

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

TRIPLE CROWN AMERICA, INC. : CIVIL ACTION  
 :  
 v. :  
 :  
 BIOSYNTH AG and BIOSYNTH :  
 INTERNATIONAL, INC. : NO. 96-7476

MEMORANDUM ORDER

Presently before the court is plaintiff's Motion for Sanctions (Doc. #107) and defendants' response thereto. By order of July 1, 1999, this motion was denied in part and left open to be resolved at this time as it relates to the deposition of Hans Spitz.

Plaintiff contends that Mark Halligan, defendants' counsel, obstructed the deposition of Hans Spitz by coaching the witness, lodging "speaking objections" and attempting to intimidate plaintiff's counsel. Mr. Halligan and counsel for plaintiff each took exception on the record to the other's conduct during the deposition. Each accused the other of shouting and engaging in intimidating and unduly aggressive behavior. During arguments that developed between counsel, Mr. Halligan did lodge several lengthy objections. Plaintiff has not, however, identified any instances in which Mr. Halligan actually suggested answers to Mr. Spitz. Although it appears from the deposition transcript that counsel for both sides sometimes engaged in less than ideal professional behavior,

plaintiff has not demonstrated that Mr. Halligan in fact obstructed the deposition of Mr. Spitz.

Plaintiff also contends that defendants did not properly prepare Mr. Spitz to testify as a corporate representative as required by Fed. R. Civ. P. 30(b)(6). Rule 30(b)(6) requires a corporation to designate a witness or witnesses that have knowledge of all the matters noticed for deposition that are reasonably available to the corporation or alternatively to prepare a witness with such information. See, e.g., Rainey v. American Forest and Paper Ass'n, 26 F. Supp. 2d 82, 94 (D.D.C. 1998); Ierardi v. Lorillard, Inc., 1991 WL 158911, at \*3 (E.D. Pa. Aug. 13, 1991).

Plaintiff's deposition notices requested the person or persons designated by Biosynth AG and Biosynth International "as most knowledgeable regarding Biosynth Intl.'s and Biosynth AG's production and sale of Melatonin from 1990 to the present." Defendants were obligated to designate or prepare someone to testify about matters within the scope of the notices. Some of the unanswered questions posed by plaintiff's counsel such as those about the age of former Biosynth International employee Chuck Feit when he left the company and about collateral legal proceedings involving plaintiff's attempt to obtain documents from a third party were not fairly within the scope of the notice served upon defendants. Nevertheless, it is clear from the

deposition transcript that defendants did not fulfill their obligation properly to prepare a designee. Mr. Spitz answered "I don't know" or "I don't recall" to more than 200 questions of clear relevance to the requested matters of examination and within the availability of defendants. For example, he professed not to know which companies supplied melatonin to Biosynth AG from 1993 to 1996, whether in September 1994 Biosynth AG would have supplied melatonin to an American company or at what price Biosynth International sold melatonin. Moreover, Mr. Spitz admitted that he did not prepare for the deposition.

**ACCORDINGLY**, this                    day of July, 1999, upon consideration of plaintiff's Motion for Sanctions (Doc. #107) and defendants' response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in that defendants shall prepare Mr. Spitz or another designee knowledgeably to answer questions on all matters reasonably available to defendants regarding Biosynth International and Biosynth AG's production and sale of Melatonin from 1990 to the present and shall, at their expense, make such designee available for deposition by plaintiff by July 19, 1999.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**