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

Proceeding	91180460
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Date	07/03/2008
Attachments	Opposer's Response to Applicant's Supplemental Objection to First Request for Documents.pdf (6 pages)(241317 bytes) Exhibit 1 - Opposer's Response To Suppl Objs to Discovery Requests.pdf (17 pages)(670053 bytes)

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

In the Matter of Application Serial No. 78/922,352
Published in the Official Gazette of July 17, 2007

E.I. DU PONT DE NEMOURS AND COMPANY,

Opposer,

v.

MELISSA J. TERZIS,

Applicant.

Opposition No. 91/180,460

Mark: **VELVET IN DUPONT**

**OPPOSER'S RESPONSE TO APPLICANT'S SUPPLEMENTAL
OBJECTION TO OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Opposer, E.I. du Pont de Nemours and Company ("Opposer") submits this response to the "Applicant's Supplemental Objection to Opposer's First Request For Production of Documents and Things" dated June 13, 2008 ("Supplemental Document Objection").

ARGUMENT

In the Supplemental Objection, Applicant:

a) Repeats prior objections based on the demonstrably erroneous claim that Opposer's discovery was not timely; and

b) Adds a new and equally baseless claim that Applicant is not required to produce any documents because, Applicant incorrectly contends, “the evidence can be readily obtained by and/or provided to the Opposer...by using its own computers and computer software programs to obtain all, if any, of the requested evidence,... which is on file with the Trademark Trial and Appeal Board Inquiry System, the District of Columbia registered organizations, the Department of Consumer, the Department of Regulatory Affairs, and other agencies.”

Applicant’s Response is but the latest in a series of seven related Objections, Supplemental Objections and Replies it has chosen to file over the last month rather than properly respond to Opposer’s Discovery requests.¹ As has been the case with all of these Objections, Applicant has not seen fit to cite any supporting statutes, rules, regulations or case law nor has it made any attempt to comply with the Trademark Trial and Appeal Board rules for discovery or motion practice.

As previously stated in Opposer’s Response to Applicant’s Objections To Opposer’s First Set of Interrogatories, First Request For Production and First Requests For Admissions, as served on June 10, 2008, Opposer undeniably served its Discovery Requests in a timely manner. Opposer respectfully submits that no further elaboration is required.

¹ As of today’s date Applicant has filed separate objections to Opposer’s First Set of Interrogatories, First Requests for Admissions and First Requests for Production. In addition, Applicant has filed Supplemental Objections to Opposer’s First Requests for Admissions and First Requests for Production of Documents as well as filing two separate related Replies.

Opposer will now address Applicant's contention that Opposer can obtain the documents sought, using its computers or from governmental agencies.

First, there is no factual basis for the claim. As can be seen by even a cursory review of the Document Requests, which Applicant failed to attach to its papers (copy attached as Exhibit 1), much of the discovery requested pertains to documents that are primarily, if not exclusively, in the possession of Applicant and its agents. The following are only some of the more obvious examples: (a) Document Request No. 1 seeks copies of materials disseminated by Applicant in connection with the Velvet in DuPont mark; (b) Document Request No. 2 seeks documents pertaining to unfavorable comments made by third parties to Applicant regarding materials disseminated by Applicant in connection with the Velvet in DuPont mark; (c) Document Request No. 9 requests materials that relate to Applicant's first use of the Velvet in Dupont mark; (d) Document Request No. 10 seeks information pertaining to the nature of business conducted by Applicant in connection with the Velvet in DuPont mark; (e) Document Request No. 11 seeks documents regarding the selection and origins of the Velvet in DuPont mark; (f) Document Request No. 12 seeks documents demonstrating the manner in which Applicant has used the Velvet in DuPont mark; (g) Document Request No. 13 seeks documents which show the manner in which the Applicant plans to use the mark in the future; (h) Document Request Nos. 15, 16 and 17 seek documents pertaining to the channels of trade the Applicant has used, the geographic area in which services have been provided, and the location of the Applicant's customers; (i) Document

Request Nos. 19 and 20 seek documents pertaining to any actual confusion between Applicant and Opposer known to Applicant; (j) Document Request No. 22 seeks documents pertaining to Applicant's knowledge of Opposer and the use by the Opposer of the DuPont mark; (k) Request No. 31 seeks documents pertaining to Applicant's future business plans; and (l) Document Request No. 33 seeks all documents that Applicant intends to rely on or introduce at the trial.

Applicant respectfully submits that it would be difficult, if not impossible, to obtain these documents from third-party sources and it certainly would be far easier and more certain for Applicant to simply produce them.

In any event, it is well recognized that having the ability to obtain information from another source does not bar a requesting party from seeking discovery. The balance of convenience, burden, and expense must weight heavily in favor of the responding party's objection for a tribunal to quash the requested discovery. See 11-1 Matthew Bender & Company, Inc., Bender's Forms of Discovery Treatise §1.50 (2008); see, e.g., Fort Washington Resources, Inc. v. Tannen, 153 F.R.D. 78, 79 (E.D. Pa. 1994) (defendant had to produce requested documents regardless of the fact they were otherwise accessible to plaintiff); Stout v. Wolff Shoe Co., 2007 U.S. Dist. LEXIS 24833, at *5 (D.S.C. Mar. 31, 2007) (the fact that the information sought might already be in the possession of the requesting party or obtainable from another source is not a bar to discovery of relevant information). Here, Applicant has not attempted to make any such showing and can make no reasonable showing that the Opposer should be required to conduct its own

investigations in various governmental agencies or to locate documents (to the extent the documents can be located) that Applicant already has in its possession.

CONCLUSION

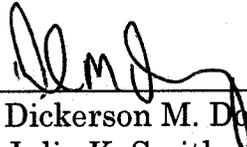
It is respectfully submitted and it should now be well apparent that it is Applicant and not Opposer that is trying to thwart the discovery process. Opposer therefore again reserves the right to seek appropriate sanctions including sanctions based on Rule 11 of the Federal Rules of Civil Procedure.

For the specific reasons set forth above, Applicant's Supplemental Objections are both legally and factually without merit and should be denied. Accordingly, Opposer hereby respectfully requests that Applicant's Supplemental Objections and all related requests for relief be denied.

Dated: New York, New York
July 3, 2008

Respectfully submitted,

CROWELL & MORING LLP

By: 

Dickerson M. Downing
Julia K. Smith

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31st Floor
New York, New York 10022

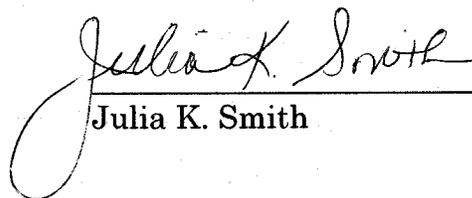
Attorneys for
E.I. du Pont de Nemours and Company

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July 2008, a true and correct copy of the foregoing document was served on counsel for the Applicant, by first-class mail to:

John E. Terzis, Esq.
15 Revere Road, Riverside
Greenwich, CT 06878-1014

Melissa J. Terzis
1700 17th Street NW, Apt. 404
Washington, D.C. 20009



Julia K. Smith

EXHIBIT 1

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

In the Matter of Application Serial No. 78/922,352

E.I. DU PONT DE NEMOURS AND COMPANY,

Opposer,

v.

MELISSA J. TERZIS,

Applicant.

Opposition No. 91/180,460

Mark: **VELVET IN DUPONT**

**OPPOSER'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Patent and Trademark Office Rules of Practice, Opposer E.I. du Pont de Nemours and Company, hereby requests that Applicant Melissa J. Terzis, produce the documents and things identified below for inspection and copying at the offices of Crowell & Moring, LLP, 153 East 53rd Street, 31st Floor, New York, New York 10022, within thirty (30) days of the date of service hereof or at such other time and place as may be mutually agreed upon by the parties.

DEFINITIONS

The following definitions and instructions are applicable to these discovery requests:

1. All definitions set forth in Section 45 the United States Trademark Act of 1946, as amended ("Lanham Act"), are incorporated herein, except as otherwise indicated.

2. *Applicant* shall mean Melissa J. Terzis and all other persons acting on her behalf.

3. *Applicant's VELVET IN DUPONT Application* shall mean the United States Trademark Application No. 78/922,352.

4. *Applicant's VELVET IN DUPONT Mark* shall mean the VELVET IN DUPONT Mark shown in Applicant's VELVET IN DUPONT Application and any variations therein as used or expected to be used by Applicant (without any admission by Opposer as to Applicant's rights to own that Mark).

5. *Opposer* shall mean E.I. du Pont de Nemours and Company and any parent and predecessors, as well as any divisions, branches, subsidiaries, affiliates, related companies or companies sharing common ownership or control and present and former officers, directors, employees, agents and representatives, servants and attorneys, and all other persons acting on its behalf.

6. *Opposer's DuPont Mark* shall mean the name and mark DuPont and all variations thereon as used by Opposer.

7. *Communication* shall mean the act of communicating, exchanging or transferring information between or among any persons, whether orally or in writing or by other means.

8. *Describe* shall mean to give a detailed account of the salient characteristics of the subject action, event or occurrence at issue, including, where applicable, a narrative as to what transpired and a summary of any communications that took place, a statement as to the relevant dates and locations at issue, and the identification of all persons involved.

9. *Document* shall be defined in the broadest sense permissible under Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, all forms of recorded, stored, reproducible, retrievable or transferable information and other content, in text, graphic, audio-video, magnetic, computer readable or other form regardless of the nature of the information or content and regardless of the medium in which said information or content is recorded, stored, reproduced, retrieved, transferred as well as copies thereof to the extent that said copy contains markings, alterations, or deletions not appearing in the original.

10. *Identify*, when referring to a document, means to provide information regarding the type of document (*e.g.*, letter, notebook, etc.), the date of the document (and, if no date appears thereon, the response shall so state and shall give the date or approximate date that such document was prepared), the title of the document, a brief summary of the subject matter of the document, the identification of the person who prepared the document, the identification of the person who signed the document, the identification of the person for whom the document was prepared,

and the identification of the recipient or addressee of the document (whether specifically named therein or not); in addition, if the document requested to be identified is not in the possession, custody, or control of Applicant, the identification of the person who has possession, custody, or control over the original of the document, and each person who has possession, custody, or control over each copy of the document; furthermore, if the document requested to be identified has been destroyed, state the date the document was destroyed, the reason for its destruction, and the identification of the person who destroyed the document and of any person who directed that the document be destroyed.

11. *Identify*, when referring to advertisements, promotional materials, and/or marketing materials, means to provide a description of the form and medium of the materials, the inclusive dates of use for the materials, the geographic area in which the materials appeared, the class or classes of persons or business entities to whom the materials were directed, and the dollar amount per year expended on each form and medium of such material.

12. *Identify*, when used in connection with a natural person means to provide the person's name, home address, business address, occupation, position of employment and employer.

13. *Identify*, when referring to a person other than a natural person, means to provide information regarding its full name and type of organization, and the address of its principal place of business (including street name and number, city or town, state, zip code, and telephone number).

14. *Interrogatory* shall mean an Interrogatory contained in Opposer's First Set of Interrogatories.

15. *Mark* shall mean, as appropriate, any registered or common law trademark, service mark, collective mark, certification mark and trade name.

16. *Pertaining* or *pertain to* shall be an inclusive and comprehensive term meaning concerning, relating to, referring to, regarding, having any relationship with, pertaining to, evidencing, or constituting evidence of, in whole or in part, the subject matter of the particular request

17. *Specimen* shall mean materials or things bearing a display of or depiction of a Mark.

18. *Survey* shall mean any survey, poll, questionnaire, focus group or other research or experiment intended to quantitatively or qualitatively evaluate or measure the opinion, belief, perception or reaction of consumers or some other designated group of persons.

19. *Third party* refers to any person other than Applicant and, except as otherwise indicated, Opposer.

20. Each discovery request shall be inclusive, rather than exclusive. Accordingly, the words *and* as well as *or* shall be construed disjunctively or conjunctively as necessary, in order to bring them within the scope of these Requests for Production all information that might otherwise be construed to be outside its scope. *Including* shall be construed to mean *without any limitation*. The word *all* includes *any* and vice versa. The past tense shall include the present tense and the present tense shall include the past tense. The singular shall be deemed to

include the plural and vice versa. The masculine includes the feminine and vice versa.

INSTRUCTIONS

The following instructions shall apply:

1. All instructions and requirements set forth in the Federal Rules of Civil Procedure and the appropriate United States Patent and Trademark Office Rules of Practice applicable to proceedings before the Trademark Trial and Appeal Board shall apply herein.

2. These requests are continuing in nature. Pursuant to Federal Rule of Civil Procedure 26, Applicant has a duty to supplement its answers promptly upon obtaining or learning of further material information.

3. If Applicant claims that any requested information is protected from discovery by any privilege against disclosure, Applicant must specify the privilege with particularity and state the basis for the assertion of the privilege with respect to the information in question. In its response, as to each communication or document withheld, Applicant must furnish a list specifying the following information:

- a) the name and title of each author;
- b) the name and title of each recipient;
- c) the date of the communication;
- d) the nature of the communication;
- e) the length or number of pages; and
- f) the general subject matter of the information or document.

REQUESTS FOR PRODUCTION

DOCUMENT REQUEST NO. 1:

Copies of all written and graphic material disseminated by or on behalf of Applicant in connection with the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 2:

All documents and things that pertain to any objections, criticisms or unfavorable comments made by any third party regarding any written or graphic material disseminated or distributed by or on behalf of Applicant in connection with the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 3:

All documents and things that support Applicant's contention, as set forth in its Answer, that Applicant has used the mark VELVET IN DUPONT in connection with a blog since June 2005.

DOCUMENT REQUEST NO. 4:

All documents and things that support Applicant's contention, as set forth in its Answer, that Opposer uses the mark DuPont as two words.

DOCUMENT REQUEST NO. 5:

All documents and things that pertain to Applicant's contention, as set forth in its Answer, that at least twenty (20) different businesses in the Dupont Circle area of Washington, D.C. use the name DUPONT.

DOCUMENT REQUEST NO. 6:

All documents and things that support Applicant's contention, as set forth in its Answer, that it is patently obvious that the Dupont Circle area of Washington, D.C. has hundreds of small businesses with the name DUPONT in their corporate partnership and individual names.

DOCUMENT REQUEST NO. 7:

All documents and things that pertain to Applicant's contention, as set forth in Paragraph 7 of its Answer, that Applicant uses the VELVET IN DUPONT trade mark in connection with a blog that was created and consistently used since June 2005 in order to write about the happenings concerning Dupont Circle area in Washington, D.C.

DOCUMENT REQUEST NO. 8:

All documents and things that pertain to Applicant's VELVET IN DUPONT Trademark Application including all submissions and filings made by Applicant with the United States Patent and Trademark Office ("USPTO") and all communications, including Office Actions and Office Action Responses, between Applicant and any USPTO representatives pertaining thereto.

DOCUMENT REQUEST NO. 9:

All documents and things that pertain to Applicant's first use of the VELVET IN DUPONT Mark and first use of the VELVET IN DUPONT Mark in commerce in connection with

- a) www.velvetindupont.com or any blog or website using a domain name incorporating the word dupont;

- b) each of the services listed in Applicant's VELVET IN DUPONT Application;
- c) each other different product or service (if any); and
- c) any signage in stores or business locations.

DOCUMENT REQUEST NO. 10:

Documents and things sufficient to provide complete and comprehensive information pertaining to the nature of the business conducted or services rendered by Applicant in connection with the VELVET IN DUPONT Mark, the locations where such activities are or have been conducted or are expected to be conducted and the time period during which such activities have been conducted or are expected to be conducted at each location.

DOCUMENT REQUEST NO. 11:

All documents and things that pertain to the selection of the VELVET IN DUPONT Mark by Applicant and the origins of the mark, including the reasons why the mark was selected and why other marks under consideration were not selected.

DOCUMENT REQUEST NO. 12:

Documents and things sufficient to demonstrate the manner in which Applicant has used the VELVET IN DUPONT Mark, including representative specimens reflecting each different type of use and the time periods and locations where the mark has been in use for each different type of product or service.

DOCUMENT REQUEST NO. 13:

Documents and things sufficient to show the manner in which Applicant plans to use the VELVET IN DUPONT Mark in the future including representative specimens reflecting each different type of intended use.

DOCUMENT REQUEST NO. 14:

Documents and things sufficient to show to class of customers to whom Applicant has sold or provided or plans to sell or provide goods and services in connection with the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 15:

Documents and things sufficient to reflect the channels of trade in which Applicant has sold or provided or plans to sell or provide goods and services in connection with the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 16:

Documents and things sufficient to reflect the geographic areas in which Applicant has sold or provided or plans to sell or provide goods and services in connection with the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 17:

Documents and things sufficient to show the geographical place of residence of consumers of Applicant's goods and services under the VELVET IN DUPONT Mark and readers of Applicant's blog at www.velvetindupont.com

DOCUMENT REQUEST NO. 18:

All documents and things that pertain to any agreement to which Applicant is a party that pertains to the right to own, use, franchise, license or transfer the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 19:

All documents and things that pertain to any instance in which anyone has expressed confusion or mistake or has made inquiries or comments regarding the possible relationship or business affiliation between Applicant or Applicant's VELVET IN DUPONT Mark and any other person or any other mark including Opposer and Opposer's DuPont Mark.

DOCUMENT REQUEST NO. 20:

All documents and things that pertain to any instance in which a person has referred to the similarity between Opposer's DuPont Mark and the VELVET IN DUPONT Mark or has inquired into or commented upon the relationship between Applicant and Opposer or Opposer's DuPont Mark.

DOCUMENT REQUEST NO. 21:

All documents and things that pertain to any inquiry, investigation, search (including trademark search), opinion or determination by or on behalf of Applicant as to the availability the VELVET IN DUPONT Mark or any variations thereon for use in any service or product area or the possible likelihood of confusion between the VELVET IN DUPONT Mark and any other Mark.

DOCUMENT REQUEST NO. 22:

All documents and things pertaining to Applicant's knowledge of:

- a) Opposer; and
- b) The use by Opposer of the DuPont Mark,

currently and at the time Applicant made the initial decision to adopt the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 23:

All documents and things that pertain to any surveys regarding:

- a) the public recognition of the VELVET IN DUPONT Mark; and
- b) the likelihood of confusion between the VELVET IN DUPONT Mark and any other Mark including Opposer's DuPont Mark.

DOCUMENT REQUEST NO. 24:

Documents and things sufficient to provide complete and comprehensive information regarding any advertising and promotion efforts conducted by or expected to be conducted by Applicant in connection with the VELVET IN DUPONT Mark including information pertaining to the nature and content of the advertising and promotional materials and where and when it occurred.

DOCUMENT REQUEST NO. 25:

Sufficient representative specimens of advertising (including video or audio tapes and website promotions), brochures, pamphlets, catalogs, sales manuals, price lists, promotional material or other material used or planned to be used by Applicant in connection with the VELVET IN DUPONT Mark as to provide a

comprehensive and complete representation of said advertising and promotional activities.

DOCUMENT REQUEST NO. 26:

Documents and things reflecting the acquisition by Applicant of each domain name that it currently owns that incorporates the VELVET IN DUPONT Mark or any other name that begins with the letters "du," including DUPONT.

DOCUMENT REQUEST NO. 27:

Documents and things sufficient to show complete and comprehensive information pertaining to Applicant's annual and year-to-date sales, if any, in units and dollars, of each product and service sold by Applicant in commerce in connection with the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 28:

Documents and things sufficient to provide complete and comprehensive information pertaining to the monetary amount expended by Applicant in connection with advertising and promotion in connection with the VELVET IN DUPONT Mark.

DOCUMENT REQUEST NO. 29:

All documents and things that pertain to any instance in which:

- a) Applicant has objected to or has given its intention to object to any third party use or registration of any name or mark based on Applicant's claim of ownership of the VELVET IN DUPONT Mark, including but not limited to all forms of communications in which said objections were discussed, all legal actions

pertaining thereto, and the results of such objection(s) (if any);

and

- b) any third party has objected to or has given its intention to object to Applicant's use or registration of the VELVET IN DUPONT Mark, including but not limited to all forms of communications in which said objections were discussed, all legal actions pertaining thereto, and the results of such objection(s) (if any).

DOCUMENT REQUEST NO. 30:

All documents and things pertaining to any steps Applicant has taken to protect and enforce the VELVET IN DUPONT Mark, including but not limited to Opposition proceedings, cease and desist letters, infringement suits and/or license negotiations.

DOCUMENT REQUEST NO. 31:

All documents and things pertaining to future plans with respect to the use of any VELVET IN DUPONT Mark including, but not limited to, all business plans, franchise plans, marketing plans or other documents relating to any new products or services to be offered.

DOCUMENT REQUEST NO. 32:

All documents and things that pertain to any testimony expected to be given in this proceeding involving an expert witness.

DOCUMENT REQUEST NO. 33:

All documents and things Applicant intends to rely on or introduce into evidence at trial in this proceeding before the Trademark Trial and Appeal Board.

DOCUMENT REQUEST NO. 34:

All documents and things that support or pertain to Applicant's affirmative defense that is entitled to obtain a registration for the mark VELVET IN DUPONT for use in connection with "writing of texts other than publicity texts," in International Class 41.

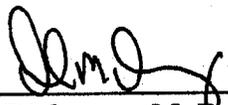
DOCUMENT REQUEST NO. 35:

To the extent that any response by Applicant to Opposer's accompanying First Request for Admissions is other than an unqualified admission produce all documents and things that support Applicant's response.

Dated: New York, New York
May 19, 2008

Respectfully submitted,

CROWELL & MORING LLP

By: 

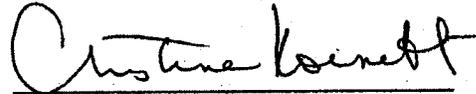
Dickerson M. Downing
153 East 53rd Street
31st Floor
New York, New York 10022
Attorneys for
E.I. DU PONT DE NEMOURS AND
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2008, a true and correct copy of the foregoing document was served on counsel for the Applicant, by first class mail to:

John E. Terzis, Esq.
15 Revere Road, Riverside
Greenwich, CT 06878-1014

Melissa J. Terzis
1700 17th Street NW, Apt. 404
Washington, D.C. 20009



Christine Kornett