IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE

THE TRADEMARK TRIAL AND APPEAL BOARD

ACM Enterprises, Inc., Petitioner, - against - Martello, Jeannette, M.D., Respondent.	Cancellation No.:92044697 Filed: March 5, 2009

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U.S. PATENT AND TRADEMARK OFFICE

Certificate of Facsimile Transmission

I hereby certify that this correspondence (Pages 1-10, excluding cover page) of the Opposition of the Motion to Compel, Motion for a Protective Order and Motion to Stay as well as Exhibit (pages 1 through 57) is being transmitted by facsimile to the United States Patent and Trademark Office on the date shown below.

On March 5, 2009.

Sincerely,

Jeannette Martello, M.D.

Jeannette Martello, M.D.
Respondent In Pro Per

JEANNETTE MARTELLO
PRESIDENT OF JEANNETTE MARTELLO, M.D., A PROFESSIONAL CORPORATION
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THE TRADEMARK TRIAL AND APPEAL BOARD

ACM Enterprises, Inc. Petitioner Against Martello, Jeannette, M.D. Respondent	Cancel No. 92044697 Filed: March 5, 2009 RESPONDENT'S OPPOSITION TO MOTION TO COMPEL MOTION FOR A PROTECTIVE ORDER MOTION TO STAY DISCOVERY

Déjà vu. Petitioner's attorney has used the exact same bad faith, dilatory tactics at the last minute on three separate occasions. Delay tactic number 1: On December 22, 2005, an extension of time was granted. Plaintiff's trial testimony period was to start on April 22, 2006. A Motion to Compel Discovery was filed by Petitioner on April 21, 2006 after a single last-minute phone call was made to Respondent's attorney on April 20, 2006. Delay tactic number 2: Over a year later, an extension of time was requested on June 30, 2007. Plaintiff's trial testimony period was set to start on August 4, 2007. Plaintiff filed a Motion for Summary Judgment on Friday, August 3, 2007 with exhibits that were mailed separately on Saturday August 4, 2007 replete with a Certificate of Mailing signed by attorney David Hong in accordance with 37 CFR § 2.197(a)(1)(A)(ii) that "the person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated." This is incredible considering the fact that page 12 of Hong's 216 pages of exhibits was printed off from the TARR web server at 19:03:12 ET 4:03 p.m. PST) on Friday, August 3, 2007 whilst the mailing post office closed at 4:30 p.m. on August 3, 2007. The exhibits for the Motion for Summary Judgment were received in Virginia on Monday, August 6, 2007 at 11:28 a.m. Delay tactic number 3: On September 17, 2008, a three month extension of time was granted. The Plaintiff's trial testimony period was set to start on February 15, 2009. On February 14, 2009, Petitioner filed this Motion to Compel.

This Second Motion to Compel presents yet another refrain in Petitioner's ongoing effort to engage Respondent in frivolous motion practice over irrelevant time-consuming discovery disputes. Petitioner has attempted to divert resources and attention away from the fact that Petitioner ACM has absolutely no standing. This Motion for a Protective Order and for a Motion to Stay Discovery to review a dispositive Motion for Summary Judgment is germane to the present Motion to Compel. Respondent has recently discovered that Petitioner had no standing to bring this Petition for Cancellation to the Trademark Trial and Appeal Board in the first place and Petitioner still has no standing to this day. This newly discovered evidence will render the

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Motion to Compel as well as all other proceedings moot once the Trademark Trial and Appeal Board has had a chance to review the evidence submitted with the dispositive Motion for Summary Judgment.

Petitioner's Motion to Compel should be denied because further discovery would be unduly burdensome and oppressive. Furthermore, Respondent believes that the discovery requested is unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26]. See ***Red Wing Co. v. J.M. Smucker Co.***, 59 USPQ2d 1861 (TTAB 2001). Respondent respectfully requests a Motion for a Protective Order and for a Motion to Stay Discovery since Respondent has discovered through newly revealed evidence that Petitioner lacked standing to file the initial Petition for Cancellation in 2005. Petitioner lacks standing to this day. Therefore, all Discovery that Petitioner seeks is the fruit of the same ill-begotten tree of deceit and fraud in its initial filing of the Petition for Cancellation with the Trademark Trial and Appeal Board.

The Trademark Trial and Appeal Board has been more than patient in granting numerous extensions of time. In order to prevent further waste of the Trademark Trial and Appeal Board's time, Respondent respectfully requests a Motion for a Protective Order as well as a Motion to Stay Discovery so that the Trademark Trial and Appeal Board may have a chance to review and decide upon a dispositive Motion for Summary Judgment. The fact that the discovery period would have ended within mere hours if Petitioner had not filed this Motion to Compel argues that this stay would not be prejudicial to the Petitioner. This Motion for Summary Judgment is germane to the present Motion to Compel since Respondent has recently discovered that Petitioner had no standing to bring this Petition for Cancellation to the Trademark Trial and Appeal Board in the first place. This newly discovered evidence will render the Motion to Compel as well as all other proceedings moot once the Trademark Trial and Appeal Board has had a chance to review the evidence submitted with the Motion for Summary Judgment.

Petitioner has forced Respondent to go on a wild goose chase to ferret out a sham Berger Medical Corporation by failing to produce complete documentation regarding the business relationship between Petitioner and Dr. Saul Berger. This illegal business relationship was

documented in a Facilities and Management Services Agreement that was 14 pages in length. Pages 1 and 14 were provided to Respondent with a redacted page 4 that was produced after much prodding. (Exhibit, pages 1 through 9). This bogus Berger Medical Corporation was formed to break California law, specifically the Moscone Knox Act that governs professional corporations. Respondent has had to independently hire agencies to obtain California Secretary of State documents on a rush basis so as to unveil the extent to which Petitioner has broken laws as well as to unveil the fact that Petitioner had absolutely no standing to have brought forth this Petition for Cancellation in the first place. Respondent has expended in excess of $ 30,000 on attorney's fees in this case in order to defend Respondent's Registration. It would be prejudicial to Respondent if this Motion for Summary Judgment were not reviewed. Furthermore, it is in the interest of justice and in the interest of the economics of time that the Trademark Trial and Appeal Board stay discovery and review this dispositive Motion for Summary Judgment.

MOTIVE FOR BAD FAITH AND DILATORY TACTICS

The motives and reasons for Petitioner's conduct via these bad faith dilatory actions became apparent only after Respondent completed arduous discovery which revealed that Petitioner has never had standing to file a Petition for Cancellation. Petitioner's counsel had been uncooperative in producing information that would have allowed this discovery to have occurred at an earlier point in the proceeding. (Exhibit, pages 1 through 9). Petitioner ACM is not a professional corporation. Petitioner ACM is not a licensed practitioner. Therefore, according to California Business and Professions Code Sections 2285 and 2415, Petitioner has been illegally using the name Skin Deep Laser Med Spa in violation of these codes. (Exhibit, pages 10 through 13). It follows that Petitioner had no standing and continues to not have standing to this day. According to the Medical Board of California, a lay person can not be a partial owner of a fictitious name permit (question 17). Fictitious name permits can only be issued to professional medical corporations (question 18) and physicians may only be partners with other physicians (question 20). Additionally, fictitious name permits are not transferrable (question 14). (Exhibit, pages 34 through 44)

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documented in a Facilities and Management Services Agreement that was 14 pages in length. Pages 1 and 14 were provided to Respondent with a redacted page 4 that was produced after much prodding. (Exhibit, pages 1 through 9). This bogus Berger Medical Corporation was formed to break California law, specifically the Moscone Knox Act that governs professional corporations. Respondent has had to independently hire agencies to obtain California Secretary of State documents on a rush basis so as to unveil the extent to which Petitioner has broken laws as well as to unveil the fact that Petitioner had absolutely no standing to have brought forth this Petition for Cancellation in the first place. Respondent has expended in excess of $ 30,000 on attorney's fees in this case in order to defend Respondent's Registration. It would be prejudicial to Respondent if this Motion for Summary Judgment were not reviewed. Furthermore, it is in the interest of justice and in the interest of the economics of time that the Trademark Trial and Appeal Board stay discovery and review this dispositive Motion for Summary Judgment.

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Petitioner's Motion to Compel should be denied because further discovery would be unduly burdensome and oppressive. Furthermore, Respondent believes that the discovery requested is unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26]. See ***Red Wing Co. v. J.M. Smucker Co.***, 59 USPQ2d 1861 (TTAB 2001). Respondent respectfully requests a Motion for a Protective Order and for a Motion to Stay Discovery since Respondent has discovered through newly revealed evidence that Petitioner lacked standing to file the initial Petition for Cancellation in 2005. Petitioner lacks standing to this day. Therefore, all Discovery that Petitioner seeks is the fruit of the same ill-begotten tree of deceit and fraud in its initial filing of the Petition for Cancellation with the Trademark Trial and Appeal Board.

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manipulated the wording of his questions so that an interrogatory could instead be viewed as an admission instead (since there is no statutory limitation on the number of requests for admissions a party can pose to another). Since the Trademark Trial and Appeal Board has proposed the limitation of interrogatories to 25; limitation of admissions to 25 and document production to 15 items (although these limitations are not in effect at this time), it appears that these are the numbers that the Trademark Trial and Appeal Board appear to be reasonable to accomplish discovery. Needless to say, Respondent has a good faith belief that the discovery requested is unreasonably cumulative, irrelevant or duplicative, etc. [Fed.R.Civ.P. 26]. ***See Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001).**

The burden is on the party seeking the information to establish why it is relevant. See ***Red Wing Co. v. J.M. Smucker Co., 59 USPQ2d 1861, 1863(TTAB 2001).*** Petitioner's attorney David Hong has never been able to adequately explain why the answers to the interrogatories and admissions that he compels in this Motion to Compel are relevant. On page three of his February 28, 2007 letter addressed to Respondent's attorney Brandon Tesser, he wrote, "I will need to follow up on our reasons why these questions deal with discoverable topics for this instant proceeding and require a response." (Exhibit, pages 45 through 47). If attorney Hong needed to get back to Respondent's attorney Tesser on "our reasons why these questions deal with discoverable topics", there is no good faith legal basis for this discovery. Over one month later, on March 21, 2007, Petitioner's counsel answered Respondent's counsel's question regarding the relevancy of the discovery material. In his long-winded ten page letter replete with circular reasoning and voluminous citations, Petitioner's attorney Hong answered what he believed the relevancy was for the discovery sought. (Exhibit, pages 48 through 57).

Petitioner has never met his burden to show the relevancy of the discovery sought. Nevertheless, Respondent, in good faith, admitted to requests for admissions numbers 50 and 63.

MOTION TO COMPEL ANSWERS TO INTERROGATORIES

For over three years, Petitioner's attorney David Hong has known the identity and location of Sara Herrick. Attorney David Hong has contacted Sara Herrick via telephone at her

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