

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

gmm

Mailed: December 3, 2015

Cancellation No. 92059915

*GE Nutrients, Inc.*

v.

*CA IP Holdings, LLC*

**David Mermelstein, Administrative Trademark Judge:**

On November 5, 2015, Respondent filed: (1) a 17-page motion to compel Petitioner's responses to Respondent's first set of requests for production of documents; and (2) a 25-page motion to compel Petitioner's responses to Respondent's first set of interrogatories.<sup>1</sup>

Respondent's motions are **DENIED without prejudice** because the combined briefs exceed the 25-page limit set forth in Trademark Rule 2.127(a). Respondent has dissected what is a single motion to compel into two motions separately addressing the interrogatories and document requests in order to file briefs totaling 42 pages. Such practice violates Trademark Rule 2.127(a).<sup>2</sup> *Estate of Shakur v. Thug Life Clothing Co.*,

---

<sup>1</sup> In each instance the separate "Certificate of Good Faith Conference" has been counted, because a written statement that the parties previously conferred in good faith in an effort to resolve the issues raised in the motion to compel is a necessary element of the motion. Trademark Rule 2.120(e)(1). Even if these pages had not been counted, the combined page count of the two documents still would exceed the 25-page limit.

<sup>2</sup> If Respondent believed it needed to file a brief exceeding the 25-page limit, it should have,

57 USPQ2d 1095, 1096 (TTAB 2000) (respondent improperly attempted to circumvent the page limit in Trademark Rule 2.127(a) by “dissect[ing] what is a single motion to compel into two motions separately addressing the interrogatories and document requests in order to file briefs totaling 50 pages”); *see* TBMP § 502.02(b) (2015).

Although the Board has not undertaken a full review of the parties’ submissions or the disputed discovery requests and responses, a cursory review indicates that an inordinately high number of requests are in dispute. The number of disputed requests alone suggests that the parties have failed to cooperate with one another in discovery or in a genuine attempt to resolve or narrow the issues Respondent has attempted to put before us.

Therefore, if Respondent elects to renew its motion to compel in a single motion adhering to the 25-page limit set forth in Trademark Rule 2.127(a), it is instructed to first confer with Petitioner and renew the parties’ efforts to resolve their discovery dispute.<sup>3</sup> The parties are reminded that they are under an equal obligation to participate in good faith to resolve the matter and that the purpose of the conference requirement is to promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought. *See Amazon Techs. Inc. v. Jeffrey S. Wax*, 93 USPQ2d 1702, 1705

---

either prior to or with the filing of the brief, filed a motion for leave to file such a brief, supporting such a request by a showing of good cause. *See Estate of Shakur*, 57 USPQ2d at 1096.

<sup>3</sup> If, during the parties’ renewed efforts to resolve their dispute, either party is concerned about the running of dates, a motion to extend time to allow for additional good-faith discussions is an appropriate approach. *See Sentrol, Inc. v. Sentex Sys., Inc.*, 231 USPQ2d 666, 667 (TTAB 1986).

(TTAB 2009). To facilitate the parties' efforts, they are instructed to review TBMP §§ 405.04(b) (nature of responses to interrogatories); 406.04(c) (nature of responses to requests for documents); 408 (duties to cooperate, search records, and supplement); and 414 (selected discovery guidelines).

In responding to interrogatories, boilerplate "general objections" are not proper. Objections, if any, must be specifically asserted in response to each interrogatory or document request. The ground for objecting to an interrogatory or document request must be stated with specificity. Fed. R. Civ. P. 33(b)(4) and 34(b)(2)(B). Responses to specific discovery requests that refer to and incorporate general objections are improper<sup>4</sup> because they fail to specify which of the general objections, if any, are being asserted in response to a specific interrogatory or document request, or why each general objection is applicable to each request. *See, Medtronic, Inc. v. Pacesetter Systems, Inc.*, 222 USPQ 80, 83 (TTAB 1984) (duty of answering party to articulate objections to interrogatories with particularity); *Amazon Tech.*, 93 USPQ2d at 1705-06 ("general objections" to interrogatories and document requests found to be "anything but specific").

In responding to each document request, a party must state whether or not it has responsive documents in its possession, custody or control and, if so, state that such documents will be produced or that such documents are being withheld based on a

---

<sup>4</sup> A general objection is appropriate only when the objection relates to the discovery requests as a set, as opposed to an objection to the form of the request or the nature of the responsive information. For instance, an objection on the ground that interrogatories (including subparts) exceed seventy-five in number, or that the discovery requests were untimely made, should be made as a general objection and in lieu of objections or responses to the specific discovery requests.

claim of privilege or a specified objection. *See* Fed. R. Civ. P. 34(b)(2)(B); *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1555 (TTAB 2000). Merely stating objections to document requests without explaining the grounds for the objections — or even whether any documents are actually being withheld — is insufficient. *See* Fed. R. Civ. P. 34(b)(2)(B)–(C). If objection is made to only part of an item or category, the part must be specified, and the unobjectionable part must be responded to. Further, a party withholding responsive documents on the basis of a claim of privilege must “(i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(A)(i)–(ii).<sup>5</sup>

Finally, the parties are reminded of their ongoing duty to supplement or correct their discovery responses in a timely manner. *See* Fed. R. Civ. P. 26(e)(1). When a party fails to disclose information or amend or supplement a prior response, as required, it may, upon timely objection from the other party, be precluded from relying at trial upon information or documents that were properly sought, but not disclosed, during discovery, unless such failure to disclose “was substantially justified or is harmless.” *See* Fed. R. Civ. P. 37(c)(1); *Panda Travel, Inc. v. Resort Option Enters., Inc.*, 94 USPQ2d 1789, 1792 (TTAB 2009).

Proceedings are resumed and dates reset as follows.

---

<sup>5</sup> If discovery is withheld pursuant to a claim of privilege, the responding party must provide a privilege log, which identifies each document withheld, information regarding the nature of the privilege claimed, the name of the persons making and receiving the communication, the date and place of the communication, and the document’s general subject matter.

Expert Disclosures Due	December 23, 2015
Discovery Closes	January 22, 2016
Plaintiff's Pretrial Disclosures	March 7, 2016
30-day testimony period for plaintiff's testimony to close	April 21, 2016
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	May 6, 2016
30-day testimony period for defendant and plaintiff in the counterclaim to close	June 20, 2016
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	July 5, 2016
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	August 19, 2016
Counterclaim Plaintiff's Rebuttal Disclosures Due	September 3, 2016
15-day rebuttal period for plaintiff in the counterclaim to close	October 3, 2016
Brief for plaintiff due	December 2, 2016
Brief for defendant and plaintiff in the counterclaim due	January 1, 2017
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	January 31, 2017
Reply brief, if any, for plaintiff in the counterclaim due	February 15, 2017

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.

Cancellation No. 92059915

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.