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

Proceeding	91205046
Party	Defendant Ate My Heart Inc.
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Preliminary Statement

Parsing through Ms. Sukljian's irrelevant ramblings, one thing is clear: Ms. Sukljian agrees that the only information produced to AMH in response to its comprehensive discovery requests and *after* the Board issued its Order to Compel, was a link to her website. Nothing else. For all of her boasting about her publicity (none of which she alleges is actually related to her supposed mark) as well as her naked claims of continuous use since 2001, Ms. Sukljian did not produce one invoice, one shipping document, any customer lists or any advertising examples proving that the mark was ever in use in commerce. These items were properly and reasonably requested by AMH and are not subject to any privilege, as she claimed in her tardy responses. In fact, during multiple calls between the parties, counsel for AMH repeatedly implored Ms. Sukljian to provide AMH with evidence of her use – even informally – but Ms. Sukljian refused.

Here is what is really going on: Ms. Sukljian registered a trademark, which she never used and never had any intention to use. Once Lady Gaga rose to international fame and began receiving virtually unparalleled publicity, Ms. Sukljian decided to capitalize on Lady Gaga's fame and good will by commencing use of the mark in commerce. Indeed, her domain name for the gagapureplatinum.com website was registered in 2011 – three years after Lady Gaga achieved worldwide renown. More specifically, the actual website associated with the domain did not go “live” until *after* AMH filed the cancellation action against Ms. Sukljian's registration – something she admitted on the phone during discussions with counsel. Put simply, Ms. Sukljian will not produce responsive documents illustrating that she has been actively using her mark in commerce since 2001 because, in fact, there are none.

Ms. Sukljian cannot use her registration as both a shield and a sword. She cannot continue to rely on the registration to oppose AMH's trademark without proving that the

trademark is valid – that it has not been abandoned and that it has been continuously used as she alleges. Her game-playing and bad faith, which has forced AMH to spend money filing a Motion to Compel and then, when that was granted, a Motion for Sanctions, should not be rewarded.¹ Ms. Sukljian still should be sanctioned for failing to comply with the Board’s Order to produce discovery to AMH by the Board entering judgment against her in this cancellation proceeding and in her opposition proceeding, which have been consolidated. Alternatively, Ms. Sukljian should be prohibited from relying on any responsive documents in support of her opposition or her defense in the cancellation action.

ARGUMENT

Ms. Sukljian claims to have “fully complied with the Board’s Order to answer discovery.” The claim is false. AMH requested that Ms. Sukljian produce information and documents to prove that Ms. Sukljian has actually been using her Mark on each of the items identified in its registration since the date of first use claimed in Ms. Sukljian’s registration.

AMH’s discovery requests are tailored to elicit information from Ms. Sukljian that are relevant to her defense in this proceeding and that would also form the basis for her opposition to AMH’s application to register the mark. Thus, the items responsive to AMH’s Discovery Requests include but are not limited to invoices, the quantity of items sold under the mark each year, annual revenues received from items sold under the mark, advertising examples, annual advertising expenditures, customer lists, contracts or licenses relating to the use of the mark and packaging for the goods.

¹ Ms. Sukljian’s attempts to paint AMH as a tormentor (though not relevant to the instant motion) are complete fabrication and further evidence of her own bad faith. Ms. Sukljian accuses AMH of making “false and defamatory statements” to the Village Voice but conveniently omits that she initiated the entire exchange with her own slanderous statements. Ms. Sukljian – not AMH - sent an email to the Village Voice that began “Lady Gaga (Ate My Heart, Inc /Stefani Germanotta) is a bully...” and concluded with “her tactic is to lie by using fraudulent, baseless and groundless claims.... Looks like she's living up to her self proclaimed title of 'mother monster' and has proven to be a total hypocrite.” AMH’s response was solicited. A copy of the article is attached hereto.

None of these items were provided and none are on the website identified by Ms. Sukljian – two facts that Ms. Sukljian cannot and does not dispute. Nor can Ms. Sukljian hide behind her so-called “general objections” of “vagueness” and “privilege” to every single one of AMH’s document requests to justify her failure to produce even one document supporting her contention that she has continuously used her mark in commerce since 2001.

Where, as here, a party fails to comply with its discovery obligations, the opposing party may file a motion to compel, and if that motion is granted and the obligations are still not met, the opposing party may *then* file a motion for sanctions, which can include entry of judgment. *See MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477, 1478 (TTAB 2000) (“The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including entry of judgment [citations omitted].”).

For example, in one case, an opposer engaged in a course of delay in failing to respond to discovery for a substantial period of time and, similar to the instant matter, disregarded the Board’s Order to respond. As a sanction, the Board entered judgment against the opposer and dismissed the opposition with prejudice. *See Mendoza v. Digium, Inc.*, 2009 TTAB LEXIS 158 (March 27, 2009). *See also Unicut Corporation v. Unicut, Inc.*, 220 USPQ 1013 (TTAB 1983); *Wahl v. Fusco*, 39 U.S.P.Q.2d 1223 (TTAB 1996) (judgment of cancellation granted for registrant’s failure to respond to discovery; registrant was non-responsive and ignored the Board’s instructions).

In another instance, the Board found that an opposer's failure to comply with an order compelling discovery until the applicant had filed a motion for sanctions demonstrated "an intent

to obstruct applicant's receipt of information and documents that the Board had already determined are discoverable." As a sanction, the Board ruled that the opposer could only introduce at trial the information and documents it had provided to the applicant before the applicant moved for discovery sanctions. *See HighBeam Mktg., LLC v. Highbeam Research, LLC*, 2008 TTAB LEXIS 2, 85 U.S.P.Q.2d 1902 (TTAB Jan. 23, 2008) (holding that "opposer may only introduce at trial, whether by testimony and related exhibits or by notice of reliance, when that option is available because of the nature of the documents, the information and documents that were provided to applicant in opposer's initial responses to applicant's discovery requests or in any supplemental responses prior to the filing of the motion for discovery sanctions.").

Here, Ms. Sukljian evaded discovery for many months, forcing AMH to file a Motion to Compel, which the Board granted. Then, in response to the Board's Order compelling Ms. Sukljian to provide discovery in this matter, Ms. Sukljian again stonewalled – this time by improperly responding "claim of privilege" to virtually all of AMH's interrogatory and document request responses and directing AMH to her website. As mentioned earlier, the site was launched after the instant cancellation action was filed. Moreover, there is no proof that the website resulted in even one sale of one item of merchandise, much less sales dating back to 2001.

Accordingly, AMH requests that judgment be entered against Ms. Sukljian for her willful disregard of the Board's Order and her repeated failure to produce any meaningful discovery responses – let alone "full and complete responses" to AMH's Discovery Requests. Judgment against Ms. Sukljian is appropriate and necessary as a result of Ms. Sukljian's willful evasion of

her obligations under the Federal Rules and TBMP as well as her blatant disregard of the Board's Order.

AMH alternatively requests that an order be entered (i) directing that the designated facts in the Petition for Cancellation be taken as established for purposes of the action as AMH claims; (ii) prohibiting Ms. Sukljian from supporting or opposing AMH's designated claims or defenses; and (iii) prohibiting Ms. Sukljian from introducing designated matters in evidence as a result of her disobedience.

WHEREFORE, for the reasons set forth herein, AMH's motion for sanctions should be granted in its entirety and judgment entered against Ms. Sukljian and in favor of AMH.

Dated: New York, New York
January 23, 2013

Respectfully submitted,

PRYOR CASHMAN LLP

By:  _____

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Lady Gaga Accused Of Bullying! She Defends Herself! Exclusive Story

By Michael Musto Tue., Jun. 26 2012 at 11:29 AM
Categories: Lady Gaga

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In came the email:

"**Lady Gaga** (Ate My Heart, Inc /Stefani Germanotta) is a bully and suing the family business that owns the 12-year-old registered trademark brand Gaga Pure Platinum cosmetics because she can't get a federal trademark registration, after being blocked registration twice.

"Gaga Pure Platinum was created and has existed since 2000 and to try to get what she wants, with no regard to who she hurts, she is trying to steal the Gaga registered trademark from Gaga Pure Platinum with a lawsuit. Lady Gaga doesn't own any trademark rights to

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from Gaga Pure Platinum with a lawsuit. Lady Gaga doesn't own any trademark rights to Gaga in cosmetics because Gaga Pure Platinum cosmetics owns it and trademarked it when Stefani Germanotta was 14 years old, long before Lady Gaga came into existence.

"So much for her anti bullying campaigns because she is bullying a family business and her tactic is to lie by using fraudulent, baseless and groundless claims in federal trademark court so she can bully them with her fame....Looks like she's living up to her self proclaimed title of 'mother monster' and has proven to be a total hypocrite. Once again she has copied yet another artist that came before her, Gaga Pure Platinum.

All the public information is available at this link."

I reached out to Gaga's people for a response, and I didn't have to bully them for it.

Here it is:

"Lady Gaga and her companies respect intellectual property and would never infringe on anyone's rights. But this particular trademark hasn't been used in what appears to be years.

"In fact, Lady Gaga's counsel tried several times to speak to the original owners about their alleged use of their mark in an effort to find a way to amicably coexist. There was never a response."

And now, here's the response to *that* from the trademark owners:

"The Gaga Pure Platinum trademark has been and continues to be in use. Lady Gaga's counsel never contacted Gaga Pure Platinum nor did we ever receive any communication from Lady Gaga nor it's representatives. No effort to communicate was ever made, only a court action."

Judges?

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CERTIFICATE OF SERVICE

I certify that on Jan. 23, 2013, a true and correct copy of the foregoing **REPLY TO RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH THE BOARD'S DISCOVERY ORDER AND REQUEST FOR JUDGMENT** was mailed by Express Mail, postage prepaid to:

Christina Sukljan
13 Manor Street
Albany, NY 12207


Name: Nicole E. Kaplan