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

Proceeding	92063647
Party	Defendant K & N Distributors
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Date	09/27/2016
Attachments	11 Response torRFA Motion.PDF(1339789 bytes)

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

INTERNATIONAL BEAUTY EXCHANGE, INC. :	:	
Petitioner,	:	
v.	:	Cancellation No. 92063647
K&N DISTRIBUTORS,	:	U.S. Reg. No. 4,941,822
Respondent	:	Mark: AFRICAN CLAIR FORMULA PLUS
	:	Registered: April 19, 2016

**RESPONDENT K & N DISTRIBUTORS' RESPONSE TO PETITIONER'S MOTION TO
DETERMINE SUFFICIENCY OF RESPONSES TO REQUEST FOR ADMISSIONS (sic)**

Pursuant to Trademark Rule 2.120 and 36 of the Federal Rules of Civil Procedure, Respondent K&N Distributors hereby responds to Petitioner International Beauty Exchange, Inc.'s Motion to Determine Sufficiency of Responses to Request for Admissions (sic), filed September 13, 2013 (Dkt. 6).

Concurrent with the filing of this Response, Respondent is serving Supplemental Responses to Petitioner's Requests for Admission in the above matter pursuant to Fed. R. Civ. P. 26(e), a copy of which is attached hereto as Exhibit A. As explained below, these Supplemental Responses may moot certain objections raised by Petitioner in its Motion. For other requests propounded by Petitioner, however, Respondent stands by its initial objections and responses, as supplemented, in Exhibit A.

With respect to **Request 1**, Respondent objected to this interrogatory as vague, ambiguous, and calls for a legal conclusion. Respondent stands by its objections insofar as "aware of 'Petitioner's AFRICAN FORMULA trademark'" is subject to interpretations that may not have been intended by Petitioner, or understood by Respondent. Nevertheless, subject to and

without waiving its objections, Respondent has provided a supplemental response that attempts to admit to as much as this request that is true, while denying the remainder. This supplemental responses satisfies Fed. R. Civ. P. 36(a)(4).

With respect to **Request 3**, Respondent has supplemented its response to admit this request.

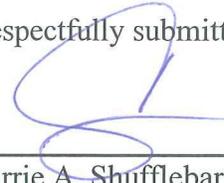
With respect to **Requests 4-5**, Respondent stands by its objections, as supplemented. Whether Respondent's packaging indicates the country of origin, and whether Federal laws require that the country of origin be identified, are not relevant to any legal or factual issues that are within the scope of authority of the USPTO or the TTAB, which is only empowered to determine Respondent's entitlement to maintain its U.S. registration that is the subject of this proceeding. Moreover, such requests are not reasonably calculated to lead to the discovery of any admissible evidence that is relevant to this proceed. Petitioner is misusing the TTAB discovery process to engage in a fishing expedition into allegations that cannot be adjudicated in this forum, and thus are not the proper scope of discovery. Nevertheless, Respondent has provided responses that satisfy its obligations under the applicable rules.

With respect to **Request No. 6**, Respondent provided a qualified response in addition to its objections, admitting this request in a manner that satisfies Fed. R. Civ. P. 36(a)(4). Thus, there is no need to determine the sufficiency of this response.

With respect to **Request Nos. 8-9**, Respondent stands by its objections to the extent these requests are poorly worded, and irrelevant to any claims or defenses the Board is empowered to adjudicate in this proceeding. But, in an effort to reach a compromise, it has also provided supplemental responses that satisfy its obligations under the applicable rules.

In view of the foregoing, Respondent respectfully submits that Petitioner's Motion to Determine Sufficiency of Responses should be denied as moot.

Respectfully submitted,



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Date: September 27, 2016

Attorneys for Respondent K & N Distributors

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing is being served via U.S. Mail, with a courtesy copy via email, on the following, on this 27th day of September, 2016.

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Carrie Shufflebarger

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EXHIBIT A

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

INTERNATIONAL BEAUTY EXCHANGE, INC. :	:	
Petitioner,	:	
v.	:	Cancellation No. 92063647
K&N DISTRIBUTORS,	:	U.S. Reg. No. 4,941,822
Respondent	:	Mark: AFRICAN CLAIR FORMULA PLUS
	:	Registered: April 19, 2016
	:	

**RESPONDENT'S SUPPLEMENTAL RESPONSES TO PETITIONER'S FIRST
REQUESTS FOR ADMISSION**

Pursuant to Trademark Rule 2.120 and Rule 36 of the Federal Rules of Civil Procedure, Respondent K&N Distributors, identified in Petitioner's Request for Admission as "Registrant" (hereafter, "Registrant"), hereby submits the following Supplemental Responses to Petitioner International Beauty Exchange, Inc.'s First Set of Requests for Admission.

1. Registrant was aware of Petitioner's AFRICAN FORMULA trademark prior to the filing of its application that led to the registration here sought to be cancelled.

Response: Subject to and without waiving its initial objections, Registrant admits it was aware of a product sold under the designation AFRICAN FORMULA. Except as expressly admitted, denied.

2. Registrant or its agent obtained a sample of Petitioner's AFRICAN FORMULA product prior to the design of its packaging for its AFRICAN CLAIR FORMULA PLUS products.

Response: Denied.

3. Registrant's AFRICAN CLAIR FORMULA PLUS product is not manufactured in the United States.

Response: Subject to and without waiving its initial objections, admitted.

4. Registrant's packaging of its AFRICAN CLAIR FORMULA PLUS products does not indicate the country of origin of its product.

Response: Registrant objects to this request for admission insofar as it is not relevant to any legal or factual issues that are within the scope of authority of the United States Patent & Trademark Office Trademark Trial & Appeal Board, and is not reasonably calculated to lead to the discovery of any admissible evidence that is relevant to this proceeding, in which the sole legal issue is Registrant's entitlement to federal trademark registration for its AFRICAN CLAIR FORMULA PLUS mark. Subject to and without waiving these objections, denied.

5. Federal laws require that the country of origin of products of the type sold by Registrant under its mark here in issue appear on the product, its container or packaging.

Response: Registrant objects to this request for admission insofar as it is not relevant to any legal or factual issues that are within the scope of authority of the United States Patent & Trademark Office Trademark Trial & Appeal Board, and is not reasonably calculated to lead to the discovery of any admissible evidence that is relevant to this proceeding, in which the sole legal issue is Registrant's entitlement to federal trademark registration for its AFRICAN CLAIR FORMULA PLUS mark. Registrant further incorporates by reference its objections set forth in its initial response to Request for Admission No. 5.

6. Registrant's AFRICAN CLAIR FORMULA PLUS products and Petitioner's AFRICAN FORMULA products are known to be sold in the same beauty supply stores.

Response: Registrant incorporates by reference its objections and response set forth in its initial response to Request for Admission No. 6.

7. Registrant and Petitioner are competitors in the beauty supply trade.

Response: Admitted.

8. Nature Cosmetics LLC is the subject of a trademark application filed by Registrant and is not a company organized and existing under the laws of Florida or any other state.

Response: Registrant incorporates by reference its objections and responses set forth in its initial response to Request for Admission No. 8. Answering further, Registrant admits it

owns U.S. Trademark Application No. 86/834,302 for the following design mark:



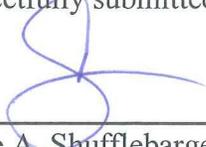
Registrant denies the remaining allegations in Request No. 8.

9. The website of Nature Cosmetics LLC as listed on the packaging for Registrant's AFRICAN CLAIR FORMULA PLUS is inactive as is the OCR device on the packaging.

Response: Registrant incorporates by reference its objections set forth in its initial response to Interrogatory No. 9 insofar as this request is vague and ambiguous. Registrant further objects insofar as it is not relevant to any legal or factual issues that are within the scope of authority of the United States Patent & Trademark Office Trademark Trial & Appeal Board, and is not reasonably calculated to lead to the discovery of any admissible evidence that is relevant to this proceeding, in which the sole legal issue is Registrant's entitlement to federal trademark registration for its AFRICAN CLAIR FORMULA PLUS mark. Subject to and

without waiving these objections, Registrant admits that as of today's date, the website and OCR device noted on the version of the packaging in Petitioner's possession may not be active.

Respectfully submitted,



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Date: September 27, 2016

Attorneys for Respondent K & N Distributors, Inc.

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