

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

FAINT

Mailed: February 21, 2008

Cancellation No. 92047661

Live Ventures Inc.

v.

Saroj International, Inc.

**Cheryl Butler, Attorney, Trademark Trial and Appeal Board:**

Before the Board are petitioner's motion to compel, filed October 5, 2007, and petitioner's motion to test the sufficiency of responses to admissions, filed October 8, 2007. No response to the motions by respondent is of record.

**Petitioner's motion to compel**

By its motion to compel, petitioner seeks to have respondent supplement its responses to petitioner's first set of interrogatories and first request for production of documents and things. According to petitioner, it served its requests on August 2, 2007 and respondent served responses on September 6, 2007. Petitioner notes that none of the responses were substantive in nature and that no documents were produced. Petitioner acknowledges that respondent served supplemental responses on September 20,

2007. Petitioner argues that these responses were deficient and were not signed. Petitioner, on September 27, 2007, sent a letter to respondent articulating the perceived deficiencies and requesting appropriate signatures in support of the discovery responses. In addition, on September 26, 2007, petitioner sent respondent an email requesting signed copies of the discovery responses. Petitioner argues that respondent never responded to the letter or to the email.

Even though respondent has not responded to petitioner's motion to compel, because a timely response to the discovery requests was made (albeit not a substantive response)<sup>1</sup> and because respondent supplemented its responses shortly thereafter, including at least some substantive responses, the Board elects to consider petitioner's motion on its merits.

**1. Signatures required to interrogatory responses.**

Answers to interrogatories are to be signed by the person making them, and objections to interrogatories are to be signed by the attorney making them. See Fed. R. Civ. P. 33(b)(2); and TBMP §405.04(c) (2d ed. rev. 2004).

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<sup>1</sup> Respondent's attorney, in serving the original, non-substantive responses, explained that respondent's principal was out of the country during the time any substantive responses would have been prepared.

Accordingly, respondent is allowed until **THIRTY DAYS** from the mailing date of this order in which to serve a signed copy of its supplementary interrogatory responses.

**2. Signatures are required for document responses.**

While there is no corresponding specific requirement in Fed. R. Civ. P. 34 that document responses be signed, nonetheless Fed. R. Civ. P. 26(g)(1) is applicable to all discovery responses. Fed. R. Civ. P. 34(b) provides that documents and things must be copied and forwarded to the requesting party or the responding party must state that inspections and related activities will be permitted as requested. Such responses, however, must be signed:

[E]very discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name – or by the party personally, if unrepresented – and must state the signer's address, e-mail address, and telephone number.

Fed. R. Civ. P. 26(g)(1).

Accordingly, respondent is allowed until **THIRTY DAYS** from the mailing date of this order in which to serve a signed copy of its supplementary responses to petitioner's first request for documents and things.

**3. Adequacy of the disputed interrogatory responses.**

With respect to Interrogatory Nos. 1-12, 14-25, 31, and 32, respondent responded that it made a diligent search and reasonable inquiry in an effort to ascertain all relevant

facts and circumstances identified in the specified interrogatories, but has not been able to ascertain responsive information. Respondent also stated it "... will honor its duty to provide supplemental discovery ... and provide such supplemental Responses when appropriate."

Petitioner argues that, if respondent did not use its marks for the goods in question, it should so state. Conversely, petitioner argues that, if respondent did use the mark for the goods, respondent must know the relevant facts and circumstances and the quarterly sales figures as requested.

On their faces, the responses are adequate. After all, if the responding party has no responsive information after a diligent search, then such party cannot provide substantive responses. Accordingly, petitioner's motion to compel is denied as to Interrogatory Nos. 1-12, 14-25, 31, and 32.

Respondent served substantive responses to Interrogatory Nos. 13, 26 and 27. Petitioner, acknowledging the information provided, complains that respondent did not state if it used the marks in question on the goods and services in question. The Board agrees with petitioner's complaint. Accordingly, respondent is allowed until **THIRTY DAYS** from the mailing date of this order in which to supplement its responses to Interrogatory Nos. 13, 26 and 27

or to confirm that it intends to rely only on the information presently contained in the responses.

Respondent served substantive responses to Interrogatory Nos. 28-30. Petitioner argues that respondent redrafted the requests by deleting the term "first" use of the marks at issue and provides no dates of use, including first use. The Board agrees that respondent is to clarify its dates of first use for the marks at issue and petitioner's motion to compel is granted in part as to such information. Respondent is allowed until **THIRTY DAYS** from the mailing date of this order to supplement Interrogatory Nos. 28-30 to provide this information. Petitioner also argues further that respondent has not provided information to show activities that constituted use in commerce. However, the Board disagrees. Respondent provided the information that it sold merchandise through its website and at its retail store. Accordingly, petitioner's motion to compel is denied in part.

Petitioner's motion to compel is denied as to Interrogatory No. 33. Respondent answered the interrogatory. Any further question petitioner has about "commerce" is the subject matter of follow-up discovery.

#### **4. Adequacy of the disputed document responses**

Respondent stated that it would produce documents in response to Requests Nos. 4-6, 106-107 and 145-147 only

under a protective order. Effective August 31, 2007 the Board's standard protective order, covering disclosures, discovery and trial, is applicable to all Board proceedings.<sup>2</sup> Trademark Rule 2.116(g). Accordingly, respondent is allowed **THIRTY DAYS** from the mailing date of this order to produce documents and things responsive to Requests Nos. 4-6, 106-107 and 145-147, or to clearly state that no such items exist.

In its supplemental document response, with respect to Request Nos. 1-3, 6, 9, 100, 102, 104, 111-113, 117, 122, 124-126, 128, and 129, respondent responded that it had made a diligent search and reasonable inquiry, and points to the 174 pages of documents already produced as responsive to these requests. Respondent has also reiterated its statement that it will honor its duty to provide supplemental discovery. Petitioner argues that these documents are not responsive because they do not include any documents related to the requests at issue. Again, on their faces, the responses are adequate. Accordingly, petitioner's motion to compel is denied as to Requests Nos. 1-3, 6, 9, 100, 102, 104, 111-113, 117, 122, 124-126, 128, and 129.

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<sup>2</sup> The standardized protective order is available from the USPTO website at:  
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>.

With respect to Request Nos. 5, 7-8, 10-99, 101, 103, 105, 108-110, 114-116, 118-121, 123, 127, 130-144, and 148, respondent stated that it was "unable to locate any item responsive to" these document requests. Petitioner argues that respondent should clearly state whether it has no possession, custody or control of any responsive documents. The Board agrees that if there are no responsive documents, then respondent must so state. Accordingly, respondent is allowed **THIRTY DAYS** from the mailing date of this order to produce responsive items or clearly state whether it has no possession, custody or control of any responsive documents.

Respondent has made it clear that it understands its duty to supplement should information and materials be uncovered that respondent did not find in its diligent search. Respondent is reminded, however, that it may be precluded at trial (upon a timely objection or motion to strike) from introducing evidence that was the proper subject matter of the discovery requests in dispute if it is found that the information and documents and things were knowingly withheld. The timing of any supplemental responses may be considered in determining whether the information and matter was improperly withheld.

**Petitioner's motion to test the sufficiency of responses to requests for admissions.**

According to petitioner, it served its first request for admission on August 2, 2007; respondent served a timely

"response" on September 6, 2007 merely stating that it was unable to admit or deny the requests "at this time";<sup>3</sup> and respondent subsequently supplemented its responses September 20, 2007, but such responses were not signed. By its motion, petitioner seeks to have the admissions deemed admitted on the basis that that respondent did not sign its supplemental responses to the admissions.<sup>4</sup> Federal Rule 36(a)(3) requires that discovery responses must be signed:

A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

Fed. R. Civ. P. 36(a)(3).

In view thereof, respondent is hereby ordered to serve no later than **THIRTY DAYS** from the mailing date of this order a signed copy of its supplemental admissions.

In the event respondent fails to respond to petitioner's discovery requests, or to sign the supplemental admissions, as ordered herein, petitioner's remedy lies in a motion for discovery

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<sup>3</sup> Again, respondent's attorney, in serving the original, non-substantive responses, explained that respondent's principal was out of the country at the time the responses were due.

<sup>4</sup> The supplemental responses provide an admission or denial for each of the enumerated Requests.

sanctions pursuant to Trademark Rule 2.120(g), 37 CFR  
Section 2.120(g).

Although the Board did not issue a suspension order in  
this matter, proceedings are considered to have been  
suspended since the filing date of the motion and are hereby  
resumed. Trial dates, including the close of discovery, are  
reset as follows:

DISCOVERY PERIOD TO CLOSE: **May 14, 2008**

30-day testimony period for party in  
position of plaintiff to close: **August 12, 2008**

30-day testimony period for party in  
position of defendant to close: **October 11, 2008**

15-day rebuttal testimony period for  
plaintiff to close: **November 25, 2008**

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 Rule  
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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**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>  
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>