

ESTTA Tracking number: **ESTTA620928**

Filing date: **08/12/2014**

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

Proceeding	91205046
Party	Defendant Ate My Heart Inc.
Correspondence Address	BRAD D ROSE PRYOR CASHMAN LLP 7 TIMES SQ, FL 3 NEW YORK, NY 10036-6569 UNITED STATES lbuckley@pryorcashman.com, rklarberg@pryorcashman.com, tmdocketing@pryorcashman.com, brose@pryorcashman.com, tlee@pryorcashman.com, tmdocketing@pryorc
Submission	Other Motions/Papers
Filer's Name	Ryan S. Klarberg
Filer's e-mail	lbuckley@pryorcashman.com, rklarberg@pryorcashman.com, jalbrink@pryorcashman.com, tmdocketing@pryorcashman.com
Signature	/ryan klarberg/
Date	08/12/2014
Attachments	Declaration of RSK iso Motion for Sanctions.pdf(1353183 bytes )

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

In the Matter of U.S. Reg. No. 2,898,544 for  
GAGA PURE PLATINUM

-----X

CHRISTINA SUKLJIAN,	:	
	:	Opposition No. 91/205,046
Opposer,	:	
v.	:	
ATE MY HEART, INC.,	:	
	:	
Applicant.	:	
ATE MY HEART, INC.,	:	
	:	Cancellation No. 92/055,279
Petitioner,	:	
v.	:	
CHRISTINA SUKLJIAN,	:	
	:	
Respondent.	:	

-----X

**DECLARATION OF RYAN S. KLARBERG IN  
SUPPORT OF PETITIONER ATE MY HEART, INC.'S  
RENEWED MOTION FOR DEFAULT JUDGMENT**

Ryan S. Klarberg declares that:

1. I am associated with the law firm of Pryor Cashman LLP, counsel for Petitioner/Applicant Ate My Heart, Inc. ("AMH," "Petitioner" or "Applicant") and have personal knowledge of all of the facts and circumstances set forth herein. I submit this declaration in

support of Petitioner's Renewed Motion For Default Judgment against Respondent/Opposer Christina Sukljian ("Sukljian," "Opposer" or "Respondent").

2. On June 12, 2014, the Board issued an Order giving AMH until June 30, 2014 to depose Sukljian. A true and correct copy of the Board's June 12, 2014 Order is attached hereto as Exhibit A.

3. On June 17, 2014, at approximately 3:30 p.m., I placed a telephone call to Sukljian to schedule a mutually convenient date for her deposition. Sukljian's receptionist answered the call. I identified myself and asked to speak to Sukljian specifically regarding the scheduling of her deposition in these Proceedings. Sukljian's receptionist placed me on hold for approximately 30 seconds and when she returned to the call, she said Sukljian was "in a meeting." In response, I left a message with the receptionist, providing my name, the name of my law firm and my direct telephone number. I reiterated that the purpose of my call was to discuss a mutually convenient date for Sukljian's deposition on or before the June 30, 2014 deadline. I requested that Sukljian return my call as soon as possible. Sukljian never did.

4. Later that same day, June 17, 2014, at approximately 4:55 p.m., I placed a second call to Sukljian, expecting that her "meeting" had concluded by then. This time, Sukljian's receptionist reported that Sukljian was "unavailable." Yet again, I left my contact information and requested that Sukljian promptly return my call to discuss the scheduling of her deposition. Sukljian failed to return that call as well.

5. On June 17, 2014, after not having received a response from Sukljian, I served a deposition notice on Sukljian sent via FedEx to her address of record (the "Deposition Notice"). The deposition was scheduled to take place on June 26, 2014, commencing at 10:00 a.m., to be held at the Albany Marriot, in the city in which Sukljian resides. The Deposition Notice

provided that the deposition would be videotaped, as well as stenographically recorded. A true and correct copy of the June 17, 2014 Deposition Notice is attached hereto as Exhibit B.

6. On June 24, 2014, I received a letter from Sukljian stating that she was unavailable to be deposed on June 26 and would not be available until August. Upon receipt of the letter, I called Sukljian at approximately 10:28 a.m. I was advised by Sukljian's receptionist that Sukljian was "unavailable." As before, I left my name, law firm name, direct telephone number and a message stating that because of the Board's discovery deadline, we needed to hear back from Sukljian by 4:00 p.m. that same day. AMH would have been willing to accommodate Sukljian by rescheduling her deposition so long as the Board approved it. However, if the parties did not speak by the end of the day on June 24, 2014, there would have been no time for AMH to obtain the Board's approval of an extension prior to the expiration of the then-current deadline, if, in fact, the Board was willing to even entertain such an extension. A true and correct copy of Sukljian's letter dated June 20, 2014 and received on June 24, 2014 is attached hereto as Exhibit C.

7. Not having reached Sukljian by telephone, at 12:11 p.m. on June 24, 2014, I e-mailed Sukljian at [info@zela.com](mailto:info@zela.com), the authorized correspondent e-mail address of record, stating:

Now it is two days before the noticed deposition . . . Unless we hear from you by close of business today to discuss an alternative deposition date in July, and agree in writing to an extension of the Board's internal deadline, which must be approved by the Board, we will appear in Albany at the designated time and place to conduct your deposition. Your failure to appear may result in sanctions . . . Considering the circumstances, the only way we will consider changing the scheduled deposition date of June 26 is if you return our phone call or respond to our email before 4:00 p.m. today. If we do not hear from you by then, we will expect your attendance on June 26. We will seek sanctions against you if you fail to appear. For the avoidance of any doubt, my direct telephone number is 212-326-0183. I am in the office all day. If you receive my voice mail, please call my colleague Lisa Buckley directly at 212-326-0483. We look forward to hearing back from you soon.

A true and correct copy of the June 24, 2014 e-mail to Sukljian is attached hereto as Exhibit D.

8. Sukljian failed to respond to my June 24, 2014 telephone call or e-mail.

9. Therefore, on June 25, 2014, the day before the noticed deposition date, I traveled from my firm's New York City offices to Albany. The day of the deposition, I arrived at the Albany Marriott hotel at 8:45 a.m. Both the stenographer and the videographer hired by AMH for the deposition arrived at the Albany Marriot at approximately 9:15 a.m. I set-up a video conference so that my co-counsel, Lisa Buckley, could participate in the deposition from her offices in New York City. The court reporter and I pre-marked exhibits to streamline the deposition. Sukljian had not arrived by 10:00 a.m., when the deposition was scheduled to start.

10. At approximately 10:05 a.m., I went on the record (via audio and video), noting that Sukljian had not yet arrived, and stating that all present attendees would wait for Sukljian until 11:00 a.m. Sukljian failed to appear. A true and correct copy of the transcript for the June 26, 2014 deposition is attached hereto as Exhibit E.

11. Prior to leaving the Albany Marriot, I left my contact information at the hotel's front desk and requested that the hotel contact me if anyone arrived for the Sukljian deposition. Nobody did.

12. A true and correct copy of the Board's August 5, 2013 Order is attached hereto as Exhibit F.

13. A true and correct copy of the Board's January 28, 2014 Order is attached hereto as Exhibit G.

Dated: New York, New York  
August 12, 2014

  
\_\_\_\_\_  
RYAN S. KLARBERG

# Exhibit A

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

wbc

Mailed: June 12, 2014

Opposition No. 91205046

Christina Sukljian

v.

Ate My Heart, Inc.

**Wendy Boldt Cohen, Interlocutory Attorney:**

On March 10, 2014, Applicant filed a motion to extend discovery to allow time to take the discovery deposition of Christina Sukljian and remaining trial dates.<sup>1</sup> The motion is fully briefed. The Board has considered the parties' submissions and presumes the parties' familiarity with the arguments made therein. The parties' arguments will not be summarized herein except as necessary to explain the Board's decision.

As last set, discovery was set to close March 10, 2014. Because Applicant acted prior to the expiration of this deadline, it need only show "good cause" for the extension sought. *See* Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a) (3d

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<sup>1</sup> Applicant also filed a motion to extend on March 3, 2014. The March 3, 2014 fails to indicate service upon Opposer as required by Trademark Rule 2.119(a) ("Proof of service must be made before the paper will be considered by the Office."). *See* TBMP § 113. The March 3, 2014 motion indicates a "cc: Ms. Christian Sukljian" but does not include the elements of a certificate of service "stating the date and manner in which service was made" signed by the filing party. *See* TBMP § 113.03. In view thereof, the March 3, 2014 motion will receive no consideration.

**Opposition No. 91205046**

ed. rev.2 2013). A motion to extend should include a recitation of specific facts constituting good cause for the extension sought. *See Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999); *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

Applicant alleges that it needs additional time to depose Ms. Sukljian and was unable to do so in the time allotted because, *inter alia*, it was waiting for Opposer's revised discovery responses and because Applicant's counsel was involved in other litigation related to an "FDIC enforcement action."

After considering the parties' submissions and arguments therein, the Board finds that Applicant has demonstrated the requisite good cause for the extension sought. *See Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383, 1383-84 (TTAB 2001) (press of other litigation may constitute good cause to extend).

In view thereof, the motion to extend discovery for the limited purpose of taking Ms. Sukljian's discovery deposition and remaining dates, to the extent modified herein, is **granted**. Applicant is allowed to serve Ms. Sukljian at

**Opposition No. 91205046**

her address of record with a discovery deposition notice, said deposition to occur on or before June 30, 2014 in Albany, New York or wherever the parties may agree.<sup>2</sup> See Trademark Rule 2.120(b); see also TBMP § 527.03. Dates are reset as follows:

Discovery for the limited purpose of taking Ms. Sukljian's discovery deposition closes	<b>6/30/2014</b>
Plaintiff's Pretrial Disclosures	<b>8/14/2014</b>
Plaintiff's 30-day Trial Period Ends	<b>9/28/2014</b>
Defendant's Pretrial Disclosures	<b>10/13/2014</b>
Defendant's 30-day Trial Period Ends	<b>11/27/2014</b>
Plaintiff's Rebuttal Disclosures	<b>12/12/2014</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>1/11/2015</b>

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. See Trademark Rule 2.125, 37 C.F.R. § 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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<sup>2</sup> As noted in the Board's January 28, 2014 order, Ms. Sukljian is reminded that failure to appear for a noticed deposition may result in entry of judgment against her.

# Exhibit B

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

In the Matter of U.S. Registration No. 2,898,544 for  
GAGA PURE PLATINUM

-----X	:	
Ate My Heart Inc.	:	
	:	Opposition No. 91/205,046
Petitioner,	:	
	:	Cancellation No. 92/055,279
-against-	:	
	:	
	:	<u>DEPOSITION NOTICE</u>
Christina Sukljian,	:	
	:	
Respondent.	:	
-----X	:	

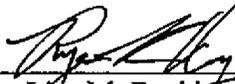
PLEASE TAKE NOTICE, that pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, Petitioner will take the deposition upon oral examination of:

**Christina Sukljian** commencing on Thursday, June 26, 2014 at 10:00 a.m.

Such deposition will be recorded by stenographic means and by simultaneous audio and video electronic recording and shall proceed before a notary public qualified to administer oaths at the Albany Marriott, 189 Wolf Road, Albany, NY 12205. The examination(s) will continue from day to day until completed.

Dated:     New York, New York  
          June 17, 2014

PRYOR CASHMAN LLP

By:   
\_\_\_\_\_  
Lisa M. Buckley  
Ryan S. Klarberg  
7 Times Square  
New York, New York 10036  
(212) 421-4100  
*Attorneys for Petitioner*

CERTIFICATE OF SERVICE

I certify that on June 17, 2014 a true and correct copy of the foregoing DEPOSITION NOTICE is being mailed by FedEx, postage prepaid to Respondent at address listed in the trademark registration for the Mark:

Christina Sukljan  
13 Manor Street  
Albany, NY 12207

A handwritten signature in black ink, appearing to read "Ryan S. Klarberg", is written over a horizontal line.

Ryan S. Klarberg

# Exhibit C

Christina Sukljian  
13 Manor Street  
Albany, NY 12207  
Telephone (518) 436-1833

June 20, 2014

**VIA USPS PRIORITY MAIL**

Ryan S. Klarberg  
Pryor Cashman LLP  
7 Times Square  
New York, NY 10036

**Re: Christina Sukljian v. Ate My Heart Inc. | Ate My Heart Inc. v. Christina Sukljian  
Opposition No. 91205046 and Cancellation No. 92055279**

Dear Mr. Klarberg:

This letter is in response to your deposition notice scheduled for June 26, 2014. This letter is to notify you that I object to your scheduled date because I will not be available on June 26, 2014.

I am in receipt of your deposition notice as of today June 20, 2014. I am also in receipt of your telephone messages left with my office, at 3:30 p.m. and 4:57 p.m. from June 17, 2014 as of today June 20, 2014. As you know, the receptionist communicated directly to you that I was unavailable with respect to your two telephone calls. You did not allow me the common courtesy and time to receive your message, check my schedule and set a mutually convenient date and time. Instead, less than an hour after your initial phone call, you already set a date solely convenient for you and mailed your deposition notice via Fedex at 4:26 p.m. the same day.

Please amend your schedule to reflect my availability which will be after August 15, 2014. I will be available on August 22, 2014 and August 29, 2014. Please let me know if any of these dates are mutually convenient for you. Please confirm by mail.

Thank you for your attention.

Sincerely,

  
Christina Sukljian

# Exhibit D

## Klarberg, Ryan S.

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**From:** Klarberg, Ryan S.  
**Sent:** Tuesday, June 24, 2014 12:11 PM  
**To:** info@zela.com  
**Cc:** Buckley, Lisa  
**Subject:** Ate My Heart Inc. v. Christina Sukljian, Cancellation No. 92055279

**Importance:** High

Dear Ms. Sukljian:

We are in receipt of your letter dated June 20, 2014, which we received this morning, on June 24. Had you deigned to either return our calls or send an email message, we would have had more flexibility in: scheduling a deposition in the first instance; and accommodating your request to be deposed on different dates falling well outside the June 30 deadline set by the Board. Now it is two days before the noticed deposition, and we have very limited flexibility in dealing with your request to adjourn the noticed date. Unless we hear from you by close of business today to discuss an alternative deposition date in July, and agree in writing to an extension of the Board's internal deadline, which must be approved by the Board, we will appear in Albany at the designated time and place to conduct your deposition. Your failure to appear may result in sanctions.

More specifically, as your letter concedes, we have attempted on several occasions to contact you in order to schedule a mutually convenient date for your deposition. In your letter, you acknowledged receipt of the two phone messages I left with your receptionist on June 17<sup>th</sup>. In the first phone conversation with your receptionist, I identified myself and asked to speak to you. Your receptionist said she would check on your availability and after putting me on hold for approximately 30 seconds, your receptionist said you were "in a meeting" and would not take my call. In response, I again provided my name, my law firm name, my direct telephone number and told your receptionist that I was calling to discuss a mutually convenient date for your deposition. I asked that you return my call as soon as possible. I called again that same day, June 17<sup>th</sup>, expecting that your "meeting" had concluded by then. This time, your receptionist once again told me that you were "unavailable." As I had done earlier in the day, I left my contact information and requested that you promptly return my call to discuss the scheduling of your deposition. As has been your practice, you failed and refused to return my calls. Therefore, your suggestion that we failed to extend you the courtesy of conferring about a mutually convenient date rings hollow. It is your intransigence and stubborn refusal to return calls or email communications-- which are more efficient ways of communicating than snail mail-- that has created the situation we now find ourselves in. It is you, Ms. Sukljian, who lacks any courtesy.

I called your office again today at approximately 10:28 a.m., but was once again advised by your receptionist that you were "unavailable." As always, I left my name, law firm name, direct telephone number and a message stating that because of the Board's discovery time constraints, we must hear back from you today by 4 p.m. to discuss a mutually convenient date for your deposition, or we will proceed with the deposition on June 26 as noticed. Your request that we "confirm by mail" that we will change the date of your deposition is simply impractical because the deposition date will come and go before you receive the mail. The only realistic means for us to discuss a mutually convenient date is by telephone or email.

Considering the circumstances, the only way we will consider changing the scheduled deposition date of June 26 is if you return our phone call or respond to our email before 4:00 p.m. today. If we do not hear from you by then, we will expect your attendance on June 26. We will seek sanctions against you if you fail to appear.

For the avoidance of any doubt, my direct telephone number is 212-326-0183. I am in the office all day. If you receive my voice mail, please call my colleague Lisa Buckley directly at 212-326-0483. We look forward to hearing back from you soon.

Very truly yours,

Ryan Klarberg

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**RYAN S. KLARBERG, ESQ.**

**PRYOR CASHMAN LLP**

7 Times Square, New York, NY 10036-6569

[rklarberg@pryorcashman.com](mailto:rklarberg@pryorcashman.com)

Direct Tel: 212-326-0183

Direct Fax: 212-798-6928

[www.pryorcashman.com](http://www.pryorcashman.com)

*A member of Interlaw, an International Association of Independent Law Firms*

# Exhibit E

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

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Opposition No. 91205046  
CHRISTINA SUKLIKIAN

v.  
ATE MY HEART INC.

\* \* \*

Cancellation No. 92055279  
ATE MY HEART INC.

v.  
CHRISTINA SUKLJIAN

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VIDEOTAPED DEPOSITION OF:  
CHRISTINA SUKLJIAN  
June 26, 2014  
10:00 a.m. to 11:01 a.m.

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Scheduled Videotape Deposition of CHRISTINA  
SUKLJIAN, taken on behalf of Plaintiff, beginning  
at 10:00 a.m., held at the Albany Marriott, 189  
Wolf Road, Albany, New York, before BRENDA J.  
O'CONNOR-MARELLO, CSR, a Certified Shorthand  
Reporter and Notary Public in and for the State of  
New York.

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A P P E A R A N C E S

APPEARING FOR THE PETITIONER/APPLICANT:

PRYOR CASHMAN, LLP  
Seven Times Square  
New York, New York 10036  
BY: LISA M. BUCKLEY, ESQ. (via videoconference)  
BY: RYAN S. KLARBERG, ESQ.

APPEARING FOR THE OPPOSER/RESPONDENT:

(No appearance.)

ALSO PRESENT:

M. BETH ARNOLD, Videographer

## PROCEEDINGS

1  
2 MR. KLARBERG: This is Ryan Klarberg  
3 here on behalf of applicant/petitioner, Ate My  
4 Heart, Inc. I'm here in connection with the  
5 United States Patent and Trademark Office,  
6 Trademark Trial and Appeal Board, consolidated  
7 proceeding, Opposition Number 91205046,  
8 Cancellation Number 92055279, caption is  
9 Christina Sukljian, spelled S-U-K-L-J-I-A-N, v.  
10 Ate My Heart, Inc.; Ate My Heart, Inc. v.  
11 Christina Sukljian.

12 It is currently 10:04 a.m. We  
13 noticed the deposition at 10:00 a.m. at the  
14 Albany Marriott.

15 At this time, we have yet to see  
16 Ms. Christina Sukljian, the opposer/respondent.

17 We noticed this deposition for this  
18 exact time, place and location.

19 At this time, we are going to wait  
20 one hour from 10:00 a.m. to see if Ms. Sukljian  
21 arrives. If she is not here by then, we will  
22 assume that she is not coming to this  
23 deposition and we will close the deposition.

24 We have at this time a court reporter  
25 and a videographer.

## PROCEEDINGS

1  
2 At this time, we are going to turn  
3 off the camera and we will only commence upon  
4 Ms. Sukljian's arrival if she does arrive.

5 MS. BUCKLEY: Ryan, let me just put  
6 my appearance on the record as well, Lisa  
7 Buckley of Pryor Cashman, who is also attorney  
8 for Ate My Heart in the consolidated  
9 proceedings.

10 There is a paper record that provides  
11 the background to Ms. Sukljian's attempt to  
12 adjourn the deposition, our willingness to  
13 discuss an adjournment, and a demand that she  
14 call us by the close of business on May 24th to  
15 have a conversation; and that in light of the  
16 Board deadline for conducting her deposition,  
17 we had very little flexibility, but were  
18 willing to discuss it. She did not respond to  
19 that written communication or telephonic  
20 communications leaving the same message.

21 We can go off the record until 11:00.  
22 Thank you.

23 \* \* \*

24 (A brief recess was taken.)

25 \* \* \*

## PROCEEDINGS

1  
2 MR. KLARBERG: It is now 11:01 a.m.  
3 on Thursday, June 26. I'm here at the Albany  
4 Marriott along with my co-counsel Lisa Buckley,  
5 who's here remotely in New York City. We have  
6 yet to hear from Christina Sukljian. At this  
7 time, we'll be closing the deposition and we  
8 will consider this matter -- this deposition  
9 finished for now.

10 Lisa, if you want to add anything.

11 MS. BUCKLEY: No. That's it.

12 \* \* \*

13 (Whereupon, the proceedings  
14 concluded at 11:01 a.m.)

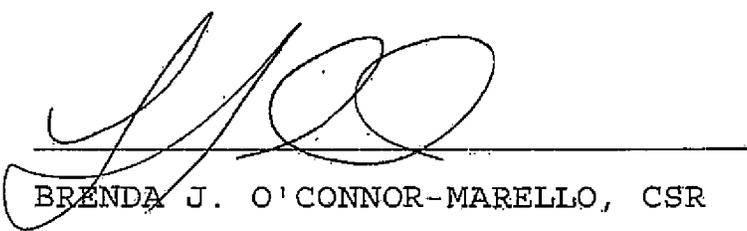
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CERTIFICATION

I, BRENDA J. O'CONNOR-MARELLO, a Certified Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of the same, to the best of my knowledge and belief.



BRENDA J. O'CONNOR-MARELLO, CSR

License No.: 001088-1

# Exhibit F

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. Sukljian made in her discovery responses differ in nature from the general objections to which Ms. Sukljian 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. Sukljian’s discovery responses, Ms. Sukljian’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. Sukljian 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. Sukljan'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. Sukljan 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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# Exhibit G

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.<sup>1</sup> 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.

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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, "[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.<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.

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

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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 § 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."

<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."

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

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

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<sup>4</sup> 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.<sup>5</sup>

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

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<sup>5</sup> 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. Suktjian'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. Suktjian 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. Suktjian 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. Suktjian argues that AMH's discovery requests are made with the sole objective to place "unnecessary undue burden" on her, but Ms. Suktjian filed the opposition proceeding, she has a duty to cooperate in discovery, and the Board has already found that the information is discoverable. Ms. Suktjian 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. Suktjian 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.<sup>6</sup> Under these circumstances, the Board declines to enter judgment against Ms. Sukljian. In

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<sup>6</sup> 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. Sukljan'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. Sukljan 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. Sukljan 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.

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