

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

Faint

Mailed: January 28, 2014

Opposition No. 91205046

Christina Sukljian

v.

Ate My Heart Inc.

Cancellation No. 92055279

Ate My Heart Inc.

v.

Christina Sukljian

**Before Bucher, Mermelstein and Greenbaum
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 3.¹ Christina Sukljian, appearing pro se, 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 likelihood of confusion under Trademark Act § 2(d) with her pleaded Registration No.

¹ Application Serial No. 85215017, filed January 11, 2011, pursuant to Trademark Act § 1(b). The following statements are of record, "[t]he English translation of 'HAUS' is 'HOUSE'"; and "[t]he name 'Gaga' identifies the stage name of Stefani Germanotta, a living individual whose consent is of record."

2898544 for the mark GAGA PURE PLATINUM in typed form.² 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 GAGA³ in standard character form, and three pending trademark applications, including the one at issue in the opposition proceeding.

This case now comes up on AMH's motion, filed September 26, 2013, for discovery sanctions pursuant to Trademark Rule 2.120(g)(1) for Ms. Sukljian's failure to comply completely with the Board's August 5, 2013, order compelling discovery responses without objection, and for Ms. Sukljian's failure to respond to AMH's notice of deposition. The motion is fully-briefed.

Motion for Discovery Sanctions

By its motion for discovery sanctions, AMH asks that the Board enter judgment in its favor, or in the alternative, that Ms. Sukljian be precluded

² 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 § 8 affidavit was accepted June 5, 2010, and a § 15 affidavit was acknowledged. "Typed drawing" form is now known as standard character form. See Trademark Rule 2.52 (a): "Standard character (typed) drawing."

³ 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."

from introducing any evidence at trial not produced pursuant to AMH's discovery requests and notice of deposition.⁴

At the time of issuance of the Board's August 5, 2013, order, AMH sought sanctions in the cancellation proceeding and to compel discovery in the opposition proceeding. By its August 5 order, the Board denied AMH's motion for sanctions in the cancellation proceeding for Ms. Sukljian's failure to comply with the Board's prior order compelling discovery, but warned Ms. Sukljian that, "if she does not properly respond to discovery requests as ordered herein, AMH may renew its motion for sanctions, including the entry of judgment." The Board compelled Ms. Sukljian to respond separately to AMH's discovery requests in the cancellation and opposition proceedings without objection on the merits, to provide a privilege log or other support for any asserted privileges, and while only one set of documents needed to be produced, responses to document requests must clearly indicate which documents are responsive to the particular request in each proceeding.

AMH argues that in her discovery responses served on August 25, 2013, pursuant to the Board's order, Ms. Sukljian objected to nearly every discovery request on the merits. As a result, AMH argues, Ms. Sukljian has failed to provide any responses or documents to show that her mark was ever in use in commerce prior to her launch of a website in the spring of 2011, and that she will be unable to demonstrate through admissible evidence that her mark is

⁴ As a second alternative, AMH seeks summary judgment in its favor. The Board declines to treat this as a motion for summary judgment.

valid. AMH states it sent a deficiency letter to Ms. Sukljian on September 9, 2013, providing a detailed description of the deficiencies, including those instances where Ms. Sukljian stated she had no documents responsive to certain requests. AMH argues that it requested Ms. Sukljian produce information and documents to show that she has actually been using her mark on each of the items identified in her registration since the date of first use claimed in her registration, but none of these items were provided and none are on the website identified by Ms. Sukljian.

Ms. Sukljian argues she responded to AMH's discovery requests with "meaningful responses" and that she provided discovery responses and documents for both proceedings for the following requests:

- Interrogatory Nos. 6, 9, 15; and
- Document Request Nos. 4, 5, 35, 41, 58 and 65.

Ms. Sukljian does not explain why she continued to respond to discovery requests with objections on the merits.⁵

Pursuant to Trademark Rule 2.120(g)(1), if a party fails to comply with a Board order compelling discovery, the Board may order appropriate sanctions as defined in that rule and in Fed. R. Civ. P. 37(b)(2), including entry of judgment. *See MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477 (TTAB 2000); TBMP § 527.01(a) (3d ed. rev. 2 2013). The

⁵ Ms. Sukljian makes arguments regarding settlement proposals between the parties. Statements regarding settlement negotiations between the parties are not considered by the Board.

sanctions which may be entered by the Board pursuant to Rule 2.120(g)(1) include refusing to allow the disobedient party to support or oppose designated claims or defenses; prohibiting the disobedient party from introducing designated matters in evidence; and entering judgment against the disobedient party. *See* TBMP § 527.01(a).

The Board's review of Ms. Sukljian's discovery responses shows that she has responded to every discovery request with boilerplate objections as to the merits, in contravention of the Board's discovery order. While Ms. Sukljian provided objections and partial responses to Interrogatory Nos. 6, 9 and 15 in the cancellation proceeding, she provided no responses other than objections to Interrogatory Nos. 9 and 15 in the opposition proceeding. Ms. Sukljian responded to seventy document requests with objections on the merits, and twenty-nine pages of documents which included a copy of the notice of opposition. Ms. Sukljian argues that AMH's discovery requests are made with the sole objective to place "unnecessary undue burden" on her, but Ms. Sukljian filed the opposition proceeding, she has a duty to cooperate in discovery, and the Board has already found that the information is discoverable. Ms. Sukljian propounded the exact same discovery requests on AMH, and will not now be heard to contend the discovery requests are improper when propounded by her adversary.

Although Ms. Sukljian responded to the discovery requests, she did not heed the Board's order requiring her to respond without objections, and has

failed to provide responsive answers to almost all of AMH's discovery requests. Thus, the Board finds that sanctions are appropriate at this juncture, *See HighBeam Marketing, LLC v. Highbeam Research LLC*, 85 USPQ2d 1902, (TTAB 2008) (where party only partially complied with Board's order compelling discovery responses, Board entered sanctions precluding disobedient party from entering evidence at trial).

In view thereof, AMH's motion for discovery sanctions for Ms. Sukljian's failure to comply fully with the Board's August 5, 2013, order is **granted** to the extent that Ms. Sukljian is precluded from using as evidence at trial any information or documents that would have been responsive to AMH's discovery requests, but were not produced prior to AMH's filing of the motion for discovery sanctions. Further, Ms. Sukljian is **ordered** within **TWENTY DAYS** of the mailing date of this order to amend her discovery responses such that those responses fully respond to AMH's discovery requests, with no objections, failing which judgment will be entered against Ms. Sukljian. If Ms. Sukljian has no other responsive documents or information regarding a particular discovery request, or she has already produced all such responsive information, or such responsive documents and information are equally available to AMH, Ms. Sukljian must affirmatively so state, under oath, within the same **TWENTY DAYS**. *See* Fed. R. Civ. P. 33(d); *see also Pioneer Kabushiki Kaisha v. Hitachi High Technologies America Inc.*, 74 USPQ2d 1672, 1679 (TTAB 2005).

Motion for Sanctions for Failure to Respond to Discovery Deposition

AMH argues that it served a notice of deposition on September 6, 2013, for Ms. Sukljian's deposition scheduled for September 19, 2013, at 10:00 a.m., and no response was received. AMH served a follow-up letter on September 12, 2013, via Federal Express, and the letter was delivered and signed for on September 13, 2013, but as of September 26, 2013, there was no response to either the notice of deposition or the follow-up letter.

Ms. Sukljian makes no mention of the discovery deposition notice in her response.

Under Trademark Rule 2.120(g)(2), if a party witness fails to attend a discovery deposition after receiving proper notice, and such party or the party's attorney or other authorized representative informs the party seeking discovery that no such attendance will take place, the Board may enter sanctions against that party. The sanctions available to the Board in such circumstances are identical to those that the Board may enter under Trademark Rule 2.120(g)(1). *See* TBMP § 527.02(b).

The Board construes Ms. Sukljian's silence as a tacit admission that she received the deposition notice. AMH, however, does not allege that Ms. Sukljian failed to appear at the noticed time and place.⁶ Under these circumstances, the Board declines to enter judgment against Ms. Sukljian. In

⁶ AMH's allegation that Ms. Sukljian did not "respond" to the notice of deposition is puzzling. While *attendance* at a duly-noticed deposition is required, the applicable rules do not require any specific response to such a notice. *See* Trademark Rule 2.120(b); Fed. R. Civ. P. 30.

view thereof, AMH's motion for sanctions for Ms. Sukljian's failure to respond to a discovery deposition notice is **denied**.

However, pursuant to the Board's inherent authority to manage cases before it, the Board **hereby orders** that AMH is allowed **TWENTY DAYS** from the mailing date of this order to serve Ms. Sukljian at her address of record with a discovery deposition notice, said deposition to occur on or before **FORTY DAYS** from the mailing date of this order in Albany, New York, or wherever the parties may agree. *See* Trademark Rule 2.120(b); *see also* TBMP § 527.03 (3d ed. rev. 2 2013). Ms. Sukljian is warned that failure to appear for the noticed deposition may result in entry of judgment against her.

Dates Reset

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

Expert Disclosures Due	2/8/2014
Discovery Closes	3/10/2014
Plaintiff's Pretrial Disclosures Due	4/24/2014
Plaintiff's 30-day Trial Period Ends	6/8/2014
Defendant's Pretrial Disclosures Due	6/23/2014
Defendant's 30-day Trial Period Ends	8/7/2014
Plaintiff's Rebuttal Disclosures Due	8/22/2014
Plaintiff's 15-day Rebuttal Period Ends	9/21/2014

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.
