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

EUGENE R. BURKARD,)
)
Opposer,)
)
v.)
)
HONEYBUNS APPAREL, INC.,)
)
Applicant.)



07-08-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #54

Opposition No. 124,983

Assistant Commissioner for Trademarks
Box TTAB NO FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

APPLICANT'S MOTION TO COMPEL DISCOVERY

Applicant, Honeybuns Apparel, Inc. makes this request pursuant to Fed. R. Civ. P. 37(a) and to 37 CFR 2.120(e) which provides that "[a] party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy."

TRADEMARK TRIAL AND APPEAL BOARD
AUG 8 2002
02 JUL

Introduction

The present motion concerns opposer, Eugene R. Burkard's failure to respond to applicant's discovery requests. In particular, opposer has failed to respond in any way to any of applicant's discovery requests, including:

- (1) Interrogatory Nos. 1-25;
- (2) Requests for Admissions Nos. 1-37; and

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(3) Requests for Production of Documents and Things Nos. 1-33.

Applicant asks the Board to compel opposer to respond to the aforementioned Interrogatories and Requests for Production of Documents and Things.

Furthermore, applicant notes that Fed. R. Civ. P. 36(a) provides that “[a Request for Admission] is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party’s attorney.” Accordingly, applicant asks the Board to deem applicant’s Requests for Admissions Nos. 1-37 admitted by opposer.

Pursuant to 37 CFR 120, copies of such discovery requests are attached hereto as Exhibit A.

Statement of Facts

Opposer filed the present opposition on September 18, 2001, and applicant filed its answer timely on April 5, 2002. On April 26, 2002, applicant served discovery requests on opposer via first class mail. Included in those requests were (1) Interrogatory Nos. 1-25; (2) Requests for Admissions Nos. 1-37; and (3) Requests for Production of Documents and Things Nos. 1-33. Opposer’s responses thus were nominally due on May 31, 2002.

Nevertheless, Opposer requested, and was given, fourteen (14) additional days to respond to applicant's discovery requests, thus extending the relevant due date to June 14, 2002. No responses to the discovery requests, or requests for further extension of time, were received by applicant.

The undersigned attorney for applicant made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefore, the issues presented in the motion. However, applicant, through its undersigned attorney, has been unable to reach agreement regarding response to applicant's discovery requests. In fact, the undersigned attorney for applicant has received no response to its attempted contact of attorney for opposer. Accordingly, applicant has filed this motion.

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Conclusion

Pursuant to Fed. R. Civ. P. 37, and 37 CFR 2.120, applicant hereby requests the Board to issue an order compelling opposer to respond fully to applicant's Interrogatory Nos. 1-25 and Requests for Production of Documents and Things Nos. 1-33. Furthermore, pursuant to Fed. R. Civ. P. 36(a), applicant hereby requests the Board to issue an order deeming applicant's Requests for Admissions Nos. 1-37 admitted. Finally, pursuant to 37 CFR 120(e)(2), applicant asks the Board to suspend this case pending resolution of this matter, and to reset discovery and testimony periods accordingly.

DATED this 2nd day of July, 2002.

Respectfully submitted,

KOLISCH, HARTWELL, DICKINSON
McCORMACK & HEUSER



Walter W. Karnstein
Registration No. 35,565
Of Attorneys for Applicant
520 S.W. Yamhill Street, Suite 200
Portland, Oregon 97204
Telephone: (503) 224-6655
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513.



Walter W. Karnstein
Date of Signature: July 2, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION TO COMPEL DISCOVERY was served on Opposer by service on its attorney, Neil F. Martin, Esq. of the firm Brown, Martin, Haller & McClain LLP of 1660 Union Street, San Diego, California 92101, by mailing same via first class mail, postage prepaid, in an envelope to the aforementioned address on this 2nd day of July, 2002.



Walter W. Karnstein
of Attorneys for Applicant

response to these inquiries at such time and to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

As used herein, the following terms shall have the meanings indicated.

"Opposer" shall mean and refer to Eugene R. Burkard and any predecessor or successor thereof that has used or owned the mark BUNS as shown in United States Registration No. 1,023,313.

"You" or "your" or "your company" or "your company's" means Opposer, its present and former owners, directors, officers, employees, consultants, agents or representatives, any predecessor corporation or firm operating under a different name, and any past or present parent, subsidiary (whether wholly or partially owned), or affiliated corporation or firm, (whether wholly or partially owned), and any owner, director, officer, employee, consultant, agent or representative of any such predecessor, parent, subsidiary or affiliated corporation or firm and all other persons, corporations, companies, joint ventures or partnerships acting or purporting to act on behalf of Opposer, whether for profit or not for profit, and without limitation with regard to the enabling or authorizing statutes of any sovereign.

"Applicant" shall mean and refer to the Applicant, Honeybuns Apparel, Inc., and includes the Applicant herein, and any predecessor or successor thereof.

"Documents" shall mean writings of any kind, source, or authorship, irrespective of whether the writing is one intended for or transmitted between the parties hereto or intended for or transmitted between the legal, audit, or financial entities or personnel, or otherwise. The term shall include papers in handwritten, typewritten, printed, electronic, or photocopied form. The term shall include communications in words, symbols, pictures, sound recordings, or combinations thereof. For purposes of illustration and not limitation, as applicable to a full and complete response

consistent with the principles of discovery, it shall include forms, trip reports, teleconference memoranda, drawings, sketches, specifications, manuals, catalogs, circulars, advertising and promotional literature, agreements, minutes of conferences, memoranda of all kinds to and from any persons, reports, evaluations, advice, recommendations, commentaries, conclusions, studies, test runs, procedures, data, results and conclusions, records of administrative, technical or financial actions taken or recommended, and all other writings, the contents of which relate to, discuss, consider, or otherwise refer to the subject matter of the particular interrogatory.

Whenever appropriate in these interrogatories the singular form of a word shall be interpreted as plural as necessary to bring within the scope of these interrogatories any response which might otherwise be construed to be outside its scope.

"And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories any response which might otherwise be construed to be outside its scope.

As used in these interrogatories, the term "all" shall mean any and all, and "any" shall likewise mean any and all, unless the context requires otherwise.

To "identify" or to state the identity of a person shall mean to state with respect thereto:

- (a) his, her, or its name and last known business address and, if a natural person, his or her last known residence address; and
- (b) if a natural person, the name and last known business address of his or her employer at the time referred to in the answer and at the present time, the employment position held by said employee with each said employer and the dates when employment began and ceased.

"Person" shall mean a natural person, a governmental agency, a private firm, a corporation, an association, a partnership, a joint venture, or other form of entity.

To "identify" or to state the identity of a document shall mean to state with respect thereto:

- (a) the name of the person who prepared it;
- (b) the name of the person who signed it or over whose name it was issued;
- (c) the name of each person to whom it was addressed or distributed;
- (d) the nature and substance of the writing with sufficient particularity to enable it to be identified;
- (e) its date or, if there is no date, the date when it was prepared or the date when it was believed to have been prepared; and
- (f) the physical location of the document and the name and address of its custodian or custodians.

To "identify" or to state the identity of any oral communication shall mean to state with respect thereto:

- (a) the name of each person who participated in the communication and the name of each person who was present at the time it was made;
- (b) by whom each such person was employed and by whom each such person represented or purported to represent in making such oral communications;
- (c) the date when and place where such oral communication took place; and
- (d) the identification of each writing or recording pertaining to such oral communication.

To "identify" a meeting shall mean to state:

- (a) the date or dates of the meeting;

- (b) the place of the meeting;
- (c) the persons who attended the meeting; and
- (d) the person who called the meeting.

As used herein, use of the terms "mark," or "trademark," without further qualification, shall be interpreted to refer to the mark BUNS as shown in United States Registration No. 1,023,313.

If any of these interrogatories are objected to on the grounds of any claim or privilege, state separately with respect to each such claim and objection: a statement of facts constituting the basis for any claim of privilege, work product, or other ground of non-disclosure; a brief description of any related document, including the date of the document, name of its author, authors, or preparers and identification by employment and title of each such person; names of each person who was sent or has had access to, or custody of the document an identification of each person; the interrogatory to which the document related; and in the case of any document relating in any way to a meeting or conversation, identification of such meeting or conversation.

As to any document of which identification is requested herein which is not presently in Opposer's possession or subject to Opposer's control, identify each person whom Opposer has reason to believe had or has knowledge of its contents and each person whom Opposer has reason to believe received a copy thereof.

To the extent any interrogatory calls for identification or description of any person or thing in the present tense, the interrogatory should be interpreted to encompass identification or description of any responsive person or thing at any time relevant to the instant action, not less than two years from the date of filing of the action.

INTERROGATORIES

Interrogatory No. 1:

With respect to Opposer state:

- (a) any business entity with which Opposer is affiliated, how the Opposer is affiliated, and each such business entity's type of business organization;
- (b) if a corporation, its place and date of incorporation;
- (c) the locations of each business office, factory, or other stationary place of business, specifying the nature of each of the business activities carried on at each such location;
- (d) describe Opposer's business, its purposes, territorial extent, how it operates and goods or services produced, sold or promoted; and
- (e) any subsidiaries, affiliated companies, parent companies or divisions of Opposer.

Interrogatory No. 2:

State the general nature of the business of Opposer, and describe with particularity, the goods and services provided by Opposer and the dates when each such product and service was first offered by Opposer.

Interrogatory No. 3:

Identify each and every mark and trade name licensed or owned by Opposer, and for each such mark or trade name:

- (a) state the products or services on which the mark or trade name is used or is intended to be used;
- (b) the dates of first use and first use in commerce, or the date an application alleging intent to use the mark was filed;

- (c) whether the mark has been used continuously since such first use; and
- (d) if the mark has not been used continuously since such first use, the dates of non-use and reasons for such non-use.

Interrogatory No. 4:

Identify each and every product or service on which BUNS is used, has been used, and is intended to be used, including:

- (a) the type of product(s) or service(s);
- (b) any other marks used with the product(s) or service(s);
- (c) the channel(s) of trade through which each product or service is distributed, or is intended to be distributed;
- (d) the time period during which each product or service was offered or is intended to be offered;
- (e) any periods of non-use including the reasons for such non-use; and
- (f) the extent of distribution by state and geographic area of the each product or service, or the extent of intended distribution.

Interrogatory No. 5:

For each product or service identified in Interrogatory No. 4:

- (a) list the sales outlets for each product by giving store categories and specific representative store names and addresses;
- (b) describe in detail the types of purchasers and ultimate users of each product or service; and

- (c) state Opposer's total dollar volume arising from each product or service for each year from the date on which it was first provided to the present, and the price of each product or service.

Interrogatory No. 6:

State the facts surrounding Opposer's selection, investigation, searching, clearance, and adoption of BUNS to identify underwear pants for men and women, and identify the person(s) who has (have) the most knowledge with respect thereto.

Interrogatory No. 7:

Describe with particularity the circumstances of Opposer's first use in commerce of BUNS in connection with underwear pants for men and women, including:

- (a) a description of how the mark was used (e.g., on product, in newspaper advertisements, on brochures, etc.);
- (b) an identification of the particular product(s) or service(s) in connection with which the mark was used, or intended to be used;
- (c) a description of the details of any bona fide sale of products or services was made, including the place or places the sale was made, the date, the parties to the sale, and the quantity of product(s) bearing the mark which were sold;
- (d) the dates upon which literature or advertisements of Opposer bearing BUNS in connection with underwear pants for men and women was first disseminated or distributed; and
- (e) an identification of the person(s) most knowledgeable concerning the date of first use of BUNS in connection with underwear pants for men and women.

Interrogatory No. 8:

Identify all persons including employees of Opposer and all outside agents or agencies who have been or now are responsible for the marketing, sale, or distribution of products or services provided in association with the mark BUNS from Opposer's date of first use thereof to the present and indicate the period during which each was responsible.

Interrogatory No. 9:

State the annual amount Opposer has spent on advertising and promoting underwear pants for men and women in connection with the mark BUNS for each year from Opposer's first use of BUNS to the present, and identify the person(s) most knowledgeable with respect to such advertising and promotion.

Interrogatory No. 10:

Provide the name and address of the advertising agency(ies) in the U.S. and abroad which produce advertisements featuring BUNS, including an identification of the individual(s) responsible for Opposer's account for underwear pants for men and women in connection with which BUNS is used.

Interrogatory No. 11:

List the trade shows, if any, by name, date and location attended by Opposer or its agents or marketing representatives.

Interrogatory No. 12:

Identify all judicial or administrative proceedings, including case docket number and filing dates, in which Opposer is or has been involved regarding its use of BUNS, or variants thereof, and identify the person(s) most knowledgeable as to such proceedings.

Interrogatory No. 13:

State whether Opposer knows of, or has facts relating to, any instances where any person in the trade or among the public:

- (a) has contacted Opposer regarding Applicant or Applicant's products or services;
- (b) has been confused, mistaken, or deceived in any way as to the identity or source of Opposer's goods sold or advertised under BUNS or the source of Applicant's goods sold or advertised under HONEYBUNS (stylized); or
- (c) has been otherwise confused, mistaken, or deceived in any way as to the identities of the businesses conducted by Opposer and Applicant.

Interrogatory No. 14:

As to each subparagraph of Interrogatory No. 13 which is answered in the affirmative, state separately with respect to each such instance:

- (a) the description of it;
- (b) the date and place it occurred;
- (c) the identity of the persons involved; and
- (d) the identity of the person who initiated the communication.

Interrogatory No. 15:

State the date when Opposer or any related party first became aware of the existence of Applicant's use of HONEYBUNS (stylized), and describe the circumstances related thereto, including the identity of such person(s).

Interrogatory No. 16:

Identify any policy which Opposer has regarding the use, display, and advertising of BUNS.

Interrogatory No. 17:

Identify each subsidiary, affiliate, agent, parent, or any other person or entity whom Opposer has permitted to use "buns" or any variants thereof.

Interrogatory No. 18:

With respect to each person or entity identified in response to Interrogatory No. 17:

- (a) identify the marks, including "buns" or variants thereof, which each person or entity used or is using under permission of Opposer;
- (b) identify the products with respect to which each person or entity used or is using "buns" or any variants thereof;
- (c) state whether Opposer has exercised control over the nature and quality of the goods in connection with which any such person or entity used "buns" or any variants thereof, and, if so, state in which way such control was exercised;
- (d) describe the relationship between Opposer and any such person or entity; and
- (e) state whether any contract exists or has existed between Opposer and any such person or entity as to the use of "buns" or any variants thereof, and, if so, identify each such contract and each person having custody of such contracts.

Interrogatory No. 19:

List each state in which Opposer has become registered to do business in the United States.

Interrogatory No. 20:

List each state in which Opposer files tax returns in the United States.

Interrogatory No. 21:

List each facility, including, but not limited to, offices, warehouses, plants, etc. which Opposer maintains any operation in the United States, including addresses of the facilities and dates of operation.

Interrogatory No. 22:

Identify any marks or trade names in Opposer's knowledge that include the formative "bun" for use in connection with clothing, whether used by Applicant, Opposer, or another entity.

Interrogatory No. 23:

State whether Opposer or any person acting for or on its behalf has conducted any type of inquiry or investigation of Applicant or its adoption, use, or registration of its mark, and if so, state the date the inquiry or investigation was conducted, identify each person who conducted and reviewed it; and state with specificity the findings that were made.

Interrogatory No. 24:

State whether Opposer or any person acting for or on its behalf has obtained any statements or opinions regarding any of the issues in this proceeding, and if so, identify the person who rendered each statement or opinion and the person who obtained or received each statement or opinion, and state whether it was oral or in writing.

Interrogatory No. 25:

Identify each person who participated in the preparation of Opposer's responses to the foregoing interrogatories or furnished any information in response thereto, and for each specify the interrogatory response for which each such person provided information or participated in the preparation of.

REQUESTS FOR ADMISSIONS

Request No. 1:

Admit that the word "buns" or variants thereof has been used in connection with goods in many fields.

Request No. 2:

Admit that the word "buns" or variants thereof has been used in connection with clothing by entities other than Applicant, Opposer, or their respective affiliates, licensees, or assigns.

Request No. 3:

Admit that there are multiple trademark registrations for clothing including the word "buns" or variants thereof that have been issued by the U.S. Patent and Trademark Office.

Request No. 4:

Admit that underwear pants for men and women are underclothing typically worn beneath one's outer clothing, such as skirts, jeans, pants, shorts, etc.

Request No. 5:

Admit that underwear pants for men and women are not outerwear.

Request No. 6:

Admit that sweatshirts, sweatpants, and hats are outerwear.

Request No. 7:

Admit that shirts and pants are outerwear.

Request No. 8:

Admit that t-shirts are outerwear.

Request No. 9:

Admit that underwear pants for men and women are different than sweatshirts, sweatpants, and hats.

Request No. 10:

Admit that underwear pants for men and women are different than shirts and pants.

Request No. 11:

Admit that underwear pants for men and women are different than t-shirts.

Request No. 12:

Admit that Opposer sells only underwear pants under the mark BUNS.

Request No. 13:

Admit that Opposer does not sell outerwear under the mark BUNS.

Request No. 14:

Admit that the Opposer does not sell sweatshirts, sweatpants, or hats under the mark BUNS.

Request No. 15:

Admit that the Opposer does not sell shirts and pants under the mark BUNS.

Request No. 16:

Admit that the Opposer does not sell t-shirts under the mark BUNS.

Request No. 17:

Admit that the Opposer does not sell underwear pants under the mark BUNS in surf shops.

Request No. 18:

Admit that the Opposer does not sell any product under the mark BUNS in surf shops.

Request No. 19:

Admit that the Opposer does not sell any product in surf shops.

Request No. 20:

Admit that Opposer does not sell products under the mark BUNS exclusively to teenage females.

Request No. 21:

Admit that teenage females are not the predominant purchasers of products sold under the mark BUNS.

Request No. 22:

Admit that Opposer does not produce a line of products intended exclusively for teenage females.

Request No. 23:

Admit that teenage females are typically brand conscious.

Request No. 24:

Admit that teenage females are discriminating purchasers.

Request No. 25:

Admit that teenage females could differentiate between BUNS and HONEYBUNS (stylized).

Request No. 26:

Admit that "buns" or variants thereof when used for underwear pants for men and women, suggests buttocks.

Request No. 27:

Admit that word "honeybuns" suggests sweet rolls.

Request No. 28:

Admit that "honeybuns" has a different commercial impression than "buns".

Request No. 29:

Admit that "honey" is not the weak part of the mark HONEYBUNS (stylized).

Request No. 30:

Admit that HONEYBUNS (stylized) has a specialized font.

Request No. 31:

Admit that Opposer uses a different font for BUNS than that used by Applicant for HONEYBUNS (stylized).

Request No. 32:

Admit that the specialized font used for HONEYBUNS (stylized) is a distinguishing feature of the mark.

Request No. 33:

Admit that HONEYBUNS (stylized) is in a different visual format than BUNS.

Request No. 34:

Admit that HONEYBUNS (stylized), in its entirety, does not look like BUNS.

Request No. 35:

Admit that HONEYBUNS (stylized), in its entirety, does not sound like BUNS.

Request No. 36:

Admit that Opposer knows of no actual confusion between BUNS for underwear pants for men and women and HONEYBUNS (stylized) for clothing, namely, shirts, t-shirts, sweatshirts, pants, sweatpants, and hats.

Request No. 37:

Admit that BUNS for underwear pants for men and women is not confusingly similar to HONEYBUNS (stylized) for clothing, namely, shirts, t-shirts, sweatshirts, pants, sweatpants, and hats.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Request No. 1:

Produce all documents referring or relating to any federal and/or state registration or application for registration of any mark of Opposer including "buns" or any variants thereof.

Request No. 2:

Produce all documents referring, relating or reflecting Opposer's acquisition of title in and to any mark of Opposer including "buns" or any variants thereof.

Request No. 3:

Produce representative samples of all labels, tags, containers, business cards, letterheads, invoices, sales slips, advertising and promotional materials which have ever been used by Opposer, and which bear the term "buns" or any variants thereof.

Request No. 4:

Produce all documents that relate to the selection, investigation, adoption, searching and clearance of the term "buns" for use by Opposer to identify underwear pants for men and women, or any other clothing.

Request No. 5:

Produce all documents referring or relating to any instance where any person in the trade or among the public has been confused, mistaken, or deceived in any way as to the identities of the businesses conducted by Applicant and Opposer or as to the identity or source of Opposer's goods

or services offered under BUNS or Applicant's goods or services offered under HONEYBUNS (stylized).

Request No. 6:

Produce all documents reflecting the first sale and the first sale in commerce of products or rendering of services under BUNS, including a copy of any invoice evidencing such transaction(s).

Request No. 7:

Produce samples of the first literature or advertising bearing BUNS.

Request No. 8:

Produce all documents reflecting the first sale and the first sale in commerce of products or rendering of services by Opposer under BUNS in connection with underwear pants for men and women, including a copy of any invoice evidencing such transaction(s).

Request No. 9:

Produce samples of the first literature or advertising by Opposer bearing BUNS in connection with underwear pants for men and women.

Request No. 10:

Produce all documents reflecting the earliest date of use and the earliest date of use in commerce on which Opposer may establish rights in BUNS for use on underwear pants for men and women.

Request No. 11:

Produce all documents referring or relating to Opposer's knowledge of the existence of other marks or names incorporating the term "buns" or variants thereof for use in connection with underwear pants for men and women.

Request No. 12:

Produce all documents referring or relating to Opposer's knowledge of the existence of other marks or names incorporating the term "buns" or variants thereof for use in connection with clothing other than underwear pants for men and women.

Request No. 13:

Produce all documents pertaining to the creation, selection, investigation, searching, adoption, earliest use and registration, if any, of the claimed mark, including any report referring or relating to any search, whether formal or informal, to determine whether "buns" or variants thereof could violate any mark or trade name.

Request No. 14:

Produce all documents, referring or relating to, or comprising, any plan Opposer has to expand the type of goods or services it offers for sale under BUNS.

Request No. 15:

Produce representative samples of documents that show any use of BUNS by Opposer on underwear pants for men and women.

Request No. 16:

Produce representative samples of documents that show any use of BUNS by Opposer on goods and services other than underwear pants for men and women.

Request No. 17:

Produce copies of all contracts or agreements which exist or existed between Opposer and any other entity relating to use of the term "buns" or any variants thereof.

Request No. 18:

Produce representative samples of documents which show how BUNS is used by Opposer on goods or services of Opposer, including, but not limited to, labels, tags, point-of-purchase displays and the like.

Request No. 19:

Produce representative samples of every publication, including periodicals, newspapers, trade press publicity and new product releases or notices, catalogs, catalog sheets, sales literature, etc. which has ever made reference to Opposer's use of BUNS to identify underwear pants for men and women.

Request No. 20:

Produce all advertisements, including name and date of publication, which make reference to Opposer's use of BUNS to identify underwear pants for men and women.

Request No. 21:

Produce all advertisements, including name and date of publication, which make reference to Opposer's use of BUNS on goods and services other than underwear pants for men and women.

Request No. 22:

Produce all documents which reference Honeybuns Apparel, Inc. or the HONEYBUNS (stylized) mark.

Request No. 23:

Produce all documents relating to dollar figures, number of sales and locations of sales of underwear pants for men and women identified by BUNS, including invoices.

Request No. 24:

Produce all documents relating to dollar figures, number of sales and locations of goods and services other than underwear pants for men and women identified by "buns" or variants thereof, including invoices.

Request No. 25:

Produce all documents relating to revenues arising from underwear pants for men and women identified by BUNS, including invoices.

Request No. 26:

Produce all documents relating to revenues arising from goods and services other than underwear pants for men and women identified by "buns" or variants thereof, including invoices.

Request No. 27:

Produce all documents showing advertising costs of underwear pants for men and women identified by BUNS.

Request No. 28:

Produce all documents showing advertising costs of goods and services other than underwear pants for men and women identified by "buns" or variants thereof.

Request No. 29:

Produce all surveys or other reports which Opposer has commissioned to determine whether there is a likelihood of confusion between Opposer's mark and Applicant's mark.

Request No. 30:

Produce all surveys or other reports which Opposer has commissioned to determine whether there is a likelihood of confusion between Opposer's mark and any other mark.

Request No. 31:

Produce all documents relating to an infringement, opposition or cancellation of the mark BUNS or based on the mark BUNS.

Request No. 32:

Produce specimens showing Opposer's first use of BUNS on underwear pants for men and women.

Request No. 33:

Produce all documents identified in Opposer's responses to interrogatories.

DATED this 26th day of April, 2002.

Respectfully submitted,

KOLISCH, HARTWELL, DICKINSON,
McCORMACK & HEUSER



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of Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S FIRST SET OF INTERROGATORIES, REQUEST FOR ADMISSIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS was served on Opposer by service on its attorney, Neil F. Martin, Esq. of the firm Brown, Martin, Haller & McClain LLP of 1660 Union Street, San Diego, California 92101, by mailing same via first class mail, postage prepaid, in an envelope to the aforementioned address on this 26th day of April, 2002.



Walter W. Karnstein
of Attorneys for Applicant