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

Proceeding no.	92078349
Party	Defendant David J. Witchell Salon & Spa, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Judith Gurley Plastic Surgery, LLC)	
Petitioner,	)	Cancellation No. 92078349
v.	)	Registration No. 5845907
David J. Witchell Salon & Spa, Inc.)	
Registrant.)	

**REGISTRANT’S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER’S ANSWERS AND OBJECTONS**

I. SUMMARY

Pursuant to TBMP §523, TBMP §524 (Fed. R. Civ. P. 36(a)), and 37 C.F.R. §2.120(d), (e), (f) and (i), Registrant, David J. Witchell Salon & Spa, Inc. (“Registrant”), by its attorney, hereby moves the Board to compel Petitioner, Judith Gurley Plastic Surgery, LLC (“Petitioner”), to respond to written discovery demands, produce responsive, nonprivileged documents, and a privilege log, and to provide proper, unqualified responses to Registrant’s Interrogatories and, after testing the sufficiency of Petitioner’s answers or objections, that the Board strike Petitioner’s improper discovery objections and compel Petitioner to properly respond to Registrant’s admission requests.

In support of Registrant’s motion, Registrant states as follows:

II. BACKGROUND

1. Registrant has made good faith efforts to resolve the outstanding discovery issues with Petitioner and was unable to reach any resolutions, as stated in paragraphs below and further supported by the exhibits attached hereto.

2. On July 15, 2022, Registrant served Petitioner with Registrant’s First Requests for Admissions to Petitioner, Registrant’s First Set of Interrogatories to Petitioner, and Registrant’s First Requests for Production to Petitioner (“Registrant’s Discovery Requests”) and, on August 11, 2022,

Petitioner served Petitioner's Responses to Registrant's Discovery Requests.¹ Attached hereto, as **Exhibit A**, is a true and correct copy of Registrant's First Requests for Admissions to Petitioner.

Attached hereto, as **Exhibit B**, is a true and correct copy of Registrant's First Set of Interrogatories to Petitioner. Attached hereto, as **Exhibit C**, is a true and correct copy of Registrant's First Requests for Production to Petitioner. Attached hereto, as **Exhibits D, E, and F**, are true and correct copies of Petitioner's Responses to Registrant's Discovery Requests.²

3. Registrant's counsel sent correspondence to Petitioner's counsel on August 26, 2022, pointing to its deficiencies, while also explaining and citing the legal authority in support of the assertion that Petitioner's objections and responses were improper. Attached hereto, as **Exhibit G**, is a true and correct copy the August 26, 2022, email from Registrant's counsel to Petitioner's counsel, which included the attached letter pointing out, explaining, and citing legal support for Registrant's contention that Petitioner's responses and objections were improper. Attached hereto, as **Exhibit H**, is a true and correct copy of Registrant's August 26, 2022 letter ("August 26th Letter") to Petitioner's Counsel pointing out, explaining, and citing legal support for Registrant's contention that Petitioner's responses and objections were improper.

4. Beginning on September 9, 2022, Petitioner's counsel and Registrant's counsel engaged in an email exchange regarding the August 26th Letter ("September 9th Email Exchange"). Attached hereto, as **Exhibit I**, is a true and correct copy of an email chain between Petitioner's counsel and Registrant's counsel, beginning on September 9, 2022 and ending September 19, 2022, in which Registrant's counsel further attempted to reach a resolution with Petitioner's counsel as to the outstanding discovery issues in this case.

¹ The titles of which have been shortened, but refer to "Petitioner's Response to Registrant's First Request for Admissions to Petitioner" (**Exhibit D**) ; "[Petitioner's Response to] Registrant's First Set of Interrogatories" (**Exhibit E**); and "Petitioner's Response to Registrant's First Requests For Production to Petitioner" (**Exhibit F**).

² See n.1.

5. In the September 9th Email Exchange, and on September 9, 2022, Petitioner's counsel represented that Petitioner's counsel never received the August 26th email (and the attached letter), but did receive the same letter by mail on September 7, 2022. Petitioner's counsel further explained that Petitioner's counsel was on vacation when the email was sent on August 26, 2022, and that she checked her email, including the spam folder, after receiving the letter by postal mail on September 7, 2022 (which was the courtesy copy of the letter sent via first class mail) and was unable to find any emails from Registrant's counsel that were sent on August 26, 2022. In the same email, Petitioner's counsel represented that Petitioner's counsel would provide a response to Registrant's letter by the end of the week (i.e., by September 12, 2022). See Exhibit I.

6. Registrant's counsel did not receive Petitioner's responses by September 12, 2022, nor any communication indicating that Petitioner's response to Registrant's Discovery Requests would be delayed.

7. On September 19, 2022, Registrant's counsel made another attempt to resolve the discovery issues and sent Petitioner's counsel an email to follow up on the prior email exchange beginning on September 9, 2022. In this email, Registrant's counsel reiterated that Petitioner's counsel represented it would provide a response to the August 26th Letter by September 12, 2022, and asked whether Petitioner still intended on responding to Registrant's Discovery Requests, since no response had been received. See Exhibit I.

8. On September 19, 2022, Petitioner's counsel replied and indicated that Petitioner would provide a response to the August 26th Letter by the end of the following week (i.e., September 30, 2022). See Exhibit I.

9. On September 23, 2022, Petitioner's counsel sent amended discovery responses to Registrant's counsel via email, but repeatedly failed to comply with the discovery rules and to fairly respond to the requests made by Registrant. Attached hereto, as Exhibit J, is a true and correct copy of an email sent by Petitioner's counsel to Registrant's counsel on September 23, 2022, in which Petitioner's counsel provided amended, albeit deficient, discovery responses and objections. Attached

hereto, as **Exhibits K, L, and M**, are true and correct copies of “Petitioner’s Amended Responses to Registrant’s Requests for Admissions, Interrogatories, and Documents”.³

10. As of the present date, Petitioner continues to withhold documents (or has not indicated that there are no responsive documents), maintain improper objections, and fails to remedy evasive answers and its conditional responses.

11. In sum, Petitioner has failed to address the discovery issues presented by Registrant and Petitioner has failed in its duty “to make a good faith effort to satisfy [Registrant’s] discovery needs. TBMP § 408.01. See also Panda Travel Inc. v Resort Option Enter., Inc., 94 USPQ2d 1789, 1791 (TTAB 2009) (‘The Board expects parties to cooperate during discovery. Each party has a duty to make a good faith effort to satisfy the reasonable and appropriate discovery needs of its adversary.’)”; and Chavakula v. Praise Broad., 2020 TTAB LEXIS 264, *12 (TTAB 2020).

III. ARGUMENT

Registrant seeks relevant information in its discovery requests to Petitioner. However, instead of complying with its discovery obligations to provide information and documents, Petitioner, instead uses a litany of inapplicable and improper objections to excuse Petitioner’s withholding of evidence that is relevant and to which Registrant is entitled. It can only be surmised that Petitioner knows that the withheld information would tend to establish Registrant’s Affirmative Defenses of Non-Exclusivity, Abandonment, and Fraud, as well as negate Petitioner’s claim of prior use and ownership over the mark, and that Petitioner cannot have rights in the mark. In short, Petitioner has provided baseless objections and evasive responses because Petitioner knows the information requested in Registrant’s discovery demands, if it were actually produced, will assist in defeating Petitioner’s claims at trial, and may well establish Registrant’s entitlement to summary judgment. Petitioner, has even gone so far to claim that it is irrelevant whether Petitioner uses, advertises or has familiarity with a product used and advertised by

³ The titles of which have been shortened, but refer to “Petitioner’s Amended Response to Registrant’s First Request for Admissions to Petitioner” (Exhibit K); “Petitioner’s Amended Response to Registrant’s First Set of Interrogatories” (Exhibit L); and “Petitioner’s Amended Response to Registrant’s First Requests For Production to Petitioner” (Exhibit M).

others in connection with dermal fillers (Juvederm and other dermal fillers), is not relevant – even though a mark similar or identical to Petitioner’s alleged mark has been in use by others over the past two decades with these products/services. This is preposterous, and is another attempt by Petitioner to prevent Registrant from learning the truth. Registrant therefore by this Motion requests the Board’s assistance to compel Petitioner to divulge relevant information.

“In inter partes proceedings before the Board, a motion to compel discovery procedure is available in the event of a failure to provide discovery requested by means of discovery depositions, interrogatories, and requests for production of documents and things.” See TBMP §523.01 and Jain v. Ramparts Inc., 49 USPQ2d 1429 (TTAB 1998). Further, “[i]f any party fails to answer any interrogatory, the party seeking discovery may file a motion with the Board for an order to compel an answer. Similarly, if any party fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion for an order to compel production and an opportunity to inspect and copy.” See TBMP §411.02 and 37 CFR §2.120(d) and (e). Also, “[i]f a propounding party is dissatisfied with a responding party’s answer or objection to a request for admission, and wishes to obtain a ruling on the sufficiency thereof, the propounding party may file a motion with the Board to determine the sufficiency of the response or objection. If the Board determines that a response does not comply with the requirements of Fed.R.Civ.P. 36(a), it may order either that the matter is admitted or that an amended answer be served. If the Board determines that an objection is not justified, it will order that a response be served”. See TBMP §411.03, Fed.R.Civ.P. 36(a), and 37 C.F.R. § 2.120(i). In the instant proceeding, Petitioner has failed to provide documents and proper responses requested in Registrant’s Discovery Requests, largely to almost every request that Registrant has propounded. Petitioner’s failure to produce responsive documents and provide proper responses to Registrant’s Discovery Requests is in direct violation of Petitioner’s obligations under TBMP §523, §524, and 37 CFR §2.120(d), 37 CFR §2.120(e), and 37 CFR §2.120(i). Moreover, Petitioner’s responses are evasive and impose repetitive boilerplate objections, with explanations that amount to a mere restatement of the same objections, and therefore violate Fed.R.Civ.P. 26(g) and 37(a)(4). Petitioner’s failure to properly

respond to Registrant's Discovery Requests and to comply with the discovery rules has prejudiced Registrant because such failures hinder Registrant's preparation for the testimony period in this Cancellation (or potential dispositive motion).

Accordingly, Petitioner is without any justification for Petitioner's failure to produce documents (or to state that it has none). Petitioner's imposition of its unsupported objections, and Petitioner's evasive responses withholds essential information germane to Registrant's establishment of its claims in this proceeding. Petitioner's conditional responses and spurious boilerplate objections merely circumvent the discovery to which Registrant is entitled.

Additionally, it is well-established that Registrant need not wait, nor make any additional attempts at resolving its discovery issues with Petitioner, beyond what Registrant has already done, before filing a motion to compel. The Board has held that, even when movant's first attempt is a "brief and insubstantial email exchange", a movant need only to make one additional attempt, by conference or correspondence, at resolving discovery issues with the other party before filing its motion, when the responding party has failed to respond or the movant receives a response which does not attempt to resolve the discovery issues presented in movant's correspondence. 3 McCarthy on Trademarks and Unfair Competition § 20:113 (5th ed.) ("Encountering a non-responding party, the proponent of discovery, after enquiring and receiving a vague and noncommittal answer from a non-responding party, [must only] 'make at least one additional inquiry' to find out the reason why there has been no compliance with discovery and whether it is caused by problems that can be resolved" (quoting Hot Tamale Mama ... and More, LLC v. SF Investments, Inc., 110 U.S.P.Q.2d 1080, 2014 WL 1390527 (TTAB 2014)). For example, the Board held in another proceeding that the movant met the good faith effort requirement, after the parties had exchanged letters and emails regarding the alleged deficiencies and were unable to resolve their differences. One Jeanswear Grp. Inc. v.

YogaGlo, Inc., 2018 TTAB LEXIS 321, *6-8 (TTAB 2018) (Motion to Compel Granted:

“Trademark Rule 2.120(f)(1), 37 C.F.R. 2.120(f)(1), and Fed. R. Civ. P. 37(a)(1) require a party moving to compel to disclose the required good faith efforts in which it engaged to try to resolve the issue when submitting the motion to the tribunal. Applicant argues that the ‘history of good faith efforts’ is set forth in its motion. Applicant's counsel submitted her declaration, which details the letter and email exchanges between counsel, together with copies of that correspondence.... The Board has reviewed the briefs, arguments, declaration and attachments. Counsel for the parties had exchanged several letters and emails regarding alleged deficiencies in the interrogatories, and were unable to resolve their differences. The Board finds Applicant has satisfied the good faith effort requirement prior to the filing of its motion to compel.”).

Furthermore, Registrant is required to file a motion to compel, or else it would waive its right to complain about the deficiencies of Petitioner’s responses at trial and waive its right to claim unfair surprise after the introduction of exhibits by Registrant at trial, which were not provided during discovery:

Failure to Move to Compel Discovery. If a party that served a request for discovery receives a response it believes to be inadequate, but fails to file a motion to test the sufficiency of the response, that party will not be heard to complain about the sufficiency of the response. For example, in one case, opposer did not file a single document in response to applicant's discovery requests. Because applicant did not move to compel discovery, it waived its right to object to the introduction at trial of evidence which was not produced during discovery. The Board observed that: ‘[A]pplicant's own inaction ensured that applicant would not see opposer's evidence for the first time until trial... [A]pplicant cannot claim unfair surprise.’.

3 McCarthy on Trademarks and Unfair Competition § 20:113 (5th ed.) (quoting The H.D. Lee Company, Inc. v. Maidenform, Inc., 87 U.S.P.Q.2d 1715, 1719, 2008 WL 1976596 (T.T.A.B. 2008)).

Accordingly, Registrant hereby requests that the Board order Petitioner to comply with Petitioner’s discovery obligations and compel Petitioner to produce responsive documents and information and to provide proper responses, and that the Board strike Petitioner’s baseless objections.

1. Petitioner's Improper Boilerplate Objections Must be Stricken.

Petitioner has provided improper boilerplate objections in response to Registrant's discovery requests without providing further explanation. Consequently, the Board must strike Petitioner's improper boilerplate objections and order Petitioner to provide proper responses to Registrant's **Document Production Requests Nos. 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, 20, 21, 22, 26, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 50, 53, 54, and Interrogatory Nos. 19, 20, 21, 22, 23, 28, 31, 38, 39, 50.**

A. Petitioner's Objections to Registrant's Document Production Requests are Improper and Must be Stricken (Document Production Request Nos. 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, 20, 21, 22, 26, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 50, 53, 54).

Petitioner has objected to Registrant's discovery requests on the basis that request: (1) "calls for information that is irrelevant and disproportional to the needs of this matter"; (2) "calls for confidential proprietary information that is not relevant nor proportionate to this matter"; (3) is "duplicative"; and/or (4) "calls for information that is protected by work product privilege and/or attorney client privilege".

For example, in Petitioner's amended response to request no. 10 of Registrant's First Request for Production to Petitioner, Petitioner objects that the request is irrelevant, disproportional, and calls for confidential proprietary information:

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

Amended Response Petitioner objects to this Request as it **calls for information that is irrelevant and disproportional to the needs of this matter**, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. **Petitioner further objects** to this Request to the extent **it calls for confidential proprietary information** that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association

with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

("Petitioner's Amended Response to Registrant's First Set of Requests for Production to Petitioner", Request No. 10 (pp. 4-5) (**Exhibit M**) (emphasis added)).

Petitioner has provided identical or substantially similar responses and objections to in Petitioner's Amended Response to Registrant's First Set of Requests for Production to Petitioner **for requests Nos. 11, 12, 13, 16, 17, 20, 21, 22, 31, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 50, 53, and 54.** In fact, Petitioner copies the same exact response and objections in response to request nos. **11, 12, 13, 16, 17, 20, 21, and 22.**

More importantly, Petitioner has provided the same exact explanations as to why Petitioner's objections apply in each response to Production Request Nos. **11, 12, 13, 16, 17, 20, 21, 22, 31, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 50, 53, and 54,** which amount to nothing more than a restatement of the boilerplate objections Petitioner is purporting to explain. Specifically, Petitioner responds with the same three explanations, which are provided as follows:

... Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

("Petitioner's Amended Response to Registrant's First Set of Requests for Production to Petitioner", Request No. 10 (pp. 4-5) (**Exhibit M**)).

None of these statements explain why Petitioner's objections should apply. Instead, Petitioner's statements amount to a mere restatement of the objection itself, e.g., Petitioner objects that "the request calls for information that is irrelevant" and then purports to explain the boilerplate objection by stating that "the requested information is irrelevant for determining whether Registrant's trademark ... is likely to cause confusion, mistake, or deception...", which is no different than stating Petitioner's objection by itself.

Petitioner, even after being reminded by Registrant and making an amended response, still has not provided an explanation of the specific grounds for the objection. Accordingly, Petitioner has failed in its discovery obligations. See Rule 34, and see Fischer v. Forrest, 14 Civ. 1304 (PAE) (AJP), 2017 WL 773694 (S.D.N.Y. Feb. 28, 2017) (deeming the type of objections that Petitioner has made in the current proceedings to be in violation of Rule 34); see also Hewlett Packard Enterprise Development LP v. Arroware Industries, Inc., Cancellation No. 92067494, May 2, 2019 (TTAB) (precedential) (overruling Petitioner's improper boilerplate objections as the party was required "to detail with specificity the reasons for its objections" and "failed to state clearly and affirmatively whether it ha[d] searched for and identified, but withheld, any documents responsive to Petitioner's document requests").

Boilerplate objections of the likes that Petitioner has presented in Petitioner's discovery responses are meritless, and should be stricken and proper responses compelled. See Younes v. 7-Eleven, Inc., Civ. No. 13-3500, pp. 25-26 (D.N.J. December 11, 2015) (boilerplate objections are "inappropriate and result in the waiver of the objection".) NE Technologies, Inc. v. Evolving Systems, Inc., C.A. No. 06-6061 (MLC), 2008 WL 4277668, at *5 (D.N.J. Sept. 12, 2008) ("When objecting to a discovery request, an objecting party must state with specificity the grounds for the objection, and not the familiar litany that an interrogatory or document production request is overly broad, burdensome, oppressive and irrelevant.")

Likewise, Petitioner's objections to Registrant's **Production Requests Nos. 5, 6, 15, 26, 35, and 36** are also improper boilerplate objections, which must be stricken. In each instance,

Petitioner responded by stating that the request is “duplicative” without formally objecting to the request on this basis and without providing a sufficient explanation as to why Petitioner should be precluded from responding on that basis. In each amended response, Petitioner also improperly refers Registrant to Petitioner’s responses to other discovery requests and fails to identify which particular documents are responsive to the request. For example, in Petitioner’s amended response to Document Production Request No. 5, Petitioner provides as follows:

REQUEST NO. 5

All documents sufficient to identify each location at which services were performed by Petitioner prior to March 16, 2016 under the alleged mark NO ONE WILL KNOW... EVERYONEWILL NOTICE.

See response to 4

Amended Response: Petitioner states that this request is duplicative of Request No. 4 and therefore directs Registrant’s attention to Petitioner’s amended response to Request No. 4.

(“Petitioner’s Amended Response to Registrant’s First Set of Requests for Production to Petitioner”, Request No. 10 (pp. 2-3) (**Exhibit M**)).

Petitioner’s informal boilerplate objections and responses are improper because: (a) Petitioner fails to formally object to the documents requested; Petitioner fails to provide a sufficient explanation in support of the objection; (c) Petitioner refers Registrant to responses for other requests, rather than responding to each particular request; and (d) Petitioner fails to identify each document responsive to each request by generally referring Registrant to other responses and groups of documents already produced.

Petitioner cannot refer Registrant to another response or a group of previously produced documents because Petitioner must identify each particular document that is responsive to each request and cannot interpose objections by referring to an objection made in response to a prior request. For example, in Petitioner’s amended response to Document Production Request No. 35, Petitioner responds by stating that the request is “duplicative” of Request no. 31 and 33 and directs Registrant to those responses. In both Petitioner’s amended response to Request No. 31

and No. 33, Petitioner objects on several grounds and does not provide any documents responsive to that request. As such, in response to Document Production Request No. 35, Petitioner directs Registrant to two different responses solely consisting of objections which pertain only to Document Production Requests Nos. 31 and 33. Likewise, Petitioner's amended response to Document Production Request No. 36 is improper because Petitioner responds by stating that the request is "duplicative" of Request no. 32 and 34 and directs Registrant to those responses. In response to Document Production Request No. 34, Petitioner provided the same list of boilerplate objections, including assertions of privilege and confidentiality (thereby, indicating that responsive documents exist). Conversely, in response to Document Production Request No. 32, Petitioner responded that no responsive documents exist other than those previously produced through discovery and in Registrant's Motion to Dismiss and Answer to Petitioner's Petition to Cancel. As such, Petitioner's response to Document Production Request No. 35 directs Registrant to two different, conflicting responses: one, in which, it is asserted that responsive documents exists, but will not be provided due to claims of privilege and confidentiality; and another, in which, Petitioner says no responsive documents exist other than those already produced. In essence, Petitioner responds by saying the documents responsive to Document Production Request No. 35 exist and are privileged, while also asserting that no responsive documents exist and/or that documents exist but are not protected by privilege or confidentiality because they have already been provided. In doing so, Petitioner provides an entirely inconsistent response.

Additionally, Registrant has no way of knowing which documents, if any, are responsive to Document Production Request No. 35 because Petitioner generally refers Registrant to Petitioner's response to Request No. 32, which asserts "none" except all documents "previously produced by [Petitioner] in response to [Registrant's] First Request for Production of Documents and Interrogatories, as well as the documents attached to Registrant's Motion to Dismiss an

Answer to Petitioner's Petition to Cancel".⁴ Petitioner's Answer includes twenty-eight different exhibits, while the Motion to Dismiss has forty-three different exhibits. Petitioner must identify which of these documents, if any, are responsive to Document Production Request No. 35.

The Board should order Petitioner to produce responsive documents and to identify each document responsive to each request, or to provide a response indicating that there are no responsive documents.

B. Petitioner's Objections to Registrant's Interrogatories are Improper and Must be Stricken (Interrogatory Nos. 19, 20, 21 22, 23, 28, 31, 38, 39, and 50).

In Petitioner's responses to Registrant's Interrogatories, Petitioner also improperly responded to Registrant's Admission Requests with numerous boilerplate objections, while also failing to provide sufficient explanations, similar to Petitioner's response to Production Request No. 10. Specifically, Petitioner provided the same or substantially similar objections in each of its responses to Interrogatory Nos. **19, 20, 21 22, 23, 28, 31, 38, 39, and 50.**

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

⁴ Petitioner mistakenly stated "None other than the documents previously produced by Registrant in response to Petitioner's First Request for Production of Documents and Interrogatories...", but Registrant believes Petitioner meant to state "None other than the documents previously produced by [Petitioner] in response to [Registrant's] First Request for Production of Documents and Interrogatories..."

(“Petitioner’s Amended Response To Registrant’s First Interrogatories To Petitioner”, Interrogatory No. 19 (**Exhibit L**) (pp.6-7)).

Additionally, Petitioner provided the same exact explanations for its objections in response to Interrogatories Nos. **19, 20, 21 22, 23, 28, 31, 38, 39, and 50**:

... Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant’s trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner’s Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

(“Petitioner’s Amended Response To Registrant’s First Interrogatories To Petitioner”, Interrogatory No. 20 (**Exhibit L**) (pp.7-8)).

None of these statements explain why Petitioner’s objections should apply. Instead, Petitioner’s statements just amount to a restatement of the objection itself, e.g., Petitioner objects that “the request calls for information that is irrelevant” and then explains the boilerplate objection by stating that “the requested information is irrelevant for determining whether Registrant’s trademark ... is likely to cause confusion, mistake, or deception...”, which is no different than stating Petitioner’s objection by itself.

These objections are improper, evasive and violate the discovery rules, as they are conclusory and lack sufficient explanations. The Board should order Petitioner to make reasonable inquiries and provide sufficient responses to Interrogatory nos. **19, 20, 21 22, 23, 28, 31, 38, 39, and 50**, as the Interrogatories request relevant information that is proportional to needs of this matter, which is neither privileged nor confidential, and is highly probative as to not be outweighed by any prejudice to Petitioner.

2. Petitioner's "Privilege" Objections Are Improper

A. Petitioner's "Privilege" Objections to Registrant's Document Production Requests Are Improper and Must Be Stricken (Document Production Requests Nos. 10, 11, 12, 13, 17, 20, 21, 22, 31, 33, 34, 37, 38, 39, 40, 41, 42, 44, 50, 53, and 54).

Petitioner's amended responses to each of the following production requests improperly object to the request on the grounds that it calls for information protected by "work product privilege" and/or "attorney client privilege" and/or "confidential proprietary information":

Document Production Request Nos. 10, 11, 12, 13, 17, 20, 21, 22, 31, 33, 34, 37, 38, 39, 40, 41, 42, 44, 50, 53, and 54.

For example, in Petitioner's Amended Response to Document Product Request No. 31, Petitioner responded as follows:

REQUEST NO. 31

All documents sufficient to show when Petitioner first gained knowledge of Registrant. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

See office action wherein the Trademark Examining Attorney cited Registrant registration.

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. **Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information** that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

(“Petitioner’s Amended Response to Registrant’s First Set of Requests for Production to Petitioner”, Request No. 31 (pp. 13-14) (**Exhibit M**) (emphasis added)).

Additionally, Petitioner provides no explanation or argument as to why the stated objections are applicable. Instead, Petitioner provides the same insufficient statements provided in support of Petitioner’s improper boilerplate objections, which amount to nothing more than a mere restatement of the objections themselves. For example, in Petitioner’s amended response to Interrogatory No. 31, Petitioner objects on the basis that the “Request ... calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter”. In support of this objection, Petitioner simply states that “the requested information is irrelevant for determining whether Registrant’s trademark ... is likely to cause confusion”; that “the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of [Registrant’s Registration]...”; and “the requested information will not assist in determining whether Petitioner will be damaged the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner”. These statements are nothing more than a restatement of Petitioner’s objections that the request calls for irrelevant information and do not pertain to any asserted claim of privilege or confidentiality.

Under Fed.R.Civ.P. 26(b)(5)(A)(i), (ii), Petitioner is required to make an express claim of privilege and describe the nature of the documents, or things being withheld, in a manner that will enable Registrant to assess the claim of privilege asserted in each response:

(5) Claiming Privilege or Protecting Trial-Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(Fed.R.Civ.P. 26(b)(5)).

If there are responsive privileged documents or materials, Petitioner needs to identify them, and provide a specific claim of privilege. If not, then the claim is still improperly made, as it is misleading, and a proper response needs to be provided.

B. Petitioner’s “Privilege” Objections to Registrant’s Interrogatories Are Improper and Must Be Stricken (Interrogatory Nos. 19, 20, 21, 22, 23, 31, 38, 50).

Similarly, Petitioner’s amended responses to each of the following Interrogatories include improper objections to the requests on the grounds that the requests call for information protected by “work product privilege” and/or “attorney client privilege” and/or “confidential proprietary information”: Interrogatory Nos. **19, 20, 21, 22, 23, 31, 38, 50**.

For example, Petitioner’s amended response to Interrogatory No. 22 objects on all of the foregoing bases and provides as follows:

INTERROGATORY NO. 22:

Identify each statement or opinion obtained by or for Petitioner regarding any issue in this cancellation proceeding including, but not limited to, whether the statement was oral or in writing, and identify all documents which record, refer to, or relate to such statement or opinion.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant’s trademark since it prevents registration of Petitioner’s Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant’s trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response: Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the

importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. **Petitioner further objects to this Interrogatory to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information** that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

("Petitioner's Amended Response To Registrant's First Interrogatories To Petitioner", Interrogatory No. 22 (**Exhibit L**) (pp.9-10) (emphasis added)).

Petitioner's privilege-based objections are improper as they lack sufficient explanations as to why any claim of privilege or confidentiality may apply. Petitioner must describe the nature of information sought and explain why it is privileged. If Petitioner does not possess information responsive to an Interrogatory, then Petitioner must state "none" or otherwise indicate there is no information responsive to the request. Additionally, Petitioner's privilege and confidential-based objections do not preclude Petitioner from its obligation to provide responsive answers to Registrant's Interrogatories, as a protective order has been put into place to allow Petitioner to respond with any privileged or confidential information without destroying privilege or confidentiality. Accordingly, Petitioner must be ordered to provide a proper privilege listing or withdraw its objections to Interrogatory Nos. **19, 20, 21, 22, 23, 31, 38, 50**.

3. Petitioner's Responses Are Non-Responsive.

A. Petitioner's Responses to Registrant's Production Requests Are Non-Responsive and Must Be Stricken (Production Request Nos. 1-8, 10-17, 19-22, 26, 30, 31, 33-42, 44-45, 50-51, 53-54).

Petitioner's amended responses to Registrant's Production Request Nos. **1-8, 10-17, 19-22, 26, 30, 31, 33-42, 44-45, 50-51, 53-54** are non-responsive because, in each instance,

Petitioner either: (1) objects and does not identify any documents; or (2) generally refers Registrant to attachments to the Petition for Cancellation and/or all previously documents produced in response to other Document Production Requests, without identifying which documents in particular are responsive to that particular request. Petitioner was instructed to identify each document that is responsive to each request. For each request, Petitioner must identify each document that is responsive to the request or state that Petitioner has no documents responsive to that request.

Petitioner's amended responses to Registrant's **Production Requests Nos. 5, 6, 15, 26, 35, and 36** are also non-responsive as Petitioner fails to respond to each request and instead refers Registrant to responses provided by Petitioner in response to other production requests. Petitioner must make a good faith effort to respond to each request by identifying which documents, if any, are responsive to each request or by stating that Petitioner does not have any responsive documents to each request.

B. Petitioner's Responses to Registrant's Interrogatories Are Non-Responsive and Must Be Stricken (Interrogatory Nos. 7, 8, 24, 29, 33, 35, 44, 45).

Petitioner's responses to Registrant's Interrogatory Nos. **7, 8, 24, 29, 33, 35, 44, 45** are also non-responsive.

For example, for Interrogatory No. 7, Registrant requested that Petitioner identify all documents related to Petitioner's adoption of the mark, to which Petitioner responded by directing Registrant to Exhibit B to Petition of Cancellation and other previously produced documents. None of the documents referred to by Petitioner relate to the adoption of Petitioner's mark. As such, Petitioner's response is non-responsive and Petitioner should be compelled to identify such documents or else state "none".

In Interrogatory No. 8, Registrant requests that Petitioner state the legal and factual basis for Petitioner's contention that Registrant's use of Registrant's mark in connection with Registrant's services is likely to cause confusion, mistake, or to deceive with Petitioner or Petitioner's mark. Instead

of stating Petitioner's rationale, Petitioner responds by quoting the Trademark Examining Attorney previous findings in an office action.

Likewise, Petitioner's response to Interrogatory No. 24 is also non-responsive because it fails to answer the call of the interrogatory. Specifically, Interrogatory No. 24 asks Petitioner to identify the ordinary purchaser of Petitioner's goods or services and the level of care exercised by such purchasers in purchasing the goods or services under Petitioner's mark. Petitioner's response is non-responsive because Petitioner does not state the level of care exercised by an ordinary purchaser of Petitioner's goods or services.

For Interrogatory No. 44, Petitioner was asked to state the legal and factual basis for Petitioner's contention that, when consumers are looking for services, it is the brand name that identifies the service provider – not the tag line. In response to the Interrogatory, Petitioner does not support this contention and curiously contradicts the argument in its response to an Office Action (see below) by stating that "Besides brand names, consumers recognize products and services by logos, slogans or tag lines, characters, color and other recognizable elements used to promote products and services.". Petitioner should have provided its basis for its contention, or stated that there was none.

For Interrogatory No. 45, Registrant requested and Petitioner responded as follows:

INTERROGATORY NO. 45

State the legal and factual basis for Your contention that Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE- 92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not contain any use of Petitioner's Mark or any other confusingly similar mark by Allergan.

RESPONSE: There is no tag line or slogan in a prominent position anywhere in the exhibit showing trademark use of . Also note that Petitioner's first use is at least as early as 2002 as shown by the ad attached to Response 35

AMENDED RESPONSE: Everyone will notice but no one will know is Registrant's tag line not Petitioner's. Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10 demonstrate Registrant's failure to police its mark and lack of priority NOT Petitioner's Mark.

(“Petitioner’s Amended Response to Registrant’s First Interrogatories To Petitioner”, Interrogatory No. 45 (**Exhibit L**) (p. 19) (emphasis added)).

Similarly, Petitioner’s response is non-responsive here because Petitioner answers the interrogatory in such a way as to fundamentally change the call of the question. Specifically, Petitioner is asked to state the basis for its contention that Exhibit 44 to Registrant’s Answer (which shows use of EVERYONE WILL NOTICE (BUT NO ONE WILL KNOW) by Allergan in connection with a Juvederm advertisement) does not contain any use of Petitioner’s Mark *or any confusingly similar mark by Allergan*. Rather than explain why Petitioner believes Allergan’s use is not confusingly similar to Petitioner’s, Petitioner states that Allergan is using Registrant’s mark – not Petitioner’s – and asserts that the exhibit evidences Registrant’s failure to police its mark and lack of priority – not Petitioner’s. Petitioner was only asked to state the basis for its contention that the mark was not confusingly similar and instead stated that the mark in Exhibit 44 was not identical to Petitioner’s and evidences alleged abandonment.

C. Petitioner’s Responses to Registrant’s Admission Requests Are Non-Responsive and Should Be Treated As Admitted (Admission Request Nos. 6, 7, 8, 9, 10, 11, 12, 19, 20, 23, 24, 25, 26, 28, 30, 31, 36, 37, 38, 39, and 40[sic]).

Additionally, Petitioner’s amended responses to Admission Requests Nos. 6, 7, 8, 9, 10, 11, 12, 19, 20, 23, 24, 25, 26, 28, 30, 31, 36, 37, 38, 39, and 40[sic] are also non-responsive.

Petitioner’s response to Admission Request No. 6, as amended, is non-responsive and should be treated as admitted because Petitioner fundamentally changed the call of the question by replacing “EVERYONE WILL NOTICE. NO ONE WILL KNOW.” with “Registrant’s Mark” when answering the question. Specifically, Registrant requested, and Petitioner responded as follows:

6. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner’s Mark knew that at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Response: Denies

Amended Response: Petitioner did not know that at least one or more third-parties were already using Registrant's Mark at the time Petitioner adopted or commenced use of Petitioner's Mark and therefore denies.

("Petitioner's Amended Response to Registrant's First Requests For Admissions To Petitioner", Admission Request No. 6 (**Exhibit K**) (p. 2)).

For the same reasons, Petitioner's response to Admission Request Nos. **8, 9, 19, 20, 23, 24, 25, 26, and 28** are also non-responsive and should be treated as admitted.

Likewise, Petitioner's response to Admission Request No. 10 is also non-responsive because Petitioner admits to information not requested. Specifically, Admission Request No. 10 asks Petitioner to admit that Petitioner stated in a prior response to an Office action that Registrant's use of Registrant's mark is not confusingly similar to Petitioner's use of Petitioner's Mark, to which Petitioner replied that Petitioner admits that it filed such a response and that "the documents speaks for itself." As such, Petitioner's answer is non-responsive because it does not admit or deny that Petitioner previously stated that Registrant's use of Registrant's mark was not confusingly similar to Petitioner's use, as requested in Admission Request No. 10. Instead, Petitioner improperly states it filed a response and that the "document speaks for itself".

For the same reasons, Petitioner's response to Admission Request Nos. **11, 12, 30, and 31** are also non-responsive because Petitioner admits to matter not requested by Registrant and/or states that the document(s) speak for itself (or themselves).

Petitioner's response to Admission Request No. 36 is also non-responsive and should be treated as admitted because Petitioner answers in such a way as to change the call of the question and does not, in fact, admit or deny the matter asserted in the request. Specifically, in Admission Request No. 36, Registrant provides and Petitioner responds as follows:

36. Admit that the use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibit 1 to the Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not identify a single source.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

Amended Response: Petitioner admits that Exhibit 1 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows use of Registrant's Mark by more than one source.

("Petitioner's Amended Response to Registrant's First Requests For Admissions To Petitioner", Admission Request No. 36 (**Exhibit K**) (p. 8)).

Here, Petitioner's answer is non-responsive because Registrant requested Petitioner to admit that the use of "EVERYONE WILL NOTICE. NO ONE WILL KNOW" in Exhibit 1 "does not identify a single source" and, instead of admitting or denying to the request as provided, the Petitioner alters the question by changing "EVERYONE WILL NOTICE. NO ONE WILL KNOW" to "Registrant's Mark" and admitting that the Exhibit "shows use ... by more than one source" rather than the "use ... does not identify a single source". In other words, Petitioner answers the admission request as though Registrant requested Petitioner to admit that the use of Registrant's Mark in Exhibit 1 shows use of Registrant's Mark by more than one source, which is fundamentally different from what was actually requested, i.e. whether the use of a particular mark (EVERYONE WILL NOTICE. NO ONE WILL KNOW.) in Exhibit 1 does, or does not, identify a single source. This request related to a third-party use of a mark which is confusingly similar to Petitioner's mark and, therefore, Petitioner's substitution of the actual mark with the phrase "Registrant's Mark" was improper in responding to the request. Moreover, admitting that a mark is used by more than one source does not equate to the admission that a mark does not identify a single source, i.e. a "mark" that does not identify a single source has no trademark significance, while a "mark" that is used by more than one source could be referring to parties who co-exist, infringers, or non-confusing use of the same marks on different goods or services, depending on the circumstances. Accordingly, Petitioner's response to Admission Request No. 36 is non-responsive and should be treated as admitted.

Likewise, and for the same reasons, Petitioner's responses to Admission Request Nos. **37, 38, 39, and 40**[sic] are also non-responsive and should be treated as admitted.

CONCLUSION

As Registrant is entitled to responses to Registrant's Discovery Demands, which are vital to the case at hand, Registrant respectfully requests that the Board issue an Order striking Petitioner's improper and baseless objections, and compelling Petitioner to respond to Registrant's Discovery Demands and produce documents, provide proper responses (including amended responses to the Registrant's document production requests, interrogatories and requests for admission), and to produce a privilege log (if indeed any privileged documents or information exists).

Respectfully submitted,

David J. Witchell Salon & Spa, Inc.

Dated: December 19, 2022

/Frank J. Bonini, Jr./
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Attorney for Registrant,
David J. Witchell Salon & Spa, Inc.

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

Judith Gurley Plastic Surgery, LLC)	
)	
Petitioner,	)	Cancellation No. 92078349
	)	Registration No. 5845907
v.)	
)	
David J. Witchell Salon & Spa, Inc.)	
)	
Registrant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that true and complete copies of the following:

1. REGISTRANT’S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST THE SUFFICIENCY OF PETITIONER’S ANSWERS AND OBJECTONS; and
2. CERTIFICATE OF SERVICE,

were served on the following, via Email on December 19, 2022:

Annette P. Heller, Esq.
Heller & Associates
400 Chesterfield Center, Suite 400
Chesterfield [St Louis], MO 63017
United States
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Attorney for Petitioner

Dated: December 19, 2022

/Frank J. Bonini, Jr./

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Registrant's First Requests for Admissions to Petitioner

EXHIBIT A

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

Judith Gurley Plastic Surgery, LLC)	
)	
Petitioner	)	Cancellation No. 92078349
	)	Registration No. 5845907
v.)	
)	
David J. Witchell Salon & Spa, Inc.,)	
)	
Registrant.)	

REGISTRANT’S FIRST REQUEST FOR ADMISSIONS TO PETITIONER

Pursuant to the provisions of 37 CFR §2.120 and Rule 36 of the Federal Rules of Civil Procedure, Registrant, David J. Witchell Salon & Spa, Inc., hereby serves the following requests for admission upon Petitioner, Judith Gurley Plastic Surgery, LLC, to be answered by Registrant within thirty (30) days of service hereof.

I. INSTRUCTIONS AND DEFINITIONS OF TERMS

A. As used herein, the term "Petitioner" and “You” and “Your” refers to Judith Gurley Plastic Surgery, LLC and includes Dr. Judith Gurley, all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their owners, managers, partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner. “Petitioner” also refers to any predecessor of any rights claimed in the mark “NO ONE WILL KNOW... EVERYONE WILL NOTICE”. “Petitioner” also refers to any licensee of the mark “NO ONE WILL KNOW... EVERYONE WILL NOTICE.

B. The terms "Petitioner's Mark" refers to NO ONE WILL KNOW... EVERYONE WILL NOTICE, as cited and alleged by Petitioner in its Petition for Cancellation.

C. The term "Registrant" refers to David J. Witchell Salon & Spa, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Registrant, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Registrant.

D. The terms "Registrant's Mark" or "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" refers to the designation and/or trademark of Registrant's US Trademark Registration no. 5845907.

E. There is no time limit on any request for admission unless stated explicitly.

F. The term "person" means any natural person or juristic person (e.g., a corporation or other entity), unless otherwise limited specifically by the request.

G. The term "Allergan" includes the entity known as any one of: Allergan, Allergan Aesthetics, Allergan, Inc., Allergan Holdings France, SAS, Allergan Industrie, SAS, Corneal Industrie, SAS, or INAMED Corporation.

H. The term "EVERYONE WILL NOTICE. NO ONE WILL KNOW." is without regard to punctuation, and includes "EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW", "EVERYONE WILL NOTICE, NO ONE WILL KNOW", "EVERYONE WILL NOTICE. NO ONE WILL KNOW.", and the terms "EVERYONE WILL NOTICE" appearing together with "NO ONE WILL KNOW" (with or without another word or words, and/or punctuation).

I. If a request is not admitted, the answer must specifically deny it or state in detail why the Petitioner cannot truthfully admit or deny it. A denial must fairly respond to the substance of the request; and when good faith requires that Petitioner qualify an answer or deny only a part of a request, the answer must specify the part admitted and qualify or deny the rest. The Petitioner may assert lack of knowledge or information as a reason for failing to admit or deny only if the Petitioner states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable Petitioner to admit or deny.

II. REQUESTS

1. Admit that Petitioner knows of an entity known as “Allergan”.
2. Admit that Petitioner is aware of “Juvéderm” dermal fillers.
3. Admit that Petitioner has used at least one Juvéderm product in connection with its services provided under the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.
4. Admit that Petitioner, as early as 2007, was aware of the brand Juvéderm.
5. Admit that Petitioner was aware of the brand Juvéderm at the time Petitioner alleges to have adopted or commenced use of Petitioner’s Mark.
6. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner’s Mark knew that at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW.
7. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner’s Mark knew at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal filler products.
8. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner’s Mark knew at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with Juvéderm products.

9. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with medical, cosmetic or plastic surgery services.

10. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that Registrant's use of Registrant's Mark (EVERYONE WILL NOTICEBUT NO ONE WILL KNOW) is not confusingly similar to Petitioner's use of Petitioner's Mark (NO ONE WILL KNOW... EVERYONE WILL NOTICE).

11. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that Petitioner's mark consists of a "tag line".

12. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that, "[w]hen consumers are looking for services, it is the brand name that identifies the service provider not the tag line".

13. Admit that Petitioner's Mark is used by third-parties as a slogan in connection with cosmetic and medical services.

14. Admit that Petitioner's Mark is a slogan.

15. Admit that Petitioner's Mark is not a slogan.

16. Admit that Petitioner's Mark is a "tag line".

17. Admit that Petitioner's Mark is not a "tag line".

18. Admit that Petitioner's Mark is widely used by third-parties in connection with Juvéderm dermal fillers.

19. Admit that Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal fillers used for providing cosmetic and plastic surgery services is confusingly similar to Petitioner's use of Petitioner's mark in connection with "medical, cosmetic and plastic surgery services".

20. Admit that Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal fillers used for providing cosmetic and plastic surgery services is marketed to the same consumers as Petitioner's medical, cosmetic and plastic surgery services.

21. Admit that Petitioner did not, at any time, enter into a license agreement with any third-party relating to the use of Petitioner's mark.
22. Admit that Petitioner did not, at any time, enter into a license agreement with any third-party regarding the use of "NO ONE WILL KNOW... EVERYONE WILL NOTICE".
23. Admit that Petitioner was aware of wide-spread use of "EVERYONE WILL NOTICE. NO ONE WILL KNOW." at the time that Petitioner filed its U.S. Trademark Application Serial No. 88304473.
24. Admit that Petitioner is aware of third-party use of "EVERYONE WILL NOTICE. NO ONE WILL KNOW." in the State of Missouri on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services.
25. Admit that third-party use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in the State of Missouri on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.
26. Admit that third-party use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in the State of Illinois on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.
27. Admit that the brochure provided as part of Petitioner's specimen of use filed on February 16, 2019 in connection with Petitioner's U.S. Trademark Application Serial No. 88304473, was not publicly available at the time Petitioner filed the specimen of use on February 16, 2019.
28. Admit that Allergan used EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with the sale or advertising of products before Petitioner made use of Petitioner's mark.
29. Admit that Petitioner has contacted a third-party in an attempt to enforce Petitioner's alleged trademark rights in the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.
30. Admit that Petitioner, in its declaration, under penalty of perjury, filed in support of Petitioner's U.S. Trademark Application Serial No. 88304473, stated that it did not know of any other person entitled to use "NO ONE WILL KNOW... EVERYONE WILL NOTICE"
31. Admit that Petitioner, in its declaration, under penalty of perjury, filed in support of Petitioner's U.S. Trademark Application Serial No. 88304473, stated that it did not

know of any other person entitled to use “EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW”.

32. Admit that Petitioner knew of third-party use of Petitioner’s Mark in connection with Juvéderm products, and cosmetic services provided in connection with such products, when it filed its declaration in support of Petitioner’s U.S. Trademark Application Serial No. 88304473 on February 16, 2019.

33. Admit that Petitioner knew of widespread use of Petitioner’s Mark by third-parties in connection with Juvéderm-brand products, and cosmetic services provided in connection with such products, when it filed its declaration in support of Petitioner’s U.S. Trademark Application Serial No. 88304473 on February 16, 2019.

34. Admit that Petitioner has never enforced rights in its alleged mark against any user of the same mark as Petitioner’s Mark or a mark confusingly similar to Petitioner’s Mark.

35. Admit that Petitioner’s Mark fails to identify a single source.

36. Admit that the use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibit 1 to the Registrant’s Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not identify a single source.

37. Admit that the use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibit 1 to the Registrant’s Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) identifies a single source.

38. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant’s Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not identify Petitioner as a source of any services in any of those Exhibits 1-44.

39. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant’s Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), identifies Juvéderm or a Juvéderm product.

40. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant’s Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), is associated with Juvéderm.

Dated: July 15, 2022

/Frank J. Bonini, Jr./

Frank J. Bonini, Jr., Esquire
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**ATTORNEY FOR REGISTRANT
DAVID J. WITCHELL SALON & SPA, INC.**

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

Judith Gurley Plastic Surgery, LLC)	
)	
Petitioner	)	Cancellation No. 92078349
	)	Registration No. 5845907
v.)	
)	
David J. Witchell Salon & Spa, Inc.,)	
)	
Registrant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following:

1. REGISTRANT'S FIRST REQUEST FOR ADMISSIONS TO PETITIONER, and
2. CERTIFICATE OF SERVICE,

were served on the following, via Email on July 15, 2022:

Annette P. Heller
Heller & Associates
400 Chesterfield Center, Suite 400
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Tel: (314) 469-2610
Fax: (800) 469-4850
tmattorneyheller@aol.com
Attorney for Petitioner Judith Gurley Plastic Surgery, LLC.

Dated: July 15, 2022

/Frank J. Bonini, Jr./

Frank J. Bonini, Jr., Esquire
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***ATTORNEY FOR REGISTRANT
DAVID J. WITCHELL SALON & SPA, INC.***

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Registrant's First Set of Interrogatories to Petitioner

EXHIBIT B

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

Judith Gurley Plastic Surgery, LLC)	
)	
Petitioner	)	Cancellation No. 92078349
	)	Registration No. 5845907
v.)	
)	
David J. Witchell Salon & Spa, Inc.,)	
)	
Registrant.)	
)	

REGISTRANT’S FIRST SET OF INTERROGATORIES TO PETITIONER

Pursuant to the provisions of 37 CFR §2.120 and Rule 33 of the Federal Rules of Civil Procedure, Registrant, David J. Witchell Salon & Spa, Inc., hereby serves the following interrogatories upon Petitioner, Judith Gurley Plastic Surgery, LLC, to be answered under oath by Petitioner within thirty (30) days of service hereof.

I. INSTRUCTIONS AND DEFINITIONS OF TERMS

A. When asked to identify each service, state the description of the service, the number of times the service was performed, the date or dates the service was provided, the location(s) at which the service was provided, and number of people to whom the service was provided.

B. As used herein, the terms "Petitioner", "You", and "Your" refers to Judith Gurley Plastic Surgery, LLC and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their owners, managers, partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including

counsel for Petitioner. "Petitioner" also refers to any predecessor of any rights claimed in the mark "NO ONE WILL KNOW... EVERYONE WILL NOTICE". "Petitioner" also refers to any licensee of the mark "NO ONE WILL KNOW... EVERYONE WILL NOTICE".

B. The terms "Petitioner's Mark" refers to "NO ONE WILL KNOW... EVERYONE WILL NOTICE", as cited and alleged by Petitioner in its Petitioner for Cancellation.

C. The term "Registrant" refers to David J. Witchell Salon & Spa, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Registrant, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Registrant.

D. The terms "Registrant's Mark" or "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" refers to the designation in Registrant's Registration no. 5845907.

E. Wherever in the following interrogatories Petitioner is asked to identify documents, it is requested that the documents be identified by stating:

- a. General type of document, i.e., letter, memorandum, report, miscellaneous, notes, etc.;
- b. Date;
- c. Author;
- d. Organization, if any, with which author was connected;
- e. Addressee or recipient;
- f. Other distributees;
- g. Organization, if any, with which addressee or recipient, or distributees were connected;
- h. General nature of the subject matter to extent that Petitioner can do so without divulging matter considered by it to be privileged;
- i. Present location of such document and each copy thereof known to Petitioner, including the title, index number and location, if any, of the file in which the document is kept or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

F. Wherever in the following interrogatories Petitioner is asked to identify persons, it is requested that the persons be identified by stating:

- a. Their full name, home and business addresses, if known;
- b. Their employment, job title or description; and
- c. If employed by Petitioner, their dates and regular places of employment and general duties.

G. Wherever in the following interrogatories Petitioner is asked to identify companies or the response to an interrogatory would require the identification of a company, it is requested that the company be identified by stating:

- a. Its full corporate name;
- b. A brief description of the general nature of its business;
- c. Its state of incorporation;
- d. The address and principal place of business; and
- e. The identity of the officers or other person having knowledge of the matter with respect to which the company has been identified.

H. Wherever in the following interrogatories Petitioner is asked to identify goods, products or services, or the marking used in combination with the goods or services, it is requested that the same be identified by stating the catalog, stock, model or the like number or designation, the trademark, name, type, grade, design element, or stylized appearance of the mark, and any other designation customarily used by the party concerned to designate such goods, products or services, or the like, and to distinguish it from others made by the same or a different producer.

I. Should Petitioner deem to be privileged any document concerning information which is requested by any of the following interrogatories, Petitioner shall list such documents and supply information as requested in Paragraph E above concerning such documents, and additionally shall indicate that they claim privilege therefor, briefly state the nature of the document, the sender, the author, the recipient of each copy, the date,

the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Petitioner associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document

J. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Petitioner and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Registrant, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

K. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date hereof and these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Petition herein which Petitioner acquires or which becomes known to Petitioner up to and including the close of the rebuttal testimony period shall be furnished to Petitioner within a reasonable time after such information is acquired or becomes known.

L. The term “person” means any natural person or juristic person (e.g., a corporation or other entity), unless otherwise limited specifically by the request.

M. The term “Allergan” includes the entity known as any one of: Allergan, Allergan Aesthetics, Allergan, Inc., Allergan Holdings France, SAS, Allergan Industrie, SAS, Corneal Industrie, SAS, or INAMED Corporation.

N. The term “EVERYONE WILL NOTICE. NO ONE WILL KNOW.” is without regard to punctuation, and includes (with or without another word or words) “EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW”, “EVERYONE WILL NOTICE, NO ONE WILL KNOW”, “EVERYONE WILL NOTICE. NO ONE WILL KNOW.”, and the terms “EVERYONE WILL NOTICE” appearing together with “NO ONE WILL KNOW” (with or without another word or words, and/or punctuation).

II. INTERROGATORIES

INTERROGATORY NO. 1:

Identify each service that You allege You have provided in commerce in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE:

INTERROGATORY NO. 2:

Identify each service that You allege You have provided in Missouri in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to November 14, 2016.

RESPONSE:

INTERROGATORY NO. 3:

Identify each service that You allege You have provided in Illinois in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to November 14, 2016.

RESPONSE:

INTERROGATORY NO. 4:

Identify each natural person who has at any time provided a service in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE:

INTERROGATORY NO. 5:

Identify each entity providing a service in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE:

INTERROGATORY NO. 6:

Identify each person that you contend has knowledge of Petitioner's alleged use of NO ONE WILL KNOW... EVERYONE WILL NOTICE who may serve as a witness for Petitioner in this proceeding.

RESPONSE:

INTERROGATORY NO. 7:

Identify all documents related to Petitioner's adoption of NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE:

INTERROGATORY NO. 8:

State the legal and factual basis for Your contention that Registrant's use of Registrant's mark with "hair and skin salon services; beauty spa services, namely, cosmetic body care" services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 9:

Identify each channel of trade, and/or each type of consumer that Petitioner considers to overlap between the channels of trade in which Registrant's services and Petitioner's services are marketed.

RESPONSE:

INTERROGATORY NO. 10:

Identify each instance in which Petitioner is aware that “hair, skin, and nail care salon services, and/or beauty spa services, namely, cosmetic body care”, are provided in connection with “medical, cosmetic and plastic surgery services”.

RESPONSE:

INTERROGATORY NO. 11

Identify each location by city and state, where any goods or services have been (i) offered, (i) promoted and advertised, and (iii) provided under Petitioner’s Mark.

RESPONSE:

INTERROGATORY NO. 12:

Describe in detail all past and existing relations, including contracts, agreements, licenses, assignments, or other relations, between Petitioner and any third party, including predecessor companies, related, or affiliated companies, relating in any manner to Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 13

With respect to Petitioner’s Mark, identify the person or persons most knowledgeable about Petitioner’s sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights.

RESPONSE:

INTERROGATORY NO. 14:

Identify all documents and set forth with specificity all facts regarding the selection by Petitioner (or Petitioner’s predecessor) of Petitioner’s Mark including, without limitation, the circumstances and method by which Petitioner adopted “NO ONE WILL KNOW . . . EVERYONE WILL NOTICE”.

RESPONSE:

INTERROGATORY NO. 15:

Identify all persons who were involved in, or participated in any way with, the decision to adopt, register and/or use "NO ONE WILL KNOW... EVERYONE WILL NOTICE", and for each such person state his/her title and the role he/she played to adopt, register and/or use the "NO ONE WILL KNOW... EVERYONE WILL NOTICE".

RESPONSE:

INTERROGATORY NO. 16:

State whether any searches or investigations were conducted by Petitioner, its attorneys, or any persons on its behalf to determine whether Petitioner's Mark was available for use and/or registration, and, if so, identify each such search or investigation including the date such search or investigation was performed and the marks located in such search or investigation.

RESPONSE:

INTERROGATORY NO. 17:

Identify all documents and set forth with specificity all facts with respect to any instance where a person or entity has been confused, mistaken, and/or deceived as to whether any goods or services advertised or sold under Petitioner's Mark are those of Registrant, or are connected or associated with Registrant, and for each such incident provide the date of such incident, the identity of the person or entity, and a detailed description of the circumstances of such confusion, mistake and/or deception.

RESPONSE:

INTERROGATORY NO. 18:

Identify all documents and set forth with specificity the substance of each communication, oral or written, received by Petitioner, which suggests, implies or infers that any of the services provided by Petitioner under Petitioner's Mark, is a service of Registrant or is affiliated, connected and/or associated with Registrant, or which inquires as to whether there is or may be an affiliation, connection and/or association between Petitioner and Registrant, and identify any response(s) by Petitioner to each such communication.

RESPONSE:

INTERROGATORY NO. 19:

Identify each person employed by Petitioner, or each outside agency or agent retained by Petitioner, who has been or now is responsible for the following activity with respect to any of the goods or services intended to be offered or rendered or actually offered or rendered under Petitioner's Mark:

- a. marketing;
- b. advertising and promotion; and
- c. bookkeeping and accounting.

RESPONSE:

INTERROGATORY NO. 20:

For each of the services identified in response to Interrogatory No. 1, set forth the number of procedures, the number of unique patients, and dollar amounts of the annual revenues of such services, the dollar amount of annual advertising expenditure on such goods or services, and the individual media through which such advertising took place, and the dollar amount of advertising through each such media; and identify documents sufficient to support your response to this interrogatory.

RESPONSE:

INTERROGATORY NO. 21:

State in detail the channels of trade in which Petitioner's Mark is used and/or in which services advertised and/or rendered in connection with Petitioner's Mark are provided, including the geographic area by state, territory or possession in which Petitioner's Mark

is used and/or sold, the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify documents sufficient to support your response to this interrogatory.

RESPONSE:

INTERROGATORY NO. 22:

Identify each statement or opinion obtained by or for Petitioner regarding any issue in this cancellation proceeding including, but not limited to, whether the statement was oral or in writing, and identify all documents which record, refer to, or relate to such statement or opinion.

RESPONSE:

INTERROGATORY NO. 23:

Identify with specificity the marketing methods used in the advertising and/or sale of goods and/or services by or for Petitioner under Petitioner's Mark, including, without limitation, the names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which Registrant has advertised and intends to advertise its goods and/or services under Petitioner's Mark, and identify documents sufficient to support your response to this interrogatory.

RESPONSE:

INTERROGATORY NO. 24:

Identify the ordinary purchaser of the goods or services sold and intended to be sold under Petitioner's Mark including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods or services sold under Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 25:

Identify all documents relating to and set forth with specificity all facts regarding any instance where Petitioner has notified anyone that any trademark or service mark used by

that person or entity infringed Petitioner 's Mark and/or any mark of Petitioner that is closely similar to NO ONE WILL KNOW . . . EVERYONE WILL NOTICE , and for each such instance provide a detailed description of any action taken thereafter.

RESPONSE:

INTERROGATORY NO. 26:

Identify each instance where Petitioner has been a party to any litigation or administrative proceeding, other than the present cancellation, involving Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 27:

Describe the meaning and derivation of the phrase NO ONE WILL KNOW . . . EVERYONE WILL NOTICE as used in connection with the services of Petitioner or in connection with which Petitioner has used that phrase.

RESPONSE:

INTERROGATORY NO. 28:

Identify each person providing "medical, cosmetic and plastic surgery services" services in connection with the use of "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW".

RESPONSE:

INTERROGATORY NO. 29

State the legal and factual basis for the contention that any third-party use of "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" is not likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 30

Identify each instance in which any person (natural or juristic) indicated that he/she (or it) believed there was an association or connection between Petitioner and Juvéderm or Allergan.

RESPONSE:

INTERROGATORY NO. 31

Identify each instance in which a natural person recognized Petitioner as the source of the services provided under Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 32

Identify each instance in which a natural person recognized a third-party as the source of services provided under Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 33

Identify each instance in which Petitioner provided a service under Petitioner's Mark before March 16, 2016.

RESPONSE:

INTERROGATORY NO. 34

Identify Petitioner's first use of Petitioner's Mark in connection with "medical, cosmetic and plastic surgery services" services.

RESPONSE:

INTERROGATORY NO. 35

Identify each document which Petitioner contends evidences Petitioner's use of NO ONE WILL KNOW . . . EVERYONE WILL NOTICE before March 16, 2016.

RESPONSE:

INTERROGATORY NO. 36

Identify each document which You contend evidences continuous use of Petitioner's Mark from 2007 to the present.

RESPONSE:

INTERROGATORY NO. 37

Identify all evidence which You contend supports Your allegation that "the relevant segment of the purchasing public has come to exclusively associate Petitioner's Mark with Petitioner's services".

RESPONSE:

INTERROGATORY NO. 38

Identify each brand of dermal fillers that Petitioner has used in connection with Petitioner's services (from 2006 to the present).

RESPONSE:

INTERROGATORY NO. 39

Identify each instance that Petitioner has used a Juvéderm (or Allergan) product in connection with Petitioner's services, including any use of dermal fillers belonging to the current Juvéderm collection of fillers, including, but not limited to:

- a. JUVÉDERM® VOLUMA® XC,
- b. JUVÉDERM® VOLLURE® XC,
- c. JUVÉDERM® Ultra Plus XC,
- d. JUVÉDERM® Ultra XC,
- e. JUVÉDERM® Ultra XC,
- f. JUVÉDERM® VOLBELLA® XC, and/or
- g. Any other product related to cosmetic surgery and medical services that is sold under the brand name Juvéderm.

RESPONSE:

INTERROGATORY NO. 40

Identify any and all license agreements that Petitioner has entered into regarding the use of Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 41

Identify any and all license agreements between Petitioner and Allergan or any other company regarding a Juvéderm product.

RESPONSE:

INTERROGATORY NO. 42

State the legal and factual basis for Your contention that Registrant's use of Registrant's Mark (EVERYONE WILL NOTICE. BUT NO ONE WILL KNOW.) is not confusingly similar to Petitioner's use of Petitioner's Mark (NO ONE WILL KNOW... EVERYONE WILL NOTICE.), as stated in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473.

RESPONSE:

INTERROGATORY NO. 43

State the legal and factual basis for Your contention that Registrant and Petitioner's marks are "tag lines", as argued in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473.

RESPONSE:

INTERROGATORY NO. 44

State the legal and factual basis for Your contention that, "[w]hen consumers are looking for services, it is the brand name that identifies the service provider not the tag line", as

argued in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473.

RESPONSE:

INTERROGATORY NO. 45

State the legal and factual basis for Your contention that Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not contain any use of Petitioner's Mark or any other confusingly similar mark by Allergan.

RESPONSE:

INTERROGATORY NO. 46

State the legal and factual basis for Your contention that Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows that Allergan's use of "*everyone will notice (but no one will know)!*" from 2016-2018 constitutes a use of Registrant's "tag line".

RESPONSE:

INTERROGATORY NO. 47

Identify each type of use Petitioner contends is made in Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), including any trademark use, "tag line" use, or other use, by any third-party (that is, not Petitioner or Registrant).

RESPONSE:

INTERROGATORY NO. 48

State the legal and factual basis for the contention that Petitioner has used Petitioner's Mark in a manner that would be perceived by potential purchasers as identifying the Registrant's services and indicating their source by a direct association.

RESPONSE:

INTERROGATORY NO. 49

State the legal and factual basis for the contention that Petitioner's Mark is used in such a way as to identify and distinguish Petitioner's services from any goods and services provided by Allergan.

RESPONSE:

INTERROGATORY NO. 50

Identify each individual, tradename, business name, identity and/or fictitious name, for which Petitioner holds an insurance policy, in effect at the time of Petitioner's filing of this Cancellation proceeding, that covers any services provided by Petitioner.

RESPONSE:

INTERROGATORY NO. 51:

Identify each person who participated in or supplied information used in answering any of the above interrogatories; beside the name of each such person, state the number of the interrogatory answer(s) with respect to which that person participated in or supplied information.

RESPONSE:

DAVID J. WITCHELL SALON & SPA, INC.

Dated: July 15, 2022

/Frank J. Bonini, Jr./
Frank J. Bonini, Jr., Reg. No. 35,452
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ATTORNEY FOR REGISTRANT
DAVID J. WITCHELL SALON & SPA, INC.

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

Judith Gurley Plastic Surgery, LLC)	
)	
Petitioner	)	Cancellation No. 92078349
	)	Registration No. 5845907
v.)	
)	
David J. Witchell Salon & Spa, Inc.,)	
)	
Registrant.)	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following:

1. REGISTRANT’S FIRST SET OF INTERROGATORIES TO PETITIONER, and
2. CERTIFICATE OF SERVICE,

were served on the following, via Email on July 15, 2022:

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Chesterfield, MO 63017
Tel: (314) 469-2610
Fax: (800) 469-4850
tmattorneyheller@aol.com
Attorney for Petitioner Judith Gurley Plastic Surgery, LLC.

Dated: July 15, 2022

/Frank J. Bonini, Jr./
Frank J. Bonini, Jr.
Bonini IP Law, LLC
150 N. Radnor Chester Road
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Radnor, PA 19087
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ATTORNEY FOR REGISTRANT
DAVID J. WITCHELL SALON & SPA, INC.

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Registrant's First Requests for Production to Petitioner

EXHIBIT C

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

Judith Gurley Plastic Surgery, LLC)	
)	
Petitioner	)	Cancellation No. 92078349
	)	Registration No. 5845907
v.)	
)	
David J. Witchell Salon & Spa, Inc.,)	
)	
Registrant.)	

REGISTRANT’S FIRST REQUESTS FOR PRODUCTION TO PETITIONER

Pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Registrant, David J. Witchell Salon & Spa, Inc. hereby addresses its First Set of Requests for Production of Documents to Petitioner, Judith Gurley Plastic Surgery, LLC , Inc., to be responded to and complied with fully within thirty (30) days of service thereof.

I. INSTRUCTIONS AND DEFINITIONS OF TERMS

A. As used herein, the term "Petitioner", “You”, and “Your” refers to Judith Gurley Plastic Surgery, LLC , Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their owners, managers, partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner. “Petitioner” also refers to any predecessor of any rights claimed in the mark “NO ONE WILL KNOW... EVERYONE

WILL NOTICE. "Petitioner" also refers to any licensee of the mark "NO ONE WILL KNOW... EVERYONE WILL NOTICE.

B. The terms "Petitioner's Mark" refers to "NO ONE WILL KNOW... EVERYONE WILL NOTICE", as cited and alleged by Petitioner in its Notice of Opposition.

C. The term "Registrant" refers to David J. Witchell Salon & Spa, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Registrant, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Registrant.

D. The terms "Registrant's Mark" or "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" refers to the designation and/or trademark of U.S. Trademark Registration 5845907.

E. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Petitioner and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Petitioner, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes,

correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks, not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

In the event Petitioner wishes to assert either attorney-client privilege or work-product exclusion, or both, as to any document for which production is requested by any of the following specific document requests, then as to each document subject to such assertion, Petitioner is requested to provide such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Petitioner associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

F. Over and above the requirements of Rule 26(e) of the Federal Rules of Civil Procedure to supplement responses, it is requested that these discovery requests be treated

as continuing. If Petitioner becomes aware of any supplemental information or documents relating to these discovery requests and which were not included in the initial responses hereto, Petitioner is requested to furnish said additional information or documents to the attorneys for Registrant as soon as possible.

G. The term “Allergan” includes the entity known as any one of: Allergan, Allergan Aesthetics, Allergan, Inc., Allergan Holdings France, SAS, Allergan Industrie, SAS, Corneal Industrie, SAS, or INAMED Corporation.

H. The term “EVERYONE WILL NOTICE. NO ONE WILL KNOW.” is without regard to punctuation, and includes “EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW”, “EVERYONE WILL NOTICE, NO ONE WILL KNOW”, “EVERYONE WILL NOTICE. NO ONE WILL KNOW.”, and the terms “EVERYONE WILL NOTICE” appearing together with “NO ONE WILL KNOW” (with or without another word or words, and/or punctuation).

I. The term “person” means any natural person or juristic person (e.g., a corporation or other entity), unless otherwise limited specifically by the request.

II. REQUESTS FOR PRODUCTION

REQUEST NO. 1

All documents evidencing the first use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE claimed by Petitioner.

REQUEST NO. 2

All documents evidencing the first use in commerce of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE claimed by Petitioner.

REQUEST NO. 3

All documents sufficient to show use each use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE, prior to March 16, 2016, by Petitioner or any person Petitioner considers to be a predecessor.

REQUEST NO. 4

All documents sufficient to identify each location at which services were performed by Petitioner under Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE during all time periods within which Petitioner claims to have used Petitioner's Mark.

REQUEST NO. 5

All documents sufficient to identify each location at which services were performed by Petitioner prior to March 16, 2016 under the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

REQUEST NO. 6

All documents sufficient to identify each location at which services were performed by Petitioner between 2007 and March 16, 2016 under the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

REQUEST NO. 7

All evidence that Petitioner has that Petitioner believes identifies priority of use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE at a time before the November 14, 2016 filing of Registrant's application.

REQUEST NO. 8

Documents sufficient to identify all persons that Petitioner is aware of and who have knowledge of Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW.

REQUEST NO. 9

Documents sufficient to identify each person that Petitioner contends has knowledge of Petitioner's use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to the Registrant's application filing date of November 14, 2016.

REQUEST NO. 10

For each service identified that was provided under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to November 14, 2016 (as per the request of Interrogatory No. 1 of Registrant's First Set of Interrogatories to Petitioner, and your response), produce all documents sufficient to identify each customer or recipient of the service, the service provided, and the manner of use of the mark.

REQUEST NO. 11

Produce documents sufficient to identify each natural person who has provided a service under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

REQUEST NO. 12

Produce documents sufficient to identify the employer of the natural person when the natural person provided the service under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

REQUEST NO. 13

Produce each insurance policy under which Judith Gurley Plastic Surgery, LLC operates when using the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE that makes a specific reference to the term "trademark" or "service mark".

REQUEST NO. 14

Produce documents sufficient to identify each different form in which Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE was used by Petitioner.

REQUEST NO. 15

Produce documents sufficient to identify each different form in which Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE was used by Petitioner prior to November 14, 2016..

REQUEST NO. 16

Produce all searches, studies or investigations undertaken in connection with Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE (this includes, but is not limited to, clearance searches, documents relating to uses of the mark or similar marks by others, investigations and the like).

REQUEST NO. 17

Produce all searches, studies or investigations undertaken in connection with Registrant's Mark (this includes, but is not limited to, clearance searches, documents relating to uses of the mark or similar marks by others, investigations and the like).

REQUEST NO. 18

All documents identifying the use or appearance of NO ONE WILL KNOW... EVERYONE WILL NOTICE by a person or entity other than Petitioner or Registrant.

REQUEST NO. 19

All documents identifying the use or appearance of EVERYONE WILL NOTICE BUT NO ONE WILL KNOW by a person or entity other than Petitioner or Registrant.

REQUEST NO. 20

All communications between You and any person or entity (other than Registrant) that uses NO ONE WILL KNOW... EVERYONE WILL NOTICE, or that uses a term similar to NO ONE WILL KNOW... EVERYONE WILL NOTICE.

REQUEST NO. 21

All documents evidencing products or services of another that are provided in connection with a mark, slogan or phrase containing "EVERYONE WILL NOTICE".

REQUEST NO. 22

All evidence that establishes any market penetration by Petitioner in the marketplace for medical services provided by Petitioner under Petitioner's Mark.

REQUEST NO. 23

All agreements between Petitioner and any person relating to the usage of the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE (this includes any license, assignment, or other permission or limitation).

REQUEST NO. 24

All agreements between Petitioner and any medical professionals, including, without limitation Dr. Gurley.

REQUEST NO. 25

Any agreements between Dr. Gurley and any person relating to the use of the Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

REQUEST NO. 26

All web sites and other marketing and advertising materials that display NO ONE WILL KNOW... EVERYONE WILL NOTICE in connection with any services provided by Petitioner.

REQUEST NO. 27

All documents relating to David J. Witchell, the natural person. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

REQUEST NO. 28

All documents mentioning David J. Witchell, the natural person. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

REQUEST NO. 29

All documents mentioning David J. Witchell Salon & Spa, Inc., including the business David J. Witchell Salon & Spa. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

REQUEST NO. 30

All documents relating to use of EVERYONE WILL NOTICE BUT NO ONE WILL KNOW by Registrant.

REQUEST NO. 31

All documents sufficient to show when Petitioner first gained knowledge of Registrant. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

REQUEST NO. 32

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant.

REQUEST NO. 33

All documents sufficient to show when Petitioner first gained knowledge of Registrant's application for the Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

REQUEST NO. 34

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant's application for Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW

REQUEST NO. 35

All documents sufficient to show when Petitioner first gained knowledge of Registrant's use of Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

REQUEST NO. 36

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant's use of Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW

REQUEST NO. 37

All documents sufficient to show when Petitioner first learned of any use by a person or entity, other than Registrant or Petitioner, of NO ONE WILL KNOW... EVERYONE WILL NOTICE (This does not include use by Registrant or Petitioner, but

seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

REQUEST NO. 38

All documents sufficient to show when Petitioner first learned of any use by a person or entity, other than Registrant or Petitioner, of EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

REQUEST NO. 39

All documents sufficient to show when Dr. Gurley first learned of any use by a person or entity, other than Registrant or Petitioner, of the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE. (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

REQUEST NO. 40

All documents sufficient to show when Dr. Gurley first learned of any use by a person or entity, other than Registrant or Petitioner, of EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

REQUEST NO. 41

All documents sufficient to show each instance when Petitioner used a Juvéderm (or Allergan) product in connection with Petitioner's services, including any use of dermal fillers belonging to the current Juvéderm collection of fillers, including, but not limited to:

- a. JUVÉDERM® VOLUMA® XC,
- b. JUVÉDERM® VOLLURE® XC,
- c. JUVÉDERM® Ultra Plus XC,
- d. JUVÉDERM® Ultra XC,
- e. JUVÉDERM® Ultra XC,
- f. JUVÉDERM® VOLBELLA® XC, and/or
- g. Any other product related to cosmetic surgery and medical services that is sold under the brand name Juvéderm.

REQUEST NO. 42

All documents sufficient to show each instance when Petitioner used a dermal filler in connection with any service provided by Petitioner, and the name and/or brand of dermal filler used.

REQUEST NO. 43

All documents relating to Petitioner's adoption and selection of Petitioner's Mark.

REQUEST NO. 44

All documents that were created or generated prior to Petitioner's alleged first date of use of Petitioner's Mark that mention Juvéderm.

REQUEST NO. 45

All documents sufficient to show consumer recognition of Juvéderm with Allergan.

REQUEST NO. 46

All documents sufficient to show any and all instances of confusion, in which a consumer indicated he/she recognized another entity as the source of the services provided in connection with NO ONE WILL KNOW... EVERYONE WILL NOTICE.

REQUEST NO. 47

All documents sufficient to show any and all instances of confusion, in which a consumer indicated he/she recognized another entity as the source of the services provided under the mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW.

REQUEST NO. 48

All document sufficient to show any and all instances in which a consumer recognized any third party as the source of the services provided in connection with NO ONE WILL KNOW... EVERYONE WILL NOTICE or EVERYONE WILL NOTICE. NO ONE WILL KNOW.

REQUEST NO. 49

All documents sufficient to show any and all instances in which a consumer indicated he/she believed there to be an association or connection between Petitioner and a Juvéderm product or Allergan.

REQUEST NO. 50

All documents sufficient to show any and all correspondence between Petitioner and Allergan related to Petitioner's use of NO ONE WILL KNOW... EVERYONE WILL NOTICE or identifying EVERYONE WILL NOTICE. NO ONE WILL KNOW.

REQUEST NO. 51

All documents sufficient to show that Petitioner has made continuous use of Petitioner's Mark from 2007 to the present.

REQUEST NO. 52

All documents sufficient to show Petitioner's use of Petitioner's Mark in a manner that would be perceived by potential purchasers as identifying the Registrant's services and indicating their source by a direct association.

REQUEST NO. 53

All documents sufficient to show that Petitioner's Mark is used in such a way as to identify and distinguish Petitioner's services from the goods and services provided by Allergan.

REQUEST NO. 54

All insurance policies that Petitioner holds, that were in effect at the time of Petitioner's filing of this Cancellation proceeding, which (i) identify an individual, tradename, business name, identity and/or fictitious name, and (ii) which covers any services provided by Petitioner.

DAVID J. WITCHELL SALON & SPA, INC.

Dated: July 15, 2022

/Frank J. Bonini, Jr./
Frank J. Bonini, Jr., Esquire
Bonini IP Law, LLC
150 N. Radnor Chester Road
Suite F200
Radnor, PA 19087
(484) 382-3060
fbonini@boninilaw.com

ATTORNEY FOR REGISTRANT
DAVID J. WITCHELL SALON & SPA, INC.

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

Judith Gurley Plastic Surgery, LLC)	
)	
Petitioner	)	Cancellation No. 92078349
	)	Registration No. 5845907
v.)	
)	
David J. Witchell Salon & Spa, Inc.,)	
)	
Registrant.)	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following:

1. REGISTRANT'S FIRST REQUESTS FOR PRODUCTION TO PETITIONER,
and
2. CERTIFICATE OF SERVICE,

were served on the following via Email on July 15, 2022:

Annette P. Heller
Heller & Associates
400 Chesterfield Center, Suite 400
Chesterfield, MO 63017
Tel: (314) 469-2610
Fax: (800) 469-4850
tmattorneyheller@aol.com
Attorney for Petitioner Judith Gurley Plastic Surgery, LLC.

Dated: July 15, 2022

/Frank J. Bonini, Jr./
Frank J. Bonini, Jr., Esquire
Bonini IP Law, LLC
150 N. Radnor Chester Road
Suite F200
Radnor, PA 19087
fbonini@boninilaw.com

***ATTORNEY FOR REGISTRANT
DAVID J. WITCHELL SALON & SPA, INC.***

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Petitioner's Response to Registrant's First Request for Admissions to Petitioner

EXHIBIT D

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

Judith Gurley Plastic Surgery, LLC

Petitioner

)Cancellation No. **92078349**

)Registration No. **5845907**

v.

David J. Witchell Salon & Spa, Inc.,

Registrant.

**PETITIONER’S RESPONSE TO REGISTRANT’S
FIRST REQUEST FOR ADMISSIONS TO PETITIONER**

Pursuant to the provisions of 37 CFR §2.120 and Rule 36 of the Federal Rules of Civil Procedure, Registrant, David J. Witchell Salon & Spa, Inc., hereby serves the following requests for admission upon Petitioner, Judith Gurley Plastic Surgery, LLC, to be answered by Registrant within thirty (30) days of service hereof.

I. INSTRUCTIONS AND DEFINITIONS OF TERMS

A. As used herein, the term "Petitioner" and “You” and “Your” refers to Judith Gurley Plastic Surgery, LLC and includes Dr. Judith Gurley, all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their owners, managers, partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner. “Petitioner” also refers to any predecessor of any rights claimed in the mark “NO ONE WILL KNOW... EVERYONE WILL NOTICE”. “Petitioner” also refers to any licensee of the mark “NO ONE WILL KNOW... EVERYONE WILL NOTICE.

B. The terms "Petitioner's Mark" refers to NO ONE WILL KNOW... EVERYONE WILL NOTICE, as cited and alleged by Petitioner in its Petition for Cancellation.

C. The term "Registrant" refers to David J. Witchell Salon & Spa, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Registrant, including all of its or their partners, principals, officers, directors, trustees, employees, staff

members, agents and representatives, including counsel for Registrant.

D. The terms "Registrant's Mark" or "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" refers to the designation and/or trademark of Registrant's US Trademark Registration no. 5845907.

There is no time limit on any request for admission unless stated explicitly.

E. The term "person" means any natural person or juristic person (e.g., a corporation or other entity), unless otherwise limited specifically by the request.

F. The term "Allergan" includes the entity known as any one of: Allergan, Allergan Aesthetics, Allergan, Inc., Allergan Holdings France, SAS, Allergan Industrie, SAS, Corneal Industrie, SAS, or INAMED Corporation.

G. The term "EVERYONE WILL NOTICE. NO ONE WILL KNOW." is without regard to punctuation, and includes "EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW", "EVERYONE WILL NOTICE, NO ONE WILL KNOW", "EVERYONE WILL NOTICE. NO ONE WILL KNOW.", and the terms "EVERYONE WILL NOTICE" appearing together with "NO ONE WILL KNOW" (with or without another word or words, and/or punctuation).

H. If a request is not admitted, the answer must specifically deny it or state in detail why the Petitioner cannot truthfully admit or deny it. A denial must fairly respond to the substance of the request; and when good faith requires that Petitioner qualify an answer or deny only a part of a request, the answer must specify the part admitted and qualify or deny the rest. The Petitioner may assert lack of knowledge or information as a reason for failing to admit or deny only if the Petitioner states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable Petitioner to admit or deny.

I. REQUESTS

1. Admit that Petitioner knows of an entity known as "Allergan".

Response: Petitioner admits it is aware of an entity known as "Allergan"

2. Admit that Petitioner is aware of "Juvéderm" dermal fillers.

Response: Admits

3. Admit that Petitioner has used at least one Juvéderm product in connection with its services provided under the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Response: Admits

4. Admit that Petitioner, as early as 2007, was aware of the brand Juvéderm.

Response: Admits

5. Admit that Petitioner was aware of the brand Juvéderm at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark.

Response: Denies

6. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew that at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Response: Denies

7. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal filler products.

Response: Denies

8. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with Juvéderm products.

Response: Denies

9. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with medical, cosmetic or plastic surgery services.

Response: Denies

10. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that Registrant's use of Registrant's Mark (EVERYONE WILL NOTICE BUT NO ONE WILL KNOW) is not confusingly similar to Petitioner's

use of Petitioner's Mark (NO ONE WILL KNOW... EVERYONE WILL NOTICE).

Response: Petitioner objects to this request as the document speaks for itself and therefore denies.

11. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that Petitioner's mark consists of a "tag line".

Response: Petitioner objects to this request as the document speaks for itself and therefore denies

12. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that, "[w]hen consumers are looking for services, it is the brand name that identifies the service provider not the tag line".

Response: Petitioner objects to this request as the document speaks for itself and therefore denies

13. Admit that Petitioner's Mark is used by third-parties as a slogan in connection with cosmetic and medical services.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

14. Admit that Petitioner's Mark is a slogan.

Response: Petitioner admits Petitioner's mark is a slogan used as a trademark.

15. Admit that Petitioner's Mark is not a slogan.

Response: Denies

16. Admit that Petitioner's Mark is a "tag line".

Response: Petitioner admits Petitioner's mark is a slogan used as a trademark

17. Admit that Petitioner's Mark is not a "tag line".

Response: Denies

18. Admit that Petitioner's Mark is widely used by third-parties in connection with Juvéderm dermal fillers.

Response: Denies

19. Admit that Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal fillers used for providing cosmetic and plastic surgery services is confusingly similar to Petitioner's use of Petitioner's mark in connection with "medical, cosmetic and plastic surgery services".

Response: Petitioner objects to this request for admission since Allergan is not a party to this proceeding.

20. Admit that Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal fillers used for providing cosmetic and plastic surgery services is marketed to the same consumers as Petitioner's medical, cosmetic and plastic surgery services

Response: Petitioner objects to this request for admission since Allergan is not a party to this proceeding

21. Admit that Petitioner did not, at any time, enter into a license agreement with any third-party relating to the use of Petitioner's mark.

Response: Admits

22. Admit that Petitioner did not, at any time, enter into a license agreement with any third-party regarding the use of "NO ONE WILL KNOW... EVERYONE WILL NOTICE".

Response: Petitioner states that this request is the same as 21 and therefore admits.

23. Admit that Petitioner was aware of wide-spread use of "EVERYONE WILL NOTICE. NO ONE WILL KNOW." at the time that Petitioner filed its U.S. Trademark Application Serial No. 88304473.

Response: Denies

24. Admit that Petitioner is aware of third-party use of "EVERYONE WILL NOTICE. NO ONE WILL KNOW." in the State of Missouri on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services.

Response: Petitioner objects to this Interrogatory as irrelevant to the issue in this proceeding and too broad in its present form to answer

25. Admit that third-party use of EVERYONE WILL NOTICE. NO

ONE WILL KNOW. in the State of Missouri on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

Response: Petitioner objects to this Interrogatory as irrelevant to the issue in this proceeding, is too broad in its present form to answer and not relevant to determine registration.

26. Admit that third-party use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in the State of Illinois on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

Response: Petitioner objects to this Interrogatory as irrelevant to the issue in this proceeding and too broad in its present form to answer

27. Admit that the brochure provided as part of Petitioner's specimen of use filed on February 16, 2019 in connection with Petitioner's U.S. Trademark Application Serial No. 88304473, was not publicly available at the time Petitioner filed the specimen of use on February 16, 2019.

Response: Denies

28. Admit that Allergan used EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with the sale or advertising of products before Petitioner made use of Petitioner's mark.

Response: Petitioner objects to this Admission as irrelevant to the issue in this proceeding and is without any information as to when Allergan first used EVERYONE WILL NOTICE. NO ONE WILL KNOW and therefore denies.

29. Admit that Petitioner has contacted a third-party in an attempt to enforce Petitioner's alleged trademark rights in the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Response: Petitioner is unaware of any third party use of its trademark and therefore denies.

30. Admit that Petitioner, in its declaration, under penalty of perjury, filed in support of Petitioner's U.S. Trademark Application Serial No. 88304473, stated that it did not know of any other person entitled to use "NO ONE WILL KNOW... EVERYONE WILL NOTICE"

Response: Petitioner objects to this request as the document speaks for itself

and therefore denies.

31. Admit that Petitioner, in its declaration, under penalty of perjury, filed in support of Petitioner's U.S. Trademark Application Serial No. 88304473, stated that it did not know of any other person entitled to use "EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW".

Response: Petitioner objects to this request as the document speaks for itself. Petitioner further objects that it did not apply for "EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW" and therefore denies.

32. Admit that Petitioner knew of third-party use of Petitioner's Mark in connection with Juvéderm products, and cosmetic services provided in connection with such products, when it filed its declaration in support of Petitioner's U.S. Trademark Application Serial No. 88304473 on February 16, 2019.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

33. Admit that Petitioner knew of widespread use of Petitioner's Mark by third parties in connection with Juvéderm-brand products, and cosmetic services provided in connection with such products, when it filed its declaration in support of Petitioner's U.S. Trademark Application Serial No. 88304473 on February 16, 2019.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

34. Admit that Petitioner has never enforced rights in its alleged mark against any user of the same mark as Petitioner's Mark or a mark confusingly similar to Petitioner's Mark.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

35. Admit that Petitioner's Mark fails to identify a single source.

Response: Denies

36. Admit that the use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibit 1 to the Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not identify a single source.

Response: Petitioner objects to this request as the documents speaks for itself

and therefore denies.

37. Admit that the use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibit 1 to the Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) identifies a single source.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

38. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not identify Petitioner as a source of any services in any of those Exhibits 1-44.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

39. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), identifies Juvéderm or a Juvéderm product.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

39. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), is associated with Juvéderm.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

Objections are made by Annette P. Heller, Attorney for Petitioner

Judith Gurley Plastic Surgery, LLC



Dated 8/11/22

Annette P. Heller, Counsel for Petitioner

Bar #26,748MO

400 Chesterfield Center Suite 400

Chesterfield (St Louis), MO 63017

314-469-2610 Fax 314-469-4850

Email: TMAAttorneyHeller@aol.com

Certificate of Service

VERIFICATION

I, Judith Gurley, am a member of Judith Gurley Plastic Surgery, LLC., I believe, based on reasonable inquiry, the foregoing answers are true and correct to best of my knowledge, information and belief.

I verify under penalty of perjury under the laws of the United States of American that the foregoing is true and correct.

Judith Gurley Plastic Surgery, LLC

By:  _____

Name: Judith Gurley, Member

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

[Petitioner's Response to] Registrant's First Set of Interrogatories

EXHIBIT E

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

Judith Gurley Plastic Surgery,

LLC Petitioner

v.

Cancellation No. **92078349**

Registration No. **5845907**

David J. Witchell Salon & Spa,

Inc., Registrant.

REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER

Pursuant to the provisions of 37 CFR §2.120 and Rule 33 of the Federal Rules of Civil Procedure, Registrant, David J. Witchell Salon & Spa, Inc., hereby serves the following interrogatories upon Petitioner, Judith Gurley Plastic Surgery, LLC, to be answered under oath by Petitioner within thirty (30) days of service hereof.

When asked to identify each service, state the description of the service, the number of times the service was performed, the date or dates the service was provided, the location(s) at which the service was provided, and number of people to whom the service was provided.

A. As used herein, the terms "Petitioner", "You", and "Your" refers to Judith Gurley Plastic Surgery, LLC and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their owners, managers, partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner. "Petitioner" also refers to any predecessor of any rights claimed in the mark "NO ONE WILL KNOW... EVERYONE WILL NOTICE". "Petitioner" also refers to any licensee of the mark "NO ONE WILL KNOW... EVERYONE WILL NOTICE".

B. The terms "Petitioner's Mark" refers to "NO ONE WILL KNOW... EVERYONE WILL NOTICE", as cited and alleged by Petitioner in its Petitioner for Cancellation.

C. The term "Registrant" refers to David J. Witchell Salon & Spa, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Registrant, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and

representatives, including counsel for Registrant.

D. The terms "Registrant's Mark" or "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" refers to the designation in Registrant's Registration no. 5845907.

E. Wherever in the following interrogatories Petitioner is asked to identify documents, it is requested that the documents be identified by stating:

- a. General type of document, i.e., letter, memorandum, report, miscellaneous, notes, etc.;
- a. Date;
- b. Author;
- c. Organization, if any, with which author was connected;
- d. Addressee or recipient;
- e. Other distributees;
- f. Organization, if any, with which addressee or recipient, or distributees were connected;
- g. General nature of the subject matter to extent that Petitioner can do so without divulging matter considered by it to be privileged;
- i. Present location of such document and each copy thereof known to Petitioner, including the title, index number and location, if any, of the file in which the document is kept or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

F. Wherever in the following interrogatories Petitioner is asked to identify persons, it is requested that the persons be identified by stating:

- a. Their full name, home and business addresses, if known;
- b. Their employment, job title or description; and
- c. If employed by Petitioner, their dates and regular places of employment and general duties.

G. Wherever in the following interrogatories Petitioner is asked to identify

companies or the response to an interrogatory would require the identification of a

company, it is requested that the company be identified by stating:

- a. Its full corporate name;
- b. A brief description of the general nature of its business;

- c. Its state of incorporation;
- d. The address and principal place of business; and
- e. The identity of the officers or other person having knowledge of the matter with respect to which the company has been identified.

H. Wherever in the following interrogatories Petitioner is asked to identify goods,

products or services, or the marking used in combination with the goods or services, it is requested that the same be identified by stating the catalog, stock, model or the like number or designation, the trademark, name, type, grade, design element, or stylized appearance of the mark, and any other designation customarily used by the party concerned to designate such goods, products or services, or the like, and to distinguish it from others made by the same or a different producer.

a. Should Petitioner deem to be privileged any document concerning information

which is requested by any of the following interrogatories, Petitioner shall list such documents and supply information as requested in Paragraph E above concerning such documents, and additionally shall indicate that they claim privilege therefor, briefly state the nature of the document, the sender, the author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Petitioner associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document

J. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Petitioner and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Registrant, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data

sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

K. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date hereof and these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Petition herein which Petitioner acquires or which becomes known to Petitioner up to and including the close of the rebuttal testimony period shall be furnished to Petitioner within a reasonable time after such information is acquired or becomes known.

L. The term “person” means any natural person or juristic person (e.g., a corporation or other entity), unless otherwise limited specifically by the request.

M. The term “Allergan” includes the entity known as any one of: Allergan, Allergan Aesthetics, Allergan, Inc., Allergan Holdings France, SAS, Allergan Industrie, SAS, Corneal Industrie, SAS, or INAMED Corporation.

N. The term “EVERYONE WILL NOTICE. NO ONE WILL KNOW.” is without regard to punctuation, and includes (with or without another word or words) “EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW”, “EVERYONE WILL NOTICE, NO ONE WILL KNOW”, “EVERYONE WILL NOTICE. NO ONE WILL KNOW.”, and the terms “EVERYONE WILL NOTICE” appearing together with “NO ONE WILL KNOW” (with or without another word or words, and/or punctuation).

II. INTERROGATORIES

INTERROGATORY NO. 1:

Identify each service that You allege You have provided in commerce in connection with Petitioner’s Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Medical services in skin care; Cosmetic and plastic surgery.

INTERROGATORY NO. 2:

Identify each service that You allege You have provided in Missouri in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to November 14, 2016.

RESPONSE: See response to No 1.

INTERROGATORY NO. 3:

Identify each service that You allege You have provided in Illinois in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to November 14, 2016.

RESPONSE: See response to No 1

INTERROGATORY NO. 4:

Identify each natural person who has at any time provided a service in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Dr. Judith Gurley

INTERROGATORY NO. 5:

Identify each entity providing a service in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Judith Gurley Plastic Surgery, LLC

INTERROGATORY NO. 6:

Identify each person that you contend has knowledge of Petitioner's alleged use of NO ONE WILL KNOW... EVERYONE WILL NOTICE who may serve as a witness for Petitioner in this proceeding.

RESPONSE: See Petitioner's initial disclosures.

INTERROGATORY NO. 7:

Identify all documents related to Petitioner's adoption of NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See exhibit B attached to the Petition and attached document of an ad in 2002 showing use by Petitioner of the trademark.

INTERROGATORY NO. 8:

State the legal and factual basis for Your contention that Registrant's use of Registrant's mark with "hair and skin salon services; beauty spa services, namely, cosmetic body care" services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

RESPONSE: The Trademark Examining Attorney has found Petitioner's trademark confusingly similar to Registrant's mark for the following reasons:

In this case, the compared marks both contain the phrases "NO ONE WILL KNOW" and "EVERYONE WILL NOTICE". Furthermore, confusion is likely between two marks consisting of reverse combinations of the same elements if they convey the same meaning or create substantially similar commercial impressions. TMEP §1207.01(b)(vii); see, e.g., *In re Wine Soc'y of Am. Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989) (holding THE WINE SOCIETY OF AMERICA and design for wine club membership services including the supplying of printed materials likely to be confused with AMERICAN WINE SOCIETY 1967 and design for newsletters, bulletins, and journals); *In re Nationwide Indus. Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (holding RUST BUSTER for a rust-penetrating spray lubricant likely to be confused with BUST RUST for a penetrating oil). In this case, despite the fact the phrases are transposed, they both convey the same meaning, that everyone will notice the clients' beauty transformations but no one will know where it came from.

The services are compared to determine whether they are similar, commercially related, or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The previously attached Internet evidence, consisting of PSS Medispa, Fenner, and Belmont Plastic Surgery, and the newly attached evidence, consisting of Radiance Medspa, Anew Skin, and Georgetown

Allure, establishes that the same entity commonly provides cosmetic and plastic surgery, as well as beauty spa services, and markets the services under the same mark. Thus, applicant's and registrant's services are considered related for likelihood of confusion purposes. See, e.g., *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009). Based on the analysis above, applicant's and the registrant's services are related.

Conclusion Because applicant's and the registrant's marks are similar and the services are related, there is a likelihood of confusion and applicant's applied-for mark must be refused under Section 2(d) of the Lanham Act.

INTERROGATORY NO. 9:

Identify each channel of trade, and/or each type of consumer that Petitioner considers to overlap between the channels of trade in which Registrant's services and Petitioner's services are marketed.

RESPONSE: None

INTERROGATORY NO. 10:

Identify each instance in which Petitioner is aware that "hair, skin, and nail care salon services, and/or beauty spa services, namely, cosmetic body care", are provided in connection with "medical, cosmetic and plastic surgery services".

RESPONSE: None

INTERROGATORY NO. 11

Identify each location by city and state, where any goods or services have been (I) offered, (I) promoted and advertised, and (iii) provided under Petitioner's Mark.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner provides services to clients living in the states surrounding the state of Missouri where Petitioner has its office.

INTERROGATORY NO. 12:

Describe in detail all past and existing relations, including contracts, agreements, licenses, assignments, or other relations, between Petitioner and any third party, including predecessor companies, related, or affiliated companies, relating in any manner to Petitioner's Mark.

RESPONSE: None

INTERROGATORY NO. 13

With respect to Petitioner's Mark, identify the person or persons most knowledgeable about Petitioner's sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights.

RESPONSE: See Petitioner's disclosures

INTERROGATORY NO. 14:

Identify all documents and set forth with specificity all facts regarding the selection by Petitioner (or Petitioner's predecessor) of Petitioner's Mark including, without limitation, the circumstances and method by which Petitioner adopted "NO ONE WILL KNOW . . . EVERYONE WILL NOTICE".

RESPONSE: No documents. Petitioner liked the tag line.

INTERROGATORY NO. 15:

Identify all persons who were involved in, or participated in any way with, the decision to adopt, register and/or use "NO ONE WILL KNOW... EVERYONE WILL NOTICE", and for each such person state his/her title and the role he/she played to adopt, register and/or use the "NO ONE WILL KNOW... EVERYONE WILL NOTICE".

RESPONSE: Dr Judith Gurley

INTERROGATORY NO. 16:

State whether any searches or investigations were conducted by Petitioner, its attorneys, or any persons on its behalf to determine whether Petitioner's Mark was available for use and/or registration, and, if so, identify each such search or investigation including the date such search or investigation was performed and the marks located in such search or investigation.

RESPONSE: None

INTERROGATORY NO. 17:

Identify all documents and set forth with specificity all facts with respect to any instance where a person or entity has been confused, mistaken, and/or deceived as to whether any goods or services advertised or sold under Petitioner's Mark are those of Registrant, or are connected or associated with Registrant, and for each such incident provide the date of such incident, the identity of the person or entity, and a detailed description of the circumstances of such confusion, mistake and/or deception.

RESPONSE: None

INTERROGATORY NO. 18:

Identify all documents and set forth with specificity the substance of each communication, oral or written, received by Petitioner, which suggests, implies or infers that any of the services provided by Petitioner under Petitioner's Mark, is a service of Registrant or is affiliated, connected and/or associated with Registrant, or which inquires as to whether there is or may be an affiliation, connection and/or association between Petitioner and Registrant, and identify any response(s) by Petitioner to each such communication.

RESPONSE: None

INTERROGATORY NO. 19:

Identify each person employed by Petitioner, or each outside agency or agent retained by Petitioner, who has been or now is responsible for the following activity with respect to any of the goods or services intended to be offered or rendered or actually offered or rendered under Petitioner's Mark:

- a. marketing;
- b. advertising and promotion; and
- c. bookkeeping and accounting.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 20:

For each of the services identified in response to Interrogatory No. 1, set forth the number of procedures, the number of unique patients, and dollar amounts of the annual revenues of such services, the dollar amount of annual advertising expenditure on such goods or services, and the individual media through which such advertising took place, and the dollar amount of advertising through each such media; and identify documents sufficient to support your response to this interrogatory.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of

Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 21:

State in detail the channels of trade in which Petitioner's Mark is used and/or in which services advertised and/or rendered in connection with Petitioner's Mark are provided, including the geographic area by state, territory or possession in which Petitioner's Mark is used and/or sold, the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify documents sufficient to support your response to this interrogatory.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner provides services to clients living in the states surrounding the state of Missouri where Petitioner has its office.

INTERROGATORY NO. 22:

Identify each statement or opinion obtained by or for Petitioner regarding any issue in this cancellation proceeding including, but not limited to, whether the statement was oral or in writing, and identify all documents which record, refer to, or relate to such statement or opinion.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 23:

Identify with specificity the marketing methods used in the advertising and/or sale of goods and/or services by or for Petitioner under Petitioner's Mark, including, without limitation, the names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which Registrant has advertised and intends to advertise its goods and/or services under Petitioner's Mark, and identify documents sufficient to support your response to this interrogatory.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner uses the internet and advertising methods normally used in this type of service.

INTERROGATORY NO. 24:

Identify the ordinary purchaser of the goods or services sold and intended to be sold under Petitioner's Mark including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods or services sold under Petitioner's Mark.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner provides services to individuals seeking medical services in the field of cosmetic and plastic surgery and cosmetic skin care..

INTERROGATORY NO. 25:

Identify all documents relating to and set forth with specificity all facts regarding any instance where Petitioner has notified anyone that any trademark or service mark used by that person or entity infringed Petitioner's Mark and/or any mark of Petitioner that is closely similar to NO ONE WILL KNOW . . . EVERYONE WILL NOTICE , and for each such instance provide a detailed description of any action taken thereafter.

RESPONSE: None

INTERROGATORY NO. 26:

Identify each instance where Petitioner has been a party to any litigation or administrative proceeding, other than the present cancellation, involving Petitioner's Mark.

RESPONSE: None

INTERROGATORY NO. 27:

Describe the meaning and derivation of the phrase NO ONE WILL KNOW . . . EVERYONE WILL NOTICE as used in connection with the services of Petitioner or in connection with which Petitioner has used that phrase.

RESPONSE: The results of Petitioner's services are very natural so that it will not look like the person had surgery or other treatment.

INTERROGATORY NO. 28:

Identify each person providing "medical, cosmetic and plastic surgery services" services in connection with the use of "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW".

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 29

State the legal and factual basis for the contention that any third-party use of "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" is not likely to

cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

RESPONSE: EVERYONE WILL NOTICE BUT NO ONE WILL KNOW is not Petitioner's trademark but the Trademark Examining Attorney finds Petitioner's trademark NO ONE WILL KNOW... BUT EVERYONE WILL NOTICE confusingly similar to Registrant's trademark due to the fact that Registrant's services include spa services where cosmetic services are offered. Since Registrant was unwilling to give consent to co-existing with Petitioner's trademark and Petitioner use predates Registrant's first use date, Petitioner's only recourse to overcome the rejection was to petition to cancel Registrant's registration.

INTERROGATORY NO. 30

Identify each instance in which any person (natural or juristic) indicated that he/she (or it) believed there was an association or connection between Petitioner and Juvéderm or Allergan.

RESPONSE: None

INTERROGATORY NO. 31

Identify each instance in which a natural person recognized Petitioner as the source of the services provided under Petitioner's Mark.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 32

Identify each instance in which a natural person recognized a third-party as the source of services provided under Petitioner's Mark.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 33

Identify each instance in which Petitioner provided a service under Petitioner's Mark before March 16, 2016.

RESPONSE:

INTERROGATORY NO. 34

Identify Petitioner's first use of Petitioner's Mark in connection with "medical, cosmetic and plastic surgery services" services.

RESPONSE: First use is at least as early at 2002 per the ad attached to this response

INTERROGATORY NO. 35

Identify each document which Petitioner contends evidences Petitioner's use of NO ONE WILL KNOW . . . EVERYONE WILL NOTICE before March 16, 2016.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See exhibits attached to petition and attachment to Response 34

INTERROGATORY NO. 36

Identify each document which You contend evidences continuous use of Petitioner's Mark from 2007 to the present.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See exhibits attached to petition and attachment to Response 34

INTERROGATORY NO. 37

Identify all evidence which You contend supports Your allegation that "the relevant segment of the purchasing public has come to exclusively associate Petitioner's Mark with Petitioner's services".

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 38

Identify each brand of dermal fillers that Petitioner has used in connection with Petitioner's services (from 2006 to the present).

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely

benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 39

Identify each instance that Petitioner has used a Juvéderm (or Allergan) product in connection with Petitioner's services, including any use of dermal fillers belonging to the current Juvéderm collection of fillers, including, but not limited to: ® ®

- a. JUVÉDERM ® VOLUMA ® XC,
- b. JUVÉDERM ® VOLLURE XC,
- c. JUVÉDERM ® Ultra Plus XC,
- d. JUVÉDERM ® Ultra XC,
- e. JUVÉDERM ® Ultra XC, ®
- f. JUVÉDERM VOLBELLA XC, and/or
- g. Any other product related to cosmetic surgery and medical services that is sold under the brand name Juvéderm.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 40

Identify any and all license agreements that Petitioner has entered into regarding the use of Petitioner's Mark.

RESPONSE: None

INTERROGATORY NO. 41

Identify any and all license agreements between Petitioner and Allergan or any other company regarding a Juvéderm product.

RESPONSE: None

INTERROGATORY NO. 42

State the legal and factual basis for Your contention that Registrant's use of Registrant's Mark (EVERYONE WILL NOTICE. BUT NO ONE WILL KNOW.) is not confusingly similar to Petitioner's use of Petitioner's Mark (NO ONE WILL KNOW... EVERYONE WILL NOTICE.), as stated in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473.

RESPONSE: The services are different and offered in different channels of trade.

INTERROGATORY NO. 43

State the legal and factual basis for Your contention that Registrant and Petitioner's marks are "tag lines", as argued in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 27481.

RESPONSE: Tag lines are one of the many forms of trademarks.

INTERROGATORY NO. 44

State the legal and factual basis for Your contention that, "[when consumers are looking for services, it is the brand name that identifies the service provider not the tag line", as argued in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473.

RESPONSE: Besides brand names, consumers recognize products and services by logos, slogans or tag lines, characters, color and other recognizable elements used to promote products and services.

INTERROGATORY NO. 45

State the legal and factual basis for Your contention that Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not contain any use of Petitioner's Mark or any other confusingly similar mark by Allergan.

RESPONSE: There is no tag line or slogan in a prominent position anywhere in the exhibit showing trademark use of . Also note that Petitioner's first use is at least as early as 2002 as shown by the ad attached to Response 35

INTERROGATORY NO. 46

State the legal and factual basis for Your contention that Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows that Allergan's use of *everyone will notice (but no one will know)!* from 2016-2018 constitutes a use of Registrant's "tag line".

RESPONSE: See Response to 45

INTERROGATORY NO. 47

Identify each type of use Petitioner contends is made in Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), including any trademark use, "tag line" use, or other use, by any third-party (that is, not Petitioner or Registrant).

RESPONSE: See Response to 45

INTERROGATORY NO. 48

State the legal and factual basis for the contention that Petitioner has used Petitioner's Mark in a manner that would be perceived by potential purchasers as identifying the Registrant's services and indicating their source by a direct association.

RESPONSE: The trademark is used prominently on the web site and in advertising.

INTERROGATORY NO. 49

State the legal and factual basis for the contention that Petitioner's Mark is used in such a way as to identify and distinguish Petitioner's services from any goods and services provided by Allergan.

RESPONSE: Petitioner's mark is for services and has been in use prior to any use by Allergan per the exhibits provided by Registrant in the exhibits attached to its answer

INTERROGATORY NO. 50

Identify each individual, tradename, business name, identity and/or fictitious name, for which Petitioner holds an insurance policy, in effect at the time of Petitioner's filing of this Cancellation proceeding, that covers any services provided by Petitioner.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 51:

Identify each person who participated in or supplied information used in answering any of the above interrogatories; beside the name of each such person, state the number of the interrogatory answer(s) with respect to which that person participated in or supplied information.

RESPONSE: Dr Judith Gurley

JUDITH GURLEY PLASTIC SURGERY, LLC.

Dated: August 11 , 2022

/Annette P. Heller./ .
Heller & Associates
400 Chesterfield Center Ste 400.
Chesterfield [St Louis] Mo 63017
314-469-2610 Fax 314-469-4850
TMAttorneyHeller@aol.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following:
PETITIONER’S RESPONSES TO REGISTRANT’S FIRST SET OF
INTERROGATORIES

were served on the following, via Email on August 11, 2022:

Frank J. Bonini, Jr
Attorney for
Registrant
Fbonini@boninilaw.com

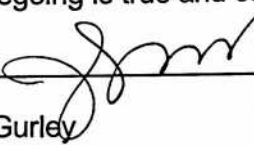
Dated: August 11, 2022

/Annette P. Heller/ .

VERIFICATION

I, Judith Gurley, am a member of Judith Gurley Plastic Surgery, LLC. I believe, based on reasonable inquiry, the foregoing answers are true and correct to best of my knowledge, information and belief.

I verify under penalty of perjury under the laws of the United States of American that the foregoing is true and correct.



Judith Gurley

Dated 8.9.22

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Petitioner's Response to Registrant's First Requests for Production to Petitioner

EXHIBIT F

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

Judith Gurley Plastic Surgery, LLC

Petitioner

Cancellation No. **92078349**

Registration No. **5845907**

v.

David J. Witchell Salon & Spa, Inc.,

Registrant.

**PETITIONER’S RESPONSE TO
REGISTRANT’S FIRST REQUESTS FOR PRODUCTION TO PETITIONER**

Pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Registrant, David J. Witchell Salon & Spa, Inc. hereby addresses its First Set of Requests for Production of Documents to Petitioner, Judith Gurley Plastic Surgery, LLC , Inc., to be responded to and complied with fully within thirty (30) days of service thereof.

I. INSTRUCTIONS AND DEFINITIONS OF TERMS

A. As used herein, the term "Petitioner", "You", and "Your" refers to Judith Gurley Plastic Surgery, LLC , Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their owners, managers, partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner. "Petitioner" also refers to any predecessor of any rights claimed in the mark "NO ONE WILL KNOW... EVERYONE WILL NOTICE. "Petitioner" also refers to any licensee of the mark "NO ONE WILL KNOW... EVERYONE WILL NOTICE.

B. The terms "Petitioner's Mark" refers to "NO ONE WILL KNOW... EVERYONE

WILL NOTICE”, as cited and alleged by Petitioner in its Notice of Opposition.

C. The term "Registrant" refers to David J. Witchell Salon & Spa, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Registrant, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Registrant.

D. The terms "Registrant's Mark" or "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW" refers to the designation and/or trademark of U.S. Trademark Registration 5845907.

E. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Petitioner and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Petitioner, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews,

reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks, not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

In the event Petitioner wishes to assert either attorney-client privilege or work-product exclusion, or both, as to any document for which production is requested by any of the following specific document requests, then as to each document subject to such assertion, Petitioner is requested to provide such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Petitioner associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

F. Over and above the requirements of Rule 26(e) of the Federal Rules of Civil Procedure to supplement responses, it is requested that these discovery requests be treated as continuing. If Petitioner becomes aware of any supplemental information or documents relating to these discovery requests and which were not included in the initial responses hereto, Petitioner is requested to furnish said additional information or documents to the attorneys for Registrant as soon as possible.

G. The term “Allergan” includes the entity known as any one of: Allergan, Allergan Aesthetics, Allergan, Inc., Allergan Holdings France, SAS, Allergan Industrie, SAS, Corneal Industrie, SAS, or INAMED Corporation.

H. The term “EVERYONE WILL NOTICE. NO ONE WILL KNOW.” is without regard to punctuation, and includes “EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW”, “EVERYONE WILL NOTICE, NO ONE WILL KNOW”, “EVERYONE WILL NOTICE. NO ONE WILL KNOW.”, and the terms “EVERYONE WILL NOTICE” appearing together with “NO ONE WILL KNOW” (with or without another word or words, and/or punctuation).

I. The term “person” means any natural person or juristic person (e.g., a corporation or other entity), unless otherwise limited specifically by the request.

II. REQUESTS FOR PRODUCTION

REQUEST NO. 1

All documents evidencing the first use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE claimed by Petitioner.

Attached to Interrogatories

REQUEST NO. 2

All documents evidencing the first use in commerce of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE claimed by Petitioner.

See 1

REQUEST NO. 3

All documents sufficient to show use each use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE, prior to March 16, 2016, by Petitioner or any person Petitioner considers to be a predecessor.

Petitioner objects on the grounds that this production is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See attachments to Cancellation Petition and attached documents

REQUEST NO. 4

All documents sufficient to identify each location at which services were performed by Petitioner under Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE during all time periods within which Petitioner claims to have used Petitioner's Mark.

Petitioner objects on the grounds that this production is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 5

All documents sufficient to identify each location at which services were performed by Petitioner prior to March 16, 2016 under the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

See response to 4

REQUEST NO. 6

All documents sufficient to identify each location at which services were performed by Petitioner between 2007 and March 16, 2016 under the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

See response to 4

REQUEST NO. 7

All evidence that Petitioner has that Petitioner believes identifies priority of use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE at a time before the November 14, 2016 filing of Registrant's application.

Petitioner objects to this request in that its burdensome. Subject to this objection, see response to 3

REQUEST NO. 8

Documents sufficient to identify all persons that Petitioner is aware of and who have knowledge of Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Petitioner object to this request in that it is not relevant to the issues in this proceeding and Allegan is not a party to this proceeding.

REQUEST NO. 9

Documents sufficient to identify each person that Petitioner contends has knowledge of Petitioner's use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to the Registrant's application filing date of November 14, 2016.

None

REQUEST NO. 10

For each service identified that was provided under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to November 14, 2016 (as per the request of Interrogatory No. 1 of Registrant's First Set of Interrogatories to Petitioner, and your response), produce all documents sufficient to identify each customer or recipient of the service, the service provided, and the manner of use of the mark.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

REQUEST NO. 11

Produce documents sufficient to identify each natural person who has provided a service under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

REQUEST NO. 12

Produce documents sufficient to identify the employer of the natural person when the natural person provided the service under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

REQUEST NO. 13

Produce each insurance policy under which Judith Gurley Plastic Surgery, LLC operates when using the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE that makes a specific reference to the term "trademark" or "service mark" .

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

REQUEST NO. 14

Produce documents sufficient to identify each different form in which Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE was used by Petitioner.

See response to 3

REQUEST NO. 15

Produce documents sufficient to identify each different form in which Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE was used by Petitioner prior to November 14, 2016..

See Response to 3

REQUEST NO. 16

Produce all searches, studies or investigations undertaken in connection with Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE (this includes, but is not limited to, clearance searches, documents relating to uses of the mark or similar marks by others, investigations and the like).

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

REQUEST NO. 17

Produce all searches, studies or investigations undertaken in connection with Registrant's Mark (this includes, but is not limited to, clearance searches, documents relating to uses of the mark or similar marks by others, investigations and the like).

See response to 16

REQUEST NO. 18

All documents identifying the use or appearance of NO ONE WILL KNOW... EVERYONE WILL NOTICE by a person or entity other than Petitioner or Registrant.

See response to 16

REQUEST NO. 19

All documents identifying the use or appearance of EVERYONE WILL NOTICE BUT NO ONE WILL KNOW by a person or entity other than Petitioner or Registrant.

See response to 16

REQUEST NO. 20

All communications between You and any person or entity (other than Registrant) that uses NO ONE WILL KNOW... EVERYONE WILL NOTICE, or that uses a term similar to NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

REQUEST NO. 21

All documents evidencing products or services of another that are provided in connection with a mark, slogan or phrase containing "EVERYONE WILL NOTICE".

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

REQUEST NO. 22

All evidence that establishes any market penetration by Petitioner in the marketplace for medical services provided by Petitioner under Petitioner's Mark.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

REQUEST NO. 23

All agreements between Petitioner and any person relating to the usage of the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE (this includes any license, assignment, or other permission or limitation).

See response to 16

REQUEST NO. 24

All agreements between Petitioner and any medical professionals, including, without limitation Dr. Gurley.

See response to 16

REQUEST NO. 25

Any agreements between Dr. Gurley and any person relating to the use of the Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

See response to 16

REQUEST NO. 26

All web sites and other marketing and advertising materials that display NO ONE WILL KNOW... EVERYONE WILL NOTICE in connection with any services provided by Petitioner.

See response to 3

REQUEST NO. 27

All documents relating to David J. Witchell, the natural person. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

See response to 16

REQUEST NO. 28

All documents mentioning David J. Witchell, the natural person. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

See response to 16

REQUEST NO. 29

All documents mentioning David J. Witchell Salon & Spa, Inc., including the business David J. Witchell Salon & Spa. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

See response to 16

REQUEST NO. 30

All documents relating to use of EVERYONE WILL NOTICE BUT NO ONE WILL KNOW by Registrant.

See response to 3

REQUEST NO. 31

All documents sufficient to show when Petitioner first gained knowledge of Registrant. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

See office action wherein the Trademark Examining Attorney cited Registrant registration.

REQUEST NO. 32

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant.

See response to 16

REQUEST NO. 33

All documents sufficient to show when Petitioner first gained knowledge of Registrant's application for the Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

See response 31

REQUEST NO. 34

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant's application for Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW

See response to 31

REQUEST NO. 35

All documents sufficient to show when Petitioner first gained knowledge of Registrant's use of Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

See response to 31

REQUEST NO. 36

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant's use of Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW

See response to 31

REQUEST NO. 37

All documents sufficient to show when Petitioner first learned of any use by a person or entity, other than Registrant or Petitioner, of NO ONE WILL KNOW... EVERYONE WILL NOTICE (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

REQUEST NO. 38

All documents sufficient to show when Petitioner first learned of any use by a person or entity, other than Registrant or Petitioner, of EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

REQUEST NO. 39

All documents sufficient to show when Dr. Gurley first learned of any use by a person or entity, other than Registrant or Petitioner, of the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE. (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

REQUEST NO. 40

All documents sufficient to show when Dr. Gurley first learned of any use by a person or entity, other than Registrant or Petitioner, of EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for

Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

REQUEST NO. 41

All documents sufficient to show each instance when Petitioner used a Juvéderm (or Allergan) product in connection with Petitioner's services, including any use of dermal fillers belonging to the current Juvéderm collection of fillers, including, but not limited to:

- a. JUVÉDERM[®] VOLUMA[®] XC,
- b. JUVÉDERM[®] VOLLURE XC,
- c. JUVÉDERM[®] Ultra Plus XC,
- d. JUVÉDERM[®] Ultra XC,
- e. JUVÉDERM[®] Ultra XC, [®]
- f. JUVÉDERM[®] VOLBELLA XC, and/or
- g. Any other product related to cosmetic surgery and medical services that is sold under the brand name Juvéderm.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Furthermore, Allergan or the trademark Juvederm are not parties to this proceeding.

REQUEST NO. 42

All documents sufficient to show each instance when Petitioner used a dermal filler in connection with any service provided by Petitioner, and the name and/or brand of dermal filler used.

See response to 16

REQUEST NO. 43

All documents relating to Petitioner's adoption and selection of Petitioner's Mark.

None

REQUEST NO. 44

All documents that were created or generated prior to Petitioner's alleged first date of use of Petitioner's Mark that mention Juvéderm.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Furthermore, Allergan or the trademark Juvederm are not parties to this proceeding.

REQUEST NO. 45

All documents sufficient to show consumer recognition of Juvéderm with Allergan.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Furthermore, Allergan or the trademark Juvederm are not parties to this proceeding.

REQUEST NO. 46

All documents sufficient to show any and all instances of confusion, in which a consumer indicated he/she recognized another entity as the source of the services provided in connection with NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

REQUEST NO. 47

All documents sufficient to show any and all instances of confusion, in which a consumer indicated he/she recognized another entity as the source of the services provided under the mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

REQUEST NO. 48

All document sufficient to show any and all instances in which a consumer recognized any third party as the source of the services provided in connection with NO ONE WILL KNOW... EVERYONE WILL NOTICE or EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

REQUEST NO. 49

All documents sufficient to show any and all instances in which a consumer indicated he/she believed there to be an association or connection between Petitioner and a Juvéderm product or Allergan.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

REQUEST NO. 50

All documents sufficient to show any and all correspondence between Petitioner

and Allergan related to Petitioner's use of NO ONE WILL KNOW... EVERYONE WILL NOTICE or identifying EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

REQUEST NO. 51

All documents sufficient to show that Petitioner has made continuous use of Petitioner's Mark from 2007 to the present.

See response 3

REQUEST NO. 52

All documents sufficient to show Petitioner's use of Petitioner's Mark in a manner that would be perceived by potential purchasers as identifying the Registrant's services and indicating their source by a direct association.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

REQUEST NO. 53

All documents sufficient to show that Petitioner's Mark is used in such a way as to identify and distinguish Petitioner's services from the goods and services provided by Allergan.

See response 3


REQUEST NO. 54

All insurance policies that Petitioner holds, that were in effect at the time of

Petitioner's filing of this Cancellation proceeding, which (i) identify an individual, tradename, business name, identity and/or fictitious name, and (ii) which covers any services provided by Petitioner.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

Respectfully submitted,
Judith Gurley Plastic Surgery, LLC

By: 
Annette P. Heller
Heller & Associates
400 Chesterfield Center, Suite 400
Chesterfield, MO 63017
Tel: (314) 469-2610
Fax: (800) 469-4850
tmattorneyheller@aol.com

Dated: August 11, 2022

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by via email on 8/11/22 to:

Frank J Bonini counsel for Registrant at fboninilaw.com

/aph72/
Annette P. Heller, Attorney for Petitioner

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

The August 26, 2022, Email from Registrant's Counsel to Petitioner's Counsel

EXHIBIT G

Subject: Correspondence Re: Petitioner Discovery Deficiencies - 92078349
Date: Friday, August 26, 2022 at 6:37:38 PM Eastern Daylight Time
From: Frank Bonini <fbonini@boninilaw.com>
To: Annette Heller <tmattorneyheller@aol.com>
Attachments: Letter Ms Heller - Petitioner Discovery Deficiencies 92078349.pdf

Dear Ms. Heller,

Please see the attached correspondence.

Sincerely,

Frank Bonini

From: Annette Heller <tmattorneyheller@aol.com>
Reply-To: Annette Heller <tmattorneyheller@aol.com>
Date: Thursday, August 11, 2022 at 5:03 PM
To: Frank Bonini <fbonini@boninilaw.com>
Subject: Initial Disclosures/Discovery - 92078349

Attached is our responses to your initial discovery requests. I will be sending the documents in a separate email since the file is too large to send with this email.

2. REGISTRANT'S FIRST REQUEST FOR ADMISSIONS TO PETITIONER;
3. REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER; and
4. REGISTRANT'S FIRST REQUESTS FOR PRODUCTION TO PETITIONER.

Also attached is a specimen showing use of our client's trademark in an advertising ad dated 2002. Therefore, our client's use predates Juvederm's first use of 2006 since that is when the FDA approved the drug or 2004 the date of first use claimed on its registration for Juvederm.

Annette P. Heller
Trademark/Copyright Attorney
Heller & Associates
400 Chesterfield Center Ste 400
Chesterfield [St Louis] MO 63017

www.TrademarkAtty.com

314-469-2610 Fax 314-469-4850

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTIONS

The August 26, 2022 Letter Pointing Out Petitioner's Improper Responses and Objections

EXHIBIT H

BONINI IP LAW, LLC

Radnor Financial Center
150 North Radnor Chester Road
Suite F200
Radnor, PA 19087

Tel: 484-382-3060
Fax: 484-382-3061

Frank J. Bonini, Jr.
Admitted in PA
Registered Patent Attorney

fbonini@boninilaw.com

Intellectual Property Law
- Patents
- Trademarks
- Copyrights
- Related causes

August 26, 2022

***VIA EMAIL (TMAAttorneyHeller@aol.com)
AND FIRST CLASS MAIL***

Annette P. Heller, Esq.
HELLER & ASSOCIATES
400 Chesterfield Center Suite 400
Chesterfield (St Louis), MO 63017

**Re: Cancellation No. 92078349
Re: US Trademark Registration No. 5845907
Petitioner's Insufficient Discovery Responses**

Dear Ms. Heller:

This is in regard to the numerous deficiencies in Petitioner's responses to Registrant's First Requests for Admissions, Interrogatories, and Production (Registrant's Discovery Requests)

Your discovery responses and objections to Registrant's First Request for Admissions, First Set of Interrogatories, and First Set of Requests for Production¹ are inadequate, insufficient, and improper.

¹ The titles of which have been shortened, but refer to "Petitioner's Response to Registrant's First Request for Admissions to Petitioner"; "[Petitioner's Response to] Registrant's First Set of Interrogatories", and "Petitioner's Response to Registrant's First Requests For Production to Petitioner".

PETITIONER HAS FAILED TO COMPLY WITH THE DISCOVERY RULES

1. Petitioner's Responses and Objections Violate Rule 26(g)

Petitioner's discovery responses are incomplete and improper under the governing Rules and law. As you undoubtedly are aware, your signature on the discovery responses certifies that any disclosures were complete and accurate when made and that a reasonable inquiry was made. See Rule 26(g)(1)(A) and see TBMP § 408.01(c). For at least the reasons we discuss herein, Petitioner's responses are in clear violation of Rule 26(g). Based on what appears to be evident "copying and pasting" the same objection, the responses and objections demonstrate a lack of good faith.

2. Petitioner's Objections Are Improper

A. Petitioner's Objections to Registrant's Document Production Requests are Improper and Must be Withdrawn (Production Requests Nos. 2-4, 7-8, 10-30, 32, 37-42, 44-54).

Petitioner has improperly objected to Registrant's discovery requests, arguing that Registrant's requests are overbroad and unduly burdensome, burdensome, not relevant, and irrelevant and disproportionate to the needs of this matter.

For example, in Petitioner's response to request no. 3 of Registrant's First Request for Production, Petitioner provides the following:

Petitioner objects on the grounds that this production is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See attachments to Cancellation Petition and attached documents

("Petitioner's Response to Registrant's First Set of Requests for Production", Request No. 3 (p. 5).)

Petitioner has provided identical answers and objections to in response to Registrant's First Set of Requests for Production, or simply refers Registrant to its response to Request No. 3, for requests Nos. 3, 4, 14, 15, 26, 30, 51, and 53.

In Petitioner's response to request nos. 10-13, 16-25, 27-32, 37-42, 44-50, 52, and 54,² Petitioner also improperly objects on the grounds that the request is irrelevant and

² In response to Requests Nos. 17-19, 23-25, 27-29, 32, 37-40, and 42, Petitioner simply refers Registrant to its response to a previous request containing the same objection (all, if not most, to Petitioner's response to Request No. 16).

disproportionate to the needs of this matter. For example, in response to Request No. 16, Petitioner provided as follows:

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

("Petitioner's Response to Registrant's First Set of Requests for Production", Request No. 16 (p. 8).)

Likewise, Petitioner improperly objects to Request No. 7 on the grounds that the request is "burdensome" and improperly objects to Request No. 8 as "not relevant":

REQUEST NO. 7

All evidence that Petitioner has that Petitioner believes identifies priority of use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE at a time before the November 14, 2016 filing of Registrant's application.

Petitioner objects to this request in that its burdensome. Subject to this objection, see response to 3

REQUEST NO. 8

Documents sufficient to identify all persons that Petitioner is aware of and who have knowledge of Allegan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Petitioner objects to this request in that it is not relevant to the issues in this proceeding and Allegan is not a party to this proceeding.

("Petitioner's Response to Registrant's First Set of Requests for Production", Request Nos. 7-8 (p. 6)).

In accordance with Rule 26(g), Petitioner is required to make reasonable inquiries to respond to Registrant's Discovery Requests. Petitioner has objected on the basis that the Registrant's requests are overbroad and unduly burdensome via boilerplate objections without further justification or support for the objection. As such, Petitioner's responses to Registrant's Requests for the Production ("Production Requests") are insufficient and evasive.

Additionally, in Petitioner's responses, Petitioner also fails to provide any meaningful production of documents in response to Registrant's requests. Petitioner merely produced the same documents which have already been provided.

In its responses, Petitioner has failed to provide documents and proper responses requested in Registrant's Discovery Requests, largely to almost every request that Registrant has propounded. Petitioner's failure to produce responsive documents and provide proper responses to Registrant's Discovery Requests is in direct violation of Petitioner's obligations under 37 CFR §2.120(d), 37 CFR §2.120(e), and 37 CFR §2.120(i). Moreover, Petitioner's responses are evasive and impose unspecified, repetitive boilerplate objections, and therefore violate Fed.R.Civ.P. 26(g) and 37(a)(4).

If Petitioner has no documents, it should provide a response so indicating, and one that is not evasive, and without the spurious objections, rather than solely objecting or simply referring Registrant to Petitioner's response to an entirely different request. In other words, if there are no documents, then Petitioner should make an unqualified response, and indicate there are none, so it is clear.

B. Petitioner's Objections to Registrant's Admission Requests Are Improper and Must be Withdrawn (Admission Requests Nos.:10-13, 19-20, 24-26, 28, 30-31, and 36-40³).

In its responses to Registrant's First Requests for Admissions, Petitioner also improperly objected to numerous admission requests on the grounds that the "document speaks for itself", that "Allergan is not a party to this proceeding", that the request is "irrelevant", and the requests are "irrelevant" and "too broad".

Specifically, in response to Admission Request Nos. 10-12, 30-31, 36-40, Petitioner improperly objects as follows: "Response: Petitioner objects to this request as the documents speaks for itself ...". (Petitioner's Response to Registrant's First Request for Admissions, Request No. 10 (p. 4)) In response to Admission Request Nos.19-20, Petitioner improperly objects that "Allergan is not a party to this proceeding" – a proxy objection to the relevance of the Registrant's requests. This spurious objection which is baseless, is used by Petitioner because Petitioner knows it cannot argue in good faith a lack of relevance for information sought by admission requests that pertain to one of Registrant's defenses, and bear on whether what Petitioner asserts as a "mark" is even a valid mark. This also is pertinent to Petitioner's alleged contentions that it has a "mark". Similarly, in response to Admission Request Nos. 24-26, Petitioner improperly objects to the requests as "irrelevant to the issue in this proceeding" and "too broad in its present form to answer". Likewise, in response to Admission Request No. 26 and 28, Petitioner improperly objects that the requests are "irrelevant" and "not relevant to determine

³ Petitioner provides the same objection in response to Request Nos. 39 and 40, but mistakenly numbered Request No. 40 as Request 39, resulting in its responses to two different requests (Nos. 39 and 40) both being labeling "39".

registration”. Lastly, Petitioner failed to provide any response to Registrant’s Admission Request No. 16 (leaving it blank) and must provide a response to Registrant’s request.

These responses are insufficient and evasive. In accordance with Rule 26(g), Petitioner is required to make reasonable inquiries to respond to Registrant’s discovery requests. Petitioner has objected to these requests on the basis that the documents speak for themselves, that Allergan is not a party to this proceeding, and that the requests are irrelevant and/or overly broad, without sufficient justification or appropriate responses. As such, Petitioner must provide answers responsive to Petitioner’s Admission requests.

C. Petitioner’s Objections to Registrant’s Interrogatories Are Improper and Must be Withdrawn (Interrogatory Responses: 7, 11, 19-20, 21-24, 28, 31-32, 35-39, and 50)

Petitioner provided similar objections in responses to Interrogatory Nos. 7, 11, 19-20, 21-24, 28, 31-32, 35-39, and 50), in which Petitioner objected on the grounds that the interrogatory “is overbroad and unduly burdensome in time and scope”, “neither relevant nor reasonably calculated to lead to the discovery admissible evidence”, and/or “calls for information that is irrelevant and disproportionate to the needs of this matter”.

For example, in response to Registrant’s Interrogatory Nos. 7, 11, 21, 23-24. And 35-36, Petitioner responded as follows:

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows:
....

Similarly, in response Interrogatory Nos. 19-20, 22, 28, 31-32, 37-39, 50, Petitioner improperly objects as follows:

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant’s trademark since it prevents registration of Petitioner’s Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant’s trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

These objections are improper, evasive and violate the discovery rules. Petitioner is required to make reasonable inquiries to respond to Registrant's discovery requests, and Petitioner must provide sufficient responses.

4. Improper "Boilerplate" Objections

Petitioner's boilerplate objections in response to Petitioner's discovery requests are improper. As you are well aware, simply making boilerplate objections without providing further explanation is not an objection at all, and is actually a waiver. Consequently, Petitioner must withdraw its improper boilerplate objections and provide proper responses for Petitioner's Document Production Requests Nos. 2-4, 7-8, 10-30, 32, 37-42, 44-54, Interrogatory Requests Nos. 7, 11, 19-20, 21-24, 28, 31-32, 35-39, and 50, and Admission Requests Nos. 10-13, 19-20, 24-26, 28, 30-31, and 36-40. In each example, Petitioner failed to provide an explanation of the specific grounds for objection.

Accordingly, Petitioner's responses are replete with improper, repetitious boilerplate objections in each of Petitioner's responses to Respondent's requests. Boilerplate objections of the likes that Petitioner has presented in Petitioner's discovery responses are meritless, and must be withdrawn. See Younes v. 7-Eleven, Inc., Civ. No. 13-3500, pp. 25-26 (D.N.J. December 11, 2015) (boilerplate objections are "inappropriate and result in the waiver of the objection"); NE Technologies, Inc. v. Evolving Systems, Inc., C.A. No. 06-6061 (MLC), 2008 WL 4277668, at *5 (D.N.J. Sept. 12, 2008) ("When objecting to a discovery request, an objecting party must state with specificity the grounds for the objection, and not the familiar litany that an interrogatory or document production request is overly broad, burdensome, oppressive and irrelevant."); See also Rule 34; Fischer v. Forrest, 14 Civ. 1304 (PAE) (AJP), 2017 WL 773694 (S.D.N.Y. Feb. 28, 2017) (deeming the type of objection that Petitioner has made in the current proceedings to be one that violates Rule 34); and Hewlett Packard Enterprise Development LP v. Arroware Industries, Inc., Cancellation No. 92067494, May 2, 2019 (TTAB) (precedential) (overruling Respondent's improper boilerplate objections as the party was required "to detail with specificity the reasons for its objections" and "failed to state clearly and affirmatively whether it ha[d] searched for and identified, but withheld, any documents responsive to Petitioner's document requests").

Additionally, Petitioner's responses are evasive and violate the discovery rules because Petitioner merely interposes boilerplate objections without providing an explanation of the specific grounds that Petitioner contends form the basis for the objection. See Rule 34, and Fischer v. Forrest, 14 Civ. 1304 (PAE) (AJP), 2017 WL 773694 (S.D.N.Y. Feb. 28, 2017) (deeming the type of objection that Petitioner has made in the current proceedings to be one that violates Rule 34).

Moreover, while "it is true that a party will be excused from responding to discovery that [would warrant those objections], the responding party may not rely on conclusory statements when objecting on th[ose] bases, but rather must state specifically the underlying basis for the objection." Hewlett Packard Enterprise Development LP v. Arroware Industries, Inc.,

Cancellation No. 92067494, May 2, 2019 (TTAB) (precedential) (overruling Respondent's improper boilerplate objections as the party was required "to detail with specificity the reasons for its objections" and "failed to state clearly and affirmatively whether it ha[d] searched for and identified, but withheld, any documents responsive to Petitioner's document requests"). Petitioner's improper boilerplate objections have no place for a legitimate response, and as Petitioner has used them here, are flagrant attempts to avoid basic discovery.

Petitioner's improper boilerplate objections have no place for a legitimate response, and as Petitioner has used them here, are flagrant attempts to avoid basic discovery.

5. Petitioner's Conditional Responses are Improper

In addition, Petitioner's responses are improper because they are conditional. Petitioner has made improper conditional responses to Registrant's discovery requests for Document Production (Request Nos. 3, 7, 16, 46, 47, 48, 49, 50, 52) and Interrogatories (Interrogatory Nos. 7, 11, 21, 23, 24, 35, 36). In each example, Petitioner either states "Subject to this [or these] objection[s]" and/or "without waiving them", before providing a response. Petitioner's conditional responses are invalid and improper attempts at evading Registrant's discovery requests. See Equal Emp't Opportunity Comm'n v. BNSF Ry. Co., p. 4 (D. Kan., 2015) (deeming each of the improper conditional requests to be admitted):

Conditional responses "occur when 'a party asserts objections, but then provides a response 'subject to' or 'without waiving' the stated objections.'" Westlake v. BMO Harris Bank N.A., No. 13-2300-CM-KGG, 2014 WL 1012669, *3 (D. Kan. March 17, 2014) (citing Sprint Comm'n Co., L.P. v. Comcast Cable Comm'n, LLC, Nos. 11-2684-JWL, 11-2685-JWL, 11-2686-JWL, 2014 WL 54544, *2, 3 (D. Kan. Feb. 11, 2014)). See also, Everlast World's Boxing Headquarters Co. V. Ringside, Inc., et al., No. 13-2150-CM-KGG, 2014 WL 2815515, at *3 (D. Kan. June 23, 2014). This Court reiterates its agreement with the Sprint decision that found such conditional responses to be "invalid," "unsustainable," and to "violate common sense." 2014 WL 54544, *2, 3.

(Id. at n. 1)

Petitioner's conditioning of its responses also changes what was being asked as to constitute a different request (*e.g.*, as further pointed out herein, *infra* Consumer Electronics Association v. Compras and Buys Magazine, Inc., No. 08-21085, 2008 WL 4327253, at *2 (S.D. Fla. Sept. 18, 2008); *see also* Mann v. Island Resorts Dev., Inc., No. 3:08cv297/RS/EMT, 2009 WL 6409113, at *2-3 (N.D. Fla., Feb. 21, 2009)(holding objection waived where party answered in spite of objection)). The requests therefore may be deemed admitted, as any admission request which is not admitted must be explicitly denied. Fed. R. Civ. P. 36(a)(4). If Petitioner attempts to respond properly, Petitioner must respond to what was asked. Again, the responses bear the Rule 26(g)

signature of counsel, and denials of admission requests that contradict facts are deceptive or constitute a failure to investigate. Accordingly, unless they are to be treated as admissions, Petitioner must serve proper and complete responses in place of Petitioner's improper conditional responses provided. (See Rule 37(c)).

6. Fraud Defense

Petitioner has also ignored additional bases for the relevance of the information sought, which Petitioner refuses to provide and/or has objected to providing. The fraud claim, as you are aware, directly renders relevant the information about Dr. Gurley's knowledge and use of dermal fillers. That is among the information that Petitioner is refusing to provide. While we can certainly understand why Petitioner would not want to provide that, as it may directly contradict statements made under oath by Petitioner, the fraud issue is not for you to decide, but is a matter for the Board to determine. Accordingly, there is no question that the information Petitioner is withholding is relevant, not only for the above reasons, but for these additional reasons.

7. Without Prejudice

In this correspondence, Registrant has pointed out a number of defects in the Petitioner's responses and objections. This is not an indication of the potential entirety of the defects, and Registrant reserves the right to seek relief for other potential issues relating to the Petitioner's discovery responses.

Accordingly, Petitioner must provide proper and complete responses. We expect to receive from you complete and proper responses to the discovery requests within one week from the date of this letter. This correspondence constitutes Petitioner's good faith effort to resolve the discovery issues prior to filing a motion to compel.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Frank J. Bonini, Jr.", with a stylized, cursive script.

Frank J. Bonini, Jr.

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

The September 9, 2022 Email Exchange Between Registrant's Counsel and Petitioner's Counsel

EXHIBIT I

Subject: Re: Discovery Responses - following up

Date: Monday, September 19, 2022 at 12:00:28 PM Eastern Daylight Time

From: Annette Heller <tmattorneyheller@aol.com>

To: Frank Bonini <fbonini@boninilaw.com>

I do apologize for the delay. Will have a response to your letter by the end of the week.

Annette

Annette P. Heller
Trademark/Copyright Attorney
Heller & Associates
400 Chesterfield Center Ste 400
Chesterfield [St Louis] MO 63017

www.TrademarkAtty.com

314-469-2610 Fax 314-469-4850

In a message dated 9/19/2022 8:49:38 AM Central Standard Time, fbonini@boninilaw.com writes:

Dear Ms. Heller,

As you represented in your September 9, 2022 email correspondence (below), you were going to provide your responses to my August 26, 2022 correspondence during the week of September 12th (since you indicated you had not seen my August 26th letter until you came back from your vacation, even though I emailed it to you on August 26, 2022). We had expected to receive your responses last week regarding your objections to providing evidence in this matter.

Please let me know if you still plan to respond, and when we can expect the responses. (If for some reason you do not plan to respond, kindly let us know that.)

Please consider this communication another attempt by Petitioner to try and resolve issues before filing a motion to compel. As you are aware, we do not need to delay this further and wait for your response, but nonetheless, we are seeing whether you and your client intent to provide the requested information that is currently being unjustly withheld.

Thank you for your cooperation.

Sincerely,

Frank Bonini

From: Annette Heller <tmattorneyheller@aol.com>
Reply-To: Annette Heller <tmattorneyheller@aol.com>
Date: Friday, September 9, 2022 at 12:44 PM
To: Frank Bonini <fbonini@boninilaw.com>
Subject: Re: Discovery Responses

I did not find any emails from you dated August 26 or later.

Annette

Annette P. Heller
Trademark/Copyright Attorney
Heller & Associates
400 Chesterfield Center Ste 400
Chesterfield [St Louis] MO 63017

www.TrademarkAtty.com

314-469-2610 Fax 314-469-4850

In a message dated 9/9/2022 11:42:12 AM Central Standard Time, fbonini@boninilaw.com writes:

Dear Ms. Heller,

Attached is a copy of the email sent you on August 26, 2022. You state that you did not find any emails from me since August 26th. Do you then mean that you in fact found my email to you of August 26th?

In any event, we await your reply, and, by the way, just to clarify, they are your "objections" that are at issue, not ours.

Sincerely,

Frank Bonini

From: Annette Heller <tmattorneyheller@aol.com>
Reply-To: Annette Heller <tmattorneyheller@aol.com>
Date: Friday, September 9, 2022 at 12:00 PM
To: Frank Bonini <fbonini@boninilaw.com>
Subject: Discovery Responses

Mr. Bonini

I received your letter of August 26 on Wednesday but noting you had also emailed it, I checked my emails and was unable to find any emails from you dated August 26. I was on vacation at that time so I also check my spam folder to see if it got buried in that folder and did not find any emails from you since August 26.

We will be responding to your objections next week.

Annette

Annette P. Heller
Trademark/Copyright Attorney
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REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

The September 23, 2022 Email from Petitioner's Counsel to Registrant's Counsel

EXHIBIT J

Subject: Amended Discovery Responses
Date: Friday, September 23, 2022 at 7:14:40 PM Eastern Daylight Time
From: Annette Heller <tmattorneyheller@aol.com>
To: Frank Bonini <fbonini@boninilaw.com>
Attachments: Amended Response to Registrant's Interrogatories.pdf, Amended Response to Registrant's Request for Admissions.pdf, Amended Response to Registrant's Request for Production of Documents 9-19-22.pdf

Attached are the amended discovery responses in follow up to your letter of August 26 letter

Annette P. Heller
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400 Chesterfield Center Ste 400
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Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Petitioner's Amended Response to Registrant's First Request for Admissions to Petitioner

EXHIBIT K

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

Judith Gurley Plastic Surgery, LLC,

Petitioner

Cancellation No. **92078349**

Registration No. **5845907**

v.

David J. Witchell Salon & Spa, Inc.,

Registrant.

**PETITIONER'S AMENDED RESPONSE TO
REGISTRANT'S FIRST REQUESTS FOR ADMISSIONS TO PETITIONER**

COMES NOW Petitioner and for its amended responses to Registrant's Request for Admissions states as follows:

1. Admit that Petitioner knows of an entity known as "Allergan".

Response: Petitioner admits it is aware of an entity known as "Allergan."

Amended Response: Admit

2. Admit that Petitioner is aware of "Juvéderm" dermal fillers.

Response: Admits

3. Admit that Petitioner has used at least one Juvéderm product in connection with its services provided under the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Response: Admits

4. Admit that Petitioner, as early as 2007, was aware of the brand Juvéderm.

Response: Admits

5. Admit that Petitioner was aware of the brand Juvéderm at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark.

Response: Denies

Amended Response: Petitioner was not aware of the brand Juvederm at the time Petitioner adopted or commenced use of Petitioner's Mark and therefore denies.

6. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew that at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Response: Denies

Amended Response: Petitioner did not know that at least one or more third-parties were already using Registrant's Mark at the time Petitioner adopted or commenced use of Petitioner's Mark and therefore denies.

7. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew that at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal filler products.

Response: Denies

Amended Response: Petitioner did not know that at least one or more third parties were already using Registrant's Mark at the time Petitioner adopted or commenced use of Petitioner's Mark and therefore denies.

8. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew that at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with Juvéderm products.

Response: Denies

Amended Response: Petitioner did not know that at least one or more third parties were already using Registrant's Mark in connection with Juvederm products at the time Petitioner adopted or commenced use of Petitioner's Mark and therefore denies.

9. Admit that Petitioner at the time Petitioner alleges to have adopted or commenced use of Petitioner's Mark knew that at least one or more third-parties were already using EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with medical, cosmetic or plastic surgery services.

Response: Denies

Amended Response: Petitioner did not know that at least one or more third parties were already using Registrant's Mark in connection with medical, cosmetic, or plastic surgery services at the time Petitioner adopted or commenced use of Petitioner's Mark and therefore denies.

10. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that Registrant's use of Registrant's Mark (EVERYONE WILL NOTICE BUT NO ONE WILL KNOW) is not confusingly similar to Petitioner's use of Petitioner's Mark (NO ONE WILL KNOW... EVERYONE WILL NOTICE).

Response: Petitioner objects to this request as the document speaks for itself and therefore denies.

Amended Response: Petitioner admits that it filed a response on May 20, 2021 to an Office Action dated November 20, 2020 in its Application Serial No. 88304473 and that the documents speaks for itself.

11. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that Petitioner's mark consists of a "tag line".

Response: Petitioner objects to this request as the document speaks for itself and therefore denies

Amended Response: Petitioner admits that it filed a response on May 20, 2021 to an Office Action dated November 20, 2020 in its Application Serial No. 88304473 and that the documents speaks for itself.

12. Admit that Petitioner stated in its Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473 that, "[w]hen consumers are looking for services, it is the brand name that identifies the service provider not the tag line".

Response: Petitioner objects to this request as the document speaks for itself and therefore denies

Amended Response: Petitioner admits that it filed a response on May 20, 2021 to an Office Action dated November 20, 2020 in its Application Serial No. 88304473 and that the documents speaks for itself.

13. Admit that Petitioner's Mark is used by third-parties as a slogan in connection with cosmetic and medical services.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

14. Admit that Petitioner's Mark is a slogan.

Response: Petitioner admits Petitioner's mark is a slogan used as a trademark.

15. Admit that Petitioner's Mark is not a slogan.

Response: Denies

Amended Response: Petitioner admits that its Mark is a slogan used as a trademark and therefore denies.

16. Admit that Petitioner's Mark is a "tag line".

Response: Petitioner admits Petitioner's mark is a slogan used as a trademark.

Amended Response: To the extent "tag line" and slogan are the same, Petitioner admits that its Mark is a "tag line" used as a trademark.

17. Admit that Petitioner's Mark is not a "tag line".

Response: Denies

Amended Response: To the extent "tag line" and slogan are the same, Petitioner admits that its Mark is a "tag line" used as a trademark and therefore denies.

18. Admit that Petitioner's Mark is widely used by third-parties in connection with Juvéderm dermal fillers.

Response: Denies

Amended Response: Petitioner is unaware of any third party use of its mark in connection with Juvederm dermal fillers and therefore denies.

19. Admit that Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal fillers used for providing cosmetic and plastic surgery services is confusingly similar to Petitioner's use of Petitioner's mark in connection with "medical, cosmetic and plastic surgery services".

Response: Petitioner objects to this request for admission since Allergan is not a party to this proceeding.

Amended Response: Petitioner denies that Allergan's alleged use of Registrant's Mark in connection with dermal fillers is confusingly similar to Petitioner's use of Petitioner's Mark in connection with medical, cosmetic, and plastic surgery services.

20. Admit that Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in connection with dermal fillers used for providing cosmetic and plastic surgery services is marketed to the same consumers as Petitioner's medical, cosmetic and plastic surgery services

Response: Petitioner objects to this request for admission since Allergan is not a party to this proceeding

Amended Response: Petitioner denies that Allergan's alleged use of Registrant's Mark in connection with dermal fillers is confusingly similar to Petitioner's use of Petitioner's Mark in connection with medical, cosmetic, and plastic surgery services.

21. Admit that Petitioner did not, at any time, enter into a license agreement with any third-party relating to the use of Petitioner's mark.

Response: Admits

22. Admit that Petitioner did not, at any time, enter into a license agreement with any third-party regarding the use of "NO ONE WILL KNOW... EVERYONE WILL NOTICE".

Response: Petitioner states that this request is the same as 21 and therefore admits.

23. Admit that Petitioner was aware of wide-spread use of "EVERYONE WILL NOTICE. NO ONE WILL KNOW." at the time that Petitioner filed its U.S. Trademark Application Serial No. 88304473.

Response: Denies

Amended Response: Petitioner was unaware of wide-spread use of Registrant's Mark at the time that Petitioner filed its U.S. Trademark Application Serial No. 88304473 and therefore denies.

24. Admit that Petitioner is aware of third-party use of "EVERYONE WILL NOTICE. NO ONE WILL KNOW." in the State of Missouri on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services.

Response: Petitioner objects to this Interrogatory as irrelevant to the issue in this proceeding and too broad in its present form to answer

Amended Response: Petitioner is unaware of widespread use of Registrant's Mark in the State of Missouri on one or more websites advertising or promoting medical, cosmetic, and/or plastic surgery services and therefore denies.

25. Admit that third-party use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in the State of Missouri on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

Response: Petitioner objects to this Interrogatory as irrelevant to the issue in this proceeding, is too broad in its present form to answer and not relevant to determine registration.

Amended Response: Petitioner is unaware of the use of Registrant's Mark in the State of Missouri on one or more websites advertising or promoting medical, cosmetic, and/or plastic surgery services and therefore denies.

26. Admit that third-party use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in the State of Illinois on one or more web sites advertising or promoting medical, cosmetic and/or plastic surgery services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

Response: Petitioner objects to this Interrogatory as irrelevant to the issue in this proceeding and too broad in its present form to answer

Amended Response: Petitioner is unaware of the use of Registrant's Mark in the State of Illinois on one or more websites advertising or promoting medical, cosmetic, and/or plastic surgery services and therefore denies.

27. Admit that the brochure provided as part of Petitioner's specimen of use filed on February 16, 2019 in connection with Petitioner's U.S. Trademark Application Serial No. 88304473, was not publicly available at the time Petitioner filed the specimen of use on February 16, 2019.

Response: Denies

Amended Response: Petitioner's specimen of use filed on February 16, 2019 in connection with its US Trademark Application Serial No 88304473 was used publicly by Petitioner both at the time Petitioner filed the specimen of use and prior to filing the specimen of use on February 16, 2019 and therefore denies.

28. Admit that Allergan used EVERYONE WILL NOTICE. NO ONE WILL

KNOW. in connection with the sale or advertising of products before Petitioner made use of Petitioner's mark.

Response: Petitioner objects to this Admission as irrelevant to the issue in this proceeding and is without any information as to when Allergan first used EVERYONE WILL NOTICE. NO ONE WILL KNOW and therefore denies.

Amended Response: Petitioner is unaware of Allergan's use of Registrant's Mark in connection with the sale or advertising of products before Petitioner made use of Petitioner's Mark and therefore denies.

29. Admit that Petitioner has contacted a third-party in an attempt to enforce Petitioner's alleged trademark rights in the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Response: Petitioner is unaware of any third party use of its trademark and therefore denies.

30. Admit that Petitioner, in its declaration, under penalty of perjury, filed in support of Petitioner's U.S. Trademark Application Serial No. 88304473, stated that it did not know of any other person entitled to use "NO ONE WILL KNOW... EVERYONE WILL NOTICE"

Response: Petitioner objects to this request as the document speaks for itself and therefore denies.

Amended Response: Petitioner admits that it filed US Trademark Application Serial No 88304473 and that the documents speak for themselves.

31. Admit that Petitioner, in its declaration, under penalty of perjury, filed in support of Petitioner's U.S. Trademark Application Serial No. 88304473, stated that it did not know of any other person entitled to use "EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW".

Response: Petitioner objects to this request as the document speaks for itself. Petitioner further objects that it did not apply for "EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW" and therefore denies.

Amended Response: Petitioner admits that it filed US Trademark Application Serial No 88304473 and the documents speak for themselves but denies that it applied for "EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW."

32. Admit that Petitioner knew of third-party use of Petitioner's Mark in connection with Juvéderm products, and cosmetic services provided in connection with such products, when it filed its declaration in support of Petitioner's U.S. Trademark Application Serial No. 88304473 on February 16, 2019.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

33. Admit that Petitioner knew of widespread use of Petitioner's Mark by third parties in connection with Juvéderm-brand products, and cosmetic services provided in connection with such products, when it filed its declaration in support of Petitioner's U.S. Trademark Application Serial No. 88304473 on February 16, 2019.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

34. Admit that Petitioner has never enforced rights in its alleged mark against any user of the same mark as Petitioner's Mark or a mark confusingly similar to Petitioner's Mark.

Response: Petitioner is unaware of any third party use of its mark and therefore denies

35. Admit that Petitioner's Mark fails to identify a single source.

Response: Denies

Amended Response: Petitioner uses Petitioner's Mark to solely identify Petitioner as the single source of its services and therefore denies.

36. Admit that the use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibit 1 to the Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not identify a single source.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

Amended Response: Petitioner admits that Exhibit 1 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows use of Registrant's Mark by more than one source.

37. Admit that the use of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibit 1 to the Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) identifies a single source.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

Amended Response: Petitioner admits that Exhibit 1 to Registrant's Answer and

Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows use of Registrant's Mark by more than one source.

38. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not identify Petitioner as a source of any services in any of those Exhibits 1-44.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

Amended Response: Petitioner admits that Exhibit 1 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows use of Registrant's Mark by more than one source.

39. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), identifies Juvéderm or a Juvéderm product.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

Amended Response: Petitioner admits that Exhibit 1 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows use of Registrant's Mark by more than one source.

39. Admit that each of the appearances of EVERYONE WILL NOTICE. NO ONE WILL KNOW. in Exhibits 1-44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10), is associated with Juvéderm.

Response: Petitioner objects to this request as the documents speaks for itself and therefore denies.

Amended Response: Petitioner admits that Exhibit 1 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows use of Registrant's Mark by more than one source.

Objections are made by Annette P. Heller, Attorney for Petitioner.

Judith Gurley Plastic Surgery, LLC



_____ Dated 9/21/2022

Annette P. Heller, Counsel for Petitioner

Bar #26,748MO

400 Chesterfield Center Suite 400

Chesterfield (St Louis), MO 63017 314-

469-2610 Fax 314-469-4850

Email: TMAAttorneyHeller@aol.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by via email on 9/23/22 to:

Frank J Bonini counsel for Registrant at fboninilaw.com

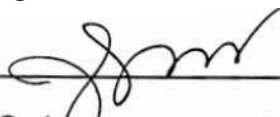
/aph72/

Annette P. Heller, Attorney for Petitioner

VERIFICATION

I, Judith Gurley, am a member of Judith Gurley Plastic Surgery, LLC. I believe, based on reasonable inquiry, the foregoing answers are true and correct to best of my knowledge, information and belief.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Judith Gurley

Dated 9/23/2022

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Petitioner's Amended Response to Registrant's First Set of Interrogatories

EXHIBIT L

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

Judith Gurley Plastic Surgery, LLC,

Petitioner

Cancellation No. **92078349**

Registration No. **5845907**

v.

David J. Witchell Salon & Spa, Inc.,

Registrant.

**PETITIONER'S AMENDED RESPONSE TO
REGISTRANT'S FIRST INTERROGATORIES TO PETITIONER**

COMES NOW Petitioner and for its amended responses to Registrant's Interrogatories
states as follows:

INTERROGATORY NO. 1:

Identify each service that You allege You have provided in commerce in connection with
Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Medical services in skin care; Cosmetic and plastic surgery.

INTERROGATORY NO. 2:

Identify each service that You allege You have provided in Missouri in connection with
Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to
November 14, 2016.

RESPONSE: See response to No 1.

AMENDED RESPONSE: Medical services in skin care; Cosmetic and plastic surgery.

INTERROGATORY NO. 3:

Identify each service that You allege You have provided in Illinois in connection with
Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to

November 14, 2016.

RESPONSE: See response to No 1

AMENDED RESPONSE: Medical services in skin care; Cosmetic and plastic surgery.

INTERROGATORY NO. 4:

Identify each natural person who has at any time provided a service in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Dr. Judith Gurley

INTERROGATORY NO. 5:

Identify each entity providing a service in connection with Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Judith Gurley Plastic Surgery, LLC

INTERROGATORY NO. 6:

Identify each person that you contend has knowledge of Petitioner's alleged use of NO ONE WILL KNOW... EVERYONE WILL NOTICE who may serve as a witness for Petitioner in this proceeding.

RESPONSE: See Petitioner's initial disclosures.

INTERROGATORY NO. 7:

Identify all documents related to Petitioner's adoption of NO ONE WILL KNOW... EVERYONE WILL NOTICE.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See exhibit B attached to the Petition and attached document of an ad in 2002 showing use by Petitioner of the trademark.

AMENDED RESPONSE: Petitioner directs Registrant to Exhibit B attached to its Petition and the ad in 2002 previously produced which demonstrates Petitioner's use of the trademark.

INTERROGATORY NO. 8:

Sate the legal and factual basis for Your contention that Registrant's use of Registrant's mark with "hair and skin salon services; beauty spa services, namely, cosmetic body care" services is likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner's Mark.

RESPONSE: The Trademark Examining Attorney has found Petitioner's trademark confusingly similar to Registrant's mark for the following reasons:

In this case, the compared marks both contain the phrases "NO ONE WILL KNOW" and "EVERYONE WILL NOTICE". Furthermore, confusion is likely between two marks consisting of reverse combinations of the same elements if they convey the same meaning or create substantially similar commercial impressions. TMEP §1207.01(b)(vii); see, e.g., *In re Wine Soc'y of Am. Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989) (holding THE WINE SOCIETY OF AMERICA and design for wine club membership services including the supplying of printed materials likely to be confused with AMERICAN WINE SOCIETY 1967 and design for newsletters, bulletins, and journals); *In re Nationwide Indus. Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (holding RUST BUSTER for a rust-penetrating spray lubricant likely to be confused with BUST RUST for a penetrating oil). In this case, despite the fact the phrases are transposed, they both convey the same meaning, that everyone will notice the clients' beauty transformations but no one will know where it came from.

The services are compared to determine whether they are similar, commercially related, or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The previously attached Internet evidence, consisting of PSS Medispa, Fenner, and Belmont Plastic Surgery, and the newly attached evidence, consisting of Radiance Medspa, Anew Skin, and Georgetown Allure, establishes that the same entity commonly provides cosmetic and plastic surgery, as well as beauty spa services, and markets the services under the same mark. Thus, applicant's and registrant's services are considered related for likelihood of confusion purposes. See, e.g., *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009). Based on the analysis above, applicant's and the registrant's services are related.

Conclusion Because applicant's and the registrant's marks are similar and the services are related, there is a likelihood of confusion and Applicant's applied-for mark must be refused under Section 2(d) of the Lanham Act.

INTERROGATORY NO. 9:

Identify each channel of trade, and/or each type of consumer that Petitioner considers to overlap between the channels of trade in which Registrant's services and Petitioner's services are marketed.

RESPONSE: None

INTERROGATORY NO. 10:

Identify each instance in which Petitioner is aware that "hair, skin, and nail care salon services, and/or beauty spa services, namely, cosmetic body care", are provided in connection with "medical, cosmetic and plastic surgery services".

RESPONSE: None

INTERROGATORY NO. 11

Identify each location by city and state, where any goods or services have been (I) offered, (I) promoted and advertised, and (iii) provided under Petitioner's Mark.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner provides services to clients living in the states surrounding the state of Missouri where Petitioner has its office.

AMENDED RESPONSE: Petitioner provides services to clients living in Missouri where Petitioner has an office and also provides services to client living in the states surrounding Missouri at its office.

INTERROGATORY NO. 12:

Describe in detail all past and existing relations, including contracts, agreements, licenses, assignments, or other relations, between Petitioner and any third party, including predecessor companies, related, or affiliated companies, relating in any manner to Petitioner's Mark.

RESPONSE: None

INTERROGATORY NO. 13

With respect to Petitioner's Mark, identify the person or persons most knowledgeable about Petitioner's sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights.

RESPONSE: See Petitioner's disclosures

INTERROGATORY NO. 14:

Identify all documents and set forth with specificity all facts regarding the selection by Petitioner (or Petitioner's predecessor) of Petitioner's Mark including, without limitation, the circumstances and method by which Petitioner adopted "NO ONE WILL KNOW . . . EVERYONE WILL NOTICE".

RESPONSE: No documents. Petitioner liked the tag line.

INTERROGATORY NO. 15:

Identify all persons who were involved in, or participated in any way with, the decision to adopt, register and/or use "NO ONE WILL KNOW... EVERYONE WILL NOTICE", and for each such person state his/her title and the role he/she played to adopt, register and/or use the "NO ONE WILL KNOW... EVERYONE WILL NOTICE".

RESPONSE: Dr Judith Gurley

INTERROGATORY NO. 16:

State whether any searches or investigations were conducted by Petitioner, its attorneys, or any persons on its behalf to determine whether Petitioner's Mark was available for use and/or registration, and, if so, identify each such search or investigation including the date such search or investigation was performed and the marks located in such search or investigation.

RESPONSE: None

INTERROGATORY NO. 17:

Identify all documents and set forth with specificity all facts with respect to any instance where a person or entity has been confused, mistaken, and/or deceived as to whether any goods or services advertised or sold under Petitioner's Mark are those of Registrant, or are connected or associated with Registrant, and for each such incident provide the date of such incident, the identity of the person or entity, and a detailed description of the circumstances of such confusion, mistake and/or deception.

RESPONSE: None

INTERROGATORY NO. 18:

Identify all documents and set forth with specificity the substance of each communication, oral or written, received by Petitioner, which suggests, implies or infers that any of the services provided by Petitioner under Petitioner's Mark, is a service of Registrant or is affiliated, connected and/or associated with Registrant, or which inquires as to whether there is or may be an affiliation, connection and/or association between Petitioner and Registrant, and identify any response(s) by Petitioner to each such communication.

RESPONSE: None

INTERROGATORY NO. 19:

Identify each person employed by Petitioner, or each outside agency or agent retained by Petitioner, who has been or now is responsible for the following activity with respect to any of the goods or services intended to be offered or rendered or actually offered or rendered under Petitioner's Mark:

- a. marketing;
- b. advertising and promotion; and
- c. bookkeeping and accounting.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 20:

For each of the services identified in response to Interrogatory No. 1, set forth the number of procedures, the number of unique patients, and dollar amounts of the annual revenues of such services, the dollar amount of annual advertising expenditure on such goods or services, and the individual media through which such advertising took place, and the dollar amount of advertising through each such media; and identify documents sufficient to support your response to this interrogatory.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is

irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 21:

State in detail the channels of trade in which Petitioner's Mark is used and/or in which services advertised and/or rendered in connection with Petitioner's Mark are provided, including the geographic area by state, territory or possession in which Petitioner's Mark is used and/or sold, the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify documents sufficient to support your response to this interrogatory.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner provides services to clients living in the states surrounding the state of Missouri where Petitioner has its office.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 22:

Identify each statement or opinion obtained by or for Petitioner regarding any issue in this cancellation proceeding including, but not limited to, whether the statement was oral or in writing, and identify all documents which record, refer to, or relate to such statement or opinion.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response: Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues,

and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 23:

Identify with specificity the marketing methods used in the advertising and/or sale of goods and/or services by or for Petitioner under Petitioner's Mark, including, without limitation, the names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which Registrant has advertised and intends to advertise its goods and/or services under Petitioner's Mark, and identify documents sufficient to support your response to this interrogatory.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner uses the internet and advertising methods normally used in this type of service.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent

registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 24:

Identify the ordinary purchaser of the goods or services sold and intended to be sold under Petitioner's Mark including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods or services sold under Petitioner's Mark.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: Petitioner provides services to individuals seeking medical services in the field of cosmetic and plastic surgery and cosmetic skin care..

AMENDED RESPONSE: Petitioner provides services to individuals seeking medical services in the field of cosmetic and plastic surgery and cosmetic skincare.

INTERROGATORY NO. 25:

Identify all documents relating to and set forth with specificity all facts regarding any instance where Petitioner has notified anyone that any trademark or service mark used by that person or entity infringed Petitioner's Mark and/or any mark of Petitioner that is closely similar to NO ONE WILL KNOW . . . EVERYONE WILL NOTICE , and for each such instance provide a detailed description of any action taken thereafter.

RESPONSE: None

INTERROGATORY NO. 26:

Identify each instance where Petitioner has been a party to any litigation or administrative proceeding, other than the present cancellation, involving Petitioner's Mark.

RESPONSE: None

INTERROGATORY NO. 27:

Describe the meaning and derivation of the phrase NO ONE WILL KNOW . . . EVERYONE WILL NOTICE as used in connection with the services of Petitioner or in connection with which Petitioner has used that phrase.

RESPONSE: The results of Petitioner's services are very natural so that it will not look like the person had surgery or other treatment.

INTERROGATORY NO. 28:

Identify each person providing "medical, cosmetic and plastic surgery services" services in connection with the use of "EVERYONE WILL NOTICE BUT NO ONE WILL KNOW".

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be

damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 29

State the legal and factual basis for the contention that any third-party use of “EVERYONE WILL NOTICE BUT NO ONE WILL KNOW” is not likely to cause confusion, mistake or to deceive with the Petitioner or Petitioner’s Mark.

RESPONSE: EVERYONE WILL NOTICE BUT NO ONE WILL KNOW is not Petitioner’s trademark but the Trademark Examining Attorney finds Petitioner’s trademark NO ONE WILL KNOW... BUT EVERYONE WILL NOTICE confusingly similar to Registrant’s trademark due to the fact that Registrant’s services include spa services where cosmetic services are offered. Since Registrant was unwilling to give consent to co-existing with Petitioner’s trademark and Petitioner use predates Registrant’s first use date, Petitioner’s only recourse to overcome the rejection was to petition to cancel Registrant’s registration.

INTERROGATORY NO. 30

Identify each instance in which any person (natural or juristic) indicated that he/she (or it) believed there was an association or connection between Petitioner and Juvéderm or Allergan.

RESPONSE: None

INTERROGATORY NO. 31

Identify each instance in which a natural person recognized Petitioner as the source of the services provided under Petitioner’s Mark.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant’s trademark since it prevents registration of Petitioner’s Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant’s trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 32

Identify each instance in which a natural person recognized a third-party as the source of services provided under Petitioner's Mark.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

AMENDED RESPONSE: None.

INTERROGATORY NO. 33

Identify each instance in which Petitioner provided a service under Petitioner's Mark before March 16, 2016.

RESPONSE:

AMENDED RESPONSE: Petitioner directs Registrant to its Petitioner including Exhibit B attached to its Petition and all documents previously produced including the ad in 2002 which demonstrates Petitioner's use of the trademark.

INTERROGATORY NO. 34

Identify Petitioner's first use of Petitioner's Mark in connection with "medical, cosmetic and plastic surgery services" services.

RESPONSE: First use is at least as early at 2002 per the ad attached to this response

INTERROGATORY NO. 35

Identify each document which Petitioner contends evidences Petitioner's use of NO ONE WILL KNOW . . . EVERYONE WILL NOTICE before March 16, 2016.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See exhibits attached to petition and attachment to Response 34

AMENDED RESPONSE: Petitioner directs Registrant to its Petitioner including Exhibit B attached to its Petition and all documents previously produced including the ad in 2002 which demonstrates Petitioner's use of the trademark.

INTERROGATORY NO. 36

Identify each document which You contend evidences continuous use of Petitioner's Mark from 2007 to the present.

RESPONSE: Petitioner objects on the grounds that this interrogatory is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See exhibits attached to petition and attachment to Response 34

AMENDED RESPONSE: Petitioner directs Registrant to its Petitioner including Exhibit B attached to its Petition and all documents previously produced including the ad in 2002 which demonstrates Petitioner's use of the trademark.

INTERROGATORY NO. 37

Identify all evidence which You contend supports Your allegation that "the relevant segment of the purchasing public has come to exclusively associate Petitioner's Mark with Petitioner's services".

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

AMENDED RESPONSE: None at this time.

INTERROGATORY NO. 38

Identify each brand of dermal fillers that Petitioner has used in connection with Petitioner's services (from 2006 to the present).

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response Petitioner objects to this Interrogatory as it calls for information that

is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 39

Identify each instance that Petitioner has used a Juvéderm (or Allergan) product in connection with Petitioner's services, including any use of dermal fillers belonging to the current Juvéderm collection of fillers, including, but not limited to: ® ®

- a. JUVÉDERM ® VOLUMA ® XC,
- b. JUVÉDERM ® VOLLURE XC,
- c. JUVÉDERM ® Ultra Plus XC,
- d. JUVÉDERM ® Ultra XC,
- e. JUVÉDERM ® Ultra XC, ®
- f. JUVÉDERM VOLBELLA XC, and/or
- g. Any other product related to cosmetic surgery and medical services that is sold under the brand name Juvéderm.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to

Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 40

Identify any and all license agreements that Petitioner has entered into regarding the use of Petitioner's Mark.

RESPONSE: None

INTERROGATORY NO. 41

Identify any and all license agreements between Petitioner and Allergan or any other company regarding a Juvéderm product.

RESPONSE: None

INTERROGATORY NO. 42

State the legal and factual basis for Your contention that Registrant's use of Registrant's Mark (EVERYONE WILL NOTICE. BUT NO ONE WILL KNOW.) is not confusingly similar to Petitioner's use of Petitioner's Mark (NO ONE WILL KNOW... EVERYONE WILL NOTICE.), as stated in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473.

RESPONSE: The services are different and offered in different channels of trade.

INTERROGATORY NO. 43

State the legal and factual basis for Your contention that Registrant and Petitioner's marks are "tag lines", as argued in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 27481.

RESPONSE: Tag lines are one of the many forms of trademarks.

INTERROGATORY NO. 44

State the legal and factual basis for Your contention that, "[when consumers are looking for services, it is the brand name that identifies the service provider not the tag line", as argued in Petitioner's Response filed on May 20, 2021 to an Office Action dated November 20, 2020 in Petitioner's US application serial no. 88304473.

RESPONSE: Besides brand names, consumers recognize products and services by logos, slogans or tag lines, characters, color and other recognizable elements used to promote products and services.

INTERROGATORY NO. 45

State the legal and factual basis for Your contention that Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE- 92078349-CAN-9 and TTABVUE-92078349-CAN-10) does not contain any use of Petitioner's Mark or any other confusingly similar mark by Allergan.

RESPONSE: There is no tag line or slogan in a prominent position anywhere in the exhibit showing trademark use of . Also note that Petitioner's first use is at least as early as 2002 as shown by the ad attached to Response 35

AMENDED RESPONSE: Everyone will notice but no one will know is Registrant's tag line not Petitioner's. Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10 demonstrate Registrant's failure to police its mark and lack of priority NOT Petitioner's Mark.

INTERROGATORY NO. 46

State the legal and factual basis for Your contention that Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE- 92078349-CAN-9 and TTABVUE-92078349-CAN-10) shows that Allergan's use of *everyone will notice (but no one will know)!*" from 2016-2018 constitutes a use of Registrant's "tag line".

RESPONSE: See Response to 45

AMENDED RESPONSE: Everyone will notice but no one will know is Registrant's tag line not Petitioner's. Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10 demonstrate Registrant's failure to police its mark and lack of priority NOT Petitioner's Mark.

INTERROGATORY NO. 47

Identify each type of use Petitioner contends is made in Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE- 92078349-CAN-9 and TTABVUE-92078349-CAN-10), including any trademark use, "tag line" use, or other use, by any third-party (that is, not Petitioner or Registrant).

RESPONSE: See Response to 45

AMENDED RESPONSE: Everyone will notice but no one will know is Registrant's tag line/mark not Petitioner's. Exhibit 44 to Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE-92078349-CAN-9 and TTABVUE-92078349-CAN-10 demonstrate Registrant's failure to police its mark and lack of priority NOT Petitioner's Mark.

INTERROGATORY NO. 48

State the legal and factual basis for the contention that Petitioner has used Petitioner's Mark in a manner that would be perceived by potential purchasers as identifying the Registrant's services and indicating their source by a direct association.

RESPONSE: The trademark is used prominently on the web site and in advertising.

INTERROGATORY NO. 49

State the legal and factual basis for the contention that Petitioner's Mark is used in such a way as to identify and distinguish Petitioner's services from any goods and services provided by Allergan.

RESPONSE: Petitioner's mark is for services and has been in use prior to any use by Allergan per the exhibits provided by Registrant in the exhibits attached to its answer

AMENDED RESPONSE: Petitioner's mark is for its services and Petitioner has been using mark prior to any use by Allergan per the exhibits provided by Registrant in Registrant's Answer and Affirmative Defenses filed on May 23, 2022 in this proceeding (TTABVUE- 92078349-CAN-9 and TTABVUE-92078349-CAN-10). Petitioner further states that Allergan's use or any other third party use is not at issue in the cancellation proceeding of Registrant's mark.

INTERROGATORY NO. 50

Identify each individual, tradename, business name, identity and/or fictitious name, for which Petitioner holds an insurance policy, in effect at the time of Petitioner's filing of this Cancellation proceeding, that covers any services provided by Petitioner.

RESPONSE: Petitioner objects to this interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark since it prevents registration of Petitioner's Application Serial No. 88304473, and the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registrant's trademark because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Amended Response Petitioner objects to this Interrogatory as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Interrogatory to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the

registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

INTERROGATORY NO. 51:

Identify each person who participated in or supplied information used in answering any of the above interrogatories; beside the name of each such person, state the number of the interrogatory answer(s) with respect to which that person participated in or supplied information.

RESPONSE: Dr Judith Gurley

Respectfully submitted,
Judith Gurley Plastic Surgery, LLC

By: 
Annette P. Heller

Dated: September 23, 2022

Heller & Associates
400 Chesterfield Center, Suite 400
Chesterfield, MO 63017
Tel: (314) 469-2610
Fax: (800) 469-4850
tmattorneyheller@aol.com

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by via email on 9/23/22 to:

Frank J Bonini counsel for Registrant at fboninilaw.com

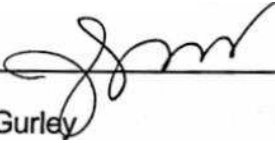
/aph72/

Annette P. Heller, Attorney for Petitioner

VERIFICATION

I, Judith Gurley, am a member of Judith Gurley Plastic Surgery, LLC. I believe, based on reasonable inquiry, the foregoing answers are true and correct to best of my knowledge, information and belief.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Judith Gurley

Dated 9/23/2022

Cancellation No. 92078349
Judith Gurley Plastic Surgery, LLC v. David J. Witchell Salon & Spa, Inc.

REGISTRANT'S MOTION TO COMPEL DISCLOSURE OR DISCOVERY AND TO TEST
THE SUFFICIENCY OF PETITIONER'S OBJECTONS

Petitioner's Amended Response to Registrant's First Requests for Production to Petitioner

EXHIBIT M

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

Judith Gurley Plastic Surgery, LLC,

Petitioner

Cancellation No. **92078349**

Registration No. **5845907**

v.

David J. Witchell Salon & Spa, Inc.,

Registrant.

**PETITIONER'S AMENDED RESPONSE TO
REGISTRANT'S FIRST REQUESTS FOR PRODUCTION TO PETITIONER**

COMES NOW Petitioner and for its amended responses to Registrant's Request for
Production of Documents states as follows:

REQUEST NO. 1

All documents evidencing the first use of the alleged mark NO ONE WILL KNOW...
EVERYONE WILL NOTICE claimed by Petitioner.

Attached to Interrogatories

Amended Response: See documents previously produced in response to Registrant's First
Request for Production of Documents and Interrogatories as well as the documents
attached to Petitioner's Petition to Cancel.

REQUEST NO. 2

All documents evidencing the first use in commerce of the alleged mark NO ONE
WILL KNOW... EVERYONE WILL NOTICE claimed by Petitioner.

See 1

Amended Response: See documents previously produced in response to Registrant's First
Request for Production of Documents and Interrogatories as well as the documents
attached to Petitioner's Petition to Cancel.

REQUEST NO. 3

All documents sufficient to show use each use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE, prior to March 16, 2016, by Petitioner or any person Petitioner considers to be a predecessor.

Petitioner objects on the grounds that this production is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiving them, Petitioner answers as follows: See attachments to Cancellation Petition and attached documents

Amended Response: See documents previously produced in response to Registrant's First Request for Production of Documents and Interrogatories as well as the documents attached to Petitioner's Petition to Cancel.

REQUEST NO. 4

All documents sufficient to identify each location at which services were performed by Petitioner under Petitioner's Mark NO ONE WILL KNOW... EVERYONE WILL NOTICE during all time periods within which Petitioner claims to have used Petitioner's Mark.

Petitioner objects on the grounds that this production is overbroad and unduly burdensome in time and scope, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Amended Response: See documents previously produced in response to Registrant's First Request for Production of Documents and Interrogatories as well as the documents attached to Petitioner's Petition to Cancel.

REQUEST NO. 5

All documents sufficient to identify each location at which services were performed by Petitioner prior to March 16, 2016 under the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

See response to 4

Amended Response: Petitioner states that this request is duplicative of Request No. 4 and therefore directs Registrant's attention to Petitioner's amended response to Request No.

4.

REQUEST NO. 6

All documents sufficient to identify each location at which services were performed by Petitioner between 2007 and March 16, 2016 under the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

See response to 4

Amended Response: Petitioner states that this request is duplicative of Request No. 4 and 5 and therefore directs Registrant's attention to Petitioner's amended response to Request No. 4.

REQUEST NO. 7

All evidence that Petitioner has that Petitioner believes identifies priority of use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE at a time before the November 14, 2016 filing of Registrant's application.

Petitioner objects to this request in that its burdensome. Subject to this objection, see response to 3

Amended Response: See documents previously produced in response to Registrant's First Request for Production of Documents and Interrogatories as well as the documents attached to Petitioner's Petition to Cancel.

REQUEST NO. 8

Documents sufficient to identify all persons that Petitioner is aware of and who have knowledge of Allergan's use of EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Petitioner object to this request in that it is not relevant to the issues in this proceeding and Allegan is not a party to this proceeding.

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to

the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 9

Documents sufficient to identify each person that Petitioner contends has knowledge of Petitioner's use of the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to the Registrant's application filing date of November 14, 2016.

None

REQUEST NO. 10

For each service identified that was provided under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE prior to November 14, 2016 (as per the request of Interrogatory No. 1 of Registrant's First Set of Interrogatories to Petitioner, and your response), produce all documents sufficient to identify each customer or recipient of the service, the service provided, and the manner of use of the mark.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of

Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 11

Produce documents sufficient to identify each natural person who has provided a service under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 12

Produce documents sufficient to identify the employer of the natural person when the natural person provided the service under Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the

burden and expense of the proposed discovery outweighs any likely benefit

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 13

Produce each insurance policy under which Judith Gurley Plastic Surgery, LLC operates when using the alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE that makes a specific reference to the term "trademark" or "service mark" .

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration

of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 14

Produce documents sufficient to identify each different form in which Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE was used by Petitioner.

See response to 3

Amended Response: See documents previously produced in response to Registrant's First Request for Production of Documents and Interrogatories as well as the documents attached to Petitioner's Petition to Cancel.

REQUEST NO. 15

Produce documents sufficient to identify each different form in which Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE was used by Petitioner prior to November 14, 2016..

See Response to 3

Amended Response: Petitioner states that this request is duplicative of Request No. 14 and therefore directs Registrant's attention to Petitioner's amended response to Request No. 14.

REQUEST NO. 16

Produce all searches, studies or investigations undertaken in connection with Your alleged mark NO ONE WILL KNOW... EVERYONE WILL NOTICE (this includes, but is not limited to, clearance searches, documents relating to uses of the mark or similar marks by others, investigations and the like).

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 17

Produce all searches, studies or investigations undertaken in connection with Registrant's Mark (this includes, but is not limited to, clearance searches, documents relating to uses of the mark or similar marks by others, investigations and the like).

See response to 16

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 18

All documents identifying the use or appearance of NO ONE WILL KNOW... EVERYONE WILL NOTICE by a person or entity other than Petitioner or Registrant.

See response to 16

Amended Response: None.

REQUEST NO. 19

All documents identifying the use or appearance of EVERYONE WILL NOTICE BUT NO ONE WILL KNOW by a person or entity other than Petitioner or Registrant.

See response to 16

Amended Response: None other than the documents previously produced by Registrant in response to Petitioner's First Request for Production of Documents and Interrogatories as well as the documents attached to Registrant's Motion to Dismiss and Answer to Petitioner's Petition to Cancel.

REQUEST NO. 20

All communications between You and any person or entity (other than Registrant) that uses NO ONE WILL KNOW... EVERYONE WILL NOTICE, or that uses a term similar to NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or

association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 21

All documents evidencing products or services of another that are provided in connection with a mark, slogan or phrase containing "EVERYONE WILL NOTICE".

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 22

All evidence that establishes any market penetration by Petitioner in the marketplace for medical services provided by Petitioner under Petitioner's Mark.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit

Amended Response Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 23

All agreements between Petitioner and any person relating to the usage of the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE (this includes any license, assignment, or other permission or limitation).

See response to 16

Amended Response: None.

REQUEST NO. 24

All agreements between Petitioner and any medical professionals, including, without limitation Dr. Gurley.

See response to 16

Amended Response: None.

REQUEST NO. 25

Any agreements between Dr. Gurley and any person relating to the use of the Petitioner's Mark
NO ONE WILL KNOW... EVERYONE WILL NOTICE.

See response to 16

Amended Response: None.

REQUEST NO. 26

All web sites and other marketing and advertising materials that display NO ONE
WILL KNOW... EVERYONE WILL NOTICE in connection with any services provided by
Petitioner.

See response to 3

**Amended Response: Petitioner states that this request is duplicative of Request No. 1, 2,
and 3 and therefore directs Registrant's attention to Petitioner's amended response to
Request No. 1, 2, and 3.**

REQUEST NO. 27

All documents relating to David J. Witchell, the natural person. (This request excludes
pleadings filed in this case, and correspondence with counsel for Registrant that may mention
Mr. Witchell.)

See response to 16

Amended Response: None.

REQUEST NO. 28

All documents mentioning David J. Witchell, the natural person. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

See response to 16

Amended Response: None.

REQUEST NO. 29

All documents mentioning David J. Witchell Salon & Spa, Inc., including the business David J. Witchell Salon & Spa. (This request excludes pleadings filed in this case, and correspondence with counsel for Registrant that may mention Mr. Witchell.)

See response to 16

Amended Response: None.

REQUEST NO. 30

All documents relating to use of EVERYONE WILL NOTICE BUT NO ONE WILL KNOW by Registrant.

See response to 3

Amended Response: None other than the documents previously produced by Registrant in response to Petitioner's First Request for Production of Documents and Interrogatories as well as the documents attached to Registrant's Motion to Dismiss and Answer to Petitioner's Petition to Cancel.

REQUEST NO. 31

All documents sufficient to show when Petitioner first gained knowledge of Registrant. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

See office action wherein the Trademark Examining Attorney cited Registrant registration.

Amended Response: Petitioner objects to this Request as it calls for information that is

irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 32

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant.

See response to 16

Amended Response: None other than the documents previously produced by Registrant in response to Petitioner's First Request for Production of Documents and Interrogatories as well as the documents attached to Registrant's Motion to Dismiss and Answer to Petitioner's Petition to Cancel.

REQUEST NO. 33

All documents sufficient to show when Petitioner first gained knowledge of Registrant's application for the Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested

information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 34

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant's application for Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW

See response to 31

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner

REQUEST NO. 35

All documents sufficient to show when Petitioner first gained knowledge of Registrant's use of Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW. (This includes attorneys for Petitioner as per the definitions and instructions above, and any other person acting for or on behalf of Petitioner.)

See response to 31

Amended Response: Petitioner states that this request is duplicative of Request No. 31 and 33 and therefore directs Registrant's attention to Petitioner's amended response to Request No. 31 and 33.

REQUEST NO. 36

All documents sufficient to show when Dr. Gurley first gained knowledge of Registrant's use of Registrant's Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW

See response to 31

Amended Response: Petitioner states that this request is duplicative of Request No. 32 and 34 and therefore directs Registrant's attention to Petitioner's amended response to Request No. 32 and 34.

REQUEST NO. 37

All documents sufficient to show when Petitioner first learned of any use by a person or entity, other than Registrant or Petitioner, of NO ONE WILL KNOW...
EVERYONE WILL NOTICE (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior

and superior rights of Petitioner.

REQUEST NO. 38

All documents sufficient to show when Petitioner first learned of any use by a person or entity, other than Registrant or Petitioner, of EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 39

All documents sufficient to show when Dr. Gurley first learned of any use by a person or entity, other than Registrant or Petitioner, of the mark NO ONE WILL KNOW... EVERYONE WILL NOTICE. (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 40

All documents sufficient to show when Dr. Gurley first learned of any use by a person or entity, other than Registrant or Petitioner, of EVERYONE WILL NOTICE, BUT NO ONE WILL KNOW (This does not include use by Registrant or Petitioner, but seeks Petitioner's knowledge of use by others, and includes knowledge of attorneys for Petitioner, and any other person acting for or on behalf of Petitioner.)

See response to 16

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473,

and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 41

All documents sufficient to show each instance when Petitioner used a Juvéderm (or Allergan) product in connection with Petitioner's services, including any use of dermal fillers belonging to the current Juvéderm collection of fillers, including, but not limited to:

- a. JUVÉDERM® VOLUMA® XC,
- b. JUVÉDERM® VOLLURE XC,
- c. JUVÉDERM® Ultra Plus XC,
- d. JUVÉDERM® Ultra XC,
- e. JUVÉDERM® Ultra XC, ®
- f. JUVÉDERM VOLBELLA XC, and/or
- g. Any other product related to cosmetic surgery and medical services that is sold under the brand name Juvéderm.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Furthermore, Allergan or the trademark Juvederm are not parties to this proceeding.

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior

and superior rights of Petitioner.

REQUEST NO. 42

All documents sufficient to show each instance when Petitioner used a dermal filler in connection with any service provided by Petitioner, and the name and/or brand of dermal filler used.

See response to 16

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 43

All documents relating to Petitioner's adoption and selection of Petitioner's Mark.

None

REQUEST NO. 44

All documents that were created or generated prior to Petitioner's alleged first date of use of Petitioner's Mark that mention Juvéderm.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at

stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Furthermore, Allergan or the trademark Juvederm are not parties to this proceeding.

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 45

All documents sufficient to show consumer recognition of Juvéderm with Allergan.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Furthermore, Allergan or the trademark Juvederm are not parties to this proceeding.

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or

deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 46

All documents sufficient to show any and all instances of confusion, in which a consumer indicated he/she recognized another entity as the source of the services provided in connection with NO ONE WILL KNOW... EVERYONE WILL NOTICE.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

Amended Response: None.

REQUEST NO. 47

All documents sufficient to show any and all instances of confusion, in which a consumer indicated he/she recognized another entity as the source of the services provided under the mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

Amended Response: None.

REQUEST NO. 48

All document sufficient to show any and all instances in which a consumer recognized any third party as the source of the services provided in connection with NO ONE WILL

KNOW... EVERYONE WILL NOTICE or EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

Amended Response: None.

REQUEST NO. 49

All documents sufficient to show any and all instances in which a consumer indicated he/she believed there to be an association or connection between Petitioner and a Juvéderm product or Allergan.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

Amended Response: None.

REQUEST NO. 50

All documents sufficient to show any and all correspondence between Petitioner and Allergan related to Petitioner's use of NO ONE WILL KNOW... EVERYONE WILL NOTICE or identifying EVERYONE WILL NOTICE. NO ONE WILL KNOW.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information

that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 51

All documents sufficient to show that Petitioner has made continuous use of Petitioner's Mark from 2007 to the present.

See response 3

Amended Response: See documents previously produced in response to Registrant's First Request for Production of Documents and Interrogatories as well as the documents attached to Petitioner's Petition to Cancel.

REQUEST NO. 52

All documents sufficient to show Petitioner's use of Petitioner's Mark in a manner that would be perceived by potential purchasers as identifying the Registrant's services and indicating their source by a direct association.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Subject to this objection None

Amended Response: None.

REQUEST NO. 53

All documents sufficient to show that Petitioner's Mark is used in such a way as to

identify and distinguish Petitioner's services from the goods and services provided by Allergan.

See response 3

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

REQUEST NO. 54


All insurance policies that Petitioner holds, that were in effect at the time of Petitioner's filing of this Cancellation proceeding, which (i) identify an individual, tradename, business name, identity and/or fictitious name, and (ii) which covers any services provided by Petitioner.

Petitioner objects to this request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit.

Amended Response: Petitioner objects to this Request as it calls for information that is irrelevant and disproportional to the needs of this matter, considering the importance of the issues at stake in this action, the controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and the burden and expense of the proposed discovery outweighs any likely benefit. Petitioner further objects to this Request to the extent it calls for information that is protected by work product privilege and/or attorney client privilege and/or confidential proprietary information that is not relevant nor proportional to this matter. Petitioner further supports this objection by stating the following: (a) the requested information is irrelevant for determining whether Registrant's trademark of Everyone Will Notice But

No One Will Know is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association with Petitioner or origin, sponsorship, or approval of Petitioner, (b) the requested information will not assist in determining whether Petitioner will be damaged by the continued registration of Registration No. 5845907 since it will prevent registration of Petitioner's Application Serial No. 88304473, and (c) the requested information will not assist in determining whether Petitioner will be damaged by the registration of Application Serial No. 88304473 because it would give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Respectfully submitted,
Judith Gurley Plastic Surgery, LLC


By: _____

Dated: September 23, 2022

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by via email on 9/23/22 to:

Frank J Bonini counsel for Registrant at fboninilaw.com

/aph72/

Annette P. Heller, Attorney for Petitioner