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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERAWAN FARMING, INC.,
Plaintiff,
vs.
PRIMA BELLA PRODUCE, INC.,
Defendant.

Case No. 1:10-cv-00148 LJO JLT
ORDER DENYING DEFENDANT’S
MOTION TO COMPEL
(Doc. 79)

_____ /

This matter comes before the Court on Defendant’s motion to compel. Defendant seeks further discovery responses to five interrogatories, seven deposition topics, and twelve requests for production of documents. In accordance with Local Rule 251, the parties have filed a joint statement regarding this discovery dispute. The parties have also appeared before the Court for hearing on this matter. Upon consideration of the parties’ submitted papers and the parties’ arguments made at hearing, the Court **DENIES** the motion.

I. BACKGROUND

This is an action for trademark infringement, trademark dilution, trademark cancellation, and unfair competition. Plaintiff seeks to recover damages and injunctive relief for infringement on its “PRIMA” trademarks (United States Trademark Registration Nos. 1,441,378 and 3,592,505), which are used in the distribution of fresh produce. (Doc. 13.) Defendant contests Plaintiff’s allegations and brings a counterclaim to cancel United States Trademark Registration Nos. 1,441,378, 3,592,505, and

1 1,585,993. (Doc. 21.)

2 Discovery conducted by Defendant in this action has included: (1) Requests for the Production
3 of Documents (Set One), which Plaintiff served responses to on March 7, 2011 (Doc. 93, Ex. A); (2)
4 Interrogatories (Set One), which Plaintiff served responses to on March 7, 2011 (Id., Ex. B); (3) a Rule
5 30(b)(6) deposition of Brent Hansston on April 7, 2011 (Doc. 97; Doc. 105, Ex. G); (4) a Rule 30(b)(6)
6 deposition of Denver Schutz on April 8, 2011 (Doc. 93, Ex. D); (5) a Rule 30(b)(6) deposition of George
7 Papangellin on April 12, 2011 (Doc. 93, Ex. E; Doc. 105, Ex. F); (6) a Rule 30(b)(6) deposition of Dan
8 Gerawan on May 4, 2011 (Doc. 93, Ex. I; Doc. 98; Doc. 105, Ex. H); and (7) a Rule 30(b)(6) deposition
9 of Michael Gerawan on May 5, 2011 (Doc. 99).

10 On May 17, 2011, Defendant filed the instant motion to compel further discovery. (Doc. 79.)
11 Defendant seeks further responses to Interrogatory Nos. 13, 14, 18, 20, and 21; Request for Production
12 of Document Nos. 9, 10, 11, 12, 13, 18, 20, 28, 19, 30, 45, and 51; and Deposition Topic Nos. 6, 8, 9,
13 13, 21, 22, and 23. (Id. at 4-14.) On June 13, 2011, the parties filed a joint statement on this discovery
14 dispute in accordance with Local Rule 251. (Doc. 92.) The parties appeared for hearing on this matter
15 on June 20, 2011.

16 **II. LEGAL STANDARD**

17 Federal Rule of Civil Procedure 26 provides a broad scope for discovery. Oppenheimer Fund,
18 Inc. v. Sanders, 437 U.S. 340, 351 (1978). Pursuant to Rule 26(b)(1), “[p]arties may obtain discovery
19 regarding any non-privileged matter that is relevant.” Fed. R. Civ. P. 26(b)(1). Relevancy, as used in
20 the context of discovery, has been construed liberally to encompass “any matter that bears on, or that
21 reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” See
22 Oppenheimer Fund, 437 U.S. at 351. “Relevant information need not be admissible at the trial” so long
23 as the discovery appears “reasonably calculated to lead to the discovery of admissible evidence.” Fed.
24 R. Civ. P. 26(b)(1).

25 If the responding party fails to produce discovery, the requesting party may move for an order
26 compelling discovery. See Fed. R. Civ. P. 37(a)(3)(B). On a motion to compel, the party seeking to
27 compel discovery bears the initial burden of showing that its discovery request satisfies the relevancy
28 requirements of Rule 26(b)(1). See Soto v. City of Concord, 162 F.R.D. 603, 610 (N.D. Cal. 1995). The

1 party resisting discovery then bears the burden of clarifying, explaining, and supporting its objections.
2 DIRECTV, Inc. v. Trone, 209 F.R.D. 455, 458 (C.D. Cal. 2002) (citing Blankenship v. Hearst Corp.,
3 519 F.2d 418, 429 (9th Cir. 1975)). If the objections are clearly articulated, the moving party must show
4 that the discovery request lies within the bounds of Rule 26. See Harcum v. LeBlanc, 268 F.R.D. 207,
5 210 (E.D. Pa. 2010) (citation omitted). The party resisting discovery ultimately carries the burden of
6 showing why discovery should not be allowed. Id.; Cable & Computer Tech, Inc. v. Lockheed Sanders,
7 Inc., 175 F.R.D. 646, 650 (C.D. Cal. 1997).

8 **III. DISCUSSION**

9 **A. Requests to Which Plaintiff Responded**

10 Here, Defendant explains, in a general fashion, how the discovery requests at issue are relevant
11 within the meaning of Rule 26(b)(1). However, Defendant fails to specifically identify how Plaintiff's
12 responses to the discovery requests are unresponsive or otherwise insufficient. See James Wm. Moore,
13 7 Moore's Federal Practice § 37.05[5] (3rd ed.) ("A motion to compel discovery or disclosure should
14 both identify specifically the portions of the responses that are inadequate, and explain, at least briefly,
15 what is missing or what kind of information would be necessary to make the response adequate.");
16 Local Rule 251 ("[A] motion made pursuant to Fed. R. Civ. P. 26 through 37. . . shall not be heard
17 unless . . .(2) the parties have set forth their differences and the bases therefor in a Joint Statement re
18 Discovery Disagreement.") Local Rule 251(c) sets forth the requirements of the joint statement and
19 requires, specifically,

20 the Joint Statement, which shall specify **with particularity** the following matters: . . .
21 (3) The contentions of each party as to each contested issue, including a memorandum
22 of each party's respective arguments concerning the issues in dispute and the legal
23 authorities in support thereof.

24 Each specific interrogatory, deposition question or other item objected to, or concerning
25 which a protective order is sought, and the objection thereto, shall be reproduced in full.
26 **The respective arguments and supporting authorities of the parties shall be set forth
27 immediately following each such objection . . .**

28 Defendant's failure to detail the deficiencies of Plaintiff's responses is particularly problematic here
because Plaintiff has in fact provided responses to many of Defendant's discovery requests.

For example, Defendant seeks additional testimony with respect to seven deposition topics, four
of which include: (1) complaints received by Plaintiff regarding its fruits or Defendant's produce; (2)

1 Plaintiff's historical production, sales, and distribution of certain stone fruits; (3) Plaintiff's total yearly
2 quantity and dollar sales of certain stone fruit; and (4) Plaintiff's total yearly quantity and dollar sales
3 of certain produce marketed as a "proprietary variety." (Doc. 92 at 8-9.) Plaintiff, however, indicates
4 that it has produced deposition witnesses pursuant to Rule 30(b)(6) on these matters. (Id. at 30-31.) In
5 fact, Plaintiff points to specific portions of the deponents' testimony wherein Defendant's requested
6 deposition topics were discussed. (See Doc. 99 at 80:12-99:20; Doc. 93, Ex. E at 159:24-165:5, 167:18-
7 168:9.) Defendant, in contrast, is silent as to why the testimony is either evasive or unresponsive. As
8 such, Defendant's motion to compel further testimony regarding Deposition Topic Nos. 6, 8, 9, and 13
9 must be denied. See Varsity Gold v. Bigham, No. C06-509RSM, 2007 U.S. Dist. LEXIS 41863, at *9
10 (W.D. Wash. June 1, 2006) (denying motion to compel where the moving party failed to identify any
11 specific deficiencies in the non-moving party's discovery responses).

12 The same holds true for Request for Production No. 18. Therein, Defendant requests Plaintiff
13 to produce all documents relating to the enforcement of the PRIMA trademark or slogan rights against
14 any person other than Defendant. (Doc. 92 at 6.) In response, Plaintiff has produced: (1) the pleadings
15 of Plaintiff's cases before the Trademark Trial and Appeal Board; (2) a cease and desist letter; and (3)
16 a confidential and non-confidential settlement agreement, among other things. (Doc. 93 at ¶ 5.) There
17 is no indication in either Defendant's motion to compel or in the parties' joint statement as to what else
18 Defendant seeks to have produced. Thus, Defendant's motion to compel a further response to Request
19 for Production No. 18 is denied.

20 The only discovery requests to which Defendant *arguably* makes a specific showing regarding
21 the sufficiency of Plaintiff's response are as to Requests for Production Nos. 20, 45, and 51. In these
22 requests, Defendant seeks the amount of money Plaintiff spent on advertising and promoting its
23 products. (Doc. 92 at 7-8.) Objections aside, Plaintiff responded by producing a summary statement
24 from its outside branding agency, MJR, covering ten years of advertising expenditures. (Id. at 21.)
25 Defendant suggests that this is insufficient. In Defendant's view, Plaintiff should have also produced
26 invoices, purchase orders, marketing plans, notes, proposals, meeting notes, and any other
27 communication associated with the advertising expenditures. (Id.)

28 The Court disagrees. As currently drafted, Request for Production Nos. 20, 45, and 51 request

1 the production of documents sufficient to show the amount Plaintiff spent on advertising. Defendant
2 obtained just that: raw numbers accounting for advertising expenses. To the extent that Defendant now
3 seeks to obtain invoices, marketing plans, or communications regarding advertising expenditures, such
4 documents are not encompassed by Defendant's initial discovery requests. Defendant cannot expand
5 the scope of its requests on a motion to compel. Accordingly, Defendant's motion to compel further
6 responses to Request for Production Nos. 20, 45, and 51 is **DENIED**.

7 **B. Requests to Which Plaintiff Objects**

8 Plaintiff stands on its objections to Interrogatory No. 18; Request for Production Nos. 28, 29,
9 and 30; and Deposition Topic Nos. 21, 22, and 23. Plaintiff objects to these discovery requests on the
10 grounds that they are vague, ambiguous, overbroad, unduly burdensome, and/or protected by the work
11 product doctrine and the attorney-client privilege. (Doc. 92 at 6, 9-10, 14-15.)

12 Defendant's failure to inform the Court of the reasons why it believes Plaintiff's responses are
13 deficient places the Court in an onerous position once again. Because Defendant has not supported its
14 own motion, the Court is left to guess which objections Defendant challenges and on what grounds it
15 believes the objections should be overruled. In other words, Defendant has abdicated its responsibility
16 as the moving party and has left the Court to advocate in its absence. This is something the Court will
17 not do. Accordingly, Defendant's motion to compel further responses to Interrogatory No. 18; Request
18 for Production Nos. 28, 29, and 30; and Deposition Topic Nos. 21, 22, and 23 is denied. See Heartland
19 Surgical Spec. Hosp., LLC v. Midwest Div., Inc., No. 05-2164-MLB-DWB, 2007 U.S. Dist. LEXIS
20 22090, at *80-81 (D. Kan. Mar. 26, 2007) (denying motion to compel where the issues presented were
21 not addressed by either party in a meaningful way; noting that the moving party must actually address
22 the resisting party's objections *first* before the court can reach any reasonable decision on the validity
23 of those objections).

24 **C. Requests to Which No Document Exists**

25 In Request for Production Nos. 9, 10, 11, 12, and 13, Defendant seeks the quantity and dollar
26 amount on a yearly basis for Plaintiff's sales or distribution of fruits and produce covered by Plaintiff's
27 varietal patents. (Doc. 92 at 11-14.) Plaintiff, however, has represented that such documents do not
28 exist because Plaintiff does not track its sales by varietal type. (Doc. 92 at 32; Doc. 93, Ex. E at 159:22-

1 165:5.) Defendant does not argue otherwise. Accordingly, because the Court cannot compel a party to
2 produce documents that apparently do not exist, Defendant’s motion to compel further responses to
3 Request for Production Nos. 9, 10, 11, 12, and 13 is denied. See Reish v. Pa. State University, Civil No.
4 4:09-CV-1273, 2011 U.S. Dist. LEXIS 55170, at *8 (M.D. Pa. May 24, 2011) (“It is clear that the court
5 cannot compel the production of things that do not exist.”).

6 **D. Requests to Which Plaintiff Will Supplement**

7 Finally, Plaintiff has affirmatively stated, in either its served discovery responses or in the joint
8 statement, that it is in the process of supplementing its responses to Interrogatory Nos. 13, 14, 20, and
9 21. (Doc. 92 at 4-5, 25, 31.) There is no indication by Defendant that such supplementation would be
10 insufficient. Defendant’s motion to compel further responses to Interrogatory Nos. 13, 14, 20, and 21
11 is therefore denied as moot. However, the Court reminds Plaintiff of its obligation under Federal Rule
12 of Civil Procedure 26(e) to supplement its discovery responses in a complete and timely manner.¹

13 **IV. CONCLUSION**

14 In sum, Defendant has failed to provide the Court with any meaningful explanation as to why
15 it believes Plaintiff’s discovery responses are deficient. Accordingly, it is **HEREBY ORDERED** that
16 Defendant’s May 17, 2011 motion to compel (Doc. 79) is **DENIED**.

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18 IT IS SO ORDERED.

19 Dated: June 23, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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28 ¹ Plaintiff’s counsel asserted at hearing that she intended to serve supplemental discovery responses by the end of
the week—by June 24, 2011.