

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

Faint

Mailed: August 5, 2013

Opposition No. 91205046

Christina Sukljian

v.

Ate My Heart, Inc.

Cancellation No. 92055279

Ate My Heart, Inc.

v.

Christina Sukljian

Before Bucher, Wolfson and Masiello,  
Administrative Trademark Judges.

By the Board:

Ate My Heart, Inc. (AMH) seeks to register the mark **HAUS OF GAGA** in standard character form for cosmetics and other goods in Class 3.<sup>1</sup> Christina Sukljian opposes registration of AMH's mark on the grounds of deceptiveness and false suggestion of a connection under Trademark Act § 2(a), dilution under Trademark Act § 43(c), and priority and likelihood of confusion under Trademark

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<sup>1</sup> Application Serial No. 85215017, filed January 11, 2011 pursuant to Trademark Act § 1(b). The following statements are of record, "The English translation of 'HAUS' is 'HOUSE'; and "The name 'Gaga' identifies the stage name of Stefani Germanotta, a living individual whose consent is of record."

Act § 2(d) with her pleaded Registration, No. 2898544 for the mark **GAGA PURE PLATINUM** in typed form.<sup>2</sup>

AMH filed a petition to cancel Ms. Sukljian's pleaded registration on the ground of abandonment. AMH also claims ownership, in the cancellation proceeding, of three registrations for the mark **LADY GAGA**<sup>3</sup> in standard character form, and three pending trademark applications, including the one at issue in the opposition proceeding.

On June 29, 2012, AMH served Ms. Sukljian with its First Set of Interrogatories and Document Requests in the cancellation. Ms. Sukljian did not respond to AMH's discovery requests. On September 20, 2012, AMH filed a motion to compel Ms. Sukljian to respond to the discovery requests. On November 6, 2012, the Board granted AMH's motion to compel as conceded, and ordered Ms. Sukljian, who is acting pro se, to serve initial disclosures and verified answers to AMH's first set of interrogatories and first set of document requests. On November 7, 2012, AMH served Ms. Sukljian with essentially the same First Set of Interrogatories and

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<sup>2</sup> Registration No. 2898544, issued November 2, 2004, for "cosmetics; namely nail polish, lipstick, lip-gloss, eye-liner, lip-liner, eye shadow, face powder, blush, mascara" in Class 3, claiming a date of first use of July 23, 2000 and first use in commerce of June 7, 2001. A Section 8 affidavit was accepted June 5, 2010, and Section 15 affidavit was acknowledged. "Typed drawing" form is now known as standard character form. *See Trademark Rule 2.52* (a): "Standard character (typed) drawing."

<sup>3</sup> Registration No. 3695129, registered October 13, 2009, for clothing in Class 25, claiming dates of use and first use in commerce of June 2008; Registration No. 3695038, registered October 13, 2009, for entertainment services in Class 41, claiming dates of use and first use in commerce of September 1, 2006; and Registration No. 3960468, registered May 17, 2011, for various goods in Class 9. "The following statement is of record in all three registrations: "Lady Gaga' identifies the stage name of Stefani Germanotta, a living individual whose consent is of record."

Document Requests in the opposition. On December 12, 2012, the Board consolidated these proceedings.

On November 26, 2012, Ms. Sukljian served the responses described below to AMH in the cancellation, and then on December 6, 2012, served the same responses on AMH in the opposition. More specifically, in response to Interrogatory No. 2 requesting the identity of persons having knowledge of the facts relied on for the answers, and Interrogatory No. 20 requesting the identity of persons who provided information or assisted in answering the interrogatories, Ms. Sukljian identified herself. In response to the remaining nineteen of AMH's twenty-one interrogatories, Ms. Sukljian stated "Claim of privilege by Defendant." In response to Document Request No. 35 seeking samples of Ms. Sukljian's goods, Ms. Sukljian responded, "Samples of Defendant's goods are in use in commerce and available to purchase" and provided a link to the website [www.gagapureplatinum.com](http://www.gagapureplatinum.com). In response to the remaining sixty-nine of AMH's seventy document requests, Ms. Sukljian stated "Claim of privilege by Defendant." Ms. Sukljian did not provide a particularized description of the privilege claimed or a description of the nature of the documents or things which were not produced or disclosed.

This case now comes up for consideration of the following contested motions:

- 1.) AMH's motion, filed December 20, 2012, for sanctions for Ms. Sukljian's failure to comply with the Board's order compelling discovery in the cancellation proceeding;
- 2.) AMH's motion, filed January 11, 2013, to compel discovery responses in the opposition proceeding;
- 3.) Ms. Sukljian's motion, filed January 23, 2013, to compel discovery responses in the cancellation proceeding;
- 4.) Ms. Sukljian's cross-motion, filed January 25, 2013, to compel additional discovery responses in the opposition proceeding; and

- 5.) AMH's motion, filed February 14, 2013, to strike Ms. Sukljian's surreply to the motion for sanctions.

On January 17, 2013, the Board suspended these proceedings for consideration of AMH's motions for sanctions and to compel discovery responses.

**AMH's Motion to Strike Ms. Sukljian's Surreply**

Ms. Sukljian filed a surreply to AMH's motion for sanctions. Trademark Rule 2.127(a) states in part "The time for filing a reply brief will not be extended. The Board will consider no further papers in support of or in opposition to a motion." In view thereof, AMH's motion to strike the surreply is **granted**. *Pioneer Kabushiki Kaisha v. Hitachi High Technologies*, 74 USPQ2d 1672, 1677 (TTAB 2005) (because Rule 2.127(a) prohibits filing of surreply briefs, opposer's surreply to applicant's motion was not considered).

**Ms. Sukljian's Motions to Compel**

On January 23, 2013, Ms. Sukljian filed a cross-motion to compel discovery responses in the cancellation and on January 25, 2013, Ms. Sukljian filed a motion to compel discovery responses in the opposition. Both motions were filed after this proceeding was suspended for consideration of AMH's motions for sanctions and to compel. The motions do not comply with Trademark Rule 2.120(e)(1), as they do not provide a statement as to any good faith effort made by Ms. Sukljian to resolve the dispute prior to filing the cross-motion or motion to compel discovery responses. *See Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626, 632 (TTAB 1986) (party failed to submit sufficient documentary evidence of good faith effort).

In view thereof, Ms. Sukljian's cross-motion and motion to compel are **denied**. Further, Ms. Sukljian may not file any further motions to compel without first obtaining permission from the Board prior to filing the motion.<sup>4</sup>

### **AMH's Motion for Sanctions**

In support of its motion for sanctions, AMH argues that Ms. Sukljian's discovery responses are "meaningless" and interposed solely to obstruct discovery. AMH asks that the Board enter judgment in its favor or, in the alternative, that an order be entered,

- 1) directing that the designated facts in the Petition for Cancellation be taken as established for purposes of the action as AMH claims;
- 2) prohibiting Ms. Sukljian from supporting or opposing her designated claims or defenses; and
- 3) prohibiting Ms. Sukljian from introducing designated matters in evidence as a result of her disobedience.<sup>5</sup>

In response, Ms. Sukljian argues that she has "fully complied" with the Board's discovery order by raising general objections to the discovery requests because the requests were "overly broad and global, vague and ambiguous, unduly burdensome, and ... seek information protected from disclosure by the attorney-client, work product, party communications, investigative and consulting expert privileges." (Jan. 4, 2013 Resp. to motion for sanctions at 6). Further, Ms. Sukljian argues AMH was provided the link to her website "to purchase Defendant's goods to examine." Ms. Sukljian's responses fall far short of compliance with the Board's order of November 6, 2012 and relevant rules. Although the assertions of privilege which

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<sup>4</sup> Ms. Sukljian must telephone the Interlocutory Attorney to seek permission.

<sup>5</sup> AMH did not clarify which "designated facts," "designated claims," or "designated evidence" the Board should consider.

Ms. Sukljan made in her discovery responses differ in nature from the general objections to which Ms. Sukljan refers in her opposition to the motion, neither form of objection was used appropriately in this case. While a party responding to discovery may initially respond with general objections that the request is overly broad, vague, or burdensome,<sup>6</sup> such objections must be specific to the requests for which the objections are being interposed. That is, in addition to posing the objection, the objecting party must explain why the objection applies to the discovery request at issue. *See* 8B Wright, Miller, Kane and Marcus, *Federal Practice & Procedure: Civil 3d* §§ 2173 and 2213 (Westlaw update 2013) (hereinafter “*Wright & Miller*”). As a consequence, very little, if any, consideration will be given by the Board to general objections or to a listing of objections. This is so because neither the Board nor the receiving party should have to guess why a particular objection or set of objections may apply.

Turning to the sufficiency of Ms. Sukljan’s discovery responses, Ms. Sukljan’s response to Document Request No. 35, which referred AMH to her website to buy any goods about which AMH sought information, is not an objection at all, but an outright refusal to provide relevant materials. Inasmuch as the Board issued an order compelling Ms. Sukljan to provide the requested discovery, she may not, in essence, tell AMH to obtain it themselves.

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<sup>6</sup> When a general objection to a discovery request is made, the requesting party has the option of modifying the request or maintaining that it is sufficient and, following a good faith effort to resolve the matter with the other party, seeking a Board order which overrules the objection and compels responses. *See e.g., Amazon Tech., Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009)(parties must present each other the merits of their respective positions to make meet and confer process meaningful).

Turning to Ms. Sukljian's assertion of privilege, unlike general objections, which focus on the form of the request, claims that the information sought by a discovery request is subject to attorney-client or a like privilege go to a characteristic or attribute of the responsive information. *No Fear, Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). Fed. R. Civ. P. 26 (b)(5)(A) provides that:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

By this procedure, the party who has withheld requested information on the basis of privilege must make the claim in such a way that the party seeking the information can decide whether to contest the claim and ultimately seek resolution by the court, or in this case the Board, as to whether the claim of privilege applies.<sup>7</sup>

Thus, it is up to the responding party to provide the support for its assertion of privilege. In the present case, neither the requesting party nor the Board has any information with which to determine if the claims of privilege are properly asserted. Inasmuch as Ms. Sukljian is appearing *pro se*, there is no self-evident rationale whereby she may have attorney-client or work product privileges to assert. In such a situation, any assertion of such privileges requires substantial explanation.

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<sup>7</sup> See Fed. R. Civ. P. 26 advisory committee's note to 2006 amendment.

While Fed. R. Civ. P. 26(b)(5)(A) does not specify how the party asserting a claim of privilege must provide the information to support its claim of privilege, the most common way is through a privilege log. *See 8 Wright & Miller* § 2016.1. Such a log may contain a brief description or summary of the contents of the withheld document, date the document was prepared, the person or persons who prepared the document, the person to whom the document was directed or for whom the document was prepared, the purpose in preparing the document, the privilege or privileges asserted with respect to the document, and how each element of the privilege is met.<sup>8</sup> On the other hand, if the parties are able to agree upon a different format – acceptable to the receiving party -- in which to support the asserted privilege -- that is the parties' prerogative. Ideally, discovery should proceed out of the view of the Board, in accordance with each party's obligation to make a good faith effort to satisfy the discovery needs of its adversary. *See TBMP* § 408.01.

An assertion of confidentiality privileges, without sufficient factual basis to support the refusal to make requested production under Fed. R. Civ. P. 34, may in appropriate situations, be a basis for sanctions under Fed. R. Civ. P. 26(g). Here it appears that Ms. Sukljian made a passing, if misguided, attempt to comply with the Board's discovery order. We find that the proposed sanctions are too severe for imposition at this juncture. In view thereof, AMH's motion for sanctions is **denied**, except as ordered below.

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<sup>8</sup> *See Victor Stanley, Inc. v. Creative Pipe Inc.*, 250 F.R.D. 251, 265 (D.Md. 2008) (discussing the usual form of privilege logs).

Ms. Sukljian is **ordered** to serve within **TWENTY DAYS** of the mailing date of this order proper discovery responses without objection as to the merits, and where any claims of privilege are invoked, to provide the privilege log described above (or other support for her asserted privilege that is acceptable to AMH).

Ms. Sukljian is warned that if she does not properly respond to discovery requests as ordered herein, AMH may renew its motion for sanctions, including the sanction of entry of judgment in the cancellation.

**AMH's Motion to Compel Discovery in the Opposition**

Inasmuch as Ms. Sukljian made the same insufficient responses to essentially the same discovery requests, for the reasons stated above, AMH's motion to compel is **granted**.

Ms. Sukljian is **ordered** to serve within **TWENTY DAYS** of the mailing date of this order proper discovery responses without objection, and where any claims of privilege are invoked, to provide a particularized explanation of the privilege relied on and a privilege log (or other support for her asserted privilege that is acceptable to AMH), describing the nature of the information, documents or things not produced or disclosed.

However, to the extent the document production requests are duplicative, Ms. Sukljian need only produce one copy of any document that is responsive to the requests served in both the opposition and cancellation, and identify to which requests such documents apply. To be clear, Ms. Sukljian must produce a separate *written* response to the interrogatories and document requests in the cancellation and in the opposition proceedings. However, if the same documents are responsive

to requests in both proceedings, Ms. Sukljian may respond in the opposition with the statement that responsive documents were produced in connection with the cancellation. It must be clear from reading Ms. Sukljian's responses which documents respond to which request.

Because discovery remains open, the Board provides the following information in an effort to prevent further unnecessary motion practice.

Proceedings are consolidated. This means that all papers must be filed in the parent case, referring to the proceeding numbers of both cases in the caption, and a single motion must be filed in the future regarding discovery issues in either case.

Both parties are advised of their obligation to make a good faith effort to resolve discovery matters, before resorting to filing a motion to compel. That is, communications with generalized complaints about inadequate discovery responses will not be sufficient. Moreover, the Board will not grant an overly broad motion to compel, and a motion to compel seeking responses without objection to every discovery request suggests that the moving party did not engage in sufficient good faith efforts to resolve any disputes.

Any further motion to compel filed by Ms. Sukljian can be filed only after seeking permission from the Interlocutory Attorney prior to filing, must show that each discovery response was improper, that Ms. Sukljian gave detailed notice to AMH regarding the perceived deficiencies of each response, and allowed a reasonable opportunity for AMH to supplement its responses before the motion to compel was filed. *See* TBMP § 523.02 (3d ed. rev. 2 2013); 8B *Wright & Miller* § 2285 ("The courts have vigorously implemented this requirement, frequently

denying motions to compel because there were insufficient efforts to avoid the need for a motion altogether.”).

Ms. Sukljian’s motions relating to discovery appear to be frivolous and interposed for purposes of delay. Further Ms. Sukljian is warned that the Board will not tolerate “game playing” or evasiveness in discovery. If the Board perceives such behavior in the future, then sanctions in the form of precluding Ms. Sukljian from introducing evidence on certain issues or, if warranted, judgment against Ms. Sukljian, will be considered by the Board. *See HighBeam Marketing LLC v. HighBeam Research LLC*, 85 USPQ2d 1902, 1904 (TTAB 2008).

We note that while parties are allowed to represent themselves in Board proceedings, this is not recommended. Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure is expected of all parties before the Board, regardless of whether they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 n.2 (TTAB 2006). Thus the trademark owner who decides to represent his or her interest before the Board takes on a considerable burden of learning complicated subject matter in a short amount of time. It is strongly recommend that Ms. Sukljian obtain a legal representative familiar with trademark matters.

**Dates Reset**

Proceedings are resumed. Dates are reset as set out below.

Expert Disclosures Due:	September 5, 2013
Discovery Closes:	October 5, 2013
Plaintiff’s Pretrial Disclosures Due:	November 19, 2013

30-day testimony period for plaintiff's testimony in the opposition to close:	January 3, 2014
Defendant/Cancellation plaintiff's pretrial disclosures due:	January 18, 2014
30-day testimony period for defendant in the opposition and as plaintiff in the cancellation to close:	March 4, 2014
Cancellation defendant's disclosures and its rebuttal disclosures as plaintiff in the opposition due:	March 19, 2014
30-day testimony period for defendant in the cancellation and its rebuttal testimony as plaintiff in the opposition to close:	May 3, 2014
Cancellation plaintiff's rebuttal disclosures due:	May 18, 2014
15-day rebuttal period for plaintiff in the cancellation to close:	June 17, 2014
Brief for plaintiff in the opposition due:	August 16, 2014
Brief for defendant in the opposition and as plaintiff in the cancellation due:	September 15, 2014
Brief for defendant in the cancellation and its reply brief, if any, as plaintiff in the opposition due:	October 15, 2014
Reply brief, if any, for plaintiff in the cancellation due:	October 30, 2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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