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

Proceeding	91185374
Party	Plaintiff CBS Broadcasting Inc.
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Submission	Motion for Sanctions
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Signature	/Christopher P. Beall/
Date	04/02/2010
Attachments	CBS-Mahjobi (VITAMEATAVEGAMIN) - M for sanctions (00291873-2).PDF (7 pages)(125652 bytes) CBS-Mahjobi (VITAMEATAVEGAMIN) - Beall Decl (w exhibits) (00291874).PDF (12 pages)(231715 bytes)

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

Trademark: **VITAMEATAVEGAMIN**
Application: 77/299,999
Filed: October 9, 2007
Published: March 25, 2008

CBS BROADCASTING Inc.,

Opposer,

v.

JAMIE MAHJOBI,

Applicant.

Opposition No. **91185374**

**OPPOSER’S MOTION FOR ENTRY OF JUDGMENT AS DISCOVERY SANCTION
BASED ON APPLICANT’S VIOLATION OF BOARD ORDER**

Opposer CBS BROADCASTING INC. (“Opposer”), through its counsel with Levine Sullivan Koch & Schulz, L.L.P., pursuant to Rule 37(b)(2)(A)(vi) and 37(d)(1)(A)(i) of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120(g)(1), moves for an order finding that Applicant Jamie Mahjobi (“Applicant”) has willfully failed to comply with the Board’s prior discovery order, in particular by failing to appear for her scheduled and duly noticed deposition, and that as a result, a judgment should be entered in favor of the opposition, with prejudice, in this case.

In support of this motion, Opposer states as follows:

1. **Certificate of Attempt to Confer:** Pursuant to Fed. R. Civ. P. 37(a)(1), undersigned counsel for Opposer certifies that he has attempted to confer in good faith with Applicant regarding the matters raised herein, but Applicant has not responded to this effort, as is more fully described below.

2. As the Board will recall, on January 27, 2010, it entered an order on the Opposer's then pending discovery motion that had been precipitated by the Applicant's failure to comply with her discovery obligations, following Applicant's refusal to participate in a Discovery Conference, her initial refusal to provide Rule 26(a)(1) disclosures, and her refusal to provide dates for her deposition. The Board ordered the Applicant to provide supplemental Rule 26(a)(1) disclosures that corrected the deficiency of her belated disclosures and to do so no later than February 16, 2010, and to make herself available for a deposition by the Opposer no later than March 31, 2010. *See* Order, dated Jan. 27, 2010, at 3-4.

3. Applicant provided untimely compliance with the first of these requirements by sending a supplemental disclosure notice on February 23, 2010 which identified herself as the only person whose testimony she would use to support her defenses. *See* Declaration of Christopher P. Beall (attached hereto), ¶ 4.

4. Applicant also agreed to make herself available for a deposition on March 31, 2010. *See* Beall Decl., ¶ 5.

5. As soon as Applicant provided her revised Rule 26(a)(1) disclosures, *i.e.*, on February 23, 2010, Opposer served on Ms. Mahjobi a notice of deposition for her testimony in this case, setting the deposition for 10 a.m. on March 31, 2010 in Los Angeles, at Ms. Mahjobi's

request. *See* Beall Decl., ¶ 6. (CBS’s in-house counsel for this matter are based in New York City, and undersigned counsel is based in Denver, Colorado.)

6. Also on February 23, 2010, Opposer served a set of discovery requests, including interrogatories, requests for production, and requests for admission. Opposer’s counsel requested that Ms. Mahjobi provide electronic copies of the responses to these discovery requests no later than March 26, 2010 so as to avoid the need to continue Ms. Mahjobi’s planned deposition on March 31, 2010 over to a second day. *See* Beall Decl., ¶ 7.

7. Ms. Mahjobi never responded to Opposer’s request for delivery of her discovery responses in advance of her deposition, and instead, she emailed undersigned counsel on the morning of March 30, 2010 indicating that her responses had been placed in the U.S. Mail that day. (A copy of that email is attached to the Beall Declaration as Exhibit A.) At no point in her email message on March 30, 2010 did Ms. Mahjobi indicate that there would be any problem for her in attending her deposition planned for the next day.

8. In response to that email, undersigned counsel requested that Ms. Mahjobi bring a set of her discovery responses with her to the deposition the next day. (A copy of this response email is attached to the Beall Declaration as Exhibit B.) Ms. Mahjobi never responded to that request.

9. On the morning of March 31, 2010, at 9:22 a.m. Pacific time, Ms. Mahjobi sent an email to undersigned counsel’s email account – although counsel was out of the office at the deposition location at that point – indicating that she would not be attending her deposition. Her only explanation for her non-appearance was a reference to “circumstances beyond my control.” Ms Mahjobi failed to provide any details as to why her attendance purportedly was unfeasible,

why she could not come to the deposition at a later time that day, and why she had not notified counsel of whatever were her “circumstances” prior to Opposer incurring the expenses associated with the out-of-town deposition. (A copy of this email message on March 31, 2010 is attached to the Beall Declaration as Exhibit C.)

10. Once undersigned counsel became aware of this email, he responded with a further message asking Ms. Mahjobi to explain her non-appearance and to make an effort to appear for the deposition even if she were late.¹ Undersigned counsel also noted that Opposer would seek an order of sanctions against Applicant if Ms. Mahjobi failed to appear that day for the deposition. (A copy of this email response is attached to the Beall Declaration as Exhibit D.)

11. Ms. Mahjobi never responded to this last request. *See* Beall Decl., ¶ 15.

12. Ms. Mahjobi never appeared for her deposition. *See* Beall Decl., ¶ 14.

13. In addition, as of the date of this motion, Applicant’s discovery responses, purportedly mailed on March 30, 2010 have not reached the offices of Opposer’s counsel. *See* Beall Decl., ¶ 16.

14. The foregoing sequence of events demonstrates a continuing disregard by the Applicant of her discovery obligation, and a willful attempt to impose unwarranted expense upon Opposer in its efforts to protect its trademark rights. These circumstances are precisely those that warrant entry of default judgment against Applicant as a sanction for her repeated violation of the Rules. *See MHW Ltd. v. Simex, Aussenhandels-gesellschaft Savelsberg KG*, 59 USPQ2d 1477, 1478 (TTAB 2000) (holding that repeated failure to comply with orders and unpersuasive

¹ Of particular note is the fact that the Applicant’s address, as listed in the records for this case – 18034 Ventura Boulevard, Suite 195, Encino, California – is just eight miles away from the deposition location at CBS’s West Coast Law Department offices, also on Ventura Boulevard in Studio City, California.

reasons for delay warranted entry of judgment against disobedient party); *Baron Philippe de Rothchild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (holding that pattern of dilatory conduct indicated willful disregard of Board order, warranting entry of judgment against disobedient); *see also* Fed. R. Civ. P. 37(b)(2)(A)(vi) (authorizing entry of default judgment for a party's failure to comply with a discovery order) and 37(d)(1)(A)(i) (authorizing entry of sanctions against a party for the party's failure to appear at a noticed deposition of the party).

15. Applicant has demonstrated through her conduct a disrespect not only for the time and expense of Opposer's staff and counsel, but also for the Board in her refusal to comply with the Board's prior orders. The Applicant has exhibited a reprehensible lack of good faith in the handling of this proceeding, behavior that necessitates a dispositive discovery sanction. *See, e.g., Unicut Corp. v. Unicut, Inc.*, 222 USPQ 341, 344 (TTAB 1984) ("Respondent's willful failure to comply with the . . . order of the Board after having been advised of the possible consequences warrants the sanction requested by petitioner.").

WHEREFORE, Opposer CBS Broadcasting Inc. respectfully requests that the Board enter an order granting the opposition with prejudice against the application to register "VITAMEATAVEGAMIN" by the Applicant.

Respectfully submitted this 2nd day of April, 2010.

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.



Christopher P. Beall
1888 Sherman Street, Suite 370
Denver, Colorado 80203
Telephone - (303) 376-2400
Facsimile - (303) 376-2401
E-mail - cbeall@lskslaw.com

Attorneys for Opposer
CBS BROADCASTING INC.

CERTIFICATE OF SERVICE

I do hereby certify that on this 2nd day of April, 2010, a true and correct copy of the foregoing **OPPOSER'S MOTION FOR ENTRY OF JUDGMENT AS DISCOVERY SANCTION BASED ON APPLICANT'S VIOLATION OF BOARD ORDER** has been transmitted by United States Postal Service first class mail, postage prepaid, with a courtesy electronic copy also delivered by e-mail transmission, to:

Jamie Mahjobi
18034 Ventura Boulevard, # 195
Encino, California 91316-3516
usptojm@yahoo.com

/s Christopher P. Beall

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CBS BROADCASTING Inc.,

Opposition No. **91185374**

Opposer,

v.

JAMIE MAHJOBI,

Applicant.

DECLARATION OF CHRISTOPHER P. BEALL

I, **Christopher P. Beall**, declare under penalty of perjury of the laws of the United States of America, as follows:

- 1) I am over the age of 18. I am competent to give testimony in this matter. The statements contained herein are based upon my personal knowledge.
- 2) I am a partner of the law firm Levine Sullivan Koch & Schulz, L.L.P.
- 3) I am counsel of record for Opposer CBS BROADCASTING INC. (“Opposer”) in this proceeding. This declaration is being provided in connection with Opposer’s Motion for Sanctions against Applicant Jamie Mahjobi (“Applicant”).
- 4) Following the Board’s discovery order entered January 27, 2010, the Applicant did not serve her supplemental Rule 26(a)(1) disclosures on me until February 23, 2010,

which she did by email transmission on that date. (No hard copy followed.) The only witness identified in Applicant's supplemental disclosure was herself.

5) In connection with the Board's requirement that Applicant make herself available for a deposition no later than March 31, 2010, Applicant proposed dates for her deposition of March 22, 2010 and March 31, 2010, and requested that the deposition be taken in Los Angeles. Because the March 22, 2010 date conflicted with my family's long-planned trip to Washington, D.C. for my seventh-grade daughter, the parties agreed to conduct the Applicant's deposition on March 31, 2010 at 10:00 a.m. (Pacific time).

6) A notice of deposition for this deposition was served on Applicant on February 23, 2010.

7) Also on February 23, 2010, I served a set of discovery requests on Applicant, including sets of interrogatories, requests for production, and requests for admission. In my email conveying courtesy electronic copies of these discovery requests, I noted that Applicant's untimely service of her supplemental Rule 26(a)(1) disclosures had resulted in an inability to serve these discovery requests any earlier. I requested that Applicant provide electronic copies of her responses to me by March 26, 2010 so that I would have enough time to review the responses before the planned deposition on March 31, 2010.

8) Applicant never responded to my request for pre-deposition service of her discovery responses.

9) Instead, on March 30, 2010, Applicant set an email message to me indicating that she had placed her discovery responses in the mail on that date. A true and correct copy of that email is attached here as Exhibit A.

10) In response to that email, I sent a further message to Applicant, requesting that she bring copies of the discovery responses with her to her deposition the next day. A true and correct copy of that email is attached here as Exhibit B.

11) At no point prior to the morning of the deposition on March 31, 2010 did I receive any communication from Applicant indicating that she might have trouble attending her deposition.

12) At 9:22 a.m. (Pacific time), I received an email from Applicant indicating that due to circumstances beyond her control, she would not be attending the 10 a.m. (Pacific time) deposition. A true and correct copy of that email is attached here as Exhibit C.

13) I forwarded a response to Applicant at 10:22 a.m. (Pacific time). A true and correct copy of that email is attached here as Exhibit D.

14) At no point did the Applicant appear for her deposition on March 31, 2010.

15) Neither on the day of the deposition, nor at any time since the deposition, have I received any communication from the Applicant responding to my last email.

16) In addition, as of the date of my signing this Declaration, I have received nothing by way of any responses from Applicant to any of the Opposer's discovery requests, despite having been notified in Applicant's email of March 30, 2010 that she was placing those responses in the mail on that date.

17) The foregoing is true and accurate, to the best of my knowledge.

Executed this 2nd day of April, 2010,



By

Christopher P. Beall

Exhibit A

Christopher Beall

From: J M [usptojm@yahoo.com]
Sent: Tuesday, March 30, 2010 7:56 AM
To: Christopher Beall
Subject: Discovery requests TTAB No. 91185374

The response to your discovery requests has been sent via US Mail.
JM

Exhibit B

Christopher Beall

From: Christopher Beall
Sent: Tuesday, March 30, 2010 9:45 AM
To: 'J M'
Subject: RE: Discovery requests TTAB No. 91185374

Dear Ms. Mahjobi,

Because your deposition will be tomorrow, and your discovery responses are not likely to arrive in time, please bring with you a set of copies of your responses and any accompanying documents to the deposition tomorrow.

Regards,
Chris Beall

Christopher P. Beall

Levine Sullivan Koch & Schulz, L.L.P.

Denver Office:

1888 Sherman Street, Suite 370

Denver, Colorado 80203

Direct Line (303) 376-2406

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www.lskslaw.com

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From: J M [mailto:usptojm@yahoo.com]
Sent: Tuesday, March 30, 2010 7:56 AM
To: Christopher Beall
Subject: Discovery requests TTAB No. 91185374

The response to your discovery requests has been sent via US Mail.
JM

Exhibit C

Christopher Beall

From: J M [usptojm@yahoo.com]
Sent: Wednesday, March 31, 2010 10:10 AM
To: Christopher Beall
Cc: usptojm@yahoo.com
Subject: Notice Re Deposition TTAB No. 91185374

Mr. Beall;

Due to circumstances beyond my control, I would not be able to attend the deposition today. It will have to be rescheduled for early next week.

Thankyou.

JM

Exhibit D

Christopher Beall

From: Christopher Beall
Sent: Wednesday, March 31, 2010 11:22 AM
To: 'J M'
Subject: RE: Notice Re Deposition TTAB No. 91185374

Dear Ms. Mahjobi,

I am very surprised to receive your email below. As I have mentioned to you before, I am based in Denver, Colorado, and I made the trip out to Los Angeles last night for your convenience. I am now at the CBS Law Department office, as is the court reporter, who is on the clock for all of the time that she has been waiting, as are the in-house attorneys for CBS who cleared their schedules for your deposition. Your late notice of non-attendance has prejudiced CBS not only with the interference with all of our schedules, but also with the costs for bringing me out to Los Angeles at your request. These actual out-of-pocket expenses exceed \$1,500.

In light of the fact that you already have been sanctioned for non-compliance with your discovery obligations in this case, as well as the fact that today is the last day set by the TTAB for your deposition, your late notice of non-appearance, without any actual explanation for the reason you are not attending the deposition, is completely unacceptable.

Because of the prejudice to CBS as a result of your late notice, CBS intends to seek sanctions against you -- including entry of judgment against you -- unless you either appear for this deposition here in Los Angeles within the next hour. In the unlikely event that the TTAB allows this case to go forward based on a rescheduling of your deposition, we will require the deposition to be scheduled in Denver, at your expense, so as not to incur additional travel expenses for CBS.

CBS, of course, reserves all of its rights with respect to your non-appearance.

Please respond to this email immediately, as our court reporter is standing by, and we need to know whether we will be going forward with the deposition today.

Regards,
Chris Beall

From: J M [mailto:usptojm@yahoo.com]
Sent: Wednesday, March 31, 2010 10:10 AM
To: Christopher Beall
Cc: usptojm@yahoo.com
Subject: Notice Re Deposition TTAB No. 91185374

Mr. Beall;
Due to circumstances beyond my control, I would not be able to attend the deposition today. It will have to be rescheduled for early next week.

Thankyou.
JM