

As approved by Order from the United States Bankruptcy Court on April 23, 2001, Church & Dwight Co., Inc. sold the assets of Enamelon, Inc. which included assigning Church & Dwight Company (a separate entity, from Church & Dwight Co., Inc.) all right, title and interest together with the good will in U.S. Registration Number 2,302,306, which is the subject of the above captioned Cancellation proceeding. The assignment of U.S. Registration Number No. 2,302,306 to Church & Dwight Company (executed on October 25, 2001 and November 15, 2001 by the respective parties) was recorded with the United States Trademark Assignment Branch effective January 7, 2002 at Reel 002417 Frame 0299.

As a result of the Assignment, Church & Dwight Company filed to substitute the name of the Respondent and reopen proceedings on December 8, 2001. By Order dated January 15, 2002, the Trademark Trial and Appeal Board substituted Church & Dwight Company¹ as the Respondent and allowed it 30 days to file an Answer to the Petition to Cancel and respond to Petitioner's outstanding Motion to Compel. By Motion on Consent from Petitioner, Church & Dwight Company moved to extend the date to answer the Petition and respond to the Motion to Compel up to and including March 15, 2002.

¹ Respondent has submitted a separate Motion to Correct the Name of Respondent to read Church & Dwight Company, who is a separate company from Church & Dwight Co., Inc. and who is the owner of U.S. Registration Number 2,302,306 as recorded with the Assignment Branch of the United States Patent and Trademark Office.

On March 13, 2002, the new Respondent, Church & Dwight Company filed an Answer to the Petition to Cancel with the Trademark Trial and Appeal Board. On March 13, 2002, the new Respondent also served Petitioner answers to outstanding discovery, originally served upon Enamelon, Inc.

LEGAL ARGUMENT

Petitioner filed its Motion for Default Judgment or Alternatively to Compel Discovery based upon Enamelon, Inc.'s (former Respondent) failure to respond to the Petition and failure to answer Petitioner's First Set of Interrogatories and First Request for Production of Documents. Because the Board vacated Default, Church & Dwight Company, the new Respondent, responds to the arguments made in the Motion to Compel Discovery as outlined below.

Church & Dwight Company has answered Petitioner's First Set of Interrogatories and First Request for Production of Documents, and served those written responses upon counsel for Petitioner. Attached at Exhibit A is a copy of the Certificate of Service and cover letter to Petitioner's counsel. Documents have not been produced because Church & Dwight Company is waiting for a response from Petitioner with regard to a proposed form of Protective Order which was forwarded by email letter dated February 19, 2002. (Attached is a copy of that letter at Exhibit B). Therefore, the Motion to Compel discovery responses is effectively moot, which only leaves Petitioner's requests to Order Respondent's objections waived and have the Board reset the discovery period for unilateral discovery by the Petitioner.

It is Church & Dwight's position that based upon the circumstances of Enamelon, Inc. going into bankruptcy, the failure to timely respond to outstanding discovery amounts to excusable neglect and Petitioner is not eligible for the relief it has requested. Moreover, Church & Dwight Company, as the new owner of U.S. Registration Number 2,302,306 for "LIQUID CALCIUM," has made good faith effort and responded to the written discovery and served those answers upon Petitioner's counsel, so if the Board resets the discovery period for discovery by both litigants (and the corresponding trial dates), there will be no prejudicial harm to the Petitioner.

While Enamelon, Inc. filed for bankruptcy on July 19, 2000, it is obvious that entity's financial troubles were developing well before that date. This is evidenced by the fact Enamelon, Inc.'s former counsel filed with the Board, on June 30, 2000, a Petition to withdraw as counsel referencing failure to be paid for over one year. As is clear from the record, no new counsel was retained nor made an appearance. As a result of its financial bankruptcy, Enamelon, Inc.'s ability to respond to discovery requests was blocked because it was without resources or legal representation to counsel it about this matter. Considering the factual circumstances, the lack of responding to discovery amounts to excusable neglect.

Because that Enamelon, Inc.'s failure to respond to discovery was clearly directly linked to Enamelon, Inc. entering into bankruptcy, and the fact that Church & Dwight Company, the new owner of the subject registration, has responded to outstanding written discovery, including providing a proposed form of Protective Order to Petitioner, Petitioner's request that the Board order that any objections to these discovery requests on the part of the Respondent be deemed waived, should be denied as inappropriate under the circumstances. Under the factual circumstances of this case, the new Respondent, Church & Dwight Company, should not be

prevented from fully defending itself in this Cancellation Proceeding, which includes objecting to inappropriate discovery requests and conducting discovery on the allegations made by Petitioner. To rule on these issues in favor of the new Respondent, would be consistent with the Board's vacating of default.

In response to Church & Dwight's motion the Board vacated default by Order dated January 15, 2002 and granted the new Respondent 30 days to answer the Petition to Cancel and respond to the motion to compel. It is the policy of the Board to vacate default and allow filing of an Answer upon showing of "good cause." *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 U.S.P.Q. 2d 1556 (TTAB 1992). The Board's January 15, 2002 Order, allowing the Church & Dwight Company to file an Answer, evidences that the former Respondent's falling into financial bankruptcy and the mark now being owned by a new separate entity amounted to good cause, which therefore also warrants this case now being litigated, including full discovery by both sides. This is because the "good cause" reason for an Answer not being filed in this case is the same reason the former Respondent had not answered discovery. Both deficiencies were the result of the financial bankruptcy.

Petitioner's request that Respondent's objections to discovery be waived and only Petitioner be extended time to conduct discovery was originally directed to the former Respondent and is not appropriate relief under the circumstances the subject registration is now owned by Church & Dwight Company. Ordering that objections to discovery requests be deemed waived and providing for unilateral discovery by Petitioner is a remedy to be imposed upon a respondent who does not have a good cause reason for not responding to discovery and is imposed upon an entity that has simply ignored the Trademark Rules of Practice and the Federal Rules of Civil Procedure. This is not the case in this matter. Instead, Church & Dwight's

objections to inappropriate discovery requests should remain intact and the Board should reset discovery and trial dates so both parties may fully explore and litigate the claims made by Petitioner. Otherwise, at time of trial the Board will not have before it even handed evidence to decide the claims of the mark being generic, merely descriptive or deceptive.

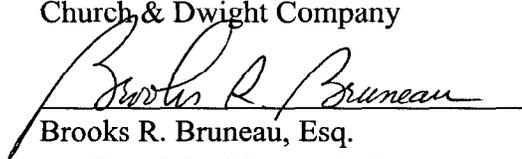
Finally, Respondent requests the Board reset the Discovery and Trial dates by providing for 5 months of discovery so that both Church & Dwight Company, Inc. and Block Drug Company may proceed with discovery in this matter.

For the reasons set forth above, it is respectfully requested that Petitioner's Motion to Compel Discovery be declared moot based upon service of discovery responses, that Petitioner's request that Respondent's objections to discovery be waived be denied, and the Board reset the Discovery and Trial Dates so that the parties may proceed with litigating this matter.

Respectfully submitted,

Church & Dwight Company

By: 3/14/02



Brooks R. Bruneau, Esq.

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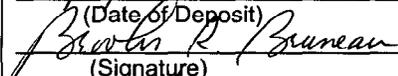
CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner For Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

Attn: BOX, TTAB No Fee

3/14/02

(Date of Deposit)



(Signature)

3/14/02

(Date of Signature)

EXHIBIT A

MATHEWS, COLLINS, SHEPHERD & MCKAY, P.A.

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03-18-2002

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COLLINS, COUNSEL

STENTS
DEMARKS
RIGHTS
COMPETITION
ENSING
...ER AND HIGH
TECHNOLOGY MATTERS
RELATED LITIGATION

March 13, 2002

Mr. Charles P. LaPolla, Esq.
Ostrolenk, Faber, Gerb & Soffen, LLP
1180 Avenue of the America
New York, New York 10036-8403

RE: Block Drug Company, Inc.
v.
Church & Dwight Company
Cancellation No.: 30,041
Our File No.: 4601-846 US
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Dear Mr. LaPolla:

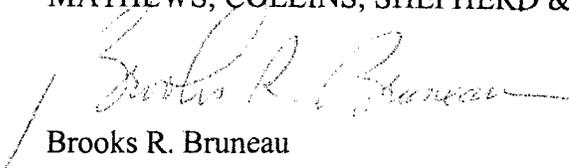
As I mentioned in our recent telephone conversations, I am enclosing Church & Dwight Company's responses to Block Drug Company's First Set of Interrogatories and First Request for Production of Documents.

We are awaiting your client's comments to the proposed form of Protective Order Tim Gibson of our office forwarded to you on February 19, 2002. Obviously, once we have a working Protective Order in place, we can properly mark and produce documents.

If you have any questions with regard to this matter, please contact me directly.

Very truly yours,

MATHEWS, COLLINS, SHEPHERD & MCKAY


Brooks R. Bruneau

BRB:dm
Enc.

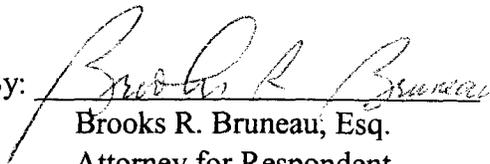
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of Respondent's written responses to Petitioner's First Set of Interrogatories and First Request for Production of Documents was served upon counsel for Petitioner this 13th day of March, 2002, via First Class Mail, Postage Prepaid, as follows:

Charles P. LaPolla, Esq.
Ostrolenk, Faber, Gerb & Soffen, LLP
1180 Avenue of the Americas
New York, New York 10036-8403

Date: 3/13/02

By:



Brooks R. Bruneau, Esq.
Attorney for Respondent
MATHEWS, COLLINS, SHEPHERD &
MCKAY
100 Thanet Circle, Suite 306
Princeton, New Jersey 08540
(609) 924-8555

EXHIBIT B

*file
cor.*

Timothy X. Gibson

From: "Timothy X. Gibson" <TGibson@MathewsLaw.com>
To: <clapolla@ostrolenk.com>
Sent: Tuesday, February 19, 2002 5:24 PM
Attach: PROTECTIVE ORDER .doc
Subject: Protective Order - Cancellation No. 30,041
Dear Charles:

Please disregard the last email attachment and review instead the attached draft Protective Order. The attached draft includes pagination and is easier to work with.

Sorry for the inconvenience.

Very truly yours,

Tim Gibson

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within Respondent's Response To Petitioner's Motion To Compel Discovery was served this 14th day of March, 2002, via First Class Mail, Postage Prepaid, as follows:

Charles P. LaPolla, Esq.
Ostrolenk, Faber, Gerb & Soffen, LLP
1180 Avenue of the Americas
New York, New York 10036-8403

Date: 3/14/02

By: Brooks R. Bruneau
Brooks R. Bruneau, Esq.
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