

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

TIFFANY (NJ) INC.,	:	
	:	Mark: TIFFANY'S RESTAURANTS
Opposer,	:	
	:	Serial No.: 76/520,262
v.	:	
	:	Opposition No. 91160913
ANTHONY SIRAGUSA and MICHAEL	:	
ROMANELLI,	:	
	:	
Applicants.	:	x

APPLICANTS' BRIEF IN OPPOSITION TO OPPOSER'S MOTION TO COMPEL

I. INTRODUCTION

Opposer Tiffany (NJ) Inc. ("Opposer") has filed a motion to compel applicants Anthony Siragusa and Michael Romanelli ("Applicants") to produce documents and things responsive to Opposer's First Set Of Requests For The Production Of Documents And Things. Applicants submit this brief in opposition to Opposer's motion.

Through Section 2.120(a) of the Trademark Rules of Practice, Rule 34 of the Federal Rules of Civil Procedure mandates that, in a response to a request to produce documents and things, a party provide the requested documents for inspection to the extent they exist, are relevant, and are nonprivileged.

Applicants' opposition to this motion is straightforward. In response to Opposer's requests, Applicants have made diligent searches for the documents and things requested by Opposer. Applicants have produced copies all nonprivileged responsive documents and things within its possession, custody, or control. Accordingly, Opposer's motion to compel the production of documents and things — that do not exist — should be denied.



12-28-2004

II. APPLICANT'S EFFORTS TO IDENTIFY AND PRODUCE DOCUMENTS

Rule 26(g) of the Federal Rules of Civil Procedure, made applicable here by 37 C.F.R. §§ 2.116 and 2.120, instructs litigants to "act responsibly and avoid abuse" during the discovery process. *See* Fed. R. Civ. P. 26(g) advisory committee's notes. With this directive in mind, the rule further requires attorneys to make a "reasonable inquiry" into any response or objection to a discovery request. *See id.* The "reasonable inquiry" standard is satisfied so long as the investigations undertaken by the attorney and conclusions drawn are reasonable under the circumstances. *See id.* "What is reasonable is a matter for the court to decide on the totality of the circumstances." *Id.*

Applicants have been diligent and comprehensive in their search to identify and locate documents and things responsive to Opposer's requests. Applicants' initial efforts included:

- Efforts to gather and set aside all responsive documents and things within their possession, custody, or control, wherever located (*i.e.* place of business, residence, storage facility, etc.).
- A search of drawers, shelves, boxes, files, computer hard drives, journals, and anywhere else Applicants would reasonably expect documents to be kept if they exist.
- Efforts to provide, to the best of Applicants' recollection, a full identification of any responsive document or thing that has been lost, destroyed, discarded or is otherwise unavailable.

On October 11, 2004, Applicants submitted their responses to Opposer's request for documents and things. Subsequently, Applicants' counsel and Opposer's counsel exchanged correspondence and conducted telephone conversations regarding the production. As a result of

these exchanges, Applicants' counsel conducted further inquiries of Applicants, and Applicants conducted further searches for documents and things. As a result of these searches, Applicants produced additional documents and things to Opposer.

Applicants have conducted diligent searches for documents that were likely to exist, but many of the categories of documents sought simply never existed or have not been retained. Although having been in a successful business enterprise for over 20 years, Applicants are essentially small restaurateurs and do not maintain records to the extent that Opposer believes they do. Many of the categories of documents requested by Opposer simply do not presently exist, or never existed. A request for production of documents does not require a party to create documents to satisfy the request. *Washington v. Garrett*, 10 F.3d 1421, 1437-38 (9th Cir. 1993). If responsive documents do not exist, there are no documents that must be produced.

III. THE SPECIFIC DOCUMENT REQUESTS

For the Board's convenience, listed below is each of Opposer's requests verbatim, followed by Applicants' responses and additional comments where warranted. Applicants note that a proper response to a request for production includes the providing of responsive documents, objecting, or stating that no such documents exist. One of these three is employed in each response. As such, the Board need not compel the production of any documents.

A. Document Requests

Applicants' responses to the document requests are believed to fairly straightforward, and are generally not based on the withholding of documents for any reason other than the attorney-client privilege, work-product immunity, or valid objection. Where documents are in the possession, custody, or control of Applicants, and are nonprivileged Applicants have produced. Otherwise, Applicants state that no responsive documents exist.

In many of the requests, the Board will note that Opposer requests documents and things related to "Applicants' Mark." The term "Applicants' Mark" is specifically defined by Opposer in the Definitions and Instruction found in Opposer's First Set Of Interrogatories To Applicants as "the mark TIFFANY'S RESTAURANTS as applied for in Application Serial No. 76/520,262, and which is the subject of this Opposition." The Definitions and Instructions from Opposer's First Set Of Interrogatories To Applicants were incorporated into Opposer's First Set of Requests For The Production Of Documents And Things To Applicants by Opposer, and therefore the definition applies to the present requests. Applicants have placed an emphasis on disclosing the documents and things specifically requested by Opposer.

Document Request No. 1

All documents identified in response to Opposer's First Set of Interrogatories served in this opposition on August 5, 2004.

Response: To the extent they exist, Applicants will produce nonprivileged documents responsive to this request.

Comment: Documents and things responsive to this request have been provided. For example, with respect to Interrogatory Request No. 4, Applicants have produced at least documents R-00001 through R-00019, R-00023, and R-00024.

Document Request No. 2

Samples of menus, napkins, matchbook covers, and any other promotional items on which Applicants use Applicants' Mark.

Response: Applicants will produce a representative sample of documents and things responsive to this request.

Comment: Documents and things responsive to this request have been provided. For example, at least documents R-00001 through R-00019, R-00023, and R-00024 are responsive to this request.

Document Request No. 3

All documents in Applicants' possession, concerning or referring to Opposer or Opposer's Marks.

Response: This request also seeks the production of documents that may be privileged and/or otherwise capable of being withheld under either the attorney-client privilege or the work-product immunity. Subject to such objections, Applicants will produce relevant documents responsive to this request and otherwise not privileged or subject to the work-product immunity.

Comment: As discussed below with respect to Request No. 18, Applicants have provided documents responsive to this request. The documents include R-00020, an October 21, 2004 letter from Tiffany & Co. to Applicants' Pine Brook facility reserving a banquet hall for this year's Tiffany & Co. holiday party, and R-00021, the corresponding \$200 deposit check. (Exh. A.) While it is believed that Tiffany & Co. has held its holiday party at Applicants' Pine Brook facility in the past, to date no documents within the possession, custody, or control evidencing the attendance have been uncovered from Applicants' files.

Document Request No. 4

Documents, including photographs, sufficient to show signage bearing or displaying Applicants' Mark.¹

Response: Applicants will produce a representative sample of documents and things responsive to this request.

Additional Response: Documents and things responsive to this request have been produced. For example, document R-00010 is a sign bearing or displaying Applicants' Mark. For signage

¹ As a reminder, the term "Applicants' Mark" is specifically defined by Opposer as "TIFFANY'S RESTAURANTS."

on Applicants' restaurants, Applicants do not have photographs taken in the ordinary course of business, but the restaurants are available for Opposer to take photographs.

Document Request No. 5

Samples or photographs of each of the items identified in response to Interrogatory No. 4.

Response: Applicants will produce a representative sample of documents and things responsive to this request.

Comment: Documents and things responsive to this request have been provided. For example, Applicants have produced at least documents R-00001 through R-00019, R-00023, and R-00024.

Document Request No. 6

Documents sufficient to show where and to whom Applicants advertise their services under applicants' Mark.

Response: To the extent that such documents exist, Applicants will produce a representative sample of documents and things responsive to this request.

Additional Response: Applicants have commissioned only a very limited volume of advertising for their services. After conducting a diligent search for sample advertisements, it is evident that none are currently within Applicants' possession, custody, or control. Applicants note that they have advertised in the past with *Clipper Magazine*, 3708 Hempland Road, Mountville, Pennsylvania 17554.

Document Request No. 7

Documents including financial, accounting or corporate records sufficient to establish the monies spent in advertising, marketing and promoting services provided under applicants' Mark for the last five years.

Response: In addition to the General Objections set forth above, Applicants object to Document Request No. 7 on the grounds that the information sought is highly confidential and only marginally relevant. Furthermore, the prejudice on Applicants in disclosing such confidential information far outweighs the potential that such information will lead to relevant and discoverable evidence, based on the subject matter of this action. Notwithstanding such objections, Applicants' will reconsider providing documents responsive to the request, if any, upon entry of a suitable protective order.

Comment: Applicants repeat their objection to this request on the grounds that the information sought is highly confidential and only marginally relevant. Furthermore, the prejudice to Applicants in disclosing such confidential information far outweighs the potential that such information will lead to relevant and discoverable evidence, based on the subject matter of this action. Notwithstanding such objections, Applicants will provide documents responsive to this request, if any exist within the possession, custody, or control of Applicants, upon entry of a suitable protective order.²

Document Request No. 8

Documents concerning any licenses, franchise agreements, assignments, authorizations, consents, permissions, transfers of rights or other agreements entered into by or on behalf of Applicants concerning Applicants' Mark.

Response: Applicants will produce documents and things responsive to this request.

² With regard to the protective order, it is noted that Applicants specifically requested that the parties agree to adopt the protective order in the exact form as approved by the Trademark Trial and Appeal Board. Opposer unequivocally refused to consider that protective order as written. Applicant is working with Opposer to resolve any legitimate concerns raised about the Board's protective order. Should the parties fail to resolve this issue, Applicants expect to file a motion requesting that the Board compel Opposer to adopt the Board's suggested protective order.

Additional Response: Applicants will produce documents and things responsive to this request, to the extent that any licenses, franchises, assignments, authorizations, consents, permissions, transfers of rights, or other agreements are consummated, upon entry of a suitable protective order. Only efforts which are consummated are relevant in this Opposition.

Document Request No. 9

All documents concerning attempts or plans by or on behalf of Applicants to franchise restaurants under Applicants' Mark including all filings made with any local, state or federal governmental agency or office concerning the same.

Response: In addition to the General Objections set forth above, Applicants object to Document Request No. 9 in that the request for discovery of all documents concerning attempts or plans by or on behalf of Applicants to franchise restaurants is overly broad, unduly burdensome, not relevant to the subject of this proceeding, and is not likely to lead to the discovery of admissible evidence. Only those franchise attempts which have been consummated are relevant to the present matter. In addition, this request calls for confidential information. As such, Applicants will produce non-confidential and non-privileged documents, if any exist, concerning consummated franchising attempts. Confidential non-privileged documents, if any exist, will be produced upon entry of a suitable protective order.

Additional Response: Applicants will produce documents and things responsive to this request, to the extent that any franchising efforts are consummated, upon entry of a suitable protective order. See Part III (B) for additional comments.

Document Request No. 10

All documents concerning any Market Research conducted by or caused to be conducted or obtained for Applicants which relate to Applicants' Mark or Opposer's Marks.

Response: To the extent they exist, Applicants will produce non-privileged documents responsive to this request.

Additional Response: No such documents have been found or are known to exist.

Document Request No. 11

Representative samples of magazine articles, newspaper articles, other publications and press kits, concerning or referring to restaurant services provided under Applicants' Mark.

Response: To the extent they exist, Applicants will produce non-privileged documents responsive to this request which are in the custody, possession or control of Applicants.

Additional Response: At least at the Union facility, Applicants maintain a publicly displayed collection of press clippings. The original press clippings are lacquered or otherwise secured within large frames permanently to the walls. No copies of the clippings are within the possession, custody, or control of Applicants. Opposer is invited to inspect the press clippings during regular business hours.

Document Request No. 12

Documents sufficient to identify all persons or entities who own, operate, control, or have an interest in restaurants that provide services under Applicants' Mark.

Response: Applicants will produce documents and things responsive to this request.

Additional Response: After a diligent search, it is evident that no documents responsive to this request are within the possession, custody, or control of Applicants. But Applicants have provided the requested information in response to Interrogatory No. 2.

Document Request No. 13

All documents evidencing, referring or relating to or analyzing the possibility of confusion between services provided under Applicants' Mark and goods and services provided under Opposer's Marks.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 13 in that the Request calls for the production of documents which are subject to the attorney-client privilege or the work-product immunity. To the extent they exist, Applicants will produce non-privileged documents responsive to this request.

Additional Response: Applicants maintain their objections to this request, including objections based on the request's seeking of documents that are subject to the attorney-client privilege or work-product immunity. To the extent any such documents are found, although none have been located, Applicants will produce non-privileged documents responsive to this request

Document Request No. 14

All documents evidencing, referring or relating to or analyzing the likelihood of dilution or actual dilution of Opposer's Marks caused by Applicants' Mark.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 14 in that the Request calls for the production of documents which are subject to the attorney-client privilege or the work-product immunity. To the extent any such documents are found, although none have been located, Applicants will produce nonprivileged documents responsive to this request.

Additional Response: Applicants maintain their objections to this request, including objections based on the request's seeking of documents that are subject to the attorney-client privilege or work-product immunity. To the extent they exist, Applicants will produce nonprivileged documents responsive to this request

Document Request No. 15

Documents sufficient to show the demographics of Applicants' consumers for services provided under Applicants' Mark.

Response: To the extent they exist, Applicants will produce documents responsive to this request.

Additional Response: No such documents have been found or are known to exist

Document Request No. 16

Documents sufficient to show Applicants' plans for expanding the nature or number of restaurants bearing the name "Tiffany's Restaurants."

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 16 in that the Request calls for

the production of documents which are irrelevant to the issues presented in this matter. The application for Applicants' Mark is based on its prior and current use of the mark. Applicants' prospective plans for expansion are irrelevant to the subject of this proceeding and are not likely to lead to the discovery of admissible evidence.

Comments: Applicants maintain their objections. See Part III (B) for additional comments.

Document Request No. 17

Documents sufficient to show the location of all restaurants currently doing business under the name "Tiffany's Restaurants" and the location of all planned Tiffany's Restaurants.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 17 in as much as the Request calls for the production of documents revealing the locations of planned Tiffany's Restaurants. This Request calls for the production of documents which are irrelevant to the issues presented in this matter. The application for Applicants' Mark is based on its prior use of the mark. Applicants' prospective plans for expansion are irrelevant to the subject of this proceeding and are not likely to lead to the discovery of admissible evidence. Subject to the forgoing objections, Applicants will produce documents responsive to this request concerning current locations of Tiffany's Restaurants, and those planned to be opened in the fall of 2004.

Additional Response: Applicants maintain their objections. Notwithstanding, Applicants have produced documents and things responsive to this request. For example, document R-00007 is fully responsive.

Document Request No. 18

All documents concerning or referring to Tiffany, to Opposer's Marks, or otherwise relating to Applicants' knowledge of Tiffany and/or the activities of Tiffany under Opposer's Marks.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 18 in that the Request calls for the production of documents that are subject to the attorney-client privilege or the work-product immunity. To the extent they exist, Applicants will produce nonprivileged documents responsive to this request.

Additional Response: Applicants maintain their objections to this request, including objections based on the request's seeking of documents which are subject to the attorney-client privilege or work-product immunity. Notwithstanding, Applicants have provided documents responsive to

this request. The documents include R-00020 and R-00021, referenced above with respect to Document Request No. 3.

Document Request No. 19

Representative samples of advertisements (regardless of media), brochures, promotional materials, point-of-sale displays, table tents, or marketing materials showing the manner in which Applicants have used or currently use Applicants' Mark.

Response: Applicants will produce a representative sample of documents and things responsive to this request.

Additional Response: Documents and things responsive to this request have been provided. For example, Applicants have produced at least documents R-00001 through R-00019, R-00023, and R-00024.

Document Request No. 20

All documents concerning Applicants' selection, creation, adoption, and development of Applicants' Mark.

Response: To the extent they exist, Applicants will produce documents responsive to this request.

Additional Response: No such documents have been found or are known to exist.

Document Request No. 21

All documents concerning the meaning or commercial impression of Applicants' Mark.

Response: To the extent they exist, Applicants will produce documents responsive to this request.

Additional Response: No such documents have been found.

Document Request No. 22

All documents concerning the meaning or significance of the word "TIFFANY'S" as used in Applicants' Mark.

Response: To the extent they exist, Applicants will produce documents responsive to this request.

Additional Response: No such documents have been found.

Document Request No. 23

All trademark searches conducted by or on behalf of Applicants concerning Applicants' Mark or the right to register the same and all correspondence and other documents relating thereto.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 23 in that the Request calls for the production of documents which are subject to the attorney-client privilege or the work-product immunity.

Additional Response: No such documents exist.

Document Request No. 24

All opinion letters you received concerning the right to register Applicants' Mark.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 24 in that the Request calls for the production of documents which are subject to the attorney-client privilege or the work-product immunity.

Comment: Applicants stand by their objections. Opinions are protected from discovery under the attorney-client privilege.

Document Request No. 25

All documents (including, without limitation, any final or non-final office action or other correspondence from or to the United States Patent and Trademark Office) concerning any application by Applicants to register Applicants' Mark.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 25 in that the Request calls for the production of documents which are subject to the attorney-client privilege or the work-product immunity. To the extent they exist, Applicants will produce non-privileged documents responsive to this request, including written communications with the United States Patent and Trademark Office.

Additional Response: Applicants maintain their objections to this request, including objections based on the request's seeking of documents which are subject to the attorney-client privilege or work-product immunity. Notwithstanding, documents responsive to this request are believed to exist at the law firm of Wolf, Block, Schorr and Solis-Cohen, LLP, 101 Eisenhower Parkway, Roseland, New Jersey 07068. Despite numerous attempts to obtain such documents, Applicants have been unsuccessful. As such, the files are presently not in the possession, custody, or control of Applicants.

Document Request No. 26

All documents concerning any investigations by or on behalf of you into the nature of Opposer's use of the TIFFANY marks pleaded in the Notice of Opposition or into any of the issues pleaded by Opposer.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents responsive to Document Request No. 26 in that the Request calls for the production of documents which are subject to the attorney-client privilege or the work-product immunity. To the extent they exist, Applicants will produce non-privileged documents responsive to this request.

Comment: Applicants maintain their objections to this request, including objections based on the request's seeking of documents which are subject to the attorney-client privilege or work-product immunity.

Document Request No. 27

All documents consulted by, relied on by, concerning, or that support Applicants:

- (a) denial of the second sentence of paragraph 9 of the Notice of Opposition;
- (b) denial of the second sentence of paragraph 13 of the Notice of Opposition;
- (c) allegations in paragraph 33 of the Answer to the Notice of Opposition.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents "consulted by" or "relied on by" in regard to the denials and allegations outlined above in that such documents, if any, are protected by the work-product

immunity and/or attorney-client privilege. To the extent they exist, Applicants will produce documents not subject to the attorney-client privilege or work-product immunity "concerning" or "supporting" the denials and allegations outlined above.

Additional Response: Applicants maintain their objections to this request, including objections based on the request's seeking of documents that are subject to the attorney-client privilege or work-product immunity. To the extent they exist, Applicants have produced responsive documents and things that are not protected by the attorney-client privilege or work-product immunity. For example, document R-00007 is responsive to this request.

Document Request No. 28

All documents consulted by, relied on by, concerning, or that support Applicants' claim:

(a) that having a restaurant service in the same retail location as the display and sale of jewelry would be inconsistent with the services provided by and associated with Opposer's TIFFANY mark as alleged in paragraph 31 of the Answer to the Notice of Opposition;

(b) that there is low likelihood of Opposer bridging the gap as alleged in paragraph 32 of the Answer to the Notice of Opposition;

(c) that there is a lack of overlap between consumers of Applicants' services and Opposer's goods and services as alleged in paragraph 32 of the Answer to the Notice of Opposition;

(d) that the sophistication and knowledge of Applicants' and Opposer's customers will avoid confusion or dilution as alleged or referred to in paragraph 32 of the Answer to the Notice of Opposition.

Response: In addition to the General Objections set forth above, Applicants specifically object to production of documents "consulted by" or "relied on by" in regard to the denials and allegations outlined above in that such documents, if any, are protected by the work-product immunity and/or attorney-client privilege. To the extent they exist, Applicants will produce documents not subject to the attorney-client privilege or work-product immunity "concerning" or "supporting" the denials and allegations outlined above.

Additional Response: Although Applicants continue to assert the merits of their objections, Applicants note that they have produced documents, if any, consulted or relied upon for the above-noted paragraphs of the Answer.

Document Request No. 29

Documents sufficient to show the nature, scope and extent of prejudice Applicants claim they would suffer as alleged in paragraph 34 of the Answer to the Notice of Opposition.

Response: To the extent they exist, Applicants will produce documents responsive to this request.

Additional Response: No such documents have been found or are known to exist.

B. Document Request Nos. 9 and 16

In Document Request No. 9, Opposer generally requested documents evidencing future plans to franchise restaurants under Applicants' Marks. In Document Request No. 16, Opposer requested documents sufficient to show Applicants' plans for expanding the nature or number of restaurants bearing the name "Tiffany's Restaurants." These requests deal with the expansion of the "size" of Applicant in terms of number of restaurants and the "scope" of Applicant in terms of types of services offered at these restaurants.

Applicants have opposed these requests on the grounds that only franchises that have been consummated are relevant to the present matter. Applicants' application that has been opposed is based on Applicants' prior and current use of the mark for its restaurant services. Plans for future expansion of the nature or number of restaurants bearing the name "Tiffany's Restaurants" are simply irrelevant.

In support of its position, Opposer has cited the broad scope of relevancy set forth in TBMP § 402.01. TBMP § 414(8) is more instructive on this point.³ Under TBMP § 414(8), "[a] party's plans for expansion may be discoverable under protective order." This statement is

³ Following an objection by Applicants, Opposer cited TBMP § 414(8) for a similar proposition with regard to Interrogatory No. 5, which requests Applicants to "set forth all actions and steps that Applicants have taken to franchise or license the use of Applicants' Marks." As Opposer has not sought to compel an answer to Interrogatory No. 5, it is assumed that Opposer has acquiesced to Applicants' position with respect to the Interrogatory.

supported by footnote 233, citing *Johnson Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 U.S.P.Q.2d 1671, 1675 (T.T.A.B. 1988), for the proposition that the intent of an opposer to expand its business to include products similar to those of applicant's is relevant. Certainly, this goes to the "bridging the gap" factor of likelihood of confusion. See *Polaroid Corp. v. Polarad Elec. Corp.*, 287 F.2d 492 (2d Cir. 1961).

But Applicants have been clear that they have no intention to enter the fine jewelry market or any other business even remotely related to Opposer's services. Beyond this, any plans for expansion of the number of restaurants, or the nature of these restaurants, are irrelevant. Most important, Opposer has not shown that such plans are relevant because they do not constitute an expansion of Applicants' business to include products or services similar to those of Opposer — the only relevance raised by TBMP § 414(8).

The registration of a trademark is based on its use in commerce as a source identifier for an applicant's then current goods or services, not prospective goods or services. See 15 U.S.C. § 1051. Any proposed expansion, either as to the scope or volume of Applicants' business, is not relevant to registration of the application at issue.

It can therefore be surmised only that Opposers' request is an attempt to obtain information as to Applicants' expansion plans, so Opposer may use that information for a future licensing proposal. Certainly, there can be no other reason, and Opposer's motion should be denied with respect to Request Nos. 9 and 16.

IV. CONCLUSION

Opposer's motion seeks an order from the Board compelling Applicants to produce documents and things responsive to Opposer's First Set Of Requests For The Production Of Documents And Things. As demonstrated, Applicants have conducted diligent searches for

documents and things that were likely to exist, in the locations where they were likely to be found. Applicants have produced the requested documents and things which were nonprivileged and not subject to the work-product immunity. Other responsive documents are being retained on a temporary basis pending the entry of a suitable protective order. For those reasons, Opposer's motion to compel should be denied in full.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West, Ste. 300
Westfield, NJ 07090-1497
Tel: 908.654.5000
Fax: 908.654.7866
*Attorneys for Applicants Anthony Siragusa
and Michael Romanelli*

Dated: December 21, 2004

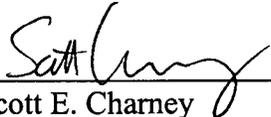
By: 
Scott E. Charney

EXHIBIT A

TIFFANY & CO.
15 SYLVAN WAY
PARSIPPANY, NEW JERSEY 07054-3893
973-254-7000

October 21, 2004

Tiffany's/Martini Bar
Banquet Manager
73 Route 46 West
Pine Brook, NJ 07058

Dear Barbara,

Enclosed you will find our deposit check in the amount of \$200.00 and the contract for our holiday party scheduled in January. To confirm we have reserved your establishment for Friday, January 7, 2005 from 2:00pm to 5:00pm.

If there is any way I could get a written confirmation that you have received this check and contract I would really appreciate it. My fax is 973-526-8652.

If there are any questions please contact me at 973-526-8650

Sincerely,



Beth Simkins
Administrative Assistant
Hand Engraving/New Sale Alterations

Tiffany and Company
15 Sylvan Way
Parsippany, NJ 07054

62-35
311

DATE
09/21/04

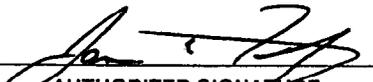
CHECK NO.
984243

PAY: Two hundred and 00/100 Dollars

The Bank of New York (Delaware)
Newark, De 19711

AMOUNT
*****\$200.00

TO THE ORDER OF: TIFFANY'S RESTAURANT
73 ROUTE 46
PINEBROOK NJ 07058


AUTHORIZED SIGNATURE
VOID 90 DAYS AFTER ISSUED

⑈984243⑈ ⑆031100351⑆ 0300965753⑈

Jan 7 2005 Holiday Party 2PM - 5PM

TIFFANY'S & COMPANY

73-526-8652 FAX

73-526-8650

mailing check



1. **SERVICE CHARGES & SALES TAX:** 19% Service Charge and 6% Sales Tax will be added to all food and beverages. New Jersey State Law states that the service charge is subject to sales tax, unless presented with a tax-exempt form. The above percentages are current and may change due to the applicable law revisions.
2. **FUNCTION ROOM SCHEDULING:** Function rooms are held for 3 hours unless otherwise indicated on your catering contract.
3. **OVERTIME CLAUSE:** Guest agrees to begin the function promptly at the scheduled time and Guest's attendees or invitees agree to vacate the designated function space at the closing hour indicated. Should your function need to run beyond the scheduled time, approval for such time may only be granted by the management. Upon such approval, there will be an overtime charge assessed. Guest agrees to reimburse the Restaurant for any overtime wage payments, expenses and damage incurred or sustained.
4. **DECORATIONS:** Any decorations which the Guest desires to use shall be approved in advance by the Restaurant.
5. The Guest will make a reasonable effort to prevent damage to the Restaurant by their attendees and will reimburse the Restaurant for any damage.
6. **ENTERTAINMENT:** The Guest shall inform the Restaurant in advance if the Guest intends to contract for music, other forms of entertainment or any other service in conjunction with its function.
7. **FOOD:** Due to prevailing Health Codes and the safety of our guests, the Restaurant reserves the right to prohibit the Guest, its invitees or attendees from removing any food and beverage from the Restaurant.
8. **DEPOSIT REQUIREMENTS:** A deposit of \$200.00 will be required to guarantee your function. This deposit is non-refundable and will be applied to your balance.
9. **INDEMNITY:** The Guest assumes responsibility for all claims of theft, loss, damage or destruction except in the case of the Restaurant's gross negligence. The Guest shall also hold the Restaurant harmless for any injury to persons or damage except in claims due to the Restaurant's gross negligence.
10. **THIS AGREEMENT IS CONTINGENT UPON THE AVAILABILITY OF THE RESTAURANT TO PERFORM ITS OBLIGATION HERUNDER,** electrical blackouts or shortages, damage or destruction of the Restaurant, accidents or other causes beyond the Restaurant's control.
11. The Guest shall comply with all applicable federal, state and local statutes, orders, ordinances, rules and regulations including but not limited to all rules and regulations regarding public assemblies and secure any license and permits where necessary.
12. This agreement constitutes the entire agreement between the Guest and the Restaurant. This agreement shall not be amended, waived or changed except by a written agreement signed by both parties.
13. Guest acknowledges receiving a copy of this agreement:

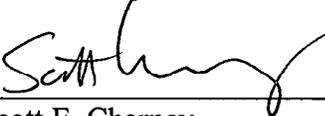
X Elizabeth A. [Signature] Date 9/16/04
 Tiffany's Manager Barbara [Signature] Date _____

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANTS' BRIEF IN OPPOSITION TO OPPOSER'S MOTION TO COMPEL was served on the attorney for Opposer via first-class mail, postage prepaid, addressed as follows:

Barbara A. Solomon, Esq.
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
At First Avenue & 48th Street
New York, NY 10017

Dated: December 21, 2004



Scott E. Charney