

TTAB

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

In the Matter of Serial No. 76/155,723 for the mark KERMIT
Published in the Official Gazette on July 31, 2001
Opposer's Ref.: HEN USA TC-01/06537



01-16-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

-----X
THE JIM HENSON COMPANY, INC., :
Opposer, :
- against - :
PEDRO TELLERIA SOPENA, :
Applicant. :
-----X

Opposition No. 151,872

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OPPOSER'S MOTION TO COMPEL

Opposer, The Jim Henson Company, Inc., by its counsel, hereby moves, pursuant to Rule 37(a)(2) of the Federal Rules of Civil Procedure and Rule 2.120(e) of the Trademark Rules of Practice, for an order compelling applicant to serve on opposer answers to Opposer's First Set of Interrogatories and First Requests for Production of Documents and Things ("Opposer's Discovery Requests"), to produce the documents and things called for by the Requests for Production of Documents and Things included in Opposer's Discovery Requests, and to provide opposer with an opportunity to inspect and copy such documents and things. The motion to compel should be granted because applicant has not provided any responses to Opposer's Discovery Requests, has not produced any documents or things called for by Opposer's Discovery Requests, and has not provided applicant with an opportunity to inspect or copy such documents and things, and the deadline for applicant to do so has passed.

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On September 9, 2002, opposer filed a Motion to Enter Judgment in Favor of Opposer on the ground that applicant had not filed an answer to the notice of opposition. Applicant's attorney subsequently informed opposer's attorney that applicant had filed an answer, and applicant's attorney provided a copy of the answer to opposer's attorney. Therefore, on November 8, 2002, opposer's attorneys served Opposer's Discovery Requests (copy attached hereto as Exhibit A) on applicant's attorney. On November 21, 2002, the TTAB issued an order (the "Order") denying the Motion to Enter Judgment in Favor of Opposer as moot. The Order also stated that that motion would have stayed proceedings in this case, and the Order therefore reset the trial dates and close of discovery herein. The date that was 35 days after the date of issuance of the Order was December 26, 2002, which has now passed, so the latest possible deadline for applicant to respond to Opposer's Discovery Requests has passed. Applicant has never responded to Opposer's Discovery Requests, produced the documents called for by them, or provided applicant with an opportunity to copy and inspect such documents.

On January 8, 2003, Robert A. Becker, one of opposer's attorneys, sent a letter (copy attached hereto as Exhibit B) by fax and mail to applicant's attorney, Thomas W. Brooke. In that letter, Mr. Becker noted applicant's failure to timely respond to Opposer's Discovery Requests and stated that if opposer did not receive responses to Opposer's Discovery Requests and the documents called for by Opposer's Discovery Requests by January 14, 2003, opposer would seek appropriate relief from the TTAB. Later that day, Mr. Brooke called Mr. Becker and stated that he had not received any instructions from his client with respect to Opposer's Discovery Requests and therefore was not in a position to respond to them. On January 15, 2003, the day after the deadline

set forth in Mr. Becker's January 8, 2003 letter to Mr. Brooke, Mr. Brooke left Mr. Becker a voice mail message stating that he still had not received any instructions from applicant regarding Opposer's Discovery Requests and that he understood that opposer would be making a motion to compel. Thus, opposer's attorney has made a good faith effort, by telephone conference and correspondence, to resolve with applicant's attorney the issues presented in this motion and has been unable to reach agreement.

Therefore, since the deadline for applicant to respond to Opposer's Discovery Requests has passed and applicant has not responded to them in any manner, opposer requests that this motion to compel be granted.

This Motion to Compel is filed in triplicate.

Dated: New York, New York
January 16, 2003

"Express Mail" mailing label No. **EL718086690US**
Date of Deposit: January 16, 2003
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Robert A. Becker
(Printed name of person mailing paper of fee)

Robert Becker
(Signature)

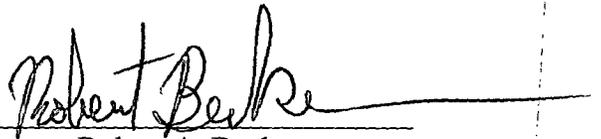
Respectfully submitted,

**FROSS ZELNICK LEHRMAN
& ZISSU, P.C.**

By: Robert Becker
Robert A. Becker
Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of OPPOSER'S MOTION TO COMPEL to be served by prepaid, first-class mail on this 16th day of January, 2003 upon Thomas W. Brooke, Esq., Holland & Knight LLP, Suite 100, 2099 Pennsylvania Avenue, NW, Washington, DC 20037.


Robert A. Becker

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B. The term "opposer" shall mean The Jim Henson Company, Inc. and its predecessors in interest, parent, affiliates, or divisions and the officers, directors, employees, attorneys, and agents of the foregoing.

C. The term "person" shall mean natural persons and legal entities and includes firms, partnerships, corporations, and associations.

D. The term "Mark" shall mean the mark KERMIT shown in U.S. Application Serial No. 76/155,723 filed by applicant, any other name or mark incorporating the term KERMIT, and any name or mark similar to the term KERMIT.

E. The term "document" is used in the broadest sense consistent with Fed. R. Civ. P. 34 and includes, without limitation, the original and any copy of the following items, whether printed, written, contained in a computer storage device such as a floppy disk or computer memory, and whether produced by and/or reproduced by any process, namely: printed matter, notes, correspondence, internal company communications, telegrams, cables, telexes, ledgers, calendars, diaries, books, statements, memoranda, summaries or records of conversations, minutes or records of meetings, reports, records, market surveys, market research, tabulations, contracts, invoices, receipts, vouchers, charges, labels, artwork, mockup labels, films, video tapes, photo boards, drawings, graphs, photographs, microfilms, tape recordings, reports and/or summaries of interviews or investigations, opinions or reports of consultants, promotional literature, trade letters, press releases, drafts of documents and revisions of drafts of documents, notes or comments on or appended to requested documents, and other written or recorded material now or formerly in the possession, custody, or control of applicant.

F. The term "market research" shall mean all surveys, polls, focus groups, market research studies and other investigations conducted on behalf of applicant whether or not such investigations were completed, discontinued, or fully carried out.

G. The term "identify," when used with respect to a person, means to state the full name of the person, the present or last known residence and business address of the person, the present or last known business affiliation including the position or title of said person, and the address at which he or she is employed.

H. The term "describe" means to state or identify the date, duration, location, nature, persons involved, witnesses, physical occurrences, and a summary of the substance of any conversations of the relevant item, person, or event.

I. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

J. Whenever the terms "and" or "or" are used they are to be construed both disjunctively and conjunctively as necessary to bring within the scope of the discovery request responses that might otherwise be construed to be outside of its scope.

K. The use of the singular form of any word includes the plural and vice versa. Similarly, references to the masculine gender shall apply equally to the feminine gender.

L. In answering these discovery requests, even though the questions may be directed to "you," furnish all information which is available to you, including information in the possession of your attorneys or investigators prepared on your behalf. If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

M. If any of the following interrogatories call for information subject to a claim of privilege or other objection, answer so much of each interrogatory and each part thereof as does not request privileged information. With respect to those portions of these interrogatories which do request privileged information, set forth the basis for your claim of privilege or any other objection you may have.

N. If any document responsive to the following document requests is not produced on the basis of a claim of privilege or any other objection, you shall provide a list containing the following information for each of the documents:

- (i) the date the document was prepared;
- (ii) the name, employment position, and address of the author(s) and/or preparer(s) of the document;
- (iii) a brief description of the document;
- (iv) the subject matter of the document;
- (v) the names of people to whom copies were distributed;
- (vi) the reasons for withholding production of the document and any supporting facts. The claim of privilege or any other objection must be made in sufficient detail so as to permit the Board to adjudicate the validity of the claim or objection;
- (vii) the number of the request under which the document would otherwise be produced.

O. These discovery requests are intended to be continuing. If, at any time after you prepare and furnish the requested discovery you ascertain or acquire additional

information, you are required to produce such supplemental information to opposer within thirty (30) days.

P. For the convenience of the Board and the parties, each interrogatory and document request should be quoted in full immediately preceding the response. You are also requested to order and label the materials produced in accordance with the final paragraph of Rule 34(b), Fed. R. Civ. P.

INTERROGATORIES

Interrogatory No. 1: Describe in specific terms the nature of applicant's business generally and specifically with respect to the marketing, licensing, or dissemination of goods or services sold or provided under or in connection with the Mark.

Interrogatory No. 2: List and describe in detail each product and service, if any, sold or provided or to be sold or provided by applicant or his licensees under or in connection with the Mark. If the nature of such products and services has changed, identify the period of and reasons for such change and all products and services previously so sold or provided.

Interrogatory No. 3: Describe the content of all television shows that have been aired or disseminated or will be aired or disseminated in connection with the Mark, including, but not limited to, whether such television shows have included children's programs, puppets, animatronic characters, cartoons, or other fictional characters. Provide the dates when all such television shows were aired or disseminated or will be aired or disseminated.

Interrogatory No. 4: For each product and service in connection with which applicant's Mark is now or has ever been used, including, but not limited to, each of the services listed in Application Serial No. 76/155,723:

- (a) State the amount of revenue derived from that product or service within the United States for each year since applicant or his licensees commenced use of the Mark on or in connection with that product or service in terms of dollars;
- (b) Identify all persons to whom such product or service was sold or provided; and
- (c) For each year since applicant or his licensees commenced use of the Mark on or in connection with that product or service, state the manufacturers (if applicable) and all dealers, distributors, wholesalers, broadcasters, and disseminators for that product or service.

Interrogatory No. 5: Identify the persons who have the most knowledge concerning applicant's and his licensees' past and future offering of goods or services bearing or sold or provided under the Mark.

Interrogatory No. 6: (a) Identify by name and address all past, present, and future authorized users of the Mark, including, but not limited to, all licensees, dealers, distributors, wholesalers, broadcasters, and disseminators, and (b) indicate the goods or services on or in connection with which each such entity used, uses, or will use the Mark.

Interrogatory No. 7: Describe in detail the channels of trade, if any, through which applicant's or his licensees' goods or services bearing or sold or provided under the Mark are or, according to applicant's plans, will be sold, provided, or offered.

Interrogatory No. 8: Describe each type of retail or other business outlet, broadcaster, or other disseminator that sells, provides, or offers or, according to applicant's plans,

will sell, provide, or offer applicant's or his licensees' goods or services bearing or sold or provided in connection with the Mark.

Interrogatory No. 9: Identify the geographic area(s), if any, where applicant's or his licensees' goods or services bearing or sold or provided under the Mark have been sold or disseminated, are sold or disseminated, or, according to applicant's plans, will be sold or disseminated.

Interrogatory No. 10: Identify all consistently appearing versions of applicant's Mark that have been or, according to applicant's plans, will be used, including typefaces, graphics, logos, designs, or other features. In lieu of an answer, applicant may attach actual specimens of each version of the Mark, provided applicant identifies the goods or services on or in connection with which each specimen is, has been, or will be used and the period of use.

Interrogatory No. 11: Describe each means by which applicant or his licensees advertise or promote or, according to applicant's plans, will advertise or promote goods or services under the Mark.

Interrogatory No. 12: Identify and describe the categories of customers, if any, to whom applicant's or his licensees' goods or services are promoted or, according to applicant's plans, will be promoted.

Interrogatory No. 13: Identify by name each magazine, newspaper, newsletter, trade directory, or other publication in which applicant's or his licensees' goods or services bearing or sold or provided under the Mark have been advertised or promoted or, according to applicant's plans, will be advertised or promoted, and identify each such advertisement.

Interrogatory No. 14: Identify each kind of promotional material, including, but not limited to, catalogs, brochures, posters, sales sheets, point of purchase displays, fliers, and

price lists which refer to applicant's or his licensees' goods or services sold or provided under the Mark, and for each such item state:

- (a) the inclusive dates during which the item or promotional material was or is currently distributed;
- (b) the categories of wholesalers, retailers, dealers, distributors, broadcasters, disseminators, and customers to whom such promotional material was or is directed.

Interrogatory No. 15: State applicant's or his licensees' advertising and promotional expenditures in dollars for goods and services bearing or sold or provided under the Mark for each year in which such activities have been conducted.

Interrogatory No. 16: List all trade shows (including dates), if any, at which applicant or his licensees have displayed literature, brochures, or other items promoting their goods or services sold or provided in connection with the Mark or at which applicant or his licensees are scheduled to promote such goods or services.

Interrogatory No. 17: Has applicant's Mark been the subject of any coverage in newspapers or other media? If so, identify each story about applicant's Mark and state the date and publication or other media involved.

Interrogatory No. 18: List and describe all ways in which applicant or his licensees use the Mark, the word KERMIT, or terms similar thereto.

Interrogatory No. 19: Describe in detail the reason(s) applicant selected and began using the Mark.

Interrogatory No. 20: Describe with particularity all facts and evidence supporting or negating the contention in ¶ 8 of your Answer that the public is not likely to

mistakenly associate the goods sold by you under the Mark with opposer or with opposer's goods and services, or to believe that your goods are sponsored, endorsed, or licensed by opposer, or to believe that there is some relationship between you and opposer.

Interrogatory No. 21: Explain why the application that is the subject of this proceeding was filed on an intent-to-use basis.

Interrogatory No. 22: Identify each trademark search, clearance, or other inquiry conducted by or on behalf of applicant or of which applicant has otherwise become aware that concerned the Mark by stating:

- (a) the date each such trademark search, clearance, or other inquiry was conducted;
- (b) the persons who conducted each such trademark search, clearance, or other inquiry and those persons' titles.

Interrogatory No. 23: Identify the natural persons responsible for the clearance of the Mark, including obtaining or preparing reports, and those persons' titles.

Interrogatory No. 24: Describe all uses known to applicant of the term KERMIT as a mark by any person and identify each such person.

Interrogatory No. 25: State when applicant first became aware of opposer's use of the mark KERMIT and describe how and in what manner applicant became aware of opposer's use.

Interrogatory No. 26: State whether applicant or, to the best of applicant's knowledge, any other person or entity has ever witnessed or obtained any knowledge or information regarding possible confusion on the part of any person as to the source, sponsorship, affiliation, or approval of opposer's goods or services provided under the KERMIT mark or

applicant's or his licensees' goods or services provided under the Mark, or as to applicant or his licensees or opposer.

Interrogatory No. 27: If the answer to the preceding interrogatory is other than an unqualified negative:

- (a) state the date and location and identify each and every person or entity that was confused; and
- (b) identify each natural person who has knowledge of such confusion.

Interrogatory No. 28: State whether applicant or any licensee, dealer, distributor, wholesaler, broadcaster, or disseminator associated with applicant, or any other authorized user of the Mark, has ever received, orally, in writing, or by other means, communications intended for opposer.

Interrogatory No. 29: If the answer to the preceding interrogatory is other than an unqualified negative:

- (a) state the date, location, means, and content of each such communication, the natural person from whom such communication was received, the company, if any, with whom such natural person was connected, the natural person who received such communication, and the company, if any, with whom such natural person was connected; and
- (b) identify each natural person who has knowledge of such communication.

Interrogatory No. 30: State whether applicant or any licensee, dealer, distributor, wholesaler, broadcaster, or disseminator associated with applicant, or any other authorized user of the Mark, has ever received, orally, in writing, or by other means, product complaints or inquiries concerning opposer's products or services.

Interrogatory No. 31: If the answer to the proceeding interrogatory is other than an unqualified negative:

- (a) state the date, location, means of communication, and content of each such complaint or inquiry, the natural person from whom such complaint or inquiry was received, the company, if any, with whom such natural person was connected, the natural person who received such complaint or inquiry, and the company, if any, with whom such natural person was connected; and
- (b) identify each natural person who has knowledge of such complaint or inquiry.

Interrogatory No. 32: State whether applicant or any licensee, dealer, distributor, wholesaler, broadcaster, or disseminator associated with applicant, or any other authorized user of the Mark, has ever received, orally, in writing, or by other means, communications from opposer concerning applicant, applicant's or his licensees' products or services, opposer, or opposer's products or services.

Interrogatory No. 33: If the answer to the proceeding interrogatory is other than an unqualified negative:

- (a) state the date, location, means, and content of each such communication, the natural person from whom such communication was received, the natural person who received such communication, and the company, if any, with whom such natural person was connected; and
- (b) identify each natural person who has knowledge of such communication.

Interrogatory No. 34: For the purpose of this interrogatory, a claim shall be defined as a demand brought by applicant or any authorized user of the Mark which either has or has not resulted in a litigation or a Patent and Trademark Office ("inter partes") proceeding. Identify each person or entity against which applicant or any authorized user of the Mark has asserted a claim or which has asserted a claim against applicant or any authorized user based on the Mark.

Interrogatory No. 35: For each court litigation or inter partes proceeding (other than this one) relating to the Mark to which applicant or any party whose use applicant contends inures to his benefit was or is a party, or of which applicant has knowledge:

- (a) Identify the proceeding by name, tribunal, and index number; and
- (b) Identify all documents concerning each proceeding identified above.

Interrogatory No. 36: Have applicant or his licensees conducted or caused to be conducted any survey or market research regarding his Mark, opposer's KERMIT character or mark, or any other use of the term KERMIT or any term similar thereto? If so:

- (a) state the dates on which it was initiated and completed;
- (b) identify the person or persons requesting the survey, inquiry, poll, market research, or investigation;
- (c) identify each person who performed the survey, inquiry, poll, market research, or investigation;
- (d) state the purposes or objectives of the survey, inquiry, poll, market research, or investigation;
- (e) state all information found as a result of the survey, inquiry, poll, market research, or investigation;

- (f) identify each document relating to the survey, inquiry, poll, market research, or investigation; and
- (g) describe any actions taken by applicant or his licensees as a result of any such survey, inquiry, poll, market research, or investigation.

Interrogatory No. 37: Describe any actual or proposed plans for use of the Mark or terms similar thereto, and identify the person(s) most knowledgeable with respect thereto.

Interrogatory No. 38: Identify each person applicant expects to call as an expert witness at trial and for each such person state:

- (a) the subject matter on which the expert is expected to testify; and
- (b) the substance of the facts relied upon and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Interrogatory No. 39: Identify each natural person who supplied information for any of the answers to the preceding interrogatories or to the following document requests, who was consulted, or whose documents or files were consulted in the preparation of those answers and identify the interrogatories and/or document requests for which the person supplied information, was consulted, or had his or her documents or files consulted.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Request No. 1: All documents identified in response to Opposer's First Set of Interrogatories.

Request No. 2: Two specimens of:

- (a) each product, if any, sold by applicant or his licensees under or in connection with the Mark;
- (b) the packaging therefor;

- (c) any labels or hangtags bearing the mark; and
- (d) any display pieces on which the mark appears.

Request No. 3: Documents sufficient to show the revenues derived from each product or service offered by applicant or his licensees under the Mark.

Request No. 4: All documents concerning or embodying any license, franchise, grant of permission, or assignment that involves or concerns applicant's Mark.

Request No. 5: All documents sufficient to identify all customers, purchasers, manufacturers (if any), dealers, distributors, wholesalers, broadcasters, disseminators, or licensees, past, current, or prospective, of goods or services bearing or sold or provided under the Mark.

Request No. 6: Documents sufficient to identify all channels of trade through which applicant's or his licensees' goods or services bearing or sold or provided in connection with the Mark are sold, offered for sale, or provided, or, according to applicant's plans, will be sold, offered for sale, or provided.

Request No. 7: Documents sufficient to identify each type of retail or other business outlet, broadcaster, or disseminator that sells, offers, or provides, or, according to applicant's plans, will sell, offer, or provide applicant's or his licensees' goods or services bearing or sold or provided in connection with the Mark.

Request No. 8: Documents sufficient to show all marks owned, used, or registered by applicant that incorporate the term KERMIT or any term similar thereto.

Request No. 9: Exemplars of all advertisements, brochures, catalogs, or other promotional materials that contain any reference to the Mark, including all drafts, mock-ups, or proposals therefor.

Request No. 10: All documents concerning applicant's or his licensees' expenditures for advertising or promotion of his or his licensees' goods or services bearing or sold or provided under the Mark.

Request No. 11: All documents referring or relating to any planned or actual trade show at which applicant or his licensees have displayed or will display literature, brochures, or other items promoting their goods or services bearing or sold or provided under the Mark.

Request No. 12: Copies of all newspaper, magazine, newsletter, trade journal, and other articles concerning, referring to, or otherwise relating to applicant's or his licensees' goods or services bearing or sold or provided under the Mark.

Request No. 13: All documents concerning the first use of the term KERMIT as a trademark by applicant or his licensees in the United States.

Request No. 14: All documents concerning any public recognition of the mark KERMIT as used by applicant or his licensees.

Request No. 15: All documents concerning any use by the trade or public of the mark KERMIT to refer to applicant, his licensees, or opposer or to signify goods or services originating from applicant, his licensees, or opposer.

Request No. 16: All documents showing that consumers or the trade identify goods or services sold under the Mark or bearing the mark KERMIT as emanating from applicant, his licensees, or opposer.

Request No. 17: Copies of all trademark searches by applicant for any mark consisting of or containing the term KERMIT or any term similar thereto.

Request No. 18: All documents concerning any opinion letter or other analysis regarding the registrability of the Mark, including all documents concerning who requested the opinion, when the opinion was requested, who prepared the opinion, and the substance thereof.

Request No. 19: All documents evidencing, referring, or relating to any confusion on the part of any person as to the source, sponsorship, affiliation, or approval of applicant's or his licensees' goods or services bearing or sold or provided under the Mark or the goods or services of opposer, or as to applicant or his licensees or opposer.

Request No. 20: All documents relating to all incidents of confusion, communications, complaints, and inquiries described in applicant's answers to Interrogatory Nos. 26-33.

Request No. 21: All documents referring or relating to opposer or its use of the KERMIT character name and mark or to applicant's awareness of opposer or its use of said character name and mark.

Request No. 22: Copies of all trademark watching service or trademark surveillance notices concerning or relating to applicant's Mark.

Request No. 23: All documents referring or relating to applicant's awareness of any third party who is using, or who formerly used, the mark KERMIT or any mark similar thereto.

Request No. 24: All cease-and-desist or demand letters sent by or on behalf of applicant or his licensees or received by applicant or licensees, dealers, distributors, wholesalers, broadcasters, or disseminators associated with applicant that concern the Mark.

Request No. 25: All documents pertaining to any litigation or inter partes proceeding involving applicant's Mark, including all pleadings, motions, investigators' reports, responses, deposition transcripts, decisions, opinions, judgments on consent, and orders.

Request No. 26: All documents concerning any claim, complaint, objection, opposition, cancellation, administrative proceeding, legal opinion, or civil action involving applicant's or his licensees' use of the Mark or use by any other party, or registrations or applications for marks deemed to be confusingly similar to applicant's Mark, including all correspondence or communications with all parties involved, demand letters, replies, documentation regarding settlement proposals, settlement agreements, and settlement letters.

Request No. 27: All reports or summaries of reports as well as all other documents, including notes and memoranda, concerning any market research, surveys, or testing relating to applicant's Mark, opposer's KERMIT mark, or any mark similar thereto.

Request No. 28: Copies of all documents concerning any market research or surveys identified in response to Interrogatory No. 36.

Request No. 29: All business plans or other planning documents concerning use or registration of the Mark.

Request No. 30: Documents sufficient to show the content of all television shows that have been aired or disseminated or will be aired or disseminated in connection with the Mark, including, but not limited to, whether such television shows have included children's programs, puppets, animatronic characters, cartoons, or other fictional characters, and documents sufficient to show the dates when all such television shows were aired or disseminated or will be aired or disseminated.

Request No. 31: All documents relating to complaints concerning applicant's or his licensees' goods or services.

Request No. 32: All documents and things upon which applicant intends to rely in this proceeding.

Request No. 33: All documents and things supporting or negating all allegations in the Answer to Notice of Opposition and the affirmative defenses set forth therein.

Request No. 34: All documents or things relied on, consulted by, or prepared by any experts expected to testify at trial for applicant.

Request No. 35: All communications between opposer and applicant and between opposer and applicant's licensees concerning the Mark or any of applicant's other marks.

Dated: New York, New York
November 8, 2002

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

Lisa Pearson
Robert A. Becker
866 United Nations Plaza
New York, New York 10017
212-813-5900

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the OPPOSER'S FIRST SET OF INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS to be served by prepaid, first-class mail on this 8th day of November, 2002 upon Thomas W. Brooke, Esq., Holland & Knight LLP, Suite 100, 2099 Pennsylvania Avenue, NW, Washington, DC 20037.

A handwritten signature in cursive script, appearing to read "Robert A. Becker", is written over a horizontal line.

Robert A. Becker

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January 8, 2003

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VIA FACSIMILE to 202-955-5564 AND MAIL

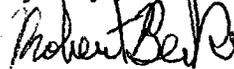
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Re: The Jim Henson Company, Inc. v. Pedro Telleria Sopena (Opp. No. 151,872)
(Our Ref.: HEN USA TC-01/06537)

Dear Mr. Brooke:

The time for applicant to respond to Opposer's First Set of Interrogatories and First Requests for Production of Documents and Things has now expired and applicant has not served any response. Therefore, under the Federal Rules of Civil Procedure, any objections that applicant may have had to opposer's interrogatories and document requests are waived. If we do not receive applicant's written responses to opposer's interrogatories and document requests, as well as the documents requested, by January 14, 2003, we will assume that applicant has decided not to provide discovery in this proceeding and will seek appropriate relief from the Board.

Very truly yours,



Robert A. Becker

RAB/dp

cc: Lisa Pearson, Esq.

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