

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

7-ELEVEN, INC.,

Opposer,

v.

SUSAN B. BUCENELL,

Applicant.

TTAB

Opposition No. 91177807

#78916143

**APPLICANT SUSAN B. BUCENELL'S MEMORANDUM IN SUPPORT OF RESPONSE  
TO OPPOSER'S MOTION TO COMPEL**

Applicant, Susan B. Bucenell ("Applicant") hereby responds to Opposer, 7-Eleven, Inc.'s ("Opposer") Motion to Compel Applicant to provide "full" responses to Opposer's First Set of Interrogatories and First Set of Document Requests to Applicant. Applicant has already fully responded to the discovery requests, as set forth in more detail below, and requests that Opposer's Motion be denied in full.

On October 1, 2007, Applicant served responses to Opposer's discovery requests. Copland Decl. ¶¶ 5 & 6, Exhs. D & E. (All of the exhibits referred to herein were attached to the Declaration of Mr. Copland filed with Opposer's Motion.) On November 7, 2007, Opposer requested supplemental information from Applicant. On November 15, 2008, Applicant sent product and promotional specimens to Opposer as requested and on January 9, 2008, Applicant sent Opposer supplemental discovery responses in letter format. Copland Decl. ¶ 9, Exh. G; ¶

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13, Exh. K. Applicant's supplemental responses specifically addressed each Interrogatory and Request for Documents that Opposer now claims are deficient. Specifically, Opposer alleges that Applicant's discovery responses fail to provide basic information in three categories:

1. Sales of goods under the HEALTHY GULP mark (Int. No. 4 & Req. No 5);
2. The geographic territory in which HEALTHY GULP has been marketed, sold and distributed (Req. No. 7); and
3. Applicant's knowledge of third party products using the word "gulp" and related documents. (Int. No. 18 & Req. No. 26).

Each category is discussed below.

**1. HEALTHY GULP SALES DATA (Int. No. 4 & Req. No. 5)**

Opposer seeks to have the Board compel Applicant to provide HEALTHY GULP sales data. Applicant provided this information to Opposer via letter dated May 16, 2008. Applicant did not provide the information with her initial discovery responses because her 4<sup>th</sup> Quarter Sales were not yet completed and because she stated an appropriate objection to the discovery requests. Copland Decl. ¶ 13, Exh. K, #5. Applicant previously advised Opposer that she would provide the requested information if Opposer responded to her objection by identifying how the requested information was relevant or reasonably calculated to lead to the discovery of admissible evidence. Opposer failed to respond to Applicant's request yet certified to this Board that it somehow made a good faith effort to resolve this dispute before filing this motion. In any event, Applicant has provided the requested data and Opposer should withdraw this portion of its motion.

**2. GEOGRAPHIC TERRITORY OF MARKETING, SALES, DISTRIBUTION (Req. No. 7)**

Opposer asks this Board to compel Applicant to identify the geographic territory in which she market, sells or distributes HEALTHY GULP. Applicant provided this information in her initial Interrogatory responses and supplemental discovery responses via letter dated January 9th, 2008 wherein she stated that Healthy Gulp is marketed, sold and distributed worldwide via the World Wide Web at [www.healthygulp.com](http://www.healthygulp.com). Applicant further detailed that Healthy Gulp has also been sold, marketed and distributed locally (Applicant's geographical area) and nationally, as cash sales and promotional free samples, and provided all documents responsive to this request. (Copland Decl. ¶ 13, Exh. K) #7

Applicant even provided Opposer with copies of postal receipts which detail exactly where each Healthy Gulp shipment was sent, to include the town, state and zip code of each order and/or free sample. Therefore, Applicant had already provided detailed information setting forth where sales have been made and products have been shipped (sales and promotional samples).

Curiously, Opposer's motion states that "Bucenell also referenced a fund raising event related to an organization with the word "Atlanta" in its name, but provided no clear information regarding where the event was or how the mark was used in association with the mark." However, in counsel's own declaration, at Copland Decl. ¶ 13, Exh. K, at #7, Applicant's discovery responses indicated that this particular event was Paws for Cocktails, a benefit for the Atlanta Pet Rescue and that Healthy Gulp was given away free of charge. Additionally, a copy of the invitation for the event was even provided to Opposer and the invitations set forth the exact address for the Paws For Cocktails Fund Raiser Event, which was Park Tavern, Piedmont Park, at the corner of 10th and Monroe, in Atlanta. Further, copies of e-mails concerning the

event were provided to Opposer and those set forth how Healthy Gulp was used in association with this event-as door prizes and giveaways. (Healthy Gulp was used in association with this event-as door prizes and giveaways). After receiving this motion, Applicant advised the Opposer of these facts in letter dated May 19, 2008.

Opposer also claims in its motion that "Bucenell...has provided no clear information regarding where [a contest at QVC] was or how the mark was used in association with the contest." This is another inaccurate claim. Applicant provided Opposer with a copy of the Product Search Event Confirmation and other related documents from QVC. It is readily apparent from the documents that the contest was "Oprah's Search for the Next Big Idea" at the QVC Studio Park, 1200 Wilson Drive, West Chester, PA., 19380. There is no additional information to provide except to state that Healthy Gulp was not selected to be on the Oprah Winfrey show.

In view of the foregoing, Applicant has fully complied with Opposer's discovery requests and has no further documents responsive to Req. No 7. Thus, Opposer should similarly withdraw this portion of its motion.

**3. KNOWLEDGE OF THIRD PARTY "GULP" PRODUCTS (Int. No. 18 & Req. No. 26)**

Opposer seeks to have this Board compel Applicant to produce details on third party products, including the manufacturer or distributor, the annual volume of products distributed, and the geographical area in which the products are sold claiming that "Bucenell has offered no legitimate grounds for her failure to respond to 7-Eleven's discovery requests." Although Applicant stated a valid objection to this discovery request, namely that the requested documents are equally available to both parties, in her supplemental discovery responses at #18 (Copland

Decl. ¶ 13, Exh. K), Applicant identified 22 third party products using the word "gulp" in their name. Opposer now takes issue with the fact that Applicant did not provide "details" on these 22 products (details which are equally available to both parties to this action).

Importantly, Applicant does not know the requested details. Applicant became aware of these 22 third party products by conducting some basic internet research. Applicant searched on the USPTO website of live trademark names using the key word "gulp." Applicant also conducted a search on the internet using the "Google" search engine. Applicant searched the key word "gulp" to find additional products using the word "Gulp" in their product name. These "hits" were then clicked on to determine which "hits" were products containing the word "gulp" in their name. This was done for approximately 15-20 pages of "hits" and then the names were simply written on a piece of scrap paper. The names which were written down by Applicant during her internet research were previously provided to Opposer. Further, upon receipt of this motion, Applicant found and provided to Opposer a copy of the scrap paper that Applicant used to record the third party "gulp" names during internet research. This was provided in a letter to the Opposer, dated May 19, 2008.

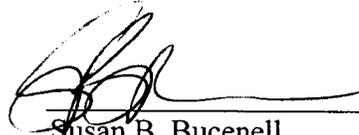
Regarding the corresponding document request, Req. No. 26, Applicant indicated that the only documents responsive to this request were those relating to 7-Eleven vs. Wechsler (Gulpy), a matter previously before the Board, already in the possession of the Opposer. In its motion, Opposer does not dispute that it already has possession of these documents. (Opposer's Footnote 2). Regardless of the fact that "Opposer finds it surprising that applicant has identified 21 other names or marks yet has no document related to the same," Applicant states yet again that she does not have any other documents responsive to this request and cannot be compelled to produce

something she does not possess (despite Opposer's surprise). Therefore, Opposer should withdraw this portion of its motion.

**CONCLUSION**

Applicant has previously provided full and complete discovery responses to Opposer and should not be compelled to produce that which does not exist.

Respectfully submitted,



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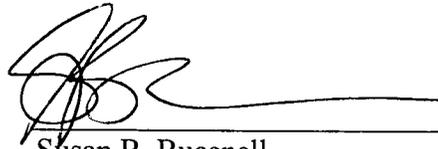
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**CERTIFICATE OF SERVICE**

I, Susan B. Bucenell, hereby certify that APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO COMPEL was served on the following counsel of record this 19<sup>th</sup> day of May, 2008, by mailing a true and accurate copy of same via regular U.S. Mail postage prepaid:

Craig S. Fochler  
Charles R. Mandly  
David A. Copland  
321 North Clark Street  
Suite 2800  
Chicago, Illinois 60610

A handwritten signature in black ink, appearing to be 'Susan B. Bucenell', written over a horizontal line.

Susan B. Bucenell  
Healthy Gulp