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

Proceeding	91200168
Party	Plaintiff Bach Flower Remedies Limited
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Attachments	5027-97ReplyBriefinSupportofMotion.pdf (6 pages)(242148 bytes)

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

BACH FLOWER REMEDIES LIMITED)	Attorney Ref.: 5027-97
)	
)	
Opposer,)	
)	
v.)	Opposition No. 91200168
)	Application No. 85/111,156
ABSOLUTELY NATURAL, INC.)	Trademark: SUNBURN RESCUE
(formerly Richards Distributing, Inc.),)	
)	
Applicant.)	

**REPLY BRIEF IN SUPPORT OF OPPOSER’S MOTION FOR EXTENSION OF
THE DISCOVERY PERIOD AND OTHER TRIAL DATES**

Applicant filed an objection to Opposer’s motion for a 30-day extension on January 25, 2012. The opposition brief states that there are no documents and things to provide to Opposer other than copies of certain third-party certificates of registration which have already been identified and supplied to Opposer.

Applicant’s opposition brief also states that Applicant is contemplating an imminent product launch that would be held up by even a short extension of the TTAB schedule. See Opposition Br., p. 1 (“Applicant is waiting to launch its product until approval of the application for registration is assured”; “Extending the discovery period for the instant Opposition would delay the product launch and would financially damage Applicant”).

However, if Applicant is close to a product launch, such that a mere 30-day extension would damage Applicant, then it is only logical that Applicant should have at least some documents which would be responsive to certain of Opposer’s requests for documents and things that were served on September

16, 2011 and which relate to the use and intended use of the mark by Applicant.

Examples of those requests include the following:

Request No. 2: "Copies of all different packaging, wrappers, labels, signs, advertisements, catalogues, brochures, posters, sales sheets, point of purchase displays, fliers, television advertising, web pages, third party web pages and price lists, including drafts or prototypes of these materials, which refer to any product or service of Applicant that is/was sold or offered for sale or is intended to be sold or offered for sale in connection with any mark containing the term SUNBURN RESCUE;

Request No. 3: A representative sample of each product, label, wrapper, package and box and any sample or prototype of these materials distributed or intended to be distributed by or on behalf of Applicant in the United States bearing any mark containing the term SUNBURN RESCUE or used in connection with products or services involving those marks;

Request No. 11: All documents concerning Applicant's creation, adoption, selection, proposed use and first use of any mark containing the term SUNBURN RESCUE;

Request No. 23: All documents relating to Applicant's plans to adopt and use the mark SUNBURN RESCUE including without limitation, all proposals, resolutions, memoranda, correspondence, marketing opinions, artwork, press releases, mark search results and legal opinions;

Request No. 24: All documents relating to Applicant's plans to adopt and use any mark containing the term RESCUE including without limitation, all proposals, resolutions, memoranda, correspondence, marketing opinions, artwork, press releases, mark search results and legal opinions;

Request No. 25: All documents tending to show the class of present or future purchasers or users of services or products, sold, offered or delivered, intended to be sold, offered or delivered under the

mark SUNBURN RESCUE by the Applicant;

Request No. 27: All documents showing communications with manufacturers, wholesale establishments or retail establishments, or with their staffs concerning the offer to sell by Applicant of any goods or services under the mark SUNBURN RESCUE;

Request No. 28: All documents concerning the channels of trade through which Applicant's goods and/or services have been, are or intended to be sold or provided under the SUNBURN RESCUE mark.

This is the first time that Applicant has informed Opposer that “no documents” would be produced in response to Opposer’s discovery responses. If Applicant has any such responsive documents, Applicant is required to produce them. The assertion in Applicant’s Opposition that there are no documents and things to provide to Opposer is contradicted by Applicant’s responses to Opposer’s Requests for Documents and Things. For example, in response to document Request Nos. 1, 4, 6, 9, 11, 14, 16, 20 and 23, Applicant responded that any such documents will be produced, with the exception of privileged materials. As to Request No. 28, Applicant indicated that “[r]epresentative documents will be produced subject to the TTAB standard protective order.” In response as to the remaining requests, Applicant expressly stated that no such documents or things exist. See Exhibit A hereto (Applicant’s Response to Opposer’s First Set of Requests for Production of Documents and Things).

This is also at odds with statements previously made by Applicant to Opposer that its “responses to Requests for Production Nos. 2, 3 and 13 will

accompany our responses to your second Set of Requests for Admission, which are due January 23, 2012”; and “Mr. Wray has agreed to make copies of documents and things responsive to our respective requests for production and send them to the offices of respective counsel” (which were made in a letter of January 11, 2012 to Opposer).

It is even more clear now that Opposer needs the time requested in its motion for follow-up with Applicant’s attorney and clarification of Applicant’s contradicting discovery responses, including the discrepancy between the statements in Applicant’s Opposition brief that Applicant has a contemplated “product launch” of its goods such that it will be damaged by a reasonable extension of the trial schedule, on the one hand, and the statement in the Opposition brief that Applicant has absolutely no responsive documents to produce to Opposer (other than third party registrations), on the other. Opposer will also need clarification as to which requests the “certificates of registration” mentioned in Applicant’s Opposition brief are responsive.

If Applicant has no responsive documents, then Opposer will request that Applicant amend its discovery responses accordingly. Otherwise, Opposer will require full compliance with the Board’s disclosure requirements and ask that Applicant supplement its responses.

In view of the above, Opposer requests, that the Board grant its motion to provide Opposer sufficient time to investigate and discuss with Applicant’s

attorney the completeness of Applicant's responses and to conduct any follow-up discovery that may be required.

Respectfully submitted,

Bach Flower Remedies Limited

By: _____

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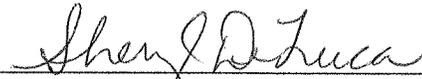
703-816-4003

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY BRIEF IN SUPPORT OF OPPOSER'S MOTION FOR EXTENSION OF THE DISCOVERY PERIOD AND OTHER TRIAL DATES was served upon the following attorney of record for Applicant by depositing same in the United States mail, first class, postage prepaid, this 30th day of January, 2012:

James C. Wray
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Sheryl De Luca