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

Proceeding	91159137
Party	Defendant NATURAL SOURCE INTERNATIONAL, LTD. NATURAL SOURCE INTERNATIONAL, LTD. PMB 331 208 EAST 51st STREET NEW YORK, NY 10022
Correspondence Address	JACQUELINE LEVASSEUR PATT VENABLE LLP 575 7TH STREET, N.W. WASHINGTON, DC 20004-1601 jlpatt@venable.com, trademarkdocket@venable.com
Submission	Motion to Compel Discovery
Filer's Name	Paul M. Fakler
Filer's e-mail	pfakler@thelenreid.com
Signature	/Paul M. Fakler/
Date	09/25/2006
Attachments	NSI Motion Compel.pdf (22 pages)(791311 bytes) NSI Fakler Decl. Compel.pdf (120 pages)(4077292 bytes)

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

In re Matter of U.S. Application Serial No. 76/504,365
For: NATURAL SOURCE and Design
Filed: April 8, 2003
Date of Publication: December 2, 2003

THRESHOLD ENTERPRISES LTD.,	)	
	)	
Opposer,	)	
v.	)	Opposition No.: 91159137
	)	(Parent)
NATURAL SOURCE INTERNATIONAL, LTD.,	)	
	)	
Respondent.	)	
	)	
_____	)	

In re Matter of U.S. Application Serial No. 76/506,477
For: SOURCED FROM NATURE . . . PERFECTED BY SCIENCE
Filed: April 14, 2003
Date of Publication: January 6, 2004

THRESHOLD ENTERPRISES LTD.,	)	
	)	
Opposer,	)	
v.	)	Opposition No.: 91159361
	)	
NATURAL SOURCE INTERNATIONAL, LTD.,	)	
	)	
Respondent.	)	
	)	
_____	)	

APPLICANT'S MOTION TO COMPEL DISCOVERY, EXTEND APPLICANT'S TIME TO TAKE DISCOVERY AND FOR PROTECTIVE ORDER

Applicant, Natural Source International, Ltd. ("NSI"), pursuant to Trademark Rule 2.120(e), 37 C.F.R. § 2.120(e) and Rule 37 of the Federal Rules of Civil Procedure,

through its undersigned attorneys, hereby respectfully moves the Trademark Trial and Appeal Board (the "Board") for an order compelling Opposer, Threshold Enterprises Ltd. ("Threshold"), to provide full and complete responses, as modified below, to Applicant's First Set of Interrogatories and First Set of Document Requests, which discovery requests were served on June 15, 2004. Despite Applicant's repeated attempts to obtain discovery from Opposer, Opposer has not produced a single document and has refused to provide much of the information sought in the Interrogatories. Indeed, Opposer has failed to make any substantive response to Applicant's repeated attempts to meet and confer in an effort to resolve this dispute.

In addition, Applicant respectfully requests that the Board grant Applicant, but not Opposer, an additional 60 days in which to complete discovery, commencing on the date that Opposer fully responds, without objection, to Applicant's First Set of Interrogatories, First Set of Document Requests and First Requests for Admission.

Finally, pursuant to Rule 26 of the Federal Rules of Civil Procedure and Trademark Rule 2.120(f), 37 CFR § 2.120(f), Applicant respectfully requests that the Board enter the proposed Protective Order submitted herewith, so that Opposer will not continue to withhold documents on the ground of confidentiality.

STATEMENT OF FACTS

On January 7, 2004, Opposer filed a notice of opposition against Application Serial No. 76/504,365 for the mark NATURAL SOURCE and Design (the "NATURAL SOURCE Opposition"). Declaration of Paul M. Fakler ("Fakler Decl.") ¶ 2. On January 29, 2004, Opposer filed a notice of opposition against Application Serial No. 76/506,477 for the mark SOURCED FROM NATURE . . . PERFECTED BY SCIENCE (the "Pending Opposition"). Fakler Decl. ¶ 3. On June 15, 2004, Applicant served its first discovery requests

in the NATURAL SOURCE Opposition. Fakler Decl. ¶ 4. On June 15, 2004, Applicant also served its first discovery requests in the Pending Opposition, true and correct copies of which are attached as Exhibit 1 to the Fakler Decl, submitted herewith. Fakler Decl. ¶ 5 & Ex. 1. On July 28, 2004, the NATURAL SOURCE Opposition was consolidated with the Pending Opposition. Fakler Decl. ¶ 6. On August 17, 2004, Opposer served its first discovery requests. Fakler Decl. ¶ 7. On August 18, 2004, Opposer served written responses to Applicant's first discovery requests, true and correct copies of which are attached as Exhibit 2 to the Fakler Decl., submitted herewith. Fakler Decl. ¶ 8 & Ex. 2. No documents were produced with the written responses. Fakler Decl. ¶ 8.

On August 30, 2004, the parties entered into settlement discussions and stipulated to a series of suspensions of the consolidated opposition. When settlement discussions were ultimately unsuccessful, the consolidated opposition re-commenced on May 19, 2006, with the new discovery period set to close on September 19, 2006. Fakler Decl. ¶ 9. On April 19, 2006, Applicant withdrew its NATURAL SOURCE application, thereby mooting the NATURAL SOURCE Opposition. Fakler Decl. ¶ 10. On June 19, 2006, Applicant served its written responses to Opposer's pending discovery requests, and shortly thereafter produced its documents. Fakler Decl. ¶ 11.

On August 2, 2006, counsel for Applicant spoke with counsel for Opposer, informing inquiring why Opposer had not produced any documents and notifying Opposer that many of Opposer's written discover objections were invalid. Opposer's attorney stated that she would have to speak with Opposer and would be able to fully discuss the discovery issues the next week. When Applicant asked for an extension of the discovery period to deal with

Opposer's failure to produce, Opposer was only willing to stipulate to a short extension, to September 19, 2006. Fakler Decl. ¶ 12.

On August 8, Opposer's counsel faxed a letter to Applicant, confirming that it would be responding that week to Applicant's discovery disputes. Fakler Decl. ¶ 13 & Ex. 3. On August 11, 2006, having received no further contact from Opposer, Applicant sent a detailed letter to Opposer by e-mail, setting forth Applicant's dispute with each of Opposer's invalid objections, suggesting compromises where appropriate, and providing a draft stipulated protective order in light of Opposer's confidentiality objections. Fakler Decl. ¶ 14 & Exs. 4-5.

On August 20, 2006, counsel for Opposer sent an e-mail to counsel for Applicant, acknowledging her receipt of Applicant's August 11 letter, but stating that she was still not able to address the substance of Applicant's discovery dispute, without giving any indication of when she would be able to do so and without explaining why no documents had been produced to date. Fakler Decl. ¶ 15 & Ex. 6. On August 22, 2006, Opposer sent a responsive e-mail, noting that twenty days had already passed since Applicant began its attempt to meet and confer in a good faith attempt to obtain Opposer's compliance with its discovery obligations and putting Opposer on notice that if Applicant did not promptly provide any substantive response, Applicant would have to proceed by motion to protect its rights, particularly in light of approaching discovery cutoff even after the short extension stipulated by Opposer. Applicant reasonably asked for at least a date certain by which it could expect Opposer's response to Applicant's detailed discovery objections. Fakler Decl. ¶ 16 & Ex. 7.

On August 24, 2006, counsel for Opposer responded, but with no discussion of the substantive discovery issues and still refusing to give any date by which Applicant could expect a substantive response. Fakler Decl. ¶ 17 & Ex. 8. On August 30, 2006, a full four weeks

after Applicant first attempted to resolve this dispute with Opposer, counsel for Opposer sent a letter to Applicant. Fakler Decl. ¶ 18 & Ex. 9. In this letter, amazingly, Opposer still provided no substantive response to any of the issues raised by Applicant, no explanation of why no documents had been produced, and no date by which Applicant could expect any such response or production. Instead, counsel stated that Opposer was "in the process" of retaining new counsel and that such new counsel would contact Applicant to address the discovery dispute at some unspecified time in the future. Opposer's counsel also made numerous false, self-serving and irrelevant statements about the failed settlement discussions. Counsel also represented that Opposer would agree to another extension of the discovery schedule, but did not indicate the length of any such extension. Opposer has not responded or communicated with Applicant in any way since the August 30 letter, and there has been no substitution of counsel in the record of the Pending Opposition. Fakler Decl. ¶ 18.

To this date, almost 25 months since documents should have been produced, an entire month since Opposer's August 30 letter, and almost two months since Applicant attempted to resolve this dispute and obtain discovery from Opposer, Opposer still has not responded to Applicant's discovery dispute, has not adequately responded to Applicant's interrogatories and has not produced a single responsive document. Fakler Decl. ¶ 19. With no production and no response to Applicant's repeated attempts to resolve this dispute without intervention of the Board, Applicant is left with no choice but to bring this motion.

ARGUMENT

I. Opposer Must Be Ordered To Respond to Applicant's Discovery Requests

Failure to comply with discovery requests is actionable and compliance may be ordered by the Board. Fed. R. Civ. P. 37(a)(2)(B); 37 C.F.R. § 120(e). Under the operative

Federal Rules, trial judges have broad discretion to grant such orders as they may deem appropriate to ensure full discovery. *See, e.g., Nat'l Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642-43 (1976). In its written responses, Opposer has interposed numerous invalid objections, and used these invalid objections to avoid producing any useful discovery. Even in the rare instance where Opposer has agreed to produce responsive documents, Opposer has simply refused to make any actual production after repeated requests. By failing to properly respond to lawful and appropriate discovery in a proceeding that it brought, Opposer has prevented the Pending Opposition from moving forward to a determination on the merits. Indeed, given the impending discovery cutoff, Opposer's disingenuous and unfulfilled promises to respond to Applicant's discovery dispute and Opposer's failure to produce a single documents, Opposer will be irreparable prejudiced unless the Board orders Opposer to provide Opposer with full and complete discovery by a date certain, and an extension of the discovery period for Applicant (but not Opposer, which should not benefit from its willful flaunting of its discovery obligations) to allow depositions to proceed after documents are finally produced and interrogatories fully answered.

As required by Trademark Rule 2.120(e), 37 C.F.R. § 2.120(e), and as evidenced by Applicant's communications referenced above, Applicant has made a good faith effort to resolve the issues presented in this motion with Opposer. So as not to prejudice its defense, Applicant hereby seeks an Order compelling Opposer to fully respond to Applicant's discovery requests.

A. Standard for the Scope of Discovery

The standard for the scope of discovery available to Applicant in the Pending Proceeding is set by Federal Rule of Civil Procedure 26, which provides:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. ... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. ...

Fed. R. Civ. P. 26(b)(1). The scope of discovery under Rule 26 is broad, and relevance is liberally construed. *Fischer Gesellschaft m.b.H. v. Molnar & Co.*, 203 USPQ 861 (TTAB 1979); *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975).

B. Opposer's Non-Specific, Boilerplate Objections

As a preliminary matter, Opposer's General Objections in its response to Applicant's Document Requests and Interrogatories, which Opposer purports to incorporate into each of its specific responses, contain numerous general, boilerplate objections, such as vagueness and relevance. Various of the specific responses also contain similar generalized and non-specific objections. Such boilerplate objections are inadequate to satisfy the Federal Rules' requirements that discovery objections be stated with specificity. For example, Federal Rule of Civil Procedure 33 provides:

> All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

Fed. R. Civ. P. 33(b)(4). Rule 34(b) has a similar provision with respect to document requests. Opposer's reliance on non-specific, boilerplate objections violates these Rules, and constitutes a waiver of the objections.

Worse, the responses in certain instances agree to produce responsive documents, "subject to and without waiving" these boilerplate objections, yet without specifying how such

production will be limited by the objections. It has been held that this type of evasive response is improper and waives any objection to the request. *Atheridge v. Aetna Casualty & Surety Co.*, 184 F.R.D. 181, 190-91 (D. D.C. 1998).

C. Applicant's Document Requests

As shown below, Opposer's objections to Applicant's Document Requests are facially invalid and frivolous. Opposer has objected on relevance grounds and withheld numerous categories of documents that are clearly necessary to Applicant's defense of this Opposition. The overwhelming number of these frivolous objections leads inexorably to the conclusion that they could only have been lodged for the improper purpose of frustrating discovery.

1. Document Requests Nos. 1-2

Opposer's Response to Request No. 1, combined with its total failure to produce any documents, makes it unclear whether Opposer is agreeing to produce responsive documents. Any documents identified in response to Applicant's Interrogatories are plainly within the scope of discovery. Similarly, and documents upon which Opposer intends to rely at trial are within the scope of discovery. Applicant requests that the Board order production immediately.

2. Document Request No. 3

With respect to Request No. 3, these documents concerning the selection, availability, adoption, design, creation and proposal to use Threshold's mark are plainly relevant to Threshold's allegations of its rights in the mark as well of its knowledge of other similar marks in the marketplace. Applicant requests that the Board order production immediately.

3. Document Request Nos. 4-13

With respect to Requests Nos. 4-13, these Requests are directed to and limited by Opposer's own pleading. As such, Threshold's objections on the grounds of relevance and vagueness are entirely misplaced. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975); *Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 USPQ 286, 287 (TTAB 1974) (opposer must answer interrogatories concerning allegations in notice of opposition). Moreover, the terms identified by Threshold as allegedly vague are expressly defined in the Requests. Threshold's objections are also non-specific, which makes it impossible to determine whether Threshold will withhold any responsive documents, and on that ground they violate the Federal Rules.

Additionally, with respect to Request Nos. 6 and 8, Opposer's limitation of its production to documents that "support" Threshold's allegations is improper. Applicant obviously has the right to obtain any documents that could tend to disprove Threshold's allegations as well as prove them.

With respect to Requests Nos. 11-13, these Requests seek documents concerning Threshold's allegations about the strength of its mark, likelihood of confusion and damages, all of which are directly and highly relevant to the Opposition. A copy of Threshold's trademark registration and samples of use are woefully inadequate to allow Applicant to defend its case. Threshold must produce all responsive documents.

Applicant requests that the Board order Opposer to immediately produce all documents responsive to Requests Nos. 4-13.

4. Document Requests Nos. 19 and 21

Request Nos. 19 and 21 seek documents sufficient to show sales, marketing and advertising expenses for each of the goods and services sold in connection with the mark. This is obviously relevant to the strength of the mark and is common trademark discovery. These Requests are not unduly burdensome, as Applicant is only asking for documents sufficient to show these figures. Applicant requests that the Board order Opposer to immediately produce all documents responsive to Requests Nos. 19 and 21.

5. Document Request No. 22

Request No. 22 seeks documents concerning press, media and other published third party references to the mark. These documents are clearly relevant to the strength of the mark. All such documents must be produced because the volume of any such references itself is relevant. Threshold's promise to produce samples is insufficient.

6. Document Request No. 23

With respect to Request No. 23, Threshold's Response is a non-sequitur. This Request seeks all documents concerning incidents of actual confusion. The few categories of documents Opposer agrees to produce are non-responsive, and in any event are insufficient. Applicant is clearly entitled to all documents, if any, concerning actual confusion.

7. Document Request No. 24

With respect to Request No. 24, the characteristics of Threshold's customers, such as demographics and other factors going to their relative sophistication, is plainly relevant to the likelihood of confusion analysis and any documents addressing this subject must be produced.

8. Request Nos. 25 and 26

Requests Nos. 25-26 seek documents concerning the quality, respectively, of Applicant's and Opposer's goods at issue in the Pending Opposition. These documents are clearly relevant to the likelihood of confusion analysis and must be produced.

9. Requests Nos. 27 and 28

Requests Nos. 27-28 seek documents concerning research, surveys, reports and studies concerning, respectively, Opposer's and Applicant's marks. The relevance of such surveys to the strength of the marks and likelihood of confusion is self-evident.

10. Request No. 29

With respect to Request No. 29, the channels of trade for Opposer's products is plainly relevant to the likelihood of confusion analysis. Opposer has not explained how this Request is unduly burdensome, but Applicant will agree to limit the Request to "documents sufficient to identify" instead of "all documents relating to and/or referring to and/or demonstrating" the channels of trade.

11. Request No. 32

Request No. 32 seeks documents concerning any assignment, license or other transfer or grant of rights with respect to Threshold's mark. These documents are clearly relevant as they are related to Threshold's ownership and rights to the mark.

12. Request No. 34

Request No. 34 seeks documents concerning Threshold's corporate status, and are relevant to its claim of ownership.

13. Request No. 35

With respect to Request No. 35, consumer research and focus group studies are clearly relevant to the strength of the mark and likelihood of confusion.

14. Request No. 36

Request No. 36 seeks standard expert discovery. It is plainly within the scope of discovery and all responsive documents must be produced.

15. Request No. 38

With respect to Request No. 38, documents concerning Opposer's exercise (or lack thereof) of quality control for products or services sold under the mark are relevant. Applicant is willing to limit this Request to documents concerning such quality control.

16. Requests Nos. 40 and 41

Request Nos. 40 and 41 seek documents concerning third party uses of marks similar to Opposer's mark and Applicant's mark, and are clearly relevant to the strength of the mark and likelihood of confusion.

D. Applicant's Interrogatories

As with Opposer's objections to Applicant's Document Requests, Opposer's objections to Applicant's Interrogatories are voluminous and frivolous, indicating bad faith.

1. Objection to Number

As a preliminary matter, Threshold has lodged numerous objections on the ground that Applicant's Interrogatories exceed 75 in number. This objection is invalid for at least two reasons. First, the proper procedure for lodging such an objection is not to selectively answer

certain of the Interrogatories, as Threshold has done, but rather to serve a general objection on that ground instead of serving answers. 37 CFR § 2.120(d)(1) ("If a party upon which interrogatories have been served believes that the number of interrogatories served exceed the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number."); TBMP § 405.03(e) ("A party should not answer what it considers to be the first seventy-five interrogatories and object to the rest as excessive."). This is precisely what Opposer has done. In addition to lodging its objection to number in addition to its other objections, Opposer has cherry-picked which Interrogatories it would refuse to answer on the basis of the objection.

Second, Applicant has clearly served fewer than 75 Interrogatories in this Opposition, as evidenced by the Interrogatories attached hereto. In its attempt to resolve this dispute prior to motion, Applicant asked Opposer to state how many individual Interrogatories Threshold alleges are contained in NSI's Interrogatories served in this Opposition and explain Threshold's counting method by which it has arrived at that number. Ex. __. Opposer refused to do so, and should not now be heard to fabricate an explanation.

2. Non-Responsive Answers Relating to the NATURAL SOURCE Mark

In various Responses, including to Requests Nos. 1,2,6, 9, 30 and 31, Opposer references the NATURAL SOURCE and Design mark, which is not the subject of the Pending Opposition and was not the subject of the Interrogatories. These Responses are therefore completely non-responsive and useless to Applicant. Applicant informed Opposer of this apparent drafting error (giving Opposer the benefit of the doubt), but Opposer has refused to

correct or amend these Responses. Any objections to these Responses should be deemed waived, and Opposer must be ordered to respond in full.

3. Interrogatories Nos. 1-10

As with Document Requests Nos. 4-13, Interrogatories Nos. 1-10 are standard contention interrogatories, with language directed to and limited by Threshold's own pleading. As such, Threshold's objections on the grounds of relevance and vagueness are entirely misplaced. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975); *Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 USPQ 286, 287 (TTAB 1974) (opposer must answer interrogatories concerning allegations in notice of opposition). The objections are also non-specific, which makes it impossible to determine whether Threshold has withheld any responsive information, and on that ground they violate the Federal Rules.

Additionally, Response No. 10 is non-responsive. Interrogatory No. 10 seeks the facts upon which Opposer bases its allegation that it will be damaged by the registration of Applicant's mark. Response No. 10 does not state any facts supporting that claim. If Threshold has any facts supporting its claim of damage, it should state them. If not, it should state that it knows of no such facts.

4. Interrogatories Nos. 11 and 12

Interrogatories Nos. 11 and 12 seek basic information about the actual first use of Opposer's mark and alleged trade name, upon which it bases its Opposition. This information is clearly relevant is in no way confidential or trade secret.

5. Interrogatories Nos. 15 and 17

With respect to Interrogatory Nos. 15 and 17, Opposer's response is impermissibly and purposefully vague, because of its qualification of its list of types of products with the phrase "among other products and services." If there are any other types of products or services sold in connection with Opposer's mark, it should identify them as required by the Interrogatory and omit the qualification of the Response.

6. Interrogatory No. 16

Interrogatory No. 16 seeks the identity of persons who created and designed Opposer's materials displaying the mark. This is clearly relevant, as such persons are potential witnesses with respect to Opposer's use of its mark.

7. Interrogatory No. 18

Interrogatory No. 18 seeks some of the most typical and basic information relevant to the strength of Opposer's mark. Opposer has asked for, and Applicant has provided, the very same information about Applicant's mark. Opposer has thus waived any objection, even if it were valid (which it is not). *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986) (parties served identical discovery requests on each other and are constrained to answer each completely); TBMP § 402.01 ("In addition, because the signature of a party or its attorney to a request for discovery constitutes, under the provisions of Fed. R. Civ. P. 26(g), a certification by the party or its attorney that, *inter alia*, the request is warranted, consistent with the Federal Rules of Civil Procedure, and not unreasonable or unduly burdensome, a party ordinarily will not be heard to contend that a request for discovery is proper when propounded by the party itself but improper when propounded by its adversary.").

8. Interrogatory No. 21

With respect to Interrogatory No. 21, Opposer's Response is wholly non-responsive. This Interrogatory seeks information about evidence of actual confusion. Threshold has already admitted that it does not know of any instances of such confusion. Opposer must confirm that there is no responsive evidence or identify such evidence.

9. Interrogatory No. 23

Interrogatory No. 23 seeks information about complaints concerning Opposer's goods sold in connection with its mark. The quality, and perceived quality, of Opposer's goods is relevant to the likelihood of confusion analysis.

10. Interrogatory No. 24

With respect to Interrogatory No. 24, any studies, searches or investigations concerning Opposer's mark are plainly relevant to this dispute in that they are likely to be probative of the strength of the mark and the likelihood of confusion. Opposer's vagueness objections are demonstrably invalid, as Opposer was able to understand and respond to the exact same words used in Interrogatory No. 25.

11. Interrogatory No. 26

With respect to Interrogatory No. 26, putting aside the impropriety of relying on a reference to a Response to a different Interrogatory, the Response so referenced, Response No. 13, does not identify all "channels of trade" as that term is defined in the Interrogatories. Opposer's channels of trade are plainly relevant to the likelihood of confusion analysis and must be identified.

12. Interrogatory No. 27

Interrogatory No. 27 seeks basic customer demographic information, which is plainly relevant to the likelihood of confusion analysis. Response No. 13, as incorporated by reference, is not responsive.

13. Interrogatory No. 28

With respect to Interrogatory No. 28, Opposer's Response does not address whether Opposer has received any licenses, assignments or other rights transfers with respect to the mark. Opposer's Response must be supplemented to be fully responsive.

14. Interrogatory No. 29

With respect to Interrogatory No. 29, in addition to the same omission noted above with respect to Interrogatory No. 28, Opposer also limits its Response to agreements with Applicant, and does not address any possible agreements with third parties. Opposer's Response must be supplemented to provide a full and complete response.

15. Interrogatory No. 32

Interrogatory No. 32 seeks information concerning all registrations and applications to register Opposer's mark, including information concerning status and rejections. This information is clearly calculated to discover evidence probative of the strength and validity of Opposer's mark.

16. Interrogatories Nos. 33-36

Interrogatories Nos. 33-36 seek information concerning Opposer's policing and enforcement of its mark, and Threshold's knowledge of the existence of other similar marks, all of which is relevant to the strength of the mark.

17. Interrogatory No. 38

With respect to Interrogatory No. 38, the identification of facts and document upon which Opposer intends to rely with respect to likelihood of confusion is plainly relevant and proper discovery. It is not clear, however, that Responses No. 1, 3-9 and 13 contain every such fact or document. Opposer must be compelled to answer Interrogatory fully, without objections, and without reference to any other Response.

18. Interrogatory No. 39

Interrogatory No. 39 seeks basic expert discovery and is both relevant and proper. If Opposer has not retained an experts in this proceeding, Applicant has the right to know that. There is simply no ground for Opposer to refuse to answer this Interrogatory.

19. Interrogatory No. 41

Interrogatory No. 41 seeks the identification of any documents Opposer intends to rely upon in this Opposition. This is clearly relevant and there is nothing vague about it. Threshold's Response is wholly non-responsive.

20. Interrogatory Nos. 42 and 43

Interrogatory Nos. 42 and 43 are common housekeeping discovery requests, and Opposer has not justified why these Interrogatories could not lead to the discovery of relevant evidence or why answering these Interrogatories would be unduly burdensome.

II. Extension of Discovery Period For Applicant's Benefit

As noted above, Opposer has willfully failed to comply with its discovery obligations, and after stipulating to only a short discovery extension, Opposer willfully ignored

Applicant's repeated attempts to obtain discovery without burdening the Board with this motion. Having done so, and having burdened both the Board and Applicant with this motion, Opposer should not be allowed to benefit from its bad faith conduct. Applicant respectfully suggests that giving Opposer the benefit of a discovery extension would act as a reward for such behavior. The Board has the discretion to grant Applicant's request in this regard. *Miss America Pageant v. Petite Productions, Inc.*, 17 U.S.P.Q.2d 1067, 1070 (T.T.A.B. 1990) ("The Board will, upon motion, reopen or extend discovery solely for the benefit of a party whose opponent, by wrongfully refusing to answer, or delaying its responses to, discovery, has unfairly deprived the propounding party of the right to take follow-up discovery." In this case, Applicant has already responded to Opposer's discovery requests, and produced documents, well in advance of the discovery cutoff. Only Opposer has failed to produce and improperly delayed discovery.

III. Entry of Protective Order

Opposer has lodged numerous objections based upon the alleged confidentiality of the material sought in discovery by Applicant. Applicant has proposed a protective order, which it believes is balance both parties' legitimate need to protect truly confidential information, while allowing the parties to efficiently litigate this proceeding. Ex. 5. Applicant notes that its proposed protective order differs from the Board's standard order in that is only has one level of confidentiality, and that there is no class of material subject to "attorneys' eyes only" status. Applicant believes its form of protective order is appropriate in this case, because the information sought by Applicant is not highly sensitive. No trade secrets are sought. Moreover, Applicant is willing to be bound to using any information from discovery only for the purposes of this proceeding. Applicant is such a small company compared to Opposer that even if any of the business information about Opposer could legitimately be considered to be of the

highest sensitivity, it would be of no competitive use to Applicant, which operates in a very different market with limited resources and wholly different economies of scale. Moreover, Applicant has already produced almost all of its discovery, including similar business information about Applicant, without a protective order in place. Finally, given Opposer's abusive discovery conduct set forth above, Applicant has a legitimate apprehension that Opposer will substantially over-designate its discovery with an "attorneys' eyes only" designation, forcing Applicant to choose between a significant burden on its ability to assist counsel with its defense and further expensive discovery motion practice. For these reasons, Applicant respectfully requests that the Board enter the protective order attached as Exhibit 5.

CONCLUSION

For the reasons set forth above, Applicant respectfully requests that the Board issue an Order:

1. Compelling Opposer, within thirty (30) days of the mailing date of the Order, to respond in writing fully and completely, without objection, to Applicant's First Set of Interrogatories as set forth above;

2. Compelling Opposer, within thirty (30) days of the mailing date of the Order, to produce all documents responsive to Applicant's First Set of Document Requests, as set forth above, at the offices of Thelen Reid & Priest LLP, located at 875 Third Avenue, New York, New York 10022;

3. Unilaterally granting Opposer a 60 day extension of time in which to take additional discovery, commencing on the date that Opposer fully complies with the Board's Order compelling discovery, above;

4. Entering the protective order attached as Exhibit 5;

5. Sanctioning Opposer for its obstructive and dilatory behavior by barring Opposer from objecting to any of Applicant's discovery requests;

6. Resetting the trial and testimony periods in conformity with Applicant's new discovery deadline;

7. Suspending the proceeding pending the resolution of this motion; and

8. Ordering any further relief the Board deems just.

Dated: September 25, 2006

Respectfully submitted,

THELEN REID & PRIEST LLP

By: _/Paul M. Fakler/_____
Paul M. Fakler

875 Third Avenue
New York, New York 10022
Telephone: (212) 603-2143
Facsimile: (212) 829-2076

Counsel for Applicant - Respondent
Natural Source International, Ltd.

CERTIFICATE OF SERVICE

The undersigned states:

I hereby certify that a true and complete copy of the foregoing Motion to Compel Discovery, Extend Applicant's Time For Discovery and For Protective Order has been served on counsel for Opposer, by mailing said copy on September 25, 2006, via First Class Mail, postage prepaid to: Mary Catherine Merz, Merz and Associates, P.C., 1140 Lake Street, Suite 304, Oak Park, Illinois, 60301.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 25, 2006, at New York, New York.

____/Paul M. Fakler/_____

Paul M. Fakler

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

In re Matter of U.S. Application Serial No. 76/504,365
For: NATURAL SOURCE and Design
Filed: April 8, 2003
Date of Publication: December 2, 2003

THRESHOLD ENTERPRISES LTD.,	)	
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Opposer,	)	
v.	)	Opposition No.: 9159137
	)	(Parent)
NATURAL SOURCE INTERNATIONAL, LTD.,	)	
	)	
Respondent.	)	
	)	
_____	)	

In re Matter of U.S. Application Serial No. 76/506,477
For: SOURCED FROM NATURE . . . PERFECTED BY SCIENCE
Filed: April 14, 2003
Date of Publication: January 6, 2004

THRESHOLD ENTERPRISES LTD.,	)	
	)	
Opposer,	)	
v.	)	Opposition No.: 91159361
	)	
NATURAL SOURCE INTERNATIONAL, LTD.,	)	
	)	
Respondent.	)	
	)	
_____	)	

DECLARATION OF PAUL M. FAKLER IN SUPPORT OF APPLICANT'S MOTION TO COMPEL DISCOVERY, EXTEND APPLICANT'S TIME TO TAKE DISCOVERY AND FOR PROTECTIVE ORDER

PAUL M. FAKLER, declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am associated with the law firm of Thelen Reid & Priest LLP, counsel for

Defendant Plaintiff Bill Graham Archives LLC in the above-captioned case. I make this declaration in opposition to Defendants' Motion for Attorneys' Fees.

2. On January 7, 2004, Opposer filed a notice of opposition against Application Serial No. 76/504,365 for the mark NATURAL SOURCE and Design (the "NATURAL SOURCE Opposition").

3. On January 29, 2004, Opposer filed a notice of opposition against Application Serial No. 76/506,477 for the mark SOURCED FROM NATURE . . . PERFECTED BY SCIENCE (the "Pending Opposition").

4. On June 15, 2004, Applicant served its first discovery requests in the NATURAL SOURCE Opposition.

5. On June 15, 2004, Applicant served its first discovery requests in the Pending Opposition, true and correct copies of which are attached hereto as Exhibit 1.

6. On July 28, 2004, the NATURAL SOURCE Opposition was consolidated with the Pending Opposition.

7. On August 17, 2004, Opposer served its first discovery requests.

8. On August 18, 2004, Opposer served written responses to Applicant's first discovery requests, true and correct copies of which are attached hereto as Exhibit 2. No documents were produced with the written responses.

9. On August 30, 2004, the parties entered into settlement discussions and stipulated to a series of suspensions of the consolidated opposition. When settlement discussions were ultimately unsuccessful, the consolidated opposition re-commenced on May 19, 2006, with the new discovery period set to close on September 19, 2006.

10. On April 19, 2006, Applicant withdrew its NATURAL SOURCE application, thereby mooting the NATURAL SOURCE Opposition.

11. On June 19, 2006, Applicant served its written responses to Opposer's pending discovery requests, and shortly thereafter produced its documents.

12. On August 2, 2006, counsel for Applicant spoke with counsel for Opposer, inquiring why Opposer had not produced any documents and notifying Opposer that many of Opposer's written discover objections were invalid. Opposer's attorney stated that she would have to speak with Opposer and would be able to fully discuss the discovery issues the next week. When Applicant asked for an extension of the discovery period to deal with Opposer's failure to produce, Opposer was only willing to stipulate to a short extension, to October 19, 2006.

13. On August 8, Opposer's counsel faxed a letter to Applicant, confirming that it would be responding that week to Applicant's discovery disputes. A true and correct copy of the August 8, 2006 letter is attached hereto as Exhibit 3.

14. On August 11, 2006, having received no further contact from Opposer, Applicant sent a detailed letter to Opposer by e-mail, setting forth Applicant's dispute with each of Opposer's invalid objections, suggesting compromises where appropriate, and providing a draft stipulated protective order in light of Opposer's confidentiality objections. A true and correct copy of the August 11, 2006 letter is attached hereto as Exhibit 4. A true and correct copy of Applicant's proposed protective order is attached hereto as Exhibit 5.

15. On August 20, 2006, counsel for Opposer sent an e-mail to counsel for Applicant, acknowledging her receipt of Applicant's August 11 letter, but stating that she was still not able to address the substance of Applicant's discovery dispute, without giving any indication of when she would be able to do so and without explaining why no documents had been produced to date. A true and correct copy of the August 20, 2006 e-mail is attached hereto as Exhibit 6.

16. On August 22, 2006, Opposer sent a responsive e-mail, noting that twenty days had already passed since Applicant began its attempt to meet and confer in a good faith attempt to obtain Opposer's compliance with its discovery obligations and putting Opposer on notice that if Applicant did not promptly provide any substantive response, Applicant would have to proceed by motion to protect its rights, particularly in light of approaching discovery cutoff even after the short extension stipulated by Opposer. Applicant reasonably asked for at least a date certain by which it could expect Opposer's response to Applicant's detailed discovery objections. A true and correct copy of Applicant's e-mail of August 22, 2006 is attached hereto as Exhibit 7.

17. On August 24, 2006, counsel for Opposer responded, but with no discussion of the substantive discovery issues and still refusing to give any date by which Applicant could expect a substantive response. A true and correct copy of the August 24, 2006 e-mail is attached hereto as Exhibit 8.

18. On August 30, 2006, a full four weeks after Applicant first attempted to resolve this dispute with Opposer, counsel for Opposer sent a letter to Applicant, a true and correct copy of which is attached hereto as Exhibit 9. In this letter, amazingly, Opposer still provided no substantive response to any of the issues raised by Applicant, no explanation of why no documents had been produced, and no date by which Applicant could expect any such response or production. Instead, counsel stated that Opposer was "in the process" of retaining new counsel and that such new counsel would contact Applicant to address the discovery dispute at some unspecified time in the future. Opposer's counsel also made numerous false, self-serving and irrelevant statements about the failed settlement discussions. Counsel also represented that Opposer would agree to another extension of the discovery schedule, but did not indicate the

length of any such extension. Opposer has not responded or communicated with Applicant in any way since the August 30 letter, and there has been no substitution of counsel in the record of the Pending Opposition.

19. To this date, almost 25 months since documents should have been produced, an entire month since Opposer's August 30 letter, and almost two months since Applicant attempted to resolve this dispute and obtain discovery from Opposer, Opposer still has not responded to Applicant's discovery dispute, has not adequately responded to Applicant's interrogatories and has not produced a single responsive document. With no production and no response to Applicant's repeated attempts to resolve this dispute without intervention of the Board, Applicant is left with no choice but to bring this motion.

20. As set forth above, Applicant has attempted in good faith to resolve the dispute presented in this motion without intervention by the Board, as required by Trademark Rule 2.120(e), 37 C.F.R. § 2.120(e), but Opposer has rebuffed those attempts.

21. I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 25, 2006
New York, New York

Paul M. Fakler

Exhibit 1

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

Threshold Enterprises Ltd., Opposer, vs. Natural Source International, Ltd., Applicant.	Opposition No. 91159361 Serial No. 76/506,477 Mark: SOURCED FROM NATURE ... PERFECTED BY SCIENCE

40803-204062

APPLICANT'S FIRST SET OF REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Applicant requests that Opposer produce for inspection and copying the documents specified below. The documents sought pursuant to this Request are to be produced at the offices of Venable LLP, 575 7th Street, N.W., Washington, D.C. 20004-1601, within thirty (30) days of the date of service of this request or at such other time and place as may be mutually agreed upon by the parties.

This request seeks the production of documents as of the date on which Opposer responds and, as to those requests falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure, shall be deemed continuing, requiring Opposer to serve upon Applicant such further responses promptly after Opposer has acquired additional knowledge or information.

Any document withheld in responding to these requests on the ground of privilege is to be identified by author or authors, recipient or recipients, person or persons to whom copies were furnished, job titles of all such persons as well as the date and subject matter of the document, and the nature of the privilege claimed.

If Opposer is aware with respect to any request that any responsive document once existed but has been destroyed, it should identify who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

The definitions and instructions set forth in Applicant's First Set of Interrogatories are incorporated herein by reference and made a part hereof.

REQUESTS FOR PRODUCTION

1. All documents that Opposer was required to identify in its response to Applicant's first set of interrogatories, or from which it derived information used in preparing said responses.

2. All documents on which Opposer intends to rely at the trial of this proceeding.

3. All documents referring or relating to the selection, availability, adoption, creation, design, proposal to use, attempt to register, or registration of Opposer's Mark, including without limitation any minutes or notes from any meetings in which such topics were discussed.

4. All documents concerning the allegations set forth in paragraph one of the Notice of Opposition.

5. All documents concerning the allegations set forth in paragraph two of the Notice of Opposition.

6. All documents concerning the allegations set forth on paragraph three of the Notice of Opposition.

7. All documents concerning the allegations set forth in paragraph four of the Notice of Opposition.

8. All documents concerning the allegations set forth in paragraph five of the Notice of Opposition.

9. All documents concerning the allegations set forth in paragraph six of the Notice of Opposition.

10. All documents concerning the allegations set forth in paragraph seven of the Notice of Opposition.

11. All documents concerning the allegations set forth in paragraph eight of the Notice of Opposition.

12. All documents concerning the allegations set forth in paragraph nine of the Notice of Opposition.

13. All documents concerning the allegations set forth in paragraph ten of the Notice of Opposition.

14. All documents referring or relating to any communication, affiliation, association or dealings between Opposer and Applicant, or any employee, agent or person affiliated with Opposer.

15. Representative samples of all documents that show each type of product or service that was ever sold under Opposer's Mark.

16. All documents and things that picture, refer to, or describe Opposer's Goods and/or Services, including, but not limited to, Internet websites, tags, labels, containers, brochures, catalogs, price lists, point-of-purchase materials, advertisements, promotional materials, and story boards.

17. Representative samples of all labels, containers, cartons, packaging, and wrappers on which Opposer's Mark appears that Opposer has used, uses, or plans to use in connection with any of Opposer's Goods and/or Services.

18. All documents upon which Opposer will rely to support the dates of first use.

19. Documents sufficient to identify Opposer's annual volume of sales in dollars or projected sales in the United States for each of Opposer's Goods and Services since Opposer's first use or anticipated first use in the United States of Opposer's Mark.

20. All advertising and promotional materials Opposer uses, has used, or plans to use in connection with any of Opposer's Goods and/or Services, including, but not limited to, samples of all advertisements, promotional materials, product information sheets, catalogs, brochures, periodicals, pamphlets, circulars, price lists, press releases, television and radio commercials, and scripts of speeches.

21. Documents sufficient to identify Opposer's annual marketing expenses or planned marketing expenses in the United States for each of Opposer's Goods and/or Services, since Opposer's first use or anticipated first use in the United States of Opposer's Mark for such goods and/or services, including, but not limited to, expenses for advertising and promotion.

22. All documents referring or relating to any press release, newspaper article or other publication which mentions Opposer, or the Mark, or any goods or services sold under the Mark.

23. All documents concerning any incidents of confusion, suspicion, mistake, belief, or deception between Applicant's Goods and those of Opposer, Applicant's Mark and Opposer's Mark, or as to the source of Applicant's Goods and those of Opposer.

24. All documents which identify or describe the type of entity to which Opposer's Goods and/or Services are sold or marketed or intended to be sold or marketed.

25. All documents concerning any complaints or comments Opposer has ever received regarding the quality of any of Applicant's Goods.

26. All documents concerning any complaints or comments Opposer has ever received regarding the quality of any of Opposer's Goods.

27. All documents concerning any formal or informal research (including, but not limited to, searches, investigations, surveys, reports, or market studies) conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Opposer's Mark.

28. All documents concerning any formal or informal research (including, but not limited to, searches, investigations, surveys, reports, or market studies) conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Applicant's Mark.

29. All documents relating or referring to and/or demonstrating the channels of trade of Opposer's Goods and/or Services.

30. All documents referring or relating to any mailing lists used by Opposer in connection with direct mail solicitations, or other mailings pertaining to goods or services offered or intended to be offered under the Mark.

31. Representative samples of documents referring or relating to the geographical area in which goods or services have been offered and sold or are intended to be offered or sold by Opposer under the Mark.

32. All documents concerning any assignment, license, or other transfer or grant of any rights to or from Opposer in Opposer's Mark.

33. All documents referring or relating to any business licenses, bonds or other approval or permission that Applicant obtained in connection with the sale or any products or services under the Mark, or the operation of any business in which the Mark was ever used.

34. All documents referring or relating to the incorporation of Opposer including without limitation any articles of incorporation or bylaws.

35. All documents concerning consumer group or focus group observations regarding Opposer's Mark.

36. Each non-privileged document concerning any expert you have retained for this proceeding, including, but not limited to, his/her qualifications, opinions, and bases for opinions.

37. All documents concerning the geographic location(s) (*e.g.*, state, county, country) in which each of Opposer's Goods and/or Services are or are intended to be sold, marketed and/or distributed.

38. All documents referring or relating to any formulas, quality control requirements, manufacturing procedures, ingredient lists, or policy or procedure manuals pertaining to the Mark or any products or services sold under the Mark.

39. All documents concerning Opposer's use of any mark consisting of or comprising, in whole or in part, the word SOURCE NATURALS.

40. All documents that refer or relate to any third party use of the terms SOURCE and/or NATURAL(S) or NATURE or any variation thereof as a trademark, service mark, trade name, corporate name, or company name.

41. All documents pertaining to any litigation, cancellation, opposition or other adversary proceeding between Opposer and any other party that included any allegation of infringement, unfair competition, likelihood of confusion or dilution, involving the mark SOURCE NATURALS or any variation thereof.

If any of the foregoing documents are deemed to contain confidential information, Applicant should so designate said documents and access thereto will be confined to Opposer's counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

Respectfully submitted,

Dated: June 15, 2004

Janet F. Satterthwaite
Jacqueline Levasseur Patt
VENABLE LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601
Telephone: (202) 344-4000
Telefax: (202) 344-8300

Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned, attorney for Applicant, hereby certifies that she served, by first class mail, postage prepaid, a copy of the foregoing Applicant's First Set of Requests for Admission to Opposer, Applicant's First Set of Interrogatories to Opposer, Applicant's First Set of Request for the Production of Documents and Things to Opposer upon attorney of record for Opposer, Mary Catherine Merz, Esq., Merz & Associates, P.C., 1140 Lake Street, Suite 304, Oak Park, Illinois 60301-1051, this 15th day of June, 2004.

Jacqueline Levasseur Patt

555918

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

Threshold Enterprises Ltd., Opposer, vs. Natural Source International, Ltd., Applicant.	Opposition No. 91159361 Serial No. 76/506,477 Mark: SOURCED FROM NATURE ... PERFECTED BY SCIENCE

40803-204062

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Applicant requests that Opposer answer the following interrogatories, separately and fully, in writing and under oath.

INSTRUCTIONS AND DEFINITIONS

Unless the terms of a particular interrogatory specifically indicate otherwise, the following definitions and instructions are applicable throughout these interrogatories and are incorporated into each specific interrogatory:

1. The terms "Opposer," "you," or "your" mean Threshold Enterprises, Ltd. and any and all affiliates, predecessors- or successors-in-interest, attorneys, agents, representatives and/or employees of any of the above-mentioned entities or persons.

2. The term "Applicant" means Natural Source International, Ltd.

3. The term "Opposer's Mark" means the Mark identified in Opposer's Notice of Opposition.

4. The term "Opposer's Trade Name" means the Trade Name identified in Opposer's Notice of Opposition.

5. The term "Applicant's Mark" means all Marks consisting of or comprising, in whole or in part, the phrase SOURCED FROM NATURE ... PERFECTED BY SCIENCE.

6. The term "trademark" means any word, name, symbol, design, shape, number, slogan, or device, or any combination thereof, that is used by a person to identify and distinguish the person's services, respectively, from the services of others. The use of the term "Mark" is to be considered as the use of the term "trademark."

7. The term "Opposer's Services" means all services that Opposer has advertised, marketed, offered for sale, distributed, or otherwise caused to be provided or that Opposer intends to advertise, market, offer for sale, distribute, or otherwise cause to be provided in the United States, under or in connection with Opposer's Marks.

8. The term "Opposer's Goods" means goods that Opposer has advertised, marketed, offered for sale, distributed, or otherwise caused to be provided or that Opposer intends to advertise, market, offer for sale, distribute, or otherwise cause to be provided in the United States, under or in connection with Opposer's Mark.

9. The term "channels of trade" means each type of person currently or intended to engage in buying, leasing, or otherwise receiving each product and/or service directly from Applicant or Opposer (e.g., distributor, jobber, end-user), each type of person currently or intended to engage in distributing or marketing each product throughout the chain of distribution between the manufacturer and end-user, and each type of person to whom such person distributes or markets each product and/or service and/or intends to distribute or market each product and/or service.

10. The terms "document" and "documents" are used in the broadest sense permissible under Rule 34 of the Federal Rules of Civil Procedure and include, without limitation(s), all writings (whether in handwritten, typed, printed, stenographic, or other form), drawings, graphs, charts, photographs, recordings, copies, or mechanical or photocopy reproductions of any or all of the foregoing items, and non-paper information storage means such as tape, film, and/or computer memory devices. Where any items contain marking(s) not appearing in the original, or are altered from the original, then all such items must be considered as separate documents and identified and produced as such.

11. The term "identify," when referring or relating to a natural person, means that person's full name, present or last known home and business addresses (including street name and number, city or town, state, zip code, and telephone number), present or last known business position, affiliation, and address, and all job titles or positions, if any, held in conjunction with employment or affiliation with Opposer or any other entity related thereto at any time, and the dates of tenure in each such job title or position.

12. The term "identify," when referring or relating to a person other than a natural person, means its full name and type of organization, and the address of its principal place of business (including street name and number, city or town, state, zip code, and telephone number).

13. The term "identify," when referring or relating to a document, means the type of document (e.g., letter, notebook etc.), the date of the document (and, if no date appears thereon, the answer shall so state and shall give the date or approximate date that such document was prepared), the title of the document, a brief summary of the subject matter of the document, the identification of the person who prepared the document, the identification of the person who

signed the document, the identification of the person for whom the document was prepared, and the identification of the recipient or addressee of the document (whether specifically named therein or not); in addition, if the document requested to be identified is not in the possession, custody, or control of Opposer, the identification of the person who has possession, custody, or control over the original of the document, and each person who has possession, custody, or control over each copy of the document; furthermore, if the document requested to be identified has been destroyed, the date the document was destroyed, the reason for its destruction, and the identification of the person who destroyed the document and of any person who directed that the document be destroyed.

14. The term "identify," when referring or relating to an oral communication, means the date and place of the communication, whether the communication was in person or by telephone, the identification of each person who participated in or heard any part of the communication, the substance of what was said by each person who participated therein, each document relating thereto, and the identification of the person or persons presently having possession, custody or control of each such document.

15. The term "identify," when referring or relating to an act, occurrence, or conduct, means a description or the substance of the event or events constituting such acts and the date when such acts occurred, the identification of each and every person or persons participating in such acts, the identification of all other persons, if any, present when such acts occurred, each document relating thereto, and the identification of the person or persons presently having possession, custody, or control of each such document.

16. The term "identify," when referring or relating to advertisements, promotional materials, and/or marketing materials, means a description of the form and medium of the

materials, the inclusive dates of the materials, the geographic area in which the materials appeared, the class or classes of persons or business entities to whom the materials were directed, and the dollar amount per year expended on each form and medium of such material.

17. The term "describe" means to give an account of the salient characteristics of the subject asked to be described, including, where applicable, dates and durations of the relevant events, places such events occurred, the names and addresses of all persons involved in those events, and all sources from which the requested information was obtained.

18. The term "concerning" means relating to, referring to, regarding, having any relationship with, pertaining to, evidencing, or constituting evidence of, in whole or in part, the subject matter of the particular request.

19. The terms "person" or "persons" include any natural person, corporation, partnership, joint venture, unincorporated association, trust, government entity, and all other entities of any nature whatsoever.

20. The term "allegation" includes all claims, contentions, assertions, statements, charges, recitations, and declarations made by Opposer as of the date of the Notice of Opposition, and/or at the time of answering these interrogatories, and/or at the time of adjudication of any issue in this opposition, and/or at any time between the date these interrogatories are answered and the adjudication date.

21. The terms "rely" and "relies" mean to look for support or to depend upon as of the date of your Notice of Opposition, and/or at the time of answering these interrogatories, and/or at the time of adjudication of any issue in this action and/or at any time between the date these interrogatories are answered and the adjudication date.

22. The term "facts" means all circumstances, events, and evidence pertaining to or touching upon the item in question.

23. The use in these interrogatories of the name of a party or business organization shall specifically include all officers, directors, attorneys, agents, representatives, employees, parents, affiliates, subsidiaries, divisions, and predecessors- or successors-in-interest of the party or business organization.

24. Each interrogatory shall be read to be inclusive, rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of this interrogatory all information that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense and the present tense shall include the past tense. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

25. Each person answering these interrogatories is required to furnish information within that person's personal knowledge and the possession of that person's attorneys, agents, representatives, and/or employees.

26. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

27. If any of the following interrogatories cannot be answered in full, they should be answered to the extent possible, specifying the reason for the inability to answer the remainder and stating any information or knowledge which the party answering has concerning the unanswered portion.

28. Any document withheld in responding to these interrogatories on the ground of privilege is to be identified by author or authors, recipient or recipients, person or persons to whom copies were furnished, together with the job titles of each such person or persons, date, subject matter and nature of privilege claimed.

29. The following interrogatories shall be deemed to be continuing and, in the event Opposer secures or discovers any information responsive to these interrogatories subsequent to answering these interrogatories which would tend to enlarge, diminish or otherwise modify the answers, Opposer has a duty to promptly serve and file supplemental answers reflecting such information pursuant to the Federal Rules of Civil Procedure.

INSTRUCTIONS

The following instructions apply in answering these discovery requests:

1. These requests are continuing in nature and, pursuant to Rule 26 of the Federal Rules of Civil Procedure, Opposer has a duty to supplement its answers promptly upon obtaining or learning of further material information.

2. The answer to each discovery request shall include such knowledge or information as is within Opposer's possession, custody, or control including, but not limited to, knowledge, information and documents in the possession, custody, or control of Opposer's officers, directors, accountants, consultants, attorneys, or other agents or representatives.

3. The answers to these discovery requests must be furnished separately and fully in writing under oath or verification by an officer of Opposer declaring, under penalty of perjury, that the answers are true and accurate to the best of his or her current knowledge, information, and belief. If an answer depends upon the knowledge of a person other than the person signing the answers, each such person should be identified in the answer.

4. Your answers shall include the knowledge of your representatives and agents including, but not limited to, your consultants, accountants and your attorneys.

5. If you object to all or any part of a discovery request, state the grounds of the objection with sufficient specificity to permit determination of the basis for and propriety of such objection, including citations where legal authority is relied upon, and answer the extent the interrogatory is not objectionable. All objections shall be signed by the attorney making them.

6. All answers and objections to discovery requests shall be forwarded, within 30 days of the service thereof, to the offices of Applicant's counsel Venable LLP, 575 7th Street,, N.W., Washington, D.C. 20004-1601.

7. You shall not refer to documents generally in lieu of answering; if the burden upon you of deriving an answer from documents is the same as it is upon Applicant, you may elect to refer to documents which are specifically identified from which the response may be readily obtained. Such a response constitutes a representation under oath by you and your counsel that, after reasonable investigation, those conditions have been met.

8. The full text of the interrogatory (or part thereof) to which any answer is intended to respond is to be restated immediately proceeding such answer.

9. If you obtain knowledge that the answer given in response to any interrogatory was not correct when given, a statement in writing consisting of the correct answer to such interrogatory shall be promptly provided.

10. If you contend that any item of information requested by these interrogatories is privileged, in whole or in part, as a ground for its non-production or non-disclosure, for each alleged privileged item or document, provide all information required by Rule 26 of the Federal Rules of Civil Procedure.

INTERROGATORIES

1. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph one of the Notice of Opposition.

2. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph two of the Notice of Opposition.

3. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph three of the Notice of Opposition.

4. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph four of the Notice of Opposition.

5. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph five of the Notice of Opposition.

6. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph six of the Notice of Opposition.

7. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph seven of the Notice of Opposition.

8. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph eight of the Notice of Opposition.

9. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph nine of the Notice of Opposition.

10. State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph ten of the Notice of Opposition.

11. Identify and describe the facts relating to the date and manner in which Opposer first used its alleged Mark in connection with the sale of any products or services, whether listed

in its application or registrations or not, specifying the identity of each person to whom each type of product or service was first sold.

12. Identify and describe the facts relating to the date and manner in which Opposer first used its alleged Trade Name.

13. Describe each manner in which Opposer has used, currently uses, or plans to use, in the United States, Opposer's Mark as described in the Notice of Opposition.

14. Identify and describe all facts relating to any communications, between Applicant and Opposer, relating to the use of the Mark.

15. Identify and describe each type of product or service sold or offered, or intended to be sold or offered, for sale by Opposer under the Mark.

16. Identify all persons who designed, created or made any materials on which the Mark has ever been used or displayed, specifying which items were designed, created or made by each such person.

17. Describe the nature of the goods and services that are covered under the Mark as identified in the Notice of Opposition.

18. For each of the goods listed in Registration No. 1,909,705 and as identified in the Notice of Opposition state:

a. the date of first use of the Mark;

b. the volume of sales in dollars in each year beginning with the date of first use and up to the present; and

c. the amount in dollars spent on advertising in each year beginning with the date of first use and up to the present.

19. Describe how Opposer's Mark has appeared or is intended to appear when used or depicted in connection with the goods, including, but not limited to, the visual manner in which such Mark appears, is displayed or utilized, or is intended to appear, be displayed or utilized, in connection with the services.

20. Identify and explain all types of advertising and all types of media used to advertise and promote Opposer's products in connection with which Opposer's Mark is used.

21. Describe in detail any evidence of confusion, mistake, and/or deception of actual or potential customers, suppliers or other persons as to the source of Applicant's goods and the goods and/or services of Opposer.

22. Describe any complaints or comments Opposer has ever received regarding the quality of any of Applicant's goods and/or services.

23. Describe any complaints or comments Opposer has ever received regarding the quality of any of Opposer's goods and/or services.

24. Describe each formal or informal investigation, study, and/or search conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Opposer's Mark.

25. Describe each formal or informal investigation, study, and/or search conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Applicant's Mark.

26. Describe the channels of trade of Opposer's goods and services covered by Opposer's Mark as described in the Notice of Opposition

27. Describe the customers to whom Opposer's goods and services are marketed, distributed, and/or sold, including, but not limited to, the customers' demographics (e.g., geographic location, age, profession, education and income).

28. Identify any assignments, licenses or other transfers or grants of any rights to or from Opposer with respect to the trademark identified in the Notice of Opposition.

29. Identify and describe all oral or written agreements, including all assignments and licenses entered into by Opposer referring or relating to the Mark, specifying the date of each agreement, the identity of all the parties thereto and the reason and purpose of the agreement.

30. State when and describe the circumstances surrounding when the Opposer first became aware of Applicant.

31. State when and describe the circumstances surrounding when the Opposer first became aware of Applicant's Mark.

32. List all trademark registrations and applications owned by Opposer on the Principal Register of the United States Patent and Trademark Office or with any state, identify and describe the facts pertaining to each such application or registration including without limitation, the status of the application, whether or not any registration was issued, and any reasons for which registration was denied.

33. Identify by name and address each person or entity with whom Opposer has communicated or had contact, either orally or in writing, wherein Opposer has either asserted its rights in Opposer's Mark or received a notice of another's claim of rights relating to Opposer's Mark or any variation thereof and, with respect to each such communication or contract, fully explain all details, including the current status or disposition of the claim, the date of such communications, the identity of the persons involved in such communications, the means of communication and the substance of such communication.

34. Identify each trademark or service mark against which Opposer has either filed a Notice of Opposition or a Petition for Cancellation wherein Opposer has asserted its rights in Opposer's Mark and provide the current status of such opposition or cancellation proceeding.

35. Identify each trademark or service mark containing the term NATURE or NATURAL or NATURALS and/or SOURCE against which Opposer has not filed a Notice of Opposition or a Petition for Cancellation.

36. Identify each trademark or service mark containing the term NATURE or NATURAL or NATURALS and/or SOURCE used in connection with vitamins, herbs, nutritional supplements and/or dietary supplements of which Opposer is aware.

37. Identify the geographic areas (by country and by state in the U.S.) in which Opposer's goods are sold or distributed in connection with its Mark.

38. Specify all facts and identify all documents upon which Opposer intends to rely in this proceeding for the allegation that Applicant's Mark is confusingly similar to Opposer 's Mark.

39. Identify any expert Opposer has retained for this litigation, including, but not limited to, his or her qualifications, opinions, and bases of opinion.

40. Identify any period during which Opposer has discontinued use of its Mark for more than one year and state the circumstances surrounding such non-use.

41. Identify all documents Opposer intends to rely upon in this proceeding.

42. If any interrogatory or document request served by Applicant calls for information that could have been answered by producing, consulting or referring to documents that are no longer in existence or are no longer within Opposer's possession, custody or control,

identify each such interrogatory or document request and, with respect thereto, identify the information or documents formerly maintained.

43. Identify each person who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories specifying the information which he or she provided.

If the response to any interrogatory is believed by Opposer to contain confidential information or trade secrets, it should be so designated and access thereto will be confined to Applicant's counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

Respectfully submitted,

Dated: June 15, 2004

Janet F. Satterthwaite
Jacqueline Levasseur Patt
VENABLE LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601
Telephone: (202) 344-4000
Telefax: (202) 344-8300

Attorneys for Applicant

Exhibit 2

TRADEMARKS
Attorney Docket 21458

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

In re Matter of U.S. Application Serial No. 76/504,365
For: NATURAL SOURCE and Design
Filed: April 8, 2003
Date of Publication: December 2, 2003

THRESHOLD ENTERPRISES LTD Opposer, v. NATURAL SOURCE INTERNATIONAL, LTD. Applicant.	)	Opposition No. 159,137 (Parent)

In the Matter of U.S. Application Serial No. 76/506,477
For: SOURCED FROM NATURE...PERFECTED BY SCIENCE
Filed: April 8, 2003
Date of Publication: January 6, 2004

THRESHOLD ENTERPRISES LTD Opposer, v. NATURAL SOURCE INTERNATIONAL, LTD. Applicant.	)	Opposition No. 159,361

RESPONSE TO APPLICANT'S
FIRST SET OF REQUESTS FOR THE PRODUCTION
OF DOCUMENTS AND THINGS TO OPPOSER

Opposer Threshold Enterprises Ltd ("Opposer") hereby responds to Applicant's First Set of Request for Production of Documents and Things to Opposer.

General Objections

1. Opposer objects to the instructions to the extent that they exceed or are inconsistent with Opposer's obligations or requirements under the Federal Rules of Civil Procedure or the rules of the Trademark Trial and Appeal Board.

2. Opposer objects to the date, time and location set for production of documents on the grounds that they are unduly burdensome and unreasonable.

3. Opposer further objects to the purported incorporation by reference of definitions and instructions from a separate set of discovery requests. Opposer further objects to the definitions to the extent that they are inconsistent with the ordinary English language meaning of the terms purportedly defined, are vague and ambiguous, and assume facts not in evidence.

4. Opposer further objects to each and every instruction and request for documents to the extent that it seeks information

or documents protected by the attorney client privilege or the work product doctrine, or any other privilege doctrine.

5. Opposer's investigation is ongoing. Opposer makes these objections and responses subject to and without waiving its right to rely on any documents or other evidence which may develop or come to Opposer's attention subsequent hereto; any objections to the admissibility as evidence of any documents produced; and the right at any time to supplement or clarify its responses and production, consistent with the Federal Rules of Civil Procedure and rules of the Trademark Trial and Appeal Board.

6. Opposer objects to each and every instruction and request to the extent that it seeks information or documents that include confidential, business proprietary information, trade secrets or other confidential research, development, financial or commercial information of Opposer. No such confidential information or documents will be produced until an appropriate protective order is in place in this proceeding.

Subject to and without waiving the foregoing objections, Opposer specifically objects and responds to the requests as follows.

Request No. 1:

All documents that Opposer was required to identify in its response to Applicant's first set of interrogatories, or from which it derived information used in preparing said responses.

Response to Request No. 1:

Opposer objects to Request No. 1 on the grounds that it is overly broad and unduly burdensome; it is compound; it calls for documents and information that are confidential, proprietary and/or trade secret; and it calls for documents that are not relevant and not likely to lead to the discovery of admissible evidence. Opposer further objects to Request No. 1 on the grounds that it is vague and ambiguous due to its assumption that "Opposer was required to identify" any documents in response to Applicant's first set of interrogatories. Opposer further incorporates herein by reference its objections to Applicant's first set of interrogatories.

Request No. 2:

All documents on which Opposer intends to rely at the trial of this proceeding.

Response to Request No. 2:

Opposer objects to Request No. 2 on the grounds that it is premature and that its investigation is ongoing; it calls for documents and information that are confidential, proprietary and/or trade secret; it calls for documents that are protected by the attorney-client privilege and/or the work product doctrine, and it calls for documents that currently are in the possession of Applicant. Subject to and without waiving these objections and the general objections, Opposer responds that it has not yet

determined on which documents it intends to rely as discovery has just commenced in this proceeding.

Request No. 3:

All documents referring or relating to the selection, availability, adoption, creation, design, proposal to use, attempt to register, or registration of Opposer's Mark, including without limitation any minutes or notes from any meetings in which such topics were discussed.

Response to Request No. 3:

Opposer objects to Request No. 3 on the ground that it is overly broad and unduly burdensome; it calls for documents that are not relevant and not likely to lead to the discovery of admissible evidence; it calls for documents that are confidential, proprietary and/or trade secret; it calls for documents and information protected from discovery by the attorney client privilege and/or the work product doctrine, and it is vague and ambiguous due to the terms "availability," "design," proposal to use," "attempt to register" and "such topics."

Request No. 4:

All documents concerning the allegations set forth in paragraph one of the Notice of Opposition.

Response to Request No. 4:

Opposer objects to Request No. 4 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" to the extent that it calls for documents and

information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and on the grounds that it calls for documents that likely are in Applicant's possession and control.

Request No. 5:

All documents concerning the allegations set forth in paragraph two of the Notice of Opposition.

Response to Request No. 5:

Opposer objects to Request No. 5 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and on the grounds that it calls for documents that likely are in Applicant's possession and control.

Request No. 6:

All documents concerning the allegations set forth in paragraph three of the Notice of Opposition.

Response to Request No. 6:

Opposer objects to Request No. 6 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and to the extent that it calls for documents and information that are

confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce responsive nonprivileged documents that are currently in its possession that demonstrate its use of its SOURCE NATURALS® mark and support the allegations in paragraph three of the Notice of Opposition, with production at a mutually convenient time and place, following entry of an acceptable protective order.

Request No. 7:

All documents concerning the allegations set forth in paragraph four of the Notice of Opposition.

Response to Request No. 7:

Opposer objects to Request No. 7 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations." Subject to and without waiving this objection and the general objections, Opposer responds that it will produce a copy of its U.S. registration certificate for its SOURCE NATURALS mark at a mutually convenient time and place.

Request No. 8:

All documents concerning the allegations set forth in paragraph five of the Notice of Opposition.

Response to Request No. 8:

Opposer objects to Request No. 8 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" that it is unduly burdensome; to the extent that it

calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and to the extent that it calls for documents and information that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce responsive nonprivileged documents that are sufficient to support its allegations in paragraph five of the Notice of Opposition, with production at a mutually convenient time and place, following entry of an acceptable protective order.

Request No. 9:

All documents concerning the allegations set forth in paragraph six of the Notice of Opposition.

Response to Request No. 9:

Opposer objects to Request No. 9 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine. Subject to and without waiving these objections and the general objections, Opposer responds that it is not currently aware of any responsive nonprivileged documents, because Opposer has not licensed, consented to, or permitted Applicant to use or register "NATURAL SOURCE and Design."

Request No. 10:

All documents concerning the allegations set forth in paragraph seven of the Notice of Opposition.

Response to Request No. 10:

Opposer objects to Request No. 10 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" it is unduly burdensome and over board; to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and to the extent that it calls for documents and information that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce exemplars of its use of its SOURCE NATURALS® mark at a mutually convenient time and place.

Request No. 11:

All documents concerning the allegations set forth in paragraph eight of the Notice of Opposition.

Response to Request No. 11:

Opposer objects to Request No. 11 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" it is unduly burdensome and over board; to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and to the extent that it calls for documents and information that are confidential, trade secret

and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce documents demonstrating its use of its SOURCE NATURALS® mark.

Request No. 12:

All documents concerning the allegations set forth in paragraph nine of the Notice of Opposition.

Response to Request No. 12:

Opposer objects to Request No. 12 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" it is unduly burdensome and over board; to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; to the extent that it calls for documents and information that are confidential, trade secret and/or proprietary; and on the ground that it calls for documents that are in Applicant's possession. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce a copy of its U.S. registration for its SOURCE NATURALS® mark.

Request No. 13:

All documents concerning the allegations set forth in paragraph ten of the Notice of Opposition.

Response to Request No. 13:

Opposer objects to Request No. 13 on the grounds that it is vague and ambiguous due to the phrase "documents concerning the allegations;" it is unduly burdensome and over board; to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and to the extent that it calls for documents and information that are confidential, trade secret and/or proprietary.

Request No. 14:

All documents referring or relating to any communication, affiliation, association or dealings between Opposer and Applicant, or any employee, agent or person affiliated with Opposer.

Response to Request No. 14:

Opposer objects to Request No. 14 on the grounds that it is vague and ambiguous due to the term "dealings" and the phrase "or any employee, agent or person affiliated with Opposer." Opposer further objects to the request to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; it is unduly burdensome and over board, and calls for documents in Applicant's possession; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Subject to and without waiving these objections and the general objections, Opposer responds that it is not aware of documents reflecting any affiliation or association between Opposer and Applicant.

Request No. 15:

Representative samples of all documents that show each type of product or service that was ever sold under Opposer's Mark.

Response to Request No. 15:

Opposer objects to Request No. 15 on the grounds that it is vague and ambiguous due to the phrase "samples of all documents." Opposer further objects to the request to the extent that it calls for documents and information that are protected from discovery by the attorney client privilege and/or the work product doctrine; it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce samples of its use of its SOURCE NATURALS® mark at a mutually convenient time and location.

Request No. 16:

All documents and things that picture, refer to, or describe Opposer's Goods and/or Services, including, but not limited to, Internet websites, tags, labels, containers, brochures, catalogs,

price lists, point-of-purchase materials, advertisements, promotional materials, and story boards.

Response to Request No. 16:

Opposer objects to Request No. 16 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce samples of its promotion and use of its SOURCE NATURALS® mark at a mutually convenient time and location.

Request No. 17:

Representative samples of all labels, containers, cartons, packaging, and wrappers on which Opposer's Mark appears that Opposer has used, uses, or plans to use in connection with any of Opposer's Goods and/or Services.

Response to Request No. 17:

Opposer objects to Request No. 17 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce samples of its

promotion and use of its SOURCE NATURALS® mark at a mutually convenient time and location.

Request No. 18:

All documents upon which Opposer will rely to support the dates of first use.

Response to Request No. 18:

Opposer objects to Request No. 18 on the grounds that it is premature; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce documents sufficient to establish its first use at a mutually convenient time and location, following entry of an acceptable protective order.

Request No. 19:

Documents sufficient to identify Opposer's annual volume of sales in dollars or projected sales in the United States for each of Opposer's Goods and Services since Opposer's first use or anticipated first use in the United States of Opposer's Mark.

Response to Request No. 19:

Opposer objects to Request No. 19 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 20:

All advertising and promotional materials Opposer uses, has used, or plans to use in connection with any of Opposer's Goods and/or Services, including, but not limited to, samples of all advertisements, promotional materials, product information sheets, catalogs, brochures, periodicals, pamphlets, circulars, price lists, press releases, television and radio commercials, and scripts of speeches.

Response to Request No. 20:

Opposer objects to Request No. 20 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce samples of its promotion and use of its SOURCE NATURALS® mark at a mutually convenient time and location.

Request No. 21:

Documents sufficient to identify Opposer's annual marketing expenses or planned marketing expenses in the United States for each of Opposer's Goods and/or Services, since Opposer's first use or anticipated first use in the United States of Opposer's Mark for such goods and/or services, including, but not limited to, expenses for advertising and promotion.

Response to Request No. 21:

Opposer objects to Request No. 21 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; and to the extent it calls for

documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce samples of its promotion and use of its SOURCE NATURALS® mark at a mutually convenient time and location.

Request No. 22:

All documents referring or relating to any press release, newspaper article or other publication which mentions Opposer, or the Mark, or any goods or services sold under the Mark.

Response to Request No. 22:

Opposer objects to Request No. 22 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; it is vague and ambiguous due to the term "the Mark"; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce samples of press releases, articles and publications that mention Opposer's SOURCE NATURALS® mark at a mutually convenient time and location.

Request No. 23:

All documents concerning any incidents of confusion, suspicion, mistake, belief or deception between Applicant's Goods and those of Opposer, Applicant's Mark and Opposer's Mark, or as to the source of Applicant's Goods and those of Opposer.

Response to Request No. 23:

Opposer objects to Request No. 23 on the grounds that it is vague and ambiguous as phrased; to the extent it calls for documents or information that are protected from discovery by the attorney client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce samples of its promotion and use of its SOURCE NATURALS® mark at a mutually convenient time and location.

Request No. 24:

All documents which identify or describe the type of entity to which Opposer's Goods and/or Services are sold or marketed or intended to be sold or marketed.

Response to Request No. 24:

Opposer objects to Request No. 24 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the

attorney-client privilege and/or the work product doctrine; it is vague and ambiguous due to the term "type of entity"; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 25:

All documents concerning any complaints or comments Opposer has ever received regarding the quality of any of Applicant's Goods.

Response to Request No. 25:

Opposer objects to Request No. 25 to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 26:

All documents concerning any complaints or comments Opposer has ever received regarding the quality of any of Opposer's Goods.

Response to Request No. 26:

Opposer objects to Request No. 26 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and

to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 27:

All documents concerning any formal or informal research (including, but not limited to, searches, investigations, surveys, reports, or market studies) conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Opposer's Mark.

Response to Request No. 27:

Opposer objects to Request No. 27 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 28:

All documents concerning any formal or informal research (including, but not limited to, searches, investigations, surveys, reports, or market studies) conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Applicant's Mark.

Response to Request No. 28:

Opposer objects to Request No. 28 on the grounds that it is unduly burdensome and over board; it calls for documents that are

not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 29:

All documents relating or referring to and/or demonstrating the channels of trade of Opposer's Goods and/or Services.

Response to Request No. 29:

Opposer objects to Request No. 29 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; it is vague and ambiguous due to Applicant's purported definition in another set of discovery requests of the term "channels of trade;" to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 30:

All documents referring or relating to any mailing lists used by Opposer in connection with direct mail solicitations, or

other mailings pertaining to goods or services offered or intended to be offered under the Mark.

Response to Request No. 30:

Opposer objects to Request No. 30 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; it is vague and ambiguous due to the term "the Mark;" to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 31:

Representative samples of documents referring or relating to the geographical area in which goods or services have been offered and sold or are intended to be offered or sold by Opposer under the Mark.

Response to Request No. 31:

Opposer objects to Request No. 31 on the grounds that it is vague and ambiguous due to the phrase "documents … relating to the geographical area in which goods or services have been offered and sold" and the term "the Mark;" it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for

documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 32:

All documents concerning any assignment, license, or other transfer or grant of any rights to or from Opposer in Opposer's Mark.

Response to Request No. 32:

Opposer objects to Request No. 32 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 33:

All documents referring or relating to any business licenses, bonds or other approval or permission that Applicant obtained in connection with the sale of any products or services under the Mark, or the operation of any business in which the Mark was ever used.

Response to Request No. 33:

Opposer objects to Request No. 33 on the grounds that it is vague and ambiguous due to the repeated use of the terms "bonds," "other approval or permission," "the Mark;" it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections or the general objections, Opposer responds that it is not aware of any licenses, bonds, government approvals or government permission obtained by Applicant.

Request No. 34:

All documents referring or relating to the incorporation of Opposer including without limitation any articles of incorporation or bylaws.

Response to Request No. 34:

Opposer objects to Request No. 34 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and

to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 35:

All documents concerning consumer group or focus group observations regarding Opposer's Mark.

Response to Request No. 35:

Opposer objects to Request No. 35 on the grounds that it is unduly burdensome and over board; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; it is vague and ambiguous due to the term "observations regarding Opposer's Mark;" to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 36:

Each non-privileged document concerning any expert you have retained for this proceeding, including but not limited to, his/her qualifications, opinions, and bases for opinions.

Response to Request No. 36:

Opposer objects to Request No. 36 on the grounds that it is unduly burdensome and over board; it is premature as discovery has just commenced in this proceeding; to the extent it calls for documents or information protected from discovery by the

attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it is not aware of any nonprivileged responsive documents that identify an expert engaged for this proceeding.

Request No. 37:

All documents concerning the geographic location(s) (*e.g.*, state, county, country) in which each of Opposer's Goods and/or Services are or are intended to be sold, marketed and/or distributed.

Response to Request No. 37:

Opposer objects to Request No. 37 on the grounds that it is unduly burdensome and overbroad; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 38:

All documents referring or relating to any formulas, quality control requirements, manufacturing procedures, ingredient lists, or policy or procedure manuals pertaining to the Mark or any products or services sold under the Mark.

Response to Request No. 38:

Opposer objects to Request No. 38 on the grounds that it is vague and ambiguous due to the term "the Mark;" unduly burdensome and overbroad; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 39:

All documents concerning Opposer's use of any mark consisting of or comprising, in whole or in part, the word SOURCE NATURALS.

Response to Request No. 39:

Opposer objects to Request No. 39 on the grounds that it is vague and ambiguous due to the phrase "the word SOURCE NATURALS;" it is unduly burdensome and overbroad; it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; to the extent it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and it calls for documents that are confidential, trade secret and/or proprietary. Subject to and without waiving these objections and the general objections, Opposer responds that it will produce

examples of its use of its SOURCE NATURALS® mark to promote and sell its products at a mutually convenient time and location.

Request No. 40:

All documents that refer or relate to any third party use of the terms SOURCE and/or NATURAL(S) or any variation thereof as a trademark, service mark, trade name, corporate name, or company name.

Response to Request No. 40:

Opposer objects to Request No. 40 on the grounds that it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; it is vague and ambiguous due to the phrase "SOURCE and/or NATURAL(S) or any variation thereof;" and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Request No. 41:

All documents pertaining to any litigation, cancellation, opposition or other adversary proceeding between Opposer and any other party that included any allegation of infringement, unfair competition, likelihood of confusion or dilution, involving the mark SOURCE NATURALS or any variation thereof.

Response to Request No. 41:

Opposer objects to Request No. 41 on the grounds that it is unduly burdensome and overbroad; it is vague and ambiguous due to

the term "any variation thereof;" it calls for documents that are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence; it calls for documents or information protected from discovery by the attorney-client privilege and/or the work product doctrine; and to the extent it calls for documents that are confidential, trade secret and/or proprietary.

Respectfully submitted,
THRESHOLD ENTERPRISES LTD

Date: August 18, 2004 By: Mary Catherine Merz

Mary Catherine Merz, Esq.
MERZ & ASSOCIATES, P.C.
Attorneys at Law
1140 Lake Street, Suite 304
Oak Park, Illinois 60301
(708) 383-8801 (phone)
(708) 383-8897 (fax)

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER was served on the APPLICANT via First Class Mail this 18th day of August 2004, addressed to:

Jacqueline L. Patt, Esq.
VENABLE LLP
575 7th Street, NW
Washington, DC 20004-1601

Date: August 18, 2004 By: Mary Catherine Merz

TRADEMARKS
Attorney Docket 21458

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

In re Matter of U.S. Application Serial No. 76/504,365
For: NATURAL SOURCE and Design
Filed: April 8, 2003
Date of Publication: December 2, 2003

THRESHOLD ENTERPRISES LTD Opposer, v. NATURAL SOURCE INTERNATIONAL, LTD. Applicant.	))))))))))	Opposition No. 159,137

In the Matter of U.S. Application Serial No. 76/506,477
For: SOURCED FROM NATURE...PERFECTED BY SCIENCE
Filed: April 8, 2003
Date of Publication: January 6, 2004

THRESHOLD ENTERPRISES LTD Opposer, v. NATURAL SOURCE INTERNATIONAL, LTD. Applicant.	)))))))))	Opposition No. 159,361

RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Opposer Threshold Enterprises Ltd ("Opposer") hereby responds to Applicant's First Set of Interrogatories to Opposer.

General Objections

1. Opposer objects to the instructions to the extent that they exceed or are inconsistent with Opposer's obligations or requirements under the Federal Rules of Civil Procedure or the rules of the Trademark Trial and Appeal Board.

2. Opposer objects to the definitions to the extent that they are inconsistent with the ordinary English language meaning of the terms purportedly defined, are vague and ambiguous, and assume facts not in evidence.

3. Opposer objects to each and every instruction and interrogatory to the extent that it seeks information or documents protected by the attorney client privilege or the work product doctrine, or any other privilege doctrine.

4. Opposer's investigation is ongoing. Opposer makes these objections and responses subject to and without waiving its right to rely on any documents, information or other evidence which may develop or come to Opposer's attention subsequent hereto; any objections to the admissibility as evidence of any

documents produced; and the right at any time to supplement or clarify its responses and production, consistent with the Federal Rules of Civil Procedure and rules of the Trademark Trial and Appeal Board.

5. Opposer objects to each and every instruction and interrogatory to the extent that it seeks information that is or includes confidential, business proprietary information, trade secrets or other confidential research, development, financial or commercial information of Applicant. No such confidential information will be produced until an appropriate protective order is in place in this action.

Subject to and without waiving the foregoing objections, Opposer specifically objects and responds to the interrogatories as follows.

INTERROGATORY NO. 1

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph one of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 1

Opposer objects to Interrogatory No. 1 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely since discovery has just recently opened in this proceeding; Opposer's investigation is ongoing; and Applicant has in its possession the requested information.

Opposer further objects on the grounds that this interrogatory is vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds that, according to the Patent and Trademark Office online records, Applicant has filed an application to register the mark "NATURAL SOURCE and Design" for "dietary supplement" and this mark was published in the Official Gazette on December 2, 2003. Opposer responds further that the online records indicate that the application was filed on April 8, 2003, and that Applicant claims a first use date of December 2, 2002.

INTERROGATORY NO. 2

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph two of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 2

Opposer objects to Interrogatory No. 2 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely since discovery has just recently opened in this proceeding; Opposer's investigation is ongoing; and Applicant has in its possession the requested information. Opposer further objects on the grounds that this interrogatory is vague and ambiguous. Subject to and without waiving these

objections and the general objections, Opposer responds that, according to the Patent and Trademark Office online records, Applicant claimed in its application Serial No. 76/504,365 that it was using the mark "NATURAL SOURCE and Design" in connection with a dietary supplement.

INTERROGATORY NO. 3

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph three of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 3

Opposer objects to Interrogatory No. 3 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely since discovery has just recently opened in this proceeding; and Opposer's investigation is ongoing. Opposer further objects on the grounds that this interrogatory is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds that since at least as early as 1982 it has used its distinctive SOURCE NATURALS® mark and/or the Source Naturals, Inc. trade name in connection with the promotion, marketing, sale and distribution of vitamins, herbs and nutritional supplements. For

example, Opposer's SOURCE NATURALS® products are promoted nationwide through advertisements in newspapers and magazines placed by Opposer and/or its resellers, through monthly newsletters, through SOURCE NATURALS® product catalogues and on Opposer's Internet web site at "sourcenaturals.com." Because of their high quality, SOURCE NATURALS® products have won recognition from trade magazines and retailers, and have been featured and recommended in prominent books and articles, all of which contributes significantly to the goodwill and market recognition Opposer enjoys in its well-known SOURCE NATURALS® mark. Opposer uses its SOURCE NATURALS® mark for more than 600 different types of products. Opposer promotes and sells its SOURCE NATURAL® products through roughly 5000 retail stores nationwide and to more than 1500 health care professionals nationwide. Opposer also attends industry trade shows each year where the company actively promotes its distinctive SOURCE NATURALS® brand and broad range of SOURCE NATURALS® products. Opposer reserves its right to supplement this response.

INTERROGATORY NO. 4

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph four of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 4

Opposer objects to Interrogatory No. 4 on the grounds that it is compound, and vague and ambiguous. Subject to and without waiving these objections and the general objections, Opposer responds that it owns U.S. Trademark Registration No. 1,909,705 for SOURCE NATURALS for "vitamins, herbs and nutritional supplements." This registration issued in 1995, and now is incontestable. Opposer further incorporates herein by reference its response to Interrogatory No. 3.

INTERROGATORY NO. 5

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph five of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 5

Opposer objects to Interrogatory No. 5 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely since discovery has just recently opened in this proceeding; and Opposer's investigation is ongoing. Opposer further objects on the grounds that this interrogatory is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds

that it owns U.S. Trademark Registration No. 1,909,705 for SOURCE NATURALS for "vitamins, herbs and nutritional supplements." This registration issued in 1995, and now is incontestable. Opposer further responds that since at least as early as 1982 it has used its distinctive SOURCE NATURALS® mark and/or the Source Naturals, Inc. trade name in connection with the promotion, marketing, sale and distribution of vitamins, herbs and nutritional supplements. For example, Opposer's SOURCE NATURALS® products are promoted nationwide through advertisements in newspapers and magazines placed by Opposer and/or its resellers, through monthly newsletters, through SOURCE NATURALS® product catalogues and on Opposer's Internet web site at "sourcenaturals.com." Because of their high quality, SOURCE NATURALS® products have won recognition from trade magazines and retailers, and have been featured and recommended in prominent books and articles, all of which contributes significantly to the goodwill and market recognition Opposer enjoys in its well-known SOURCE NATURALS® mark. Opposer uses its SOURCE NATURALS® mark for more than 600 different types of products. Opposer promotes and sells its SOURCE NATURAL® products through roughly 5000 retail stores nationwide and to more than 1500 health care professionals nationwide. Opposer also attends industry trade shows each year where the company actively promotes its distinctive SOURCE NATURALS® brand and broad range of SOURCE NATURALS® products.

INTERROGATORY NO. 6

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph six of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 6

Opposer objects to Interrogatory No. 6 on the grounds that it is compound, and vague and ambiguous. Subject to and without waiving these objections and the general objections, Opposer responds that it has never granted to Applicant a license, consent or permission to use or to register "NATURAL SOURCE and Design."

INTERROGATORY NO. 7

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph seven of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 7

Opposer objects to Interrogatory No. 7 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely. Opposer further objects on the grounds that this interrogatory is compound, vague and ambiguous; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds by incorporating herein by

reference its objections and responses to Interrogatory Nos. 3 and 5.

INTERROGATORY NO. 8

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph eight of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 8

Opposer objects to Interrogatory No. 8 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely. Opposer further objects on the grounds that this interrogatory is compound, vague and ambiguous; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds by incorporating herein by reference its objections and responses to Interrogatory Nos. 3 and 5.

INTERROGATORY NO. 9

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph nine of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 9

Opposer objects to Interrogatory No. 9 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely since discovery has just recently opened

in this proceeding; Applicant has at least some of the information requested in its possession; and Opposer's investigation is ongoing. Opposer further objects on the grounds that this interrogatory is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds by incorporating herein by reference its objections and responses to Interrogatory Nos. 1 and 3-6. Opposer further responds that its incontestable U.S. Registration for its distinctive SOURCE NATURALS® mark and Applicant's pending application to register the mark "NATURAL SOURCE and Design" on their face establish likelihood of confusion due to the similarity of the marks and the overlap and/or relatedness of the goods identified in Opposer's registration and Applicant's application.

INTERROGATORY NO. 10

State fully and completely all facts upon which Opposer will rely to support the allegations in paragraph ten of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 10

Opposer objects to Interrogatory No. 10 on the grounds that it is premature in that Opposer has not yet determined all facts

upon which it will rely since discovery has just recently opened in this proceeding; Applicant has at least some of the information requested in its possession; and Opposer's investigation is ongoing. Opposer further objects on the grounds that this interrogatory is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds by incorporating herein by reference its objections and responses to Interrogatory Nos. 1 and 3-6. Opposer further responds that its incontestable U.S. Registration for its distinctive SOURCE NATURALS® mark and Applicant's pending application to register the mark "NATURAL SOURCE and Design" on their face establish likelihood of confusion due to the similarity of the marks and the overlap and/or relatedness of the goods identified in Opposer's registration and Applicant's application.

INTERROGATORY NO. 11

Identify and describe the facts relating to the date and manner in which Opposer first used its alleged Mark in connection with the sale of any products or services, whether listed in its application or registrations or not, specifying the identity of each person to whom each type of product or service was first sold.

RESPONSE TO INTERROGATORY NO. 11

Opposer objects to Interrogatory No. 11 on the grounds that it is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer states that it first used its distinctive SOURCE NATURALS® mark in connection with the promotion and sale of its products at least as early as January 1, 1982.

INTERROGATORY NO. 12

Identify and describe the facts relating to the date and manner in which Opposer first used its alleged Trade Name.

RESPONSE TO INTERROGATORY NO. 12

Opposer objects to Interrogatory No. 12 on the grounds that it is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is confidential, proprietary and/or trade secret.

INTERROGATORY NO. 13

Describe the manner in which Opposer has used, currently uses, or plans to use, in the United States, Opposer's Mark as described in the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 13

Opposer objects to Interrogatory No. 13 on the grounds that it is premature in that Opposer has not yet determined all facts upon which it will rely since discovery has just recently opened in this proceeding; and Opposer's investigation is ongoing. Opposer further objects on the grounds that this interrogatory is compound, vague and ambiguous; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds that since at least as early as 1982 it has used its distinctive SOURCE NATURALS® mark in connection with the promotion, marketing, sale and distribution of vitamins, herbs and nutritional supplements. For example, Opposer's SOURCE NATURALS® products are promoted nationwide through advertisements in newspapers and magazines placed by Opposer and/or its resellers, through monthly newsletters, through SOURCE NATURALS® product catalogues and on Opposer's Internet web site at "sourcenaturals.com." Because of their high quality, SOURCE NATURALS® products have won recognition from trade magazines and retailers, and have been featured and recommended in prominent books and articles, all of which contributes significantly to the goodwill and market recognition Opposer enjoys in its well-known SOURCE NATURALS® mark. Opposer uses its SOURCE NATURALS® mark on the labels and related materials for

more than 600 different types of products, in addition to various other usages. Opposer promotes and sells its SOURCE NATURAL® products through roughly 5000 retail stores nationwide and to more than 1500 health care professionals nationwide. Opposer also attends industry trade shows each year where the company actively promotes its distinctive SOURCE NATURALS® brand and broad range of SOURCE NATURALS® products.

INTERROGATORY NO. 14

Identify and describe all facts relating to any communications, between Applicant and Opposer, relating to the use of the Mark.

RESPONSE TO INTERROGATORY NO. 14

Opposer objects to Interrogatory No. 14 on the grounds that it is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; and it seeks information that is in Applicant's possession or control.

INTERROGATORY NO. 15

Identify and describe each type of product or services sold or offered, or intended to be sold or offered, for sale by Opposer under the Mark.

RESPONSE TO INTERROGATORY NO. 15

Opposer objects to Interrogatory No. 15 on the grounds that it is compound, vague and ambiguous; it seeks information

protected from discovery by the attorney client privileged and/or the work product doctrine; it is unduly burdensome and overly broad; it calls for information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer states that it uses its distinctive SOURCE NATURALS® mark in connection with, among other products and services, approximately 600 different products, including vitamins, herbs and nutritional supplements.

INTERROGATORY NO. 16

Identify all persons who designed, created or made any materials on which the Mark has ever been used or displayed, specifying which items were designed, created or made by each such person.

RESPONSE TO INTERROGATORY NO. 16

Opposer objects to Interrogatory No. 16 on the grounds that it is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; it is unduly burdensome and overly broad; it calls for information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence; and it seeks information that is confidential, proprietary and/or trade secret.

INTERROGATORY NO. 17

Describe the nature of the goods and services that are covered under the Mark as identified in the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 17

Opposer objects to Interrogatory No. 17 on the grounds that it is compound, vague and ambiguous; it is unduly burdensome and overly broad; and it seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer states that it uses its distinctive SOURCE NATURALS® mark in connection with, among other things, vitamins, herbs, and dietary and nutritional supplements.

INTERROGATORY NO. 18

For each of the goods listed in Registration No. 1,909,705 and as identified in the Notice of Opposition state:

a. the date of first use of the Mark;

b. the volume of sales in dollars in each year beginning with the date of first use and up to the present; and

c. the amount in dollars spent on advertising in each year beginning with the date of first use and up to the present.

RESPONSE TO INTERROGATORY NO. 18

Opposer objects to Interrogatory No. 18 on the grounds that it is compound, vague and ambiguous; it is unduly burdensome and overly broad; it calls for information that is not relevant or reasonably calculated to lead to the discovery of admissible

evidence; and it seeks information that is confidential, proprietary and/or trade secret.

INTERROGATORY NO. 19

Describe how Opposer's Mark has appeared or is intended to appear when used or depicted in connection with the goods, including, but not limited to, the visual manner in which such Mark appears, is displayed or utilized, or is intended to appear, be displayed or utilized, in connection with the services.

RESPONSE TO INTERROGATORY NO. 19

Opposer objects to Interrogatory No. 19 on the grounds that it is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; it is unduly burdensome and overly broad; it calls for information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence; and it seeks information that is confidential, proprietary and/or trade secret.

INTERROGATORY NO. 20

Identify and explain all types of advertising and all types of media used to advertise and promote Opposer's products in connection with which Opposer's Mark is used.

RESPONSE TO INTERROGATORY NO. 20

Opposer objects to Interrogatory No. 20 on the grounds that it is compound, vague and ambiguous; it is unduly burdensome and overly broad; and it seeks information that is confidential,

proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer incorporates herein by reference its response to Interrogatory No. 13.

INTERROGATORY NO. 21

Describe in detail any evidence of confusion, mistake, and/or deception of actual or potential customers, suppliers or other persons as to the source of Applicant's goods and the goods and/or services of Opposer.

RESPONSE INTERROGATORY NO. 21

Opposer objects to Interrogatory No. 21 on the grounds that it is compound, vague and ambiguous; it seeks information protected from discovery by the attorney client privileged and/or the work product doctrine; it is premature and seeks information in the possession of Applicant. Subject to and without waiving these objections and the general objections, Opposer incorporates herein its responses to Interrogatory Nos. 9 and 13.

INTERROGATORY NO. 22

Describe any complaints or comments Opposer has ever received regarding the quality of any of Applicant's goods and/or services.

RESPONSE TO INTERROGATORY NO. 22

Opposer objects to Interrogatory No. 22 on the grounds that it is compound, and vague and ambiguous. Subject to and without waiving these objections and the general objections, Opposer responds that it is not currently aware of any consumer or

marketplace criticism about any goods or services offered by Applicant under the "NATURAL SOURCE and Design" mark.

INTERROGATORY NO. 23

Describe any complaints or comments Opposer has ever received regarding the quality of any of Opposer's goods and/or services.

RESPONSE INTERROGATORY NO. 23

Opposer objects to Interrogatory No. 22 on the grounds that it is compound; seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; seeks information that is confidential, proprietary and/or trade secret; and is vague and ambiguous.

INTERROGATORY NO. 24

Describe each formal or informal investigation, study, and/or search conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 24

Opposer objects to Interrogatory No. 24 on the grounds that it is compound; seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; seeks information that is confidential, proprietary and/or trade secret; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; and is vague and ambiguous.

INTERROGATORY NO. 25

Describe each formal or informal investigation, study, and/or search conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 25

Opposer objects to Interrogatory No. 25 on the grounds that it is compound, seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; seeks information that is confidential, proprietary and/or trade secret; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; and is vague and ambiguous. Subject to and without waiving these objections and the general objections, Opposer responds that there no such investigations, studies or searches.

INTERROGATORY NO. 26

Describe the channels of trade of Opposer's goods and services covered by Opposer's Mark as described in the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 26

Opposer objects to Interrogatory No. 26 on the grounds that it is compound (particularly given the purported definition of "channels of trade," to which Opposer objects); seeks information that is confidential, proprietary and/or trade secret; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; and is vague

and ambiguous. Subject to and without waiving these objections and the general objections, Opposer responds by incorporating herein by reference its response to Interrogatory No. 13.

INTERROGATORY NO. 27

Describe the customers to whom Opposer's goods and services are marketed, distributed, and/or sold, including, but not limited to, the customers' demographics (e.g., geographic location, age, profession, education and income).

RESPONSE TO INTERROGATORY NO. 27

Opposer objects to Interrogatory No. 27 on the grounds that it is compound (particularly given the purported definition of "demographics," to which Opposer objects); seeks information that is confidential, proprietary and/or trade secret; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; and is vague and ambiguous. Subject to and without waiving these objections and the general objections, Opposer responds by incorporating herein by reference its response to Interrogatory No. 13.

INTERROGATORY NO. 28

Identify any assignments, licenses or other transfers or grants of any rights to or from Opposer with respect to the trademark identified in the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 28

Opposer objects to Interrogatory No. 28 on the grounds that it is vague and ambiguous; it is overly broad; it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence; and seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds that it has never granted, assigned, licensed or transferred to Applicant, or any other party, any of Opposer's rights in its distinctive SOURCE NATURALS® mark.

INTERROGATORY NO. 29

Identify and describe all oral or written agreements, including all assignment s and licenses entered into by Opposer referring or relating to the Mark, specifying the date of each agreement, the identity of all the parties thereto and the reason and purpose of the agreement.

RESPONSE TO INTERROGATORY NO. 29

Opposer objects to Interrogatory No. 29 on the grounds that it is compound, vague and ambiguous; it is overly broad; it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence; and seeks information that is confidential, proprietary and/or trade secret. Subject to and without waiving these objections and the general objections, Opposer responds that it has never granted,

assigned, licensed or transferred to Applicant any of Opposer's rights in its distinctive SOURCE NATURALS® mark and Opposer has never entered into any agreement with Applicant with respect to Opposer's distinctive SOURCE NATURALS® mark.

INTERROGATORY NO. 30

State when and describe the circumstances surrounding when the Opposer first became aware of Applicant.

RESPONSE TO INTERROGATORY NO. 30

Opposer objects to Interrogatory No. 30 on the grounds that it is compound, vague and ambiguous; it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence; and seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine. Subject to and without waiving these objections and the general objections, Opposer responds that it was not aware of Applicant's claimed use of the infringing designation NATURAL SOURCES and Design, and its application to register that mark, until sometime in or about January 2004, when Opposer learned that that Applicant's claimed mark was published for opposition.

INTERROGATORY NO. 31

State when and describe the circumstances surrounding when the Opposer first because aware of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 31

Opposer objects to Interrogatory No. 31 on the grounds that it is compound, vague and ambiguous; it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence; and seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine. Subject to and without waiving these objections and the general objections, Opposer responds that it was not aware of Applicant's claimed use of the infringing designation NATURAL SOURCES and Design, and its application to register that mark, until sometime in or about January 2004, when Opposer learned that that Applicant's claimed mark was published for opposition.

INTERROGATORY NO. 32

List all trademark registrations and applications owned by Opposer on the Principal Register of the United States Patent and Trademark Office or with any state, identify and describe the facts pertaining to each such application or registration including without limitation, the status of the application, whether or not any registration was issued, and any reason for which registration was denied.

RESPONSE TO INTERROGATORY NO. 32

Opposer objects to Interrogatory No. 32 on the grounds that it is compound, seeks information that is confidential, proprietary and/or trade secret; seeks information that is protected from discovery by the attorney client privilege and/or

the work product doctrine; it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; and is vague and ambiguous.

INTERROGATORY NO. 33

Identify by name and address each person or entity with whom Opposer has communicated or had contact, either orally or in writing, wherein Opposer has either asserted its rights in Opposer's Mark or received a notice of another's claim of rights relating to Opposer's Mark or any variation thereof and, with respect to each such communication or contract, fully explain all details, including the current status or disposition of the claim, the date of such communications, the identity of the persons involved in such communications, the means of communication and the substance of such communication.

RESPONSE TO INTERROGATORY NO. 33

Opposer objects to Interrogatory No. 32 on the grounds that it is compound; seeks information that is confidential, proprietary and/or trade secret; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; it seeks information that is protected by the terms of confidentiality agreements; it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 34

Identify each trademark or service mark against which Opposer has either filed a Notice of Opposition or a Petition for Cancellation wherein Opposer has asserted its rights in Opposer's Mark and provide the current status of such opposition or cancellation proceeding.

RESPONSE TO INTERROGATORY NO. 34

Opposer objects to Interrogatory No. 34 on the grounds that it is compound; it seeks information that is protected by the terms of confidentiality agreements; it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 35

Identify each trademark or service mark containing the term NATURAL or NATURALS and/or SOURCE against which Opposer has not filed a Notice of Opposition or a Petition for Cancellation.

RESPONSE TO INTERROGATORY NO. 35

Opposer objects to Interrogatory No. 35 on the grounds that it is compound; is unduly burdensome and overly broad; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; it seeks information that is not relevant and is not reasonably calculated

to lead to the discovery of admissible evidence; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 36

Identify each trademark or service mark containing the term NATURAL or NATURALS and/or SOURCE used in connection with vitamins, herbs, nutritional supplements and/or dietary supplements of which Opposer is aware.

RESPONSE TO INTERROGATORY NO. 36

Opposer objects to Interrogatory No. 36 on the grounds that it is compound; is unduly burdensome and overly broad; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 37

Identify the geographic areas (by country and by state in the U.S.) in which Opposer's goods are sold or distributed in connection with its Mark.

RESPONSE TO INTERROGATORY NO. 37

Opposer objects to Interrogatory No. 37 on the grounds that it is compound; it is overly broad and unduly burdensome; it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; and is vague and ambiguous. Subject to and without waiving these objections and the general objections, Opposer responds that it and its resellers promote and sell its well-known SOURCE NATURALS® products nationwide. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 38

Specify all facts and identify all documents upon which Opposer intends to rely in this proceeding for the allegation that Applicant's mark is confusingly similar to Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 38

Opposer objects to Interrogatory No. 38 on the grounds that it is compound; it is premature in that Opposer has not determined all facts and documents on which it intends to rely in this proceeding to establish its claim that Applicant's application should be refused on grounds of likelihood of confusion; it is unduly burdensome and overly broad; seeks information that is protected from discovery by the attorney

client privilege and/or the work product doctrine; it seeks information that confidential, proprietary and/or trade secret; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board. Subject to and without waiving these objections and the general objections, Opposer incorporates herein by reference its responses to Interrogatory Nos. 1, 3-9 and 13.

INTERROGATORY NO. 39

Identify any expert Opposer has retained for this litigation, including, but not limited to, his or her qualifications, opinions, and bases of opinion.

RESPONSE TO INTERROGATORY NO. 39

Opposer objects to Interrogatory No. 39 on the grounds that it is compound; is unduly burdensome and overly broad; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 40

Identify any period during which Opposer has discontinued use of its Mark for more than one year and state the circumstances surrounding such non-use.

RESPONSE TO INTERROGATORY NO. 40

Opposer objects to Interrogatory No. 40 on the grounds that it is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board. Subject to and without waiving this objection and the general objections, Opposer responds that it has not discontinued use of its distinctive and well-known SOURCE NATURALS® mark for more than one year, but instead has used its mark continuously to promote its well-respected products.

INTERROGATORY NO. 41

Identify all documents Opposer intends to rely upon in this proceeding.

RESPONSE TO INTERROGATORY NO. 41

Opposer objects to Interrogatory No. 41 on the grounds that it is compound; it is premature in that Opposer has not determined all documents on which it intends to rely in this proceeding, and its investigation is ongoing; it is unduly

burdensome and overly broad to require identification by way of an interrogatory response; it seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; it seeks information that confidential, proprietary and/or trade secret; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board. Subject to and without waiving these objections and the general objections, Opposer incorporates herein by reference its responses to Interrogatory Nos. 1, 3-9 and 13, and incorporates its responses to Applicant's requests for production of documents.

INTERROGATORY NO. 42

If any interrogatory or document request served by Applicant calls for information that could have been answered by producing, consulting or referring to documents that are no longer in existence or are no longer with Opposer's possession, custody or control, identify each such interrogatory or document request and, with respect thereto, identify the information or documents formerly maintained.

RESPONSE TO INTERROGATORY NO. 42

Opposer objects to Interrogatory No. 42 on the grounds that it is compound; seeks information that is protected from discovery by the attorney client privilege and/or the work product doctrine; it seeks information that confidential,

proprietary and/or trade secret; it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence; is unduly burdensome and overly broad; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 43

Identify each person who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories specifying the information which he or she provided.

RESPONSE TO INTERROGATORY NO. 43

Opposer objects to Interrogatory No. 43 on the grounds that it seeks information that is protected from discovery by the attorney client privileged and/or the work product doctrine; seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence; is compound; and is vague and ambiguous. Opposer further objects that, due to subparts in prior interrogatories, this

Interrogatory exceeds the limit of 75 interrogatories permitted by the rules of the Trademark Trial and Appeal Board.

Respectfully submitted,

THRESHOLD ENTERPRISES LTD

Date: August 18, 2004 By: Mary Catherine Merz

Mary Catherine Merz, Esq.
MERZ & ASSOCIATES. P.C.
Attorneys at Law
1140 Lake Street, Suite 304
Oak Park, Illinois 60301
(708) 383-8801 (phone)
(708) 383-8897 (fax)

Attorney for Opposer

VERIFICATION

THRESHOLD ENTERPRISES LTD

Date: _____ By: _____

Name: _____

Title: _____

Sworn and subscribed to before me this ____ day of August, 2004.

_____

Notary

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER was served on the APPLICANT via First Class Mail this 18th day of August 2004, addressed to:

Jacqueline L. Patt, Esq.
VENABLE LLP
575 7th Street, NW
Washington, DC 20004-1601

Date: August 18, 2004 By: Mary Catherine Mez

Exhibit 3

MERZ & ASSOCIATES®

Merz & Associates, P.C.
Attorneys at Law
1140 Lake Street, Suite #304
Oak Park, Illinois 60301-1051
U.S.A.

Mary Catherine Merz, Esq.
Direct Dial: (708) 383-8801 ext. 22
Fax: (708) 383-8897
Email: mmerz@merz-law.com

DOMESTIC/INTERNATIONAL
Trademarks, Copyrights
Unfair Competition and
Advertising Law

VIA FACSIMILE
CONFIRMATION VIA AIRMAIL

August 8, 2006

Paul Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022

Re: Opposition v. "SOURCED FROM NATURE...PERFECTED BY SCIENCE" in the U.S.
(Opposition No. 159,361; Our Ref. 21436)

Dear Paul:

Thank you for your telephone call last week regarding the above-referenced opposition. I am in receipt of the service copy of the stipulated motion you filed with the Trademark Trial and Appeal Board to extend the discovery period by thirty days; that is until, **October 19, 2006**.

As I explained to you during our telephone conversation, I will be in touch this week with my client regarding the discovery requests the parties have exchanged to date. As soon as I have had a chance to discuss those responses with my client, I will contact you to discuss them, as well.

Very truly yours,

Mary Catherine Merz

Mary Catherine Merz

MCM/jbw
cc: Barry Sugarman
via E-mail

Exhibit 4

Thelen Reid & Priest LLP
Attorneys At Law

875 Third Avenue
New York, NY 10022-6225
Tel. 212.603.2000
Fax 212.603.2001
www.thelenreid.com

Paul Fakler
212.603.2143 Direct Dial
212.829.2076 Direct Fax
pfakler@thelenreid.com

August 11, 2006

VIA E-MAIL

Mary Catherine Merz
Merz and Associates, P.C.
1140 Lake Street
Suite 304
Oak Park, Illinois 60301

Re: **Opposition No. 91159361; SOURCED FROM NATURE . . . PERFECTED BY SCIENCE**

Dear Mary:

As a follow-up to my call last week, I would like to highlight some of the issues Natural Source International, Ltd. ("NSI") has with the discovery responses served by Threshold Enterprises Ltd. ("Threshold") on August 17, 2004 in the above-referenced Opposition. Hopefully, after you speak with Threshold, we will be able to resolve, or at least narrow, these issues.

In light of Threshold's various objections on the grounds of confidentiality and alleged trade secrecy, I am enclosing a proposed draft stipulated protective order. I do not believe that very much of the information requested is properly considered confidential, and none of it highly confidential, so I did not include an attorneys' eyes only level of protection.

Interrogatories

As a preliminary matter, Threshold has lodged numerous objections on the ground that NSI's Interrogatories exceed 75 in number. This objection is invalid for at least two reasons. First, the proper procedure for lodging such an objection is not to selectively answer certain of the Interrogatories, as Threshold has done, but rather to serve a general objection on that ground instead of serving answers. 37 CFR § 2.120(d)(1); TBMP § 405.03(e) ("A party should not answer what it considers to be the first seventy-five interrogatories and object to the rest as excessive."). Second, NSI has clearly served fewer than 75 Interrogatories in this Opposition. Please withdraw these objections. If Threshold will not withdraw the objections, please state how many individual Interrogatories Threshold alleges are contained in NSI's Interrogatories

served in this Opposition and explain Threshold's counting method by which it has arrived at that number.

In various Responses, including Nos. 1,2,6, 9, 30 and 31, Threshold references the NATURAL SOURCE and Design mark, which is not the subject of this Opposition and was not the subject of the Interrogatories. If this was a mistake on Threshold's part, and without waiving any of NSI's rights or remedies, please serve corrected responses immediately.

With respect to Interrogatories Nos. 1-10, please note that these are contention interrogatories, with language directed to and limited by Threshold's own pleading. As such, Threshold's objections on the grounds of relevance and vagueness are entirely misplaced. The objections are also non-specific, which makes it impossible to determine whether Threshold has withheld any responsive information, and on that ground they violate the Federal Rules. Please confirm whether Threshold has withheld any responsive information based upon these objections. If Threshold has withheld any responsive information, please withdraw these invalid objections and provide supplemental responses. Additionally, Response No. 10 is non-responsive. Interrogatory No. 10 seeks the facts upon which Threshold bases its allegation that it will be damaged by the registration of NSI's mark. Response No. 10 does not state any facts supporting that claim. If Threshold has any facts supporting its claim of damage, it should state them. If not, it should state that it knows of no such facts.

Interrogatories Nos. 11 and 12 seek basic information about the actual first use of Threshold's mark and alleged trade name at issue in the Opposition. This information is clearly relevant is in no way confidential or trade secret. Please amend the Responses to answer these Interrogatories.

With respect to Interrogatory Nos. 15 and 17, Threshold's response is impermissibly and purposefully vague, because of its qualification of its list of types of products with the phrase "among other products and services." If there are any other types of products or services sold in connection with Threshold's mark, please identify them as required by the Interrogatory. If there are no other types, please confirm this fact.

Interrogatory No. 16 seeks the identity of persons who created and designed Threshold's materials displaying the mark. This is clearly relevant and a common interrogatory in trademark practice, as such persons are potential witnesses with respect to Threshold's use of the mark. Please amend the Responses to answer this Interrogatory.

Interrogatory No. 18 seeks some of the most typical and basic information relevant to the strength of Threshold's mark. We note that Threshold has asked for, and NSI has provided, the very same information about NSI's mark. Please amend the Responses to provide the requested information, which is central to the merits of the Opposition.

With respect to Interrogatory No. 21, Threshold's Response is wholly non-responsive. This Interrogatory seeks information about evidence of actual confusion. Threshold has already admitted that it does not know of any instances of such confusion. Please either confirm that there is no responsive evidence or identify such evidence.

Interrogatory No. 23 seeks information about complaints concerning Threshold's goods sold in connection with its mark. The quality, and perceived quality, of Threshold's goods is relevant to the likelihood of confusion analysis, as you well know. This Interrogatory must be answered.

With respect to Interrogatory No. 24, any studies, searches or investigations concerning Threshold's mark are plainly relevant to this dispute in that they are likely to be probative of the strength of the mark and the likelihood of confusion. Threshold's vagueness objections are demonstrably invalid, as Threshold was able to understand the exact same words used in Interrogatory No. 25. Please amend the Responses to provide the required information.

With respect to Interrogatory No. 26, putting aside the impropriety of relying on a reference to a Response to a different Interrogatory, Response No. 13 does not identify all "channels of trade" as that term is defined in the Interrogatories. Threshold's channels of trade are plainly relevant to the likelihood of confusion analysis. Please amend the Responses to give a complete Response to Interrogatory No. 26.

Interrogatory No. 27 seeks basic customer demographic information. Response No. 13, as incorporated by reference, is not responsive. Please amend the Responses to provide the required information.

With respect to Interrogatory No. 28, Threshold's Response does not address whether Threshold had received any licenses, assignments or other rights transfers with respect to the mark. Please amend the Responses to provide this required information.

With respect to Interrogatory No. 29, in addition to the same omission noted above with respect to Interrogatory No. 28, Threshold also limits its Response to agreements with NSI, and does not address any possible agreements with third parties. Please amend the Responses to provide this required information.

Interrogatory No. 32 seeks information concerning all registrations and applications to register Threshold's mark, including status and rejections. This information is clearly calculated to discover evidence probative of the strength and validity of Threshold's mark. Please amend the Responses to provide the responsive information.

Interrogatory Nos. 33-36 seek information concerning Threshold's policing and enforcement of its mark, and Threshold's knowledge of the existence of other similar marks, all of which is relevant to the strength of the mark. Please amend the Responses to provide the responsive information.

With respect to Interrogatory No. 38, the identification of facts and document upon which Threshold intends to rely with respect to likelihood of confusion is plainly relevant and proper discovery. Please either confirm that Responses No. 1, 3-9 and 13 contain every such fact or document, or amend the Responses to properly and fully answer this Interrogatory.

Interrogatory No. 39 seeks basic expert discovery and is both relevant and proper. Please amend the Responses to proved the required information or confirm that Threshold has not retained any experts in connection with the Opposition.

Interrogatory No. 41 seeks the identification of any documents Threshold intends to rely upon in this Opposition. This is clearly relevant and there is nothing vague about it. Threshold's Response is wholly non-responsive. Please amend the Responses to provide the required information and confirm that Threshold will supplement the Responses to the extent other documents become responsive.

Interrogatory Nos. 42 and 42 are common housekeeping discovery requests, and must be answered. Please amend the Responses to provide this information.

Document Requests

With respect to Request No. 1, please confirm that Threshold will produce any documents identified in response to NSI's Interrogatories.

With respect to Request No. 2, please confirm that Threshold will product any document it intends to rely upon at trial once such documents are identified.

With respect to Request No. 3, these documents concerning the selection, availability, adoption, design, creation and proposal to use Threshold's mark are plainly relevant to Threshold's allegations of its rights in the mark as well of its knowledge of other similar marks in the marketplace. Please withdraw the objections and agree to produce the documents.

With respect to Requests Nos. 4-13, please note that these Requests are directed to and limited by Threshold's own pleading. As such, Threshold's objections on the grounds of relevance and vagueness are entirely misplaced. Moreover, the terms identified by Threshold as allegedly vague are expressly defined in the Requests. Threshold's objections are also non-specific, which makes it impossible to determine whether Threshold will withhold any responsive documents, and on that ground they violate the Federal Rules. Please confirm whether Threshold intends to withhold any responsive documents based upon these objections. If so, please withdraw these invalid objections in writing.

With respect to Request Nos. 6 and 8, Threshold's limitation of its production to documents that "support" Threshold's allegations is improper. NSI obviously has the right to obtain any documents that could tend to disprove Threshold's allegations. Please confirm that Threshold will produce all documents concerning the allegations.

With respect to Requests Nos. 11-13, these Requests seek documents concerning Threshold's allegations about the strength of its mark, likelihood of confusion and damages, all of which are directly and highly relevant to the Opposition. A copy of Threshold's trademark registration and samples of use are woefully inadequate. Threshold must produce all responsive documents.

Request Nos. 19 and 21 seek documents sufficient to show sales and marketing / advertising expenses for each of the goods and services sold in connection with the mark. This is obviously relevant to the strength of the mark and is common trademark discovery. These Requests are not unduly burdensome, as NSI is only asking for documents sufficient to show these figures. Please confirm that Threshold will produce responsive documents.

Request No. 22 seeks documents concerning press, media and other published third party references to the mark. These documents are clearly relevant to the strength of the mark. All such documents must be produced because the volume of any such references itself is relevant. Threshold's promise to produce samples is insufficient. Please confirm that Threshold will produce all responsive documents.

With respect to Request No. 23, Threshold's Response is a non-sequitur. This Request seeks all documents concerning incidents of actual confusion. Please confirm that Threshold will produce all responsive documents.

With respect to Request No. 24, the characteristics of Threshold's customers is plainly relevant to the likelihood of confusion analysis. We do not believe that this Request should be unduly burdensome, but will agree to limit the Request to "documents sufficient to identify or describe" instead of "all documents which identify or describe" the designated entities.

Requests Nos. 25-26 seek documents concerning the quality, respectively, of NSI's and Threshold's goods at issue in the Opposition. These documents are clearly relevant to the likelihood of confusion analysis and must be produced.

Requests Nos. 27-28 seek documents concerning research, surveys, reports and studies concerning, respectively, Threshold's and NSI's marks. The relevance of such surveys to the strength of the marks and likelihood of confusion is self-evident. Please confirm that Threshold will produce all responsive documents.

With respect to Request No. 29, the channels of trade for Threshold's products is plainly relevant to the likelihood of confusion analysis. We do not believe that this Request should be unduly burdensome, but will agree to limit the Request to "documents sufficient to identify" instead of "all documents relating to and/or referring to and/or demonstrating" the channels of trade.

Request No. 32 seeks documents concerning any assignment, license or other transfer or grant of rights with respect to Threshold's mark. These documents are clearly relevant as they are related to Threshold's ownership and rights to the mark. Please confirm that Threshold will produce any responsive documents.

Request No. 34 seeks documents concerning Threshold's corporate status, and are relevant to its claim of ownership. Please confirm that the documents will be produced.

With respect to Request No. 35, consumer research and focus group studies are clearly relevant to the strength of the mark and likelihood of confusion. Please confirm that all responsive documents will be produced.

Request No. 36 seeks standard expert discovery. Please confirm that all responsive documents will be produced.

With respect to Request No. 38, documents concerning quality control for products or services sold under the mark are relevant. NSI is willing to limit this Request to documents concerning such quality control.

Request Nos. 40 and 41 seek documents concerning third party uses of similar marks and are clearly relevant to the strength of the mark and likelihood of confusion. Please confirm that Threshold will produce all responsive documents.

Requests for Admission

With respect to Requests Nos. 9 and 10, please not that the website specified in these Requests, www.colema-boards.com, is currently active and shows the sale of the NATURAL SOURCE VITAMIN C product. In compliance with Threshold's continuing discovery obligations, please supplement Threshold's Responses to these Requests.

I will be out of the office next week, which should give you sufficient time to raise these issues with your client. Please let me know when during the week of August 21, 2006 you will be available to discuss these issues pursuant to our meet and confer obligations for discovery disputes. NSI should be able to send you its document production during that week as well. We hope that Threshold will be able to at least begin its production concurrently.

Very truly yours,

Paul Fakler

PF/

cc: Kevin MacCarthy, Esq.

NY #722859 v1

Exhibit 5

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

THRESHOLD ENTERPRISES LTD.,	)	
	)	
Opposer,	)	
v.	)	Opposition No.: 91159361
	)	Serial No. 76/506477
NATURAL SOURCE INTERNATIONAL, LTD.,	)	Mark: SOURCED FROM NATURE . . . PERFECTED BY SCIENCE
	)	
Respondent.	)	
	)	
	)	

STIPULATED PROTECTIVE ORDER

Having agreed that discovery in this case may require disclosure of trade secrets or other confidential research, financial, product development or commercial information, and considering the privacy interests in disclosure of this information, and good cause having been shown pursuant to 37 C.F.R. § 2.120(f) and Rule 26(c) of the Federal Rules of Civil Procedure, the parties hereto, through their undersigned counsel, hereby stipulate and agree to the entry of the following order ("Protective Order"):

1. Any party to this action, and any non-party from whom discovery is sought in connection with this action (the "Designating Party"), may designate as "CONFIDENTIAL" any documents, testimony or other discovery material that contains confidential information. The Designating Party shall not designate material as "CONFIDENTIAL" unless it comprises or contains trade secrets, sensitive technical, marketing, financial, sales or other confidential business information, and unless the above types of information are so competitively sensitive that their disclosure is likely to cause competitive injury to the Designating Party. This Protective Order shall not protect from production information, documents or other material that (a) the Designating Party

has not made reasonable efforts to keep confidential (including documents produced to federal, state and local legislators and their staff; federal, state and local agencies; trade associations, lawyers' committees, joint defense committees and advocacy organizations); (b) has been produced in any other action or proceeding without confidentiality protection, except inadvertently produced documents; (c) has been lawfully obtained by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (d) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding; or (e) has been denied confidential treatment in any other action or proceeding by a final order as to which all appeals and other opportunities to challenge have been exhausted or for which the time for appealing or otherwise challenging has expired.

2. "Confidential Information," as used in this Protective Order, shall refer to any document, testimony or other discovery material designated "CONFIDENTIAL," and all copies thereof, whether produced by a party or nonparty, and shall also refer to the information contained in such material.

3. All persons receiving Confidential Information (the "Receiving Party") shall take all steps reasonably necessary to prevent the disclosure of such Confidential Information to anyone other than persons identified below.

4. Confidential Information shall be maintained in confidence by the Receiving Party and shall not be disclosed to any person except:

a. the Board and its employees;

b. counsel, whether retained counsel or in-house counsel;

c. employees of counsel;

d. present officers or employees of a party to this Opposition to the extent necessary in the prosecution of or in defense to claims made in this proceeding, provided that such officers or employees of a party to this litigation have read this Protective Order and have signed an undertaking in the form of Exhibit A attached hereto;

e. translators, duplicating services, auxiliary services of like nature, routinely engaged by counsel;

f. fact and expert witnesses;

g. litigation consultants; and

h. any witness for the purpose of conducting an examination of such witness during trial or discovery deposition.

Material marked or otherwise designated "CONFIDENTIAL" shall not be disclosed to persons in categories 4(e), 4(f) or 4(g) until such persons have executed the agreement annexed as Exhibit A hereto.

5. The parties hereto agree that if any person not authorized to receive Confidential Information under the terms of this Protective Order is present at any deposition in this action or at a hearing, trial or other proceeding in connection with this Opposition, that person shall be asked to leave that proceeding for the period of time during which such information is the subject of questioning.

6. The attorneys of record for a party who wishes to disclose Confidential Information to persons other-than those identified in Paragraph 4 shall notify the attorneys of record for the other party. The attorneys shall discuss in good faith whether disclosure will be allowed. If the parties cannot agree, the party seeking disclosure shall move the Board, on reasonable notice,

for an order permitting disclosure. No disclosure of the information to persons other than those identified in Paragraph 4 shall be made pending a ruling by the Board.

7. A party shall not be obligated to challenge the propriety of the designation of information as "CONFIDENTIAL" at the time made, and failure to do so shall not preclude a later challenge thereof. If a party challenges such a designation, it shall send or give notice to the other party and to any third party who designated the information as confidential and shall attempt in good faith to resolve any challenge on an expedited and informal basis. The party which designated such information as "CONFIDENTIAL" shall have the burden of proof as the validity of each such designation. The information at issue shall continue to be treated as "CONFIDENTIAL" until the parties reach an agreement or the Board makes a determination as to the propriety of the designation.

8. Discovery material produced without the designation of "CONFIDENTIAL" may be designated subsequent to production or testimony when the Designating Party failed to make such designation at the time of production or during the testimony through inadvertence or error. If discovery material is designated subsequent to production or testimony, the Receiving Party shall use its best efforts to promptly collect any copies that have been provided to individuals other than those identified in Paragraph 4 of the Protective Order. For purposes of this Paragraph, material and information will be deemed to be "CONFIDENTIAL" as of the date upon which notice of the designation is received.

9. After each deposition, a party may designate portions of the transcript "CONFIDENTIAL" within ten (10) days from receipt of the transcript of the depositions.

10. No Confidential Information shall be filed in the public record of this Opposition. With respect to any documents or things containing or embodying Confidential

Information that are to be filed in this proceeding, the portions of such filings that disclose Confidential Information should be redacted, to the extent reasonable.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should be very rare.

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

> **This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.**

11. At the conclusion of this proceeding, all material produced pursuant to discovery, and all copies thereof, shall be returned to the Designating Party or, at the option of the Designating Party, opposing counsel shall certify in writing that such materials have been

destroyed, except that counsel of record may retain one set of all papers filed with the court, including confidential discovery material.

12. This Protective Order shall remain in full force and effect after the termination of this proceeding, or until canceled or otherwise modified by the Board, or by written agreement of the parties.

Dated: August ___, 2006

Agreed to by:

MERZ AND ASSOCIATES, P.C.	THELEN REID & PRIEST LLP
By: _____ Mary Catherine Merz	By: _____ Paul M. Fakler
1140 Lake Street Suite 304 Oak Park, Illinios 60301 Telephone: ( ) - Facsimile: ( ) -	875 Third Avenue New York, New York 10022 Telephone: (212) 603-2143 Facsimile: (212) 829-2076
Counsel for Opposer *Threshold Enterprises Ltd.*	Counsel for Applicant *Natural Source International, Ltd.*

By Order of the Board, effective _____.

_____
Administrative Trademark Judge
Trademark Trial and Appeal Board

EXHIBIT A

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

THRESHOLD ENTERPRISES LTD.,	)	
	)	
Opposer,	)	
v.	)	Opposition No.: 91159361
	)	Serial No. 76/506477
NATURAL SOURCE INTERNATIONAL, LTD.,	)	Mark: SOURCED FROM NATURE . . . PERFECTED BY SCIENCE
	)	
Respondent.	)	
	)	
_____	)	

AGREEMENT TO COMPLY WITH STIPULATED PROTECTIVE ORDER

I hereby acknowledge receipt of materials or information alleged to be confidential by one or more parties to the above-captioned proceeding before the Trademark Trial and Appeal Board. I certify my understanding that such material is provided to me pursuant to the terms and restrictions of the Stipulated Protective Order in that proceeding ("Protective Order") and that I have been given a copy of an have read said Protective Order. I understand that I am to retain control of any copies of any of the aforesaid discovery material and that, upon completion of my assigned duties, I shall be responsible for the identification and disposition of the designated material, including any copies of documentary materials. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Protective Order. I also agree not to disseminate such information, except for purposes of this action and as permitted by said Protective Order or a further Order of the Board.

I declare under penalty of perjury that the above statements are true and correct.

Dated:_____ Signed:_____

Exhibit 6

Fakler, Paul

From: mmerz@merz-law.com
Sent: Sunday, August 20, 2006 5:51 PM
To: Fakler, Paul

Dear Paul:

I am in receipt of your E-mail message from August 11. My new contact within Threshold Enterprises has changed, and his is out of town at the present. As soon as I am able to go over in detail with him your correspondence from August 11, I will get back in touch with you.

Very truly yours,
Mary Merz

Mary Catherine Merz, Esq.
MERZ & ASSOCIATES, P.C.
mmerz@merz-law.com

Exhibit 7

Fakler, Paul

From: Fakler, Paul
Sent: Tuesday, August 22, 2006 4:44 PM
To: 'mmerz@merz-law.com'
Subject: Threshold v. NSI

Mary,

Thank you for your response. I note that when we spoke on August 2, you stated you would get back to me about this discovery. Having not heard from you, on August 11 I followed up with a detailed written account of NSI's problems with Threshold's objections, including proposed compromises where possible. It is now three weeks since our first conversation and eleven days since I sent my letter. Most, if not all, of NSI's concerns are of a legal nature and do not require much in the way of input from your client. Many of the disputed objections are obviously inappropriate, such as Threshold's objections that documents concerning various estblished likelihood of confusion elements are irrelevant.

I hope to be able to resolve or at least narrow these disputes, and have been making a good faith effort to do so. NSI will not wait much longer, however, before making a motion. Even with the modest extension agreed to by Threshold, there is simply not enough time left in the discovery period to tolerate these kinds of delays. Please give me a date certain by which Threshold will respond to my letter so that I may plan accordingly.

Regards,
Paul

Paul M. Fakler
Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143
fax (212) 829-2076
e-mail pfakler@thelenreid.com

-----Original Message-----
From: mmerz@merz-law.com [mailto:mmerz@merz-law.com]
Sent: Sunday, August 20, 2006 5:51 PM
To: Fakler, Paul
Subject:

Dear Paul:

I am in receipt of your E-mail message from August 11. My new contact within Threshold Enterprises has changed, and his is out of town at the present. As soon as I am able to go over in detail with him your correspondence from August 11, I will get back in touch with you.

Very truly yours,
Mary Merz

Mary Catherine Merz, Esq.
MERZ & ASSOCIATES, P.C.
mmerz@merz-law.com

Exhibit 8

Fakler, Paul

From: Mary Merz [mmerz@merz-law.com]
Sent: Thursday, August 24, 2006 12:21 PM
To: Fakler, Paul
Subject: Re: Threshold v. NSI (Our Ref. 21436)

Dear Paul:

As I wrote to you in my last E-mail message, as soon as I am able to confer with my client, I will be back in touch with you. That should be soon.

Very truly yours,
Mary Merz

Mary Catherine Merz, Esq.
MERZ & ASSOCIATES, P.C.
(ph) (708) 383-8801 ext. 22
(fax) (708) 383-8897
(e-mail) mmerz@merz-law.com
----- Original Message -----
From: "Fakler, Paul" <pfakler@thelenreid.com>
To: <mmerz@merz-law.com>
Sent: Tuesday, August 22, 2006 3:43 PM
Subject: Threshold v. NSI

Mary,

Thank you for your response. I note that when we spoke on August 2, you stated you would get back to me about this discovery. Having not heard from you, on August 11 I followed up with a detailed written account of NSI's problems with Threshold's objections, including proposed compromises where possible. It is now three weeks since our first conversation and eleven days since I sent my letter. Most, if not all, of NSI's concerns are of a legal nature and do not require much in the way of input from your client. Many of the disputed objections are obviously inappropriate, such as Threshold's objections that documents concerning various estblished likelihood of confusion elements are irrelevant.

I hope to be able to resolve or at least narrow these disputes, and have been making a good faith effort to do so. NSI will not wait much longer, however, before making a motion. Even with the modest extension agreed to by Threshold, there is simply not enough time left in the discovery period to tolerate these kinds of delays. Please give me a date certain by which Threshold will respond to my letter so that I may plan accordingly.

Regards,
Paul

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Thelen Reid & Priest LLP
875 Third Avenue
New York, NY 10022-6225
www.thelenreid.com

phone (212) 603-2143
fax (212) 829-2076
e-mail pfakler@thelenreid.com

-----Original Message-----
From: mmerz@merz-law.com [mailto:mmerz@merz-law.com]
Sent: Sunday, August 20, 2006 5:51 PM
To: Fakler, Paul

Subject:

Dear Paul:

I am in receipt of your E-mail message from August 11. My new contact within Threshold Enterprises has changed, and his is out of town at the present. As soon as I am able to go over in detail with him your correspondence from August 11, I will get back in touch with you.

Very truly yours,
Mary Merz

Mary Catherine Merz, Esq.
MERZ & ASSOCIATES, P.C.
mmerz@merz-law.com

Exhibit 9

MERZ & ASSOCIATES®

Merz & Associates, P.C.
Attorneys at Law
1140 Lake Street, Suite #304
Oak Park, Illinois 60301-1051
U.S.A.

Mary Catherine Merz, Esq.
Direct Dial: (708) 383-8801 ext. 22
Fax: (708) 383-8897
Email: mmerz@merz-law.com

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VIA FACSIMILE
CONFIRMATION U.S. MAIL

August 30, 2006

Paul M. Fakler
THELEN REID & PRIEST LLP
875 Third Avenue
New York, New York 10022

Re: Opposition v. "SOURCED FROM NATURE...PERFECTED BY SCIENCE" in the U.S.
(Opp. No. 159,137; Our Ref. 21436)

Dear Paul:

I have spoken with my client regarding the status of discovery in the above-referenced opposition and the related issues you have raised. He has advised me as follows.

First, Threshold Enterprises Ltd. ("Threshold") is in the process of bringing new counsel into this opposition; new counsel will get back to you as soon as possible regarding the discovery concerns you have raised in your recent correspondence.

Second, there are problems with the stipulated protective agreement that Natural Source International Ltd. ("NSI") has proposed. Most importantly, the agreement does not adequately protect Threshold's proprietary information; a provision such as an "attorney's eyes only" limitation is going to have to be added to protect Threshold's confidential information.

Third, Threshold is surprised by your concern about the speed with which Threshold is responding to NSI's recent interest in moving this proceeding forward. Kevin McCarthy of NSI has continuously delayed this proceeding by delaying his responses to Threshold's correspondence concerning settlement negotiations. Threshold has been more than patient with these delays over the past two years. Furthermore, Threshold is quite troubled by the bad faith in which Mr. McCarthy appears to have

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been negotiating on behalf of NSI. As you may be aware, the parties had reached an agreement in principal during negotiations between Mr. McCarthy and Brian Cayton of Threshold. However, when it came to putting those terms in a written agreement, the terms to which NSI was willing to agree were very different from the ones that had been discussed, particularly with respect to the use of NSI's trade name prominently on its product labels and packaging.

Finally, given that Threshold is beginning to work with new counsel in this proceeding, Threshold would be willing to agree to a further extension of the discovery period. The length of that extension, however, will need to be discussed with Threshold's new counsel. As stated above, Threshold's new counsel will be in touch with you as soon as possible.

Very truly yours,

Mary Catherine Merz

Mary Catherine Merz

MCM/mm
cc: Barry Sugarman
Carla Oakley, Esq.
via E-mail

CERTIFICATE OF SERVICE

The undersigned states:

I hereby certify that a true and complete copy of the foregoing Declaration of Paul M. Fakler has been served on counsel for Opposer, by mailing said copy on September 25, 2006, via First Class Mail, postage prepaid to: Mary Catherine Merz, Merz and Associates, P.C., 1140 Lake Street, Suite 304, Oak Park, Illinois, 60301.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 25, 2006, at New York, New York.

/Paul M. Fakler/

Paul M. Fakler