

INSTRUCTION AND DEFINITIONS OF TERMS

A. As used herein, the term “Applicant” refers to KUMHO INDUSTRIAL CO., LTD., and KUMHO TIRE CO., INC., and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Applicant, including all of its or their partner, principal, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Applicant.

B. The terms “Applicant’s Marks” generally refers to any designation and/or trademark used or intended to be used by Applicant to identify Applicant or the goods offered and promoted by Applicant in connection with that term, and particularly refers to the MATRAC mark owned by Applicant.

C. The term “Opposer” refers to TBC BRANDS, LLC and/or its licensee(s), and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to or affiliated with Opposer, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Opposer.

D. The term “MATRIX” refers to the designation or trademark of Opposer’s Registration No. 1,478,574.

E. The term “MULTI-TRAC” refers to the designation or trademark of Opposer’s Registration No. 981,104.

F. The term "Opposer's Marks" refers to the designations and/or trademarks registered of Opposer's Registrations Nos. 1,478,574 and 981,104.

G. Wherever in the following interrogatories Opposer is asked to identify documents, it is requested that the documents be identified by stating:

1. General type of document, i.e., letter, memorandum, report, miscellaneous, notes, etc.;
2. Date;
3. Author;
4. Organization, if any, with which author was connected;
5. Addressee or recipient;
6. Other distributees;
7. Organization, if any, with which addressee or recipient, or distributees were connected;
8. General nature of the subject matter to extent that Opposer can do so without divulging matter considered by it to be privileged;
9. Present location of such document and each copy thereof known to Opposer, including the title, index number and location, if any, of the file in which the document is kept or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

H. Wherever in the following interrogatories Opposer is asked to identify persons, it is requested that the persons be identified by stating:

1. Their full name, home and business addresses if known;
2. Their employment, job title or description; and

3. If employed by Opposer, their dates and regular places of employment and general duties.

I. Wherever in the following interrogatories Opposer is asked to identify outlets or the response would require the identification of a outlet, it is requested that the outlet be identified by stating:

1. Its full name;
2. A brief description of the general nature of its business;
3. The address and principal place of business; and
4. The identity of the officers or other person having knowledge of the matter with respect to which the company has been identified.

J. Should Opposer deem to be privileged any document concerning information which is requested by any of the following interrogatories, Opposer shall list such documents and supply information as requested in Paragraph E above concerning such documents, briefly state the nature of the document, the sender, the author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Opposer associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

K. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Opposer and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or

produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Opposer, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

INTERROGATORIES

Interrogatory No. 1:

If Opposer has licensed one or more of Opposer's Marks to any third party, identify the mark, the licensee, the goods licensed, the territory licensed, and the term of the license.

Response:

Interrogatory No. 2:

For each instance in which Opposer has accused any third party of infringement of the MATRIX mark, specify the third party, the mark of the third party, and the resolution, if any, of the infringement issue.

Response:

Interrogatory No. 3:

For each instance in which Opposer has accused any third party of infringement of the MULTI-TRAC mark, specify the third party, the mark of the third party, and the resolution, if any, of the infringement issue.

Response:

Interrogatory No. 4:

For each instance in which Opposer has relied on its MATRIX registration to oppose or cancel the registration of any third-party trademark, identify the third-party trademark by mark and registration or application number and specify the outcome of the opposition or cancellation proceeding.

Response:

Interrogatory No. 5:

For each instance in which Opposer has relied on its MULTI-TRAC registration to oppose or cancel the registration of any third-party trademark, identify the third-party trademark by mark and registration or application number and specify the outcome of the opposition or cancellation proceeding.

Response:

Interrogatory No. 6:

Identify all documents and set forth with specificity all facts with respect to any instance where a person or entity has been confused, mistaken, and/or deceived as to whether any goods advertised or sold under the MATRAC mark by Applicant were those of Opposer, and/or its affiliates, and for each such instance provide the date of such instance, the identity of the person or entity, the mark or marks of Opposer involved, if any, and a detailed description of the circumstances of such confusion, mistake and/or deception.

Response:

Interrogatory No. 7:

If Opposer is aware of any instances of actual confusion between Opposer's Marks and any third-party mark, for each instance specify Opposer's Marks, the third party, the third-party's mark, the person or person confused, mistaken and/or deceived, the date of such instance, and a detailed description of the circumstances of such confusion, mistake, or deception.

Response:

Interrogatory No. 8:

State in detail the channels of trade through which Opposer's Marks are used including the geographic area by city, state and territory or possession in which Opposer's Marks are used, the geographical reach of each such channel, and the approximate percentage of total sales (actual and projected) of goods through each such channel.

Response:

Interrogatory No. 9:

Identify with specificity the marketing methods used in the advertising and/or sale of the goods by or for Opposer under MATRIX and MULTI-TRAC marks, including, without limitation, the names of newspaper, magazines, trade journals or periodicals in which Opposer has advertised its goods under Opposer's MATRIX and MULTI-TRAC marks.

Response:

Interrogatory No. 10:

Identify and describe in detail the ordinary purchaser of the goods under Opposer's MATRIX and MULTI-TRAC marks, including without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods under Opposer's Marks.

Response:

Interrogatory No. 11:

For each tire size to which the MATRIX mark is applied, specify the kind of vehicle that uses the tire, the size of tire, the channel of distribution of such tire (type of retail outlet), and the number of such tires sold in each of the past five years.

Response:

Interrogatory No. 12:

For each tire size to which the MULTI-TRAC mark is applied, specify the kind of vehicle that uses the tire, the size of tire, the channels of distribution of such tire (type of retail outlet), and the number of such tires sold in each of the past five years.

Response:

Interrogatory No. 13:

If the MATRIX mark appears on any of the tires identified above together with Opposer's corporate name or another mark of Opposer, identify the tire by size and kind of vehicle and the other mark or marks of Opposer, if any.

Response:

Interrogatory No. 14:

Identify by name and address all retail outlets that sell Opposer's MATRIX tires.

Response:

Interrogatory No. 15:

Identify by name and address all retail outlets that sell Opposer's MULTI-TRAC tires.

Response:

Interrogatory No. 16:

If Opposer's application to register the MATRIX mark was refused on the grounds of likelihood of confusion with respect to any other mark, identify that other mark and Opposer's response to the refusal to register.

Response:

Interrogatory No. 17:

If Opposer has ever made any representations that its MATRIX mark is dissimilar to the mark MAXTRAC (Reg. No. 930,038), specify the representations made, the person making the

representations, the person to whom the representations were made, and the date of the representations.

Response:

Interrogatory No. 18:

If Opposer's application to register the MULTI-TRAC mark was refused on the grounds of likelihood of confusion with respect to any other mark, identify the other mark and Opposer's response to the refusal to register.

Response:

Interrogatory No. 19:

Has any person ever asserted that TBC BRANDS, LLC's MATRIX mark infringed a third-party trademark? If so, identify the third-party trademark, the name and last known address of the person asserting the infringement, the approximate date of the assertion or accusation, the response of Opposer to the assertion, and the resolution of the matter.

Response:

Respectfully submitted,



R. Neil Sudol
Attorney for Applicant
Kumho Industrial Co., Ltd.
Kumho Tire Co., Inc.

Date: 5/5/04

COLEMAN SUDOL SAPONE, PC
714 Colorado Avenue
Bridgeport, CT 06605-1601
(203) 366-3560

PROOF OF SERVICE

I hereby certify that on May 5, 2004, which also is the date of execution of this declaration, this APPLICANT'S FIRST INTERROGATORIES TO OPPOSER TBC BRANDS, LLC is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" service under 37 C.F.R § 1.10, postage prepaid, in an envelope addressed to:

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

Marsha G. Gentner, Esq.
JACOBSON HOLMAN PLLC
400 Seventh St., N.W.
Washington, D.C. 20004

EXPRESS MAIL NO.:
EL 890530726 US

EXPRESS MAIL NO.:
EL 890541264 US



Claudia S. Valera

INSTRUCTION AND DEFINITION OF TERMS

- A. As used herein, the term “Applicant” refers to KUMHO INDUSTRIAL CO., LTD., and KUMHO TIRE CO., INC., and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Applicant, including all of its or their partner, principal, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Applicant.
- B. The term “Applicant’s Marks” generally refers to any designation and/or trademark used or Intended to be used by Applicant to identify Applicant or the goods offered and promoted by Applicant in connection with that term, and particularly refers to the MATRAC mark owned by Applicant.
- C. The term “Opposer” refers to TBC BRANDS, LLC and/or its licensee(s), and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to or affiliated with Opposer, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Opposer.
- D. The term “MATRIX” refers to the designation or trademark of Opposer’s Registration No. 1,478,574.
- E. The term “MULTI-TRAC” refers to the designation or trademark of Opposer’s Registration No. 981,104.

F. The term "Opposer's Mark" refers to the designations and/or trademarks of Opposer's Registrations Nos. 1,478,574 and 981,104.

G. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Opposer and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Opposer, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

In the event Opposer wishes to assert either attorney-client privilege or work-product exclusion, or both, as to any document for which production is requested by any of the following specific document requests, then as to each document subject to such assertion, Opposer is requested to provide such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Opposer associated with such document, a summary statement of the subject matter(s) of such document, a sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or the like for each such document.

H. Over and above the requirements of Rule 26(e) of the Federal Rules of Civil Procedure to supplemental responses, it is requested that these discovery requests be treated as continuing. If Opposer becomes aware of any supplemental information or documents relating to these discovery requests and which were not included in the initial responses hereto, Opposer is requested to furnish said additional information or documents to the attorneys for Opposer as soon as possible.

REQUEST FOR PRODUCTION

Request No. 1:

Produce all documents within the records and/or control of Opposer which record or refer to the subject of this opposition proceeding.

Response:

Request No. 2:

Produce a sample of each and every different advertisement, intended advertisement, item of promotional material and/or intended item of promotional material printed and/or disseminated by or for Opposer in which Opposer's Marks appear.

Response:

Request No. 3:

Produce a sample of each tire of Opposer on which or in connection with which at least one of Opposer's Marks appears.

Response

Request No. 4:

Produce all documents which record, refer to, or relate to any communication, oral or written, received by Opposer from any person which suggests, implies, or infers any connection or association between Applicant, and Opposer, or which inquires as to whether there is or may be such a connection or association, based upon Opposer's and/or its licensees' or sublicensees' use of the marks MATRIX and/or MULTI-TRAC.

Response:

Request No. 5:

Produce all documents which record, refer to, or relate to, or which constitute any research, reports, surveys, or studies conducted by or on behalf of Opposer of consumer or customer perception of Opposer's Marks.

Response:

Request No. 6:

Produce all press releases, articles and clippings relating to or commenting on goods or services marketed or sold under Opposer's Marks.

Response:

Request No. 7:

Produce a copy of any statements and/or opinions of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

Response:

Request No. 8:

Produce a copy of all documents, other than those produced to any of the foregoing requests, upon which Opposer intends to rely in connection with this opposition proceeding.

Response:

Request No. 9:

Produce copies of all correspondence transmitted between the registrant and the Patent and Trademark Office during the prosecution of the application to register the MATRIX mark.

Response:

Request No. 10:

Produce copies of all correspondence transmitted between the registrant and the Patent and Trademark Office during the prosecution of the application to register the MULTI-TRAC mark.

Response:

Request No. 11:

Produce copies of all correspondence relating to any assertion that the MATRIX mark infringed a third-party trademark.

Response:

Request No. 12:

Produce copies of all correspondence relating to any assertion that the MULTI-TRAC mark infringed a third-party trademark.

Response:

Request No. 13:

Produce all documents which record, refer to, or relate to one or more instances of actual confusion between Opposer's MATRIX mark and applicant's MATRAC mark.

Response:

Request No. 14:

Produce all documents which record, refer to, or relate to one or more instances of actual confusion between Opposer's MULTI-TRAC mark and applicant's MATRAC mark.

Response:

Request No. 15:

Produce all documents which record, refer to, or relate to one or more instances of actual confusion between Opposer's MATRIX mark and any third-party mark that includes a prefix syllable MA or MAT.

Response:

Request No. 16:

Produce all documents which record, refer to, or relate to one or more instances of actual confusion between Opposer's MULTI-TRAC mark and any third-party mark that includes a suffix syllable TRAC or TRACK.

Response:

Request No. 17:

Produce copies of all documents, including but not limited to advertising brochures, catalogues and price lists, referring to Opposer's MATRIX tires.

Response:

Request No. 18:

Produce copies of all documents, including but not limited to advertising brochures, catalogues and price lists, referring to Opposer's MULTI-TRAC tires.

Response:

Request No. 19:

Produce all documents which record, refer to or relate to any assertion by Opposer that a third-party infringed the MATRIX mark.

Response:

Request No. 20:

Produce all documents which record, refer to or relate to any assertion by Opposer that a third party infringed the MULTI-TRAC mark.

Response:

Request No. 21:

Produce all correspondence between the Opposer and any third party and all correspondence between Opposer and the Patent and Trademark Office relating to any opposition or cancellation proceeding brought by or threatened by Opposer based on its MATRIX registration, other than the present oppositions against Applicant's MATRAC, MATRAC TX AND MATRAC STX marks.

Response:

Request No. 22:

Produce all correspondence between the Opposer and any third party and all correspondence between Opposer and the Patent and Trademark Office relating to any opposition or cancellation proceeding brought by or threatened by Opposer based on its MULTI-TRAC registration, other than the present oppositions against Applicant's MATRAC, MATRAC TX AND MATRAC

STX marks.

Response:

Respectfully submitted,



R. Neil Sudol
Attorney for Applicant
Kumho Industrial Co., Ltd.
Kumho Tire Co., Inc.

Date: 5/5/04

COLEMAN SUDOL SAPONE, PC
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PROOF OF SERVICE

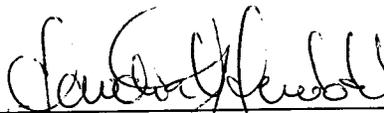
I hereby certify that on May 5, 2004, which also is the date of execution of this declaration, this APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO OPPOSER is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" service under 37 C.F.R § 1.10, postage prepaid, in an envelope addressed to:

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

Marsha G. Gentner, Esq.
JACOBSON HOLMAN PLLC
400 Seventh St., N.W.
Washington, D.C. 20004

EXPRESS MAIL NO.:
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EXPRESS MAIL NO.:
EL 890541264 US



Claudia S. Valera