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

Proceeding	91206915
Party	Defendant Eric Lucas
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Submission	Opposition/Response to Motion
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Signature	/Damon L. Ward/
Date	10/31/2013
Attachments	Memorandum in Response to Motion to Compel Discovery and Extend Discovery and Trial Dates (executed).pdf(155326 bytes) Declaration of Damon Ward in Opposition to Motion to Compel (final).pdf(2976667 bytes)

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

In the matter of Application Serial No.: 85/597,114
Published in the Official Gazette on August 28, 2012

MYBODY, L.L.C.,

Opposer,

vs.

ERIC LUCAS,

Applicant.

Opposition No. 91206915

Memorandum in Opposition to Opposer's
Motion to Compel Discovery and in
Support of Applicant's Request to Extend
the Discovery Period

Applicant submits this memorandum in opposition to Opposer's Motion to Compel and submits its Request to Extend the Discovery Period.

BACKGROUND AND PROCEDURAL POSTURE

On September 10, 2012, Opposer initiated this proceeding in an effort to prevent Applicant from completing the trademark application process after Applicant received Publication Confirmation in the Official Gazette subsequent to a determination that Applicant's Mark may be registered. Declaration of Damon L. Ward, Exhibit 1. Pursuant to the opposition, the United States Patent and Trademark Office ("USPTO") established a schedule of dates for prosecution and litigation of this matter. See Docket # 2. After conference between counsel for parties, Applicant and Opposer stipulated to a protective order to maintain the confidentiality of sensitive information anticipated to be produced. See Docket # 5. The Stipulation was entered and approved by the USPTO on March 7, 2013. See Docket # 6. Although it was accurate at the time Opposer filed its motion that any limited documentation had not yet been produced by Applicant subject to the Protective Order, Opposer has also failed to produce un-redacted

documents although the protective order has been entered. Ward Decl., ¶ 2.

Nevertheless, after written discovery was exchanged and answered, Applicant served deposition notices for Opposer's identified witnesses. Ward Decl., Exhs. 2, 3, and 4. However, Opposer was having difficulty scheduling all of the witnesses. Ward Decl., ¶ 4. In addition, during the course of discovery, counsel for Opposer, Michael Hool, contacted counsel for Applicant and requested an extension of the scheduling order then currently in place because a witness and principal of the corporation opposing Applicant's Mark suffered a death in his family and would not be able to appear for his deposition which was duly noted and served well within the discovery period. Ward Decl., ¶ 5. Counsel for Applicant readily and immediately agreed to the extension, id., and the parties stipulated to and filed the extension on April 16, 2013, see Docket # 7, which was granted. See Docket # 8.

However, in or about mid-June 2013, counsel for applicant began experiencing severe physical disturbances and trouble breathing which led him to present to the emergency room. Ward Decl., ¶ 6. Shortly thereafter, counsel for Applicant suffered severe congestive heart failure and was admitted to the hospital on or about July 3, 2013. Id. While still admitted to the hospital, the parties conferred regarding the deposition scheduling and the parties' outstanding discovery matters. Ward Decl., ¶ 7. Pursuant to these discussions, the parties agreed to an extension of the discovery and trial periods and on July 8, 2013 filed said stipulation with this tribunal. See Docket ## 9, 10.

However, in the months during Applicant's counsel's aggressive medical treatment to address his congestive heart failure (heart performance down to 30%), it was discovered that Applicant's counsel was now experiencing third stage renal failure, anemia, coronary artery disease, and a variety of other maladies. Ward Decl., Exh. 5. As such, counsel for Applicant

was unable to meaningfully participate in various litigation matters in which he was primary counsel and obtained appropriate scheduling extensions. Ward Decl., ¶ 8.

In the meantime, Opposer's counsel contacted Applicant's counsel once, regarding outstanding discovery matters, in an e-mail dated October 9, 2013 to which counsel for Applicant responded. Ward Decl., Exhs. 6, 7.¹ Two days later, Opposer filed a motion to compel without engaging in the required "meet and confer" conference pursuant to Rule 37 of the Federal Rules of Civil Procedure and before Applicant's counsel could provide a meaningful response. Rule 37 also requires that the motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action. Opposer failed to provide any such certification with its motion.

SUMMARY OF THE ARGUMENT

Applicant contends that Opposer's motion is unwarranted for the following reasons: (1) Applicant's counsel's health issues were unanticipated and addressing said maladies with aggressive and time consuming medical treatment was unavoidable; (2) Applicant's responses to Opposer's First Set of Interrogatories and Requests for Production of Documents were timely and substantially complete except for production of confidential/sensitive information stamped Attorneys Eyes Only; (3) Opposer failed to engage in the required "meet and confer" to attempt to resolve this matter without the need for intervention by this tribunal; (4) Opposer's un-redacted discovery production remains outstanding impeding Applicant's ability to take depositions in this matter; and (5) Applicant has now provided Opposer with Supplemental Answers to Opposer's Interrogatories (Set 1) and Supplemental Responses to Opposer's Request

¹ Although the e-mail references a purported communication from Opposer's paralegal, Applicant has no such record of said communication.

for Production of Documents (Set 1). Opposer's Second Set of Interrogatories to Applicant remains unanswered because Opposer exceeded the maximum number of interrogatories permitted in its initial set.

Nevertheless, Applicant contends that an extension of the schedule is still necessary. Contrary to Opposer's position, however, Applicant seeks an extension of all of the scheduling periods. Applicant's counsel's health issues should not work to the prejudice of Applicant especially in this case where Opposer has articulated absolutely no prejudice or legal basis for hobbling Applicant's rights in this proceeding and its own discovery responses remain outstanding.

Therefore, because of the unusual and extreme circumstances, Applicant now seeks a brief extension of all of the discovery, testimony, and trial period by 45 to 60 days as set forth below. Applicant has good cause for this extension and Opposer has expressed no prejudice and can articulate no prejudice in granting this extension.

I. OPPOSER'S MOTION TO COMPEL DISCOVERY SHOULD BE DENIED.

Opposer's motion to compel discovery against Applicant is not well taken, and the Board should deny the motion in its entirety. At the outset, Opposer has not complied with the Federal Rules of Civil Procedure required to be followed in this instance in tandem with 37 C.F.R. Part 2, § 2.120. Prior to filing its motion, Opposer never sought nor attempted to meet and confer, nor has it properly certified that it, in good faith, met and conferred with Applicant's counsel before serving its motion about the discovery issues Opposer now raises. Federal Rule of Civil Procedure 37 provides that:

A party may move for an order compelling disclosure or discovery. The motion must include certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

Fed.R.Civ.P. 37(a)(1). By its express terms, the rule requires that a party engage in a good faith effort to resolve discovery disputes before seeking TTAB intervention. The Opposer's motion papers do not reference any direct discussions between counsel for Applicant and Opposer's counsel that presage the motion to compel or attempt to resolve through a conference any of the substantive issues raised in Opposer's pending motion. Opposer raised only the outstanding discovery matter in an e-mail and then filed its motion 2 days later without awaiting word from Applicant's counsel.

Moreover, merely attaching (or in this case merely referencing) self-serving letters/emails does not comply with the obligation of the movant to certify that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the matter without tribunal action. See Struzyk v. Prudential Ins. Co. of America, 2003 WL 21302966 (D. Minn., May 16, 2003); American Petro, Inc. v. Shurtleff, 159 F.R.D. 35 (D. Minn. 1994).

Between the date of the above-referenced e-mail and the date of filing this motion, Opposer made neither a single phone call to Applicant's counsel, nor even sent an email requesting a formal meet and confer exchange as to its ultimatum correspondence dated October 9, 2013. Indeed, as of the date of the service and filing of this memorandum, Opposer, as the moving party, took no first steps to initiate an effort to resolve its alleged dispute beyond its "checkin in" email threatening a motion to compel. Ward Decl., Exh. 6.

Assuming *arguendo* Opposer continues to assert that its inadequate certification suffices, the great weight of case law should be enough to disabuse Opposer of the notion that it complied with Rule 37. It is *a priori* that more than a recitation of it sending an e-mail correspondence to Applicant is required to satisfy the "meet and confer" standard. Indeed, even a conclusory statement in an affidavit asserting that the movant fulfilled the meet and confer requirement is

insufficient.” Prescient Partners, L.P. v. Fieldcrest Cannon, Inc., No. 96-Civ.-7590, 1998 U.S. Dist. LEXIS 1826 at * *6-7 (S.D.N.Y. Feb. 18, 1998). Indeed, Opposer must include more than a cursory statement that counsel have been unable to resolve the matter. Shuffle Master, Inc. v. Progressive Games, Inc., 170 F.R.D.166, 171 (D. Nev. 1996). Good faith efforts in meetings to discuss the very discovery disputes at issue must be shown. Struzyk v. Prudential Ins. Co. of America, 2003 WL 21302966 (D. Minn., May 16, 2003). The purpose of the meet and confer rule is “[t]o curtail undue delay and expense in the administration of justice.” Chamberlain Group v. Lear Corp., 2010 U.S. Dist. LEXIS 71103 (N.D. Ill. July 15, 2010) (quoting Chicago Observer, Inc. v. City of Chicago, 929 F.2d 325, 329 (7th Cir. 1991)). “If the parties can resolve the issue, the [presiding authority’s] time is saved and available to be directed to those cases that present issues that cannot be amicably resolved.” Chamberlain, 2010 U.S. Dist. LEXIS 71103 at *6 (denying motion to compel for failure to certify that moving party had satisfied the requirement to meet and confer prior to filing the motion to compel). See also Mr. Electric Corp. v. Khalil, 2008 U.S. Dist. LEXIS 103801 (D. Kan. December 23, 2008) (motion to compel answer of discovery requests denied because party did not meet requirement of including certification of a good faith attempt to confer and resolve the issue with opposing counsel); Doe v. Nat'l Hemophilia Found., 194 F.R.D. 516, 519 (D. Md. 2000) (motion to compel answer to discovery interrogatories and document production requests denied because moving party failed to attempt to resolve its dispute with the non-moving party by even informal means).

With this precedent in mind, Opposer cannot seriously argue that sending an e-mail to the non-movant, without so much as an e-mail follow-up let alone a personal meeting or discussion on the matter, then filing a motion after 2 days with no notice other than that provided by the TTAB electronic filing/service system, is a good faith attempt to meet and confer to resolve any

dispute. In fact, “[s]imply sending a letter without further follow-up does not constitute the type of effort to engage in a pre-filing conference anticipated by” Rule 37 and local district counterparts. Wrangen v. Pennsylvania Lumbermans Mut. Ins. Co., 2008 WL 5427785, at *1 (S.D.Fla. Dec.30, 2008). Such missives lack the “give-and-take exchange” implicit in the act of meeting and conferring. Id. at 1299 n.3. Thus, Opposer’s so-called attempt at resolution did not suffice because of its unidirectional nature.

Accordingly, since Opposer failed to make any effort by virtue of a meet and confer exchange with Applicant’s counsel to resolve any alleged discovery issues pursuant to Rule 37, it has failed to properly certify to the TTAB any alleged efforts, or even certify to the TTAB its reasons for not complying with Rule 37.

Therefore, Opposer’s motion should not be considered.

II. APPLICANT’S RESPONSES TO OPPOSER’S DISCOVERY ARE COMPLETE

At the filing of this response in opposition to Opposer’s Motion to Compel discovery, Applicant has provided supplemented responses to Opposer’s discovery by serving the documents subject to the entered Protective Order. However, Opposer’s demand for responses to its second set of interrogatories must fail because its demand exceeds the number of interrogatories permitted under the Federal Rules of Civil Procedure. Rule 33 of the Federal Rules of Civil Procedure limits the number of interrogatories a party may ask to twenty-five (25), including discrete subparts. See Fed.R.Civ.P. 33. Even if discrete subparts are excluded (which Applicant does not concede), Opposer propounded twenty-six (26) interrogatories in its first set. Applicant objected to any interrogatories in excess of those permitted under the Federal Rules generally in its General Objections found in his answers to Opposer’s first set of interrogatories and specifically to Interrogatory 26 on that ground. Opposer’s attempt to ask

even more questions is not permitted under Rule 33, and, therefore, no response is required to Opposer's deficient and impermissible Second Set of Interrogatories.

Finally, Opposer has still not yet produced un-redacted versions (other than for attorney-client privilege) of the documentation produced prior to the entry of the Protective Order since said Order was entered and should be required to do so in light of their demand for Applicant's responses with its own unclean hands.

III. THE BOARD SHOULD EXTEND THE EXPERT, DISCOVERY, PRE-TRIAL, AND TRIAL PERIODS

The remainder of the discovery schedule is set as follows:

Expert Disclosures Due	10/15/2013
Discovery Closes	11/14/2013
Plaintiff's Pretrial Disclosures	12/29/2013
Plaintiff's 30-day Trial Period Ends	02/12/2014
Defendant's Pretrial Disclosures	02/27/2014
Defendant's 30-day Trial Period Ends	04/13/2014
Plaintiff's Rebuttal Disclosures	04/28/2014
Plaintiff's 15-day Rebuttal Period Ends	05/28/2014

Given the pending motion and the outstanding discovery disputes and the unforeseen and unique nature of the Opposer's family death and Applicant's counsel's ongoing health issues, Applicant believes an extension of the schedule is warranted. Applicant contemplates the following, brief extension will place the matter back on track and ultimately result in a little more than a month's extension over the prior schedule.

Accordingly, and for good cause, Applicant respectfully request that the Board issue an Order extending the schedule as follows:

Expert Disclosures Due	12/18/2013
Discovery Closes	01/17/2014
Plaintiff's Pretrial Disclosures	03/03/2014
Plaintiff's 30-day Trial Period Ends	04/17/2014
Defendant's Pretrial Disclosures	05/02/2014
Defendant's 30-day Trial Period Ends	05/17/2014
Plaintiff's Rebuttal Disclosures	06/01/2014
Plaintiff's 15-day Rebuttal Period Ends	07/01/2014

IV. CONCLUSION

For the foregoing reasons, Applicant requests that the Board deny Opposer's Motion to Compel. Applicant further requests that this Court deny Opposer's request to extend the discovery and trial periods *only* for Opposer and instead grant Applicant's request to extend the entire schedule as presented above.

Dated: October 31, 2013

WARD LAW GROUP

By: _____
Damon L. Ward
301 Fourth Avenue South
Suite 378N
Minneapolis, MN 55415
Telephone: (612) 353-9770
Fax: (866) 759-6030
E-mail: dward@wardlawgroup.com

Certificate of Service and Transmittal: I hereby certify that a copy of the foregoing **MEMORANDUM IN OPPOSITION TO OPPOSER'S MOTION TO COMPEL** is being sent by first class mail, postage prepaid, to: mybody, LLC through its counsel Michael Hool, Hool Law Group, PLC, Suite 1020, 2398 East Camelback Road, Phoenix, AZ 85016 on the date specified below.

Dated: October 30, 2013

Damon L. Ward

deposition which was duly noted and served within the discovery period. Counsel for applicant readily and immediately agreed to the extension and the parties stipulated to and filed the extension on April 16, 2013.

6. However, in or about mid-June 2013, I began experiencing severe physical disturbances and trouble breathing which led me to present to the emergency. Shortly thereafter, I suffered severe congestive heart failure and was admitted to the hospital on or about July 3, 2013.
7. While still admitted to the hospital, the parties conferred regarding the deposition scheduling and the parties' outstanding discovery matters. Pursuant to these discussions, the parties agreed to an extension of the discovery and trial periods and on July 8, 2013 filed said stipulation with this tribunal.
8. However, in the months during my aggressive medical treatment to address my congestive failure (heart performance down to 30%), it was discovered that I was now experiencing third stage renal failure, anemia, coronary artery disease, and a variety of other maladies. As such, I was unable to meaningfully participate in various litigation matters in which I am primary lead or co-counsel and obtained appropriate scheduling extensions.
9. Attached hereto as Exhibit 1 is a true and correct copy of the Publication Confirmation for Applicant's "MY HERO" trademark.
10. Attached hereto as Exhibit 2 is a true and correct copy the Notice of Taking Deposition of Therese Clark.
11. Attached hereto as Exhibit 3 is a true and correct copy the Notice of Taking Deposition of David Watson.
12. Attached hereto as Exhibit 4 is a true and correct copy the Notice of Taking Deposition of myBody, LLC.
13. Attached hereto as Exhibit 5 is a true and correct copy of my health chart relating to my recent health problems.
14. Attached hereto as Exhibit 6 is a true and correct copy of an e-mail from Opposer's counsel regarding discovery matters.
15. Attached hereto as Exhibit 7 is a true and correct copy of an e-mail to Opposer's counsel regarding discovery matters.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: October 31, 2013

Damon L. Ward

From: TMOOfficialNotices@USPTO.GOV
Sent: Tuesday, August 28, 2012 00:44 AM
To: dward@wardlawgroup.com
Subject: Official USPTO Notification: OG Publication Confirmation for Serial Number 85597114

OFFICIAL GAZETTE PUBLICATION CONFIRMATION

Serial Number: 85-597,114
Mark: MY HERO(STANDARD CHARACTER MARK)
International Class(es): 003
Applicant: Lucas, Eric
Docket/Reference Number:

The mark identified above has been published in the *Trademark Official Gazette* (OG) on Aug 28, 2012. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a notice of allowance (NOA) should issue. (Note: The applicant must file a Statement of Use or Extension Request within six (6) months after the NOA issues.)

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

1. Click on the following link or paste the URL into an internet browser:
http://www.uspto.gov/web/trademarks/tmog/20120828_OG.pdf#page=1
2. Wait for the total OG to download completely (as indicated on bottom of OG page).
3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
4. Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 85-597,114, e.g.
5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=85597114>.
NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

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

In the Matter of Application Serial No. 85/597114
Mark: MY HERO
Published in the *Official Gazette* on August 28, 2012

MYBODY, LLC

Opposer,

v.

Opposition No. 91206915

ERIC LUCAS,

Applicant.

NOTICE OF TAKING DEPOSITION OF THERESE CLARK

**TO: OPPOSER ABOVE NAMED AND ITS ATTORNEYS, JENNIFER L. LEFERE,
HOOL LAW GROUP, PLC, SUITE 1020, 2398 EAST CAMELBACK ROAD,
PHOENIX, ARIZONA 85016.**

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the deposition of Therese Clark will be taken by oral examination before a qualified notary public or other person authorized by law to administer oaths commencing on March 6, 2013 at 9:00 a.m. and continuing until the same is completed. This deposition will be taken at the offices of Jeffrey A. Hassan, Esq., 12855 West Black Hill Road, Peoria, AZ 85383.

Dated: January 20, 2013

WARD LAW GROUP



By: _____

Damon L. Ward, I.D. #221442
301 Fourth Avenue South; Suite 378N
Minneapolis, MN 55415
Telephone: (612) 353-9770
Fax: (866) 759-6030

**ATTORNEYS FOR APPLICANT
ERIC LUCAS**

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

In the Matter of Application Serial No. 85/597114
Mark: MY HERO
Published in the *Official Gazette* on August 28, 2012

MYBODY, LLC

Opposer,

v.

Opposition No. 91206915

ERIC LUCAS,

Applicant.

NOTICE OF TAKING DEPOSITION OF DAVID WATSON

**TO: OPPOSER ABOVE NAMED AND ITS ATTORNEYS, JENNIFER L. LEFERE,
HOOL LAW GROUP, PLC, SUITE 1020, 2398 EAST CAMELBACK ROAD,
PHOENIX, ARIZONA 85016.**

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the deposition of David Watson will be taken by oral examination before a qualified notary public or other person authorized by law to administer oaths commencing on March 5, 2013 at 9:00 a.m. and continuing until the same is completed. This deposition will be taken at the offices of Jeffrey A. Hassan, Esq., 12855 West Black Hill Road, Peoria, AZ 85383.

Dated: January 20, 2013

WARD LAW GROUP



By: _____
Damon L. Ward, I.D. #221442
301 Fourth Avenue South; Suite 378N
Minneapolis, MN 55415
Telephone: (612) 353-9770
Fax: (866) 759-6030

**ATTORNEYS FOR APPLICANT
ERIC LUCAS**

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

In the Matter of Application Serial No. 85/597114
Mark: MY HERO
Published in the *Official Gazette* on August 28, 2012

MYBODY, LLC

Opposer,

v.

Opposition No. 91206915

ERIC LUCAS,

Applicant.

NOTICE OF TAKING DEPOSITION OF MYBODY, L.L.C.

TO: OPPOSER ABOVE NAMED AND ITS ATTORNEYS, JENNIFER L. LEFERE, HOOL LAW GROUP, PLC, SUITE 1020, 2398 EAST CAMELBACK ROAD, PHOENIX, ARIZONA 85016.

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the deposition of the above-captioned Opposer (“MyBody, L.L.C.”) will be taken by oral examination before a qualified notary public or other person authorized by law to administer oaths commencing on March 7, 2013 at 9:00 a.m. and continuing until the same is completed. This deposition will be taken at the offices of Jeffrey A. Hassan, Esq., 12855 West Black Hill Road, Peoria, AZ 85383.

Opposer is directed pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf regarding the subject matter set forth below:

1. Regarding Opposer's Goods:
 - (a) potential customers for Opposer's Goods;
 - (b) the manner of advertising, solicitation and/or targeting of customers and/or potential customers (e.g., advertisement, sales visits, brochures, mailings, trade shows, etc.);
 - (c) all issues of publications, directories and broadcasting outlets that have carried advertisements for Opposer's Goods;
 - (d) each advertising agency, consulting firm or other third party who advised, aided, assisted or otherwise participated in each advertisement, solicitation and/or targeting of customers and/or potential customers;
 - (e) the approximate annual expenditure of Opposer and any other entity from whom Opposer claims rights, for all advertising for Opposer's Goods;
 - (f) the recommended retail price of each of Opposer's Goods; and
 - (g) the three individuals most knowledgeable about the preparation of advertising and promotional copy for Opposer's Goods.
2. Regarding Opposer's Sales of Opposer's Goods:
 - (a) the total amount of such sales in dollars and in number of customers;
 - (b) the channels of trade and distribution in which Opposer's Goods (i) have been sold, (ii) are sold, and (iii) are intended to be sold in the future;
 - (c) the business entities used by Opposer to sell Opposer's Goods; and
 - (d) three individuals most knowledgeable about the distribution and sale of Opposer's Goods.
3. Any and all searches, investigations, evaluations, comparisons, and/or reports relating to Applicant's Mark, Applicant's Goods, Opposer's Mark, and Opposer's Goods.
4. Any and all surveys, pretests, polls, investigation, or other evaluations relating to any consumer recognition or confusion (or lack thereof) in connection with Applicant's Mark, Applicant's Goods, Opposer's Mark, and Opposer's Goods
5. The results of any and all searches, investigations, evaluations, comparisons, reports, surveys, pretests, and polls.

6. All facts and circumstances surrounding the permitted use of Opposer's Mark by a person other than Oppose.
7. All facts and circumstances regarding any license or assignment agreements involving Opposer's Mark.
8. The responses of Opposer to the discovery served upon MyBody, LLC including, but not limited to, Opposer's Answers to Applicant's Interrogatories (Set 1), Opposer's Responses to Applicant's Request for Production of Documents (Set 1); and Opposer's Responses to Applicant's Request for Production of Statements;
9. Each and every claim and allegation set forth in Opposer's Notice of Opposition;

Dated: January 20, 2013

WARD LAW GROUP



By: _____
Damon L. Ward, I.D. #221442
301 Fourth Avenue South; Suite 378N
Minneapolis, MN 55415
Telephone: (612) 353-9770
Fax: (866) 759-6030

**ATTORNEYS FOR APPLICANT
ERIC LUCAS**

[Print This Page](#) | [Close This Window](#)

Name: Damon Lee Ward | DOB: 11/2/1963 | MRN: 0934547 | PCP: Nadeem Aqeel Khan, MBBS

Current Health Issues

Please review the health issues that we have on file. Remove any health issues that no longer apply, and add any health issues that are not listed.

You should not use this feature to report an urgent concern. If this is an urgent issue please contact your clinic directly or call 911.

Health Issue	Date Noted
CHF (congestive heart failure)	07/12/2013
DM (diabetes mellitus)	07/16/2013
Anemia	09/26/2013
Mixed hyperlipidemia	09/27/2013
CAD (coronary artery disease), native coronary artery	09/27/2013
Mitral regurgitation	09/27/2013

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Subject: MY HERO Opposition

Date: Wednesday, October 9, 2013 at 9:12:03 AM Central Daylight Time

From: Michael Hool

To: 'Damon Ward'

CC: Heidi Abdul

Hi Damon,

I am checking in to see about your responses per the email string I pasted below. The last communication was from Heidi Abdul to you on September 20, 2013 inquiring about the late responses. Since we have not yet heard from you we need to get the discovery process completed or move to compel responses. Would you please circle back with me by close of business today to let us know when we might expect to have responses. Thank you, Michael

Michael D. Hool
Hool Law Group, PLC
Biltmore Financial Center
2398 East Camelback Road
Suite 1020
Phoenix, Arizona 85016
mhool@hoollawgroup.com
Phone: (602) 852-5560
Fax: (602) 852-5499



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This e-mail message is for the sole use of the intended recipient(s) and may contain information that is confidential and privileged. Any review, use, disclosure or distribution by persons or entities other than the intended recipient(s) is prohibited. If you are not an intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message and attachment(s). Although the sender believes this e-mail and any attachment(s) to be free of any virus or other defect that could damage the system(s) into which they may be received and opened, it is the responsibility of the recipient to ensure that no virus or other defect is present. The Hool Law Group PLC disclaims liability for losses or damage resulting from viruses or other defects. To reply to our Administrator, please call (602) 852-5500. Thank you.

Hi Damon: Just following up on the status. Thanks very much. Heidi

--- Original Message---

To: Michael Hool

Cc: Heidi Abdul

From: dward@wardlawgroup.com

Sent: 7/05/2013 3:22PM

Subject: Re: mybody/MY HERO mark

>> Michael:

>>

>> Thank you. I am agreeable to those dates. I will attend to the responses as soon as I

>> am discharged. I greatly appreciate your professional courtesy.

>>

>> Damon
>>
>>
>> Damon L. Ward, Esq.
>> Ward Law Group
>> 301 Fourth Avenue S.
>> Suite 378N
>> Minneapolis, MN 55415
>> (612) 353-9770 Main
>> (612) 282-3060 Direct
>> (866) 759-6030 Facsimile
>> dward@wardlawgroup.com
>>
>>
>> On Jul 5, 2013, at 4:56 PM, "Michael Hool" <mhool@hoollawgroup.com> wrote:
>>
>> > Damon, we can extend discovery period for a maximum of 90 days, which I am
>> > ok with under the circumstances. I hope you can return to health soon.
>> >
>> > We also need to have a date when you can respond to our Interrogatories
>> > sufficiently in advance of the other discovery deadline. Please confirm the
>> > following as our stipulated new time periods:
>> >
>> > You respond to our latest set of Interrogatories by 9-15-13
>> > You respond to the items you left open in our first set of Interrogatories
>> > by 9-15-13
>> > Deadline for expert disclosures 10-15-13
>> > Date for closure of discovery 11-14-13
>> >
>> > Please confirm by email with your agreement to these dates and we will file
>> > the stipulation.
>> >
>> > Michael D. Hool
>> > Hool Law Group, PLC
>> > Biltmore Financial Center
>> > 2398 East Camelback Road
>> > Suite 1020
>> > Phoenix, Arizona 85016
>> > mhool@hoollawgroup.com
>> > Phone: (602) 852-5560
>> > Fax: (602) 852-5499
>> >
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>> >
>> >
>> > -----Original Message-----

>> > From: Damon Ward [mailto:dward@wardlawgroup.com]
>> > Sent: Friday, July 05, 2013 3:41 AM
>> > To: Michael Hool
>> > Cc: Heidi Abdul
>> > Subject: Re: mybody/MY HERO mark
>> >
>> > Michael:
>> >
>> > I am contacting you to follow up and request an extension of the schedule.
>> > In the past weeks I have suffered severe medical distress related to a
>> > chronic medical disease. I am currently admitted to the hospital and am
>> > unaware when I will be released will evaluation for pneumonia and heart
>> > distress are completed and addressed. Given you are on vacation for most of
>> > this month as well, I believe an extension is warranted.
>> >
>> > Damon
>> >
>> >
>> > Damon L. Ward, Esq.
>> > Ward Law Group
>> > 301 Fourth Avenue S.
>> > Suite 378N
>> > Minneapolis, MN 55415
>> > (612) 353-9770 Main
>> > (612) 282-3060 Direct
>> > (866) 759-6030 Facsimile
>> > dward@wardlawgroup.com
>> >
>> >
>> > On Jun 30, 2013, at 9:57 AM, "Michael Hool" <mhool@hoollawgroup.com> wrote:
>> >
>> >> Hi Damon:
>> >>
>> >> I left you a voicemail Thursday so please get back in touch when you
>> >> can. I am interested in moving discovery along so we can finish. I
>> >> am not sure schedules for my clients now that we are into July but I
>> >> can reach out to them if you know when you might want their
>> >> depositions. Also, we have two sets of interrogatories outstanding
>> >> with you that need completion. Can you respond on those? We are
>> >> starting to run short on time so I would appreciate your direct
>> >> attention on these items. I am in California escaping the heat but am
>> >> mostly reachable and respond to emails. Please feel free to connect
>> >> with Heidi Abdul if you cannot reach me if you have any questions that
>> > need a call.
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Subject: Re: MY HERO Opposition
From: "Damon L. Ward, Esq." <dward@wardlawgroup.com>
Date: Wed, October 9, 2013 9:16 am
To: "Michael Hool" <mhool@hoollawgroup.com>
Priority: Normal
Options: [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#) | [View Message details](#)

Sorry Michael.

Will take a look. I do not have Heidi's communication but have been having website difficulties. Don't want to complain re: medical issues, but my heart failure and heart output have gotten worse. I understand that is not your problem though, so I will have a substantive response by end of today regarding your concerns.

Damon

> Hi Damon,
>
>
>
> I am checking in to see about your responses per the email string I pasted
> below. The last communication was from Heidi Abdul to you on September
> 20,
> 2013 inquiring about the late responses. Since we have not yet heard from
> you we need to get the discovery process completed or move to compel
> responses. Would you please circle back with me by close of business
> today
> to let us know when we might expect to have responses. Thank you, Michael
>
>
>
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> Michael D. Hool
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> PHOENIX, ARIZONA 85010
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> _____

> Hi Damon: Just following up on the status. Thanks very much. Heidi

> --- Original Message---

> To: Michael Hool
>
> Cc: Heidi Abdul
>
> From: dward@wardlawgroup.com

>
> Sent: 7/05/2013 3:22PM
>
> Subject: Re: mybody/MY HERO mark

>>> Interrogatories
>
>>> > sufficiently in advance of the other discovery deadline. Please
> confirm the
>
>>> > following as our stipulated new time periods:
>
>>> >
>
>>> > You respond to our latest set of Interrogatories by 9-15-13
>
>>> > You respond to the items you left open in our first set of
> Interrogatories
>
>>> > by 9-15-13
>
>>> > Deadline for expert disclosures 10-15-13
>
>>> > Date for closure of discovery 11-14-13
>
>>> >
>
>>> > Please confirm by email with your agreement to these dates and we
>>> will
> file
>
>>> > the stipulation.
>
>>> >
>
>>> > Michael D. Hool
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Take Address