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

Proceeding	91248718
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 87/767,914
For the Trademark AEROGO and Design
Published in the *Official Gazette* on December 11, 2018

Stamford Devices Limited,)	
)	
Opposer,)	
)	Opposition No. 91248718
v.)	
)	
Feellife Medical Inc.,)	
)	
Applicant.)	
_____)	

**OPPOSER’S MOTION FOR SANCTIONS IN THE FORM OF JUDGMENT OR, IN THE
ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES**

Pursuant to the Federal Rules of Civil Procedure 37(b)(2) and (d), U.S. Trademark Law Rules of Practice 37 C.F.R. §2.120(h)(2), and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §§ 527.01(b) and 527.03, Opposer Stamford Devices Limited (“Opposer” or “Stamford”) hereby moves for dispositive sanctions in the form of judgment against Feellife Medical Inc. (“Applicant”) in light of Applicant’s refusal to respond to discovery and defend itself in this proceeding. Applicant has (1) failed to correct numerous deficiencies in its responses to Opposer’s First Set of Interrogatories and Requests for Production or respond to Opposer’s March 16, 2020 letter and subsequent requests to meet and confer; (2) failed to respond to Opposer’s Second Set of Interrogatories and Requests for Production and First Set of Requests for Admission due on April 15, 2020; and (3) has informed Opposer that it will not respond to Opposer’s discovery requests or continue to defend itself in this proceeding.

In the event the Board is unable to grant sanctions in the form of judgment against Applicant at this time, Opposer hereby moves pursuant to Fed. R. Civ. P. 36(a) and 37(a), 37

C.F.R. § 2.120(f), and TBMP §§ 523-24 for an order compelling Applicant to (1) serve complete amended responses to Opposer's First Set of Interrogatories, specifically Interrogatory Nos. 2-5, 7-13, and 16 (the "Subject Interrogatories"); (2) serve complete amended responses and produce documents responsive to Opposer's First Set of Requests for Production, specifically RFP Nos. 1-11 and 15 (the "Subject RFPs"); (3) serve responses to Opposer's Second Set of Interrogatories and Requests for Production; and (4) hold that Opposer's First Set of Requests for Admission have been deemed admitted. Opposer also respectfully requests that the Board suspend this proceeding and reset subsequent deadlines by sixty (60) days upon the disposition of the Motion to Compel so that Opposer may have sufficient time to review any discovery Applicant is compelled to produce. *See* 37 C.F.R. § 2.120(f)(2).

I. INTRODUCTION

Applicant has prejudiced Opposer's ability to prosecute this opposition by failing to satisfy its discovery obligations. Opposer served its First Set of Requests for Interrogatories and Requests for Production on December 12, 2019. Since that time, Applicant has been a reluctant participant in the discovery process. Opposer has made a significant good faith effort to obtain complete discovery from Applicant with no success. Because Applicant has expressly communicated to Opposer that it will no longer defend itself in this proceeding or respond to Opposer's outstanding discovery requests, Opposer must move this Board for dispositive sanctions in the form of judgment, or at the very least, to compel Applicant to satisfy its discovery obligations outlined herein.

II. BACKGROUND

A. The Opposition

On January 24, 2018, Applicant applied to register the mark AEROGO and Design (the "AEROGO Mark" or the "Mark") on an in-use basis in connection with:

Alcohol breath testing units; Air filters for medical ventilators; Blood glucose meter; Electromedical rehabilitative and pain management products for clinical and home use, namely, electrical nerve and muscle stimulators, ultrasonic stimulators, magnet therapy stimulators and laser therapy stimulators; Medical devices and apparatus, namely, ultrasound imaging apparatus, scanners and needle guides, and parts and fittings therefor; Medical ultrasound apparatus; Medical ultrasound apparatus to assist in the placement of central line catheters; Surgical apparatus for use in ophthalmic surgery; Ultrasonic therapy machines and apparatus

in International Class 10 (the “Application”). *See* Prosecution File of U.S. Ser. No. 87/767,914, Doc. No. 1. Stamford timely opposed the Application on June 10, 2019 on the grounds that (1) registration of the AEROGO Mark is likely to create confusion among consumers; and (2) the Applicant had made no bona fide use of the Mark in connection with the goods identified in the Application at the time of filing. Dkt No. 1; Declaration of Kelley Harrington in Support of Opposer’s Motion for Sanctions in the Form of Judgment or, in the Alternative, to Compel Discovery Responses (“Harrington Decl.”) at ¶2. Applicant answered the Notice of Opposition on July 11, 2019. Dkt No. 4; Harrington Decl. at ¶3.

B. Status of Discovery

The parties, through counsel, held their discovery conference on August 16, 2019 and subsequently exchanged initial disclosures. Harrington Decl. at ¶¶4-5. Opposer propounded its first set of interrogatories and requests for production on December 12, 2019. *Id.* at ¶6, Exs. 1-2. After securing Opposer’s permission for an extension of time to respond, Applicant served its responses on January 20, 2020. Dkt Nos. 5-6; Harrington Decl. at ¶¶7-8, Exs. 3-4. Opposer documented the deficiencies in Applicant’s responses and document production in a letter which was emailed to Applicant’s counsel on March 16, 2020 (the “March 16 Letter”). Harrington Decl. at ¶9, Ex. 5. Opposer asked Applicant to provide Opposer with its availability to meet and confer about the issues discussed in the letter and confirm by March 20, 2020 when it would be able to supplement its discovery responses. *Id.* That same day, Opposer served additional discovery,

consisting of a second set of interrogatories and requests for production and a first set of requests for admission. *Id.* at ¶10, Exs. 6-8. Pursuant to 37 C.F.R. § 2.120(a)(3) and TBMP § 403.03, responses to these discovery requests were due on April 15, 2020. *Id.* at ¶11.

After receiving no response to the March 16 Letter, Opposer, through its counsel, wrote to Applicant on April 1, 2020 to reiterate its request to confer about Applicant's discovery responses and inquire as to when it could expect to receive a response. *Id.* at ¶12, Ex. 9. The next day, Applicant's counsel responded that they had been "instructed to take no further action in this matter and close our file," but were "not authorized to expressly abandon the application." *Id.* Opposer asked if Applicant's counsel would notify the Board and formally withdraw its representation, but Applicant's counsel did not believe such withdrawal was warranted because it has not been "fully discharged." *Id.* With the understanding that Applicant's counsel was no longer representing Applicant in this proceeding, Opposer requested contact information for Applicant, but Applicant's counsel explained that it takes instruction from a Chinese law firm and did not have this information. *Id.*

On April 10, 2020, Opposer wrote to Applicant again, stressing that while it understood Applicant's counsel had not been fully discharged, it still had not received a response to its March 16 Letter or requests to discuss Applicant's deficient discovery responses. *Id.* Opposer explained that while "we would like to resolve this amicably, if we do not hear from [Applicant] by April 15 [the date Opposer's additional discovery requests were due] we will be forced to file a motion to compel." *Id.* Opposer reminded Applicant's counsel that Applicant, as a foreign-domiciled entity, is required to be represented by U.S. counsel in this proceeding and would need to find new counsel to proceed. *Id.* Opposer requested alternative contact information again, this time for the instructing Chinese firm. *Id.*

That same day, Applicant’s counsel responded that the “instructing firm and it[s] client are fully aware of the consequences,” and that a “motion to compel will not be contested . . . [n]or would a motion for judgment as a sanction for failure to prosecute.” *Id.* Opposer’s counsel further explained that it was not authorized to provide contact information for the instructing Chinese firm and that “they won’t appoint new counsel.” *Id.* On April 16, 2020, Opposer notified Applicant’s counsel that because Applicant did not respond to Opposer’s requests to confer or its second set of discovery due on April 15, 2020, it would be moving forward with a motion for sanctions in the form of judgment, or in the alternative, to compel discovery. *Id.*

Opposer made several good faith efforts to confer with Applicant about its discovery responses and elicit additional discovery, but Applicant’s counsel has made clear that Applicant will not respond to Opposer’s discovery requests or continue to defend itself in this proceeding. Neither Applicant nor Applicant’s counsel responded to Opposer’s April 16, 2020 email, and Opposer has not received a response to its March 16, 2020 letter or discovery requests. *Id.*

C. Applicant’s Deficient Discovery Responses

Applicant served incomplete and inconsistent responses to the Subject Interrogatories and Subject RFPs. *Id.* at ¶¶7-9, Exs. 3-5. Applicant told Opposer that it would provide a signed verification of its interrogatory responses, but Opposer never received that verification. *Id.* Opposer’s March 16, 2020 letter to Applicant memorialized its concerns and requested that Applicant address these deficiencies by serving amended responses, withdrawing its objections, and supplementing its document production or otherwise confirming that its responses were complete. *Id.* at ¶9, Ex. 5.

1. Applicant’s Responses to the Subject Interrogatories

The Subject Interrogatories and Applicant’s responses are summarized below. *Id.* at ¶¶6-7, Exs. 1, 3.

- **Interrogatory No. 2** requested that Applicant identify each person “with knowledge of the selection, adoption and development” of the AEROGO Mark. Applicant identified one individual – Hua Jian, President of Feellife Medical Inc.—but its response to Interrogatory 3 indicates that multiple individuals and at least one outside entity were involved in developing the Mark.
- **Interrogatory No. 3** requested that Applicant describe “the facts and circumstances surrounding the selection of the AEROGO Mark.” Applicant provided a narrative response that included a statement that the AEROGO brand was “founded in the United States in 2018” but failed to explain what that meant.
- **Interrogatory Nos. 4-5** requested that Applicant describe all the goods and/or services for which the AEROGO Mark has been used or will be used. Applicant objected to the scope of the request. Applicant’s response merely referred Opposer to Applicant’s document production and Application.
- **Interrogatory Nos. 7-8** requested that Applicant identify certain dates of Applicant’s use of the AEROGO Mark in the United States—i.e., dates of first use and dates of continuous use or non-use, and the reasons for any non-use. Applicant objected on the ground that its “records are not maintained in such a way, in the ordinary course of business”
- **Interrogatory No. 9** requested that Applicant describe in detail the manner in which the AEROGO Mark is or has been promoted in the U.S. for all goods and services identified in response to Interrogatory 4. Applicant listed its website www.feellife.com and its manufacturing facility, Feellife Health Inc., in City of Industry, California. In light of Applicant’s document production, which included photos of Applicant’s products at a trade show possibly in the U.S., Opposer believes this response is incomplete.
- **Interrogatory No. 10** requested that Applicant identify and describe the channels of trade and/or potential channels of trade for the goods and services distributed, sold and/or marketed under the AEROGO Mark. Applicant’s response only identified its “intended customer markets.”
- **Interrogatory No. 11** requested that Applicant describe any advertising for the AEROGO Mark, including “the nature of such advertising, the identity of each Person who has conducted such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.” Applicant responded that it primarily markets its goods in the U.S. through its website, www.feellife.com, referred to excerpts from its website, and stated that it operates a manufacturing facility, Feellife Health Inc., in City of Industry, California.
- **Interrogatory No. 12** requested that Applicant describe all efforts in preparation to use the AEROGO Mark in the U.S. in connection with the goods and services identified in the Application. Applicant failed to respond to this Interrogatory and objected to the scope and relevance of the request.

- **Interrogatory No. 13** requests that Applicant identify the number of U.S. customers or users who have used or purchased the goods and/services offered under the AEROGO Mark by year. Applicant failed to respond and objected on the ground that its “records are not maintained in such a way, in the ordinary course of business”
- **Interrogatory No. 16** requested that Applicant identify each person who supplied information to respond to these Interrogatories or whose files were consulted. Applicant failed to respond and objected on relevance grounds.

2. *Applicant’s Responses to the Subject RFPs*

The Subject RFPs and Applicant’s responses are summarized below. *Id.* at ¶¶6-7, Exs. 2,

4.

- **RFP Nos. 1-4, 6, and 10** requested “documents sufficient to show” Applicant’s use of the AEROGO Mark on goods and/or services in the U.S.; its first use of the Mark in connection with the goods and services identified in the Application; the steps it has taken to develop and provide those goods and services; its target customers and markets for those goods and services; and the channels of trade through which it sells or intends to sell and advertise goods and services offered in the U.S. under the Mark. Applicant responded that it had produced “sampling of such documents.”
- **RFP No. 5** requested all documents concerning Applicant’s creation, development and selection of the AEROGO Mark. Applicant objected to the scope of the request and on confidentiality grounds. Applicant did not produce any documents responsive to this request and merely referred Opposer to its response to Interrogatory 3.
- **RFP No. 7** requested all business plans, pitches, or proposals regarding goods and services offered or intended to be offered in the U.S. under the AEROGO Mark. Applicant failed to respond and objected to the scope of the request and on confidentiality grounds.
- **RFP No. 8** requested documents sufficient to show Applicant’s “current and potential business partners, investors, and customers” for offerings under the AEROGO Mark. Applicant responded that it “does not have any business partners or investors,” but its response to Interrogatory 3 references Applicant’s “partners.”
- **RFP No. 9** requested all marketing plans, surveys, forecasts and projections associated with any goods or services offered or intended to be offered in the U.S. under the AEROGO Mark. Applicant failed to respond and objected to the scope of the request and on confidentiality grounds.
- **RFP No. 11** requested documents referring to any U.S. “conferences, conventions, exhibitions, or trade shows” that Applicant attended concerning the AEROGO Mark. Applicant responded that it does not have any responsive documents, but photographs

from Applicant's document production, including one from a trade show with an American flag in the background, suggest otherwise.

- **RFP No. 15** requested documents concerning any "trademark clearance search" conducted in connection with the AEROGO Mark. Applicant's responded with a screenshot of a January 4, 2020 search in the Trademark Electronic Search System (TESS) for "AEROGO."

Applicant's meager document production primarily consisted of screenshots from Applicant's website and photos of Applicant's Mark used on nebulizers, with no indication as to where or when any of the photos were taken. *Id.* at ¶8. Specifically, its production included following:

- Photos of the AEROGO Mark displayed on nebulizers – with no associated date;
- January 16, 2020 screenshots of Applicant's website www.feellife.com showing the AEROGO Mark displayed in connection with nebulizers, a page on Feellife research and development, and pictures of its U.S. manufacturing facility, Feellife Health Inc., in California;
- A copy of the Articles of Incorporation for Feellife Health Inc. in California;
- A screenshot of three stylized versions of the AEROGO mark;
- A screenshot of a webpage from Amazon.com showing a FEELLIFE cool mist humidifier for sale with no associated date;
- Two invoices from February 5, 2018 and August 8, 2018 documenting the sale of nebulizers offered under the AEROGO Mark;
- Photos of the AEROGO Mark used in connection with nebulizers at trade shows or conferences with no associated date or indication of where the photos were taken;
- The first page of a 125-page January 22, 2018 TUV Rheinland test report for the Aerogo Mesh Nebulizer;
- Two marketing materials showing Opposer's mark AERONEB used in connection with nebulizers;
- TSDR print outs of Applicant and third party U.S. registrations for AERO-formative marks.

Applicant has not come close to fulfilling its obligations with respect to the Subject RFPs. Applicant's production contained no documents concerning its advertising or marketing efforts, marketing plans, business plans or presentations, or amount spent on advertising regarding the goods offered or intended to be offered under the AEROGO Mark; no documents concerning any trademark clearance search conducted before the filing of the AEROGO Mark; no documents showing Applicant's business partners, investors, and hardly any documents showing its current or target U.S. customers for offerings under the AEROGO Mark; no documents concerning Applicant's target markets, including the demographics of the marketplace and geographic scope, for offerings under the AEROGO Mark; and no documents concerning Applicant's development and selection of the AEROGO Mark. In addition, Applicant's production contained no documents showing Applicant's date of first use, or any use for that matter, of the AEROGO Mark for the goods listed in its Application.

III. THE BOARD SHOULD ENTER DISCOVERY SANCTIONS IN THE FORM OF JUDGMENT AGAINST APPLICANT

The Board has authority under 37 C.F.R. § 2.120(h)(2) to sanction a party in the form of adverse judgment for failure to respond to interrogatories and requests for production "where the responding party (1) has failed to respond, and (2) has informed the party seeking discovery that no response will be made." TBMP § 527.01(b). A motion to compel is not a prerequisite, and the Board has granted such requests when the two requirements have been satisfied. *Id.*; *Kairos Institute of Sound Healing, LLC v. Doolittle Gardens, LLC*, 88 USPQ2d 1541, 1541-43 (T.T.A.B. 2008) (motion to compel not required and sanctions available when "party has failed to meet its obligation and has also expressly stated to its adversary that it does not intend to meet its obligation, e.g. . . . respond to discovery"); *see also, e.g., Loandepot.com, LLC v. Anthony Cases*, 2019 WL 3061402, at *1 (T.T.A.B. July 10, 2019) (granting motion for discovery sanctions in the form of

judgment against Applicant as conceded where Applicant failed to serve discovery responses and stated that it would not submit such responses); *Freshpet Inc. v. PTJN Enterprises Inc.*, 2019 WL 655010, at *1 (T.T.A.B. Feb. 14, 2019) (same); *Jaguar Land Rover Ltd.*, 2018 WL 3572404, at *1 (T.T.A.B. July 23, 2018) (same).

In addition, the Board has inherent authority to sanction a party in the form of adverse judgment when that party advises it will not take further action in the case. TBMP § 527.03 (“[W]hen a party to an inter partes proceeding before the Board advises an adverse party that it will not take any further action in the case, the adverse party may file a motion asserting this fact and request entry of judgment in its favor. If, as usually is the case, the motion is uncontested, the Board will normally grant it.”).

Here, dispositive sanctions in the form of judgment against Applicant are unquestionably warranted. Applicant has made an affirmative choice not to answer Opposer’s March 16 Letter and requests to meet and confer, correct the deficiencies in its January 20, 2020 discovery responses, respond to Opposer’s March 16, 2020 discovery requests, or continue to defend itself in this Opposition. This choice was clearly communicated to Opposer by Applicant’s counsel on April 2, 2020 and again on April 10, 2020. Harrington Decl. at ¶12, Ex. 9. Opposer should not be forced to expend additional time and resources to prosecute an opposition that Applicant has abandoned, especially when it has received barely any discovery. In addition, Applicant’s counsel has stated that he is no longer representing Applicant in this Opposition yet is not authorized to share alternative contact information. *Id.* Moving forward, Opposer has no way to communicate with Applicant about discovery or other issues relating to this proceeding.¹ Any subsequent

¹ As noted above, Applicant is a foreign-domiciled applicant and is required to be represented by a U.S.-licensed attorney in this proceeding. *See* “Requirement of U.S. Licensed Attorney for

attempts would be fruitless. Thus, judgment should be entered against Applicant.

IV. IN THE ALTERNATIVE, THE BOARD SHOULD COMPEL APPLICANT TO RESPOND TO OPPOSER'S DISCOVERY REQUESTS

A. Opposer's Motion to Compel is Timely and Well-Supported

If a party fails to respond, or fails to respond adequately, to interrogatories and requests for production, the propounding party may file a motion to compel such responses. 37 C.F.R. § 2.120(f); TBMP §§ 411, 523. The moving party must (1) support its motion with a written statement showing a good faith effort to resolve the issues presented; (2) include a copy of the requests or interrogatories at issue, as well as any answer or proffer of production or objection made in response; and (3) file its motion prior to the commencement of pretrial disclosures for the first testimony period. *Id.*

1. Opposer Has Made a Good Faith Effort to Resolve This Dispute

To support a motion to compel discovery, the movant must provide a written statement showing it “has made a good faith effort, by conference or correspondence, to resolve the issues with the other party, but that the parties were unable to resolve their differences.” *Hot Tamale Mama ... and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080, 1081 (T.T.A.B. 2014). When a party attempts to fulfill this obligation, the other party is “under an equal obligation to participate in good faith” to resolve the dispute. *Amazon Tech. Inc. v. Wax*, 93 USPQ2d 1702, 1705 (T.T.A.B. 2009). A party need not make repeated attempts to persuade the other to satisfy the good faith requirement. *Hot Tamale Mama*, 110 USPQ2d at 1080-81 (moving party should have made “at least one additional inquiry” following its first email communication, but “was not required to wait indefinitely”); *Pioneer Kabushiki Kaisha v. Hitachi High Tech. Am. Inc.*, 74 USPQ2d 1672, 1679

Trademark Applicants and Registrants Not Domiciled in the United States,” 84 FR 31498 (effective Aug. 3, 2019).

n.11 (T.T.A.B. 2005) (two letters requesting documents prior to moving to compel demonstrated a “good faith effort to resolve the discovery dispute”).

As described above and in the attached declaration and exhibits, Opposer repeatedly sought complete responses to Opposer’s First Set of Interrogatories and Requests for Production. Harrington Decl. at ¶¶9, 12, Exs. 5, 9. Opposer’s counsel, in a good faith effort to resolve this dispute, emailed Applicant several times requesting that Applicant respond to Opposer’s discovery deficiency letter and schedule a time to confer about the discovery sought by this Motion. *Id.* Despite Opposer’s efforts, Applicant has refused to respond to Opposer’s requests and has affirmatively stated, through its counsel, that it will not take further action in this matter. *Id.* Given this background, Opposer has no reason to believe that Applicant will fulfill its discovery obligations absent the Board’s intervention.

2. *Opposer’s Motion is Accompanied by the Requests in Dispute, Applicant’s Objections, Responses, and Proffers of Production*

A motion to compel documents or interrogatory responses must be accompanied by the requests in dispute and any objections or responses thereto. 37 CFR § 2.120(f)(1); TBMP § 523.02. When a party seeks to compel the production of documents, its motion must include a list and brief description of documents that were not produced. *Id.* As such, Opposer’s discovery requests, Applicant’s written responses and objections thereto, and a list and brief description of the outstanding documents identified to the best of Opposer’s ability are included herein. Harrington Decl. at ¶¶ 6-10, Exs. 1-8; *see also supra* at 5-9.

3. *Opposer’s Motion Is Timely Filed*

A party seeking an order compelling discovery must file its motion prior to the commencement of the first testimony period which, in this proceeding, does not begin until May

30, 2020. Dkt No. 5; 37 CFR § 2.120(f)(1); TBMP § 523.03. Accordingly, this requirement is satisfied.

B. The Board Should Compel Applicant to Serve Amended Responses to the Subject Interrogatories

A party served with interrogatories is obligated to respond “separately and fully” to each interrogatory. Fed. R. Civ. P. 33(b)(3); TBMP § 405.04(b). With respect to the Subject Interrogatories, Applicant has either refused to respond on the basis of improper objections or provided incomplete and unverified responses.

Interrogatories 7-8 and 13 request information regarding dates of first use of the AEROGO Mark (RFP 7); dates of continuous use or non-use of the AEROGO Mark (RFP 8); and the number of U.S. customers that have used or purchased products offered under the AEROGO Mark on a yearly basis (RFP 13). Harrington Decl. at ¶6, Ex. 1. Applicant has refused to respond to these requests on the grounds that its “records are not maintained in such a way, in the ordinary course of business.” *Id.* at ¶7, Ex. 3. This objection is inappropriate. Applicant has a duty “to make a good faith effort to satisfy” Opposer’s discovery needs. TBMP § 402.01. If Applicant was unable to provide such information in the requested format it should have conferred with Opposer about the scope of the requests or offered to provide “a representative sampling” or “some other reduced amount of information” that would satisfy Opposer’s needs. TBMP § 402.02; *see also* Fed. R. Civ. P. 26(b)(2).

As to Interrogatories 12 and 16, Applicant has refused to respond on the grounds that the requests are overbroad and irrelevant to the parties’ claims and defenses. Harrington Decl. at ¶¶6-7, Ex. 3. Neither objection is warranted. Interrogatory 12 seeks information regarding Applicant’s efforts to prepare to use the AEROGO Mark in connection with the goods and services identified in the Application. *Id.*, Ex. 1. Documents responsive to this request, or a lack thereof, are directly

relevant to whether Applicant made bona fide use of the Mark as of the filing date of its Application and the likelihood of confusion analysis. *See, e.g., Clorox Co. v. Salazar*, 108 U.S.P.Q. 2d 1083, 1086-87 (T.T.A.B. 2013); *In re E. I. DuPont DeNemours & Co.*, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973).

Interrogatory 16 requests the identity of each person who provided information or documents used to respond to the Interrogatories. Harrington Decl. at ¶6, Ex. 1. Opposer is entitled to know the identity of persons with knowledge of discoverable matter and to request information from those individuals. *See* Fed. R. Civ. P. 26(b)(1); *Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 U.S.P.Q. 193, 196 (T.T.A.B. 1976). To the extent Applicant believed these requests were overbroad, it should have conferred with Opposer about the scope of the requests. 37 C.F.R. § 2.120(f).

Applicant's responses to Interrogatories 2-5 and 9 are incomplete or require clarification. TBMP § 405.04(b); Fed. R. Civ. P. 33(b)(3). As to Interrogatory 2, Applicant has identified only Hua Jian as an individual with knowledge of the selection, adoption, and development of the AEROGO Mark, yet Applicant's response to Interrogatory 3 indicates that multiple individuals and at least one "design company" were involved in the Mark's development. Harrington Decl. at ¶¶6-7, Exs. 1, 3. Similarly, in response to Interrogatory 9, Applicant identified its website and manufacturing facility as the manner in which the AEROGO Mark has been or will be promoted in the U.S., but Applicant's document production indicates that Applicant also promotes the AEROGO Mark at trade shows and conferences. *Id.* This response is incomplete. As to Interrogatory 3, Opposer does not know what Applicant means by "founded in the United States in 2018" and has requested that Applicant clarify this statement. *Id.*, Exs. 3, 5.

Interrogatories 4-5 ask Applicant to describe the goods and services for which the

AEROGO Mark has been or will be used. *Id.*, Ex. 1. Applicant's responses merely refer Opposer to Applicant's document production and Application. *Id.*, Ex. 3. If Applicant intended to rely on Fed. R. Civ. P. 33(d) to respond to these interrogatories it should have said so; and in any event, it has not complied with the Rule's requirement that the responding party's answer "specify the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them" Moreover, Applicant's document production only shows the AEROGO Mark used in connection with nebulizers, which are not even covered by the Application. These responses are inadequate and cannot stand.

Finally, as to Interrogatories 10-11, Applicant has failed to answer the questions asked. Interrogatory 10 asked Applicant to identify and describe the channels or potential channels of trade for products offered under the AEROGO Mark, but Applicant only identified its intended customer markets. *Id.*, Exs. 1, 3. Interrogatory 11 requested that Applicant describe any advertising conducted for the AEROGO Mark, including the nature of the advertising, the names of those who conducted such advertising, the geographic scope, and money spent on a yearly basis. *Id.*, Ex. 1. Applicant provided a one-sentence response – that it markets its goods through its website and operates a manufacturing facility in the U.S. *Id.*, Ex. 3. These are standard requests in an opposition proceeding, and Applicant's responses are critical to understanding the similarities between the Parties' offerings, target markets, and channels of trade. *See, e.g.*, TBMP § 414 (3), (16), (18); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 U.S.P.Q. 2d 1671, 1675 (T.T.A.B. 1988); *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 U.S.P.Q. 147, 149 (T.T.A.B. 1985); *In re E. I. DuPont DeNemours & Co.*, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973). Accordingly, the Board should compel Applicant to supplement and serve complete responses to the Subject Interrogatories.

C. The Board Should Compel Applicant to Produce Responsive Documents and Serve Amended Written Responses to the Subject RFPs

As an initial matter, Applicant has refused to comply with Fed. R. Civ. P. 34(b)(2)(C), which requires Applicant to “state whether any responsive materials are being withheld on the basis of” an asserted objection. The Board should compel Opposer to comply with Rule 34 and clarify whether it is withholding responsive documents on the basis of any of its objections.

In addition, Applicant’s responses to the Subject RFPs are grossly deficient. Each of the Subject RFPs seeks basic and necessary discovery to which Opposer is entitled. Accordingly, the Board should compel Applicant to withdraw its objections and produce all responsive, non-privileged documents in its possession, custody, or control.

1. Subject RFP Nos. 5, 7, and 9

Applicant has refused to produce documents responsive to these requests on the grounds that they seek confidential business information and are overly broad or unduly burdensome. RFP Nos. 5, 7, and 9 request documents concerning Applicant’s creation, selection and development of the AEROGO Mark (RFP 5); business plans, pitches or proposals regarding the goods offered or intended to be offered in the U.S. under the AEROGO Mark (RFP 7); and marketing plans, surveys, forecasts and projections associated with the goods offered or intended to be offered in the U.S. under the AEROGO Mark (RFP 9). Harrington Decl. at ¶¶6-7, Ex. 2, 4. These requests seek documents that are highly relevant to likelihood of confusion analysis – namely, documents that would show Applicant’s awareness of Opposer’s mark, the similarities or relatedness of the Parties’ respective channels of trade and consumer markets, and any potential plans for expansion that Applicant may have. *See, e.g.*, TBMP § 414(3)-(4), (11), (16), (18)-(19); *Johnston Pump/General Valve Inc.*, 10 U.S.P.Q. 2d at 1675; *In re E.I. du Pont*, 177 U.S.P.Q. at 567.

Applicant indicated in its general objections that it would produce documents responsive

to these requests “in accordance with the terms of the Stipulated Protective Order.” Harrington Decl. at ¶7, Ex. 4. As Applicant knows, the Board’s standard protective order is *automatically imposed* in Board proceedings. 37 C.F.R. § 2.116(g); TBMP § 412. The Parties have not negotiated a separate protective order, nor has Applicant given Opposer any explanation as to why it should not be required to produce these documents. As to the scope of RFP Nos. 5, 7, and 9, if Applicant believed they were overbroad it should have responded to Opposer’s requests to confer about Applicant’s discovery responses. 37 C.F.R. § 2.120(f). Accordingly, Applicant must withdraw its objections and produce documents responsive to these requests.

2. Subject RFP Nos. 8 and 11

Applicant has indicated that it is not in possession of any documents responsive to RFP Nos. 8 and 11, which request documents sufficient to show Applicant’s current and potential business partners, investors and customers for offerings under the AEROGO Mark (RFP 8) and all documents relating to conferences, conventions, exhibitions or trade shows attended in the U.S. in connection with the AEROGO Mark (RFP 11). Harrington Decl. at ¶¶6-7, Ex. 2, 4. With respect to RFP No. 8, Applicant states that it does not have “partners or investors,” yet its response to Interrogatory 3 explicitly mentions Applicant’s “important partners” of its “B-end market.” *Id.* As for “customers,” Applicant has produced only two documents that are arguably responsive to this request — invoices showing the sale of nebulizers to two U.S. customers. *Id.* These documents do not satisfy Applicant’s obligation to search for and produce documents responsive to this request. TBMP § 402.01.

Opposer is similarly skeptical of Applicant’s response to RFP No. 11. Certain documents in Applicant’s production suggest that the AEROGO Mark may have been on display at a trade show in the U.S. Harrington Decl. at ¶¶8-9, Ex. 5; *see supra* at 8-9. Because Applicant has refused to respond to Opposer’s requests to confer, Opposer cannot test the sufficiency of this response.

3. Subject RFP Nos. 1-4, 6, 10, and 15

Applicant's document production is facially incomplete with respect to RFP Nos. 1-4, 6, 10, and 15. RFP Nos. 1-4, 6 and 10 request documents sufficient to show use of the AEROGO Mark in the U.S. on any goods and services, including those identified in the Application (RFP 1-2); the steps taken to develop and offer the goods and services identified in the Application (RFP 3); the date of first use of the Mark in connection with the goods and services identified in the Application (RFP 4); Applicant's target customers and markets for the goods and services identified in the Application, including target demographics and geographic scope (RFP 6); and channels of trade through which Applicant sells or intends to sell and advertise goods and services offered under the Mark in the U.S. (RFP 10). Harrington Decl. at ¶¶6-7, Exs. 2, 4.

The Opposition alleges that Applicant has not made bona fide use of the AEROGO Mark in connection with any of the goods identified in its use-based Application, including at the time of filing. Dkt No. 1; 15 U.S.C. §§ 1051, 1127. Because the validity of the AEROGO Mark is central to the issues in dispute, documents establishing Applicant's use of the Mark in connection with the goods identified in the Application and the steps taken to prepare for that use are highly relevant. *Clorox Co.*, 108 U.S.P.Q. 2d at 1086-87. Applicant's responses to RFPs 1-4 state that it has produced a "sampling" of such documents, but its production only includes documents showing use of the Mark in connection with nebulizers, which again, are not covered by its Application. Harrington Decl. at ¶¶7-9, Exs. 4-5; *see supra* at 8-9. In addition, Applicant has only produced a handful of documents with dates, which include screenshots from Applicant's website from January 16, 2020, a test report for the Aerogo nebulizer dated January 22, 2018 and invoices for the sale of Aerogo nebulizers to two U.S. customers dated February 5, 2018 and August 8, 2018. *Id.* These documents do not establish use of the AEROGO Mark in connection with the goods identified in the Application at the time of filing, nor do they show continuous use of the

Mark in connection with those goods.

As for RFP Nos. 6 and 10, these requests also seek documents relevant to the likelihood of confusion analysis – again, documents that show the similarities or relatedness of the Parties’ target customers, markets, and channels of trade. *See, e.g.*, TBMP § 414(3)-(4), (11), (16), (18)-(19); *In re E.I. du Pont de Nemours & Co.*, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973). Screenshots from Applicant’s website, a screenshot of a Feellife cool mist humidifier for sale on Amazon, photos of the AEROGO Mark used in connection with nebulizers, and two invoices for the sale of Aerogo nebulizers are the only documents in Applicant’s production that are even arguably responsive to these requests. Harrington Decl. at ¶¶8-9, Ex. 5; *see supra* at 8-9. Still, none show the target customers, markets, and channels of trade for the goods identified in the Application.

Finally, as to RFP No. 15, which requests documents concerning any trademark clearance search conducted in connection with the AEROGO Mark, Applicant’s response was a screenshot of four results from a January 4, 2020 TESS search for “AEROGO.” Harrington Decl. at ¶¶8-9, Exs. 4-5. If this is the only search Applicant has conducted for the AEROGO Mark, Applicant should provide a complete response and confirm that no other responsive documents exist.

Applicant’s responses and document production make clear that Applicant has failed to conduct a good faith search for all responsive, non-privileged documents in its custody, possession, or control. The categories of documents identified here are the type of business records an entity like Applicant would be expected to possess. Accordingly, the Board should order Applicant to search for the documents requested in the Subject RFPs and produce any responsive, non-privileged results.

D. The Board Should Compel Applicant to Respond to Opposer’s Second Set of Discovery Requests and Opposer’s Requests for Admission Should Be Deemed Admitted

Applicant’s responses to Opposer’s Second Set of Interrogatories and Requests for

Production, and its First Set of Requests for Admission, were due on April 15, 2020. Applicant has not responded to these requests. *Id.* at ¶11. Accordingly, the Board should compel Applicant to respond to Opposer’s Second Set of Interrogatories and Requests for Production and hold that Applicant has forfeited its right to object on the merits. TBMP § 403.03; *No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1554 (T.T.A.B. 2000).

As for Opposer’s Requests for Admission, “a requested admission is deemed admitted unless a written answer or objection is provided to the requesting party within thirty days of service.” TBMP § 407.03; Fed. R. Civ. P. 36(a)(3). Accordingly, these requests should be deemed admitted.

E. The Board Should Suspend the Proceeding and Reset Deadlines Upon Disposition of the Motion to Compel

When a party files a motion to compel, the case is suspended by the Board “with respect to all matters not germane to the motion.” 37 CFR § 1.120(f)(2); TBMP § 523.01. Further, when a motion to compel “is filed after discovery has closed, but before the day of the deadline for pretrial disclosures for the first testimony period, the time period for making pretrial disclosures will be suspended and dates will be reset after the motion to compel is decided.” TBMP § 523.01.

As described above and in the attached declaration and exhibits, Opposer has made a good faith effort to obtain needed discovery from Applicant, but Applicant has failed to cooperate. Following the disposition of the Motion to Compel, Opposer will need adequate time to evaluate any discovery Applicant is compelled to produce. Thus, Opposer requests that the Board extend and reset all subsequent deadlines by sixty (60) days following the disposition of the Motion to Compel. Opposer respectfully contends that it has shown good cause for this extension.

V. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board enter judgment

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Opposer's Motion for Sanctions in the Form of Judgment or, in the Alternative, to Compel Discovery Responses** has been served on Applicant Feellife Medical Inc. via email on May 20, 2020 at: jh@mg-ip.com; mailroom@mg-ip.com.

Dated: May 20, 2020

By: */Kelley B. Harrington/*
Kelley B. Harrington

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

In the Matter of Application Serial No. 87/767,914
For the Trademark AEROGO and Design
Published in the *Official Gazette* December 11, 2018

Stamford Devices Limited,)	
)	
Opposer,)	Opposition No. 91248718
)	
v.)	
)	
Feellife Medical Inc.,)	
)	
Applicant.)	
_____)	

**DECLARATION OF KELLEY HARRINGTON IN SUPPORT OF OPPOSER’S
MOTION FOR SANCTIONS IN THE FORM OF JUDGMENT OR, IN THE
ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES**

I, Kelley Harrington, Esq., declare as follows:

1. I am an associate at the law firm of Cooley LLP (“Cooley”), which is counsel of record for Stamford Devices Limited (“Opposer”) in the above-captioned matter. I make this statement based on my personal knowledge of the facts set forth herein, my review of client files maintained by Cooley LLP for Stamford Devices Limited, and my conversations with my colleagues regarding this proceeding. I submit this declaration in support of Opposer’s Motion for Sanctions in the Form of Judgment or, in the Alternative, to Compel Discovery Responses.
2. On June 10, 2019, Opposer filed a Notice of Opposition to U.S. Application Serial No. 87/767,914 for the AEROGO and Design mark (“Applicant’s Mark”), filed by Feellife Medical Inc. (“Applicant”). Dkt No. 1.
3. On July 11, 2019, Applicant filed an Answer to the Notice of Opposition. Dkt No. 4.
4. On August 16, 2019 the parties held a discovery conference.
5. On September 18, 2019 the parties exchanged initial disclosures.

6. On December 12, 2019 Cooley LLP served Opposer's First Set of Interrogatories and First Set of Requests for Production of Documents and Things ("RFPs") on Applicant. A true and correct copy of Opposer's First Set of Interrogatories is attached hereto as **Exhibit 1** and a true and correct copy of Opposer's First Set of RFPs is attached hereto as **Exhibit 2**.
7. On January 20, 2020 Applicant served its responses to Opposer's First Set of Interrogatories and First Set of RFPs on Opposer. A true and correct copy of Applicant's Responses to Opposer's First Set of Interrogatories is attached hereto as **Exhibit 3**. A true and correct copy of Applicant's Responses to Opposer's First Set of RFPs is attached hereto as **Exhibit 4**.
8. On January 20, 2020 Applicant produced 69 documents in response to Opposer's First Set of RFPs. I personally reviewed each of the produced documents. The vast majority of these documents are screenshots of Applicant's website and photos of Applicant's Mark used in connection with nebulizers with no associated date or indication of where the photos were taken. Many of these documents did not support Applicant's claims or defenses or did not address the substance of Opposer's requests, specifically RFP Nos. 1-11 and 15.
9. On March 16, 2020 I sent an email to Mr. Jay Hines, counsel for Applicant, attaching a letter from Anne Peck, counsel for Opposer, to Mr. Hines outlining the deficiencies in Applicant's discovery responses and requesting that the parties schedule a time to meet and confer. Mr. Hines did not respond to my March 16, 2020 email or the letter. A true and correct copy of the March 16, 2020 email and letter are attached hereto as **Exhibit 5**.
10. On March 16, 2020 I served Opposer's Second Set of Interrogatories, Second Set of RFPs, and First Set of Requests for Admission on Applicant. A true and correct copy of Opposer's Second Set of Interrogatories is attached hereto as **Exhibit 6**, a true and correct copy of Opposer's Second Set of RFPs is attached hereto as **Exhibit 7**, and a true and correct copy of Opposer's First Set of Requests for Admission is attached hereto as **Exhibit 8**.

11. Applicant's responses to Opposer's Second Set of Interrogatories, Second Set of RFPs, and First Set of Requests for Admission were due on April 15, 2020. As of the date of this Declaration, Applicant has not responded to these requests.
12. I exchanged emails with Mr. Hines on April 1, 2020, April 2, 2020, April 3, 2020, April 10, 2020, and April 16, 2020 regarding Opposer's request to meet and confer regarding Applicant's discovery responses, Opposer's attempts to elicit additional discovery from Applicant, and Applicant's decision to stop defending itself in Opposition No. 91248718. Attached hereto as **Exhibit 9** is a true and correct copy of my communications with Mr. Hines on the aforementioned dates.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 2.20, I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2020 in Redwood City, California.

/Kelley B. Harrington/
Kelley B. Harrington, Esq.
Associate, Cooley LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Declaration of Kelley Harrington in Support of Opposer's Motion for Sanctions in the Form of Judgment or, in the Alternative, to Compel Discovery Responses** was served on Applicant Feellife Medical Inc. on May 20, 2020 via email at: jh@mg-ip.com; mailroom@mg-ip.com.

Dated: May 20, 2020

By: */Kelley B. Harrington/*
Kelley B. Harrington

EXHIBIT 1

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

In the Matter of Application Serial No. 87/767,914
Mark: AEROGO (Stylized)
Published: December 11, 2018

STAMFORD DEVICES LIMITED,)	
)	
Opposer,)	
)	Opposition No. 91248718
)	
)	
v.)	
)	
FEELLIFE MEDICAL INC.,)	
)	
Applicant.)	
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**OPPOSER STAMFORD DEVICES LIMITED'S FIRST SET OF INTERROGATORIES
TO APPLICANT FEELLIFE MEDICAL INC.**

PROPOUNDING PARTY: OPPOSER STAMFORD DEVICES LIMITED
RESPONDING PARTY: APPLICANT FEELLIFE MEDICAL INC.
SET NUMBER: ONE

Pursuant to Section 2.120 of the Rules of Practice in Trademark Cases and Rule 33 of the Federal Rules of Civil Procedure, Opposer Stamford Devices Limited (“Stamford”) requests that Applicant Feellife Medical Inc. (“Applicant”) answer separately and completely in writing under oath within 30 days of service hereof each of the Interrogatories set forth below in accordance with the following Definitions and Instructions:

I. DEFINITIONS

1. YOU and YOUR refer to Applicant and each of its officers, directors, employees, consultants, members, managers, representatives, partners, corporate parent, subsidiaries, divisions, successors in interest, associates, affiliates, attorneys, accountants and agents.

2. DOCUMENT is used in its broadest sense, and is defined to be synonymous in meaning and equal in scope to the definition in Federal Rule of Civil Procedure 34. A draft or non-identical copy is a separate DOCUMENT within the meaning of this term. Without limiting the generality of the foregoing, the term "DOCUMENT" means, without limitation, the following items, whether printed, or written, produced or reproduced by any other mechanical process, or written or produced by hand, or in electronic format: agreements, COMMUNICATIONS, reports, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks, plans, drawings, sketches, maps, summaries or records of any meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture film, tape recordings, videotapes, computer disks, tapes or hard drives, electronic mail, brochures, pamphlets, advertisements, circulars, newspaper or magazine articles, newsletters, publications, press releases, surveys, judicial records, customer lists, governmental certificates, applications, licenses, registrations, letters, accounts, objects, minutes of meetings, interoffice communications, studies, written forecasts, projections, analyses, contracts, guarantee agreements, ledgers, books of accounts, vouchers, checks, purchase orders, invoices, charge slips, expense account reports, receipts, working papers, drafts, statistical records, costs sheets, calendars, appointment books, time sheets or logs, job or transaction files, computer printouts or papers similar to any of the foregoing, and any marginal comments appearing on any DOCUMENT and any other writings.

3. COMMUNICATION is used in its broadest sense, and means any transmission of information from one PERSON or entity to another by any means, including without limitation written communications, telephone communications, in-person communications, email and other electronic communications.

4. PERSON means any natural person, business or other legal entity.

5. AEROGO OPPOSITION refers to Opposition No. 91248718, filed by Stamford on December 11, 2018.

6. The AEROGO MARK refers to the mark reflected in Application Serial No. 87/767,914, filed on January 24, 2018, and claiming first use in commerce since at least as early as February 22, 2017.

7. The STAMFORD MARKS refer to the marks reflected in Registration Nos. 2459921 and 3170324.

8. A request to provide information CONCERNING something means relating to, referencing, evidencing or constituting.

9. The use of the singular form of any word includes the plural, and use of the plural form includes the singular form.

II. INSTRUCTIONS

1. YOU are requested to answer each Interrogatory set forth below separately and completely in writing under oath. YOUR response hereto is to be signed and verified by the PERSON making it, and the objections signed by YOU, as required by Federal Rule of Civil Procedure 33(b) and section 405.04(c) of the Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.").

2. Each Interrogatory shall be answered fully unless it is objected to in good faith, in which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase or clause contained within it, YOU are required to state YOUR objection to that portion only and to respond to the remainder of the Interrogatory, using YOUR best efforts to do so.

3. If YOU or YOUR counsel assert that any information responsive to any Interrogatory is privileged or otherwise protected from discovery, YOU are required to comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT, thing, oral COMMUNICATION or piece of information for which a claim of privilege or protection from discovery is made. For any DOCUMENT or information withheld on the grounds that it is privileged or otherwise claimed to be excludable from discovery, identify the information or DOCUMENT, describe its subject matter and date, identify all authors and all recipients (including copied and

blind copied recipients), and specify the basis for the claimed privilege or other grounds of exclusion.

4. If YOU answer any of the Interrogatories by reference to records from which the answer may be derived or ascertained, YOU are required to comply with the requirements of Federal Rule of Civil Procedure 33 and section 405.04(b) of the T.B.M.P.

5. If any responsive DOCUMENT is no longer in existence, cannot be located or is not in YOUR possession, custody or control, identify it, describe its subject matter and describe its disposition, including, without limitation, identifying the PERSON having knowledge of the disposition.

6. These Interrogatories are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).

III. INTERROGATORIES

INTERROGATORY NO. 1:

Identify each PERSON that has used the AEROGO MARK in the U.S. in connection with providing goods or services.

INTERROGATORY NO. 2:

Identify each PERSON with knowledge of the selection, adoption and development of the AEROGO MARK.

INTERROGATORY NO. 3:

Describe fully the facts and circumstances surrounding the selection of the AEROGO MARK.

INTERROGATORY NO. 4:

Describe in detail, including as to each of the goods listed in Application Serial No. 87/767,914, all goods and/or services with which the AEROGO MARK has been or is currently being used by any PERSON in the United States.

INTERROGATORY NO. 5:

Describe in detail all goods and/or services in connection with which YOU intend to use the AEROGO MARK in the United States in the future.

INTERROGATORY NO. 6:

With respect to each of the goods and services identified in response to Interrogatory No. 4, identify the intended customer markets.

INTERROGATORY NO. 7:

With respect to each of the goods and services identified in response to Interrogatory No. 4, provide the date(s) that the AEROGO MARK was first used the United States.

INTERROGATORY NO. 8:

With respect to each of the goods and services identified in response to Interrogatory No. 4, identify the dates during which each PERSON has continuously used the AEROGO MARK in the United States, or if such use(s) has (have) not been continuous, state with particularity the dates and reasons for any period that the AEROGO MARK has not been used in the United States by any PERSON.

INTERROGATORY NO. 9:

With respect to each of the goods and services identified in response to Interrogatory No. 4, describe in detail the manner in which the AEROGO MARK is or has been promoted in the United States.

INTERROGATORY NO. 10:

Identify and fully describe the channels of trade and/or the potential channels of trade, for YOUR products or services that are or were distributed, sold and/or marketed under the AEROGO MARK in the United States.

INTERROGATORY NO. 11:

Describe fully any advertising conducted by any PERSON of the AEROGO MARK in the United States including, but without limitation: the nature of such advertising, the identity of each Person who has conducted such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis by each Person.

INTERROGATORY NO. 12:

Describe in detail all efforts done to date in preparation to use the AEROGO MARK in the United States in connection with the goods and services identified in its trademark application.

INTERROGATORY NO. 13:

For each year that the products or services have been offered under the AEROGO MARK, identify the number of U.S. customers or users who have actively used or purchased such goods or services.

INTERROGATORY NO. 14:

Describe fully any instances in which the AEROGO MARK was mistaken for or confused with STAMFORD MARKS, Applicant was mistaken for Stamford, Applicant was mistakenly associated or affiliated with Stamford, or Applicant received communication(s) intended for Stamford or concerning any product or service of Stamford.

INTERROGATORY NO. 15:

Identify each witness Applicant intends to present or rely upon in the AEROGO OPPOSITION.

INTERROGATORY NO. 16:

Identify each person who supplied information included in any of the answers to this set of interrogatories or who was consulted or whose documents or files were consulted in connection with the preparation of the answers.

COOLEY LLP

Date: December 12, 2019

By: /Anne H. Peck/

Anne H. Peck

Attorney for Opposer

1299 Pennsylvania Avenue, NW

Suite 700

Washington, D.C. 20004

(650) 843-5096

trademarks@cooley.com

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing **OPPOSER STAMFORD DEVICES LIMITED'S FIRST SET OF INTERROGATORIES TO APPLICANT FEELLIFE MEDICAL INC.** was served upon Correspondent to the Applicant via email to the following addresses:

mailroom@mg.ip.com
jh@mg-ip.com

Date: December 12, 2019


Elizabeth Ortiz

EXHIBIT 2

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

In the Matter of Application Serial No. 87/767,914
Mark: AEROGO (Stylized)
Published: December 11, 2018

STAMFORD DEVICES LIMITED,)	
)	
Opposer,)	
)	Opposition No. 91248718
v.)	
)	
FEELLIFE MEDICAL INC.,)	
)	
Applicant.)	
_____)	

**OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO APPLICANT**

PROPOUNDING PARTY: OPPOSER STAMFORD DEVICES LIMITED

RESPONDING PARTY: APPLICANT FEELLIFE MEDICAL INC.

SET NUMBER: ONE

Pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 34, Opposer Stamford Devices Limited (“Stamford”) hereby requests that Applicant Feellife Medical Inc. (“Applicant”) respond to this First Set of Requests for Production of Documents and Things (“Requests”) within thirty (30) days of service hereof and in accordance with the Definitions and Instructions set forth below.

I. DEFINITIONS

Notwithstanding any Definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

As used in these Requests, words in capital letters are defined as follows:

1. YOU, YOUR, or YOURS refer to Applicant and anyone acting on its behalf, including without limitation his employees, partners, accountants, and consultants.
2. COMMUNICATION is used in its broadest sense and means any transmission of information from one PERSON to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.
3. CONCERN or CONCERNING means constituting, relating to, reflecting, regarding, memorializing, identifying, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, connected to, indicating, evidencing, supporting, or refuting.
4. DOCUMENT or DOCUMENTS shall have the broadest meaning ascribed to those terms by Federal Rule of Civil Procedure 34 and include electronically-stored information and tangible things, whose discovery is permitted under Rule 34(a)(1), and writings as defined by Rule 1001(1) of the Federal Rules of Evidence. A draft or non-identical copy is a separate “document” within the meaning of this term.
5. PERSON means any natural person, business, or other legal entity.
6. The AEROGO OPPOSITION refers to Opposition No. 91248718 filed by Stamford on December 11, 2018.
7. YOUR ANSWER refers to the Answer YOU filed in the AEROGO OPPOSITION on July 11, 2019.
8. The STAMFORD MARKS refer to the marks reflected in Registration Nos. 2459921 and 3170324.
9. THE AEROGO MARK refers to the mark reflected in Application Serial No. 87/767,914, filed on January 24, 2018, and claiming first use in commerce since at least as early as February 22, 2017.

II. INSTRUCTIONS

1. YOU shall produce all non-privileged DOCUMENTS or tangible things in YOUR possession, custody, or control that are responsive to these Requests. If YOU object to part of a Request and refuse to respond to that part, YOU shall produce all DOCUMENTS called for which are not subject to that objection. If YOU object to the scope or time period of a Request, YOU shall state YOUR objection and produce all documents responsive to the Request that are not covered by YOUR objection.

2. If, in responding to these Requests, YOU encounter any ambiguities when construing a Request or Definition, YOU shall set forth in YOUR written response to the Request the matter deemed ambiguous and the construction used in responding.

3. Each DOCUMENT or tangible thing produced in response to these Requests shall be produced as it is kept in the usual course of business, including file folders, binders, notebooks, and other devices by which such papers or things may be organized or separated, or it shall be organized and labeled to correspond with the Requests to which it is responsive. All DOCUMENTS that are physically or electronically attached to each other shall be produced in that form and designated accordingly in an electronic production.

4. DOCUMENTS should be produced in a form pursuant to a production protocol to be agreed upon by the parties, in a form in which they are ordinarily maintained (*e.g.*, native form), or in a reasonably usable form (*e.g.*, TIFF images with Concordance-compatible load files).

5. If there are no DOCUMENTS or things responsive to any particular Request, YOU are requested to indicate the same in writing. If any responsive DOCUMENT is no longer in existence, cannot be located, or is not in YOUR possession, custody, or control, identify it, describe its subject matter and describe its disposition, including without limitation identifying the PERSON having knowledge of the disposition.

6. These Requests are continuing so as to require prompt supplemental responses as required under Federal Rule of Civil Procedure 26(e) up to and including the time of trial of the OPPOSITION. If YOU come into possession, custody, or control of responsive DOCUMENTS or things

after the initial production, YOU shall supplement the production by promptly producing such DOCUMENTS or things.

7. If YOU believe that any Request calls for the disclosure of privileged information, YOU must comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT for which a claim of privilege or protection from discovery is made.

8. When a DOCUMENT contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a DOCUMENT, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a DOCUMENT has been redacted or altered in any fashion, YOU shall identify as to each DOCUMENT the reason for the redaction or alteration, the date of the redaction or alteration, and the individual performing the redaction or alteration. Any redaction must be clearly visible on the redacted DOCUMENT.

9. Whenever used herein, the present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompasses both "and" and "or." Words in the masculine, feminine, or neutral form shall include each of the other genders.

III. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

DOCUMENTS sufficient to show YOUR use, if any, of the AEROGO MARK in United States commerce in connection with each of the goods and services identified in Application Serial No. 87/767,914.

REQUEST FOR PRODUCTION NO. 2:

DOCUMENTS sufficient to show YOUR use, if any, of the AEROGO MARK in United States commerce in connection with any goods or services.

REQUEST FOR PRODUCTION NO. 3:

DOCUMENTS sufficient to show the steps YOU have undertaken to develop and provide in the United States each of the goods and services identified in Application Serial No. 87/767,914.

REQUEST FOR PRODUCTION NO. 4:

DOCUMENTS sufficient to show the date of YOUR first use of the AEROGO MARK in connection with each of the goods and services identified in Application Serial No. 87/767,914 in United States commerce.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS CONCERNING the adoption of the AEROGO MARK by YOU including, without limitation, all DOCUMENTS CONCERNING the creation, selection, and development of the AEROGO MARK.

REQUEST FOR PRODUCTION NO. 6:

DOCUMENTS sufficient to show YOUR target customers and market(s) for the goods and services identified in Application Serial No. 87/767,914, including without limitation the demographics of the marketplace and the geographic scope of the target market

REQUEST FOR PRODUCTION NO. 7:

All business plans, business pitches, or business proposals CONCERNING any goods or services offered or sold, or intended to be offered or sold, to persons in the United States in connection with the AEROGO MARK.

REQUEST FOR PRODUCTION NO. 8:

DOCUMENTS sufficient to show YOUR current and potential business partners, investors, and customers in connection with YOUR offering(s) under the AEROGO MARK.

REQUEST FOR PRODUCTION NO. 9:

All marketing plans, market surveys, forecasts, and projections associated with any services offered or sold, or intended to be offered or sold, in the United States in connection with the AEROGO MARK.

REQUEST FOR PRODUCTION No. 10:

DOCUMENTS sufficient to identify the channels of trade through which YOU sell, plan to sell, advertise, or plan to advertise each good and service offered or sold, or intended to be offered or sold, in the United States connection with the AEROGO MARK.

REQUEST FOR PRODUCTION No. 11:

All DOCUMENTS referring to or reflecting any conferences, conventions, exhibitions, or trade shows which YOU attended in the United States CONCERNING the AEROGO MARK and/or YOUR offering(s) under the AEROGO MARK.

REQUEST FOR PRODUCTION No. 12:

All DOCUMENTS CONCERNING any instances of confusion, mistake, deception, or association of any kind between the AEROGO MARK, YOU, or any of YOUR services and Stamford, the STAMFORD MARKS or Stamford's products or services.

REQUEST FOR PRODUCTION No. 13:

All DOCUMENTS CONCERNING COMMUNICATIONS between YOU and Stamford or any current or former Stamford agent, employee, developer, consultant, licensee, affiliate, vendor, partner, or service provider referring to the AEROGO Mark, or the STAMFORD MARKS.

REQUEST FOR PRODUCTION No. 14:

All DOCUMENTS CONCERNING Stamford or the STAMFORD MARKS, including without limitation all COMMUNICATIONS CONCERNING the trademark rights of Stamford in the STAMFORD MARKS.

REQUEST FOR PRODUCTION No. 15:

Any trademark clearance search conducted by YOU or on YOUR behalf in connection with the AEROGO MARK or any variation on or part of it.

REQUEST FOR PRODUCTION No. 16:

DOCUMENTS sufficient to show the identities of any corporate entities affiliated with YOUR offering(s) under the AEROGO MARK.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS CONCERNING any facts that form the basis of any denial, allegation or defense asserted by YOU in YOUR ANSWER.

REQUEST FOR PRODUCTION NO. 18:

All DOCUMENTS YOU used, identified, relied upon, or referred to when answering Stamford's First Set of Interrogatories or any other discovery requests propounded by Stamford.

REQUEST FOR PRODUCTION NO. 19:

All DOCUMENTS upon which YOU intend to rely in the AEROGO OPPOSITION.

COOLEY LLP

Date: December 12, 2019

By: /Anne H. Peck /
Anne H. Peck
Attorney for Opposer
1299 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
(650) 843-5096
trademarks@cooley.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT** was served on Applicant's counsel on the date set forth below by emailing said copy to Applicant's counsel at the following email addresses:

mailroom@mg.ip.com

jh@mg-ip.com

Date: December 12, 2019



Elizabeth Ortiz

EXHIBIT 3

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

Mark: AEROGO)	
Application No.:87767914)	
Filed: Jan. 24, 2018)	
)	
Stamford Devices Limited,)	
)	
Opposer)	Opposition No. 91248718
)	
v.)	
)	
FEELLIFE MEDICAL INC.,)	
)	
Applicant.)	
_____)	

APPLICANT’S RESPONSES TO OPPOSER’S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33, Fed. R. Civ. P., and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer provides the following answers to the first set of interrogatories of Applicant. These answers are based upon the best information presently available to Opposer, and best belief of its counsel, and are made without prejudice to the right of Opposer to make additional or modified answers should better or further information or belief subsequently become available to Opposer. Moreover, these answers are made without prejudice to any right of the Opposer to offer evidence on its behalf or to object to the relevance, competence or admissibility of any ground of any evidence or witness offered by Applicant; and these answers do not constitute an admission of competence or admissibility or evidence or a waiver of objection on any grounds.

GENERAL OBJECTIONS

1) Opposer objects to Applicant's discovery requests to the extent that they seek information that falls within the attorney-client privilege, that constitutes attorney work product, or that constitutes trial preparation materials on the grounds that matter within the attorney-client privilege is outside the scope of permissible discovery and that attorney work product and trial preparation material, absent an appropriate showing, fall outside the scope of permissible discovery.

2) Opposer objects to Applicant's discovery requests to the extent they seek information that constitutes confidential, highly confidential business, or trade/secret/commercially sensitive information, but will provide such information and documents in accordance with the terms of the Stipulated Protective Order.

3) Opposer objects to Applicant's discovery requests to the extent they seek discovery from third parties.

4) Opposer objects to Applicant's discovery requests to the extent they seek to impose obligations beyond those required by the Federal Rules of Civil Procedure.

5) Opposer objects to Applicant's discovery requests to the extent they seek information that is not within Applicant's possession, custody, or control; to the extent that the information is in the public domain and equally available to Applicant; or to the extent that the information is already in Applicant's possession.

6) Opposer objects to Applicant's discovery requests to the extent they are unreasonably broad, unduly burdensome, oppressive, vague or ambiguous.

7) Opposer objects to Applicant's discovery requests to the extent they seek information pertaining to matters outside of the United States.

8) Opposer's written responses are based on information presently available to and

located by Opposer and its attorneys. As Opposer has not completed its investigation of the facts relating to this case, its discovery in this action, or its preparation for any hearing or trial, Opposer's written objections and written responses are made without prejudice to its right to supplement or amend its written objections and written responses and to present evidence discovered hereafter at any hearing or trial.

9) To the extent that specific general objections are cited herein in response to specific discovery requests, those specific objections are provided because they are believed to be particularly applicable to the discovery requests and are not to be construed as a waiver of any other general objection applicable to information and documents falling within the scope of the request. Moreover, the production of any non-relevant information, whether or not in response to any discovery requests, is not to be construed as a waiver of a claim of irrelevancy.

INTERROGATORIES

INTERROGATORY No. 1:

Identify each PERSON that has used the AEROGO MARK in the U.S. in connection with providing goods or services.

RESPONSE

Applicant markets its goods in the US through its website at www.feellife.com. Further, Applicant's US company, Feellife Health Inc., a California corporation, operates a manufacturing facility in City of Industry, California through which it distributes its products.

INTERROGATORY No. 2:

Identify each PERSON with knowledge of the selection, adoption and development of the AEROGO MARK.

RESPONSE

Hua Jian, President of Applicant.

INTERROGATORY No. 3:

Describe fully the facts and circumstances surrounding the selection of the AEROGO MARK.

RESPONSE

The "Aerogo" brand was founded in the United States in 2018 and is a sub-brand of Feellife Raffles, which is derived from "Aerosol" + "go". "Aerosol" means aerosol, aerosol, spray, aerosol, while "GO" stands for portable / portable, tiny and portable, easy to go. Aerogo, which means micro-portable nebulizer, Portable Mesh Nebulizer, and this is exactly the nebulizer inhalation device product that we have been developing and operating since 2013. Therefore, we created the "Aerogo" brand of portable net atomizers.

At first, we designed the *AeroGo* (Aerogo) trademark with the intention of designing the "G" in uppercase. At first glance, consumers can understand the shallow meaning of the trademark's representative by splitting it: portable, can Hold the sprayer while walking. Later, when the Aerogo brand was introduced to our B-end market, some of our important partners pointed out: This *AeroGo* trademark is very nice. If it shows a little more affinity, it will be perfect. So, we initiated another thought and choice on the design of this trademark *Aerogo Aerogo*. After the professional opinion of the design team was evaluated, we decided to "go complex and simplify" and design "G" into a more concise and round "g" A small change, I did not expect the entire combination to be even more surprising, removing the sharp edges and corners of "G", the entire trademark looks more harmonious, "g" completes the left and right "o" to form a perfect symmetry, Like our brand and consumers are talking, admiring each other and feeling each other's compliments.

As the new brand trademark *Aerogo* is about to be launched, at the spring CMEF exhibition in May 2019, many domestic and foreign customers have a very intuitive feeling about its products: It's kind of cartoonish and generic.

Our design team was once again caught in reflection and exploration. We also consulted the professional brand VI design company and finally reached an agreement: do something on "g". Only then was the final conclusion *Aerogo*. The "g" faded away the previous round and round design, added some contour treatments, and gave the Aerogo brand a sense of technology and

professionalism, because the brand positioning is a smart micronet fog. The "g", which no longer follows the rules, looks more powerful, making the brand's trademark more unique and more medical.

INTERROGATORY No.4:

Describe in detail, including as to each of the goods listed in Application Serial No. 871767,914, all goods and/or services with which the AEROGO MARK has been or is currently being used by any PERSON in the United States.

RESPONSE

Applicant objects to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome in that it seeks Applicant to identify all goods used in the US bearing Applicant's Mark. Notwithstanding said objection, Applicant states that the goods are set forth in its US application and Applicant identifies a representative sampling of products in response to the document requests.

INTERROGATORY NO. 5:

Describe in detail all goods and/or services in connection with which You intend to use the AEROGO MARK in the United States in the future.

RESPONSE

Applicant intends to use the mark in the United States in connection with all of goods listed in subject application Serial No. 87767914.

INTERROGATORY No. 6:

With respect to each of the goods and services identified in response to Interrogatory No. 4, identify the intended customer markets.

RESPONSE

Applicant's intended customer markets include general consumers, hospitals, medical clinics, doctors, universities, municipalities and other governmental entities.

INTERROGATORY No. 7:

With respect to each of the goods and services identified in response to Interrogatory No.

4, provide the date(s) that the AEROGO MARK was first used the United States.

RESPONSE

Applicant objects to this interrogatory on the grounds that records are not maintained in such a way, in the ordinary course of business that would allow it to determine the dates of first use for each individual item of goods.

INTERROGATORY NO. 8:

With respect to each of the goods and services identified in response to Interrogatory No. 4, identify the dates during which each PERSON has continuously used the AEROGO MARK in the United States, or if such use(s) has (have) not been continuous, state with particularity the dates and reasons for any period that the AEROGO MARK has not been used in the United States by any PERSON.

RESPONSE

Applicant objects to this interrogatory on the grounds that records are not maintained in such a way, in the ordinary course of business that would allow it to determine the dates of first use for each individual item of goods.

INTERROGATORY No. 9.:

With respect to each of the goods and services identified in response to Interrogatory No. 4, describe in detail the manner in which the AEROGO MARK is or has been promoted in the United States.

RESPONSE

Applicant primarily markets its goods in the US through its website at www.feellife.com. Further, Applicant's US company, Feellife Health Inc., a California corporation, operates a manufacturing facility in City of Industry, California through which it distributes its products.

INTERROGATORY No. 10:

Identify and fully describe the channels of trade and/or the potential channels of trade, for YOUR products or services that are or were distributed, sold and/or marketed under the AEROGO MARK in the United States.

RESPONSE

Applicant's intended customer markets include general consumers, hospitals, medical clinics, doctors, universities, municipalities and other governmental entities.

INTERROGATORY No. 11:

Describe fully any advertising conducted by any PERSON of the AEROGO MARK in the United States including, but without limitation: the nature of such advertising, the identity of each Person who has conducted such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis by each Person.

RESPONSE

Applicant primarily markets its goods in the US through its website at www.feellife.com. A representative sampling of website excerpts are produced in Response to the document requests. Further, Applicant's US company, Feellife Health Inc., a California corporation, operates a manufacturing facility in City of Industry, California through which it distributes its products.

INTERROGATORY No. 12:

Describe in detail all efforts done to date in preparation to use the AEROGO MARK in the United States in connection with the goods and services identified in its trademark application.

RESPONSE

Applicant objects to Interrogatory No. 12 on the grounds that it is overly broad and unduly burdensome in that it seeks all efforts to date in preparation for use of the mark. Opposer further objects on the grounds that the matter sought is neither relevant to the subject matter involved in

the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY No. 13:

For each year that the products or services have been offered under the AEROGO MARK, identify the number of U.S. customers or users who have actively used or purchased such goods or services.

RESPONSE

Applicant objects to this interrogatory on the grounds that records are not maintained in such a way, in the ordinary course of business that would allow it to determine the dates of first use for each individual item of goods.

INTERROGATORY No. 14:

Describe fully any instances in which the AEROGO MARK was mistaken for or confused with STAMFORD MARKS, Applicant was mistaken for Stamford, Applicant was mistakenly associated or affiliated with Stamford, or Applicant received communication(s) intended for Stamford or concerning any 'product or service of Stamford.

RESPONSE

Applicant is not aware of any such instances.

INTERROGATORY No. 15:

Identify each witness Applicant intends to present or rely upon in the AEROGO OPPOSITION.

RESPONSE

Applicant objects to this Interrogatory on the grounds that it seek to use pre-trial discovery to obtain premature disclosure of Applicant's witnesses, that it seeks to require speculation about Applicant's future decisions and that it seeks information that is protected under the attorney client and attorney work product privileges.

INTERROGATORY NO. 16:

Identify each person who supplied information included in any of the answers to this set of interrogatories or who was consulted or whose documents or files were consulted in connection with the

preparation of the answers.

RESPONSE

Applicant objects to this interrogatory on the ground that the matter sought is neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,



As to objections:

Joe McKinney Muncy
P. Jay Hines
H. David Starr

Attorneys for Respondent
Dated: January 20, 2020
Muncy, Geissler, Olds & Lowe, P.C.
4500 Legato Road, Suite 310
Fairfax, VA 22033
Phone: 703-621-7140
Fax: 703-621-7 155
mailroom@mg-ip.com

As to answers:

I hereby state under the penalty of perjury that I have read the foregoing answers and believe them to be true and accurate to the best of my knowledge.

Date: _____

Signature: _____

Name: _____

Title: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2020, a true and correct copy of the foregoing was served by electronic mail to the following: trademarks@cooley.com, peckah@cooley.com, jlauter@cooley.com, dkoons@cooley.com, eortiz@cooley.com



P. Jay Hines

EXHIBIT 4

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

Mark: AEROGO)	
Application No.:87767914)	
Filed: Jan. 24, 2018)	
)	
Stamford Devices Limited,)	
)	
Opposer)	Opposition No. 91248718
)	
v.)	
)	
FEELLIFE MEDICAL INC.,)	
)	
)	
Applicant.)	
_____)	

APPLICANT’S RESPONSES TO OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 34 of the Federal Rules of Civil Procedure, Applicant hereby responds to the following requests for production of document and things.

GENERAL OBJECTIONS

The objections included in Applicant’s Responses to Opposer’s First Set of Interrogatories are incorporated herein by reference.

DOCUMENTS REQUESTED

REQUEST FOR PRODUCTION No. 1:

DOCUMENTS sufficient to show YOUR use, if any, of the AEROGO MARK in United States

commerce in connection with each of the goods and services identified in Application Serial No. 87/767,914.

RESPONSE

Applicant produces a representative sampling of such documents.

REQUEST FOR PRODUCTION No.2:

DOCUMENTS sufficient to show YOUR use, if any, of the AEROGO MARK in United States commerce in connection with any goods or services.

RESPONSE

Applicant produces a representative sampling of such documents.

REQUEST FOR PRODUCTION No.3:

DOCUMENTS sufficient to show the steps You have undertaken to develop and provide in the United States each of the goods and services identified in Application Serial No. 87/767,914.

RESPONSE

Applicant objects to this document request on the grounds that records are not maintained in such a way, in the ordinary course of business that would allow it to provide the steps it has taken on a product basis. Notwithstanding said objection, Applicant produces a representative sampling of such documents.

REQUEST FOR PRODUCTION No. 4:

DOCUMENTS sufficient to show the date of YOUR first use of the AEROGO MARK in connection with each of the goods and services identified in Application Serial No. 87/767,914 in United States commerce.

RESPONSE

Applicant objects to this document request on the grounds that records are not maintained in such a way, in the ordinary course of business that would allow it to provide the steps it has taken on a product basis. Notwithstanding said objection, Applicant produces a representative sampling of such documents.

REQUEST FOR PRODUCTION No. 5:

All DOCUMENTS CONCERNING the adoption of the AEROGO MARK by You including, without limitation, all DOCUMENTS CONCERNING the creation, selection, and development of the AEROGO MARK.

RESPONSE

Applicant objects to this document request on the grounds that it is overly broad and unduly burdensome in that it seeks all documents pertaining to adoption of the AEROGO Mark and on the ground that it seeks confidential business information. Applicant has provided a thorough narrative in response to Interrogatory No. 3.

REQUEST FOR PRODUCTION No. 6:

DOCUMENTS sufficient to show YOUR target customers and market(s) for the goods and services identified in Application Serial. No. 87/767,914, including without limitation the demographics of the marketplace and the geographic scope of the target market

RESPONSE

Applicant objects to this document request on the grounds that records are not maintained in such a way, in the ordinary course of business that would allow it to provide the demographics and geographic location of its US customers. Notwithstanding said objection, Applicant produces a representative sampling of such documents.

REQUEST FOR PRODUCTION No. 7:

All business plans, business pitches, or business proposals CONCERNING any goods or services offered or sold, or intended to be offered or sold, to persons in the United States in connection with the AEROGO MARK.

RESPONSE

Applicant objects to this this document request on the ground that the preparation of a full, accurate and truthful answer would be unduly burdensome, time-consuming and expensive in that it seeks all documents pertaining to business plans, pitches and proposals in the United States and on the grounds that it seeks confidential business information.

REQUEST FOR PRODUCTION No. 8:

DOCUMENTS sufficient to show Your current and potential business partners, investors, and customers in connection with YouR offering(s) under the AEROGO MARK.

RESPONSE

Applicant does not have partners or investors.

REQUEST FOR PRODUCTION No. 9:

All marketing plans, market surveys, forecasts, and projections associated with any services offered or sold, or intended to be offered or sold, in the United States in connection with the AEROGO MARK.

RESPONSE

Applicant objects to this this document request on the ground that the preparation of a full, accurate and truthful answer would be unduly burdensome, time-consuming and expensive in that it seeks all documents pertaining to business plans, pitches and proposals in the United States and on the grounds that it seeks confidential business information.

REQUEST FOR PRODUCTION No. 10:

DOCUMENTS sufficient to identify the channels of trade through which You sell, plan to sell, advertise, or plan to advertise each good and service offered or sold, or intended to be offered or sold, in the United States connection with the AEROGO MARK.

RESPONSE

Applicant objects to this document request on the grounds that records are not maintained in such a way, in the ordinary course of business that would allow it to provide the steps it has taken on a product basis. Notwithstanding said objection, Applicant produces a representative sampling of such documents.

REQUEST FOR PRODUCTION No. 11:

All DOCUMENTS referring to or reflecting any conferences, conventions, exhibitions, or trade shows which You attended in the United States CONCERNING the AEROGO MARK and/or YOUR offering(s) under the AEROGO MARK.

RESPONSE

Applicant is not in possession of any responsive documents.

REQUEST FOR PRODUCTION No. 12:

All DOCUMENTS CONCERNING any instances of confusion, mistake, deception, or association of any kind between the AEROGO MARK, You, or any of Your services and Stamford, the STAMFORD MARKS or Stamford's products or services.

RESPONSE

Applicant is not in possession of any responsive documents.

REQUEST FOR PRODUCTION No. 13:

All DOCUMENTS CONCERNING COMMUNICATIONS between You and Stamford or any current or former Stamford agent, employee, developer, consultant, licensee, affiliate, vendor, partner, or service

provider referring to the AEROGO Mark, or the STAMFORD MARKS.

RESPONSE

Applicant is not in possession of any responsive documents.

REQUEST FOR PRODUCTION No. 14:

All DOCUMENTS CONCERNING Stamford or the STAMFORD MARKS, including without limitation all COMMUNICATIONS CONCERNING the trademark rights of Stamford in the STAMFORD MARKS.

RESPONSE

Applicant is not in possession of any responsive documents.

REQUEST FOR PRODUCTION No. 15:

Any trademark clearance search conducted by You or on YouR behalf in connection with the AEROGO MARK or any variation on or part of it.

RESPONSE

Applicant recently conducted the search below:

TESS was last updated on Wed Jan 1 04:13:02 EST 2020

TESS HOME NEW USER STRUCTURED FREE FORM Browse Dict SEARCH OG PREV LIST NEXT LIST IMAGE LIST BOTTOM HELP

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **4 Records(s) found (This page: 1 ~ 4)**

Refine Search (Aerogo)[COMB]

Current Search: S1: (Aerogo)[COMB] docs: 4 occ: 14

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	87767914		AEROGO	TSDR	LIVE
2	85120423	3954635	AEROGO	TSDR	DEAD
3	78617624		AEROGO	TSDR	DEAD
4	72299081	0868625	AEROGO	TSDR	LIVE

TESS HOME NEW USER STRUCTURED FREE FORM Browse Dict SEARCH OG PREV LIST NEXT LIST IMAGE LIST TOP HELP

REQUEST FOR PRODUCTION No. 16:

DOCUMENTS sufficient to show the identities of any corporate entities affiliated with YouR offering(s) under the AEROGO MARK.

RESPONSE

Applicant's only related company is Feellife Health Inc., a California corporation that operates its manufacturing facility in City of Industry, California. Applicant produces pertinent documents herewith.

REQUEST FOR PRODUCTION No. 17:

All DOCUMENTS CONCERNING any facts that form the basis of any denial, allegation or defense asserted by You in Your ANSWER.

RESPONSE

Applicant produces herewith USPTO TSDR datasheets for two of its own prior Registrations and third party Registrations for marks beginning with the formative "AERO..." for nebulizers in International Class 10.

REQUEST FOR PRODUCTION No. 18:

All DOCUMENTS You used, identified, relied upon, or referred to when answering Stamford's First Set of Interrogatories or any other discovery requests propounded by Stamford.

RESPONSE

Applicant is producing all such documents.

REQUEST FOR PRODUCTION No. 19:

All DOCUMENTS upon which You intend to rely in the AEROGO OPPOSITION.

RESPONSE

Applicant objects to this document request on the grounds that it improperly seeks to use pretrial discovery to require speculation about Applicant's future decisions and to the extent is seeks information which is protected under that attorney client and attorney work product privileges.



Joe McKinney Muncy
P. Jay Hines

H. David Starr

Attorneys for Respondent

Dated: July 11, 2019

Muncy, Geissler, Olds & Lowe, P.C.

4500 Legato Road, Suite 310

Fairfax, VA 22033

Phone: 703-621-7140

Fax: 703-621-7 155

mailroom@mg-ip.com

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2020, a true and correct copy of the foregoing was served by electronic mail to the following: trademarks@cooley.com, peckah@cooley.com, jlauter@cooley.com, dkoons@cooley.com, eortiz@cooley.com



P. Jay Hines

EXHIBIT 5

Ortiz, Elizabeth

From: Harrington, Kelley B
Sent: Monday, March 16, 2020 1:12 PM
To: 'jh@mg-ip.com'; 'mailroom@mg.ip.com'
Cc: Peck, Anne; Ortiz, Elizabeth; Koons, Drue
Subject: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.
Attachments: Stamford v. Feellife Medical - Discovery Deficiency Letter.pdf

Dear Mr. Hines,

On behalf of my colleague Anne Peck and Stamford Devices Limited, please see the attached.

Sincerely,

Kelley Harrington

Kelley Harrington

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
+1 650 843 5202 office
+1 650 849 7400 fax
kharrington@cooley.com

www.cooley.com



Anne H. Peck
T: +1 650 843 5096
peckah@cooley.com

Via E-Mail to: jh@mg-ip.com

March 16, 2020

Mr. Jay Hines
Muncy, Geissler, Olds & Lowe, P.C.
400 Legato Road, Suite 310
Fairfax, Virginia 22033

Re: Stamford Devices Limited v. Feellife Medical Inc. Opposition No. 91248718 - Discovery Deficiencies

Dear Mr. Hines:

As you know, we represent Stamford Devices Limited (“Stamford”) in the above-captioned matter pending before the Trademark Trial and Appeal Board (“TTAB”). We have received and reviewed Applicant Feellife Medical Inc. (“Applicant”)’s responses to Stamford’s First Set of Interrogatories and First Set of Requests for Production of Documents and Things. Pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 402, we write to seek clarification of and address several deficiencies arising out of Applicant’s responses.

At the outset, we remind you that the parties have a duty “to make a good faith effort to satisfy the discovery needs of their adversary.” TBMP § 402.01. Please provide us with your availability to meet and confer this week on the issues discussed in this letter.

Applicant’s Responses to Stamford’s First Set of Interrogatories

Pursuant to the Federal Rules of Civil Procedure (“FRCP”) 33(b)(3), Applicant is required to respond, fully and completely, and to the best of the party’s knowledge, with the relevant facts requested. See also Stamford’s First Set of Interrogatories, Section II, Nos. 1-2. Applicant’s Responses to **Interrogatory (“Rog”) Nos. 2-11 and 13** are incomplete, insufficient, and/or require clarification. For example:

- **Rog 2** asks Applicant to identify “each PERSON with knowledge of the selection, adoption and development” of the AEROGO Mark (or “the Mark”). Applicant’s response identifies only one individual, while its response to Rog 3 indicates that multiple individuals and an outside entity were involved in the Mark’s development. See Applicant’s Response to Rog 3 (referencing a “design team” and a “professional brand VI design company”).
- **Rog 3** asks Applicant to describe “the facts and circumstances surrounding the selection of the AEROGO Mark. Applicant’s response states that the AEROGO brand was “founded in the United States in 2018.” It is unclear what Applicant means by “founded.” Please clarify this response.
- **Rogs 4-5** ask Applicant to describe the goods and/or services for which the AEROGO Mark has been, is currently being, or will be used in the United States. Applicant’s responses merely refer Stamford to Applicant’s document production and the Application. Neither are appropriate responses to this request.



Mr. Jay Hines
March 16, 2020
Page Two

- **Rog 6** asks Applicant to identify the “intended customer markets” for each of the goods and services identified in Rog 4. Applicant’s response fails to answer this request with respect to each good and/or service.
- **Rogs 7-8 and 13** ask Applicant to identify certain dates corresponding to Applicant’s use of the AEROGO Mark in the United States. Applicant fails to respond to this request and objects on the ground that its “records are not maintained in such a way, in the ordinary course of business.” These requests, as you know, are targeted toward understanding Applicant’s use of the Mark in U.S. commerce in connection with the goods identified in Application Ser. No. 87/767,914 (the “Application”). Because Applicant has failed to respond, we will proceed with the understanding that Applicant cannot substantiate its use of the AEROGO Mark in U.S. commerce.¹ Please confirm this understanding is, in fact, correct, or be prepared to discuss this during our meet and confer.
- **Rog 9** asks Applicant to describe the manner in which the AEROGO Mark has or will be promoted in the U.S. Stamford believes that Applicant’s response is incomplete, including because Applicant produced numerous photos (albeit without identifying where the photos were taken) of Applicant’s products at trade shows and/or conferences. Please supplement this response to describe any promotion of Applicant’s products at a trade show and/or conference in the U.S.
- **Rog 10** requests that Applicant identify and describe the channels of trade and/or potential channels of trade for the goods listed in its Application. Applicant’s response only discusses its “intended customer markets,” which are distinct from “channels of trade.” Please supplement this response.
- **Rog 11** asks Applicant to describe any advertising conducted in the U.S. Applicant’s response is deficient for many reasons, including because it fails to confirm whether it has actually advertised the AEROGO Mark in the U.S., as well as the geographic scope of such advertising and the amount of money spent on a yearly basis by each PERSON. To the extent Applicant does not conduct advertising for the AEROGO Mark in the U.S. and/or has not spent any money on such advertising, please indicate as such.

Finally, we note that FRCP 33(b)(5) requires Applicant to verify its responses with the signature of the person who responded. Please provide a signed verification.

We request that Applicant confirm by **Friday, March 20, 2020** when it will be able to supplement its answers to the above interrogatories.

Applicant’s Responses to Stamford’s First Set of Requests for Production of Documents

Applicant’s responses to **Requests for Production (“RFP”) Nos. 1-6, 8, 10-11, and 15** are likewise deficient or require clarification. Specifically:

- **RFPs 1-4, 6, and 10** (“documents sufficient to show”) are targeted toward understanding Applicant’s use of the AEROGO Mark on goods and/or services in the U.S., including the goods and/or services listed in the Application, the steps it has taken to develop and provide those goods and/or services, its target customers and markets for those goods and/or services, its channels of

¹ *Barbaras Bakery, Inc. v. Barbara Landesman*, 82 U.S.P.Q.2d 1283, 2007 WL 196406 (T.T.A.B. 2007) (“In a use-based application ... an opposition will be sustained as to any of the identified goods as to which it is shown that no use had been made as of the application filing date.”).



Mr. Jay Hines
March 16, 2020
Page Three

trade, and its efforts to advertise or promote the Mark. Applicant has responded to these requests by producing a “sampling of such documents.” These documents do not show use of the Mark in connection with each of the goods and/or services set forth in the Application, nor do they satisfy any of the other related requests.

- **RFP 5** requests all documents concerning Applicant’s creation, development and selection of the AEROGO Mark. Applicant’s response merely refers Stamford to its response to Rog 3, where it describes its process for selecting the Mark, which included evaluating the “professional opinion of the design team” and consulting a “professional brand VI design company.” Given this background, Stamford would expect Applicant to have documents that are responsive to this request.
- **RFP 8** requests documents sufficient to show Applicant’s “current and potential business partners, investors, and customers” for offerings under the AEROGO Mark. Applicant states that it does not have any business partners or investors, yet its response to Rog 3 mentions Applicant’s “partners.” In addition, Applicant’s response to RFP 8 fails to indicate whether it has documents sufficient to show Applicant’s customers for its offerings under the Mark.
- Applicant states that it is “not in possession of any responsive documents” to **RFP 11**, which relates to Applicant’s attendance of any trade shows, conferences, conventions or exhibitions in the U.S. for the AEROGO Mark. However, certain photographs from Applicant’s document production, specifically from “2020-01-20 Trade Show Displays” and “2020-01-20 Trade Show Displays 2” suggest that Applicant may have displayed the AEROGO Mark at U.S. trade shows. If Applicant has produced any documents responsive to this request, please identify them.
- **RFP 15** requests documents concerning any “trademark clearance search” conducted in connection with the AEROGO Mark. Applicant’s response merely provides a screenshot of a January 1, 2020 TESS search. In light of this, Stamford will proceed with the understanding that no trademark clearance search was conducted prior to Applicant’s adoption of the Mark. Please confirm this understanding is in fact, correct, or be prepared to discuss this during our meet and confer.

Finally, Stamford notes that Applicant has produced numerous documents, including from the following PDFs “2020-01-20 Trade Show Displays,” “2020-01-20 Trade Show Displays 2,” “2020-01-20 Evidence of Use,” and “2020-01-20 Related Products,” with no identifying information or accompanying metadata. Stamford cannot assess the relevancy or test the authenticity of these documents without this basic information. At a minimum, please provide the following information for each produced document: document name, custodian, author, date created, whether the document was produced in its native form, and for photographs, the location where the photo was taken.

In addition, Applicant has produced at least one incomplete document—a report from TUV Rheinland. Documents must be produced in their entirety, and if any document is altered or produced in abbreviated form, you must indicate the reason for such alteration.

Please confirm by **Friday, March 20, 2020** when Applicant will supplement its production to address the above-referenced deficiencies.²

² A party must state the timing of its production. “The production must be completed either by the time for inspection specified in the request or by another reasonable time specifically identified in the response.” FRCP 34(b)(2)(B); TBMP § 406.04.



Mr. Jay Hines
March 16, 2020
Page Four

Applicant's Objections to Stamford's First Set of Interrogatories and Requests for Production of Documents

Applicant objects to **Rogs 4 and 12** and **RFPs 5, 7, and 9** on the grounds that such requests are vague, overly broad and/or unduly burdensome. Please indicate whether Applicant is withholding any documents or other responses on the basis of these objections and set forth facts supporting Applicant's claims for each response in which you assert such an objection. See FRCP 34(b)(2)(C); TBMP § 406.04.

In addition, Applicant objects to **RFPs 5, 7, and 9** on the ground that the request seeks confidential business information. However, Applicant's general objections to Stamford's First Set of Interrogatories and Production of Documents indicate that it "will provide such information and documents in accordance with the terms of the Stipulated Protective Order." As you know, the TTAB's standard protective order is *automatically imposed* unless the parties agree to an alternative order. See 37 C.F.R. § 2.116(g); TBMP § 412. For this reason, objections based on confidentiality "are expected to be minimal." TBMP § 410. Please produce documents responsive to these requests under the TTAB's standard protective order or provide us with a draft of an alternative protective order by **Friday, March 20, 2020** so that we may reach an agreement in a timely fashion.

Applicant objects to **Rogs 7-8 and 13** and **RFPs 3-4, 6, and 10** on the ground that its "records are not maintained in such a way, in the ordinary course of business." Despite this objection, Applicant has produced a "sampling of such documents" in response to **RFPs 3-4, 6, and 10**. Please indicate whether Applicant has withheld any other relevant documents on the basis of this objection.

Applicant objects to **Rogs 12 and 16** on the ground that such requests are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Evidence of Applicant's efforts to use the AEROGO Mark in the U.S. in connection with the goods and/or services in its Application is directly relevant to the issues in this matter, including Applicant's intent to use the Mark in connection with the identified goods and/or services (Rog 12). The identity of each person who supplied information in response to Stamford's interrogatories is separately relevant because Stamford is entitled to know the identity of persons having knowledge of any discoverable matter and request relevant information from those individuals (Rog 16). See FRCP 26(b)(1). Please indicate whether Applicant will provide responses to these requests.

Finally, Stamford recognizes that Applicant has asserted a number of general objections to Stamford's discovery requests. Applicant must identify all responsive documents it is currently withholding on the basis of its general objections.

* * *

Please let me know what days and times you are available this week to meet and confer on the foregoing issues. I look forward to resolving these issues efficiently and informally.



Mr. Jay Hines
March 16, 2020
Page Five

Sincerely,

Cooley LLP

A handwritten signature in blue ink that reads "Anne H. Peck". The signature is fluid and cursive.

Anne H. Peck

cc: Kelley B. Harrington, Esq.

EXHIBIT 6

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

In the Matter of Application Serial No. 87/767,914
Mark: AEROGO (Stylized)
Published: December 11, 2018

STAMFORD DEVICES LIMITED,)	
)	
Opposer,)	
)	Opposition No. 91248718
)	
v.)	
)	
FEELLIFE MEDICAL INC.,)	
)	
Applicant.)	
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**OPPOSER STAMFORD DEVICES LIMITED'S SECOND SET OF
INTERROGATORIES TO APPLICANT FEELLIFE MEDICAL INC.**

PROPOUNDING PARTY: OPPOSER STAMFORD DEVICES LIMITED
RESPONDING PARTY: APPLICANT FEELLIFE MEDICAL INC.
SET NUMBER: TWO

Pursuant to Section 2.120 of the Rules of Practice in Trademark Cases and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer Stamford Devices Limited (“Stamford”) requests that Applicant Feellife Medical Inc. (“Applicant”) answer separately and completely in writing under oath within 30 days of service hereof each of the Interrogatories set forth below in accordance with the following Definitions and Instructions:

I. DEFINITIONS

1. YOU and YOUR refer to Applicant and each of its officers, directors, employees, consultants, members, managers, representatives, partners, corporate parent, subsidiaries, divisions, successors in interest, associates, affiliates, attorneys, accountants and agents.

2. DOCUMENT is used in its broadest sense and is defined to be synonymous in meaning and equal in scope to the definition in Federal Rule of Civil Procedure 34. A draft or non-identical copy is a separate DOCUMENT within the meaning of this term. Without limiting the generality of the foregoing, the term DOCUMENT means, without limitation, the following items, whether printed, or written, produced or reproduced by any other mechanical process, or written or produced by hand, or in electronic format: agreements, COMMUNICATIONS, reports, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks, plans, drawings, sketches, maps, summaries or records of any meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture film, tape recordings, videotapes, computer disks, tapes or hard drives, electronic mail, brochures, pamphlets, advertisements, circulars, newspaper or magazine articles, newsletters, publications, press releases, surveys, judicial records, customer lists, governmental certificates, applications, licenses, registrations, letters, accounts, objects, minutes of meetings, interoffice communications, studies, written forecasts, projections, analyses, contracts, guarantee agreements, ledgers, books of accounts, vouchers, checks, purchase orders, invoices, charge slips, expense account reports, receipts, working papers, drafts, statistical records, costs sheets, calendars, appointment books, time sheets or logs, job or transaction files, computer printouts or papers similar to any of the foregoing, and any marginal comments appearing on any DOCUMENT and any other writings.

3. COMMUNICATION is used in its broadest sense and means any transmission of information from one PERSON or entity to another by any means, including without limitation written communications, telephone communications, in-person communications, email and other electronic communications.

4. PERSON means any natural person, business or other legal entity.

5. IDENTIFY (with respect to PERSON) 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 paragraph, only the name of that PERSON need be listed in response to subsequent discovery requesting the identification of that PERSON.

6. AEROGO OPPOSITION refers to Opposition No. 91248718, filed by Stamford on June 10, 2019.

7. The AEROGO MARK refers to the mark reflected in Application Serial No. 87/767,914, filed on January 24, 2018, and claiming first use in U.S. commerce since at least as early as February 22, 2017.

8. The STAMFORD MARK refer to the mark reflected in Registration No. 2459921.

9. The use of the singular form of any word includes the plural and use of the plural form includes the singular form.

II. INSTRUCTIONS

1. YOU are requested to answer each Interrogatory set forth below separately and completely in writing under oath. YOUR response hereto is to be signed and verified by the PERSON making it, and the objections signed by YOU, as required by Federal Rule of Civil Procedure 33(b) and section 405.04(c) of the Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.").

2. Each Interrogatory shall be answered fully unless it is objected to in good faith, in which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase or clause contained within it, YOU are required to state YOUR objection to that portion only and to respond to the remainder of the Interrogatory, using YOUR best efforts to do so.

3. If YOU or YOUR counsel assert that any information responsive to any Interrogatory is privileged or otherwise protected from discovery, YOU are required to comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT, thing, oral COMMUNICATION or piece of information for which a claim of privilege or protection from discovery is made. For any DOCUMENT or information withheld on the grounds that it is privileged

or otherwise claimed to be excludable from discovery, identify the information or DOCUMENT, describe its subject matter and date, identify all authors and all recipients (including copied and blind copied recipients), and specify the basis for the claimed privilege or other grounds of exclusion.

4. If YOU answer any of the Interrogatories by reference to records from which the answer may be derived or ascertained, YOU are required to comply with the requirements of Federal Rule of Civil Procedure 33 and section 405.04(b) of the T.B.M.P.

5. If any responsive DOCUMENT is no longer in existence, cannot be located or is not in YOUR possession, custody or control, identify it, describe its subject matter and describe its disposition, including, without limitation, identifying the PERSON having knowledge of the disposition.

6. These Interrogatories are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).

III. INTERROGATORIES

INTERROGATORY NO. 17:

IDENTIFY the names of all trade shows, events, and/or conferences that YOU attended at which YOU allegedly spoke to third parties or displayed the AEROGO MARK. For each such trade show, event, and/or conference, include the date, location and a description of any materials that were presented or distributed.

INTERROGATORY NO. 18:

IDENTIFY the name, date, and location of all trade shows, events, and/or conferences YOU attended, including, but not limited to, those depicted in the documents titled "2020-01-20 Trade Show Displays," and "2020-01-20 Trade Show Displays 2" from YOUR January 20, 2020 Production of Documents. For each such trade show, event, and/or conference, provide a description of any materials that were presented or distributed.

INTERROGATORY NO. 19:

IDENTIFY each PERSON from the "design team" and the "professional brand VI design company," including their employment title and last known place of employment as identified in YOUR January 20, 2020 Response to INTERROGATORY 3.

INTERROGATORY NO. 20:

As set forth in U.S. Application No. 87/767,914, identify for each of the goods below (subparts (a)-(i)) whether the AEROGO MARK has been or is currently being used by any PERSON in the United States in connection with that good:

- (a) Alcohol breath testing units;
- (b) Air filters for medical ventilators;
- (c) Blood glucose meter;
- (d) Electromedical rehabilitative and pain management products for clinical and home use, namely, electrical nerve and muscle stimulators, ultrasonic stimulators, magnet therapy stimulators and laser therapy stimulators;
- (e) Medical devices and apparatus, namely, ultrasound imaging apparatus, scanners and

needle guides, and parts and fittings therefor;

(f) Medical ultrasound apparatus;

(g) Medical ultrasound apparatus to assist in the placement of central line catheters;

(h) Surgical apparatus for use in ophthalmic surgery;

(i) Ultrasonic therapy machines and apparatus.

INTERROGATORY NO. 21:

IDENTIFY the name of each product that has been or is currently being sold under the AEROGO MARK in the U.S. and the dates during which each product was offered for sale in the U.S.

INTERROGATORY NO. 22:

Provide the date(s) for which Applicant's "Air-Mask Portable Mesh Nebulizer" and the "Aerogo Portable Mesh Nebulizer" have been offered for sale in the U.S. State with particularity the dates and reasons for any period during which the "Air-Mask Portable Mesh Nebulizer" and the "Aerogo Portable Mesh Nebulizer" were not offered for sale in the U.S.

INTERROGATORY NO. 23:

IDENTIFY the date of Applicant's first sale in the U.S. under the AEROGO MARK and the product or products that were sold on that date, the total sale in U.S. dollars, and the PERSON sold to.

INTERROGATORY NO. 24:

IDENTIFY the date Applicant first offered a product or products for sale in the U.S. under the AEROGO MARK and the name of the product(s) that were offered.

INTERROGATORY NO. 25:

As identified in YOUR January 20, 2020 Production of Documents, "2020-01-20 Related Products" (page 5), provide the date(s) for which the "FEELLIFE Portable Steam Compressor Cool Mist Humidifier Machine" was offered for sale in the U.S., the website on which it was offered, and the date(s) of any sales.

COOLEY LLP

Date: March 16, 2020

By: /Anne H. Peck /
Anne H. Peck
Attorney for Opposer
1299 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
(650) 843-5096
trademarks@cooley.com

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing **OPPOSER STAMFORD DEVICES LIMITED'S SECOND SET OF INTERROGATORIES TO APPLICANT FEELLIFE MEDICAL INC.** was served upon Correspondent to the Applicant via email to the following addresses:

mailroom@mg.ip.com
jh@mg-ip.com

Date: March 16, 2020



Kelley B. Harrington

EXHIBIT 7

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

In the Matter of Application Serial No. 87/767,914
Mark: AEROGO (Stylized)
Published: December 11, 2018

STAMFORD DEVICES LIMITED,)	
)	
Opposer,)	
)	Opposition No. 91248718
v.)	
)	
FEELLIFE MEDICAL INC.,)	
)	
Applicant.)	
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**OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO APPLICANT**

PROPOUNDING PARTY: OPPOSER STAMFORD DEVICES LIMITED
RESPONDING PARTY: APPLICANT FEELLIFE MEDICAL INC.
SET NUMBER: SECOND

Pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 34, Opposer Stamford Devices Limited (“Stamford”) hereby requests that Applicant Feellife Medical Inc. (“Applicant”) respond to this Second Set of Requests for Production of Documents and Things (“Requests”) within thirty (30) days of service hereof and in accordance with the Definitions and Instructions set forth below.

I. DEFINITIONS

Notwithstanding any Definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

As used in these Requests, words in capital letters are defined as follows:

1. YOU, YOUR, or YOURS refer to Applicant and anyone acting on its behalf, including without limitation his employees, partners, accountants, and consultants.

2. COMMUNICATION is used in its broadest sense and means any transmission of information from one PERSON to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.

3. CONCERN or CONCERNING means constituting, relating to, reflecting, regarding, memorializing, identifying, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, connected to, indicating, evidencing, supporting, or refuting.

4. DOCUMENT is used in its broadest sense and is defined to be synonymous in meaning and equal in scope to the definition in Federal Rule of Civil Procedure 34. A draft or non-identical copy is a separate DOCUMENT within the meaning of this term. Without limiting the generality of the foregoing, the term DOCUMENT means, without limitation, the following items, whether printed, or written, produced or reproduced by any other mechanical process, or written or produced by hand, or in electronic format: agreements, COMMUNICATIONS, reports, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks, plans, drawings, sketches, maps, summaries or records of any meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture film, tape recordings, videotapes, computer disks, tapes or hard drives, electronic mail, brochures, pamphlets, advertisements, circulars, newspaper or magazine articles, newsletters, publications, press releases, surveys, judicial records, customer lists, governmental certificates, applications, licenses, registrations, letters, accounts, objects, minutes of meetings, interoffice communications, studies, written forecasts, projections, analyses, contracts, guarantee agreements, ledgers, books of accounts, vouchers, checks, purchase orders, invoices, charge slips, expense

account reports, receipts, working papers, drafts, statistical records, costs sheets, calendars, appointment books, time sheets or logs, job or transaction files, computer printouts or papers similar to any of the foregoing, and any marginal comments appearing on any DOCUMENT and any other writings.

5. PERSON means any natural person, business, or other legal entity.

6. The AEROGO OPPOSITION refers to Opposition No. 91248718 filed by Stamford on June 10, 2019.

7. YOUR ANSWER refers to the Answer YOU filed in the AEROGO OPPOSITION on July 11, 2019.

8. The STAMFORD MARK refer to the mark reflected in Registration No. 2459921.

9. THE AEROGO MARK refers to the mark reflected in Application Serial No. 87/767,914, filed on January 24, 2018, and claiming first use in commerce since at least as early as February 22, 2017.

II. INSTRUCTIONS

1. YOU shall produce all non-privileged DOCUMENTS or tangible things in YOUR possession, custody, or control that are responsive to these Requests. If YOU object to part of a Request and refuse to respond to that part, YOU shall produce all DOCUMENTS called for which are not subject to that objection. If YOU object to the scope or time period of a Request, YOU shall state YOUR objection and produce all documents responsive to the Request that are not covered by YOUR objection.

2. If, in responding to these Requests, YOU encounter any ambiguities when construing a Request or Definition, YOU shall set forth in YOUR written response to the Request the matter deemed ambiguous and the construction used in responding.

3. Each DOCUMENT or tangible thing produced in response to these Requests shall be produced as it is kept in the usual course of business, including file folders, binders, notebooks, and other devices by which such papers or things may be organized or separated, or it shall be organized and labeled to correspond with the Requests to which it is responsive. All DOCUMENTS

that are physically or electronically attached to each other shall be produced in that form and designated accordingly in an electronic production.

4. DOCUMENTS should be produced in a form pursuant to a production protocol to be agreed upon by the parties, in a form in which they are ordinarily maintained (*e.g.*, native form), or in a reasonably usable form (*e.g.*, TIFF images with Concordance-compatible load files).

5. If there are no DOCUMENTS or things responsive to any particular Request, YOU are requested to indicate the same in writing. If any responsive DOCUMENT is no longer in existence, cannot be located, or is not in YOUR possession, custody, or control, identify it, describe its subject matter and describe its disposition, including without limitation identifying the PERSON having knowledge of the disposition.

6. These Requests are continuing so as to require prompt supplemental responses as required under Federal Rule of Civil Procedure 26(e) up to and including the time of trial of the OPPOSITION. If YOU come into possession, custody, or control of responsive DOCUMENTS or things after the initial production, YOU shall supplement the production by promptly producing such DOCUMENTS or things.

7. If YOU believe that any Request calls for the disclosure of privileged information, YOU must comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT for which a claim of privilege or protection from discovery is made.

8. When a DOCUMENT contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a DOCUMENT, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a DOCUMENT has been redacted or altered in any fashion, YOU shall identify as to each DOCUMENT the reason for the redaction or alteration, the date of the redaction or alteration, and the individual performing the redaction or alteration. Any redaction must be clearly visible on the redacted DOCUMENT.

9. Whenever used herein, the present tense includes the past and future tenses. The

singular includes the plural, and the plural includes the singular. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompasses both "and" and "or." Words in the masculine, feminine, or neutral form shall include each of the other genders.

III. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 20:

DOCUMENTS sufficient to identify all products on which the AEROGO MARK is or has been used in United States commerce.

REQUEST FOR PRODUCTION NO. 21:

DOCUMENTS sufficient to identify the date of YOUR first sale of a product under the AEROGO MARK in United States commerce.

REQUEST FOR PRODUCTION NO. 22:

DOCUMENTS sufficient to show the date of YOUR first sale under the AEROGO MARK in connection with each of the goods and services identified in U.S. Application Serial No. 87/767,914 in United States commerce.

REQUEST FOR PRODUCTION NO. 23:

DOCUMENTS sufficient to identify the date of YOUR first use of the AEROGO MARK in United States commerce.

COOLEY LLP

Date: March 16, 2020

By: Anne H. Peck /
Anne H. Peck
Attorney for Opposer
1299 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
(650) 843-5096
trademarks@cooley.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT** was served on Applicant's counsel on the date set forth below by emailing said copy to Applicant's counsel at the following email addresses:

mailroom@mg.ip.com

jh@mg-ip.com

Date: March 16, 2020


Kelley B. Harrington

EXHIBIT 8

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

In the Matter of Application Serial No. 87/767,914
Mark: AEROGO (Stylized)
Published: December 11, 2018

STAMFORD DEVICES LIMITED,)	
)	
Opposer,)	
)	Opposition No. 91248718
v.)	
)	
FEELLIFE MEDICAL INC.,)	
)	
Applicant.)	
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OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

PROPOUNDING PARTY: OPPOSER STAMFORD DEVICES LIMITED
RESPONDING PARTY: APPLICANT FEELLIFE MEDICAL INC.
SET NUMBER: ONE

Pursuant to 37 C.F.R. § 2.120 and Federal Rules of Civil Procedure 26 and 36, Opposer Stamford Devices Limited (“Stamford”) hereby requests that Applicant Feellife Medical Inc. (“Applicant”) admit, separately and in writing under oath within 30 days of service hereof, each of the matters of fact set forth below (“Requests”) in accordance with the following Definitions and Instructions.

I. DEFINITIONS

Notwithstanding any Definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in these Requests, words in capital letters are defined as follows:

1. YOU, YOUR, or YOURS refer to Applicant and each of its officers, directors,

employees, consultants, members, managers, representatives, partners, corporate parent, subsidiaries, divisions, successors in interest, associates, affiliates, attorneys, accountants and agents.

2. COMMUNICATION or COMMUNICATIONS is used in its broadest sense and means any transmission of information from one PERSON to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.

3. DOCUMENT or DOCUMENTS shall have the broadest meaning ascribed to those terms by Federal Rule of Civil Procedure 34 and include electronically-stored information and tangible things, whose discovery is permitted under Rule 34(a)(1), and writings as defined by Rule 1001(1) of the Federal Rules of Evidence. A draft or non-identical copy is a separate “document” within the meaning of this term.

4. PERSON means any natural person, business, or other legal entity.

5. AEROGO OPPOSITION refers to Opposition No. 91248718 filed by Stamford on June 10, 2019.

6. YOUR ANSWER refers to the Answer YOU filed in the AEROGO OPPOSITION on July 11, 2019.

7. The STAMFORD MARK or the AEROGEN MARK refers to the mark reflected in Registration No. 2459921.

8. THE AEROGO MARK refers to the mark reflected in U.S. Application Serial No. 87/767,914, filed on January 24, 2018 and claiming first use in commerce at least as early as February 22, 2017.

II. INSTRUCTIONS

1. Stamford requests that YOU admit or deny the truth of each statement or fact, application of law to fact, or opinions about either, set forth in the Requests below

2. To the extent that YOU do not respond with either an unqualified admission or an objection (the reasons for which must be stated), YOU shall specifically deny the matter and set

forth in detail the reasons why YOU cannot truthfully admit the matter. Any such denial shall fairly meet the substance of the Request, and when good faith requires that YOU qualify an answer or deny only a part of the matter in which any admission is requested, YOU shall specify so much of it as is true and qualify or deny the remainder.

3. If, in responding to these Requests, YOU encounter any ambiguities when construing a Request, instruction, or definition, YOU shall set forth in YOUR response the matter deemed ambiguous and the construction used in responding.

4. YOU may not give lack of information or knowledge as the reason for failure to admit or deny unless YOU state that YOU have made reasonable inquiry and that the information known or readily obtainable by YOU is insufficient to enable YOU to admit or deny.

5. The fact that a Request covers a matter which YOU believe presents a genuine issue for trial may not, on that ground alone, provide the basis for an objection.

6. Any Request set forth below to which there has not been an adequate and timely response may be deemed admitted and, therefore, conclusively established for purposes of the AEROGO OPPOSITION.

7. These Requests are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).

8. Wherever used herein, the present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all." "Any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine, or neuter form shall include each of the other genders.

III. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that YOU were aware of the STAMFORD MARK prior to YOUR selection and adoption of the AEROGO MARK.

REQUEST FOR ADMISSION NO. 2:

Admit that YOU were aware of the STAMFORD MARK on the date YOU filed Application Ser. No. 87/767,91.

REQUEST FOR ADMISSION NO. 3:

Admit that YOU were aware of Stamford's registered U.S. rights in the STAMFORD MARK at the time YOU filed Application Ser. No. 87/767,91.

REQUEST FOR ADMISSION NO. 4:

Admit that YOU did not conduct a search of the records of the United States Patent and Trademark Office prior to filing YOUR application to register the AEROGO MARK.

REQUEST FOR ADMISSION NO. 5:

Admit that Stamford did not consent to YOUR application to register the AEROGO MARK.

REQUEST FOR ADMISSION NO. 6:

Admit that the advertising channels used to promote the goods offered under the AEROGO MARK and the advertising channels used to promote the goods offered under the STAMFORD MARK are the same.

REQUEST FOR ADMISSION NO. 7:

Admit that the channels of trade for goods offered under the AEROGO MARK and the channels of trade for the goods offered under the STAMFORD MARK are the same.

REQUEST FOR ADMISSION NO. 8:

Admit that the AEROGO MARK and STAMFORD MARK could be encountered by the same class of consumers.

REQUEST FOR ADMISSION NO. 9:

Admit that the AEROGO MARK and STAMFORD MARK are encountered by the same class of consumers.

REQUEST FOR ADMISSION NO. 10:

Admit that the goods identified in U.S. Application Ser. No. 87/767,914 are at least related to the goods listed in U.S. Reg. Nos. 2459921 and 3169324 for the STAMFORD MARK.

REQUEST FOR ADMISSION NO. 11:

Admit that YOU only market the goods identified in U.S. Application Ser. No. 87/767,914 under the AEROGO MARK to U.S. consumers through YOUR website www.feellife.com.

REQUEST FOR ADMISSION NO. 12:

Admit that YOU are a competitor of Stamford.

REQUEST FOR ADMISSION NO. 13:

Admit that U.S. Application Ser. No. 87/767,914 for the AEROGO MARK only includes the following goods in International Class 10: "*Alcohol breath testing units; Air filters for medical ventilators; Blood glucose meter; Electromedical rehabilitative and pain management products for clinical and home use, namely, electrical nerve and muscle stimulators, ultrasonic stimulators, magnet therapy stimulators and laser therapy stimulators; Medical devices and apparatus, namely, ultrasound imaging apparatus, scanners and needle guides, and parts and fittings therefor; Medical ultrasound apparatus; Medical ultrasound apparatus to assist in the placement of central line catheters; Surgical apparatus for use in ophthalmic surgery; Ultrasonic therapy machines and apparatus[.]*"

REQUEST FOR ADMISSION NO. 14:

Admit that U.S. Application Ser. No. 87/767,914 for the AEROGO MARK does not include: "*Aerosol dispensers for medical use; Aerosol dispensers for medical purposes; Aerosol masks for medical use;*" "*Apparatus for dispensing non-medical oxygen and aromatherapy that also utilizes light, sound, and vibration for relaxation therapy;*" "*Body rehabilitation apparatus for medical purposes;*" "*Breath gas analyzers for medical diagnostics;*" "*Inhalers for medical*

purposes;” or “Nebulizer for administering medication in the form of a mist inhaled into the lungs, for treatment of respiratory diseases; Nebulizers for respiration therapy; Portable medical devices used for breathing exercises, namely, portable devices used for endogenous breathing exercises and for respiratory muscle training; Sterile disposable oxygen humidifiers and nebulizers for respiratory therapy sold pre-filled with water[.]”

REQUEST FOR ADMISSION NO. 15:

Admit that YOU cannot claim a priority date prior to the filing date of January 24, 2018 for U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 16:

Admit that YOU only use the AEROGO MARK in U.S. commerce in connection with the goods identified in REQUEST FOR ADMISSION NO. 14.

REQUEST FOR ADMISSION NO. 17:

Admit that YOU use the AEROGO MARK in U.S. commerce in connection with the goods identified in REQUEST FOR ADMISSION NO. 14.

REQUEST FOR ADMISSION NO. 18:

Admit that YOU do not currently use the AEROGO MARK in U.S. commerce in connection with *any* of the identified goods under U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 19:

Admit that YOU have never used the AEROGO MARK in U.S. commerce in connection with *any* of the identified goods under U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 20:

Admit that YOU do not now sell in U.S. commerce *any* of the goods identified in U.S. Application Ser. No. 87/767,914 under the AEROGO MARK.

REQUEST FOR ADMISSION NO. 21:

Admit that YOU have never sold in U.S. commerce *any* of the goods identified in U.S. Application Ser. No. 87/767,914 under the AEROGO MARK.

REQUEST FOR ADMISSION NO. 22:

Admit that YOU did not use the AEROGO MARK in U.S. commerce in connection with *any* of the goods identified in U.S. Application Ser. No. 87/767,914 on or after January 24, 2018.

REQUEST FOR ADMISSION NO. 23:

Admit that YOU did not use the AEROGO MARK in U.S. commerce in connection with *any* of the goods identified in U.S. Application Ser. No. 87/767,914 on or after February 22, 2017.

REQUEST FOR ADMISSION NO. 24:

Admit that YOU do not currently use the AEROGO MARK in U.S. commerce in connection with *some* of the identified goods under U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 25:

Admit that YOU have never used the AEROGO MARK in U.S. commerce in connection with *some* of the identified goods under U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 26:

Admit that YOU do not now sell in U.S. commerce *some* of the goods identified in U.S. Application Ser. No. 87/767,914 under the AEROGO MARK.

REQUEST FOR ADMISSION NO. 27:

Admit that YOU have never sold in U.S. commerce *some* of the goods identified in U.S. Application Ser. No. 87/767,914 under the AEROGO MARK.

REQUEST FOR ADMISSION NO. 28:

Admit that YOU did not use the AEROGO MARK in U.S. commerce in connection with *some* of the goods identified in U.S. Application Ser. No. 87/767,914 on or after January 24, 2018.

REQUEST FOR ADMISSION NO. 29:

Admit that YOU did not use the AEROGO MARK in U.S. commerce in connection with *some* of the goods identified in U.S. Application Ser. No. 87/767,914 on or after February 22, 2017.

REQUEST FOR ADMISSION NO. 30:

Admit that YOUR first U.S. sale under the AEROGO MARK was on February 5, 2018 to

Holistic Hope with an address of 3045 N. Federal Hwy Suite 98, Fort Lauderdale, FL 33306.

REQUEST FOR ADMISSION NO. 31:

Admit that YOU have only made two U.S. sales under the AEROGO MARK—the first on February 5, 2018 to Holistic Hope with an address of 3045 N. Federal Hwy Suite 98, Fort Lauderdale, FL 33306 and the second on August 8, 2018 to Coastal Green Wellness with an address of 2954B Howard Avenue, Myrtle Beach, South Carolina 29577.

REQUEST FOR ADMISSION NO. 32:

Admit that YOU do not possess any DOCUMENTS demonstrating YOUR use of the AEROGO MARK in connection with any of the goods identified in U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 33:

Admit that YOU do not possess any COMMUNICATIONS demonstrating YOUR use of the AEROGO MARK in connection with any of the goods identified in the opposed Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 34:

Admit that YOU do not possess any DOCUMENTS demonstrating YOUR use of the AEROGO MARK in connection with some of the goods identified in U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 35:

Admit that YOU do not possess any COMMUNICATIONS demonstrating YOUR use of the AEROGO MARK in connection with some of the goods identified in U.S. Application Ser. No. 87/767,914.

REQUEST FOR ADMISSION NO. 36:

Admit that both the AEROGO MARK and AEROGEN MARK begin with the term AERO.

REQUEST FOR ADMISSION NO. 37:

Admit that the term AERO is the first and predominant part of the AEROGO MARK.

REQUEST FOR ADMISSION NO. 38:

Admit that the term AERO is the first and predominant part of the AEROGEN MARK.

REQUEST FOR ADMISSION NO. 39:

Admit that the look and feel of the AEROGO MARK and AEROGEN MARK are similar.

REQUEST FOR ADMISSION NO. 40:

Admit that the AEROGO MARK and AEROGEN MARK differ by only two letters.

REQUEST FOR ADMISSION NO. 41:

Admit that the AEROGO MARK and AEROGEN MARK are confusingly similar.

REQUEST FOR ADMISSION NO. 42:

Admit that there is a likelihood of confusion between the AEROGO MARK and AEROGEN MARK.

REQUEST FOR ADMISSION NO. 43:

Admit that the documents produced in response to Opposer's First Set of Document Requests are true and authentic copies of the genuine original documents.

REQUEST FOR ADMISSION NO. 44:

Admit that the documents produced in response to Opposer's First Set of Document Requests are YOUR business records kept in the ordinary course of YOUR business.

COOLEY LLP

Date: March 16, 2020

By: /Anne H. Peck /
Anne H. Peck
Attorney for Opposer
1299 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
(650) 843-5096
trademarks@cooley.com

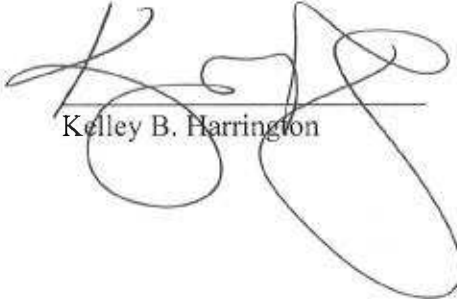
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT** was served on Applicant's counsel on the date set forth below by emailing said copy to Applicant's counsel at the following email addresses:

mailroom@mg.ip.com

jh@mg-ip.com

Date: March 16, 2020



Kelley B. Harrington

EXHIBIT 9

Ortiz, Elizabeth

From: Harrington, Kelley B
Sent: Thursday, April 16, 2020 6:21 PM
To: Jay Hines
Cc: Peck, Anne; Ortiz, Elizabeth; Koons, Drue; Mailroom; Ken Muncy; Loria M. Grindle; Roman Campos
Subject: RE: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

Dear Jay,

I hope you are continuing to stay safe and healthy. Thank you for letting us know. Since your client has not responded to our outstanding discovery requests that were due on April 15, 2020 or responded to our requests to meet and confer about its earlier discovery responses and document production, we will be moving forward with a motion for sanctions in the form of a judgment, and in the alternative, a motion to compel.

Best regards,

Kelley

Kelley Harrington

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
+1 650 843 5202 office
+1 650 849 7400 fax
kharrington@cooley.com

www.cooley.com

From: Jay Hines <jh@mg-ip.com>
Sent: Friday, April 10, 2020 9:42 AM
To: Harrington, Kelley B <kharrington@cooley.com>
Cc: Peck, Anne <PECKAH@cooley.com>; Ortiz, Elizabeth <eortiz@cooley.com>; Koons, Drue <dkoons@cooley.com>; Mailroom <Mailroom@mg-ip.com>; Ken Muncy <km@mg-ip.com>; Loria M. Grindle <LMG@mg-ip.com>; Roman Campos <arc@mg-ip.com>
Subject: Re: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

[External]

Kelly,

The instructing firm and it's client are fully aware of the consequences.

A Motion to Compel will not be contested. Nor would a Motion for Judgment as a sanction for failure to prosecute. That's as far as I can take. I am not authorized to provide contact information at the instructing firm and they won't appoint new counsel.

Thank you,
Jay

Sent from my iPhone

On Apr 10, 2020, at 12:06 PM, Harrington, Kelley B <kharrington@cooley.com> wrote:

Jay,

We understand that you are not fully discharged, but the fact remains that we have not yet received a response to our March 16, 2020 letter requesting a meet and confer to discuss Feellife's deficient discovery responses and document production. In addition, we have served additional discovery requests that are due by April 15, 2020 and your past correspondence suggests that Feellife will not be responding to those requests. While we would like to resolve this amicably, if we do not hear from Feellife by April 15 we will be forced to file a motion to compel.

Since your firm is no longer representing Feellife in this dispute, please provide us with contact information for the Chinese firm handling this matter so we can be sure this message has been communicated. We also remind you that Feellife, as a foreign-domiciled applicant, is required to be represented by U.S. counsel in this dispute and will need to find new counsel to proceed (see [here](#)).

We would appreciate the courtesy a response today.

Best regards,

Kelley

Kelley Harrington
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
+1 650 843 5202 office
+1 650 849 7400 fax
kharrington@cooley.com
www.cooley.com

From: Jay Hines <jh@mg-ip.com>
Sent: Monday, April 6, 2020 8:10 AM
To: Harrington, Kelley B <kharrington@cooley.com>
Cc: Peck, Anne <PECKAH@cooley.com>; Ortiz, Elizabeth <eortiz@cooley.com>; Koons, Drue <dkoons@cooley.com>; Mailroom <Mailroom@mg-ip.com>; Ken Muncy <km@mg-ip.com>; Loria M. Grindle <LMG@mg-ip.com>; Roman Campos <arc@mg-ip.com>
Subject: RE: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

[External]

Kelley,

As we were not fully discharged we do not believe that we should withdraw representation. Circumstances could change.

Thank you,
Jay

Muncy, Geissler, Olds & Lowe, P.C.
4000 Legato Road, Suite 310
Fairfax, Virginia 22033

Email: jh@mg-ip.com
Phone: 703-621-7140 X 140
Fax: 703-621-7155
Website: www.mg-ip.com

From: Harrington, Kelley B [<mailto:kharrington@cooley.com>]
Sent: Friday, April 03, 2020 11:52 AM
To: Jay Hines
Cc: Peck, Anne; Ortiz, Elizabeth; Koons, Drue; Mailroom; Ken Muncy; Loria M. Grindle; Roman Campos
Subject: RE: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

Jay,

Thanks for the information. Since your firm has been instructed to close its file on this proceeding, will it be withdrawing as counsel per the TTAB and Trademark Law Rules (e.g. TBMP § 116 and 37 C.F.R. §11.116)?

Best regards,

Kelley

Kelley Harrington

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Palo Alto, CA 94304-1130
+1 650 843 5202 office
+1 650 849 7400 fax
kharrington@cooley.com

www.cooley.com

From: Jay Hines <jh@mg-ip.com>
Sent: Thursday, April 2, 2020 12:13 PM
To: Harrington, Kelley B <kharrington@cooley.com>
Cc: Peck, Anne <PECKAH@cooley.com>; Ortiz, Elizabeth <eortiz@cooley.com>; Koons, Drue <dkoons@cooley.com>; Mailroom <Mailroom@mg-ip.com>; Ken Muncy <km@mg-ip.com>; Loria M. Grindle <LMG@mg-ip.com>; Roman Campos <arc@mg-ip.com>
Subject: RE: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

[External]

Kelly,

I'm afraid we take instruction through a Chinese firm and have no contact information for the Applicant.

Thank you,
Jay

Muncy, Geissler, Olds & Lowe, P.C.
4000 Legato Road, Suite 310
Fairfax, Virginia 22033
Email: jh@mg-ip.com
Phone: 703-621-7140 X 140
Fax: 703-621-7155

Website: www.mg-ip.com

From: Harrington, Kelley B [<mailto:kharrington@cooley.com>]
Sent: Thursday, April 02, 2020 2:35 PM
To: Jay Hines
Cc: Peck, Anne; Ortiz, Elizabeth; Koons, Drue; Mailroom; Ken Muncy; Loria M. Grindle; Roman Campos
Subject: RE: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

Jay,

Thank you for letting us know. Could you please send us the contact information for the applicant?

I hope you and your family are staying healthy and safe.

Best regards,

Kelley

Kelley Harrington

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
+1 650 843 5202 office
+1 650 849 7400 fax
kharrington@cooley.com

www.cooley.com

From: Jay Hines <jh@mg-ip.com>
Sent: Thursday, April 2, 2020 10:01 AM
To: Harrington, Kelley B <kharrington@cooley.com>
Cc: Peck, Anne <PECKAH@cooley.com>; Ortiz, Elizabeth <eortiz@cooley.com>; Koons, Drue <dkoons@cooley.com>; Mailroom <Mailroom@mg-ip.com>; Ken Muncy <km@mg-ip.com>; Loria M. Grindle <LMG@mg-ip.com>; Roman Campos <arc@mg-ip.com>
Subject: RE: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

[External]

Dear Ms. Harrington and Anne,

Yesterday we were instructed to take no further action in this matter and close our file. Unfortunately I am not authorized to expressly abandon the application.

Thank you.
Jay Hines

Muncy, Geissler, Olds & Lowe, P.C.
4000 Legato Road, Suite 310
Fairfax, Virginia 22033
Email: jh@mg-ip.com
Phone: 703-621-7140 X 140
Fax: 703-621-7155
Website: www.mg-ip.com

From: Harrington, Kelley B [<mailto:kharrington@cooley.com>]
Sent: Wednesday, April 01, 2020 7:44 PM
To: Jay Hines
Cc: Peck, Anne; Ortiz, Elizabeth; Koons, Drue; Mailroom
Subject: RE: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

Dear Mr. Hines,

Please let us know when we can expect a response to our March 16, 2020 letter (re-attached) regarding Feellife's deficient document production and discovery responses. Please also let us know if Feellife has reconsidered its position and will be abandoning the AEROGO application.

Best regards,

Kelley

Kelley Harrington
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+1 650 849 7400 fax
kharrington@cooley.com
www.cooley.com

From: Harrington, Kelley B
Sent: Monday, March 16, 2020 1:12 PM
To: 'jh@mg-ip.com' <jh@mg-ip.com>; 'mailroom@mg.ip.com' <mailroom@mg.ip.com>
Cc: Peck, Anne <PECKAH@cooley.com>; Ortiz, Elizabeth <eortiz@cooley.com>; Koons, Drue <dkoons@cooley.com>
Subject: Opposition No. 91248718 - STAMFORD DEVICES LIMITED v. FEELLIFE MEDICAL INC.

Dear Mr. Hines,

On behalf of my colleague Anne Peck and Stamford Devices Limited, please see the attached.

Sincerely,

Kelley Harrington

Kelley Harrington
Cooley LLP
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Palo Alto, CA 94304-1130
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+1 650 849 7400 fax
kharrington@cooley.com
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