

TTAB

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

PORT CARLING CORPORATION,)
Opposer,)

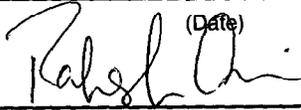
v.)

JULIE SOMERS,)
Applicant.)

Opposition No: 91,152,840
Serial No. 76/255860

I hereby certify that this correspondence and all
marked attachments are being deposited with the
United States Postal Service as first-class mail in an
envelope addressed to: Assistant Commissioner for
Trademarks, 2900 Crystal Drive, Arlington, VA
22202-3514, on

July 8, 2003

 (Date)

Rakesh M. Amin

**APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO STRIKE
NOTICE OF RELIANCE AND MOTION FOR LEAVE TO AMEND ADMISSIONS**

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



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Dear Sir:

I. INTRODUCTION

Applicant/Petitioner, Julie Somers ("Applicant"), hereby requests that the Trademark Trial and Appeal Board grant Applicant's Motion To Strike Notice of Reliance And Motion For Leave To Amend Admissions.

**II. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICANT'S
MOTION TO STRIKE NOTICE OF RELIANCE**

A. APPLICABLE STANDARD

TBMP § 411 states that "[i]f a party upon which requests for admission have been

served fails to timely respond thereto, the requests will stand admitted unless the party is able to show that its failure to timely respond was the result of excusable neglect....” Applicant can show that her failure to respond was the result of excusable neglect.

Excusable neglect is defined as the failure to take steps at the proper time, not in consequence of the party’s own carelessness, inattention, or willful disregard of the process of the court, **but in consequence of** some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on **promises made by the adverse party**. *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 1553, 18 USPQ2d 1710 (Fed. Cir. 1991) (citing Opposition No. 77,043, slip op. at 3 (TTAB 1990) (citing *Black’s Law Dictionary* 508(5th ed. 1979))) (emphasis added).

The Supreme Court later clarified the meaning of “excusable neglect” by establishing a four-factor test. *Pioneer Investment Service Co. v. Brunswick Associates Limited Partnership*, 507 US 380 (1993). The four-factors in the *Pioneer* case are the following: (1) the danger of prejudice to the non-movant; (2) the length of delay and its potential impact on the judicial proceeding; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Id.*

B. APPLICANT’S FAILURE TO RESPOND TO OPPOSER’S FIRST REQUEST FOR ADMISSIONS IS THE RESULT OF EXCUSABLE NEGLIGENCE

Applicant’s failure to respond to Opposer’s First Requests for Admissions was due to the statements made by Opposer’s counsel. During a telephone conversation, Opposer did grant Applicant an extension to respond. Based on such extension, which Applicant reasonably and in good faith relied upon, Applicant’s actions are the result of excusable neglect. Applicant did not have counsel, Opposer encouraged Applicant to immediately cease and desist during settlement discussions for no remuneration despite Applicant having every right to use the mark, and did tell Applicant that if she settled then discovery would not need to be answered. Opposer also granted an extension while Applicant thought about settling. Based on the oral

extension given during settlement discussions, Applicant did not answer the discovery requests. Applicant did not answer the discovery requests because she believed that she had an extension and time to answer and Applicant did not know how devastating it may be to her rights if she failed to respond in time in case Opposer denied or renege the extension. Moreover, Applicant simply did not think that Opposer would deny or renege on the extension and would try to unfairly prejudice her rights.

1. Opposer Granted Applicant An Extension

Prior to retaining counsel, Applicant and Applicant's husband had several conversations with Opposer's counsel. During one such conversation, Opposer's counsel represented that Applicant had time to decide whether to settle before having to answer Opposer's Request for Admissions. Based on this representation, Applicant, in good faith, continued to pursue settlement discussions and did not respond to Opposer's Request for Admissions. It was not until after Applicant obtained counsel that Opposer then informed Applicant's counsel that Applicant did not timely respond to Opposer's Request for Admissions and that Opposer would seek to admit the Requests for Admissions.

Clearly Opposer's counsel attempted to take advantage of the fact that Applicant was not represented by counsel. Even though *pro se* parties are still subject to the same rules and procedures as parties represented by counsel, *pro se* parties should not be taken advantage of and unfairly prejudiced, especially when the harm to Opposer in granting Applicant's Motion is slight, if any. It is not unreasonable for a *pro se* party to rely on statements made by opposing counsel and that is exactly what happened in this matter.

Opposer served Applicant with Opposer's First Request for Admissions, Opposer's First Interrogatories and Opposer's First Request for Production, which were sent by mail on March 28, 2003. Applicant's responses to each such request were due by May 2, 2003 but an extension of time was given to Applicant to respond to Opposer's discovery requests. On May 22, 2003, Mr. Somers informed Opposer's counsel that Applicant had retained counsel. On

June 5, 2003, Opposer's counsel sent Applicant's counsel a letter stating that Applicant must provide responses to the requests mailed on March 28, 2003. In addition to the telephone call where the Opposer granted an extension to Applicant, the June 5, 2003 letter indicates that Opposer did not intend to abide by the May 2, 2003 deadline and that Applicant had additional time to respond.

Applicant adamantly believes an extension was granted and that Applicant is being bullied, blind-sided and unfairly prejudiced based on Opposer's false allegations that an extension was never granted. Applicant relied on statements made by Opposer's counsel, and Applicant will definitely be severely and unfairly prejudiced by such reasonable reliance if the Motion is not granted.

2. The Danger of Prejudice To The Non-Movant Is Minimal, if Any

Opposer does not inform the Board how Applicant's actions will prejudice Opposer because Opposer knows that there is no danger of prejudice if Applicant's Motion to Strike is granted. This is evident by the statement that "the remaining factors [referring to factors 1 and 2 of the *Pioneer* test] should not be determinative of the matter". Opposer attempts to avoid these factors altogether because no arguments can be made to support Opposer that it will really be prejudiced. Instead, Opposer argues policy reasons as to why Applicant's Motion to Strike should be denied.

Applicant recognizes that a dangerous precedent would be set if every party could delay action until the party hires an attorney without suffering any consequences, but this specific argument is inapplicable to the matter at issue. Applicant relied upon statements Opposer's counsel made to her and her husband while Applicant represented herself *pro se*. Had Opposer's counsel never represented that Applicant was not obligated to respond to Opposer's Request for Admissions while settlement discussions occurred, Applicant surely would have filed a response. When Applicant retained counsel, Opposer's counsel then realized that it could no longer manipulate Applicant and only then attempted to force responses by the original

deadline date despite the extension Opposer had granted.

Because Opposer failed to show the danger of any prejudice to it, Applicant's Motion to Strike should be granted. If the Motion to Strike is denied, Applicant would be severely prejudiced because the allegations in the Notice of Reliance are false and inconsistent with other pleadings filed by Applicant. Opposer is attempting to force Applicant to admit allegations that she has already denied in Applicant's Amended Answer and Affirmative Defenses to Notice of Deposition (attached hereto as Exhibit A) and in Applicant's Objections and Responses to Opposer's First Set of Requests for Admissions Nos. 1-24 (attached hereto as Exhibit B). It is completely ludicrous for Applicant to admit that "Applicant **is not currently using the mark** as shown in Application Serial Number 76/255,860 in connection with 'greeting cards, Christmas cards, occasion cards, art prints, art print reproductions, comic strips, cartoons, gift wrapping paper, and other related paper products, namely, stationery, note pads, bookmarks and mailing labels" [referring to Request For Admission No. 1] (emphasis added) **when Applicant is using the mark in connection with such goods**. If Applicant is forced to admit allegations that are untrue, then Applicant will be severely prejudiced. Applicant will also be severely prejudiced if it must admit that "there is a likelihood of confusion between Applicant's Mark and Opposer's Marks" [referring to Request For Admission No. 18]. This is a question of law that Applicant has denied from the beginning. These are only a few of the admissions that Opposer is attempting to force admissions to even though Opposer knows Applicant denies them and has denied them in previous pleadings and even though Opposer knows such admissions would be completely untruthful and false.

Applicant, moreover, is not seeking an extension of the discovery period and does not require an extension. Applicant is only seeking leave to properly respond to Opposer's Request for Admissions. In the interest of fairness and justice, Applicant's Motion to Strike should be granted because Applicant would be severely prejudiced if such Motion was denied while Opposer would not be prejudiced at all if such Motion was granted.

3. The Length of Delay Will Have No Impact On The Judicial Proceeding

As stated above, Opposer is unable to make any arguments as to how the judicial proceeding would be affected by granting Applicant's Motion to Strike. The obvious reason for the failure to include any arguments in support of Opposer's position is that no delay will occur. Instead of showing how the delay will harm the judicial proceeding, Opposer makes conclusory and presumptuous arguments as to Applicant's actions and continues to rely on false assumptions and policy.

Opposer's failure to show how it will be prejudiced or how the judicial proceeding would be delayed by granting Applicant's Motion to Strike is very relevant. Applicant's other pleadings have already provided Opposer with responses to the allegations that Opposer is wrongfully attempting to admit. There will be no surprises for Opposer if Applicant is allowed to properly respond. Opposer knows that Applicant would not admit the allegations contained in Opposer's Requests for Admissions based on Applicant's objections, denials and responses in other pleadings, but instead of trying to resolve this matter fairly, Opposer wants to force Applicant to admit allegations that are clearly contradictory. Worse yet is that Opposer is attempting to gain the advantage based on misrepresentations made to Applicant.

Moreover, Applicant is not seeking an extension of the discovery period. Opposer also does not need the discovery period reopened because Opposer's Interrogatories and Production Requests served upon and answered by Applicant were sufficiently comprehensive to address all of the Applicant's responses, denials and admissions to Opposer's Request for Admissions. A reading of the 41 Interrogatories and the 81 Production Requests served upon and answered by Applicant will show that there is nothing more Opposer needs to ask in discovery. Therefore, the judicial proceedings should and will continue as scheduled. For these reasons, Applicant's Motion to Strike should be granted.

4. Applicant Acted In Good Faith

Applicant always acted in good faith. It is evident that Applicant is not an attorney, and Opposer tried to use this against her. Opposer's counsel represented that Applicant had time to decide whether to settle before having to answer Opposer's Request for Admissions. Based on this representation, Applicant, in good faith, continued to pursue settlement discussions and did not respond to Opposer's Request for Admissions. But for the misrepresentation that Applicant was not required to respond to the Request for Admissions as long as settlement discussions continued, Applicant would have filed a timely response. Clearly, no bad faith existed on the part of Applicant.

III. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICANT'S MOTION FOR LEAVE TO AMEND ADMISSIONS

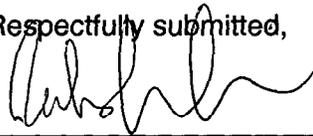
As an alternative to its Motion to Strike, Applicant has also filed a Motion For Leave To Amend Admissions. The standard for determining whether leave to amend answers to admissions for failing to timely respond to request for admissions is the "excusable neglect" standard discussed above. For the same reasons argued above, Applicant submits that any alleged failure to timely respond constitutes excusable neglect due to representations and promises made by the adverse party. Therefore, if Applicant's Motion to Strike is denied, Applicant respectfully requests that the Board grant Applicant's Motion For Leave To Amend Admissions.

IV. CONCLUSION

Applicant therefore requests that Applicant's Motion To Strike Notice of Reliance And Motion For Leave To Amend Admissions be granted. Any failures to timely respond were due to excusable neglect created by promises of Opposer's counsel. Applicant's Motions, if granted, will not prejudice Opposer and if denied, will severely prejudice Applicant. Additionally, Applicant wishes the Board to note that she acted in good faith and is not requesting the discovery period to be extended, and Applicant is prepared to proceed under the dates set forth in the Motion On Consent For Extension Of Testimony Dates submitted on June 26, 2003.

Date: 7-8-03

Respectfully submitted,



Rakesh M. Amin
Attorney for Applicant
Weaver & Amin
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Suite 602
Chicago, IL 60661
Phone: (312) 466-0077
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EXHIBITS

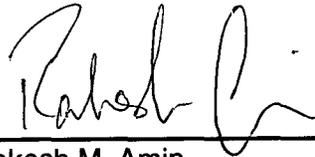
- Exhibit A Applicant's Amended Answer and Affirmative Defenses to Notice of Deposition
- Exhibit B Applicant's Objections and Responses to Opposer's First Set of Requests for Admissions Nos. 1-24

CERTIFICATE OF SERVICE

I, Rakesh M. Amin, hereby certify that I caused the foregoing **APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO STRIKE NOTICE OF RELIANCE AND MOTION FOR LEAVE TO AMEND ADMISSIONS** to be served via U.S. Mail, first class postage pre-paid, to:

Jonathan A. Hyman, Esq.
Knobbe, Martens, Olson & Bear LLP
1900 Avenue of the Stars, Suite 1425
Los Angeles, CA 90067

this 8th day of July, 2003.



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Phone: (312) 466-0077
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Counsel for Applicant,
JULIE SOMERS

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

PORT CARLING CORPORATION,
Opposer

v.

JULIE SOMERS,
Applicant.

) Opposition No: 91,152,840

) Serial No. 76/255860

) Mark: SOMERSEASONS

) GREETINGS ASHLEY

) International Class: 16 Paper Goods
) and Printed Matter

) Published: April 30, 2002



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Commissioner for Trademarks
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Arlington, VA 22202-3513

07-11-2003

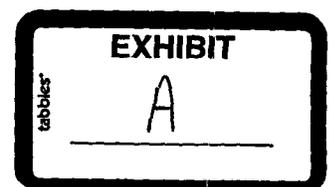
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

APPLICANT'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES
TO NOTICE OF OPPOSITION

Applicant, Julie Somers, through its attorneys, Weaver & Amin, hereby submits its Amended Answer to Include Sufficient Answers, Denials and Affirmative Defenses to the Notice of Opposition, as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Notice of Opposition, and accordingly denies the same.

2. Applicant denies the allegations contained in the first sentence of paragraph 15 of the Notice of Opposition. Applicant admits the allegations contained in the second sentence of paragraph 15 of the Notice of Opposition. Applicant denies the allegations contained in the third sentence of paragraph 15 of the Notice of Opposition.



3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 16 of the Notice of Opposition and accordingly denies the same. Applicant denies the allegations contained in the second sentence of paragraph 16 of the Notice of Opposition.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 17 of the Notice of Opposition and accordingly denies the same. Applicant denies the allegations contained in the second sentence of paragraph 17 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Applicant's trademark is manifestly distinct from any alleged mark of the Opposer, thus likelihood of confusion will never occur.

2. There is no likelihood of confusion, mistake or deception because Applicant's mark and Opposer's mark are not confusingly similar. Any similarity, if at all, between Applicant's mark and Opposer's mark is in the term "SOMERS" which has been used and registered by numerous third parties; thus Opposer cannot base any similarity between its mark and Applicant's mark on the term "SOMERS".

3. There is no likelihood of confusion because Applicant's SOMERSEASONS GREETINGS ASHLEY distinctive design mark is not at all confusingly similar to Opposer's SUZANNE SOMERS, SOMERS, SOMERSIZE, SUZANNE SOMERS COLLECTION, SOMERSWEET, SOMERSIZE marks (collectively "SOMERS marks") in its sound.

4. There is no likelihood of confusion because Applicant's SOMERSEASONS GREETINGS ASHLEY design mark is so drastically different from and is not confusingly similar to Opposer's SOMERS marks in its appearance.

5. There is no likelihood of confusion because Applicant's SOMERSEASONS GREETINGS ASHLEY design mark is not at all confusingly similar to Opposer's SOMERS marks in its meaning.

6. There is no likelihood of confusion because Applicant's SOMERSEASONS GREETINGS ASHLEY design mark is so drastically different from and is not confusingly similar to Opposer's SOMERS marks in appearance of advertising, promotional material and packaging.

7. There is no likelihood of confusion because Applicant's and Opposer's distinct and unique design elements prominently appear on material bearing the marks which are so drastically and significantly different.

8. There is no likelihood of confusion because Applicant's and Opposer's distinct house marks or company names prominently appear on material bearing the marks which are so drastically and significantly different.

9. There is an absence of likely confusion because the marks at issue create a completely different commercial connotation and impression.

10. There is no likelihood of confusion because of significant differences in Applicant's and Opposer's nature of goods, in the channels of commerce used for these goods, in the advertising media used for the goods, and in the quality and price of the goods.

11. Actual confusion regarding the marks at issue has never occurred.

12. Applicant adopted and used its SOMERSEASONS GREETINGS ASHLEY design mark in good faith and never with an intent to deceive or confuse and Applicant has only made "fair use" of its mark such that no likelihood of confusion will ever occur with Opposer's mark; not even a remote chance of likelihood of confusion exists.

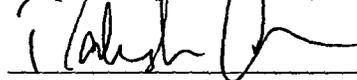
13. The mark portion "SOMERS" of the Opposer's SOMERSEASONS GREETINGS ASHLEY design mark is commonly used and registered by many third-parties and cannot be solely claimed as owned or for use by the Opposer.

14. Applicant affirmatively alleges that the mark portion "SOMERS" is very common and cannot be distinctive to or solely owned by Opposer. Since Applicant's mark as a whole is not in any way similar to Opposer's mark, there can be no likelihood of confusion. Many third party registrations and uses now exist and have existed of SOMERS – containing marks.

15. The Opposer's "SOMERS marks" are "weak" marks with a very limited and narrow scope of protection and are not likely to be confused with the Applicant's SOMERSEASONS GREETINGS ASHLEY design mark because the public has been exposed to extensive third-party use of many "SOMERS" marks and can easily distinguish between the Opposer's and Applicant's marks.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark.

Respectfully Submitted,



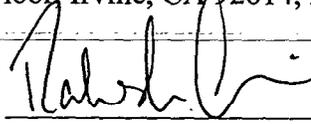
Rakesh M. Amin (IL #6228751)
Weaver & Amin
217 N. Jefferson St., Suite 602

Chicago, Illinois 60661
Telephone: (312) 466-0077
Facsimile: (312) 466-0088

Dated: June 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION** was mailed first-class mail, postage prepaid, to Jonathan A. Hyman, Esq., Knobbe, Martens, Olson & Bear, LLP, 2040 Main Street, Fourteenth Floor, Irvine, CA 92614, Attorneys for Opposer, this 17th day of June, 2003.

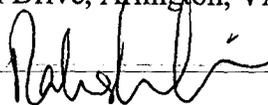


Rakesh M. Amin

Attorney for Applicant

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: BOX TTAB, NO FEE, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on June 17, 2003.



Rakesh M. Amin

Attorney for Applicant

Answer to Request No. 1:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I deny the Request because I do currently use the mark in connection with greeting cards, Christmas cards and occasion cards.

Answer to Request No. 2:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I deny the Request because I have used the mark in connection with greeting cards, Christmas cards and occasion cards.

Answer to Request No. 3:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 4:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 5:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 6:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 7:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 8:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 9:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. This Request is also vague and ambiguous. To the extent I can answer, I deny that I thought about Ms. Suzanne Somers before adopting my SOMERSEASONS GREETINGS ASHLEY design mark and deny that myself or anyone else, other than Suzanne Somers herself, believed that Suzanne Somers marks would be argued as being a conflict because the marks are so drastically different.

Answer to Request No. 10:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. This Request is also vague and ambiguous; but to the extent I can answer, I deny that I thought about Ms. Suzanne Somers before filing my SOMERSEASONS GREETINGS ASHLEY design mark and deny that myself or anyone else, other than Suzanne Somers herself, thought that the Suzanne Somers marks would pose a conflict for me because the marks at issue are openly and obviously different, distinct and unrelated.

Answer to Request No. 11:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I deny the Request.

Answer to Request No. 12:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused.

Without waiving specific or general objections and to the extent I can answer, I deny the Request.

Answer to Request No. 13:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that ~~not even 1% of potential consumers in the relevant market place would be confused.~~ Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 14:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 15:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. This request is also vague and ambiguous and calls for speculation. Without waiving specific or general objections and to the extent I can answer, I deny the Request.

Answer to Request No. 16:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. This request is also vague and ambiguous and calls for speculation. Without waiving specific or general objections and to the extent I can answer, I deny the Request.

Answer to Request No. 17:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 18:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I deny the Request.

Answer to Request No. 19:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I deny the Request.

Answer to Request No. 20:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I deny the Request.

Answer to Request No. 21:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 22:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I admit the Request.

Answer to Request No. 23:

The Request is irrelevant because the SOMERSEASONS GREETINGS ASHLEY distinctive design mark and SUZANNE SOMERS marks are so drastically different that not even 1% of potential consumers in the relevant market place would be confused. Without waiving specific or general objections and to the extent I can answer, I deny the Request. Michael Ferguson, who conducted the trademark search, advised me that I was free and clear to use and register my SOMERSEASONS GREETINGS ASHLEY distinctive design mark and that absolutely no conflict existed.

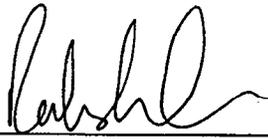
Answer to Request No. 24:

This Request is irrelevant, vague and ambiguous. Because the marks at issue are so drastically different, priority of use is not an issue. Nevertheless, I am the senior user of the SOMERSEASONS GREETINGS ASHLEY design mark reflected in USPTO Application Serial No. 76/255860.

June 06/17/03, 2003

Julie Somers

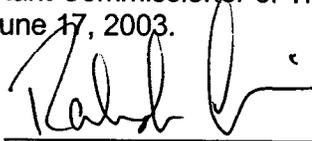
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CERTIFICATE OF MAILING

I hereby certify that this correspondence **APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS NOS. 1-24**, is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: ~~BOX TTAB, NO FEE~~, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on June 17, 2003.



Rakesh M. Amin

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