

ESTTA Tracking number: **ESTTA289349**

Filing date: **06/11/2009**

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

Proceeding	91180471
Party	Plaintiff Marc Vianello
Correspondence Address	Arthur K. Shaffer Intellectual Property Center, LLC 9233 Ward Parkway Suite 100 Kansas City, MO 64114 UNITED STATES ashaffer@theIPCenter.com
Submission	Motion for Default Judgment
Filer's Name	Arthur K. Shaffer
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Signature	/Arthur K. Shaffer/
Date	06/11/2009
Attachments	motion-entrydefault.pdf ( 3 pages )(460424 bytes ) Exhibit A.pdf ( 4 pages )(59691 bytes )

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

MARC VIANELLO	)	
	)	Opposition No. 91180471
Opposer,	)	
v.	)	Mark: JUDICIAL REVIEW
	)	
SANDRA L. NUDELMAN,	)	
	)	
Applicant.	)	

**MOTION FOR ENTRY OF JUDGMENT AS A DISCOVERY SANCTION FOR  
FAILURE TO COMPLY WITH DISCOVERY ORDER UNDER TBMP § 2.120(g)(1)**

Opposer hereby moves for entry of judgment under TBMP § 2.120(g)(1) as a discovery sanction for failure of applicant to comply with the discovery Order issued December 31, 2008.

The present dispute has been ongoing for over a year and a half. During that time, Opposer has filed multiple Motions to Compel production of discovery, has had each granted, and Applicant has failed to sufficiently produce or comply with most discovery requests. On September 24, 2008, Opposer, Marc Vianello (herein "Opposer" or "Vianello") submitted his Second Notice of Document Requests (attached hereto as Exhibit A). On October 9, 2008, Opposer filed his Second Motion to Compel Discovery (*see* Dkt. #12). On December 31, 2008, Interlocutory Attorney submitted an Order in response to the Opposer's Motion to Compel Discovery from Applicant (*see* Dkt. #15). The December 31, 2008 Order allowed the Applicant thirty days from the mailing date of the Order to respond in full and without objection. The Order specifically stated: "[s]hould Applicant fail to provide the ordered responses, then Opposer's remedy will lie in a motion for entry of sanctions, in the form of entry of judgment sustaining the opposition." The law is clear that if a party fails to comply with an Order of the

Board relating to discovery, including an Order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including entry of judgment. *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848 (TTAB 2000); *Unicut Corp. v. Unicut, Inc.*, 222 USPQ 341 (TTAB 1984); and TBMP Section 527.01.

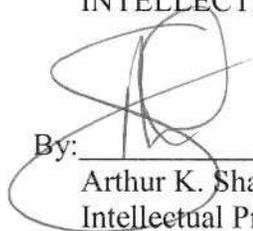
Applicant has not produced any documentation in response to any of the aforementioned filings or the December 31, 2008 Order. Further, Opposer has received no communication from the Applicant of any kind since Applicant made herself available for the August 29, 2008 deposition. In the time since the December 31, 2008 Order, Opposer has continued to use his mark in commerce, as he has since September 1, 2007. Opposer is not aware of Applicant's use in commerce. Despite having filed her registration application over two years ago, the Applicant has yet to file a Statement of Use. The December 31, 2008 Order set the discovery period to close on March 1, 2009. It is clear from Applicant's past behavior that she will continue to fail to comply with any discovery requests or Orders.

Therefore for the reasons stated above, sanctions in the form of default judgment should be entered against Applicant and Application Serial No. 77/110,266 should be denied.

Respectfully Submitted,

INTELLECTUAL PROPERTY CENTER, LLC

Dated: June 3, 2009

By:   
Arthur K. Shaffer, Reg. No. 50,257  
Intellectual Property Center, LLC  
9233 Ward Parkway, Suite 100  
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(816) 363-1555 (Tel)  
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CERTIFICATE OF FILING

I hereby certify that this correspondence is being deposited with the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22213-1451 on this 3rd day of June, 2009 via the Electronic System for Trademark Trials and Appeals.

/Arthur K. Shaffer/  
\_\_\_\_\_  
Arthur K. Shaffer

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing MOTION FOR ENTRY OF JUDGMENT AS A DISCOVERY SANCTION FOR FAILURE TO COMPLY WITH DISCOVERY ORDER UNDER TBMP 2.120(g)(1) has been served on Sandra L. Nudelman, pro se applicant, by mailing said copy on June 3, 2009, via First Class Mail, postage prepaid to: Sandra L. Nudelman, 131 SEWALL AVE. #46 BROOKLINE, MA 02446.

/Arthur K. Shaffer/  
\_\_\_\_\_  
Arthur K. Shaffer

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

In the matter of application )  
Serial No.: 77/110,266 )  
 )  
Filed: February 18, 2007 )  
 )  
Applicant: Sandra L. Nudelman )  
 )  
Mark: JUDICIAL REVIEW )  
 )  
Published: August 14, 2007 )  
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\_\_\_\_\_)  
MARC VIANELLO, )  
 )  
Opposer, )  
 )  
v. )  
 )  
SANDRA L. NUDELMAN, )  
 )  
Applicant, )  
\_\_\_\_\_)

Opposition No. 91180471

OPPOSER’S SECOND NOTICE OF DOCUMENT REQUESTS TO APPLICANT

Pursuant to Fed. R. Civ. P. 34 and 37 C.F.R. § 2.120(d)(2), Opposer, Marc Vianello, by its undersigned attorneys, hereby serves the following Motion to Compel Production of Documents on Applicant.

Instructions and Definitions

The definitions provided in Opposer’s First Set of Interrogatories to Applicant are incorporated herein by reference.

Opposer reincorporates all requests provided in Opposer’s First Set of Document Requests to Applicant and supplements requests.

## Requests

### Request No. 1

All documents identified by Applicant in her responses to Opposer's Deposition to Applicant.

### Request No. 2

All documents relating to the use of the JUDICIAL REVIEW in commerce by Applicant.

### Request No. 3

All documents concerning any trademark searches that Applicant or its representatives or agents (including without limitation its attorneys) performed in connection with the mark JUDICIAL REVIEW.

### Request No. 4

All documents comprising, constituting, concerning or relating to advertising, promoting or marketing of any services under the mark JUDICIAL REVIEW by Applicant.

### Request No. 5

All documents referenced by Applicant and/or requested by Opposer during the deposition of Sandra L. Nudelman on August 29, 2008, comprising, constituting, concerning or relating to the mark JUDICIAL REVIEW including, but not limited to: the Business Plan (Nudelman Dep. 14:18-22, 15:16-18, August 29, 2008) (including, but not limited to all Copies of the Business Plan, Market Study Reports, Competitor Reports, Marketing Analysis, Marketing Plan, Development Plan, and Detail of Subscription Based Model, Exit Strategy), all Subsequent revisions of the Business Plan (Nudelman Dep. 16:12, 21:7, August 29, 2008), and PowerPoint slides of the Business Plan as used in the Presentation at the Harvard Business School Business Plan Contest (Nudelman Dep. 99:8, August 29, 2008).

MARC VIANELLO

Respectfully submitted,

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ARTHUR K. SHAFFER  
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Telephone: (816) 363-1555  
Facsimile: (816) 363-1201

Attorney for Opposer

Certificate of Service

I hereby certify that a copy of the foregoing Opposer's Second Set of Document Requests to Applicant has been served via electronic mail and first class mail, postage prepaid, on Sandra L. Nudelman 131 Sewall Ave. #46, Brookline, Massachusetts 02446, this 24 day of September, 2008.

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