

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: September 23, 2008

Opposition No. **91182996**

Traditional Medicinals, Inc.

v.

K.U.M. Hair Care Products,
Inc.

Cheryl Goodman, Interlocutory Attorney:

This case now comes up on opposer's motion to amend the notice of opposition, filed May 21, 2008, and opposer's motion to strike, filed June 19, 2008.

With respect to the motion to amend, opposer seeks to amend the notice of opposition to correct the caption to identify the applicant as K.U.M. Hair Care Products, Inc. (rather than Novartis, AG) and to amend the preamble and paragraphs 2, 3, 4, 5 and 6 of the notice of opposition.

Applicant has not filed a response thereto.

In view thereof, opposer's motion to amend is granted and the amended notice of opposition is accepted. Trademark Rule 2.127(a).

Applicant is allowed until THIRTY DAYS from the mailing date of this order to file an answer to the amended notice of opposition.

The Board now turns to the motion to strike.

Opposer seeks to strike applicant's discovery requests which consist of request for admissions and a request for production of documents. These requests were served on opposer on May 27, 2008.

Opposer submits that according to the current trial schedule, initial disclosures are due on June 22, 2008, and since applicant has not made its initial disclosures, its discovery is untimely. Opposer seeks an order requiring the service of no further discovery until initial disclosures have been filed and requiring opposer not to respond to the May 27, 2008 discovery.

In response, applicant argues that opposer's "argument that Applicant is late in serving Initial Disclosures is misleading and disingenuous" since opposer's notice of opposition was not "valid" and therefore its "duty to provide disclosure has not been triggered." Applicant submits that if the Board allows the correction of the Notice of Opposition, the "correct remedy is not striking the discovery but rather staying it until Initial Disclosures are made."

Applicant is correct that its duty to serve initial disclosures is not triggered until the pleadings are closed. In this case, the pleadings are not closed since opposer filed a motion to amend its notice of opposition which the Board granted, and applicant has yet to file its answer to

the amended notice of opposition. Accordingly, the date for initial disclosures will be reset below.

With regard to the issue of the timeliness of applicant's formal discovery, on the other hand, the Board agrees with opposer that the service of such discovery is premature. The Trademark Rules are clear that a party may not seek formal discovery until after it has made its initial disclosures.

Accordingly, opposer's motion to strike is granted to the extent that opposer need not respond to the discovery requests served on May 27, 2008 at this time. Applicant may re-serve such discovery at the appropriate time i.e., after its initial disclosures have been provided.

The Board presumes the parties have held their discovery conference. In light of the amended pleading, the parties may wish to reconvene. Discovery is open. The Board will reset dates starting with initial disclosures.

Answer to amended notice of opposition due: **October 22, 2008**

Initial Disclosures Due	11/21/08
Expert Disclosures Due	3/21/09
Discovery Closes	4/20/09
Plaintiff's Pretrial Disclosures	6/4/09
Plaintiff's 30-day Trial Period Ends	7/19/09
Defendant's Pretrial Disclosures	8/3/09
Defendant's 30-day Trial Period Ends	9/17/09
Plaintiff's Rebuttal Disclosures	10/2/09
Plaintiff's 15-day Rebuttal Period Ends	11/1/09

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.