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
General Email: TTABInfo@uspto.gov

RK

February 3, 2020

Cancellation No. **92068467**

U.G.A. Nutraceuticals SRL

v.

Maple Mountain Group, Inc.

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on Respondent's motion (filed August 15, 2019) to compel responses to its first sets of interrogatories and document requests served on April 5, 2019.[1] Petitioner filed a response to the motion on September 4, 2019.[2] By way of its response, Petitioner does not dispute that its discovery responses are overdue and states that it "will consent to a compel order" to the extent that Respondent's "request to deem objections waived … be denied."[3] For the reasons that follow, Respondent's motion to compel is **GRANTED** and Petitioner's request to deny the waiver of objections is **DENIED**.

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1 19 TTABVUE.

2 21 TTABVUE.

3 *Id*. at 2-3.

Preliminarily, the Board finds Respondent's efforts to obtain Petitioner's responses to discovery sufficient to discharge the good faith effort requirement of Trademark Rule 2.120(f)(1), 37 C.F.R. § 2.120(f)(1).

As to the merits of the motion, it is undisputed that Petitioner failed to timely respond to Respondent's discovery requests. "[A] party who fails to respond to a request for discovery during the time allowed therefore [sic] is deemed to have forfeited his right to object to the request on its merits unless he can show that failure to timely respond was the result of excusable neglect." *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448, 449 (TTAB 1979); *see also No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). Petitioner has made no showing that its failure to timely respond to Respondent's discovery requests was the result of excusable neglect. Petitioner's various and vague claims that Respondent's discovery requests "have virtually no bearing on the central question in this proceeding," that Respondent has "ignored the delays caused by its own deflections in discovery," the "difficulties of an overseas [client,]" and "miscommunication amongst opposing counsel," are of little relevance to Petitioner's failure to timely respond to Respondent's discovery requests and provide no cause to find that Petitioner has somehow preserved its right to object to the discovery requests on the merits.[4] Moreover, Petitioner's contention that because it "has yet to lodge its objections to the merits of Registrant's requests" such that "[a]djudication of

[4] 21 TTABVUE 2.

potential waiver of objections, to the extent they will be lodged, is premature," is without support in Board practice and case law.[5]

Accordingly, Petitioner is allowed until **MARCH 6, 2020**, in which to serve its written responses to Respondent's first sets of interrogatories and document requests, as well as documents responsive thereto, in full and without objection on the merits. *See No Fear Inc.*, 54 USPQ2d at 1554.

Responses to requests for production should comply with the provisions of Fed. R. Civ. P. 34(b). In accordance with Fed. R. Civ. P. 34(b)(2)(B) and (C), a proper response to a request for production of documents and things must address each item or category of documents or things identified in the request and state, as to each, whether there are any responsive documents. If none, the responding party must state as such. *Id.* at 1555. If there are responsive documents, the party must specify whether such documents will be produced, either by allowing inspection or providing copies, or withheld on a claim of privilege, *see id.*, unless the party opts to object[6], in whole or in part, to the request, in which case the party must specify the reasons for the objection and state whether any responsive material is being withheld on the basis of the objection. *See* Fed. R. Civ. P. 34(b)(2)(C). An objection in part must identify the part being objected to and permit inspection of the rest. *Id.* If responsive documents are withheld on a claim of privilege, the responding party must expressly make the claim and provide a privilege log that does not disclose the

[5] *Id.* at 3.

[6] Petitioner is reminded, however, that pursuant to this order, Petitioner may not raise any objection on the merits.

privileged or protected information but affords sufficient detail to enable the requesting party to assess the claim. *See* Fed. R. Civ. P. 26(b)(5)(A). The privilege log should identify each document withheld and provide information regarding the nature of the privilege claimed, the name of the person making/receiving the communication, the date and place of the communication, and the document's general subject matter. *See No Fear, Inc.*, 54 USPQ2d at 1556.

In the event that Petitioner fails to serve its responses as ordered herein, Respondent's remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(h)(1).

Proceedings are **RESUMED** in accordance with the following schedule:

Expert Disclosures Due	**4/6/2020**
Discovery Closes	**5/6/2020**
Plaintiff's Pretrial Disclosures Due	**6/20/2020**
Plaintiff's 30-day Trial Period Ends	**8/4/2020**
Defendant's Pretrial Disclosures Due	**8/19/2020**
Defendant's 30-day Trial Period Ends	**10/3/2020**
Plaintiff's Rebuttal Disclosures Due	**10/18/2020**
Plaintiff's 15-day Rebuttal Period Ends	**11/17/2020**
Plaintiff's Opening Brief Due	**1/16/2021**
Defendant's Brief Due	**2/15/2021**
Plaintiff's Reply Brief Due	**3/2/2021**
Request for Oral Hearing (optional) Due	**3/12/2021**

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, matters in evidence, the manner and timing of taking testimony, and the procedures for

submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence.

Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

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