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Filing date: **07/14/2011**

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

Proceeding	91199018
Party	Plaintiff Amylin Pharmaceuticals, Inc.
Correspondence Address	JENNIFER FRASER CONNOLLY BOVE LODGE & HUTZ LLP PO BOX 2207 WILMINGTON, DE 19801 UNITED STATES trademarks@cblh.com
Submission	Motion to Compel Discovery
Filer's Name	Jennifer Fraser
Filer's e-mail	trademarks@cblh.com, jfraser@cblh.com, bstaley@cblh.com
Signature	/jf/
Date	07/14/2011
Attachments	Motion to Compel IDs.pdf (11 pages)(281874 bytes)

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

In re: Application Serial No. 85/094,790	:	
	:	
Filed: July 28, 2010	:	
	:	
For the Mark: DR. AMLIN & Design	:	Opposition No 91199018
	:	
Published: March 8, 2011	:	
	:	
Amylin Pharmaceuticals, Inc.,	:	
	:	
Opposer,	:	
	:	
v.	:	Attorney Docket No.: 32377-1
	:	
Amlin Health, LLC	:	
	:	
Applicant.	:	

**OPPOSER’S MOTION TO COMPEL APPLICANT’S
INITIAL DISCLOSURES**

Amylin Pharmaceuticals, Inc. (“Opposer”) respectfully requests the Board issue an order compelling Amlin Health, LLC (“Applicant”) to provide its required Rule 26 Initial Disclosures pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120(e) of the Trademark Rules of Practice.

Such an order is appropriate because Applicant has failed to provide Opposer with its required disclosures and has failed to respond to Opposer's request to comply with its obligation under Rule 26. Counsel for Opposer has made a good faith effort to resolve the issue with Applicant but such efforts have been unsuccessful.

I. BACKGROUND

On March 16, 2011, Opposer filed a Notice of Opposition against Application No. 85/094,790 for the mark “DR. AMLIN & Design” for the goods “dietary and nutritional supplements; dietary supplements; vitamins.” On the same day, the Board instituted this proceeding and set discovery to open on May 25, with Initial Disclosures due June 24, 2011. Counsel for Applicant and Opposer held the discovery conference, with Board participation, on May 23, 2011. During the conference, among other things, the parties agreed to send courtesy copies of documents by e-mail.

On June 24, 2011, Opposer served Applicant with Opposer’s Rule 26 Initial Disclosures (by e-mail and mail). Opposer did not receive Applicant’s Rule 26 Initial Disclosures. On June 29, Opposer served Applicant with Opposer’s First Set of Interrogatories, Requests for Production, and Requests for Admission. Opposer still had not received Applicant’s Initial Disclosures so, on July 7, Opposer sent an e-mail to Applicant and Counsel for Applicant inquiring as the status of Applicant’s Initial Disclosures.¹ Opposer advised that if they did not hear from Applicant (or counsel of record) advising as the status of the Initial Disclosures, Opposer would have to raise the issue with the Board and file a Motion to Compel (e-mail attached at Exhibit A).² On July 8, Opposer also sent a letter by first class mail to Applicant and counsel of record (attached at Exhibit C). To date, neither Applicant nor current counsel of record has responded to Opposer’s inquiries and Opposer has not received Initial Disclosures from Applicant which are now almost three weeks late.

¹ On July 6, Applicant’s counsel filed a Motion to Withdraw as Counsel, providing the Board with Applicant’s contact information. Such Motion has not yet been granted by the Board. The contact information in the Motion was also that used by Opposer in attempting to contact Applicant.

² Opposer also requested an e-mail “delivery notification” and received confirmation of delivery for both e-mail addresses (Exhibit B).

II. OPPOSER'S MOTION TO COMPEL SHOULD BE GRANTED

In accordance with Trademark Rule 2.120(e), Opposer respectfully submits that it has made a good faith effort to resolve this issue with Applicant and counsel and has yet to receive the required Initial Disclosures, no less any reply.

III. CONCLUSION

Opposer respectfully requests that the Board enter an order compelling Applicant to provide its required Rule 26 Initial Disclosures in accordance with the Trademark Rules of Practice and the Federal Rules of Civil Procedure and/or take any other appropriate action the Board deems just and proper.

Respectfully submitted,
Amylin Pharmaceuticals, Inc.

Date: July 14, 2011

/s/ Jennifer Fraser
Jennifer Fraser
Christina M. Hillson
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 N. Orange Street
P.O. Box 2207
Wilmington, DE 19899
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July 2011 a true and correct copy of the foregoing document was caused to be served on the following parties as indicated:

VIA E-MAIL AND FIRST CLASS MAIL

Matthew H. Swyers, Esq.
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Vienna, VA 22180-5612
mswyers@thetrademarkcompany.com

Linus Zhang, M.D.
Amlin Health, LLC
451 Hungerford Drive
Suite 119-132
Rockville, MD 20850
amlinhealth@gmail.com

/s/ Jennifer Fraser
Jennifer Fraser

EXHIBIT A

Breanne M. Staley

From: Jennifer Fraser
Sent: Thursday, July 07, 2011 1:03 PM
To: 'mswyers@thetrademarkcompany.com'; 'amlinhealth@gmail.com'
Cc: Breanne M. Staley
Subject: Amylin Pharmaceuticals, Inc. vs. Amlin Health, LLC

Dear Mr. Swyers and Mr. Zhang,

We are writing to inquire about the status of Applicant's Initial Disclosures which were due almost two weeks ago on June 24. Please advise when we can expect to receive Applicant's Initial Disclosures.

If we do not hear from you shortly, we will be forced to raise this issue with the Board and will file a Motion to Compel on July 14 unless we receive the required disclosures by that time.

Please contact us if you would like to discuss this matter.

Regards,

Jennifer Fraser
Connolly Bove Lodge & Hutz LLP
Suite 1100
1875 Eye Street NW
Washington, DC 20006
TEL (202) 756-4356 (direct)
FAX (202) 293-6229

EXHIBIT B

Breanne M. Staley

From: Jennifer Fraser
Sent: Thursday, July 07, 2011 4:37 PM
To: Breanne M. Staley
Subject: FW: Delivery Status Notification (Relay)

Attachments: ATT5639569.txt; Amylin Pharmaceuticals, Inc. vs. Amlin Health, LLC



ATT5639569.txt
(282 B)



Amylin
araceuticals, Inc. vs

-----Original Message-----

From: Administrator
Sent: Thursday, July 07, 2011 1:04 PM
To: Jennifer Fraser
Subject: Delivery Status Notification (Relay)

This is an automatically generated Delivery Status Notification.

Your message has been successfully relayed to the following recipients, but the requested delivery status notifications may not be generated by the destination.

mswyers@thetrademarkcompany.com

Breanne M. Staley

From: Jennifer Fraser
Sent: Thursday, July 07, 2011 4:37 PM
To: Breanne M. Staley
Subject: FW: Delivery Status Notification (Relay)

Attachments: ATT5639545.txt; Amylin Pharmaceuticals, Inc. vs. Amlin Health, LLC



ATT5639545.txt
(272 B)



Amylin
Pharmaceuticals, Inc. vs

-----Original Message-----

From: Administrator
Sent: Thursday, July 07, 2011 1:03 PM
To: Jennifer Fraser
Subject: Delivery Status Notification (Relay)

This is an automatically generated Delivery Status Notification.

Your message has been successfully relayed to the following recipients, but the requested delivery status notifications may not be generated by the destination.

amlinhealth@gmail.com

EXHIBIT C



CONNOLLY BOVE LODGE & HUTZ LLP

ATTORNEYS AT LAW

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July 8, 2011

VIA 1st CLASS MAIL

Dr. Linus Zhang
Amlin Health, LLC
451 Hungerford Drive
Suite 119-132
Rockville, MD 20850

Re: Amylin Pharmaceuticals, Inc. v. Amlin Health, LLC
Trademark Opposition No. 91199018 against DR. AMLIN & Design
Our Ref.: 32377-1

Dear Dr. Zhang:

Further to our July 7 e-mail, we are writing to inquire about the status of Applicant's Initial Disclosures which were due almost two weeks ago on June 24. Please advise when we can expect to receive Applicant's Initial Disclosures.

If we do not hear from you shortly, we will be forced to raise this issue with the Board and will file a Motion to Compel on July 14 unless we receive the required disclosures before then.

Please contact us if you would like to discuss this matter.

Very truly yours,

JENNIFER FRASER

JF/bms
cc: Matthew H. Swyers, Esq.
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