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

Proceeding	91244593
Party	Defendant JH Biotech, Inc.
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Submission	Motion to Compel Discovery or Disclosure
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Date	05/03/2019
Attachments	Motion to Compel Discovery.pdf(863068 bytes) Declaration in Support of Motion to Compel Discovery.pdf(326829 bytes)

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

In the Matter of:

Mark: SEEDUP
Serial No. 87/953,971
Date of Filing: 06-08-2018

Cytozyme Laboratories, Inc.)	
)	
Opposer,)	Opposition No.: 91244593
)	
vs.)	
)	APPLICANT’S MOTION TO COMPEL
JH Biotech, Inc.)	DISCOVERY
)	
Applicant.)	
_____)	

APPLICANT’S MOTION TO COMPEL DISCOVERY

JH BIOTECH, INC. (“Applicant”), in accordance with Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120(f) of the Trademark Rules of Practice, hereby moves the Trademark Trial and Appeal Board (the “Board”) for an order compelling Cytozyme Laboratories, Inc. (“Opposer”) to:

- (1) admit or deny Applicant’s requests for admission numbers 5 and 6;
- (2) produce documents to fully respond to Applicant’s Requests for Production numbers 2 and 8; and,
- (3) answer Applicant’s Interrogatory numbers 3, 5, 6, 10, 11, 26, 28-32, 34-37, and 40-42

in full.¹

FACTS

Opposer is the owner of registered mark “SEED+.” Opposer filed an opposition after publication of Applicant’s applied-for mark “SEEDUP” claiming that registration of Applicant’s SEEDUP mark: 1) will likely cause confusion in the marketplace as to source and is likely to falsely suggest a connection between Applicant and Opposer; 2) that its registered mark is famous under 15 U.S.C. § 1125(c) ; and, 3) that Applicant’s mark will likely dilute Opposer’s famous mark by blurring and/or tarnishment under through 15 U.S.C. § 1125(a).²

A copy of all at-issue Interrogatory, Production and Admission requests and responses are provided as Exhibits 1, 2 and 3 respectively.

On January 28, 2019, Applicant served Opposer with a first set of Written Interrogatories, Requests for Production, and Requests for Admission.

Opposer provided responses on February 27, 2019. These responses provided either no substantive answers or evasive answers relating to the following:

Interrogatories³

No. 3 – The documents supporting Opposer’s belief that its SEED+ mark is famous.

No. 5 – Evidence supporting Opposer’s allegation of tarnishment.

No. 6 – Evidence supporting Opposer’s allegation of blurring.

No. 9 – Identification of publications within which an advertisement for SEED+ appears.

No. 10 – Annual sales figures for the SEED+ mark for the period 2000 to 2018.

No. 11 – Annual advertising expenditures supporting the SEED+ mark for the period

1 The facts in support of this Motion to Compel are set forth in the accompanying declaration of Ralph D. Chabot, dated May 3, 2019 (“Chabot Decl.”), and the exhibits thereto.

2 Notice of Opposition ¶¶7,8,9, TTAB prosecution history #1

3 Exhibit 1

2000 to 2018.

Requests for Production⁴

No. 2 – Documents supporting Opposer’s belief that its SEED+ mark is famous.

No. 5 – Copies of each publication within which an advertisement for SEED+ appeared.

Pursuant to 37 C.F.R. §2.120(e) and TBMP §523.02, Applicant made a good faith effort to resolve the inadequacies in Opposer’s responses dated February 27, 2019. Applicant sent an email to Opposer on March 1, 2019 highlighting the inadequacies of Opposer’s responses, requesting additional information, and explaining the relevance of the additional information requested pertaining to Interrogatories 3,5,6,9,10 and 11; and, Requests for Production 2 and 5.⁵ Applicant invited Opposer to discuss any issue described in Applicant’s email at Opposer’s convenience.⁶ Applicant requested Opposer to respond to Applicant’s email by March 14, 2019.⁷

On March 14, 2019, Opposer provided a First Amended Response to the first set of Interrogatories. Opposer’s response provided either no substantive answers or evasive answers relating to the following topics described above, namely Interrogatories Numbered 3, 5, 6, 10, and 11, and Requests for Production Number 2.

In addition, on March 5, 2019, Applicant served Opposer with a second set of Written Interrogatories, Requests for Production and Requests for Admission.

Opposer responded to Applicant’s Interrogatories, Requests for Production, and Requests for Admission on April 4, 2019. Opposer’s response provided either no substantive answers or evasive answers relating to the following:

4 Exhibit 2

5 Chabot Decl. Exhibit A.

6 Id.

7 Id.

Interrogatories⁸

No. 26 – A list of the unit size in which SEED+ product is sold.

No. 28 – The unit price for sale of SEED+ products directly from Opposer to its customers.

No. 29 – Information relating to the availability of SEED+ products through retail stores.

No. 30 – Information relating to the number of sales people not affiliated with Opposer's sales partner companies selling the SEED+ products.

No. 31 – Identification of the number of sales partner companies working with Opposer to sell SEED+ products in the United States.

No. 32 – Identification of the date Opposer first used a company to provide Watch Notices pertaining to SEED+.

No. 34 – For 2018, identification of the percentage of worldwide sales of SEED+ product which was sold in the United States.

No. 35 – For 2018, identification of the percentage of Opposer's United States sales is attributable to SEED+.

No. 36 – For 2018, identification of the percentage of SEED+ sales sold by Opposer directly to customers in the United States.

No. 37 – For 2018, identification of the single largest sale of SEED+ product to a single customer in the United States.

No. 40 – With respect to Request for Admission No. 5, if Opposer does not admit to No. 5, Opposer is requested to fully explain its thinking as to why confusion between SEEDMAXX and SEED+ is not likely.

No. 41 – With respect to Request for Admission No. 6, if Opposer does not admit to No.

⁸ Exhibit 1

6, Opposer is requested to fully explain its thinking as to why confusion between SEEDNET and SEED+ is not likely.

No. 42 – Identification of the five crops from which the most revenue is obtained from sale of SEED+ products.

Requests for Production⁹

No. 8 – Documents relating to agreements between Opposer and each company in partnership with Opposer for sale of SEED+ products.

Requests for Admission¹⁰

No. 5 – Admit or deny that Opposer believes that registered mark SEEDMAXX so resembles the SEED+ mark as to be likely to cause confusions among consumers as to source.

No. 6 – Admit or deny that Opposer believes that registered mark SEEDNET so resembles the SEED+ mark as to be likely to cause confusions among consumers as to source.

Again, Applicant made a good faith effort to resolve the inadequacies in Opposer's responses dated April 4, 2019. Applicant sent an email to Opposer on April 5, 2019 highlighting the inadequacies of Opposer's responses, requesting additional information, and explaining the relevance of the additional information requested pertaining to Interrogatories 26, 28-32, 34-37, 40-42; Requests for Production 2 and 8; and, Requests for Admission 5 and 6.¹¹ In order to reduce the burden on Opposer, Applicant offered to reduce the time period for which sales and

⁹ Exhibit 2

¹⁰ Exhibit 3

¹¹ Chabot Decl. Exhibit B.

advertising expenditures were requested from the period 2000-2018 to 2012-2018.¹² Applicant also invited Opposer to discuss any issue described in Applicant's email at Opposer's convenience.¹³ Further, Applicant requested Opposer to respond to Applicant's email by April 26, 2019.¹⁴ Opposer did not provide any response to the April 5th email.

The discovery period in this matter is scheduled to close July 14, 2019. TTAB prosecution history #2.

ARGUMENTS

I. Scope of Discovery is Broad: Opposer Must Answer Interrogatories, etc. Concerning Claims in its Notice of Opposition

In the present case, as part of its Notice of Opposition, Opposer has claimed that registration of Applicant's SEEDUP mark will likely cause confusion in the marketplace as to source and is likely to falsely suggest a connection between Applicant and Opposer.¹⁵ Opposer has also claimed its SEED+ mark is famous.¹⁶ Further, Opposer claims that registration of Applicant's mark "...is likely to dilute Opposer's famous SEED+ mark by blurring and/or tarnishment..."¹⁷

Applicant may, therefore, take discovery regarding nonprivileged matters relevant to Opposer's claims that its mark is famous, that Applicant's mark is likely to dilute Opposer's mark by blurring, that Applicant's mark is likely to dilute Opposer's mark by tarnishment, and that registration of Applicant's mark is likely to cause confusion in the marketplace.

Applicant's Interrogatories 3, 5, 6, 10 and 11, and Request for Production number 2 seek

12 Id.

13 Id.

14 Id.

15 Notice of Opposition ¶7

16 Notice of Opposition ¶8

17 Notice of Opposition ¶9

information relating to Opposer's claims that its SEED+ mark is famous, and that registration of Applicant's mark will dilute Opposer's mark by blurring and/or tarnishment. A party may take discovery as to matters relevant to the claims or defenses raised in the proceedings. *See TBMP § 414, fn 25 See Mack Trucks, Inc. v. Monroe Auto Equip. Co.*, 181 USPQ 286, 287 (TTAB 1974) (opposer must answer interrogatories concerning allegations in notice of opposition). Opposer has provided either no substantive answers or evasive answers to the listed requests relating to the claims in the Notice of Opposition, so Opposer should be compelled to provide responses to Applicant's requests.

Applicant's Interrogatories number 10, 11, 28, 29, 34, 35, 36, 37 and 42 request information relating to Opposer's sales and advertising/promotion of its SEED+ products. According to the TBMP, annual sales and advertising figures, stated in round numbers, for a party's involved goods or services sold under its involved mark are proper matters for discovery. *See TBMP § 414, fn 18 See e.g. Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147, 149 (TTAB 1985) (relevant to issues of likelihood of confusion...; response that these figures have been "substantial" is insufficient); *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581, 583 (TTAB 1975) (sales and advertising expenditures have bearing on registrability). Opposer has provided either no substantive answers or evasive answers to the listed interrogatories relating to the sales figures and advertising expenditures related to its SEED+ products, so Opposer should supplement its responses to Applicant's requests.

Applicant's Interrogatories number 30, 31, and 32, and Request for Production number 8 seek information relating to the channel employed by Opposer to sell the SEED+ products. "Information concerning...contractual agreements between a responding party and third parties based on the responding party's involved mark is discoverable." *See TBMP § 414, fn 10 See Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675

(TTAB 1988) (licensing agreements and arrangements between opposer and third parties and amount of sales thereto are relevant); *Johnson & Johnson v. Rexall Drug Co.*, 186 USPQ 167, 172 (TTAB 1975) (contacts with third parties, such as through litigation or agreements, based on pleaded mark for involved goods, are relevant). Information relating to the areas of distribution for a party's involved goods or services sold under its involved mark is discoverable. *See TBMP § 414, fn 16* *See Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (relevant areas of inquiry include number of salesmen, locations of sales representatives who market goods bearing the mark, and geographic location of dealers who market and distribute the products under the mark.) Opposer has provided either no substantive answers or evasive answers to the listed requests relating to the sales channel for its SEED+ products, so Opposer should supplement its responses to Applicant's requests.

Applicant's Interrogatories number 26, 28, 29 and 30 seek information relating to the sophistication of the purchasers of Opposer's SEED+ products. Information concerning the technical expertise of the purchasers of a party's products is relevant to the issue of likelihood of confusion and is discoverable. *See TBMP § 414, fn 20 Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (the sophistication of purchasers a factor in assessing the likelihood of confusion). Opposer has provided either no substantive answers or evasive answers to the listed requests relating to sophistication of a purchaser for its SEED+ products, so Opposer should supplement its responses to Applicant's requests.

Applicant's Interrogatories number 40 and 41, and Requests for Admission number 4 and 5 seek information related to Opposer's opinion about possible likelihood of confusion between Opposer's SEED+ mark and other registered marks. A request for discovery is not necessarily objectionable merely because it requires a party or a witness to give an opinion or contention that

relates to fact or the application of law to fact. *See TBMP § 414, fn 21 See e.g, Gould Inc. v. Sanyo Electric Co.*, 179 USPQ 313, 314 (TTAB 1973) (question of whether opposer believes marks to be confusingly similar is relevant); *J.B. Williams Co. v. Pepsodent GmbH*, 188 USPQ 577, 580-81 (TTAB 1975) (identity of all civil and USPTO proceedings involving mark is not objectionable);. Opposer has provided either no substantive answers or evasive answers to the listed requests relating to its opinions and thoughts relating to the likelihood of confusion between Opposer's SEED+ mark and other registered marks.

Opposer's Interrogatory responses, provided in the attached Exhibit 1, are insufficient because of the following reasons:

- No. 3 – The documents supporting Opposer's response show the SEED+ mark being registered. A registration by itself is insufficient for the mark to be considered "famous." The provided response is therefore unresponsive.
- No. 5 – Opposer's response repeats an allegation that "JHB's inferior and poorer quality seed treatment and growth products [associated with the SEEDUP mark]" tarnishes Opposers SEED+ mark. No evidence of any testing or comparative evaluation of the products performed by Opposer is included to support the allegation of tarnishment. The provided response is therefore unresponsive.
- No. 6 – Opposer's response simply repeats an accusation that Applicant's SPEEDUP mark causes blurring of Opposer's SPEED+ mark. The response does not identify any evidence to support the allegation and is therefore unresponsive.

- No. 10 – Opposer’s response states that Applicant’s request is overbroad and unduly burdensome. Applicant’s initial request for sales figures was for a period covering just over 40% of the life of Opposer’s product and was modified to request sales information covering less than 15% of the life of the product for the most recent six years of the product’s life. The provided response is therefore unresponsive.
- No. 11 – Opposer’s response states that Applicant’s request is overbroad and unduly burdensome. Applicant’s initial request for advertising figures was for a period covering just over 40% of the life of Opposer’s product and was modified to request advertising expenditure information covering less than 15% of the life of the product for the most recent six years of the product’s life. The provided response is therefore unresponsive.
- No. 26 – Opposer maintains that the requested information of a list of the unit size in which SEED+ product is sold is not relevant to the dispute. The provided response is therefore unresponsive.
- No. 28 – Opposer maintains that information relating to the unit price for sale of SEED+ products directly from Opposer to its customers is not relevant to the dispute. The provided response is therefore unresponsive.
- No. 29 – Opposer maintains that information relating to the availability of SEED+ products through retail stores is not relevant to the dispute. The provided response is therefore unresponsive.
- No. 30 – Opposer maintains that information relating to the number of sales people used to sell SEED+ not affiliated with Opposer’s sales partner companies is not relevant to this dispute. The provided response is

therefore unresponsive.

- No. 31 – Applicant requests Opposer to identify the number of companies having a partnership with Opposer for sale of SEED+ products in the United States. Opposer responds that the number of companies with which Opposer has a partnership and whom sell SEED+ products in the United States is not relevant to this dispute. The provided response is therefore unresponsive.
- No. 32 – Opposer maintains that the date Opposer began using a company to provide watch notices pertaining to the SEED+ mark is not relevant to the dispute. The provided response is therefore unresponsive.
- No. 34 – Opposer maintains that the percentage of worldwide sales of SEED+ product sold in the United States in 2018 is not relevant to this dispute. The provided response is therefore unresponsive.
- No. 35 – Opposer maintains that the percentage of Opposer’s overall sales in the United States attributed to the sale of SEED+ products is not relevant to this dispute. The provided response is therefore unresponsive.
- No. 36 – Opposer maintains that the percentage of Opposer’s sales in the United States from products bearing the SEED+ mark directly to customers in 2018 is not relevant to this dispute. The provided response is therefore unresponsive.
- No. 37 – Opposer maintains that the single largest purchase of SEED+ product purchased by a customer placing an order directly with Opposer, in US dollars, is not relevant to this dispute. The provided response is therefore unresponsive.

- No. 40 – Opposer maintains that Opposer’s analysis of confusion between SEED+ and SEEDMAXX marks is not relevant to this dispute. The provided response is therefore unresponsive.
- No. 41 – Opposer maintains that Opposer’s analysis of confusion between SEED+ and SEEDNET marks is not relevant to this dispute. The provided response is therefore unresponsive.
- No. 42 – Opposer maintains that a list of five crops from which the most revenue is obtained from the sale of products bearing the SEED+ mark is not relevant to this dispute. The provided response is therefore unresponsive.

In addition, Opposer’s responses to Requests for Production provided in the attached Exhibit 2 are insufficient because of the following reasons:

- No. 2 – The documents supporting Opposer’s response show the SEED+ mark being registered. A registration by itself is insufficient for the mark to be considered “famous.” The provided response is therefore unresponsive.
- No. 8 – Opposer maintains that Applicant is not entitled to production of agreements between Opposer and companies partnering with Opposer for the sale of SEED+ products. The provided response is therefore unresponsive.

In addition, Opposer’s responses to Requests for Admission are insufficient for the following reasons:

- No. 5 – Opposer maintains that Opposer’s analysis of confusion between SEED+ and SEEDMAXX is not relevant to this dispute. The provided response is therefore unresponsive.
- No. 6 – Opposer maintains that Opposer’s analysis of confusion between SEED+ and SEEDMAXX is not relevant to this dispute. The provided response is therefore unresponsive.

CONCLUSION

For all the foregoing reasons, Applicant requests the Board to compel Opposer to:

- (1) admit or deny Applicant’s Requests for Admission numbers 5 and 6;
- (2) produce documents to fully respond to Applicant’s Requests for Production numbers 2 and 8; and,
- (3) answer Applicant’s Interrogatory numbers 3, 5, 6, 10, 11, 26, 28-32, 34-37, and 40-42 in full.

/s/ Ralph D. Chabot

Ralph D. Chabot
Attorney for Applicant
JH Biotech, Inc.

Date: May 3, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing:

APPLICANT'S MOTION TO COMPEL DISCOVERY

has been served on Peter M. de Jonge of Thorpe North & Western, LLP, counsel for Opposer, by forwarding said copy on May 3, 2019 via email to: dejonge@tnw.com; jillaine.chaston@tnw.com; kaelynn.moultrie@tnw.com; aimee.kaderabek@tnw.com; litigation@tnw.com.

/s/ Ralph D. Chabot

Ralph D. Chabot
Attorney for Applicant
JH Biotech, Inc.

Date: May 3, 2019

Exhibit 1

Subject to and without waiving said objections, Gina Harris, Executive Support for Cytozyme, and Eric Baughman, Chief Executive Offer for Cytozyme, provided information to answer Applicant's Interrogatories.

INTERROGATORY NO. 2:

State whether or not CYTOZYME LABORATORIES, INC. has made a diligent search of all related documents under its control in order to fully answer Applicant's discovery requests.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad. Moreover, Cytozyme objects to the Interrogatory to the extent "diligent" is vague and undefined.

Subject to and without waiving said objections, Cytozyme states that it has reviewed any documents necessary to respond to Applicant's discovery requests. Pursuant to its rights under the Federal Rules of Civil Procedure, Cytozyme will continue to search for any relevant documents and supplement and/or amend its responses to Applicant's discovery requests as needed.

INTERROGATORY NO. 3:

At paragraph 8 of the Notice of Opposition, CYTOZYME LABORATORIES, INC. states that upon "information and belief, Opposer's SEED+ mark is famous as defined under 15 U.S.C. § 1125(c)". Identify all documents that support this belief.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome.

Subject to, and without waiving any of said objections, Cytozyme states that documents Bates labeled CYTOZYME0020-103 support Cytozyme's claim that its SEED+ mark is famous and widely recognized by the public. Specifically, documents Bates labeled CYTOZYME0028-75 show the SEED+ mark has been registered with the USPTO. Further, Cytozyme advertises its products bearing the SEED+ mark in multiple channels of trade, including online advertisements and through partnerships with other companies. *See* CYTOZYME0020-23, 76-103. For example, CYTOZYME0020-21 and 82-99 are images of Cytozyme's publicly available online website and web-linked pdf document advertising and providing information regarding its SEED+ products, while CYTOZYME0022-23 and 76-81 are images of the Verdesian's publicly available online website and web-linked pdf document advertising and providing information regarding Cytozyme's SEED+ products. Verdesian is an authorized distributor of the SEED+ Dry products. *See* CYTOZYME0100-103. Further still, customers of Cytozyme's products bearing the SEED+ mark are sold in multiple states throughout the country and are widely recognized by customers of Cytozyme and its SEED+ products.

INTERROGATORY NO. 4:

Identify the employees of CYTOZYME LABORATORIES, INC. most knowledgeable in providing testimony to their belief that the SEED+ mark is famous as alleged in paragraph 8 of the Notice of Opposition

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving any of said objections, Cytozyme states that Dr. Elizabeth Wozniak and Eric Baughman, both persons identified in Cytozyme's Initial Disclosures, are the Cytozyme employees with knowledge that the SEED+ mark is famous.

INTERROGATORY NO. 5:

At paragraph 9 of the Notice of Opposition, CYTOZYME LABORATORIES, INC. states that "Registration of the '971 Application in connection with the goods listed therein is likely to dilute Opposer's famous SEED+ mark by blurring and/or tarnishment under (*sic*) 15 U.S.C. § 1125(c). Identify all evidence to support CYTOZYME LABORATORIES, INC.'s allegation of tarnishment.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome.

Subject to, and without waiving any of said objections, Cytozyme states that JH Biotech's SEEDUP mark tarnishes Cytozyme's famous SEED+ mark by associating JH Biotech's inferior and poorer quality seed treatment and growth products with Cytozyme's established and highly respected seed growth treatment.

INTERROGATORY NO. 6:

Identify all evidence to support CYTOZYME LABORATORIES, INC.'s allegation of blurring stated in paragraph 9 of the Notice of Opposition.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome.

Subject to, and without waiving any of said objections, Cytozyme states that JH Biotech's SEEDUP mark causes blurring of Cytozyme's SEED+ mark by decreasing the unique nature of Cytozyme's SEED+ mark and the likelihood that SEED+ will continue to be a unique identifier of Cytozyme's high-quality seed treatment.

INTERROGATORY NO. 7:

Identify all channels of trade used by CYTOZYME LABORATORIES, INC. To sell products having the SEED+ mark.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome. Cytozyme objects to the Interrogatory to the extent the term "channels of trade" is vague and undefined.

Subject to, and without waiving any of said objections, Cytozyme states products bearing the SEED+ mark are advertised on the internet, through partnerships with other companies, and

are directly sold to customers through contact with Cytozyme or one of these partnership companies.

INTERROGATORY NO. 8:

Identify what CYTOZYME LABORATORIES, INC. believes to be the dominant portion of the SEED+ mark.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the term “dominant” is vague and undefined.

Subject to, and without waiving any of said objections, Cytozyme states that all “portions” of the SEED+ mark, especially the combination of SEED and + as well as the + on its own, are important to the strength and integrity of the mark.

INTERROGATORY NO. 9:

Identify each publication in which an advertisement for SEED+ has appeared in an issue of that publication.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent that the terms “publication”, “issue”, and “appeared” are vague and undefined.

Subject to, and without waiving said objection, Cytozyme states that it advertises products bearing the SEED+ mark online and through its partnership companies. *See* CYTOZYME0020-23, 76-103. Cytozyme does not advertise its SEED+ products in magazines or newspapers in the United States.

INTERROGATORY NO. 10:

Provide the annual sales figures under the SEED+ mark for each year from 2000-2018.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the extent the Interrogatory is disproportionate to the needs of the case and is not sufficiently limited in time. Cytozyme further objects to the extent the term “sales figures” is undefined and vague.

Subject to, and without waiving said objection, Cytozyme states that it will provide any sales information relevant to the dispute, during a reasonable and limited timeframe, if needed and relevant to the dispute. At this time, JH Biotech has no reasonable basis for asking for 18 years of annual sales figures.

INTERROGATORY NO. 11:

Provide the annual advertising figures for the SEED+ mark for each year from 2000-2018.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the extent the Interrogatory is disproportionate to the needs of the

case and is not sufficiently limited in time. Cytozyme further objects to the extent the term “advertising figures” is undefined and vague.

Subject to, and without waiving said objection, Cytozyme states that it will provide any advertising information relevant to the dispute, during a reasonable and limited timeframe, if needed and relevant to the dispute. At this time, JH Biotech has no reasonable basis for asking for 18 years of annual advertising figures.

INTERROGATORY NO. 12:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEED COAT (Ser. No. 88/011,246), a copy of the mark status from the Trademark Electronic Search System (TESS) is provided with bates stamp JHB 0002.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant’s Interrogatories to Opposer it was unaware of the mark SEED COAT (Ser. No. 88/011,246).

INTERROGATORY NO. 13:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEED RANCH (Ser. No. 87/637,152), a copy of the mark status from TESS is provided with bates stamp JHB 0003.

5. Cytozyme objects to the Interrogatories to the extent the Interrogatories are overbroad, uncertain, and unintelligible so that Cytozyme cannot determine the nature of the information sought, and, therefore, is unable to provide such information.

6. Cytozyme objects to the Interrogatories to the extent the Interrogatories are based on information, the acquisition of which would be overly burdensome. The information so acquired would be of little or no relevance to the issues raised in this dispute and would place an unreasonable and oppressive burden on Cytozyme in the necessary expenditure of time and money.

7. Each of the foregoing objections are incorporated herein by reference into the responses below. To the extent a particular objection is mentioned in response to a specific Interrogatory, that objection is considered particularly relevant to that Interrogatory, and is not to be considered as excluding other objections that may be applicable.

Discovery is ongoing and Cytozyme reserves the right to supplement or amend the responses to these Interrogatories in accordance with Federal Rule of Civil Procedure 26(e).

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 24:

CYTOZYME LABORATORIES, INC.'s response to **INTERROGATORY NO. 7**, stated that products bearing the SEED+ mark are directly sold to customers through contact with Cytozyme or by companies having a partnership with Cytozyme. Identify each company currently in partnership with Cytozyme for sale of SEED+ products.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent the Interrogatory calls for the disclosure of

attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome. Moreover, Cytozyme objects to the Interrogatory to the extent the phrase “currently in partnership” is vague.

Subject to and without waiving said objections, Cytozyme states that a full list of Cytozyme’s partners and companies it has agreements with is not relevant to this dispute.

INTERROGATORY NO. 25:

Identify each company which had a partnership with CYTOZYME LABORATORIES, INC., to sell products bearing the SEED+ mark but that does not have a current partnership with Cytozyme to do so.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent the Interrogatory calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome and is not reasonably limited in time.

Subject to and without waiving said objections, Cytozyme states that a full list of Cytozyme’s former partners is not relevant to this dispute.

INTERROGATORY NO. 26:

Identify each unit size which is used to sell SEED+ product.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the

term “unit size” is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that a list of sizes or measurements by which Cytozyme sells its products using the SEED+ mark is not relevant to this dispute.

INTERROGATORY NO. 27:

For each unit size identified in **INTERROGATORY NO. 26**, provide the price paid by companies having a partnership with CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the term “unit size” is vague and undefined. Cytozyme incorporates its Objections and Response to Interrogatory No. 26. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the price Cytozyme’s partner companies pay for Cytozyme’s products using the SEED+ mark is not relevant to this dispute.

INTERROGATORY NO. 28:

For each unit size identified in **INTERROGATORY NO. 26**, provide the unit price for customers desiring SEED+ products directly from CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the terms “unit size” and “desiring” are vague and undefined. Cytozyme incorporates its Objections and Response to Interrogatory No. 26. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the price customers for Cytozyme’s products using the SEED+ mark is not relevant to this dispute.

INTERROGATORY NO. 29:

Is SEED+ products available in retail stores?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the terms “available” and “retail stores” are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that Cytozyme products bearing the SEED+ mark are available directly from Cytozyme and through Cytozyme’s partners.

INTERROGATORY NO. 30:

Identify the number of salesmen used to sell SEED+ product that are not affiliated with any company having a partnership with CYTOZYME LABORATORIES, INC..

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the terms “salesmen” and “affiliated” are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the number of salesmen used to sell products bearing the SEED+ mark who are not affiliated with any company having a partnership with Cytozyme is not relevant to this dispute.

INTERROGATORY NO. 31:

Identify the number of companies having a partnership with CYTOZYME LABORATORIES, INC. for sale of SEED+ products in the United States.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the number of companies Cytozyme has a partnership with and which sell SEED+ products in the United States is not relevant to this dispute.

INTERROGATORY NO. 32:

Provide the date CTYOZYME LABORATORIES, INC. first began using a company to provide Watch Notices pertaining to SEED+; an example of a Watch Notice provided by Bates number CYTOZYME0024.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the date Cytozyme began using a company to provide watch notices pertaining to the SEED+ mark is not relevant to this dispute.

INTERROGATORY NO. 33:

Why did CYTOZYME LABORATORIES, INC. wait more than 34 years to file a trademark application for the SEED+ mark?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that its decision as to when to file its trademark application for the SEED+ mark is not relevant to this dispute. Further, Cytozyme was not required to file its trademark application when it first used its mark.

INTERROGATORY NO. 34:

For the year 2018, what percentage of worldwide sales of SEED+ product is sold in the United States?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the percentage of worldwide sales of SEED+ product sold in the United States in 2018 is not relevant to this dispute.

INTERROGATORY NO. 35:

For the year 2018, what percentage of Cytozyme's overall sales in the United States is attributed to the sale of SEED+ products?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the

term “attributed” is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the percentage of Cytozyme’s sales in the United States from products bearing the SEED+ mark in the year 2018 is not relevant to this dispute.

INTERROGATORY NO. 36:

For the year 2018, what percentage of SEED+ sales in the United States is sold by Cytozyme directly to customers?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the term “directly” is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the percentage of Cytozyme’s sales in the United States from products bearing the SEED+ mark directly to customers in the year 2018 is not relevant to this dispute.

INTERROGATORY NO. 37:

For the year 2018, state in US dollars the single largest purchase of SEED+ product purchased by a customer placing an order directly with CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client

communications or other privileged communications. Cytozyme further objects to the extent the phrases “single largest purchase” and “placing an order directly” are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the single largest purchase of SEED+ product purchased by a customer placing an order directly with Cytozyme, in US dollars, is not relevant to this dispute.

INTERROGATORY NO. 38:

For the year 2018, state in US dollars the single largest purchase of SEED+ product purchased by a customer placing an order with a company having a partnership with CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the phrase “single largest purchase” is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the single largest purchase of SEED+ product purchased by a customer placing an order with a company having a partnership with Cytozyme, in US dollars, is not relevant to this dispute.

INTERROGATORY NO. 39:

Are SEED+ products used by customers for organic farming?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that its products bearing the SEED+ product are used by a variety of farms and companies using a variety of growing techniques, which may include organic farming.

INTERROGATORY NO. 40:

If your response to **REQUEST FOR ADMISSION NO. 5** is anything but an unqualified admission, state all reasons why confusion between SEEDMAXX and SEED+ is not likely.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that Cytozyme's analysis of confusion between the SEED+ and SEEDMAXX marks is not relevant to this dispute.

INTERROGATORY NO. 41:

If your response to **REQUEST FOR ADMISSION NO. 6** is anything but an unqualified admission, state all reasons why confusion between SEEDNET and SEED+ is not likely.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that Cytozyme's analysis of confusion between the SEED+ and SEEDNET marks is not relevant to this dispute.

INTERROGATORY NO. 42:

Identify the five crops from which the most revenue is obtained from sale of SEED+ products.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the terms "most revenue" and "obtained" are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, not reasonably limited in time, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that a list of the five crops from which the most revenue is obtained from the sale of products bearing the SEED+ mark is not relevant to this dispute.

DATED this 4th day of April, 2019.

THORPE NORTH & WESTERN, LLP

/s/ Peter M. de Jonge
Peter M. de Jonge
Attorney for Opposer, Cytozyme Laboratories Inc.

Exhibit 2

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

Produce documents that support CYTOZYME LABORATORIES, INC.'s allegation of first use in commerce "at least as early as June 1976" of the SEED+ mark as described in U.S. Reg. No. 4,192,979 and paragraph 5 of the Notice of Opposition.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to this Request as unduly burdensome. Cytozyme further objects to the Request as being disproportionate to the needs of the case and not likely to produce relevant information.

Subject to, and without waiving said objections, Cytozyme states that it will make available information regarding its first use in commerce of the SEED+ mark relevant to the dispute if needed.

REQUEST NO. 2:

For each document identified in response to **INTERROGATORY NO. 3**, produce the document.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme incorporates its Objections and Response to Interrogatory No. 3.

Subject to, and without waiving said objections, Cytozyme produced documents that are specifically identified in Cytozyme's response to Interrogatory No. 3.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 8:

For each company identified in your response to **INTERROGATORY NO. 24**, produce the agreement regarding Cytozyme's partnership.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme incorporates its Objections and Response to Interrogatory No. 24.

Subject to, and without waiving said objections, Cytozyme states that JH Biotech is not entitled to production of such agreements.

REQUEST NO. 9:

If the response by **REQUEST FOR ADMISSION NO. 4** is anything but an unqualified admission, produce a copy of each webpage from the www.cytozyme.com website where the SEED+ mark is shown.

RESPONSE:

Cytozyme has admitted the SEED+ mark is not used on the www.cytozyme.com website. However, as previously disclosed via its document production, the SEED+ mark is widely used on the www.cytozymeag.com website where Cytozyme's products using the SEED+ mark are advertised. *See* CYTOZYME0020-21, 0082-99.

Exhibit 3

OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 4:

Admit that the SEED+ mark does not appear on the www.cytozyme.com website as the website appeared on March 4, 2019.

RESPONSE:

Admitted.

REQUEST FOR ADMISSIONS NO. 5:

Admit that **CYTOZYME LABORATORIES, INC.** believes that product sold using the registered mark SEEDMAXX (Reg. No. 5482602 for “Chemical preparations for use in agriculture, horticulture, and forestry, namely, chemical preparations for the treatment of seeds” in class 1) previously provided as Bates number JHB 0004-0005 so resembles the SEED+ mark as to be likely to cause confusion among consumers as to source.

RESPONSE:

Cytozyme states that Cytozyme’s analysis of confusion between the SEED+ and SEEDMAXX marks is not relevant to this dispute.

REQUEST FOR ADMISSION NO. 6:

Admit that **CYTOZYME LABORATORIES, INC.** believes that product sold using the registered mark SEEDNET (Reg. No. 4599670 for “Chemical preparations for use in agriculture, horticulture, and forestry, namely, chemical preparations for the treatment of seeds; Fertilizers for agricultural use” in class 1) previously provided as Bates number JHB 0010-0011 so resembles the SEED+ mark as to be likely to cause confusion among consumers as to source.

RESPONSE:

Cytozyme states that Cytozyme's analysis of confusion between the SEED+ and SEEDNET marks is not relevant to this dispute.

DATED this 4th day of April, 2019.

THORPE NORTH & WESTERN, LLP

/s/ Peter M. de Jonge _____

Peter M. de Jonge

Attorney for Opposer, Cytozyme Laboratories, Inc.

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

In the Matter of:

Mark: SEEDUP
Serial No. 87/953,971
Date of Filing: 06-08-2018

Cytosyme Laboratories, Inc.)	
)	
Opposer,)	Opposition No.: 91244593
)	
vs.)	
)	
JH Biotech, Inc.)	DECLARATION OF RALPH D.
)	CHABOT IN SUPPORT OF
Applicant.)	APPLICANT’S MOTION TO COMPEL
)	DISCOVERY
_____)	

I am the attorney of record for Applicant in Opposition No. 91244593.

1. After receipt of Opposer’s Set One discovery responses on February 27, 2019, I sent an email on March 1, 2019 to Opposing counsel Peter de Jonge as my meet and confer obligation. In the email I outlined why Opposer’s Set One responses were inadequate. A true and correct of the March 1st email is provided as Exhibit A.
2. On March 14, 2019, Opposer provided its Set One First Amended Responses.
3. On March 5, 2019, I sent a second set of discovery requests to Mr. de Jonge and Opposer’s Set Two responses were received on April 4, 2019. I again believed these responses to be inadequate and I sent a second email to Mr. de Jonge on April 5, 2019 as my meet and confer obligation. In the email, I explained why Opposer’s Set Two

responses were inadequate and requesting responsive answers by April 26, 2019. A true and correct of the March 5th email is provided as Exhibit B.

4. No amended answers for the Set Two discovery requests have been provided by Opposer as of the date of this declaration.

5. Pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02, I have made a good faith effort to resolve the lack of responses to Applicant's First and Second Sets of Interrogatories, Requests for Production, and Requests for Admissions.

I declare that the foregoing is true and correct.

/s/ Ralph D. Chabot

Ralph D. Chabot
Attorney for Applicant
JH Biotech, Inc.

Date: May 3, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing:

**DECLARATION OF RALPH D. CHABOT IN SUPPORT OF APPLICANT'S
MOTION TO COMPEL DISCOVERY**

has been served on Peter M. de Jonge of Thorpe North & Western, LLP, counsel for Opposer, by forwarding said copy on May 3, 2019 via email to: dejonge@tnw.com; jillaine.chaston@tnw.com; kaelynn.moultrie@tnw.com; aimcee.kaderabek@tnw.com; litigation@tnw.com.

/s/ Ralph D. Chabot

Ralph D. Chabot
Attorney for Applicant
JH Biotech, Inc.

Date: May 3, 2019

EXHIBIT A

From: Ralph D. Chabot <rdc@chabotlaw.com>
Sent: Friday, March 1, 2019 7:56 AM
To: Peter de Jonge (dejonge@tnw.com)
Subject: Cytozyme Laboratories SEEDUP Opposition No. 91244593 Docket: 6517-1805A (Sent Registered)

Dear Mr. de Jonge,

Pursuant to 37 CFR § 2.120(f)(1), this email is my good faith effort to resolve the inadequacies in Cytozyme Laboratories Inc. (Cytozyme) responses sent February 27, 2019 to certain document and interrogatory requests.

Specifically, I require additional information for the following:

Interrogatory No. 3 requests Cytozyme to identify all documents that support the belief that SEED+ is famous as stated in the Notice of Opposition paragraph 8. **Document Request No. 2** asked for copies of the documents identified.

Your response, in part, cites documents showing the SEED+ mark being registered with the USPTO CYTOZYME0028-75. As you are well aware, a registration by itself is insufficient for the mark to be considered "famous". The provided response is therefore nonresponsive.

Your response, in part, stated Cytozyme advertises its products bearing the SEED+ mark in multiple channels of trade, including online advertisements and thru partnerships with other companies and directing to Bates numbers CYTOZYME0020-27. These documents do not provide any evidence of online advertisements or documentation supporting your allegation of partnerships with other companies. Presented instead appears to be a pdf brochure by Verdesian, CYTOZYME0020-23; a Watch Notice regarding SEEDUP, CYTOZYME0024; and Cytozyme product labels CYTOZYME0025-27. This answer is unresponsive to **Interrogatory No. 3** and **Document Request No. 2**.

You may revise your response to state that you have no evidence to support a finding that SEED+ is famous or, amend your pleading to remove this allegation, or identify and provide requested documents.

Interrogatory No. 5 requests Cytozyme to identify all evidence to support an allegation of tarnishment.

Your response, in part alleges JHB's SEEDUP mark tarnishes SEED+ by associating *JHB's inferior and poorer quality seed treatment and growth products*. In order to support your allegation of "inferior and poorer quality", some testing or comparative evaluation of the products must have been performed. Any such results or evaluation should be identified in your response to this interrogatory. Alternatively, you may revise your response to state Cytozyme has no evidence to support an allegation of tarnishment.

Interrogatory No. 6 requests Cytozyme to identify all evidence to support an allegation of blurring.

Your response, in part, simply makes an accusation that JHB's SEEDUP mark causes blurring of Cytozyme's SEED+ mark by decreasing the unique nature of Cytozyme's SEED+ mark and the likelihood that SEED+ will continue to be a unique identifier of Cytozyme's high-quality seed treatment. Your response does not identify any evidence to support your allegation of blurring. If you have no evidence, you may revise your response to so state.

Interrogatory No. 9 requested each publication in which an advertisement for SEED+ has appeared in an issue of that publication. **Document Request No. 5** requests a SEED+ advertisement which appeared in an issue of that publication.

Your response provided CYTOZYME0020-27 as your answer. These documents, as described above, do not identify any publication and no advertisements have been provided. JHB seeks to know where SEED+ has been advertised. The interrogatory is narrowly drafted and is only asking for the name of a publications (i.e. a published magazine or newspaper) in which an advertisement for SEED+ has appeared in an issue for that publication. The document request is for you to produce one advertisement which appeared in each publication identified. JHB is not requesting that every Cytozyme advertisement be produced; rather, JHB is seeking the name of each publication and one Cytozyme advertisement for SEED+ that has appeared in that publication.

Interrogatory No. 10 is asking for annual sales figures for each year from 2000-2018.

Your response, in part, states that the request is overbroad and unduly burdensome and that Cytozyme will provide any sales information relevant to the dispute, during a reasonable and limited timeframe, if needed and relevant to the dispute.

Again, this is non-responsive. I direct you to TBMP §405.03(d) note 7. The information sought is, in part, to ascertain whether SEED+ is famous. We do not believe the request is overbroad and unduly burdensome since we are only seeking sales figures on an annual basis. Cytozyme has allegedly been selling SEED+ product since June 1976, a period of over 42 years. Our request covers only the most recent 18 years .

Interrogatory No. 11 is asking for annual advertising figures for each year from 2000-2018.

Your response, in part, states that the request is overbroad and unduly burdensome and that Cytozyme will provide any advertising information relevant to the dispute, during a reasonable and limited timeframe, if needed and relevant to the dispute.

Again, this is non-responsive. I direct you to TBMP §405.03(d) note 7. The information sought is, in part, to ascertain whether SEED+ is famous. We do not believe the request is overbroad and unduly burdensome since we are only seeking advertising figures on an annual basis. Cytozyme has been selling SEED+ product since June 1976, a period of over 42 years. Our request covers only the most recent 18 years.

I appreciate your attention to this issue and hope to receive a complete response by Thursday March 14, 2019 at which time I will decide whether to file a Motion to Compel. If you disagree with my request and wish to discuss at greater length, I'd be happy to discuss any issue. However, please note that I will be on travel from March 11-14.

Regards,

Ralph D. Chabot
Attorney At Law
Tel: 805.388.5028

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applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

EXHIBIT B

From: rdc chabotlaw.com
Sent: Friday, April 5, 2019 8:02 AM
To: Peter de Jonge (dejonge@tnw.com)
Subject: Cytozyme Laboratories SEEDUP Opposition No. 91244593 Docket: 6517-1805A (Sent Registered)

Dear Mr. de Jonge,

Pursuant to 37 CFR § 2.120(f)(1), this email is my good faith effort to resolve the inadequacies in Cytozyme Laboratories Inc. (Cytozyme) responses sent April 4, 2019 to certain document and interrogatory requests.

Summarizing, your responses are inadequate. Your basis for refusing to provide responses is that, in your opinion, my requests are irrelevant and overbroad.

I assure you that the requests are extremely direct and straight forward. They are necessary to address the allegations made in your Notice of Opposition, including, but not limited to, the allegation that the SEED+ mark is famous.

Specifically, I require additional information for the following:

Interrogatory No. 26 requests Cytozyme to identify each unit size which is used to sell SEED+ product. This information is necessary to ascertain the sophistication of the purchaser regarding your allegation of likelihood of confusion.

Interrogatory No. 28 requests for each unit size described in **Interrogatory No. 26** the unit price for customers desiring to purchase directly from Cytozyme. This information is necessary to ascertain the sophistication of the purchaser regarding your allegation of likelihood of confusion.

Interrogatory No. 29 requests whether SEED+ is available in retail stores. You failed to provide a response.

Interrogatory No. 30 requests Cytozyme to identify the number of salesman. We are not asking for the names; simply the number of salesman you employ.

Interrogatory No. 31 requests the number of companies having a partnership with Cytozyme for sale of SEED+ products in the US. We are not asking for each company name; only the total number.

Interrogatory No. 32 requests when Cytozyme first began using a company to provide Watch Notices pertaining to SEED+. We are not asking for the company name or search results; only the date Cytozyme first began using a company. If Cytozyme has never used a company, then so state.

Interrogatory No. 34 requests what percentage of worldwide sales of SEED+ product is sold in the US for year 2018. This is to ascertain your allegation that SEED+ is famous.

Interrogatory No. 35 requests what percentage of overall sales in the US is attributed to the sale of SEED+ products for the year 2018. This is to ascertain your allegation that SEED+ is famous.

Interrogatory No. 36 requests what percentage of SEED+ sales in the US was sold by Cytozyme directly to customers for the year 2018. This is to ascertain your allegation that SEED+ is famous.

Interrogatory No. 37 requests the single largest purchase of SEED+ product purchased by a customer placing an order directly with Cytozyme. This is to ascertain the sophistication of the purchaser regarding your allegation of likelihood of confusion.

Interrogatory No. 40 and **Request For Admission No. 5** regard Cytozyme to state why confusion between SEEDMAXX and SEED+ is not likely.

Interrogatory No. 41 and **Request For Admission No. 6** regard Cytozyme to state why confusion between SEEDNET and SEED+ is not likely.

Interrogatory No. 42 requests Cytozyme to identify the five crops from which the most revenue is obtained for your SEED+ product. We fail to see how identifying 5 crops is vague and burdensome. This information is required for an analysis into likelihood of confusion.

With regard to **Interrogatory No. 10** in which we requested annual sales figures for SEED+ from 2000-2018, we would accept as an adequate response sales figures for the last six years. This is to ascertain your allegation that SEED+ is famous.

With regard to **Interrogatory No. 11** in which we requested annual advertising figures for SEED+ from 2000-2018, we would accept as an adequate response advertising figures for the last six years. This is to ascertain your allegation that SEED+ is famous.

I appreciate your attention to this issue and hope to receive a complete response by Friday April 26, 2019 at which time I will decide whether to file a Motion to Compel.

If you disagree with my request and wish to discuss at greater length, I'd be happy to discuss any issue.

Regards,

Ralph D. Chabot
Attorney At Law
Tel: 805.388.5028

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