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

Proceeding	92044697
Party	Plaintiff ACM ENTERPRISES, INC.
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**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: July 1, 2005

**PETITIONER’S REPLY BRIEF FOR 2nd MOTION TO COMPEL FURTHER
RESPONSES (TBMP 523) AND TO TEST SUFFICIENCY OF RESPONSE TO
ADMISSION REQUEST (TBMP 524)**

Respondent’s March 6, 2009 opposition motion completely fails to address the discovery issues. Respondent attempts to raise allegations of standing, bad faith, and delay, among others in a “motion for summary judgment,” which are all not germane to the outstanding discovery issues.

Petitioner has proper standing, which has been clearly explained in its discovery responses and letters. *See* Petitioner’s Jan. 24, 2006 Resp. to Special Interrogatory No. 4; March 12, 2008 Letter from Petitioner attorney D. Hong to Respondent’s former attorney B. Tesser. Respondent provided a copy of this March 12, 2008 letter as an exhibit to her declaration in support of her opposition (Exhibits-Martello Decl. 3-5-09, pages 6-9).

Petitioner’s Feb. 14, 2009 motion papers clearly explain why each pending discovery request was relevant, including the interrogatories geared toward Ms. Sara Herrick’s alleged use of the mark. As stated in the initial pleadings, Petitioner is challenging Respondent’s alleged use of the mark in commerce and also prior to filing the application or registration. Regarding the interrogatories for Ms. Herrick’s alleged

use of the mark, if Respondent is attempting to use an assignment to get the benefit of Ms. Herrick's alleged use, then Respondent should be able to fully explain Ms. Herrick's alleged use of the mark, especially since Respondent admitted to knowing Ms. Herrick about 2002. (*See* Martello Jan. 18, 2005 Deposition, Page 129-130).

Because Respondent has not presented any reasonable explanation for not further responding to the discovery requests, Petitioner respectfully requests that the Board grant Petitioner's motions to compel discovery and order additional responses.

DATED: Mar. 26, 2009

By: /david hong, esq/
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

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Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following documents:

PETITIONER'S REPLY BRIEF FOR 2nd MOTION TO COMPEL FURTHER RESPONSES (TBMP 523) AND TO TEST SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST (TBMP 524)(3 pages) and Exhibits (3 pages) were sent by first class U.S. Mail on March 26, 2009, in an envelope addressed to:

Dr. Jeannette Martello, M.D.
701 Fremont Avenue
South Pasadena, CA 91030

By: /david hong/
David Hong (Reg. No. 45,704)

JEANNETTE MARTELLO, M.D.

website.

Q. And what phone number is that again?

A. (866) WOMANDR.

Q. All right. And then is there somewhere on this advertisement where you use the mark "Skin Deep" to refer to your magazine?

A. Yes.

Q. Where is that in relation to where you discuss using Skin Deep with your radio show?

A. Above it.

Q. Can you describe -- is there any difference from type or font?

A. "Skin Deep Magazine" is in bold and capitals just like it is "Skin Deep Radio Shows," bold and capitals.

Q. All right. Can I ask the reason why you ran this ad in this publication?

A. To gain clientele.

Q. Let's see.

Thank you. Let's see.

You've referenced earlier that you knew someone named Sara Herrick; is that right?

A. Correct.

Q. Can you tell me how do you know her?

A. I was introduced to her through a mutual

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JEANNETTE MARTELLO, M.D.

friend years ago.

Q. Can you approximate the time?

A. I would say at least three years ago.

Q. Three years ago; so 2003; is that right?

A. About then, yes, I would say or into 2002. I would have to ask her or try to get some paperwork. I don't know.

Q. Was it -- do you know -- is it through a professional contact?

A. From the very first meeting it was personal, but immediately after that it became professional.

Q. And do you know what Ms. Herrick does for a living?

A. She's one of the co-owners of Skin Deep Skin Care.

Q. And what is Skin Deep Skin Care? What is it?

A. It is an entity that presently practices in Monrovia, California.

Q. I am sorry. Where?

A. In Monrovia, California.

Q. Oh, in Monrovia, okay.

And then -- I am sorry. You said she a co-owner. Do you know what she does for a living?

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