

ESTTA Tracking number: **ESTTA1206126**

Filing date: **04/29/2022**

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

Proceeding no.	92078302
Party	Plaintiff Seneca Foods Corporation
Correspondence address	SHERYL DE LUCA NIXON & VANDERHYE P.C. 901 N. GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203 UNITED STATES Primary email: nixonptomail@nixonvan.com Secondary email(s): sld@nixonvan.com, csmith@nixonvan.com, jsp@nixonvan.com 703-816-4063
Submission	Motion to Compel Discovery or Disclosure
Filer's name	Sheryl De Luca
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Signature	/Sheryl De Luca/
Date	04/29/2022
Attachments	3146-346.Motion to Compel Initial Disclosures 4872-6329-1933 v.1.pdf(33770 bytes) 3146-346 Ex. A.pdf(163314 bytes) 3146-346 Ex. B.pdf(54445 bytes)

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

3146-346

Seneca Foods Corporation,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92078302
)	Registration No. 5719357
Gemsa Enterprises, LLC dba Gemsa Oils,)	Mark: FARM TO MARKET & Design
)	
Registrant.)	

ATTN: Chief Administrative Trademark Judge
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITIONER’S MOTION TO COMPEL INITIAL DISCLOSURES

Petitioner Seneca Foods Corporation (“Seneca Foods” or “Petitioner”), in accordance with Rules 26(a)(1)(A)(i) and (ii) of the Federal Rules of Civil Procedure and TBMP §§ 401.02, 408.01(b), 411.01 and 523.01 (June 2021), respectfully moves the Board for an order compelling the Registrant Gemsa Enterprises, LLC dba Gemsa Oils (“Registrant”) to provide its initial disclosures.

I. INTRODUCTION

Petitioner filed this Petition for Cancellation on October 21, 2021. (1 TTABVUE)
The Board instituted it on October 25, 2021 and issued a Scheduling Order. (2 TTABVUE). Registrant filed an Answer on December 4, 2021. (4 TTABVUE).
Petitioner filed a consented motion to extend the dates in the case (5 TTABVUE), which was granted of January 4, 2022. (6 TTABVUE). As reset, the due date for the parties

to serve their initial disclosures was Sunday, April 3, 2022 (effectively, Monday, April 4, 2022). Petitioner served its Initial Disclosures on Registrant on April 4, 2022. See Exhibit A. To date, Registrant has not provided its initial disclosures and did not contact Petitioner to request any extension of time to respond or otherwise move the Board for an extension or to reopen the due date.

The attorney for Petitioner has made a good faith effort, by correspondence, to resolve with the attorney for Registrant the issues presented in this motion, and has been unable to reach agreement. In particular, on April 21, 2022, counsel for Petitioner sent an email to counsel for Registrant at the email of record, matt@beckerlawfirm.com, indicating that Petitioner had not received registrant's initial disclosures and inquired when they would be provided. See Exhibit B. However, to-date Registrant has not responded to the email.

II. REGISTRANT SHOULD BE COMPELLED TO PROVIDE ITS INITIAL DISCLOSURES.

The parties in an *inter partes* proceeding are obligated to make initial disclosures to the other party, by the deadline set in the Board's institution order, or as reset by the Board. TBMP §401.02 (June 2021). "As part of the discovery phase parties are obliged to make initial disclosures. . ." TBMP §408.01(b) (June 2021). This "disclosure regime [] promote[s] the early exchange of information and settlement and, for cases that do not settle, 'more efficient discovery and trial, reduction of incidents of unfair surprise, and increase the likelihood of fair disposition of the parties' claims and defenses'" (*Id.*); and "[it] is intended to 'obviate the need to use traditional discovery to obtain 'basic information' about a party's claims or defenses.'" *Id.*

Here, Registrant failed to make its initial disclosures by the effective April 4, 2022 due date in the revised scheduling order. Registrant also failed to request an extension of time to make its initial disclosures with Petitioner or the Board by the April 4, 2022 due date. Registrant had sufficient notice of this due date, especially since Petitioner served its initial disclosures on Registrant on that date. To date, Registrant has not responded to Petitioner's attempt to follow up with Registrant to seek their initial disclosure production on April 21, 2022.

Section 523 of the TBMP §523 indicates that a motion to compel is available in the event of a failure of a party to provide required disclosures in *inter partes* proceedings. See also TBMP §401.02 (June 2021) ("A party failing to make initial disclosures may be subject to a motion to compel, and ultimately, a motion for discovery sanctions"); TBMP §411.01 (same); *Luster Products Inc. v. Van Zandt*, 104 USPQ2d 1877, 1878-79 (TTAB 2012) (motion to compel is available remedy for failure to serve, or insufficient, initial disclosures); TBMP § 408.01 (noting the general rule that the Board expects the parties to cooperate with each other during the discovery process).

III. CONCLUSION

For the reasons stated above, Petitioner respectfully requests an Order compelling Registrant to provide its initial disclosures.

Date: April 29, 2022

By:



Sheryl DeLuca
Attorneys for Petitioner
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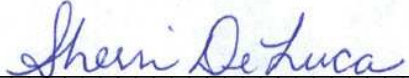
CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April 2022, a true and complete copy of the foregoing PETITIONER'S MOTION TO COMPEL INITIAL DISCLOSURES has been served on Attorney for Registrant, by forwarding said copy *via email* to the following:

MATTHEW A BECKER
THE LAW OFFICE OF MATTHEW A BECKER
PO BOX 180135
CORONADO, CA 92178
matt@beckerlawfirm.com

Date: April 27, 2022

By:



Sheryl De Luca

From: [Sherri DeLuca](#)
To: ["matt@beckerlawfirm.com"](mailto:matt@beckerlawfirm.com)
Cc: [Joe Presta](#); [Cherie Smith](#)
Subject: TTAB Cancellation No. 92078302; Registration No. 5719357; FARM TO MARKET & Design
Date: Monday, April 4, 2022 8:57:23 PM
Attachments: [3146-346.Petitioner's first RFP to Respondent.pdf](#)
[3146-346.Petitioner's first interrogatories to Respondent.pdf](#)
[3146-346.Petitioner's initial disclosures.pdf](#)

Dear Matt,

Please see the attached documents in connection with the subject Cancellation:

1. Petitioner's Initial Disclosures
2. Petitioner's First Set of Interrogatories
3. Petitioner's First Set of Requests for Production of Documents and Things.

Best regards,
Sherri

EXHIBIT B

From: [Sherri DeLuca](#)
To: ["matt@beckerlawfirm.com"](mailto:matt@beckerlawfirm.com)
Subject: TTAB Cancellation No. 92078302; Registration No. 92078302; FARM TO MARKET & Design
Date: Thursday, April 21, 2022 11:14:18 AM

Hi Matt,

We do not seem to have received your initial disclosures in the subject action, which were due on April 3, 2021. Could you please let us know when you will provide them. Thank you.

Best regards,
Sherri