

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 \* \* \*

4 T.R.P. COMPANY, INC.,

5 Plaintiff,

6 v.

7 SIMILASAN AG, et al.,

8 Defendants.

Case No. 2:17-cv-02197-JCM-CWH

**ORDER**

9  
10 Presently before the court is plaintiff T.R.P. Company, Inc.'s motion for order issuing a  
11 letter (ECF No. 72), filed on August 29, 2018. Defendant Similasan AG filed a response (ECF  
12 No. 73) on September 12, 2018. Plaintiff filed a reply (ECF No. 74) on September 18, 2018.

13 This case arises from allegations of trademark infringement. (Compl. (ECF No. 1).)  
14 Plaintiff alleges that it is the owner of a trademark for a homeopathic eye drop product known as  
15 PinkEyeRelief. (*Id.*) Plaintiff claims that defendant Similasan AG is a Swiss corporation that  
16 manufactures homeopathic remedies in Switzerland and sells the products in the United States  
17 through defendant Similasan Corporation. (*Id.*) Plaintiff further alleges that defendant  
18 Similasan AG used the name "Pink Eye Relief" for an eye drop product and then filed a United  
19 States trademark application for the product. (*Id.*) Plaintiff further alleges that the trademark  
20 application was denied due to the product's similarities to plaintiff's product. (*Id.*)

21 Defendants then moved to dismiss the complaint, and moved for a protective order or  
22 limited stay of discovery pending the court's resolution of the motions to dismiss. (*See* Mot. to  
23 Dismiss (ECF Nos. 56, 57); Mot. for Protective Order (ECF No. 54).) On November 27, 2018,  
24 the court denied defendants' motion to dismiss. (Order (ECF No. 76).) The court then denied  
25 defendants' motion to stay discovery as moot. (Min. Order (ECF No. 94).)

26 Plaintiff now moves for an order issuing a letter of request under the Hague Convention  
27 on the Taking of Evidence Abroad in Civil or Commercial Matters to obtain physical evidence  
28 from defendant Similasan AG. Defendant Similasan responds that the court should deny

1 plaintiff's request because discovery is not warranted, given the pending motion to dismiss and  
2 the motion to stay discovery. (Resp. (ECF No. 73).) Plaintiff replies that its motion is  
3 procedurally proper and that plaintiff is entitled to discovery. (Reply (ECF No. 74).)

4 The March 18, 1970 Hague Convention on the Taking of Evidence Abroad in Civil and  
5 Criminal Matters ("Hague Convention") is the "law of the United States" with the same effect and  
6 force of a federal statute. Hague Convention on the Taking of Evidence Abroad in Civil or  
7 Commercial Matters, art. 1, March 18, 1970, 3 U.S.T. 2555 (Oct. 7, 1972); *see also*  
8 *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for Southern Dist. of Iowa*, 482  
9 U.S. 522, 524 n.1 (1987). Signatories to the Hague Convention agree that a judicial authority in a  
10 contracting state may provide a letter of request to obtain evidence.<sup>1</sup> Hague Convention, art. 1, 3  
11 U.S.T. 2555. Both the United States and Switzerland are signatories to the Hague Convention.  
12 "[A letter of request] shall not be used to obtain evidence which is not intended for use in judicial  
13 proceedings." *Id.* Whether to issue the letter is within the discretion of the court. *See*  
14 *Aerospatiale*, 482 U.S. at 540-41. The court should first examine the facts of the case and the  
15 foreign sovereign's interests to determine whether the letter of request will be effective. *Id.* at  
16 543-44.

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17  
18  
19 <sup>1</sup> The letter Hague Convention requires the letter to specify:

- 20 (a) the authority requesting its execution and the authority requested to execute it, if  
21 known to the requesting authority;  
22 (b) the names and addresses of the parties to the proceedings and their representatives, if  
23 any;  
24 (c) the nature of the proceedings for which the evidence is required, giving all necessary  
25 information in regard thereto;  
26 (d) the evidence to be obtained or other judicial act to be performed.  
27 Where appropriate, the Letter shall specify, inter alia--  
28 (e) the names and addresses of the persons to be examined;  
(f) the questions to be put to the persons to be examined or a statement of the subject-  
matter about which they are to be examined;  
(g) the documents or other property, real or personal, to be inspected;  
(h) any requirement that the evidence is to be given on oath or affirmation, and any  
special form to be used;  
(i) any special method or procedure to be followed under Article 9.

Hague Convention, art. 3, 3 U.S.T. 2555.

1 Here, plaintiff filed this action against defendants for trademark infringement arising from  
2 defendants' homeopathic eye drops. Plaintiff maintains that the letter is necessary because Swiss  
3 defendant Similasan AG has declined to voluntarily produce the requested evidence and contests  
4 personal jurisdiction in this action. Plaintiff's proposed letter lists its interrogatories and the  
5 documents plaintiff wishes for Similasan AG to produce. (ECF No. 72-1.) The interrogatories  
6 concern Similasan AG's trademark application, licensing and use of the eye drop product, the  
7 development of the product, and internal policies regarding the product. The discovery request  
8 raises Switzerland's sovereign interests, as the discovery is intrusive. However, discovery is  
9 inherently intrusive and without the information plaintiff seeks, this court will be unable to  
10 determine the merit of plaintiff's claims.

11 Further, Similasan AG contests the issuance of such a letter because of the procedural  
12 posture of the case. The court notes that at the time plaintiff filed the instant motion, the court had  
13 not issued a ruling on defendants' motions to dismiss and motion to stay discovery. However, the  
14 court has since resolved the aforementioned motions. As such, Similasan AG's arguments are  
15 now moot. Accordingly, the court will grant plaintiff's motion.

16 IT IS THEREFORE ORDERED that plaintiff's motion for order issuing a letter (ECF No.  
17 72) is GRANTED. A signed copy of plaintiff's proposed request (ECF No. 72-1) is attached to  
18 this order.

19 IT IS FURTHER ORDERED that plaintiff must file an updated translation of the letter  
20 attached to this order within seven days from the date of this order. Plaintiff must also submit  
21 certification that the translated letter is a true and correct translation. Upon receipt of the translated  
22 letter and the certification, the court will affix its signature to the translated letter.

23  
24  
25 DATED: March 27, 2019

26  
27   
28 C.W. HOFFMAN, JR.  
UNITED STATES MAGISTRATE JUDGE

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 T.R.P. Company, Inc.,

CASE NO: 2:17-cv-02197-JCM-CWH

4 Plaintiff/Counter-Defendant,

5 vs.

6 Similasan AG and Similasan Corporation.

7 Defendants/Counter-Claimants.  
8

9 **REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE**  
10 **PURSUANT TO THE HAGUE CONVENTION OF 18 MARCH 1970**  
11 **ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR**  
12 **COMMERCIAL MATTERS TO OBTAIN RELEVANT PHYSICAL EVIDENCE AND**  
13 **TESTIMONY FROM SIMILASAN AG**

14 The Honorable Carl W. Hoffman, United States Magistrate Judge, of the District  
15 Court for the District of Nevada, presents his compliments to the Central Authority of the  
16 Canton of Aargau, Switzerland, and request international judicial assistance pursuant to the  
17 Hague Convention of 18 March 1970 on the Taking of Evidence in Civil or Commercial Matters,  
18 23 U.S.T. 2555, T.I.A.S. No. 7444 (the "Hague Evidence Convention"), to obtain evidence to  
19 be used in the above-captioned civil proceeding before this Court. This Court has determined  
20 that it would further the interests of justice if Similasan AG provided documents in its possession  
21 and answers to narrowly tailored questions relevant to the issues in this case.

22 This Request has been made upon the motion of Plaintiff and Counter-Defendant T.R.P.  
23 Company, Inc. ("TRP"), who has advised the Court that the evidence sought from Similasan AG  
24 as to the issues in this case is relevant and necessary for the due determination of the matters in  
25 dispute between the parties in this case involving violations of the Lanham Act, 15 U.S.C. §  
26 1051, et seq. including trademark infringement, false designation of origin, false advertising, and  
27 unfair  
28

1 competition, as well as common law claims under Nevada law of tortious interference with  
2 business relations, commercial disparagement, and unfair competition. Having considered the  
3 submissions of the parties, this Court has found that this Request is necessary in the interests of  
4 justice and for the purpose of a full and fair determination of the matters in issue among the parties  
5 to the pending proceeding.  
6

7 **SECTION I**

8 **1. Sender**

9 Michael N. Feder  
10 Dickinson Wright PLLC  
8363 West Sunset Road, Suite 200  
11 Las Vegas, Nevada 89113-2210  
United States of America  
12

13 Daniel S. Silverman  
Venable LLP  
14 2049 Century Park East, Suite 2300  
Los Angeles, California 90067  
15 United States of America

16 Meaghan H. Kent  
Venable LLP  
17 600 Massachusetts Ave., NW  
18 Washington, D.C. 20001  
United States of America  
19

20 *As Authorized By:*  
The Honorable Carl W. Hoffman  
21 United States Magistrate Judge  
District Court for the District of Nevada  
22 333 Las Vegas Blvd South  
Las Vegas, NV 89101  
23

24 **2. The Receiving (Central Cantonal) Authority is:**

25 Gerichte Kanton Aargau  
Generalsekretariat  
26 Obere Vorstadt 40  
5000 Aarau  
27 Switzerland  
28

1  
2 **3. Persons to Whom the Executed Request is to be Returned**

3 Dr. Christian Oetiker, LL.M., Attorney at Law  
4 Vischer AG  
5 Aeschenvorstadt 4, CH-4010 Basel  
6 Email: [coetiker@vischer.com](mailto:coetiker@vischer.com)  
7 Tel.: +41 58 211 33 00

8 On behalf of:

9 Daniel S. Silverman  
10 2049 Century Park East, Suite 2300  
11 Los Angeles, California 90067  
12 United States of America  
13 Email: [dssilverman@venable.com](mailto:dssilverman@venable.com)  
14 Tel.: +1 (310) 229-0373

15 **4. Specification of Date by Which the Requesting Authority Requires Receipt of the Response to the Letter of Request**

16 A response is requested as soon as possible, in order to ensure that the evidence may be  
17 obtained before the deadline for factual discovery to conclude, which has already been extended  
18 twice and is currently set for **March 15, 2019**.

19 **SECTION II**

20 **In conformity with Article 3 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, the undersigned applicant has the honor to submit the following request:**

21 **5. (a) Requesting Judicial Authority (Article 3(a))**

22 The Honorable Carl W. Hoffman  
23 United States Magistrate Judge  
24 District Court for the District of Nevada  
25 333 Las Vegas Blvd South  
26 Las Vegas, NV 89101  
27 United States of America

28 **(b) To the Central Authority of the Canton of Aargau, Switzerland**

Gerichte Kanton Aargau  
Generalsekretariat  
Obere Vorstadt 40  
5000 Aarau

1 Switzerland

2 **(c) Name of the Case and any Identifying Number**

3 *T.R.P. Company, Inc. v. Similasan AG et al*, Case No. 2:17-cv-02197-JCM-CWH, United  
4 States District Court for the District of Nevada.

5 **6. Names and Addresses of the Parties and Their Representatives (Article 3(b))**

6 **(a) Plaintiff**

7 T.R.P. Company, Inc.  
8 c/o Michael N. Feder  
9 Dickinson Wright PLLC  
10 8363 West Sunset Road, Suite 200  
11 Las Vegas, Nevada 89113-2210  
12 United States of America  
13 Tel. (702) 550-4400  
14 [mfeder@dickinson-wright.com](mailto:mfeder@dickinson-wright.com)

15 Daniel S. Silverman  
16 Venable LLP  
17 2049 Century Park East, Suite 2300  
18 Los Angeles, California 90067  
19 United States of America  
20 Tel. (310) 229-0373  
21 [dssilverman@venable.com](mailto:dssilverman@venable.com)

22 Meaghan H. Kent  
23 Venable LLP  
24 600 Massachusetts Ave., NW  
25 Washington, D.C. 20001  
26 United States of America  
27 Tel. (202) 344-4000  
28 [mhkent@venable.com](mailto:mhkent@venable.com)

**(b) Defendants**

Similasan AG and Similasan Corporation  
c/o Michael D. Rounds  
Ryan Cudnik  
Brownstein Hyatt Farber Schreck, LLP  
5371 Kietzke Lane  
Reno, NV 89511  
United States of America  
Tel. (775) 324-4100  
[mrounds@bhfs.com](mailto:mrounds@bhfs.com)  
[rcudnik@bhfs.com](mailto:rcudnik@bhfs.com)

1 Michelle Gillette  
2 Crowell & Moring LLP  
3 3 Embarcadero Center, 26th Floor  
4 San Francisco, CA 94111  
5 United States of America  
6 Tel. (415) 365-7445  
7 [mgillette@crowell.com](mailto:mgillette@crowell.com)

8 **7. Nature and Purpose of the Proceedings and a Summary of the Case (Article 3(c)):**

9 **(a) Nature of the Action**

10 The above-captioned case is a civil proceeding in the United States District Court for the  
11 District of Nevada. The litigation arises primarily out of a trademark dispute over TRP’s registered  
12 United States trademark PINKEYE RELIEF (No. 3,447,225), along with additional federal  
13 trademark claims, false advertising claims, and Nevada common law questions regarding business  
14 interference.

15 **(b) Summary of Complaint**

16 TRP primarily alleges infringement of the PINKEYE RELIEF mark by the defendants.  
17 TRP owns the registered mark PINKEYE RELIEF (No. 3,447,225) and first used it in commerce  
18 at least as early as 2007. Similasan AG attempted to file a trademark application for “Pink Eye  
19 Relief” on January 6, 2011 but the Trademark Examiner for the United States Patent and  
20 Trademark Office (“USPTO”) issued an office action on March 29, 2011 indicating that  
21 Similasan’s application was not entitled to registration “because of a likelihood of confusion with  
22 the mark in U.S. Registration No. 3447225.” Similasan AG subsequently abandoned its  
23 application. The defendants used the name “Irritated Eye Relief” for their homeopathic pink eye  
24 product until 2017, when they renamed their product “Pink Eye Relief” despite TRP’s trademark.  
25 TRP also alleges that defendants interfered with its longstanding business relationship with CVS  
26 Health, which decided to stop distribution of their products after an 11 year relationship. TRP’s  
27 complaint also includes claims regarding false statements made by Similasan about TRP’s  
28



1 products as well as false statements made by Similasan about Similasan’s products. Similasan AG  
2 admits that it manufactures Similasan’s Pink Eye Relief product.

3 **(c) Summary of Defense and Counterclaims**

4 Similasan AG contends that the United States Food and Drug Administration (“FDA”)  
5 required it to change its name from Pink Eye Relief, which it used from 2003 to 2011, to Irritated  
6 Eye Relief, but that its name change did not indicate an intent to abandon its use of “Pink Eye  
7 Relief” permanently. Similasan argues for cancellation of TRP’s trademark on the basis that TRP  
8 made a false statement to the USPTO that it did not know of Similasan’s use of the name when it  
9 applied for the trademark registration of “PINKEYE RELIEF” in 2006. Similasan has also brought  
10 counterclaims for false advertising and trademark infringement counterclaims for “Pink Eye  
11 Relief” as well as two other products: “Allergy Eye Relief” and “Earache Relief.”

12 **(d) Other Necessary Information**

13  
14 Similasan AG has denied that it is subject to personal jurisdiction in this matter. It claims that  
15 it manufactures the products but has no control over matters affecting the trademark usage or  
16 packaging. TRP contends that this assertion is contradicted by Similasan AG’s filing of a  
17 trademark application and persistent presence in the responsive documents provided by Similasan  
18 Corporation in the course of discovery between TRP and Similasan. TRP requires access to the  
19 responsive documents in the care of Similasan AG in order to further demonstrate jurisdiction over  
20 the entity. TRP also requires access to this evidence as part of its trademark infringement case and  
21 defenses to Similasan’s counterclaims.  
22

23 **8. (a) Evidence to be Obtained or Other Judicial Act to be Performed (Article 3(d)):**

24 TRP asks that its specific list of interrogatories in part 9 below be duly permitted by the Central  
25 Authority of the Canton of Aargau to be asked of Similasan AG. TRP contends that the brief list  
26 of seven narrowly-tailored questions for Similasan AG is necessary both to prove essential  
27  
28

1 elements of their claims and to establish certain defenses to the defendants' counterclaims. TRP  
2 also asks that its request for documents, enumerated in part 10 below, be duly enforced by the  
3 Central Authority of the Canton of Aargau against Similasan AG. TRP contends that the  
4 documents in the possession of Similasan AG are necessary to prove essential elements of their  
5 claims and to establish certain defenses to the defendants' counterclaims. Accordingly, the  
6 assistance of the Central Authority of the Canton of Aargau is hereby sought. It is respectfully  
7 requested that, in the interest of justice and for the purpose of discovering evidence for use in the  
8 judicial proceeding now being litigated before this Court and for the due determination of the  
9 matters in dispute between the parties hereto, the Central Authority of the Canton of Aargau direct,  
10 through competent authority, the entry of such orders as the law of Switzerland permits,  
11 compelling answers to the questions below and the production of documents responsive to TRP's  
12 requests.  
13  
14

15 **(b) Purpose of the Evidence or Judicial Act Sought:**

16 This evidence is intended for use in the above-captioned proceeding between TRP and the  
17 defendants. TRP wishes to use the information gathered from the documents in Similasan AG's  
18 possession to establish its claims and to defend against Similasan's counterclaims.  
19

20 **9. Documents or Other Property to be Inspected (Article 3(g)) – Interrogatories**

21 The following interrogatories are requested to be answered pursuant to and modeled on Federal  
22 Rule of Civil Procedure 33 ("Rule 33"). Rule 33 restricts the number of interrogatories to 25 per  
23 party, requires answers and objections within 30 days unless the Court orders otherwise, and  
24 permits the production of business records in place of a written answer if the documents would  
25 sufficiently answer the question asked. Rule 33 also defines the appropriate scope of the questions  
26 as "any nonprivileged matter that is relevant to any party's claim or defense and proportional to  
27 the needs of the case" while balancing the importance of the issues at stake, the amount in  
28

1 controversy, the parties' relative access to the information as well as their resources, and whether  
2 the burden of the proposed discovery outweighs its benefit. In order to fulfill the purpose of these  
3 questions for the United States proceedings, the executing Court is requested to execute this  
4 request in a manner similar to the one provided for in Rule 33.  
5

6 Nothing in the interrogatories shall call for the disclosure of information that is protected from  
7 disclosure under United States or Swiss law, including but not limited to, the attorney-client  
8 privilege and work-product doctrine. The following are the requested definitions and instructions  
9 for the interrogatories TRP requests to present to Similasan AG. Each interrogatory is followed by  
10 a one-sentence explanation of its relevance to the proceedings in the United States.

11 **Definitions:**

- 12
- 13 A. "Similasan AG" shall mean Defendant Similasan AG with its principal place of  
14 business located at Haus Similasan, Chriesiweg 6, 8916 Jonen AG, Schweiz, and its  
15 employees, agents, and representatives, and any and all other persons acting on its  
16 behalf.
- 17 B. "Similasan Corporation" shall mean Defendant Similasan Corporation, with its  
18 principal place of business located at 1805 Shea Center Drive, Suite 270, Highlands  
19 Ranch, CO, 80219 and its employees, agents, and representatives, and any and all  
20 other persons acting on its behalf.
- 21
- 22 C. "Plaintiff" or "TRP" shall mean T.R.P. Company, Inc.
- 23 D. The term "this Action" refers to *T.R.P. Company, Inc. v. Similasan AG and Similasan*  
24 *Corporation*, Case No. 2:17-cv-02197-JCM-CWH, pending before the United States  
25 District Court for the District of Nevada.
- 26 E. "Pink Eye Relief" shall mean Similasan's Pink Eye Relief product and all its past and  
27 present versions, including the Irritated Eye Relief product.  
28

1 **Instructions:** In addition to the substantive answer, Similasan AG should provide the source of  
2 the information with as much particularity as is reasonably possible and identify other persons  
3 known or believed to have some or all of the information sought in the given question. These  
4 requests are of a continuing nature and therefore Similasan AG should provide supplemental  
5 responses if it obtains further or different information after the date of the initial answer.  
6

7 **Interrogatories:**

8 1. Describe when Similasan AG first began developing the “Pink Eye Relief” relief  
9 product, the date the name “Pink Eye Relief” was developed, the dates that “Pink Eye Relief”  
10 was used in commerce in the United States, and the persons or entities with whom it worked in  
11 the development of the “Pink Eye Relief” product and name.  
12

13 **Relevance:** The answer to this question will assist the Court in the United States in  
14 establishing the timeline related to the first use and subsequent abandonment of the Pink Eye Relief  
15 trademark at issue in this Action and the entities involved in such development, use and  
16 abandonment.  
17

18 2. Describe Similasan AG’s decision to apply for, and then abandon the application  
19 for, trademark registration of “Pink Eye Relief” with the United States Patent and Trademark  
20 Office (“USPTO”) on January 6, 2011 (USPTO Application No. 85/212,101) and all persons or  
21 entities who were involved in the decision and process.  
22

23 **Relevance:** The answer to this question will clarify the parties’ arguments for the Court in  
24 the United States surrounding first use and abandonment of the Pink Eye Relief trademark at issue  
25 in this Action.  
26

27 3. Describe Similasan AG’s decision to apply for, and then abandon the application  
28 for, trademark registration of “Earache Relief” with the USPTO on January 6, 2011 (USPTO

1 Application No. 85/212,105) and all persons or entities who were involved in the decision and  
2 process.

3           **Relevance:** The answer to this question will clarify the parties' arguments for the Court in  
4 the United States surrounding first use and abandonment of the Earache Relief trademark at issue  
5 in this Action.  
6

7           4.       Describe Similasan AG's first knowledge of TRP's use of Pinkeye Relief® and  
8 TRP's U.S. Trademark Registration for PINKEYE RELIEF (Reg. No. 3,447,255).

9           **Relevance:** The answer to this question will inform the question of intent and willfulness  
10 for purposes of assessment of the parties' trademark claims by the Court in the United States.  
11

12           5.       Identify every version of the Pink Eye Relief product manufactured by Similasan  
13 AG and distributed in the United States and when each of those versions was sold in the United  
14 States and indicate whether each version included Belladonna and/or Silver Sulfate.

15           **Relevance:** The answer to this question will inform assessment by the Court in the United  
16 States of the parties' arguments regarding advertising the safety of their respective homeopathic  
17 pink eye products, including Similasan Corporation's counterclaims related to TRP's advertising.  
18

19           6.       Describe all manufacturing infractions or violations Similasan AG has incurred in  
20 connection with the manufacture of Pink Eye Relief or Earache Relief, including from any  
21 United States or international governmental agencies, including the United States Food and Drug  
22 Administration and Federal Trade Commission warning letters, and any actions Similasan AG  
23 took regarding those violations.

24           **Relevance:** The answer to this question will inform the assessment by the Court in the  
25 United States of the parties' arguments regarding advertising the safety of the Similasan AG Pink  
26 Eye Relief and Earache Relief products, as well as trademark infringement claims regarding the  
27 product labeling and trademark abandonment by Similasan AG and Similasan Corporation.  
28

1           7.       Describe the investigation and research Similasan AG has performed regarding  
2 the efficacy, safety or possible adverse effects of Pink Eye Relief, including its ingredients  
3 Belladonna and Silver Sulfate.

4           **Relevance:** The answer to this question will inform the assessment by the Court in the  
5 United States of the parties’ arguments regarding advertising the safety and efficacy of their  
6 respective homeopathic pink eye products.  
7

8           **10. Documents or Other Property to be Inspected (Article 3(g)) – Requests for  
9 Production**

10       The following requests for production are requested to be answered pursuant to and modeled  
11 on Federal Rule of Civil Procedure 34 (“Rule 34”). Rule 34 permits a party to request that another  
12 party produce relevant documents, provided that those documents are described with particularity  
13 and specify when and how they should be produced. Parties typically have 30 days to respond as  
14 to whether they will produce such documents or object to their production. The scope limitations  
15 for the request are the same as for those governed by Rule 33, as explained in part 9. In order to  
16 fulfill the purpose of these questions for the United States proceedings, the executing Court is  
17 requested to execute this request in a manner similar to the one provided for in Rule 34.  
18

19       Nothing in the requests shall call for the disclosure of information that is protected from  
20 disclosure under United States or Swiss law, including but not limited to, the attorney-client  
21 privilege and work-product doctrine. The following are the requested definitions and instructions  
22 for the document requests TRP seeks to present to Similasan AG. Each request is followed by a  
23 one-sentence explanation of its relevance to the proceedings in the United States.  
24

25       **Definitions:**

- 26           1. “Similasan AG” is defined in Part 9 above.  
27           2. “Similasan Corporation” is defined in Part 9 above.  
28           3. “Plaintiff” or “TRP” is defined in Part 9 above.

1 4. "Pink Eye Relief" is defined in Part 9 above.

2 5. The term "communication" means the transmittal of information by any means,  
3 including, without limitation, written, verbal, and electronic transmission of information.

4 6. The term "document" or "documents" as used herein shall have the broadest possible  
5 meaning ascribed to it by the Federal Rules of Civil Procedure 34(a) and shall in its broadest  
6 sense include, without limitation any and all written, printed, typed, recorded or graphic matter  
7 of every type and description, in Similasan AG's actual or constructive possession, custody or  
8 control.

9  
10 **Instructions:** Similasan AG should produce all responsive information and documents, including  
11 all electronically stored information and documents, in their original form. If only a portion of the  
12 document is responsive, the entire document should be produced subject only to the redaction of  
13 any privileged material. These requests are of a continuing nature and so Similasan AG should  
14 provide supplemental responses if it obtains further or different information after the date of the  
15 initial answer. Unless otherwise stated in the interrogatory request itself, produce documents and  
16 information from January 2002 onward.

17  
18 **Requests:**

19 1. Documents relating to Similasan AG's 2011 decisions to apply for, and then to  
20 abandon, the application for a trademark registration for "Pink Eye Relief" in the United States,  
21 including documents exchanged between Similasan AG, Similasan Corporation, or with any  
22 other entities.

23  
24 **Relevance:** The production of these documents will assist the parties and the Court in the  
25 United States in assessing personal jurisdiction and the viability of the parties' trademark  
26 infringement claims and abandonment defense.

1           2.       Documents relating to the change in product name from Pink Eye Relief to  
2 Irritated Eye Relief in 2011 and then back to Pink Eye Relief in 2017, including documents  
3 sufficient to evidence the rationale and decision to change these names on products, including  
4 documents exchanged between Similasan AG, Similasan Corporation, or with any other entities  
5 who would have participated in those decisions, such as manufacturers or marketing consultants.  
6

7           **Relevance:** The production of these documents will assist the parties and the Court in the  
8 United States in assessing personal jurisdiction and the viability of the parties' trademark  
9 infringement claims and abandonment arguments as well as willfulness and intent.

10           3.       License agreements, use agreements, or other authorization agreements that relate  
11 to the distribution of the Pink Eye Relief product in the United States, including agreements with  
12 Similasan Corporation or other distributing entities.  
13

14           **Relevance:** The production of these documents will assist the parties and the Court in the  
15 United States in assessing personal jurisdiction and the viability of the parties' trademark  
16 infringement claims and abandonment arguments.

17           4.       Documents sufficient to show the development of each version of Similasan AG's  
18 Pink Eye Relief product and the justification for the inclusion of Belladonna and Silver Sulfate,  
19 including documents sufficient to evidence any research performed regarding the safety, efficacy  
20 or adverse effects of the Pink Eye Relief product.  
21

22           **Relevance:** The production of these documents will assist the parties and the Court in the  
23 United States in assessing the viability of the false advertising claims at issue regarding the  
24 safety of Similasan AG's Pink Eye Relief product.

25           5.       Documents sufficient to show Similasan AG's policies and procedures for  
26 monitoring the manufacture of products in its facilities, namely the Pink Eye Relief product.  
27  
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1           **Relevance:** The production of these documents will assist the parties and the Court in the  
2 United States in assessing the viability of the false advertising claims at issue regarding the  
3 safety of Similasan AG’s Pink Eye Relief product.

4           6.       Documents sufficient to show any investigations or evaluations conducted by  
5 third parties or governmental entities of Similasan AG’s manufacturing facilities.

6           **Relevance:** The production of these documents will assist the parties and the Court in the  
7 United States in assessing the viability of the false advertising claims at issue regarding the  
8 safety of Similasan AG’s Pink Eye Relief product.

9           7.       Documents relating to the efficacy, safety, or possible adverse effects of the Pink  
10 Eye Relief product or any of the ingredients in the Pink Eye Relief product, including  
11 Belladonna and Silver Sulfate, including any documents exchanged between Similasan AG and  
12 Similasan Corporation.

13           **Relevance:** The production of these documents will assist the parties and the Court in the  
14 United States in assessing the viability of the false advertising claims at issue regarding the  
15 safety of Similasan AG’s Pink Eye Relief product.

16           8.       Documents sufficient to show any consumer complaints relating to the Pink Eye  
17 Relief product.

18           **Relevance:** The production of these documents will assist the parties and the Court in the  
19 United States in assessing the viability of the false advertising claims at issue regarding the  
20 safety of Similasan AG’s Pink Eye Relief product as well as the claims relating to trademark  
21 infringement and any harm caused by trademark infringement.

22           9.       Documents concerning the efficacy, safety, or possible adverse effects of TRP’s  
23 PinkEye Relief® product or any of the ingredients in TRP’s PinkEye Relief® product, or other  
24

1 competitors' homeopathic pink eye products, including any research performed and including  
2 documents exchanged between Similasan AG and Similasan Corporation.

3           **Relevance:** The production of these documents will assist the parties and the Court in the  
4 United States in assessing the viability of the false advertising claim at issue regarding the safety  
5 of TRP PinkEye Relief® product as well as the unfair competition, commercial disparagement,  
6 and interference with business relationship claims at issue in this case.  
7

8           10. Documents relating to Similasan AG's efforts to convince United States retailers  
9 to remove TRP's PinkEye Relief and Earache Relief products from their stores and replace  
10 them with Similasan's competing products, including communications with Similasan  
11 Corporation regarding those efforts and communications with retailers in furtherance of those  
12 efforts.  
13

14           **Relevance:** The production of these documents will assist the parties and the Court in the  
15 United States in assessing personal jurisdiction, as well as the viability of the unfair competition,  
16 commercial disparagement, and interference with business relationship claims at issue in this  
17 case.  
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19           11. Documents relating to Similasan AG's efforts to convince United States retailers  
20 that TRP could not use the words "pink eye" on its products, including communications with  
21 Similasan Corporation regarding those efforts and communications with retailers in furtherance  
22 of those efforts.  
23

24           **Relevance:** The production of these documents will assist the parties and the Court in the  
25 United States in assessing personal jurisdiction and the viability of the unfair competition,  
26 commercial disparagement, and interference with business relationship claims at issue in this  
27 case.  
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1           12. Documents relating to Similasan AG’s decision not to produce a new UPC/GTIN  
2 when it changed its pink eye product name in or around 2017 from Irritated Eye Relief to Pink  
3 Eye Relief, including communications with Similasan Corporation regarding those efforts and  
4 communications with retailers in furtherance of those efforts.  
5

6           **Relevance:** The production of these documents will assist the parties and the Court in the  
7 United States in assessing personal jurisdiction and the viability of the false advertising claims at  
8 issue regarding the safety of Similasan AG’s Pink Eye Relief product.

9           13. Documents relating to any manufacturing infractions or violations Similasan AG  
10 has received, including in connection the Pink Eye Relief product, as well as any warning letters  
11 from the U.S. Food and Drug Administration (“FDA”) or similar letters from other  
12 governmental agencies, and actions taken by Similasan AG regarding the infractions or  
13 violations.  
14

15           **Relevance:** The production of these documents will assist the parties and the Court in the  
16 United States in assessing personal jurisdiction and the viability of the trademark infringement  
17 and false advertising claims at issue in this case.

18           **11. Special Methods or Procedures to be Followed (Article 3(i))**

19           It is respectfully requested that the responses to the interrogatories and requests for production  
20 follow the prescribed methods in the instructions above, which are pursuant to United States  
21 procedural guidelines, most notably Federal Rules of Procedure 33 and 34, respectively.  
22 Furthermore, TRP requests that Similasan AG provide general information regarding responsive  
23 documents in their possession over which they claim privilege separately. All documents are  
24 requested to be provided in either their original physical or original electronic format.  
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1 assistance of the type herein requested is authorized by the law of Switzerland and, in particular,  
2 by the Hague Evidence Convention.

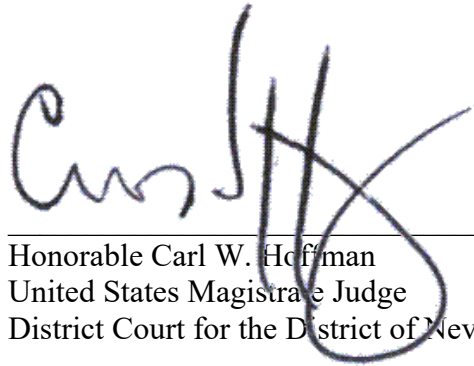
3 Dated: Las Vegas, Nevada

4 March 27, 2019

5 Signature and seal of the requesting authority:

6 [Seal of the Court]

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Honorable Carl W. Hoffman  
United States Magistrate Judge  
District Court for the District of Nevada