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Filing date: **05/03/2006**

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

Proceeding	91168183
Party	Plaintiff U.S. Bariatric, LLC
Correspondence Address	Karen L. Stetson, Esq. Law Offices of Karen L. Stetson, Esq. P.O. Box 403023 Miami, FL 33140 UNITED STATES kls@kstetsonlaw.com
Submission	Motion to Compel Discovery
Filer's Name	Karen L. Stetson
Filer's e-mail	maf@kstetsonlaw.com, kls@kstetsonlaw.com
Signature	/Karen L. Stetson/
Date	05/03/2006
Attachments	Wellness USB's Motion to Compel.pdf ( 2 pages )(18498 bytes ) Wellness USB's First Set of Interrogatories to Applicant.pdf ( 9 pages )(77331 bytes ) Wellness Kommer's Objection to USB's First Set of Interrogatories.pdf ( 2 pages )(18590 bytes )

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

In re: Application of Elaine F. Kommers  
Serial No. 78487940  
Date Filed: September 22, 2004  
Date Published: August 23, 2005  
Mark: WELLNESS BUILDING BLOCKS

U.S. BARIATRIC, LLC,

Opposer,

Opposition No. 91168183

vs.

ELAINE F. KOMMERS,

Applicant.

\_\_\_\_\_ /

OPPOSER U.S. BARIATRIC, LLC'S MOTION TO COMPEL

Opposer, U.S. Bariatric, LLC ("USB"), by and through undersigned counsel, hereby requests the entry of an Order compelling Applicant, Elaine Kommers to respond to USB's First Set of Interrogatories. In support thereof, USB states as follows:

On March 6, 2006, USB served its First Set of Interrogatories to Applicant. A true and correct copy of USB's First Set of Interrogatories is attached hereto. USB's First Set of Interrogatories contains nine (9) interrogatories. However, Applicant objected to USB's First Set of Interrogatories on the basis that "Applicant believes that the number of interrogatories served exceeds the limitations specified in Rule 2.120(d)(1) of the Trademark Rules of Practice." A true and correct copy of Applicant's General Objection to USB's First Set of Interrogatories is attached hereto.

Applicant's objection is disingenuous and is made in bad faith as there is no possible interpretation which would lead one to conclude that USB's interrogatories

exceed the maximum 75 interrogatories permitted by the rules. See T.B.M.P. § 405.03; Trademark Rules of Practice R. 2.120(d)(1).

Undersigned counsel has attempted to confer with counsel for Applicant regarding the discovery sought herein, but counsel has not responded to such attempts.

For the foregoing reasons, Opposer, U.S. Bariatric, LLC, requests an Order compelling Applicant to answer USB's First Set of Interrogatories.

KAREN L. STETSON, ESQ.  
Attorneys for Opposer  
U.S. BARIATRIC, LLC  
P.O. Box 403023  
Miami, FL 33140

By: Karen L. Stetson/  
Karen L. Stetson  
Florida Bar No. 742937  
Meredith A. Frank  
Florida Bar No. 502235

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via U.S. Mail to Charles Saunders, Esq., 311 Lindenwold Avenue, Ambler, Pennsylvania 19002 on this 3<sup>rd</sup> day of May, 2006.

By: Karen L. Stetson/  
Karen L. Stetson

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U.S. BARIATRIC, LLC,

Opposer,

Opposition No. 91168183

vs.

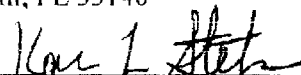
ELAINE F. KOMMERS,

Applicant.

**OPPOSER U.S. BARIATRIC, LLC'S NOTICE OF SERVING FIRST SET  
OF INTERROGATORIES TO APPLICANT**

Opposer, U.S. Bariatric, LLC ("USB"), pursuant to TTAB Manual of Procedure §405 and Federal Rule of Civil Procedure 33 and Rules 2.116 and 2.120 of the Trademark Rules of Practice, hereby serves the following Interrogatories on Applicant, Elaine F. Kommers ("Kommers"), and requests Applicant to answer each of the following Interrogatories within the time prescribed by said Rules.

KAREN L. STETSON, ESQ.  
Attorneys for Opposer  
U.S. BARIATRIC, LLC  
P.O. Box 403023  
Miami, FL 33140

By:   
Karen L. Stetson  
Florida Bar No. 742937

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via U.S. Mail to Charles Saunders, 311 Lindenwold Avenue, Ambler, Pennsylvania 19002 on this 6<sup>th</sup> day of March, 2006.

By: Karen L. Stetson  
Karen L. Stetson

## DEFINITIONS AND INSTRUCTIONS

1. As used herein, the term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
  
2. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
  
3. When referring to a person, “to identify” means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
  
4. When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).
  
5. As used herein, the term “relating to” means concerning, referring to, describing, evidencing or constituting.
  
6. The terms “all” and “each” shall be construed as all and each.
  
7. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
  
8. The use of the singular form of any word includes the plural and vice versa.

9. "Opposer" means U.S. BARIATRIC, LLC or "USB", including, its corporate parents, affiliates, subsidiaries any corporations or entities controlling USB or under its control, and EEI's present and former officers, directors, agents, servants, attorneys, or other persons acting on its behalf.

10. "Applicant", "you" or "your" means Elaine Kommers, her agents, servants, attorneys, or other persons acting on her behalf.

11. The "WELLNESS BUILDING BLOCKS mark" refers to Elaine Kommer's application Serial No. 78,487,940.

## INTERROGATORIES

1. Identify all persons who were consulted in preparing your responses to these interrogatories; who supplied information used in answering these interrogatories; who prepared or assisted in the preparation of the responses to these interrogatories; and for each person indicate the interrogatories for which responses each person was consulted, supplied information, or prepared or assisted.

2. Identify the earliest date upon which you intend to rely in this proceeding with respect to your use of the WELLNESS BUILDING BLOCKS mark in interstate commerce and state the factual basis therefor.



3. Identify, in detail, all trade channels used in interstate commerce for materials containing the WELLNESS BUILDING BLOCKS mark.

4. Identify and describe each of the goods and/or services on which you have used the WELLNESS BUILDING BLOCKS mark or any variation thereof and state the date of such use(s).

5. Identify all persons who were involved in, or participated in any way with, the decision to adopt, register and/or use the WELLNESS BUILDING BLOCKS mark and for each such person state his/her title and the role he/she played to adopt, register and/or use the WELLNESS BUILDING BLOCKS mark

6. Identify each person employed by you, or each outside agency or agent retained by you, who has been or now is responsible for marketing, advertising and promotion, bookkeeping and accounting with respect to any of the goods or services offered or rendered under the WELLNESS BUILDING BLOCKS mark.

7. Identify the ordinary purchaser of the goods or services sold under the WELLNESS BUILDING BLOCKS mark including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods or services sold under the WELLNESS BUILDING BLOCKS mark.

8. Identify those witnesses whom you intend to use in your defense of this Opposition. For each witness state the subject matter about which the witness is expected to testify; the substance of the facts and/or opinions about which the witness is expected to testify; and a summary of the grounds for each opinion.

9. Identify all persons who are known by you or your counsel to have knowledge or information concerning the subject matters set forth in the Notice of Opposition.

STATE OF FLORIDA            )  
COUNTY OF MIAMI-DADE    )

\_\_\_\_\_  
ELAINE F. KOMMERS

BEFORE ME the undersigned authority personally appeared Elaine F. Kommers and swears and deposes that she has read the Answers to Interrogatories and that the same are true and correct to the best of her knowledge and belief. Elaine F. Kommers is personally known to me (    ), or has produced \_\_\_\_\_ as identification.

SWORN to and subscribed to on this \_\_\_\_ day of \_\_\_\_\_, 2006.

NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name printed, stamped, or typed)

MY COMMISSION EXPIRES:

(SEAL)

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

U.S. BARIATRIC, LLC,	)	
	)	
Opposer,	)	Opposition No.: 91168183
	)	
vs.	)	Serial No. 78/487,940
	)	Mark: WELLNESS BUILDING
ELAINE F. KOMMERS,	)	BLOCKS
	)	
Applicant.	)	
	)	

**APPLICANT'S GENERAL OBJECTION TO OPPOSER U.S. BARIATRIC, LLC'S  
FIRST SET OF INTERROGATORIES TO APPLICANT**

Applicant Elaine F. Kommers ("Applicant"), through her undersigned attorney Wm. Charles Saunders, objects generally to Opposer U.S. Bariatric, LLC's first set of interrogatories to Applicant. As grounds for its general objection, Applicant believes that the number of interrogatories served exceeds the limitation specified in Rule 2.120(d)(1) of the Trademark Rules of Practice.

Respectfully submitted,

BY: 

Wm. Charles Saunders  
Attorney at Law  
311 Lindenwold Avenue  
Ambler, PA 19002

(215) 540-5580 (Phone)  
(215) 540-5581 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S GENERAL OBJECTION TO OPPOSER U.S. BARIATRIC, LLC'S FIRST SET OF INTERROGATORIES TO APPLICANT has been furnished by FIRST CLASS MAIL, POSTAGE PREPAID, this 10th day of April, 2006 to:

Karen L. Stetson, Esq.  
Law Office of Karen L. Stetson  
P.O. Box 403023  
Miami, FL 33140



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Wm. Charles Saunders, Attorney at Law