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Filing date: **09/30/2016**

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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Signature	/cas/
Date	09/30/2016
Attachments	14 Response to Motion to Compel Interrogatories.PDF(687497 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
	:	U.S. Reg. No. 4,941,822
K&N DISTRIBUTORS,	:	Mark: AFRICAN CLAIR
	:	FORMULA PLUS
Respondent	:	Registered: April 19, 2016
	:	

**RESPONDENT K & N DISTRIBUTORS' MOTION TO STRIKE MOTION TO
COMPEL INTERROGATORY RESPONSES**

Pursuant to Trademark Rule 2.120(e)(1) and TBMP § 523.02, and Trademark Rule 2.119 and TBMP § 113, Respondent K&N Distributors hereby moves to strike Petitioner International Beauty Exchange, Inc.'s Motion to Compel Interrogatories, mailed on 9/16/2016 (Dkt. 9) and Supplemental Submission in support (Dkt. 13), mailed on 9/22/2016 and entered into TTABVue on 9/28/2016. As grounds for this motion, K&N Distributors respectfully submits the Motion fails to comply with rules noted above insofar as it did not include the discovery requests that were the subject of the motion or any other referenced attachments, and insofar as neither of these documents was properly served on counsel of record for Respondent. The 09/22/2016 filing also lacked a Certificate of Service of any kind.

Details concerning these failures, and how such noncompliance with the rules has prejudiced Respondent, are outlined in the memorandum in support submitted herewith.

On Thursday, September 29, 2016, the undersigned contacted counsel for Petitioner in an effort to resolve this matter without having to resort to this motion to strike, but those efforts were unsuccessful.

MEMORANDUM IN SUPPORT

On September 15, 2016, the undersigned counsel entered an appearance in this proceeding, replacing Respondent's prior counsel of record by filing a Power of Attorney. (Dkt. 7). Prior to filing the Power of Attorney, the undersigned called Petitioner's counsel as a matter of courtesy, and advised him that Thompson Hine, LLP would be replacing Respondent's counsel of record. The "correspondent address" in TTABVue was updated on September 16, 2016. (Dkt. 8).

On that same day, with knowledge of the substitution of counsel, Petitioner's counsel filed his third motion to compel in this matter, seeking to compel "full and proper responses to certain interrogatories." Respondent's prior counsel had submitted the responses that Petitioner asserts are incomplete and/or improper. This filing did not attach any documentation as required by Trademark Rule 2.120(e)(1). Nor was this document properly served on counsel of record pursuant to Trademark Rule 2.119. Rather, it was served on Respondent's *prior* counsel, who had been replaced as counsel of record pursuant to Respondent's September 15, 2016 Power of Attorney filing. Respondent's current counsel only learned of this filing on Friday, September 23, when checking the TTABVue system to ascertain the response dates for the other Motions to Compel that were outstanding in this action when this substitution of counsel occurred.¹

On September 27, 2016, the undersigned attempted to contact opposing counsel to discuss the deficiencies in this Motion to Compel, and to request that he withdraw the filing to provide Respondent's new counsel an opportunity to serve revised interrogatory responses that would likely address at least some of Petitioner's concerns. Petitioner's counsel did not return

¹ Respondent timely responded to each of the other Motions to Compel. *See* Dkt. 11-12.

that call until September 29, shortly before which the undersigned learned of Petitioner's "Supplemental Filing" (Dkt. 13), which was mailed on September 22, 2016 but not posted to TTABVue until September 28, 2016. Petitioner's counsel did not serve this "Supplemental Filing" on either of Respondent's counsel, despite the requirements of Trademark Rule 2.119.

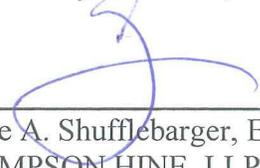
During the September 29, 2016 call, Respondent's counsel identified the issues with Petitioner's motion, and requested that Petitioner withdraw the motion to give Respondents' new counsel an opportunity to prepare and provide amended supplemental responses in an attempt to address Petitioner's concerns. Petitioner's counsel refused.

Respondent, through its newly appointed counsel, stands ready to review the previously-served discovery responses, and to make a reasonable effort to serve supplemental responses that may obviate the need for Board intervention. It is unable to do so, however, in the limited time provided to it, caused at least in part by Petitioner's neglect of the applicable rules cited above.

Accordingly, Respondent respectfully requests the Board strike Petitioner's third Motion to Compel (Dkt. 9 and 22). Alternatively, Respondent requests the Board hold this motion in abeyance for 30 days to give Respondent's newly appointed counsel the opportunity to receive and review case files from prior counsel, confer with its client, and propound Amended and Supplemental Interrogatory Responses to the discovery requests that are subject to this motion. Such action is likely to moot all or part of the issues raised by Petitioner, without the need for Board intervention.

Dated: September 30, 2016

Respectfully submitted,



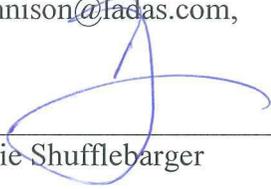
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Attorneys for Respondent K & N Distributors, Inc.

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 30th day of September, 2016.

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Carrie Shufflebarger

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