Opposer has no limitation on the channels of trade, it is presumed that the opposer's registration, as well as applicant's application, encompass all normal channels of trade. TMEP 1207.01(a)(iii) and cases cited. Thus, applicant's application containing no limitation on the channels of trade, and Opposer's registration containing no limitation on the channels of trade, it is presumed that the goods of both parties move in the same channels of trade.

Consequently, the requested discovery, limited by applicants

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to the likelihood of confusion factor of "channels of trade", is not relevant to the issues in this case and is not likely to lead to the discovery of relevant evidence since there is nothing before the Board to rebut the presumption that the goods of both parties will move through the same channels of trade because there is no limitation on the channels of trade in either Opposer's registration or applicant's application.

Applicants also make an argument regarding the ingredients in the products sold by Opposer. Opposer has provided the product labels for its products to Applicants which clearly state all of the ingredients in the products. There is nothing more for Opposer to provide to Applicants. Indeed, Opposer does not know what more it can provide to Applicants. Since the labels clearly list the ingredients in the products, Applicants have all the information they need to make whatever arguments they want regarding the composition of Opposer's products. Furthermore, since Applicants are not selling any product, and have not disclosed any intended ingredient in any product, this issue is irrelevant and not likely to lead to the discovery of admissible evidence. Furthermore, the issue before the Board will be whether the goods of the two parties are closely related, identical or similar. The issue of the ingredients in Opposer's products is not relevant - the nature of the goods identified in Opposer's registration and Applicant's application is the relevant issue, not the individual ingredients.

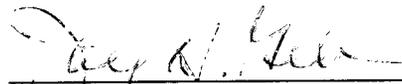
Based upon the foregoing, Opposer submits that the Motion to Compel is not well founded and should be denied. Applicants have

failed to demonstrate that the requested discovery will lead to the discovery of admissible evidence since (1) the goods of both parties are presumed to move through the same channels of trade absent a limitation (there is none here) and (2) Opposer has already disclosed the identity of the ingredients in its products.

Opposer further requests that the Board sanction Applicants. The arguments set forth here - the presumption of all normal channels of trade apply in the absence of a limitation and that the ingredients have already been disclosed to Applicants were made in Opposer's attorney's letter to Applicants (Ex. D. to their Motion). The Board should enter appropriate sanctions for Applicants wasting of the time and resources of both the Board and Opposer.

Opposer respectfully requests that the Board deny the Motion to Compel and enter sanctions against Applicants as appropriate..

Dated: September 29, 2008



Jay H. Geller
Jay H. Geller, A Prof. Corp.
2425 W. Olympic Bl., Suite 4000W
Santa Monica, CA 90404
Telephone: 310-449-1399
Facsimile: 310-449-1394
Email: JHGELLER@aol.com

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. Box 11106, Ft. Lauderdale, FL 33339 on August 13, 2007.



Jay H. Geller