ESTTA Tracking number: **ESTTA319634**
Filing date: **12/01/2009**

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

Proceeding	91187847
Party	Plaintiff The Susan G. Komen Breast Cancer Foundation, Inc.
Correspondence Address	Dace A. Caldwell Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington D.C., DC 20036-5306 UNITED STATES dcaldwell@gibsondunn.com
Submission	Other Motions/Papers
Filer's Name	Dace A. Caldwell
Filer's e-mail	dcaldwell@gibsondunn.com, pto-cc@gibsondunn.com
Signature	/dace caldwell/
Date	12/01/2009
Attachments	Hogan Decl Motion for Sanctions.pdf (32 pages)(827645 bytes)

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

THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC.

Opposer,

v.

Opposition No. 91187847

CHRISTINE MACHLEIT and
MATILDA BEELER

Applicant

DECLARATION OF HOWARD S. HOGAN

---

1. I am an attorney with the law firm of Gibson, Dunn & Crutcher LLP, and counsel for Opposer The Susan G. Komen Breast Cancer Foundation, d/b/a Susan G. Komen for the Cure ("Komen"). I am licensed to practice law in the State of New York, the State of Connecticut, and the District of Columbia. I am one of the attorneys principally responsible for the representation of Komen in this action. I have personal knowledge of the facts set forth in this declaration, unless indicated otherwise, and if called as a witness, I could and would competently testify thereto. I am submitting this declaration in support of Komen's Motion for Sanctions in the Form of a Judgment Sustaining the Opposition.

2. On or about October 22, 2009, the Board issued an order in the above-captioned proceeding. A true and correct copy of the Board's October 22, 2009 Order is attached hereto as Exhibit A.

3. Attached as Exhibit B is a true and correct copy of an envelope received by Komen's counsel, Molly Buck Richard of the Richard Law Group, on September 15, 2009 from

the U.S. Postal Service, indicating that the delivery of Komen's August 10, 2009 First Set of Interrogatories and First Requests for Productions from Applicants (collectively, the "First Requests") was "Attempted, Not Known" and was therefore returned to the Richard Law Group.

4. Attached as Exhibit C is a true and correct copy of a letter that Komen's counsel, James F. Struthers of the Richard Law Group, sent on September 15, 2009 to Applicants at their last known address providing an additional copy of Komen's First Requests. To the best of my knowledge, Mr. Struthers' September 15 mailing was not returned by the U.S. Postal Service.

5. On or about October 27, 2009, I, along with my fellow associate Dace A. Caldwell of Gibson Dunn & Crutcher LLP, entered an appearance in the present opposition on behalf of Komen.

6. On or about October 29, 2009, Applicants filed a change of correspondence address with the Board. A true and correct copy of Applicants' change of correspondence address is attached hereto as Exhibit D.

7. On or about November 19, 2009, I called Applicants using the telephone number listed on Applicants' own change of correspondence address filed October 29, 2009. I left a recorded voice message requesting that Applicants return my call to discuss the present opposition. As of today's date, I have not received any return call from Applicants.

8. As of today's date, Komen has not received any response from Applicants to Komen's First Requests.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on December 1, 2009:

Howard S. Hogan

Howard S. Hogan

EXHIBIT A

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

sb/gcp

Mailed: October 22, 2009

Opposition No. 91187847

The Susan G. Komen Breast Cancer Foundation, Inc.

v.

Christine Machleit and Matilda Beeler

George C. Pologeorgis, Interlocutory Attorney:

This proceeding is before the Board for consideration of opposer's motion, filed September 22, 2009, to compel discovery and initial disclosures. Applicants have not filed a brief in response to opposer's motion.

In its motion, opposer seeks responses to its first set of interrogatories and first request for production of documents and things. Additionally, opposer seeks to compel applicants' initial disclosures.

Opposer asserts that it served the aforementioned discovery requests upon applicants on August 10, 2009, but has yet to receive any responses thereto. Opposer further

states that the discovery requests were returned to the opposer's counsel on September 15, 2009 by the U.S. Postal Service as "Attempted, Not Known" despite the fact that opposer served its discovery requests upon applicants at their address of record.[1] Moreover, per the Board's institution order, initial disclosures were due by March 13, 2009 but opposer contends that applicant has yet to provide its initial disclosures.

Pursuant to Trademark Rule 2.120(e)(2), opposer's motion is timely.[2]

Moreover, a party that fails to respond to a request for discovery, and is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel, to have forfeited its right to object to the discovery requests on their merits. Inasmuch as nothing in the record indicates that applicants' failure to respond was the result of excusable neglect, applicants have waived

---

[1] If applicants have moved from their correspondence address of record, it is their obligation to file a separate written notice of change of address with the Board referencing this proceeding number. Indeed, it is the responsibility of a party to a proceeding before the Board to ensure that the Board has the party's current correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party. *See* TBMP § 117.07 (2nd ed. rev. 2004).

[2] The Board finds that opposer has demonstrated a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1).

their right to object to opposer's interrogatory and document requests on the merits, and must respond in full and without objection (except for objections based upon privilege), inasmuch as applicants neither timely responded nor objected to opposer's discovery requests. *See No Fear, Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

Accordingly, opposer's motion to compel is granted both on the merits and as conceded. *See* Trademark Rule 2.127(a).[3]

Applicants are allowed **thirty days** from the mailing date of this order in which to serve upon opposer full and complete answers to all requests for interrogatories and all requests for documents and things, without objection (except for objections based upon privilege). To the extent applicants object to any of the interrogatory and/or document requests based upon privilege, applicants are required to provide opposer with a privilege log within the **thirty days** set forth above. Furthermore, applicants are allowed the same **thirty days** in which to serve their initial disclosures upon opposer. Should applicants fail to serve on opposer the discovery responses and initial disclosures as ordered herein, as well as a privilege log, if

[3] Trademark Rule 2.127(a) reads, in relevant part: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

applicable, the Board will entertain a motion for sanctions in the form of entry of judgment sustaining the opposition. *See* Trademark Rule 2.120(g)(1).

Proceedings herein remain ongoing. Discovery is closed. Trial dates, beginning with the deadline for opposer's pretrial disclosures, are reset as follows:

Plaintiff's Pretrial Disclosures	**12/1/09**
Plaintiff's 30-day Trial Period Ends	**1/15/10**
Defendant's Pretrial Disclosures	**1/30/10**
Defendant's 30-day Trial Period Ends	**3/16/10**
Plaintiff's Rebuttal Disclosures	**3/31/10**
Plaintiff's 15-day Rebuttal Period Ends	**4/30/10**

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

-oOo-

EXHIBIT B

7008 1830 0002 5199 2759

UNITED WE STAND

UNITED STATES POSTAGE
PITNEY BOWES
02 1P $006.30⁰
0004503992 AUG 10 2009
MAILED FROM ZIP CODE 75225

ATTEMPTED, NOT KNOWN

RICHARD LAW GROUP

8411 Preston Road, Suite 890
Dallas, Texas 75225

ATTEMPTED, NOT KNOWN

Not on this address

AND

MAIL TO:
Ms. Christine Machleit and
Ms. Matilda Beeler
14738 Pacific Ave.
Baldwin Park, CA 91706-5337

Not on this address

RETURN FOR
[redacted]

EXHIBIT C

RICHARD
LAW GROUP

Richard Law Group, Inc.
8411 Preston Road • Suite 890
Dallas, Texas 75225

214.206.4300 phone
214.206.4330 fax
richardlawgroup.com

Direct Dial: 214-206-4312
E-Mail: jim@richardlawgroup.com

September 15, 2009

Via U.S. Mail
Christine Machleit
Matilda Beeler
14738 Pacific Ave.
Baldwin Park, CA 91706-5337

Re: The Susan G. Komen Breast Cancer Foundation, Inc. v. Machleit, et al

Dear Christine and Matilda:

Our letter to you dated August 10, 2009 and enclosing discovery requests on behalf of The Susan G. Komen Breast Cancer Foundation was returned to us today marked "not at this address." Copies of the original letter and discovery requests are enclosed. We have confirmed that these documents were correctly sent to your address of record in this proceeding. Therefore, the discovery requests were properly served and responses were due on September 14, 2009. Please provide us with your responses no later than September 22, 2009. Please also provide your Initial Disclosures which were due on March 13, 2009. If we do not hear from you, we will ask the Board to compel disclosures and responses.

Sincerely,

James F. Struthers

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

THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC.

Opposer,

v.

Opposition No. 91187847

CHRISTINE MACHLEIT and
MATILDA BEELER

Applicants.

OPPOSER'S FIRST REQUESTS FOR PRODUCTION TO APPLICANTS

The Susan G. Komen Breast Cancer Foundation, Inc., Opposer in the above referenced matter serves these Requests for Production on Applicants, Christine Machleit and Matilda Beeler pursuant to Rule 2.120(d) of the Trademark Rules of Practice and pursuant to Rule 34 of the Federal Rules of Civil Procedure. Applicants shall serve their responses and produce the requested documents to the offices of Opposer's counsel, Richard Law Group, at 8411 Preston Road, Suite 890, Dallas, TX 75225 within thirty (30) days of service of these Requests.

Definitions

A. "Komen" or "Opposer" means the named Opposer, its predecessors in interest or title, parent and subsidiary entities, and any and all related companies (as defined by 15 USC § 1127) together with the directors, officers, employees, attorneys, agents and representatives and other personnel thereof.

B. "Applicants" means the named Applicants, their predecessors in interest or title, parent and subsidiary entities, and any and all related companies (as defined by 15

USC § 1127) together with the directors, officers, employees, attorneys, agents and representatives and other personnel thereof.

C. "Person" or "Persons" means any individual, association, partnership, corporation, firm, organization or entity.

D. The word "or" means "and/or" and the word "and" means "and/or."

E. "Document" or "Documents" means the original and all identical copies of written, printed, typed and visually or orally reproduced material of any kind, whether or not privileged, which are in the possession, custody or control of Applicants, including, but not limited to, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, minute books, books of account, orders, invoices, receipts, statements, computation sheets, notebooks, diaries, reports, photographs, drawings of any kind, tracings, blueprints, microfilm, photostats, sketches, charts, catalogues, brochures, advertising and promotional literature, bulletins, cables, telegrams, letters, notes, instructions, reports, test data, and any other similar materials.

F. The term "things" as used herein shall refer to any tangible object, including audio recordings, video recordings and the like, which may for some reason be construed as something other than a document.

G. "Identify" or "identification" with respect to a person or persons means to state:

1) the full name;

2) the title;

3) the present address, if known, or if not, the last known address;

4) the employer or business affiliation of such person(s); and

5) the employment duties, functions and responsibilities of such person or persons.

H. "Identify" or "identification" with respect to a company means to state:

1) the name;

2) the place of incorporation, if incorporated;

3) the principal place of business; and

4) the identity of the person or persons having knowledge of the matter with respect to which the company is named.

I. "Identify" or "identification" with respect to a government agency, organization or other government entity means to state:

1) the name;

2) the municipality, city, county, state or other entity by and/or for which the organization serves;

3) the principal place of business;

4) the purpose of the organization; and

5) the identity of the person or persons having knowledge of the matter with respect to which the organization is named.

J. "Identify" or "identification" with respect to a document means to state:

1) the title of the document;

2) the date of the document;

3) the name of the person or persons who signed, prepared, or participated in the preparation of such document;

4) the name of the person to whom the document was addressed;

5) the name of each person to whom the document was given or sent, or who received such document or a copy thereof;

6) the identity of each person having possession, custody, control or effective control of the document or thing; and

7) the nature and subject matter of the document or thing.

In lieu of such identification, Applicants may simply provide a copy of the document with their answers to these interrogatories and indicate on the document copy which interrogatory or sub-interrogatory the document is being produced in response to.

K. "Identify" or "identification" with respect to a thing means to state:

1) a description of the thing;

2) where the thing is located; and

3) the identity of the person or persons who have possession or control of the thing.

In lieu of such identification, Applicants may simply provide photographs or other illustrative replicas of the thing with their answers to these interrogatories and indicate on the photograph or replica which interrogatory or sub-interrogatory the same is being produced in response to.

L. "Identify" or "identification" with respect to an event means to state:

1) the date of such event;

2) the location of such event; and

3) the identity of each person present at the event.

M. "Including" means "including but not limited to."

N. "Date of first use" refers to the date of first use in the United States unless otherwise stated.

O. "Commerce" refers to interstate or foreign commerce.

P. "Services" means "products, goods or services."

Q. "On" and "in connection with" mean "on or in connection with."

R. "Relating to" means "relating to, reflecting, supporting, evidencing, discussing, showing, summarizing, analyzing, containing, pertaining to, or concerning in any way, directly or indirectly."

S. "Communication" or "communications" means any contact or act, the purpose or effect of which is to convey information or knowledge, including, but not limited to, written contact by letters, memoranda, financial reports, telecopies, telegrams, telexes, or by any documents, and oral contact by such means as face-to-face meetings, telephone conversations, or recorded telephone messages.

T. The singular includes the plural and the plural includes the singular.

U. "Advertising materials" means any and all advertising or promotional materials, including, but not limited to, brochures, catalogs, inserts, phone directories, Yellow Pages advertisements or listings, radio and television commercials, signage and packaging materials, labels, hang tags, decals or other indicia.

Requests for Production

REQUEST FOR PRODUCTION NO. 1:

All documents and things relating to Applicants' selection of the mark TIME FOR A CURE and the decision to file an application for registration of that mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

Representative documents relating to the channels of trade through which Applicants' services are sold, advertised and marketed under the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

Samples or photographs of any and all advertisements or other information bearing Applicants' mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

Any and all documents relating to Applicants' first use of the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

Any and all documents evidencing any revenues received by Applicants under the mark TIME FOR A CURE, including but not limited to proof of donations, purchase orders, invoices, sales receipts and credit card receipts.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

Samples of advertising materials that Applicants have used or intend to use in connection with advertising or rendering services under the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

Samples of tags, labels, product packaging, advertising and other materials that Applicants use or intend to use, on products or services under the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

All documents that refer to or evidence Applicants' first knowledge of the Opposer's use of any "For a Cure" or "For the Cure" marks for any goods or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

All documents and things relating to Applicants' business plans for use of the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

Documents sufficient to identify the dates of first use or time periods during which Applicants have offered or sold goods or rendered any services under or in connection with the mark TIME FOR A CURE and the total revenues generated from the sales of such goods or services.

RESPONSE:

Respectfully submitted,

By: Molly Buck Richard
RICHARD LAW GROUP
8411 Preston Road, Suite 890
Dallas, Texas 75225
Tel: 214 206 4301
Fax: 214 206 4330

ATTORNEYS FOR THE SUSAN G. KOMEN BREAST CANCER FOUNDATION, INC.

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Opposer's First Requests for Production of Documents to Applicants, Christine Macheit and Matilda Beeler, 14738 Pacific Avenue, Baldwin Park, CA 91706 on the 10th day of August, 2009, by U.S. Mail, Postage Prepaid, Certified, Return Receipt Requested.

Molly Buck Richard

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

THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC.

Opposer,

v.

Opposition No. 91187847

CHRISTINE MACHLEIT and
MATILDA BEELER

Applicants.

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANTS

Opposer, The Susan G. Komen Breast Cancer Foundation, Inc. hereby serves its First Set of Interrogatories to Applicants and pursuant to the Rules, requests that Applicants' responses be served upon the undersigned within thirty (30) days of service of these Interrogatories.

DEFINITIONS

The definitions set forth in Opposer's First Requests for Production of Documents are incorporated herein in their entirety and shall be used by Applicants in responding to these Interrogatories

INTERROGATORIES

INTERROGATORY NO. 1:

When and how did you select the mark TIME FOR A CURE?

ANSWER:

INTERROGATORY NO. 2:

When and how did you first use the mark TIME FOR A CURE?

ANSWER:

INTERROGATORY NO. 3:

Identify any past or current plans to use the mark TIME FOR A CURE.

ANSWER:

INTERROGATORY NO. 4:

Identify when Applicants first had any knowledge of Opposer and Opposer's use of any FOR A CURE or FOR THE CURE trademarks.

ANSWER:

INTERROGATORY NO. 5:

Identify all revenues received by Applicant for its use of the mark TIME FOR A CURE and identify how Applicant disposed of such revenues.

ANSWER:

Respectfully submitted,

Molly Buck Richard
molly@richardlawgroup.com
RICHARD LAW GROUP, INC.
8411 Preston Road, Suite 890
Dallas, Texas 75225
Tel: 214 206 4300
Fax: 214 206 4330

Counsel for Opposer

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Opposer's First Set of Interrogatories to Applicants were sent to Applicants, Christine Macheit and Matilda Beeler, 14738 Pacific Avenue, Baldwin Park, CA 91706 on the 10th day of August, 2009 by U.S. Mail, Postage Prepaid, Certified, Return Receipt Requested.

Molly Buck Richard

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

THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC.

Opposer,

v.

Opposition No. 91187847

CHRISTINE MACHLEIT and
MATILDA BEELER

Applicants.

OPPOSER'S FIRST REQUESTS FOR ADMISSION

Pursuant to Section 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, Applicant, The Susan G. Komen Breast Cancer Foundation, Inc., requests that Applicants, Christine Machleit and Matilda Beeler, answer the following Requests for Admission within thirty (30) days of the date of service hereof.

Requests for Admission

REQUEST FOR ADMISSION NO. 1:

Admit that Applicants were aware of Opposer's ownership and use of the mark RACE FOR THE CURE prior to Applicants' adoption of the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 2:

Admit that the mark TIME FOR A CURE, as used on or in connection with promoting public awareness of breast cancer, is likely to be confused with Opposer's mark RACE FOR THE CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 3:

Admit that the mark TIME FOR A CURE, as used on or in connection with promoting public awareness of breast cancer, is likely to be confused with Opposer's FOR THE CURE and FOR A CURE marks.

RESPONSE:

REQUEST FOR ADMISSION NO. 4:

Admit that Opposer's mark RACE FOR THE CURE is a famous trademark that was famous prior to Applicants' first use of TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 5:

Admit that Opposer's mark RACE FOR THE CURE is a famous trademark that was famous prior to the date that Applicants applied to register the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 6:

Admit that Opposer was using its family of "FOR THE CURE" and "FOR A CURE" trademarks prior to Applicants' first use of the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 7:

Admit that Opposer was using its family of "FOR THE CURE" and "FOR A CURE" trademarks prior to the date that Applicants applied to register the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 8:

Admit that Opposer's FOR THE CURE and FOR A CURE marks are famous trademarks that were famous prior to Applicants' first use of TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 9:

Admit that Opposer's FOR THE CURE and FOR A CURE marks are famous trademarks that were famous prior to the date that Applicants applied to register the mark TIME FOR A CURE.

RESPONSE:

Respectfully submitted,

By: Molly Buck Richard
RICHARD LAW GROUP
8411 Preston Road, Suite 890
Dallas, Texas 75225
Tel: 214 206 4301
Fax: 214 206 4330

ATTORNEYS FOR THE SUSAN G. KOMEN
BREAST CANCER FOUNDATION, INC.

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Opposer's First Requests for Admission to Applicant was sent to Applicants, Christine Macheit and Matilda Beeler, 14738 Pacific Avenue, Baldwin Park, CA 91706 on the 10th day of August, 2009 by U.S. Mail, Postage Prepaid, Certified, Return Receipt Requested.

Molly Buck Richard

EXHIBIT D

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov
ESTTA Tracking number: **ESTTA314312**
Filing date: **10/29/2009**

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

Change of Correspondence Address

Proceeding.	91187847
Defendant	Defendant Christine Machleit, and Matilda Beeler

Please change the correspondence address for the above party here as follows:

Old Correspondence Address	MACHLEIT, CHRISTINE 14738 PACIFIC AVE BALDWIN PARK, CA 91706-5337 UNITED STATES timeforacure@aol.com
New Correspondence Address	MACHLEIT, CHRISTINE 19931 Heartwood Drive Perris, CA 92570 UNITED STATES timeforacure@aol.com Phone:951/789-2756

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,
/Christine Machleit/
Christine Machleit
timeforacure@aol.com, christine@timeforacure.org
10/29/2009

Opposition No. 91187847

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2009, a copy of the foregoing **DECLARATION OF HOWARD S. HOGAN** is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to:

Christine Machleit
19931 Heartwood Drive
Perris, CA 92570

Dace A. Caldwell

Dace A. Caldwell