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

Proceeding	92056362
Party	Plaintiff Milano Series International Products, Ltd.
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Attachments	92056362-Petitioner Reply and to Suspend.pdf(109877 bytes)

Attorney Docket No. 406676US35

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

MILANO SERIES INTERNATIONAL PRODUCTS, LTD.,	)	
Petitioner,	)	
v.	)	Cancellation No. 92/056362 Supplemental Registration No. 4,215,599 Mark: MILANO BAGS
MILANO BAGS INC.	)	
Respondent.	)	

PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS SECOND MOTION TO COMPEL AND TO SUSPEND PENDING RESPONDENT PROVIDING PROPER DISCOVERY RESPONSES TO PETITIONER

Pursuant to Trademark Rule 2.127(a), Milano Series International Products, Ltd. ("Petitioner"), submits this Reply Brief in Support of its Second Motion requesting the Trademark Trial and Appeal Board ("Board") order Milano Bags Inc. ("Respondent"): (i) to provide all Respondent's Answers to Petitioner's interrogatories (Respondent's original Answers, Supplemental Answers and any further Supplemental Answers) under oath, (ii) to fully and completely respond to certain of Petitioner's First Set of Interrogatories, (iii) to fully and completely respond to certain of Petitioner's First Request for Production of Documents, Things, and Electronically Stored Information. Petitioner also requests the Board suspend discovery and trial dates until Petitioner receives the documents and information requested in Petitioner's Second Motion to Compel.

Petitioner clearly established the "good faith" standard required under Trademark Rule 2.120(e) as Respondent did not question Petitioner's compliance with the rule.

Respondent's Response to Petitioner's Second Motion to Compel reveals that (i) Respondent participated in a two hour conversation (a conference ordered by the Board –July 2, 2013, footnote 8), wherein the parties resolved various issues, and (ii) Respondent served Supplemental Responses. However, all further communications thereafter from Petitioner's counsel were met with Respondent's counsel's demands that Petitioner's counsel communicate in writing. Having then done so, Respondent fell silent until the very last day to respond to Petitioner's Second Motion to Compel. The bottom line is that Respondent's counsel's failed to provide complete responses and verification of the Interrogatories and Supplemental Interrogatories after the long history of requests and promises.

Respondent's Responsive Brief As To Providing Answers to Interrogatories Under Oath

Respondent states that original Answers and Supplemental Answers under oath "will be done in the coming days." (Responsive brief, page 4.) However, the history of this case makes it clear that a Board Order is required before Respondent will provide its Answers to the Petitioner's First Set of Interrogatories under oath (original Answers, Supplemental Answers, and any further Supplemental Answers), signed by an authorized and knowledgeable representative of Milano Bags Inc. pursuant to Fed.R.Civ.P. 33(b)(3) and (5).

Respondent's Responsive Brief As To The Deficiencies In Respondent's Answers To Petitioner's First Set of Interrogatory Nos. 2, 3, 12, 16 and 17.

Despite Respondent's counsel's assertions to the contrary, Petitioner is not concerned that Respondent identified persons residing in Peru. Petitioner is entitled to know the relationship of the person named to Applicant, a Florida corporation (see "Section E" in Petitioner's First Set of Interrogatories), and thus learn whether the person is authorized to answer and bind Applicant corporation. The persons were originally identified as "owners of the company." "Owner" is not a corporate title, and "the company" was not identified. Respondent now refers to the persons as "principals," an equally vague answer and also not in compliance with Petitioner's Section E on identifying persons. Stated differently, Petitioner is entitled to know whether the person named has the authority to act on behalf of and bind Applicant.

Respondent's attorney contends he identified Juan Ferriera "to the best of counsel's ability." (Respondent's Brief, page 3.) Petitioner does not know what that vague and nebulous statement means. Moreover, Petitioner's Interrogatories were directed to Respondent, not Respondent's counsel. Respondent's Supplemental Response to Petitioner's Interrogatory No. 17 provides only Mr. Ferriera's name and an address in Miami, Florida. There is no indication this person has any direct or even indirect connection to Applicant corporation. Mr. Ferriera was listed by Respondent as supplying documents or information, or participating in responding to Petitioner's written discovery requests.

Respondent's Responsive Brief As To The Deficiencies In Respondent's Answers To Petitioner's First Request for Production Nos. 1, 9, 10 and 11.

Petitioner requested the contract referenced by Respondent in its unverified Answer to Petitioner's Interrogatory No. 1. Respondent contends that Petitioner is "assuming that a written contract exists." (Responsive Brief, page 3.) Respondent also states in its Brief (page 3), that

"Nothing in Registrant's cited answers indicates that a writing exists in that regard." Petitioner disagrees. In Respondent's Answer to Petitioner's Interrogatory No. 1, Respondent answered: "Studio Moda SAC has a contract with Milano Bags, Inc. … ."

In addition, Respondent states (Brief, page 3): "As such, Petitioner is moving for an order compelling Registrant to produce a document that may or may not exist. In turn, Registrant has unambiguously stated that it retains no such documents."[1] (Emphasis added.)

Respondent's counsel studiously avoids stating that there has never been a written contract. In Respondent's continuing and usual evasive manner, Respondent refuses to provide Answers to Petitioner's involved requests. Petitioner seeks answers to its discovery requests about the contract (whether oral or written) that Respondent identified. Respondent insinuates in its arguments several things – a written contract perhaps currently exists or once existed, and that if there is or was a written contract, Respondent has no information on it now. If in fact Respondent has no information on the alleged "contract" under which Respondent allegedly obtained the rights to commercialize and register the Milano Bags brand in the United States, then perhaps there is no such contract – written or oral.

Regarding the deficiencies of Respondent's Supplemental Answers to Petitioner's Request for Production Nos. 10 and 11, even for the simple matter of providing legible copies of documents, Respondent states (Brief, page 4), it "will *agree* to *attempt* to reproduce better copies to the Petitioner." (Emphasis added.) Given the history of this matter, Respondent should be ordered to provide legible copies.

[1] Respondent does not set forth any of its Responses which "unambiguously" show that Respondent "retains no such documents."

As to the reverse side of labels, Respondent states (Brief, page 4): "*If* the reverse sides were blank they would not be responsive." (Emphasis added.) Petitioner requested sample labels, tags, etc., but Respondent provided no actual labels, tags, etc. Rather it produced only photocopies of one side of what appear to be labels. Respondent should be ordered to provide copies of both sides of each label, tag, etc., or state in further Supplemental Answers, <u>if accurate</u>, as to each label, tag, etc., whether the reverse side is <u>completely blank, with no wording and no design of any kind thereon</u>.

Respondent has demonstrated that, absent an order by the Board, Respondent will continue to avoid providing discovery responses despite clear obligations under the Rules to do so. Respondent has increased costs to Petitioner and to the Board.

Accordingly, based on the foregoing, Milano Series International Products Ltd. respectfully requests that the Board grant Petitioner's Second Motion to Compel, and order Respondent to: (i) provide all Respondent's Answers to Petitioner's Interrogatories (Respondent's original Answers, Supplemental Answers and any further Supplemental Answers) under oath, (ii) fully and completely respond to Petitioner's First Set of Interrogatories Nos. 2, 3, 12, 16 and 17, (iii) fully and completely respond to Petitioner's First Request for Production of Documents, Things, and Electronically Stored Information Nos. 1, 9, 10 and 11.

Petitioner also requests the Board suspend discovery and trial dates until Petitioner receives the documents and information requested in Petitioner's Second Motion to Compel.

Respectfully submitted,

MILANO SERIES INTERNATIONAL PRODUCTS, LTD.

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RSB/BAC/cli {9685050_1.DOC}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS SECOND MOTION TO COMPEL AND TO SUSPEND PENDING RESPONDENT PROVIDING PROPER DISCOVERY RESPONSES TO PETITIONER was served on counsel for Respondent, this 5th day of February, 2014, by sending same via First Class mail, postage prepaid, to:

MATTHEW H SWYERS
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