



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

INTERNATIONAL BEAUTY EXCHANGE, INC.]
]
 Petitioner,]
]
 v.]
]
 K & N DISTRIBUTORS,]
]
 Registrant.]

86 150 835
Cancellation No. 92063647
Reg. No. 4,818,656
Docket # C16681825

MOTION TO COMPEL
(Interrogatory Answers)

Petitioner hereby respectfully moves the Honorable Board for an Order compelling the Registrant to submit full and proper responses to certain interrogatories pursuant to appropriate discovery requests properly served upon its attorney on July 12, 2016. A copy of the discovery request and Registrant's Answers to selected interrogatories is attached hereto.



This Motion is brought under the provisions of 37 C.F.R. §2.120(e) and TBMP §523.01. A good faith effort has been advanced by the undersigned by a letter dated August 29, 2016 in order to obtain the required interrogatory answers (copy enclosed). However, counsel for Registrant has failed to respond to this communication.

Before listing Answers to any of the Interrogatories, Registrant submitted nine pages of boiler plate general objections and also generally objected to each and every interrogatory and request for documents submitted by Petitioner.

Registrant provided answers to some of the interrogatories, but the response was not submitted under oath as required by Fed. R. Civ. Pro. 33(b)(3).

Attention is directed to the responses to interrogatories Nos. 1, 7, 9, 10, 15, 16, 18, 20, 21, and 22. In each instance, as noted above, the response provided incorporated boiler plate objections of various forms.

Most of these interrogatories seek very basic information necessary for the prosecution of this case such

as; the name and location of the manufacturer of Registrant's product.

Registrant in its response to Interrogatory #15 regarding the manufacturer of its product responded that "This information is irrelevant to a cancellation proceeding and therefore is outside the scope of discovery". Further in response to Interrogatory #16 concerning notification on its packaging of the country of manufacture, the response given was that "This information is wholly irrelevant to the nature and scope of this proceeding. No response is required nor will it be provided". It appears from Registrant's answer to Interrogatory #7d that the goods are actually made abroad and any failure to indicate the country of origin could be in violation of federal law and accordingly could be grounds for amending the Petition for cancellation to set forth a new ground.

Interrogatory #18 seeks information about a company called "Nature Cosmetics LLC" which name is prominently referred to on Registrant's packaging and which includes a logo which in fact is the subject of a pending application of the present Registrant, application no. 86-834082. Registrant

refused to respond to the Interrogatory by stating that it was "irrelevant to this proceeding".

In response to Interrogatory #1, Registrant failed to provide information about any branch offices.

Interrogatory #7 relates to the first date of use by Registrant. No documents have apparently been located to support the first use and the response is confusing and contradictory since it states that the first shipment of goods was "June 2015" yet the first importation of the goods was "September 2015".

Interrogatory #9 relates to the circumstances and the date when Registrant selected its mark. Registrant deemed this inquiry to be "privileged and confidential under attorney-client privileged (sic.), work product doctrine, and company work product in anticipation of litigation".

When asked if any searches or surveys were conducted prior to the filing of its application (Interrogatory # 10), Registrant responded, "No response to inappropriate Interrogatory".

In its Answer to the Petition, Registrant stated that Registrant did not have seniority, yet when inquired by Interrogatory #20 as to what facts Registrant had to support

this claim, it responded that to provide such an answer "would require an unreasonable and undue burden and expense .." Such a ludicrous objection should not be entertained. Priority is a key issue in proceedings such as this and the refusal to provide this information should lead to sanctions.

Registrant in Interrogatory #21 was asked to identify all documents that it held to be privileged. The answer given was that "A privilege log is still being drafted".

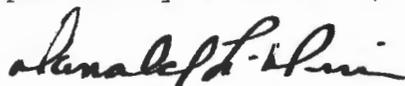
Finally, when asked (Interrogatory #22) to identify each person who was consulted with respect to the answers to the Interrogatories, Registrant stated "registrant and their employees". This hardly identifies the individuals involved.

Registrant's evasion of providing prompt answers as required by law is an unreasonable attempt to prevent the Petitioner to obtain basic information concerning the Registrant and its products which are involved in this Cancellation.

This type of boilerplate response to legitimate interrogatories should not be permitted and should be sanctioned by the Board.

Accordingly, since the discovery sought is essential to the proper prosecution of this case, an Order requiring the Registrant to respond to the Discovery requests as put without objection is solicited.

Respectfully submitted,



Donald L. Dennison
Attorney for Petitioner
LADAS & PARRY LLP
1727 King Street
Suite 105
Alexandria, VA 22314
(703) 837-9600 Ext. 15

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Compel was sent by electronic mail as agreed upon by counsel, this 16th day of September, 2016 to counsel for Registrant, Rishi Nair, c/o Keener & Associates, at the e-mail address, rishi.nair@keeneregale.com.



Donald L. Dennison