

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: February 29, 2016

Cancellation No. 92057613

Natural Organics, Inc.

v.

Naturally Plus Direct Marketing Pte. Ltd.

**Robert H. Coggins,
Interlocutory Attorney:**

Now before the Board is Petitioner's motion (filed November 2, 2015) to compel discovery. Respondent has filed a brief in opposition thereto.

Motion to Compel

Petitioner moves to compel responses to Interrogatory Nos. 5, 6, 9, and 14, and Document Request Nos. 7 and 10 from its *first* set of discovery requests; and Interrogatory No. 5 and Document Request No. 7 from its *second* set of discovery requests.¹

Given the discovery history between the parties (exhibited, in part, by Petitioner's earlier, but later withdrawn motion to compel), the small number of

¹ It is a better practice to continue the number sequence where it ended with the first set of discovery requests (instead of starting over at the beginning with No. 1) when it is necessary to serve a second set of discovery requests.

discovery requests at issue in the present motion, and the parties' detailed email communications submitted as Exhibits A-E to the motion, the Board presumes the parties' familiarity with the issues. For the sake of efficiency, the Board will not recite in this order each party's argument with regard to the eight discovery requests at issue; instead, after careful consideration of the motion to compel and brief in opposition thereto, this order summarizes the determinations made by the Board.

Good faith effort

The Board finds that under the specific circumstance of this case Petitioner made the requisite good faith effort prior to filing the current motion to compel. *See* Trademark Rule 2.120(e)(1).

First Interrogatories

The motion to compel is **granted** as to (first) Interrogatory Nos. 5, 6, 9, and 14. Annual sales and advertising figures, stated in round numbers for a party's involved goods sold under its involved mark are proper matters for discovery. *See, e.g., J.B. Williams Co. v. Pepsodent GmbH*, 188 USPQ 577 (TTAB 1975). Although Respondent states that it provided to Petitioner an Excel spreadsheet of every sale of every product (as an answer to Nos. 5 and 6), it is unclear whether such a spreadsheet is, in fact, a business record itself or merely a summary of other business records. Usually, business records are trustworthy because they are prepared contemporaneously with the recorded events and because businesses need to rely on them in their commercial affairs; however, a spreadsheet summaries may

not be business records. Similarly, consumer surveys are discoverable. *See* J. Thomas McCarthy, *6 McCarthy on Trademarks and Unfair Competition* § 32:158 (4th ed., March 2016 update) (Introduction to survey evidence). Respondent's objections as to confidentiality are overruled. Respondent must produce allegedly confidential or proprietary information pursuant to the protective order that is automatically in place in this proceeding by operation of Trademark Rule 2.116(g).

Second Interrogatories

The motion to compel is **granted** as to (second) Interrogatory No. 5. Conferences, seminars, and tradeshow are proper matters for discovery, as such information may be relevant to advertising, channels of trade, consumers, and first use of the mark(s). Respondent does not sufficiently explain why responding to this interrogatory is overbroad or burdensome. It is noted that the subject registrations claim first use in commerce as of January 2012, but Respondent's brief in opposition provides no information on the number or nature of past conferences, trade shows, seminars, etc., and the Board cannot infer any burden. Events are usually public in nature and should be easily identifiable and quantifiable.

First Document Requests

The motion to compel is **granted** as to (first) Document Request No. 7. As indicated above, Respondent's annual advertising figures are proper matters for discovery. Respondent's objections as to confidentiality are overruled. Respondent must produce allegedly confidential or proprietary information pursuant to the

protective order that is automatically in place in this proceeding by operation of Trademark Rule 2.116(g).

Channels of trade are similarly proper matters. To the extent Respondent states that it has already produced documents sufficient to show its channels of trade, the motion to compel is **granted** as to (first) Document Request No. 10 to the extent that Respondent must specify for Petitioner which documents it has produced that are response to this request.

Second Document Requests

The motion to compel is **denied** as to (second) Document Request No. 7 to the extent it seeks the applications for all of Respondent's members/representatives. *See Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (need not reveal names of dealers). However, inasmuch as the ground of abandonment has been pleaded, the names of a minimal number of members for the period in question is discoverable under the protective order, and the motion is **granted** as to (second) Document Request No. 7 to the extent Respondent must produce the first member's name and the names of a minimal number of other members since January 2012 (under the proactive order).

Time to comply

Respondent is allowed until **thirty days** from the date of this order in which to serve upon Petitioner the discovery compelled herein.

Schedule

Proceedings are **resumed**. Dates are reset on the following schedule:

Discovery Closes	4/14/2016
Plaintiff's Pretrial Disclosures	5/29/2016
Plaintiff's 30-day Trial Period Ends	7/13/2016
Defendant's Pretrial Disclosures	7/28/2016
Defendant's 30-day Trial Period Ends	9/11/2016
Plaintiff's Rebuttal Disclosures	9/26/2016
Plaintiff's 15-day Rebuttal Period Ends	10/26/2016

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.