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

Proceeding	91181969
Party	Defendant Societe des Produits Nestle S.A.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Fetch, Inc.)	
)	
Opposer,)	
)	Opposition No. 91181969
v.)	
)	
Societe des Produits Nestle, S.A.)	
)	Directed to App. No. 77/175,430
Applicant.)	
)	
)	
)	
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**NESTLE’S MEMORANDUM IN OPPOSITION TO OPPOSER’S
MOTION TO CHALLENGE NESTLE’S DESIGNATIONS OF
INFORMATION AS TRADE SECRET/COMMERCIALY SENSITIVE**

Applicant Societe des Produits Nestle, S.A. (“Nestle”) submits this memorandum in opposition to Opposer’s Motion to Challenge Nestle’s Designations of Information as “Trade Secret/Commercially Sensitive” (“Opp.’s Motion”). Once Nestle launches its pet insurance program in the U.S., the parties will be direct competitors. As such, Opposer should be restricted from viewing Nestle’s commercially sensitive information.

I. INTRODUCTION

Nestle designated five interrogatory answers as “Trade Secret/Commercially Sensitive” under the Board’s standard protective order, shielding the information from the public and Opposer. Nestle was within its rights to protect this information from the public and Opposer due to its commercially sensitive nature. The information, if disclosed, would provide Opposer with: the scope of Nestle’s business; Nestle’s marketing, development and advertising plans; and Nestle’s budget. Opposer could then use this information to seek an unfair advantage in the

market. To protect Nestle's proprietary information and to prevent Opposer from gaining an unfair competitive advantage, the Board should deny Opposer's motion.

II. DISCUSSION

A. Nestle's Designations of "Trade Secret/Commercially Sensitive" are Proper.

It is well within the Board's discretion to protect Nestle's confidential information from disclosure. FED.R.CIV.P. 26(c)(1)(G). *See also* TBMP § 402.02; *Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861, 1862 (T.T.A.B. 2001) (protective agreement would adequately protect against disclosure of trade secret information). Opposer challenges Nestle's confidentiality designations on interrogatories addressing the following:

- Nestle's marketing materials for its pet insurance services (Interrogatory #8);
- Whether Nestle has licensed or granted authorization to anyone to provide pet insurance services (Interrogatory #9);
- Nestle's annual advertising expenditures and future advertising expenditures (Interrogatory #10);
- Nestle's plans to publicize and advertise the services (Interrogatory #15); and
- The date that Nestle plans to first use its mark in connection with its services (Interrogatory #17).

Opp.'s Motion, pp. 3-5.¹

These interrogatories require Nestle to provide highly sensitive marketing materials, advertising expenditures and corporate plans. This is the type of competitive information that is routinely protected by a protective order. Nestle may protect its proprietary information depending upon: (1) the extent to which information is known outside the business; (2) the extent to which information is known to those inside the business; (3) the measures taken to guard the secrecy of the information; and (4) the value of the information to the business and its competitors. *Sullivan Marketing, Inc., v. Valassis Comm'n's, Inc.*, No. 93 CIV. 6350, 1994 WL

¹ Nestle has agreed to withdraw the confidentiality designation on its response to Interrogatory #3.

177795, at *2 (S.D.N.Y. May 5, 1994). Here, all four factors support Nestle's right to continued confidential treatment of its interrogatory answers.

1. The Information Is Not Known Outside of Nestle's Business.

First, the interrogatory answers are not known outside of Nestle's business; in fact, the information is only known by a few people employed by Nestle. Competitors such as Opposer have no access to this information, and Opposer should not be granted access simply because it filed a Notice of Opposition. Withdrawing Nestle's designations and allowing Opposer to share Nestle's proprietary information with others will do nothing to promote the resolution of this opposition; it will only harm Nestle by making this information public. *See, e.g., Roton Barrier, Inc. v. Stanley Works*, 79 F.3d 1112, 1118, 37 USPQ2d 1816 (Fed. Cir. 1996).

2. The Information Is Not Known Inside Nestle's Business.

As noted above, the information at issue here is not even openly available within Nestle's business. Nestle has a core team of a few employees with access to the information that Opposer seeks. This select team of decision-makers are responsible for determining Nestle's marketing, development and advertising plans, as well as selecting a budget for Nestle's pet insurance services. This type of information is routinely held to be protected by a protective order. *Roton Barrier*, 79 F.3d at 1118.

3. Nestle Takes Secure Measures to Guard the Secrecy of its Information.

The information sought by Opposer has been maintained in confidence and should therefore be protected. *Sullivan Marketing*, 1994 WL 177795, at *2. Nestle takes great measures to guard the secrecy of this information, including designating the information as confidential as it did here. Nestle also ensures that its core team of decision-makers guard the confidentiality of this information.

4. *The Information is of Paramount Value to Nestle's Business and Competitors.*

The interrogatory responses would provide Nestle's competitors with valuable insight into Nestle's financial position, operations, and plans. Nestle intends to provide services similar, if not identical, to those offered by Opposer. Therefore, the parties will be direct competitors. As Nestle's competitor, Opposer should be restricted from viewing Nestle's responses to these interrogatories. *Roton Barrier*, 79 F.3d at 1118.

B. Opposer's Request to Withdraw Nestle's Designations Fails to Protect Nestle's Interests.

Opposer claims that the information cannot be confidential because it "mirrors" Nestle's trademark application and consists of "basic statements." Opp.'s Motion p. 2. Opposer hypothesizes that, if Nestle is allowed to retain its designations here, all "basic statements" in all oppositions will be protected as commercially sensitive from now on. Opp.'s Motion p. 3. The better alternative, according to Opposer, is to withdraw the designations and provide Opposer carte blanche to share Nestle's confidential information with Opposer and countless other competitors of Nestle.

Withdrawing Nestle's designations and allowing Opposer to share Nestle's interrogatory responses with others will do nothing to promote the resolution of this opposition. In fact, it will only allow Opposer to advance its agenda outside of the opposition. Opposer may use Nestle's information as a prototype for developing its own marketing and advertising plans. Even worse, Opposer may use the information to sabotage Nestle. For instance, if Nestle is forced to disclose its launch date to Opposer, Opposer may plan concurrent events, thereby distracting potential customers and detracting from Nestle's launch efforts.

III. CONCLUSION

The dissemination of Nestle's confidential information to others would be extremely prejudicial to Nestle. To protect Nestle's proprietary and commercially sensitive information, the Board should deny Opposer's motion.

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is addressed to the Trademark Trial and Appeal Board, Hon. Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, and is being deposited via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 30th day of September, 2008.

/David B. Jinkins/

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was served via first class mail,
postage pre-paid this 30th day of September, 2008, to:

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