ESTTA Tracking number: **ESTTA467248**
Filing date: **04/16/2012**

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

Proceeding	91200187
Party	Plaintiff Ultimate Nutrition, Inc.
Correspondence Address	WILLIAM C WRIGHT EPSTEIN DRANGEL LLP 60 EAST 42ND STREET, SUITE 2410 NEW YORK, NY 10165 UNITED STATES mail@ipcounselors.com
Submission	Motion to Compel Discovery
Filer's Name	William C. Wright
Filer's e-mail	mail@ipcounselors.com
Signature	/William C. Wright/
Date	04/16/2012
Attachments	DOC041612motioncompelun-04162012142339.pdf (66 pages)(1268690 bytes)

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

In re: VENS NUTRITION, Ser. No. 85/168,760

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ULTIMATE NUTRITION, INC.

Opposer,

v.

Opposition No. 91200187

TANJA HERBST,

Applicant.

----------X

OPPOSER'S MOTION FOR SANCTIONS OR, ALTERNATIVELY, TO COMPEL DISCOVERY

Opposer, Ultimate Nutrition Inc., by and through its undersigned attorneys, hereby moves for sanctions against Applicant, Tanja Herbst("Applicant"), namely, striking Applicant's Answer and entry of judgment in favor of Opposer, pursuant to TBMP Sec. 527.01(a), (b). Alternatively, Opposer moves for an order compelling discovery without objections, pursuant to TBMP Sec. 523.01. This motion and incorporated memorandum of law are supported by the Declaration of William C. Wright submitted herewith.

Consistent with Trademark Rule 2.127(d) and 37 C.F.R. § 2.127(d), Opposer requests that the Board suspend proceedings pending this motion's determination.

On February 14, 2012, Opposer served Applicant with Opposer's First Set of Interrogatories, Opposer's First Set of Requests for the Production of Documents and Things, and Opposer's First Set of Requests for Admissions (collectively, "First Round of Discovery"). Declaration of William C. Wright ("Wright Dec."), ¶4, Ex. A. On March 26, 2012, Applicant

served Opposer with responses to Opposer's First Round of Discovery. Wright Dec., ¶5, Ex. B. Applicant did not produce a single documents in response to Opposer's First Set of Requests for the Production of Documents and Things. Wright Dec., ¶6. On March 29, 2012, Opposer requested that Applicant supplement its deficient responses and discovery production on or before April 5, 2012. Wright Dec., ¶7 , Ex. C. Opposing counsel informed Opposer that Applicant would produce some documents, but only at the end of April, and refused to further supplement Applicant's responses to Opposer First Round of Discovery, as called for in Opposer's e-mail dated March 29, 2012. Wright Dec., ¶ 8, Ex. D. In an attempt to avoid motion practice, Opposer set a deadline of April 13, 2012 to produce all of the documents that Applicant agreed to produce and requested that Applicant fully supplement her responses and production to Opposer's first round of discovery, as detailed in Opposer's e-mail dated March 29, 2012. Wright Dec., ¶ 9, Ex. E. As of the date of this motion, Applicant has not supplemented its deficient responses and discovery production. Wright Dec., ¶ 10.

Applicant's responses and production to Opposer's First Round of Discovery are clearly deficient. First, Applicant has not produced a single document that she has agreed to produce. Wright Dec., ¶ 6,8, Ex. D. Moreover, Applicant flatly refuses to produce documents called for in Document Request Nos. 5, 9, 15, 16, 17, 18, 27, 36, 42, 47-50, all of which are clearly relevant and discoverable. Wright Dec., ¶¶7-8, Exs. C-D. Opposer has explained to Applicant in an e-mail dated March 29, 2012 why all of documents called for in the aforementioned requests were discoverable, relevant, and not covered by any privilege. Applicant replied simply by stating "[w]e are only providing the documents outlined in our response! Accordingly, your request for **these** documents is refused!" *Id.* As detailed in Opposer's e-mail dated March 29, 2012, which is incorporated by reference herein, the documents called for in Document Request Nos. 5, 9, 15, 16, 17, 18, 27, 36,

42, 47-50, are all relevant and discoverable. Wright Dec., ¶7 , Ex. C.

Applicant has also failed to supplement its answers to Admissions Nos. 1, 2, and 3, and Interrogatory Nos. 13, 14, 15, 21, and 22. Wright Dec., ¶¶ 7-10, Exs. C-E. As detailed in the Opposer's aforesaid e-mail dated March 29, 2012, which is incorporated by reference herein, the Board should compel Applicant to supplement its answers to Admissions Nos. 1, 2, and 3, and Interrogatory Nos. 13, 14, 15, 21, and 22. Moreover, Tanja Herbst's Responses to Opposer's First Set of Interrogatories have been improperly signed by Applicant's counsel. Wright Dec., ¶5, Ex. B. Accordingly, the Board should compel Applicant to properly sign said responses.

Given Applicant's failure to provide the most basic information or produce the most basic documents, Applicant's refusal to provide documents called for in Document Request Nos. 5, 9, 15, 16, 17, 18, 27, 36, 42, 47-50, and Applicant's failure to sign its response to Opposer's First Set of Interrogatories, it is clear that Applicant is willfully not producing documents and will not supplement her deficient responses to Opposer's First Set of Interrogatories and Opposer's First Set of Admissions. Wright Dec., ¶¶ 4-10, Exs. A-E. Accordingly, sanctions should be imposed against Applicant, Applicant's Answer should be stricken, and judgment should be entered in favor of Opposer. Alternatively, Applicant should be compelled to immediately: 1). produce, without objection, all documents that she has agreed to produce; 2). produce, without objection, all documents called for in Document Request Nos. 5, 9, 15,16, 17, 18, 27, 36, 42, 47-50; 3). supplement, without objection, its Responses to Opposer's First Set of Interrogatories and Opposer's First Set of Admissions to Applicant; and 4). properly sign Applicant's Responses to Opposer's First Set of Interrogatories. Lastly, Opposer respectfully requests that the Board reset all relevant dates.

Respectfully submitted,
EPSTEIN DRANGEL LLP
Attorneys for Opposer

Dated: April 16, 2012 By:

William C. Wright
Jason M. Drangel
60 East 42nd Street, Suite 2410
New York, New York 10165
Tel.: (212) 292-5390
Fax: (212) 292-5391

****

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2012, a true copy of the foregoing OPPOSER'S MOTION FOR SANCTIONS OR, ALTERNATIVELY, TO COMPEL DISCOVERY has been served by e-mail, on:

Marijan Stephan Hucke
Hucke and Hucke
An Der Fuchskaul 14
Pulheim, 50259
Germany
marijan@marksandmore.de

Dated: April 16, 2012 By:

William C. Wright

****

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

In re: THE FUTURE OF SMART NUTRITION, Ser. No. 77/890,850

----------X

ULTIMATE NUTRITION, INC.

Opposer,

v.

Opposition No. 91198789

HEALTH ESSIST, INC.,

Applicant.

----------X

DECLARATION OF WILLIAM C. WRIGHT

I, William C. Wright, hereby declare as follows:

1. I am familiar with the facts set forth below and make this Declaration in support of Opposer's Motion For Sanctions, or, Alternatively, To Compel Discovery.

2. I am an attorney with the law firm of Epstein Drangel LLP, located at 60 East 42nd Street, Suite 2410, New York, New York 10165.

3. I am admitted to practice in the State of New York as well as the United States District Court for the Southern and Eastern Districts of New York.

4. On February 14, 2012, Opposer served Applicant with Opposer's First Set of

Interrogatories, Opposer's First Set of Requests for the Production of Documents and Things, and Opposer's First Set of Requests for Admissions (collectively, "First Round of Discovery"). Attached hereto as **Exhibit A** are true and correct copies of Opposer's First Round of Discovery.

5. On March 26, 2012, Applicant served Opposer with responses to Opposer's First Round of Discovery. Attached hereto as **Exhibit B** are true and correct copies of Applicant's Responses to Opposer's First Round of Discovery.

6. Applicant did not produce a single documents in response to Opposer's First Set of Requests for the Production of Documents and Things.

7. On March 29, 2012, Opposer requested that Applicant supplement its deficient responses and discovery production on or before April 5, 2012. Attached hereto as **Exhibit C** is a true and correct copy of said e-mail.

8. Opposing counsel informed Opposer that Applicant would produce some documents, but only at the end of April, and refused to further supplement Applicant's responses to Opposer First Round of Discovery, as called for in Opposer's e-mail dated March 29, 2012. Attached hereto as **Exhibit D** is a true and correct copy of said e-mail.

9. On April 11, 2012, I set a deadline of April 13, 2012 for Applicant to produce all of the documents that Applicant agreed to produce and requested that Applicant fully supplement her responses and production to Opposer's First Round of Discovery, as detailed in my e-mail dated March 29, 2012. Attached hereto as **Exhibit E** is a true and correct copy of my e-mail dated April 11, 2012.

10. As of the date of this motion, Applicant has not supplemented its deficient responses and discovery production.

I declare under the penalty of perjury that to the best of my knowledge the

foregoing is true and correct.

Dated: April 16, 2012

By: William C. Wright

EXHIBIT A

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

ULTIMATE NUTRITION, INC.,	:	
OPPOSER,	:	
v.	:	Opposition No. 91200187
TANJA HERBST	:	
APPLICANT.	:	

OPPOSER'S FIRST SET OF ADMISSIONS TO APPLICANT

Pursuant to Rule 2.120(h) of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, Opposer Ultimate Nutrition, Inc. requests that Applicant Tanja Herbst admit the truth of the following matters by providing written responses thereto to Epstein Drangel LLP, 60 East 42 Street, Suite 2410, New York, New York 10165, Attention: William C. Wright, within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

DEFINITIONS

The definitions set forth in Opposer's First Set of Interrogatories to Applicant and in Opposer's First Set of Requests for the Production of Documents and Things to Applicant, both served on February 14, 2012, are incorporated by reference as if fully set forth herein.

INSTRUCTIONS

1. If Applicant fails specifically to admit or deny any of the Requests for Admission (the "Requests," and each, a "Request"), or to set forth with particularity the reasons why it cannot admit or deny the given Request, the Request will be deemed admitted.

2. These Requests seek responses from Applicant that are complete and fully responsive as of the date the responses are executed, and which reflect or embody all relevant information and documentation within the custody or control of Applicant as of that date. Should Applicant later learn that any response was incomplete or incorrect when made, or although correct when made is no longer accurate, Applicant should timely supplement the response as required by Rule 26 of the Federal Rules of Civil Procedure.

3. No part of a Request shall be left unanswered merely because an objection is interposed as to any part thereof. Where Applicant makes an objection to any Request, Applicant should make the objection in writing and state all grounds with specificity.

4. For the convenience of the Board and the parties, Applicant should quote each Request in full immediately preceding the response.

ADMISSIONS

1. The mark VENS NUTRITION is owned by Tanja Herbst.

2. The mark VENS NUTRITION is owned by Vens Nutrition.

3. The mark VENS NUTRITION is owned by Daniel Holzl.

4. Applicant sells products bearing the mark ULTIMATE NUTRITION.

5. Daniel Holzl sells products bearing the mark ULTIMATE NUTRITION.

6. Vens Nutrition sells products bearing the mark ULTIMATE NUTRITION.

7. Applicant sells promotional items (such as, but not limited to, shirts and shaker cups)

bearing the mark ULTIMATE NUTRITION.

8. Daniel Holzl sells promotional items (such as, but not limited to, shirts and shaker cups) bearing the mark ULTIMATE NUTRITION.

9. Vens Nutrition sells promotional items (such as, but not limited to, shirts and shaker cups) bearing the mark ULTIMATE NUTRITION

10. Applicant intends to sell products bearing the mark ULTIMATE NUTRITION.

11. Daniel Holzl intends to sell products bearing the mark ULTIMATE NUTRITION.

12. Vens Nutrition intends to sell products bearing the mark ULTIMATE NUTRITION.

13. Applicant intends to sell promotional items (such as, but not limited to, shirts and shaker cups) bearing the mark ULTIMATE NUTRITION.

14. Daniel Holzl intends to sell promotional items (such as, but not limited to, shirts and shaker cups) bearing the mark ULTIMATE NUTRITION.

15. Vens Nutrition intends to sell promotional items (such as, but not limited to, shirts and shaker cups) bearing the mark ULTIMATE NUTRITION.

Respectfully submitted,

EPSTEIN DRANGEL LLP

Dated: February 14, 2012

By:

William C. Wright
Jason M. Drangel
Robert L. Epstein
Lincoln Building
60 East 42nd Street, Suite 2410
New York, New York 10165
Tel.: (212) 292-5390
Fax: (212) 292-5391

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF ADMISSIONS TO APPLICANT was served by e-mail on this 14th day of February, 2012, upon Applicant's attorney:

MARIJAN STEPHAN HUCKE
HUCKE AND HUCKE
AN DER FUCHSKAUL 14
PULHEIM, 50259
GERMANY
marijan@marksandmore.de

BY: _____
William C. Wright

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

ULTIMATE NUTRITION, INC.,	:	
OPPOSER,	:	
v.	:	Opposition No. 91200187
TANJA HERBST	:	
APPLICANT.	:	

OPPOSER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 34 of the Federal Rules of Civil Procedure, Opposer, Ultimate Nutrition, Inc., hereby requests that Applicant, Tanja Herbst, respond to the following requests for the production of documents and things by providing written responses thereto within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure and by producing the documents and things specified herein for inspection and copying at the offices of Ultimate Nutrition Inc.'s attorneys, Epstein Drangel LLP, at 60 East 42 Street, Suite 2410, New York, New York 10165, Attn.: William C. Wright, simultaneously with the written responses or at another mutually agreed upon time and place.

DEFINITIONS

A. The definitions contained in Opposer's First Set of Interrogatories to Applicant, served on February 14, 2012, are incorporated by reference as if fully set forth herein.

B. A request "concerning" any subject calls for all documents or things that reflect, relate to,

comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the request, including but not limited to all documents that reflect, record, memorialize, discuss, evaluate, consider, review or report on the subject matter of the request.

INSTRUCTIONS

1. Applicant is required to produce any and all documents in its possession, custody or control that are known or available to it, regardless of whether those documents are possessed by it or by any agent, representative, attorney or other third party. Applicant must make a diligent search of its records (including but not limited to paper records, computerized records, electronic mail records and voicemail records) and of other papers and materials in its possession, custody or control, including but not limited to those documents available to it or its agents, representatives, attorneys or other third parties.

2. All documents produced for inspection must be organized and labeled to correspond with the categories in the request or as the documents are kept in the ordinary course. Fed. R. Civ. P. 34(b).

3. In the event Applicant produces copies of the responsive documents, it is requested to retain the originals of all such documents for inspection. Staples, clips, notes, tape and other items attached in any way to documents or attaching documents to each other should not be removed.

4. Where any copy of any document is not identical to any other copy thereof by reason of any alteration, marginal notes, comments or other material contained there or attached thereto, or otherwise, Applicant should produce all such non-identical copies separately.

5. If there are no documents responsive to any particular request or part thereof, Applicant should so state in writing.

6. If any document is known by Applicant to have been in existence, but is no longer either in existence or in its possession, custody or control, Applicant should state:

a. whether the document is missing or lost, and if so, the name and current address and phone number of the persons who have knowledge of it;

b. whether the document has been destroyed, and if so, the circumstances under which it was destroyed and the name and current address and phone number of the persons who destroyed it or who have knowledge of its destruction;

c. whether the document has been transferred voluntarily or involuntarily, and in each instance explain the circumstances surrounding the date of its disposition; and

d. the identity of the persons who has possession, custody, or control of the document.

7. If Applicant objects to furnishing documents in response to any request, or any part or portion thereof, Applicant should state specifically the basis of such objection, identify the documents to which each objection applies, and furnish all requested documents to which the objection does not apply.

8. In the event any document is withheld on a claim of attorney/client privilege or work product immunity, Applicant should offer a statement signed by an attorney representing it identifying as to each such document:

a. the name of the author of the document;

b. the name of the sender of the document;

c. the names of all persons to whom copies were sent or to whom the information contained therein was disclosed;

d. the job title of every person named in (a), (b), and (c) above;

e. the date of the document;

f. the date on which the document was received;

g. a brief description of the nature and subject matter of the document; and

h. the statute, rule, or decision which is claimed to give rise to the privilege.

9. If, in responding to any document request, Applicant perceives any ambiguity in construing either the request or the instruction or definition relevant to the request, Applicant should identify the matter deemed ambiguous and set forth the construction chosen or used in answering the request.

10. These requests are continuing in character so as to require prompt supplemental production if Applicant obtains or discovers further responsive documents after preparing and serving its initial responses pursuant to these requests. Applicant should serve each supplemental response no later than 30 days after discovery of further responsive documents. In no event should Applicant serve any supplemental response later than the day before the trial period opens.

REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Request No. 1

All documents requested to be identified, or otherwise identified, in response to Opposer's First Set of Interrogatories to Applicant.

Request No. 2

Documents sufficient to show the structure, organization, directors and officers of Vens Nutrition.

Request No. 3

Documents sufficient to show Applicant's document retention and document destruction policies and electronic file retention and electronic file destruction policies.

Request No. 4

All documents that support or contravene the Applicant's allegation that on or before November 4, 2010 she had a bona fide intent to use in commerce Applicant's Mark on or in connection with each and every one of the following goods: "dietary and nutritional supplements; Nutritional supplements for boosting energy and endurance" and "footwear; Gym shorts; Headgear, namely, caps, hats, bonnets; Hooded sweat shirts; Short-sleeved or long-sleeved t-shirts; Sweat bands; Sweat jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweaters; Track jackets; Track pants; Track suits; Trousers; Trousers for sweating".

Request No. 5

All documents concerning the meaning of the term VENS.

Request No. 6

All documents concerning the creation, selection and adoption of Applicant's Mark.

Request No. 7

All documents concerning Applicant's line of dietary supplements or sports nutrition products to which the mark VENS NUTRITION has been applied.

Request No. 8

A representative sample of documents that reference VENS NUTRITION.

Request No. 9

All documents that evidence the past and current owners of Applicant's Mark.

Request No. 10

All documents concerning the meaning or commercial impression of Applicant's Mark.

Request No. 11

All documents that evidence the third party dietary supplements that Applicant or Vens Nutrition sells or intends to sell under or in connection with Applicant's Mark.

Request No. 12

All trademark searches conducted by or on behalf of Applicant concerning the right to use or register Applicant's Mark in the United States, and all correspondence and other documents relating thereto.

Request No. 13

All opinion letters commissioned or received by or on behalf of Applicant concerning the right to use or register Applicant's Mark in the United States, and all correspondence and other documents relating thereto.

Request No. 14

All documents (including, but not limited to, any final or non-final office action or other correspondence from or to the United States Patent and Trademark Office) concerning any application by Applicant to register Applicant's Mark in the United States.

Request No. 15

All documents concerning any investigation of Opposer commissioned or received by or on behalf of Applicant.

Request No. 16

All documents concerning any investigation of any of Opposer's Marks commissioned or received by or on behalf of Applicant.

Request No. 17

All documents concerning any investigation of goods and services offered under any of Opposer's Marks commissioned or received by or on behalf of Applicant.

Request No. 18

All documents evidencing ownership of all trademark applications and registrations of the mark VENS NUTRITION.

Request No. 19

All documents concerning Applicant's knowledge of Opposer and/or the activities of Opposer under any of Opposer's Marks.

Request No. 20

All documents concerning any investigation of third party marks consisting of VENS NUTRITION or any variation thereof for dietary supplements commissioned or received by or on behalf of Applicant.

Request No. 21

All documents concerning any investigation of third party marks consisting of or incorporating the phrase "ULTIMATE NUTRITION' or any phonetic equivalent thereof for dietary supplements commissioned or received by or on behalf of Applicant.

Request No. 22

With regard to any third party marks known to Applicant that include the terms "ULTIMATE

NUTRITION" or any phonetic equivalents thereof used in the dietary supplement field, all documents concerning:

(a) use of the mark, including but not limited to geographical extent of use of the mark;

(b) the extent of advertising and promotion of the mark;

(c) consumer recognition of the mark; and

(d) the percentage share of the total relevant market enjoyed by goods or services sold under the mark.

Request No. 23

All documents concerning any investigation, including but not limited to Market Research, by Applicant or on Applicant's behalf into any of the issues in this proceeding.

Request No. 24

All documents concerning confusion between Opposer's mark and Applicant's Mark.

Request No. 25

All documents concerning Applicant's planned use of Applicant's Mark in the United States.

Request No. 26

All documents evidencing any actual use of Applicant's Mark in the United States.

Request No. 27

Documents sufficient to evidence all steps Applicant has taken to use Applicant's Mark in the

United States.

Request No. 28

All communications with investors or prospective investors in Applicant's business in the United States.

Request No. 29

All documents evidencing budgets or other financial results or projections related to Applicant's use or planned use of Applicant's Mark in the United States.

Request No. 30

All documents concerning Applicant's decision to use Applicant's Mark in the United States.

Request No. 31

Documents sufficient to identify every item offered or planned to be offered under Applicant's Mark.

Request No. 32

A representative sample of each specimen of each item on which Applicant's Mark has appeared or will appear in the United States.

Request No. 33

Representative samples of advertisements (regardless of media), catalogues, brochures, promotional materials and other marketing materials showing the manner in which Applicant has

used or intends to use Applicant's Mark in the United States.

Request No. 34

Documents sufficient to identify the types of media through which Applicant has used, or intends to use, to advertise, market, promote or otherwise publicize goods or services to be offered under Applicant's Mark in the United States.

Request No. 35

All press releases and media articles concerning the goods and services offered or intended to be offered under Applicant's Mark.

Request No. 36

All documents concerning Agreements, whether or not currently in force, or negotiations with any person or entity, concerning the offering of goods or services under Applicant's Mark in the United States.

Request No. 37

All documents concerning any objection or opposition asserted by a third party in regard to Applicant's use or registration of Applicant's Mark, including but not limited to all communications between Applicant and such third party.

Request No. 38

All documents concerning any objection or opposition asserted by Applicant against a third party on the basis of Applicant's rights in Applicant's Mark, including but not limited to all

communications between Applicant and such third party.

Request No. 39

All documents concerning Opposer.

Request No. 40

All documents concerning any of Opposer's Mark.

Request No. 41

All documents concerning any goods or services offered under Opposer's Mark.

Request No. 42

All e-mails sent to third parties referencing VENS NUTRITION.

Request No. 43

From Applicant's date of first use in commerce to date, a representative sample of Applicant's invoices, sales, and shipping documents for the sale or distribution of Applicant's Products in the U.S. bearing Applicant's Mark.

Request No. 44

All documents showing where Applicant's Products bearing Applicant's mark are sold or distributed.

Request No. 45

Representative samples of all labels used or intended to be used in commerce bearing Applicant's Mark.

Request No. 46

All documents showing product formulations for the goods bearing Applicant's Mark.

Request No. 47

All documents showing Daniel Holzl's involvement with VENS NUTRITION.

Request No. 48

All documents showing the products that are or that are intended to be marketed under Applicant's Mark.

Request No. 49

All documents showing the identities of the manufacturers, distributors, and other third parties that sell, distribute, or advertise or intend to sell, distribute or advertise products bearing Applicant's Mark.

Request No. 50

All documents evidencing the domain names owned by Applicant, Daniel Holzl, and Vens Nutrition.

Request No. 51

All documents evidencing the sale of products bearing Applicant's Mark.

Request No. 52

All documents that Daniel Holzl possesses with respect to the disputed facts, including knowledge about the company Ultimate Nutrition, Inc.

Respectfully submitted,

EPSTEIN DRANGEL LLP

Dated: February 14, 2012

By: _____

William C. Wright
Jason M. Drangel
Robert L. Epstein
60 East 42nd Street, Suite 2410
New York, New York 10165
Tel.: (212) 292-5390
Fax: (212) 292-5391

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS was served by e-mail on this 14th day of February, 2012, upon Applicant's attorney:

MARIJAN STEPHAN HUCKE
HUCKE AND HUCKE
AN DER FUCHSKAUL 14
PULHEIM, 50259
GERMANY
marijan@marksandmore.de

BY: _____
William C. Wright

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

ULTIMATE NUTRITION, INC.,	:	
OPPOSER,	:	
v.	:	Opposition No. 91200187
TANJA HERBST	:	
APPLICANT.	:	

OPPOSER'S FIRST SET OF
INTERROGATORIES TO APPLICANT

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer, Ultimate Nutrition, Inc., hereby requests that Applicant, Tanja Herbst, answer the following interrogatories by serving written responses thereto at the offices of Opposer's attorneys, Epstein Drangel, LLP, 60 East 42 Street, Suite 2410, New York, New York 10165, Attention: William C. Wright, within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

DEFINITIONS

A. "Agreement" means any written or oral contract, understanding, agreement or agreement in principle, all schedules, exhibits or other documents ancillary thereto or referred to therein, and all drafts of and amendments to the foregoing.

B. "All" and "each" shall be construed as "all and each."

C. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

D. Applicant's Mark means VENS NUTRITION or any variation thereof.

E. "Communication" means, without limitation, the transmittal of information (in the form of facts, ideas, inquiries or otherwise), including, but not limited to, meetings, discussions, conversations, telephone calls, recordings, photographs, notes, memoranda, letters, facsimiles, email and the transmittal of information in the form of agreements.

F. "Concerning" means relating to, referring to, describing, evidencing or constituting.

G. "Describe," with respect to oral communications, means to state or identify the date, time of day, duration, location, persons involved, witnesses, physical occurrences, and a summary of the substance of any conversations. With respect to documents, "describe" means to identify the type of document, its date, its author, its recipients, and to offer a summary of the substance thereof.

H. "Document" is used in the broadest sense possible consistent with the Federal Rules of Civil Procedure as adopted by the Trademark Rules of Practice and includes, without limitation, non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise), and drafts, whether printed or recorded (through a sound, video or other electronic, magnetic or digital recording system) or reproduced by hand, including but not limited to writings, recordings, photographs, letters, correspondence, purchase orders, invoices, facsimiles, telegrams, telexes, memoranda, records, summaries, minutes, records or notes of personal conversations, interviews, meetings and/or conferences,

note pads, notebooks, postcards, "Post-It" notes, stenographic or other notes, opinions or reports of consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, checks (front and back), contracts, agreements, appraisals, analyses, confirmations, publications, articles, books, pamphlets, circulars, microfilms, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, tape recordings, videotapes, disks, diskettes, compact discs (CDs), data tapes or readable computer-produced interpretations or transcriptions thereof, electronically-transmitted messages (email), voicemail messages, inter-office communications, advertising, packaging and promotional materials, and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to all information contained in any computer or electronic data processing system, or on any tape, whether or not already printed out or transcribed.

I. "Identify" when used in reference to:

a. a current officer or employee of Applicant means to state the person's full name and title or position;

b. a former officer or employee of Applicant means to state, to the extent known, the person's full name, last title or position with Applicant, and the person's present business affiliation, and business addresses and telephone number or residential address and telephone number;

c. any other person means to state, to the extent known, the person's full name, present or last known address, and the current or last known place of employment and business addresses and telephone number;

d. an oral communication means to describe the date and time of the communication, the place where the communication occurred, the persons

involved in the communication, any other person present, and the substance of the communication;

e. a business entity or institution means to state, to the extent known, its full name, address and telephone number;

f. a document means to describe the document with specificity, including, where applicable, the subject matter of the document, its date, the name, title and address of each writer or sender and each recipient, its present location and custodian, and, if any such document is not in Applicant's possession or subject to its control, state what disposition was made of it, by whom, and the date thereof. Applicant may furnish a copy of the document in lieu of identifying it, provided: (a) the document contains the above information or Applicant separately furnishes such information when furnishing the document, (b) Applicant identifies the production number of such document in its response; and (c) Applicant follows the Instructions set forth in Opposer's First Set of Requests for the Production of Document and Things to Applicant.

J. "Market Research" includes all surveys, polls, focus groups, trademark and/or any other search reports, market research studies and other investigations, whether or not such investigations were completed, discontinued or fully carried out.

J. "Opposer" shall mean Ultimate Nutrition, Inc.

K. Opposer's Mark or Opposer's Marks shall mean the ULTIMATE NUTRITION marks relied upon by Opposer in its Notice of Opposition, Opposition No. 91200187.

L. "Notice of Opposition" means the action filed with the Trademark Trial and Appeal Board, assigned Opposition No. 91200187.

M. "Person" means any natural person or any business, legal or governmental entity or association.

N. "Products" shall collectively mean Applicant's dietary supplements and other sports nutrition products or promotional goods for said products, including but not limited to clothing, headwear and footwear.

O. "Applicant", "you" or "your" shall mean, collectively, as applicable, Tanja Herbst, together with any parents; subsidiaries; affiliates; successors in interest; assignees; subrogees; related companies; present and former officers, directors, employees, agents and attorneys; and any other persons acting or purporting to act for or on behalf of the foregoing.

P. "Applicant's Goods" mean dietary and nutritional supplements, sports nutrition products, and any and all related goods.

Q. "Applicant's Mark" shall mean the mark VENS NUTRITION, as reflected in Application No. 85/168,760, and any other variant mark for use on or in connection with "Applicant's Goods".

R. "Set Forth the Basis" with respect to an allegation or denial of an allegation means to state all facts, evidence and legal bases on which Applicant is relying herein in support of such allegation or denial and to identify all documents concerning such allegation or denial (including both those supporting and those tending to negate the allegation or denial).

S. "Services" shall collectively mean Applicant's services.

T. "Thing" means any tangible object.

U. The use of the singular form of any word includes the plural and vice versa.

V. References to the masculine gender shall apply equally to the feminine gender.

INSTRUCTIONS

1. Should Applicant claim that any particular interrogatory is beyond the scope of permissible discovery, Applicant should specify in detail each and every ground on which such claim rests.

2. Should Applicant find any interrogatory or any term used in an interrogatory to be vague, ambiguous, subject to varying interpretations or unclear, Applicant should identify the matter deemed to be ambiguous, vague, subject to interpretation or unclear, state its understanding of the disputed matter, and respond to the best of its ability in accordance with that understanding.

3. Should Applicant be unable to answer any interrogatory in full, Applicant should answer the interrogatory to the fullest extent possible, specify the reasons for the inability to answer the remainder, and state whatever information Applicant has concerning the unanswered portion.

4. If a claim of privilege is asserted in objecting to any interrogatory or any aspect or portion thereof, and a full answer is not or will not be provided on the basis of such assertion, Applicant should offer a statement signed by an attorney representing Applicant setting forth as to each such interrogatory or aspect or portion thereof the nature of the privilege (including work product) being claimed. Applicant should answer each interrogatory and each part thereof not requesting privileged information.

5. Applicant must answer each interrogatory and each part thereof separately and fully to the extent no objection is made.

6. Any objection to any interrogatory for which a basis has not been specifically stated within the time provided by the Federal Rules of Civil Procedure shall be waived.

7. For the convenience of the Board and the parties, Applicant should quote each interrogatory in full immediately preceding the response.

8. These interrogatories shall be deemed continuing. Should Applicant at any time after preparing and furnishing the requested information ascertain or acquire additional responsive information, Applicant should produce such supplemental information to Applicant within thirty (30) days but in no event later than the day before the trial period opens.

INTERROGATORIES

INTERROGATORY NO. 1

Describe the nature of Applicant's business and the goods or services offered under Applicant's Mark.

INTERROGATORY NO. 2

Identify each designation used by Applicant that incorporates, in whole or in part, the phrase "VENS" along with the term "NUTRITION', or any variation thereof.

INTERROGATORY NO. 3

Identify the exact goods or services offered, sold or intended to be sold under Applicant's Mark and how Applicant's Mark is currently used in commerce on said goods or services.

INTERROGATORY NO. 4

Identify each good or service for which Applicant has used in commerce said mark and, for each such goods or services, provide the following information:

a. the date upon which each such good was first sold or shipped in commerce;

b. the date upon which each such service was offer or provided in commerce;

c. the last date of sale of each such good in commerce, if it has been discontinued; and

d. the last date that the services were offered or provided in commerce.

INTERROGATORY NO. 5

Describe Applicant's current plans to use VENS NUTRITION in the U.S.

INTERROGATORY NO. 6

Describe the advertising media in the U.S. that Applicant has used or intends to use in connection with its sale of its Products bearing Applicant's Mark.

INTERROGATORY NO. 7

Identify the U.S. consumers (including U.S. distributors) to whom Applicant's has or currently markets its Products bearing Applicant's Mark.

INTERROGATORY NO. 8

Identify all channels of trade by which Applicant's Products bearing Applicant's Mark is used or

is intended to be used.

INTERROGATORY NO. 9

Identify Applicant's annual gross sales of each Product bearing Applicant's Mark since the date of first use in the United States of each Product.

INTERROGATORY NO. 10

Describe the reasons why Applicant selected Applicant's Mark.

INTERROGATORY NO. 11

State when and describe how Applicant first became aware of Opposer's Mark.

INTERROGATORY NO. 12

Describe the meaning of the term VENS.

INTERROGATORY NO. 13

Set Forth Applicant's basis for alleging that on or before November 4, 2010 she had a bona fide intent to use in commerce Applicant's Mark on or in connection with each and every one of the following items: "dietary and nutritional supplements; Nutritional supplements for boosting energy and endurance" and "footwear; Gym shorts; Headgear, namely, caps, hats, bonnets; Hooded sweat shirts; Short-sleeved or long-sleeved t-shirts; Sweat bands; Sweat jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweaters; Track jackets; Track pants; Track suits;

proceeding (including a refusal of registration by a Trademark Examining Attorney) or other proceeding which involves or relates to Applicant's alleged rights to Applicant's Mark or other persons rights to "VENS NUTRITION" or the phonetic equivalent thereof, and provide copies of all documents that refer or relate or are relevant thereto.

INTERROGATORY NO. 20

Identify all instances of actual confusion known to Applicant between the source of Opposer's dietary supplements, nutritional supplements, vitamins, or any other sports nutrition product sold under Opposer's Marks and the goods sold under Applicant's Mark.

INTERROGATORY NO. 21

Identify the date when Applicant first became aware of Opposer or dietary supplements, nutritional supplements, vitamins, or any other sports nutrition product sold under Opposer's Mark(s).

INTERROGATORY NO. 22

Identify each and every person who prepared, assisted in the preparation of, or provided information to Applicant for the answers to the foregoing Interrogatories, indicating for each such person which interrogatory answer he or she prepared, assisted in the preparation of, or otherwise provided the information for, and/or which documents he or she provided.

INTERROGATORY NO. 23

Describe why Vens Nutrition is the applicant for the Community Trademark registrations of

VENS NUTRITION and VENS NUTRITION EXPERIENCE IN SPORTS NUTRITION, Nos. 009604216 and 009436651.

Respectfully submitted,

EPSTEIN DRANGEL LLP

Dated: February 14, 2012

By: _____

William C. Wright
Jason M. Drangel
Robert L. Epstein
Lincoln Building
60 East 42nd Street, Suite 2410
New York, New York 10165
Tel.: (212) 292-5390
Fax: (212) 292-5391

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served by e-mail, on this 14th day of February, 2012, upon APPLICANT's attorney:

MARIJAN STEPHAN HUCKE
HUCKE AND HUCKE
AN DER FUCHSKAUL 14
PULHEIM, 50259
GERMANY
marijan@marksandmore.de

BY: _____
William C. Wright

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ULTIMATE NUTRITION, INC.,	)	OPPOSITION NO: 91200187
OPPOSER,	)	
v.	)	RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS
TANJA HERBST	)	
APPLICANT	)	
	)	
	)	

TANJA HERBST'S RESPONSE TO OPPOSER'S FIRST SET OF ADMISSIONS TO APPLICANT

Responding Party: Applicant
Tanja, Herbst

Requests for Admission Set 1

Requesting party: Opposer
Ultimate Nutrition, Inc.

Tanja Herbst, the Applicant in the above opposition proceeding, responds, by and through its counsel of record, as follows to the First set of Requests for Admission of Opposer, Ultimate Nutrition, Inc.:

1. Applicant admits that the trademark application VENS NUTRITION in the United States is owned by Tanja Herbst.
2. Applicant denies that the U.S. trademark application VENS NUTRITION is currently owned by Vens Nutrition.
3. Applicant denies that the U.S. trademark application VENS NUTRITION is currently owned by Daniel Hölzl.
4. DENIED
5. DENIED
6. DENIED
7. DENIED

8. DENIED
9. DENIED
10. DENIED
11. DENIED
12. DENIED
13. DENIED
14. DENIED
15. DENIED

HUCKE & HUCKE LAW OFFICE
Attorneys for Applicant

Marijan Hucke
Attorney for Applicant

CERTIFICATE OF SERVICE

It is hereby certified on the 26th day of March, 2012, the forgoing Applicant's response to the Opposer's request for admission pursuant to Rule 36 of the Federal Rules of Civil Procedure was served by email upon Opposer's attorney:

William C. Wright
Epstein Drangel LLP
60 East 42nd Street, Suite 2410
New York, NY 10165
UNITED STATES
bwright@ipcounselors.com

HUCKE & HUCKE

Marijan Hucke
Attorney for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ULTIMATE NUTRITION, INC.,	)	OPPOSITION NO: 91200187
OPPOSER,	)	
v.	)	RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS
TANJA HERBST	)	
APPLICANT	)	
	)	
	)	

TANJA HERBST'S RESPONSE TO OPPOSER'S
FIRST SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS AND THINGS

Responding Party: Applicant
Tanja, Herbst

Requests for documents and things Set 1

Requesting party: Opposer
Ultimate Nutrition, Inc.

Tanja Herbst, the Applicant in the above opposition proceeding, responds, by and through its counsel of record, as follows to the First set of Requests for the production of documents and things of Opposer, Ultimate Nutrition, Inc.:

General Objections:

1. The general objections in Applicant's responds to the First Set of Interrogatories are incorporated by reference as if fully set forth herein.

2. Applicant objects to the Opposer's Instructions as they are vague overbroad and overly burdensome as the Opposer requires the Applicant to produce any and all documents.

3. Applicant objects to the Requests to the extent that they seek information protected by the attorney-client privilege, that was prepared in anticipation of litigation, and/or is attorney work product.

4. Applicant objects to the first and eighth paragraph of the "Instructions" section of Opposer's Request for the production of documents and things, as they interfere with the attorney-client privilege.

5. Applicant objects to the request of Opposer to produce the documents and things requested for inspection and copying at the offices of Ultimate Nutrion Inc.'s attorneys. Applicant is not required to copy responsive documents and forward them to its adversary in response to a document request. It is sufficient for a responding party to make the documents available, at the place they are normally kept, for inspection and copying by the inquiring party (Electronic Industries Ass'n v. Potega, 50 U.S.P.Q2d 1775 (T.T.A.B. 1999)).

6. Applicant objects that to providing documents outside the time period November 10, 2010 to the present (the "relevant period"), on the grounds that requests for documents and information outside the relevant period are overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

7. Applicant object to the Requests to the extent that they require Applicant to provide information not within the scope of discovery permitted by Rules 26 and 34 of the Federal Rules of Civil Procedure.

8. Applicant responds to each of the Interrogatores and Requests for Production of Documents based upon information and documentation available as of the date hereof and reserve the right to supplement and amend their responses.

Specific Reponses

1. Applicant object to this Request on the ground that it is vague.

   Subject to and without waiver of the general and specific objections, Applicant has no such documents available as already stated in the responds to the First set of Interrogatories to Applicant.

2. Applicant object to this Request on the ground that it is beyond the scope of discovery.

   Subject to and without waiver of the general and specific objections, the company Vens Nutrition is not party to the present opposition proceeding. Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

3. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

   Subject to and without waiver of the general and specific objections, the Applicant does not have such a policy.

4. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

   Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

5. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

   Subject to and without waiver of the general and specific objections, Applicant submits that the word VENS has no meaning.

6. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

   Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

7. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

   Subject to and without waiver of the general and specific objections, the trademark is currently not used and has not been used in the U.S.

8. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

   Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

9. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

   The U.S. trademark application VENS NUTRITION has been applied for in the name of the applicant as can be seen from the USPTO record. The trademark has since been owned by the Applicant.

10. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

11. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

    Subject to and without waiver of the general and specific objections, Applicant currently does not sell, currently intends to sell or has sold third party products under the trademark in commerce in the U.S.

12. Applicant object to this Request on the ground that the request is vague and the information and documents sought to be discovered are protected by the attorney-client privilege.

13. Applicant object to this Request on the ground that the information and documents sought to be discovered are protected by the attorney-client privilege.

14. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome. The information requested is available online at the USPTO website.

    Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

15. Applicant object to this Request on the ground that it is vague, overbroad and unduly burdensome and the information and documents sought to be discovered are protected by the attorney-client privilege.

16. Applicant object to this Request on the ground that it is vague, overbroad and unduly burdensome and the information and documents sought to be discovered are protected by the attorney-client privilege.

17. Applicant object to this Request on the ground that it is vague, overbroad and unduly burdensome and the information and documents sought to be discovered are protected by the attorney-client privilege.

18. Applicant object to this Request on the ground that it is vague, overbroad and unduly burdensome and the information and documents sought to be discovered are protected by the attorney-client privilege.

    Subject to and without waiver of the general and specific objections, Applicant

19. Applicant object to this Request on the ground that it is vague, overbroad and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant has currently no such documents.

20. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome. The information requested is available online at the USPTO website.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

21. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome. The information requested is available online at the USPTO website.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

22. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

23. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

24. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant is of the opinion that Opposer's trademarks and Applicant's trademark application are not confusingly similar and thus, has no such documents available.

25. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

26. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not use the trademark in the U.S.

27. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not use the trademark in the U.S.

28. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not have such documents.

29. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

30. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

31. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

32. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

33. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

34. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

35. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

36. Applicant object to this Request on the ground that it is vague, overly burdensome, unduly burdensome and are protected or privileged.

37. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently has no such documents.

38. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently has no such documents.

39. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

40. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

41. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

42. Applicant object to this Request on the ground that it is vague, overbroad and unduly burdensome and the information and documents sought to be discovered are protected by the attorney-client privilege.

43. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not use the trademark in the U.S.

44. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not use the trademark in the U.S.

45. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

46. Applicant objects to this Request on the grounds that it is overbroad and seeks disclosure of confidential business information.

47. Applicant objects to this Request on the grounds that it is overbroad. The company VENS NUTRITION nor Daniel Hölzl are parties to the opposition proceeding.

48. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not use the trademark in the U.S.

49. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not use the trademark in the U.S.

50. Applicant objects to this Request on the grounds that it is overbroad. The company VENS NUTRITION nor Daniel Hölzl are parties to the opposition proceeding.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

51. Applicant object to this Request on the ground that it is vague, overly burdensome and unduly burdensome.

Subject to and without waiver of the general and specific objections, Applicant currently does not use the trademark in the U.S.

52. Applicant objects to this Request on the grounds that it is overbroad. The company VENS NUTRITION nor Daniel Hölzl are parties to the opposition proceeding.

Subject to and without waiver of the general and specific objections, Applicant will make available for inspection and copying all such documents in their possession which they believe are responsive to this Request.

HUCKE & HUCKE LAW OFFICE
Attorneys for Applicant

Marijan Hucke
Attorney for Applicant

CERTIFICATE OF SERVICE

It is hereby certified on the 26th day of March, 2012, the forgoing Applicant's response to the Opposer's request for production of documents and things pursuant to Rule 34 of the Federal Rules of Civil Procedure was served by email upon Opposer's attorney:

William C. Wright
Epstein Drangel LLP
60 East 42nd Street, Suite 2410
New York, NY 10165
UNITED STATES
bwright@ipcounselors.com

HUCKE & HUCKE

Marijan Hucke
Attorney for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ULTIMATE NUTRITION, INC.,	)	OPPOSITION NO: 91200187
OPPOSER,	)	
V.	)	RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS
TANJA HERBST	)	
APPLICANT	)	
	)	
	)	

TANJA HERBST'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Responding Party: Applicant
Tanja, Herbst

Requests for Interrogatories Set 1

Requesting party: Opposer
Ultimate Nutrition, Inc.

Tanja Herbst, the Applicant in the above opposition proceeding, responds, by and through its counsel of record, as follows to the First set of Interrogatories of Opposer, Ultimate Nutrition, Inc.:

General Objections:

1. Applicant objects to Opposer's "Instructions" and "Definitions" to the extent they purport to impose discovery obligations that differ from or exceed the discovery obligations imposed by the Federal Rules of Civil Procedure.

2. Applicant objects to the Interrogatories and Requests for Production of Documents to the extent that they seek information protected by the attorney-client privilege, the work-product privilege, or any other privilege, protection, or immunity applicable under the governing law.

3. Applicant objects to the Interrogatories and Requests for Production of Documents to the extent that they are overly broad, unduly burdensome, oppressive, and/or seek information

that is not relevant to the issues in this opposition proceeding or reasonably calculated to lead to the discovery of admissible evidence.

4. These General Objections are made, to the extent applicable, in response to each of the Interrogatories and Requests for Production of Documents as if the objections were fully set forth therein.

5. Applicant responds to each of the Interrogatores and Requests for Production of Documents based upon information and documentation available as of the date hereof and reserve the right to supplement and amend their responses.

1. The Applicant is in the business of dietary and nutrition supplements and currently does not offer any goods or services in the United States.

2. Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

   Subject to and without waiving this objection, the Applicant responds that she currently intends to use the trademark VENS NUTRITON for its nutritional supplement products.

3. Objection. This Interrogatory is vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

   Subject to and without waiving this objection, the Applicant responds that she currently does not offer and has not sold any products in commerce. The Applicant intends to sell nutritional supplement products in commerce under Applicant's trademark VENS NUTRITION.

4. The Applicant currently has not used in commerce said trademark.

5. The Applicant plans to use VENS NUTRITION on nutritional supplemental products in the U.S.

6. The Applicant has not used any advertising media and has currently no intention to use a certain advertising media in the U.S.

7. The Applicant has not marketed or currently markets its products bearing Applicant's trademark to any U.S. consumers.

8. The Applicant has not used any channels of trade in the U.S. and is currently unable to identify a specific channel of trade by which Applicant's products bearing Applicant's trdeamark is intended to be used in the U.S.

9. The Applicant has not used the trademark in the U.S. and therefore cannot identify any annual gross sales of products bearing Applicant's trademark.

10. Applicant is in the business of nutrition supplemental products, therefore Applicant intended to use the descriptive term "nutrition" within its trademark. There is no specific reason why Applicant selected the word "VENS".

11. The Applicant, Tanja Herbst, became aware of the Opposer's U.S. trademark registrations at the time the Opposer informed her of these registrations by way of serving Notice of Opposition together with enclosures with copies of the database print outs of the trademark registrations on June, 9th 2011.

12. The term VENS has no meaning.

13. Objection. This Interrogatory is vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

14. The opposed U.S. trademark application has been filed in the name of the Applicant. The owner has since not changed.

15. Objection. The Applicant objects to this interrogatory as is overly broad and unduly burdensome and may seek information that could be protected or privileged.

    Subject to and without waiving this objection, the Applicant responds that the U.S. trademark application has not been and currently is not used in the U.S. Hence, the Applicant cannot identify any such agreements requested.

16. Objection. This Interrogatory seeks information that could be protected or privileged and is not reasonably calculated to lead to the discovery of admissible evidence.

    Subject to and without waiving this objection, the Applicant responds that the trademark has not been used in the United States. Hence, the Applicant is unable to identify any such establishments.

17. Objection. This Interrogatory seeks information that could be protected or privileged and is not reasonably calculated to lead to the discovery of admissible evidence.

    Subject to and without waiving this objection, the Applicant responds that no third party dietary products have been sold or are currently intended to be sold.

18. The Applicant does not sell ULTIMATE NUTRITION products nor does she or a related third party intend to sell such products.

19. Objection. This Interrogatory is vague and unduly burdensome.

    Subject to and without waiving this objection, the Applicant responds that she does not have actual knowledge of such matter. Further, the Applicant is under no obligation to make any special investigation or research to furnish such information.

20. There are no such instances known to the Applicant.

21. Objection. This Interrogatory is vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

22. Objection. This Interrogatory seeks information protected by the attorney-client privilege, the work-product privilege, or any other privilege, protection, or immunity applicable under the governing law.

23. Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. As a general rule the Applicant is not required during discovery to provide information relating to its use or the use of third party trademarks other than the trademark involved in the case.

HUCKE & HUCKE LAW OFFICE
Attorneys for Applicant

Marian Hucke
Attorney for Applicant

CERTIFICATE OF SERVICE

It is hereby certified on the 26th day of March, 2012, the forgoing Applicant's response to the Opposer's First Set of Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure was served by email upon Opposer's attorney:

William C. Wright
Epstein Drangel LLP
60 East 42nd Street, Suite 2410
New York, NY 10165
UNITED STATES
bwright@ipcounselors.com

HUCKE & HUCKE

Marian Hucke
Attorney for Applicant

EXHIBIT C

William C. Wright

From: William C. Wright
Sent: Thursday, March 29, 2012 12:04 PM
To: 'office@u-tm.com'
Subject: RE: Opp No. 91200187 Serial No. 85/168760 Vens Nutrition

Dear Marijan:

As I indicated in my earlier e-mail your client's responses to Ultimate's first set of discovery requests is inadequate. Therefore, in an effort to avoid motion practice, please have your client fully and completely supplement her responses on or before April 5, 2012.

As to what requires further specificity and/or supplementation, please note the following.

I. **ADMISSIONS**

Admissions 1, 2, and 3 require your client to admit or deny if Tanja Herbst, Vens Nutrition, or Daniel Holzl own the mark VENS NUTRITION, not the U.S. trademark application for the same mark. Accordingly, we seek your client's revised responses to the questions posed.

II. **INTERROGATORIES**

No. 13 – The interrogatory is relevant in determining your client's bona fide intent to use the mark in the U.S. Please explain your client's intent to use the applied for mark for the goods in the application.

No. 14 – The question is not limited to the U.S. application; it calls for all past and current owners of Applicant's Mark. Since Vens Nutrition is the applicant for the Community Trademark registration of VENS NUTRITION and your client filed for the same mark in the U.S., there is an issue as to who owns the mark VENS NUTRITION. This response must therefore be supplemented.

No. 15 – There is a protective order in place and this interrogatory goes to ownership of the mark and channels of trade. This response must therefore be supplemented.

No. 21 – This interrogatory goes to your client's bad faith adoption of its mark. Moreover, despite an objection, the interrogatory must be responded to. This response must therefore be supplemented.

No. 22 – This interrogatory is relevant in that there is a question as to who owns Applicant's Mark. Moreover, despite an objection, the interrogatory must be responded to. This response must therefore be supplemented.

III. **DOCUMENT REQUESTS**

You have agreed to provide us with the documents that your client has indicated it has in its possession and control. Please provide all such documents on or before April 5, 2012.

Request No. 5 – We have not asked for the meaning of VENS but instead requested that Applicant provide documents pertaining to the meaning of that term. This response must therefore be supplemented.

Request No. 9 – This request goes to the ownership of the mark, not the U.S. application. Please produce the requested documents.

Request Nos. 15, 16, 17 and 18 – All of this information is discoverable and none of it is privileged. Also, you have not produced a privilege log. Please produce the requested documents.

Request No. 27 – Calls for documents showing the steps your client has taken to use the mark in the U.S. Please produce the requested documents.

Request No. 36 – There is protective order, the information called for is not privileged, and the request goes to ownership of the mark and channels of trade. Please produce the requested documents.

Request No. 42 – This request goes to your client's intent to use and the products offered. It cannot be privileged because the e-mails were sent to third parties. Also, there is a protective order in place. Please produce the requested documents.

Request No. 47 & 50 – These requests go to the ownership of the mark. Please produce the requested documents.

Request Nos. 48 & 49 - These requests go to your client's intent to use. Please produce the requested documents.

Regards,

Bill

William C. Wright I Epstein Drangel LLP
60 East 42nd Street, Suite 2410, New York, NY 10165
T: 212-292-5390 I F: 212-292-5391 I E: wwright@ipcounselors.com

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-----Original Message-----
From: Attorney Marijan Hucke [mailto:office@u-tm.com]
Sent: Monday, March 26, 2012 11:52 PM
To: William C. Wright
Subject: Opp No. 91200187 Serial No. 85/168760 Vens Nutrition

Dear Bill,

enclosed please find the responses to the request for documents and things, admissions and interrogatories.

Please confirm receipt!

Further, also confirm that you have received our client's Initial Disclosure.

Yours sincerely,

Marijan Hucke
Attorney at Law

EXHIBIT D

William C. Wright

Subject: FW: AW: Re: AW: AW: Opp No. 91200187 Serial No. 85/168760 Vens Nutrition

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From: Attorney Marijan Hucke [mailto:office@u-tm.com]
Sent: Wednesday, April 11, 2012 3:18 AM
To: William C. Wright
Subject: AW: AW: Re: AW: AW: Opp No. 91200187 Serial No. 85/168760 Vens Nutrition

Dear Bill,

due to the Easter holiday period I am responding you today.

We are only providing the documents outlined in our response! Accordingly, your request for **these** documents is refused!

As I already mentioned, our client is unable to provide the documents until the end of April, I therefore suggest an additional extension of 30 days. Please advise.

Yours sincerely,

Marijan Hucke, Esq.
Attorney at Law

Law Office Hucke Hucke
An der Fuchskaul 14
50259 Pulheim

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email: hucke@u-tm.com

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EXHIBIT E

William C. Wright

Subject: FW: AW: Re: AW: AW: Opp No. 91200187 Serial No. 85/168760 Vens Nutrition

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From: William C. Wright
Sent: Wednesday, April 11, 2012 2:01 PM
To: 'Attorney Marijan Hucke'
Subject: RE: AW: Re: AW: AW: Opp No. 91200187 Serial No. 85/168760 Vens Nutrition

Dear Marijan:

Your client has failed to produce a single document. All of the documents requested should be kept in the ordinary course of business. Therefore, I am puzzled as to why the documents cannot be immediately produced.

With that in mind, we ask that your client produce all of the documents it has agreed to produce in Tanja Herbst's Response to Opposer's First Set of Requests for the Production of Document and Things and fully supplements its responses and production to Opposer's first round of discovery, as detailed in my e-mail dated March 29, 2012, on or before **April 13, 2012**.

If your client fail to do that, we will have no choice but to make a motion to compel.

Bill

William C. Wright | Epstein Drangel LLP
60 East 42nd Street, Suite 2410, New York, NY 10165
T: 212-292-5390 | **F**: 212-292-5391 | **E**: wwright@ipcounselors.com

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