

TKAP

KRAMER LEVIN NAFTALIS & FRANKEL LLP

919 THIRD AVENUE

NEW YORK, N.Y. 10022 - 3852

CAROLE E. KLINGER
ASSOCIATE
TEL (212) 715-9357
FAX (212) 715-8000
cklinger@kramerlevin.com

47, AVENUE HOCHÉ
75008 PARIS
FRANCE

April 7, 2005

BY FIRST CLASS MAIL

Commissioner for Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451
Attn.: Trademark Trial and Appeal Board

Re: *L.C. Licensing, Inc. v. Cary Berman*
Opp. No. 91162330
Our Ref.: 019200/25101

Dear Sir or Madam:

Enclosed for filing are Opposer L.C. Licensing, Inc.'s:

- (1) Motion to Compel Discovery; and
- (2) Affidavit of Carole E. Klinger in Support of Opposer's Motion to Compel Discovery.

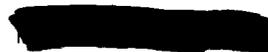
In the event that any fee is required, please charge it to our **Deposit Account No. 50-0540**. Please acknowledge receipt on the enclosed postcard.

Very truly yours,

Carole E. Klinger
Carole E. Klinger

Enclosures

cc: Cary Berman



04-11-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

I. APPLICANT'S BAD FAITH OBSTRUCTION OF DISCOVERY

On December 23, 2004, Opposer served its First Set of Interrogatories to Applicant. See Exhibit A. On February 4, 2005, Applicant responded to Opposer's interrogatories.³ Applicant provided identical, nonresponsive replies to Interrogatories #1-7, and nearly identical, nonresponsive replies to Interrogatories #9-16, and #19-22. Applicant stated numerous times in its responses that Applicant has not commenced use of its Mark and that "Applicant does not feel that it's [sic] future plans with respect to it's [sic] Mark are relevant to the parties [sic] dispute." See Exhibit C, Responses #14-18, 20-21.

Applicant's future plans with respect to its mark, however, are of utmost relevance to the determination of likelihood of confusion between Applicant's and Opposer's marks. In its response to Interrogatories #27-28, Applicant states, "Confusion does not exist as the products are dissimilar." Opposer submits that if Applicant intends to rely on such a position in this proceeding, Applicant is obligated to provide Opposer with information as to how Applicant intends to use its mark and the potential customers to whom the products to be offered under the mark are to be targeted, and cannot maintain its complete refusal to provide Opposer with necessary information. Opposer is entitled to receive responses to all of its interrogatories regarding Applicant's use or proposed use of its mark, because such responses are relevant to the subject matter of this opposition including the factors underlying the tests for both likelihood of confusion and dilution. See *Neville Chemical Co. v. The Lubrizol Corp.*, 183 USPQ 184, 186 (TTAB 1974), *overruled in part on other grounds by Johnson & Johnson v.*

³This set of responses is annexed as Exhibit C. Opposer notes that Applicant served its discovery responses more than 30 thirty days after the date of service of Opposer's discovery requests in violation of 37 C.F.R. § 2.120(a). Accordingly, since such responses were not timely served, Applicant has waived any objections to Opposer's discovery requests.

Rexall Drug Comp., 186 USPQ 167 (TTAB 1975) (parties entitled to obtain discovery regarding any nonprivileged matter relevant to the pending action).

Similarly, Applicant has refused to provide any information regarding the businesses with which he is associated, the products and/or services offered by such businesses, the consumers to whom such products/services are directed, and sales information relating to such goods. Although Applicant has applied to register the mark ENYCE in his individual capacity, his presumed experience and established channels of trade are the customers of his current businesses. Therefore, information regarding the businesses with which Applicant is currently associated would assist Opposer in further evaluating the potential channels of trade, price levels and customer base to which Applicant's proposed ENYCE mark may be targeted. Accordingly, such information is relevant to this proceeding and should be produced.

Additionally, on December 23, 2004, Opposer also served Applicant fifty-three requests for production of documents and things. See Exhibit B. On February 4, 2005, Applicant submitted its response to Opposer's requests.⁴ Applicant responded to forty-eight of these fifty-three requests by stating either that "...Applicant does not believe that the information requested in this request is relevant to the parties [sic] dispute" (Response to Requests #1-7 and Request #34); "No documents exist that are responsive to this request" (Response to Requests #9, 12-14, 16-23, 25-33, 35-38, 40-46, 50 and 51); or that no responsive documents exist other than those already in the possession of Opposer or publicly available (Response to Requests #7, 8, 10, 11, 15, 47 and 48). Exhibit D. Moreover, with respect to Requests Nos. 1-6 and 34, Applicant has provided identical responses to each of such requests in that Applicant has not produced or indicated that he does not intend to produce a single document or thing in response

⁴This set of responses is annexed as Exhibit D.

to any of Applicant's requests, in blatant violation of 37 C.F.R. § 2.210 and FRCP 26 and 34. See Johnson & Johnson v. Diamond Medical, Inc., 183 USPQ 615, 617 (TTAB 1974) (motion to compel production of documents granted when requested documents were not privileged or confidential and were relevant and of a reasonable number). Indeed, Applicant has simply stated in a wholly conclusory fashion that he does not believe that the information sought is relevant. To the contrary, however, since many of Opposer's requests (especially with respect to requests nos. 1-6 and 34) seek information regarding Applicant's (1) affiliated businesses; (2) the customer base of his affiliated companies; (3) certain of the products manufactured or sold by the affiliated businesses, and sales information relating to same; and (4) the address and telephone number for each of same etc., Opposer is entitled to such information because, as set forth above, it is clearly relevant to the subject matter of this litigation.

Applicant's vague and incomplete responses to Opposer's interrogatories and Applicant's utter failure to cooperate with Opposer's requests for document production in violation of 37 C.F.R. § 2.210 have prevented Opposer from acquiring factual information relevant to this proceeding, delayed the progress of this proceeding, and wasted the resources of both Opposer and the Board.

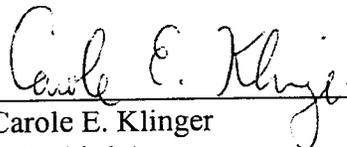
II. RELIEF REQUESTED

In view of the foregoing, Opposer respectfully requests that the Board compel Applicant to provide supplemental, sufficiently particularized, fully responsive answers to Opposer's First Set of Interrogatories, specifically to Interrogatories #1-7, 9-16, and 19-22. Further, it is requested that the Board compel Applicant's production of all relevant documents and things enumerated in Opposer's First Set of Requests for Production of Documents and Things. In the alternative, Opposer requests that, in light of Applicant's bad faith in responding

to Opposer's discovery requests, the Board infer that Applicant's mark is intended to be used in the broadest possible manner.

Respectfully submitted this 7th day of April, 2005.

KRAMER LEVIN NAFTALIS
& FRANKEL LLP



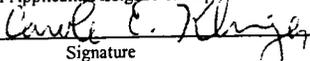
Carole E. Klinger
919 Third Avenue
New York, New York 10022
(212) 715-9100
Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Trademarks,
P.O. Box 1451, Alexandria, VA 22313-1451,
Attention: Trademark Trial and Appeal Board
on April 7, 2005.

Carole E. Klinger

Name of Applicant, Assignee or Representative



Signature

April 7, 2005

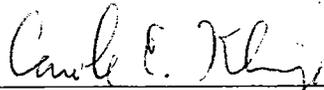
Date of Signature

CERTIFICATE OF SERVICE

Opposition No. 91162330

I hereby certify that on April 7, 2005, I caused one true and correct copy of the foregoing
OPPOSER'S MOTION TO COMPEL DISCOVERY to be served by first class mail upon the
following individual:

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035



Carole E. Klinge

Opposer L.C. Licensing, Inc.
Opposition No. 91162330
L.C. Licensing, Inc. v. Cary Berman

EXHIBIT A

C. "Opposer" means the above Opposer, L.C. Licensing, Inc., and any predecessor or successor corporation or entity, any licensee, parent, subsidiary or affiliated company, any entity in which L.C. Licensing or a subsidiary holds or has held any interest, and any attorney, officer, director, agent, representative or employee of L.C. Licensing or any of the other foregoing entities.

D. "Applicant's Mark" means the mark shown in Application Serial No. 78/320,850 for ENYCE.

E. "Opposer's ENYCE Marks" means each mark and/or registration which is relied upon by Opposer in the Notice of Opposition in this proceeding to challenge Applicant's Mark and/or Application Serial No. 78/320,850 directed thereto.

F. The term "Opposer's Goods" shall mean the goods identified in Reg. No. 2,093,751, namely, "apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tanktops, skirts, warm-up suits, sweatshirts and sweatpants", in International Class 25, and the goods identified in Reg. No. 2,351,411, namely, "apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tank tops, skirts, warm-up suits, sweatshirts and sweatpants", in International Class 25, and the goods identified in Reg. No. 2,338,404, namely, "women's clothing, namely, shirts, tops, bottoms, pants, jackets, coats, jogging suits, warm-up suits, T-shirts, polo shirts, tank tops, skirts, shorts, denim shirts, denim pants, denim tops, denim bottoms, denim shorts, denim skirts, sweat shirts, sweat pants, sweat shorts, headwear, caps, hats", in International Class 25.

G. "Intermediary" means a company or person through which Applicant has provided its products or services to the ultimate customers therefor.

H. "Trade Show" means any trade show, convention, seminar or exhibition at which Applicant's products or services provided under Applicant's marks were sold, displayed, featured or presented.

I. "Classes of customers" means types or categories of customers which relate to the nature of the business of said customers, such as based upon SIC codes.

J. Use which "has not been constant" means use for which there has been a hiatus in use of one (1) month or longer.

K. "Document" shall include, without limitation, the following items, whether printed or reproduced or stored or recorded by any process, or written, or produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: notes, letters, correspondence, books, periodicals, printed publications, communications, interoffice communications, telexes, telegrams, memoranda, summaries and records of telephone conversations, summaries, and research reports and notebooks, charts, lists, schedules, plans, drawings, photographs, diaries, studies, evaluations, worksheets, minutes or records of meetings including directors' meetings, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, reports or opinions regarding trademark, service mark, trade name, or corporate name registrations, consumer surveys, pilot studies, opinions of counsel, agreements, contracts, reports or summaries of negotiations, court papers, administrative agency papers, transcripts, brochures, pamphlets, advertisements, circulars, promotional material, trade letters, press releases, packaging, videotapes, audio tapes, CD-Roms, electronic messages and data, story boards, recordings, drafts of documents and revisions of drafts of documents and all other written or recorded material of whatever kind known to or in the possession or control of Opposer including copies or reproductions of all of the foregoing

items upon which notations in writing have been made which do not appear on the original, and anything within the scope of Rules 26(b) and 34 of the Federal Rules of Civil Procedure, including things.

- L. "Identify" means to provide, when in reference to a natural person:
- (a) his or her full name;
 - (b) his or her present or last known home address (including street name and number, city or town, state and country);
 - (c) his or her present or last known business address;
 - (d) his or her present position, business affiliation, and job description (if the present position, business affiliation, and job description are not known, so state and state the corresponding last known such information);
 - (e) his or her position, business affiliation, and job description at the time in question inquired about by the interrogatory or other request involved;
 - (f) the date each such person began employment with Applicant and, if no longer employed, the date such employment terminated;
 - (g) an identification of each position held by such person while in the employment of Applicant or an affiliate, subsidiary or predecessor thereof, including:
 - 1) the beginning and ending dates during which each such position was held;
 - 2) the title of each position;
 - 3) a description of the duties and responsibilities in each such position.
- M. "Identify" means to provide, when in reference to a company, corporation, association, partnership or other legal entity not a natural person:
- (a) its correct and complete name;
 - (b) the address of its principal place of business;
 - (c) its state of incorporation or association;

- (d) a description of the type of entity;
 - (e) a description of the principal type of business in which it is engaged.
- N. "Identify" means to provide, when in reference to a product, its:
- (a) description;
 - (b) manufacturer;
 - (c) designation by the manufacturer thereof (e.g., style, model, proprietary name, established name, product classification number and/or catalog number);
 - (d) purpose and function.
- O. "Identify" means to provide, when in reference to a service, its:
- (a) description;
 - (b) provider;
 - (c) designation by the provider thereof (e.g., proprietary name, established name, identification number, and/or catalog number).
 - (d) purpose and function.
- P. "Identify" means to provide, when in reference to a document:
- (a) its description (e.g., letter, memorandum, report, etc.);
 - (b) its title and date, and the number of pages thereof;
 - (c) its subject matter in summary;
 - (d) its author's identity;
 - (e) its addressee's identity;
 - (f) the identity of each person by whom copies were received;
 - (g) its present location and its custodian's identity (if any such document was, but is no longer, in the possession of or subject to the control of Applicant, state where and when disposition was made of it).
- Q. "Identify" means to provide, when in reference to an oral communication:

- (a) the date and place where it occurred;
 - (b) its substance;
 - (c) information as requested in Definition G above as to the identity of each person to whom such communication was made, the person from whom the communication was made and each person who was present when such communication was made.
- R. "Identify" means to provide, when in reference to adoption of a mark:
- (a) the date of adoption;
 - (b) the facts and circumstances leading to the adoption;
 - (c) each person involved in such adoption.
- S. "Identify" means to provide, when in reference to Applicant's use of a mark:
- (a) the date of Applicant's first use;
 - (b) the date of Applicant's first use in commerce;
 - (c) a detailed description of the nature of Applicant's use in the United States on each product or service provided thereunder for each year in which such mark was in use;
 - (d) a detailed description of the circumstances surrounding any changes in the nature of Applicant's use, including the nature and date of the alteration, and reasons therefor.
- T. "Identify" means to provide, when in reference to classes of customers:
- (a) the name or identity of the class;
 - (b) a description of the class, including the type of business conducted by the class;
 - (c) the reasons the class is defined by Applicant as a class;
 - (d) the identity of the first customer in such class for each of the goods and services provided by Applicant under each of Applicant's marks.
- U. "Identify" means to provide, when in reference to advertising and promotion:

- (a) a detailed description of each item of advertising and promotion, including the dates and specific media involved.
 - (b) a detailed description of the channels of trade and classes of customers to which such advertising and promotion was directed;
 - (c) all expenditures for such advertising and promotion broken down on a yearly and product/service/mark basis;
 - (d) the identity of each company, entity or person other than Applicant which was involved in said advertising and promotion.
- V. "Identify" means to provide, when in reference to an Intermediary:
- (a) the identity of the intermediary;
 - (b) the services performed by the Intermediary;
 - (c) the extent to which the intermediary is a licensee under any of Applicant's marks for the subject product or service.
- W. "Identify" means to provide, when in reference to a Trade Show:
- (a) the name and sponsor of the Trade Show;
 - (b) the dates of the Trade Show;
 - (c) the location of the Trade Show;
 - (d) the products and/or services promoted, provided and/or sold by Applicant at the Trade Show.
- X. "Identify" means to provide, when in reference to an instance of actual confusion:
- (a) a detailed description of the facts or events surrounding such instance;
 - (b) the reasons or basis such instance evidences confusion;
 - (c) a detailed description of all actions Applicant took in response thereto;
 - (d) the identity of each person making an inquiry evidencing or expressing confusion;
 - (e) the identity of each document reflecting, commenting on or involving such confusion.

Y. "Identify" means to provide, when in reference to litigation and inter partes proceedings:

- (a) the names of the parties thereto;
- (b) the forum or jurisdiction;
- (c) the title of the proceeding and the proceeding number;
- (d) the status and/or outcome of the proceeding;
- (e) the citation of any reported decision;
- (f) the mark in question.

Z. Without affecting the applicability of the foregoing, if Applicant claims privilege or an alleged right to withhold any document, Applicant shall comply with the requirements of Fed. R. Civ. P. 26(b)(5) and set forth the factual or legal basis, if any, for such claim and/or allegations of right with particularity. In addition, a brief indication of the nature of the subject matter of the document sufficient to identify whether the document should be produced should be provided.

AA. In each instance where Applicant denies knowledge or information sufficient to answer the interrogatory, Applicant should set forth the name and address of each person, if any, known to have such knowledge or information; but Applicant shall answer fully to the extent it does have any knowledge or information.

BB. The words "and" and "and/or" shall each be deemed to refer to both their conjunctive and disjunctive meanings. The word "any" shall mean "each and every" as well as "any one." The masculine gender shall be deemed to include the feminine where appropriate, and the singular shall be deemed to include the plural, and vice versa.

CC. The following interrogatories seek answers as of the date hereof, but shall be deemed to be continuing, and any additional information relating in any way to these

interrogatories which is acquired by or becomes known to Applicant up to and including the time of trial shall be furnished to Opposer promptly after such information is acquired or becomes known.

DD. Those interrogatories which call for the identification of documents will be deemed answered if Applicant provides copies of such documents to Opposer's attorneys within the period in which timely response to the interrogatories can be made, including proper extensions of time, if any. Every document called for by these interrogatories which Applicant does not make so available to Opposer's attorneys shall be properly identified in a timely response to the appropriate interrogatory.

EE. Each interrogatory and request to produce refers to Applicant's ENYCE Mark and Applicant's business activities within the United States.

FF. Only one copy of each document need be produced; however, any document that varies in any way so that it is not identical to one produced is to be considered a separate document and must be produced.

GG. In the event that any requested document has been destroyed, lost, discarded, or otherwise disposed of, any such document is to be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal, and person disposing of the document.

HH. All documents that respond, in whole or in part, to any portion of any Interrogatory shall be produced in their entirety, including all attachments and enclosures.

II. These discovery requests cover all information and documents in the possess, custody, or control of Applicant, whether they are located in Applicant's offices or

residences or any other place maintained by Applicant, or in the possession of its agents, accountants, attorneys, or of a trade association or other organization to whose documents Applicant has access.

INTERROGATORIES

Interrogatory No. 1

Identify each and every business with which Applicant is affiliated and/or involved.

Interrogatory No. 2

With respect to each and every business identified in Applicant's Response to Interrogatory No. 1, identify every product and/or service offered by Applicant and/or such business identified in response to Interrogatory No. 1.

Interrogatory No. 3

With respect to the products identified in Applicant's Response to Interrogatory No. 2, identify the three products having the highest gross sales over the past three years for each and every business identified in Applicant's Response to Interrogatory No. 1.

Interrogatory No. 4

With respect to the each of the products identified in Applicant's Response to Interrogatory No. 3, identify the actual gross sales figures for each product identified for the past three years.

Interrogatory No. 5

With respect to the services identified in Applicant's Response to Interrogatory No. 2, identify the three services having the highest gross sales over the past three years with respect to each and every business identified in Response to Interrogatory No. 1

Interrogatory No. 6

With respect to each of the services identified in Applicant's Response to Interrogatory No. 5, identify the actual gross sales figures for each service identified for the past three years.

Interrogatory No. 7

Identify the three largest customers with respect to each and every business identified in Applicant's Response to Interrogatory No. 1.

Interrogatory No. 8

Identify and describe the adoption of Applicant's ENYCE Mark.

Interrogatory No. 9

Identify the date of first use and the date of first use in interstate commerce of Applicant's Mark.

Interrogatory No. 10

Identify each of the goods and/or services on or in connection with which Applicant's Mark has ever been used, and for each such goods and/or services state the character of the use of Applicant's ENYCE Mark.

Interrogatory No. 11

Identify the manner in which Applicant's ENYCE Mark was used, is used and/or is intended to be used in interstate commerce (e.g., hang tags, labels, etc.).

Interrogatory No. 12

If Applicant's use of Applicant's Mark in interstate commerce has not been constant since its respective date of first use, state the periods of non-use with respect to Applicant's Mark for each good, and the reason Applicant's ENYCE Mark was not used.

Interrogatory No. 13

For each calendar year since the date of first use of Applicant's ENYCE Mark in the United States, state separately by specific goods and services, the quantity of sales in units and the dollar amounts of the goods or services sold or provided by or on behalf of Applicant thereunder in interstate commerce.

Interrogatory No. 14

Identify each and every good in connection with which Applicant has used, is using, or intends to use Applicant's Mark.

Interrogatory No. 15

Identify each and every service in connection with which Applicant has used, is using, or intends to use Applicant's ENYCE Mark.

Interrogatory No. 16

Separately identify and describe the past, current and future prospective means of distribution and the channels of trade for each and every good or service provided by or for Applicant under Applicant's Mark.

Interrogatory No. 17

Describe the ultimate consumer of Applicant's goods and/or services sold and/or intended to be sold under Applicant's Mark (e.g., age, gender, education level, annual household income).

Interrogatory No. 18

Separately identify the class(es) of customers (e.g., retailers, wholesalers, department stores, boutiques, general public, etc.) to whom Applicant has sold or distributed, is

selling or distributing, and/or intends to sell or distribute its products and/or services in connection with Applicant's Mark.

Interrogatory No. 19

Separately for each of the goods and services provided under Applicant's Mark, identify and describe any and all advertising and promotion thereof for each month since the commencement of use of Applicant's Mark in interstate commerce.

Interrogatory No. 20

With respect to Applicant's ENYCE Mark, to the extent Applicant does not provide its products and/or services thereunder directly to the ultimate customers thereof but provides them through an Intermediary, identify separately for Applicant's Mark and products and services each Intermediary used by Applicant in the provision thereof.

Interrogatory No. 21

Identify the name and address of any affiliate of Applicant who has used, uses or intend to use Applicant's Mark.

Interrogatory No. 22

Identify each and every Trade Show at which the products and services promoted, provided and/or sold by or for Applicant, or authorized, permitted or encouraged to be provided or sold by Applicant, under Applicant's Mark, was offered or exhibited.

Interrogatory No. 23

Identify all litigation or any other inter partes proceedings in which Applicant's Mark was involved or is currently involved.

Interrogatory No. 24

Identify any third parties who sent correspondence to Applicant regarding Applicant's use of Applicant's Mark based upon such third party's determination that Applicant's Mark was similar to such third party's mark(s) or trade name.

Interrogatory No. 25

Identify any third parties to whom Applicant sent correspondence regarding its use of a mark or trade name based upon Applicant's determination that such third party's mark was similar to Applicant's Mark.

Interrogatory No. 26

Describe in detail the date and circumstances by which Applicant first became aware of Opposer's ENYCE Mark(s) and any actions it took with respect thereto.

Interrogatory No. 27

Identify and describe each and every instance of actual confusion between any of Applicant's Mark and Opposer's ENYCE Mark(s).

Interrogatory No. 28

With regard to Applicant's Mark, set forth and fully describe each and every basis for Applicant's contention in Paragraph 9 of Applicant's Notice of Opposition that there is not or will not be a likelihood of confusion between Applicant's Mark and Opposer's ENYCE Marks.

Interrogatory No. 29

With regard to Applicant's Mark, set forth and fully describe each and every basis for Applicant's contention that Applicant's registration of Applicant's Mark will not cause injury and damage to Opposer, and to Opposer's right in Opposer's ENYCE Mark(s) and to the use thereof.

Interrogatory No. 30

Separately for each of the foregoing Interrogatories, identify the two (2) most knowledgeable persons with respect to the subject matter inquired about therein and specify which response or portion thereof each such person, or some other person, provided or prepared.

Interrogatory No. 31

Identify the person(s) most familiar with Applicant's use of Applicant's Mark.

Interrogatory No. 32

Identify the person(s) who was primarily responsible for selecting Applicant's ENYCE Mark.

Interrogatory No. 33

Identify each and every reason why Applicant selected Applicant's Mark as its trademark and/or service mark.

Interrogatory No. 34

Identify each and every basis for Applicant's contention that "Applicant does not believe that consumers are aware of [Opposer's] Mark as applicant was not aware of said Mark." contained in paragraph 9 of the Answer to the Notice of Opposition filed in this proceeding.

Interrogatory No. 35

Identify the person who has primary responsibility or will have primary responsibility for the advertising and sale of products under Applicant's Mark by or on behalf of Applicant.

Interrogatory No. 36

Identify any opinions received by Applicant concerning the likelihood of confusion between Applicant's Mark and Opposer's ENYCE Mark(s).

Interrogatory No. 37

Identify each person who supplied information in any of the responses to this set of interrogatories, or who has consulted or whose documents or files were consulted in connection with the preparation of the responses.

Interrogatory No. 38

Identify every person whom Applicant expects to call as a witness during its testimony period.

Dated: New York, New York
December 23, 2004

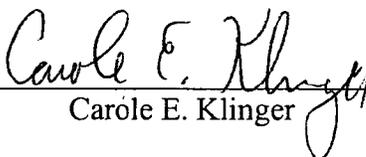
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
By: 
Carole E. Klinger
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
(212) 715-9100
Attorneys for Opposer
L.C. Licensing, Inc.

CERTIFICATE OF SERVICE

Opposition No. 91162330

I hereby certify that on December 23, 2004, I caused one true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT to be served by first class mail upon Applicant Cary Berman by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Applicant as follows:

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035


Carole E. Klinger

Opposer L.C. Licensing, Inc.
Opposition No. 91162330
L.C. Licensing, Inc. v. Cary Berman

EXHIBIT B

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

-----X
L.C. Licensing, Inc. :
Opposer, :
v. : Opposition No. 91162330
Application Serial No. 78/320,850
Cary Berman, :
Applicant. :
-----X

**OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

Opposer L.C. Licensing, Inc. ("L.C. Licensing" or "Opposer") pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, hereby requests that Applicant Cary Berman ("Berman" or "Applicant"), produce for inspection and copying at the offices of Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, New York 10022, or at such other place as agreed to by the parties, within thirty (30) days of the date of service of this request, the documents and things in its possession, custody or control set forth below. These requests are continuing and impose upon Applicant the obligations stated in the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

As used herein, the following definitions and instructions apply:

A. "Person" means any natural person, corporation, limited liability company, association, firm, partnership, or other business or legal entity.

B. "Applicant" means the above applicant, Cary Berman and/or the business through which Mr. Berman sells, has sold, or intends to sell products under Applicant's ENYCE mark.

C. "Opposer" means the above Opposer, L.C. Licensing, and any predecessor or successor corporation or entity, any licensee, parent, subsidiary or affiliated company, any entity in which L.C. Licensing or a subsidiary holds or has held any interest, and any attorney, officer, director, agent, representative or employee of L.C. Licensing or any of the other foregoing entities.

D. "Applicant's Mark" means the mark shown in Application Serial No. 78/320,850 for ENYCE.

E. "Opposer's ENYCE Marks" means each mark and/or registration which is relied upon by Opposer in the Notice of Opposition in this proceeding to challenge Applicant's Mark and/or Application Serial No. 78/320,850 directed thereto.

F. The term "Opposer's Goods" shall mean the goods identified in Reg. No. 2,093,751, namely, "apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tanktops, skirts, warm-up suits, sweatshirt and sweatpants", in International Class 25, and the goods identified in Reg. No. 2,351,411, namely, "apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tank tops, skirts, warm-up suits, sweatshirt and sweatpants", in International Class 25, and the goods identified in Reg. No. 2,338,404, namely, "women's clothing, namely, shirts, tops, bottoms, pants, jackets, coats, jogging suits, warm-up suits, T-shirts, polo shirts, tank tops, skirts, shorts,

denim shirts, denim pants, denim tops, denim bottoms, denim shorts, denim skirts, sweat shirts, sweat pants, sweat shorts, headwear, caps, hats”, in International Class 25.

G. The term “concerning” shall mean relating to, referring to, describing, evidencing, or constituting.

H. The term “any” also means “each and every.”

I. The term “refer to, relate to” shall mean comprise, refer to, relate to or in any way relevant to.

J. “Intermediary” means a company or person through which Applicant has provided its products or services to the ultimate customers therefor.

K. “Trade Show” means any trade show, convention, seminar or exhibition at which Applicant’s products or services provided under Applicant’s marks were sold, displayed, featured or presented.

L. “Classes of customers” means types or categories of customers which relate to the nature of the business of said customers, such as based upon SIC codes.

M. Use which “has not been constant” means use for which there has been a hiatus in use of one (1) month or longer.

N. The term “identify as used in connection with a communication (other than a document) shall mean to set forth the parties thereto, the date, the type of the communication, and the general subject matter.

O. “Document” shall include, without limitation, the following items, whether printed or reproduced or stored or recorded by any process, or written, or produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: notes, letters, correspondence, books, periodicals, printed publications, communications, interoffice

communications, telexes, telegrams, memoranda, summaries and records of telephone conversations, summaries, and research reports and notebooks, charts, lists, schedules, plans, drawings, photographs, diaries, studies, evaluations, worksheets, minutes or records of meetings including directors' meetings, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, reports or opinions regarding trademark, service mark, trade name, or corporate name registrations, consumer surveys, pilot studies, opinions of counsel, agreements, contracts, reports or summaries of negotiations, court papers, administrative agency papers, transcripts, brochures, pamphlets, advertisements, circulars, promotional material, trade letters, press releases, packaging, videotapes, audio tapes, CD-Roms, electronic messages and data, story boards, recordings, drafts of documents and revisions of drafts of documents and all other written or recorded material of whatever kind known to or in the possession or control of Applicant including copies or reproductions of all of the foregoing items upon which notations in writing have been made which do not appear on the original, and anything within the scope of Rules 26(b) and 34 of the Federal Rules of Civil Procedure, including things.

P. The words "and" and "and/or" shall each be deemed to refer to both their conjunctive and disjunctive meanings. The word "any" shall mean "each and every" as well as "any one." The masculine gender shall be deemed to include the feminine where appropriate, and the singular shall be deemed to include the plural, and vice versa.

Q. The following requests seek documents as of the date hereof, but shall be deemed to be continuing, and any additional information relating in any way to these requests which is acquired by or becomes known to Applicant up to and including the time of trial shall be furnished to Opposer promptly after such information is acquired or becomes known.

R. Those requests which call for the identification of documents will be deemed answered if Applicant provides copies of such documents to Opposer's attorneys within the period in which timely response can be made, including proper extensions of time, if any. Every document called for by these requests which Applicant does not make so available to Opposer's attorneys shall be properly identified in a timely response to the appropriate interrogatory.

S. Each request to produce refers to Applicant's ENYCE Mark and Applicant's business activities within the United States.

T. Only one copy of each document need be produced; however, any document that varies in any way so that it is not identical to one produced is to be considered a separate document and must be produced.

U. In the event that any requested document has been destroyed, lost, discarded, or otherwise disposed of, any such document is to be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal, and person disposing of the document.

V. All documents that respond, in whole or in part, to any portion of any Request shall be produced in their entirety, including all attachments and enclosures.

W. These discovery requests cover all information and documents in the possess, custody, or control of Applicant, whether they are located in Applicant's offices or residences or any other place maintained by Applicant, or in the possession of its agents, accountants, attorneys, or of a trade association or other organization to whose documents Applicant has access.

X. If Applicant knows of the existence, past or present, of any documents and things described below, but is unable to produce such documents and things because they are not presently in its possession, custody or control, it shall so state and shall identify such documents and the name and address of the person who has possession, custody or control of the documents and things.

Y. As to the identification of any natural person, please give, to the extent known, the person's full name, present or last known address, and the present or last known place of employment.

Z. To the extent that Applicant is not willing to voluntarily produce documents requested herein, state, with respect to each document that Applicant is not willing to voluntarily produce, the basis on which the same is being withheld from voluntary production. If any document is deemed privileged or confidential, furnish a list identifying each document or thing for which privilege or confidentiality is claimed, together with the following information as to each such document or thing:

- (1) a brief description of its nature and subject matter, including the title and type of document;
- (2) its date;
- (3) the name and title of the author(s);
- (4) the name and title of the person(s) to whom the document is addressed including all persons who received copies;
- (5) the name and title of the person(s) to whom the document or thing was sent;
- (6) the number of pages;
- (7) the request to which the document, thing or withheld information is otherwise responsive; and

- (8) in the case of a document for which privilege is claimed, set forth the privilege claimed and the facts on which Applicant relies to support the claimed privilege.

Also state whether the document was marked with any restricted access language, such as “confidential” or “attorney client privilege”, at the time it was prepared, and identify each actual recipient of each such document or of copies thereof and all persons who have seen or who have access to the same and the steps taken to prevent its communication to unauthorized persons.

REQUESTS

Request No. 1

Produce all documents sufficient to identify each and every business with which Applicant is affiliated or involved.

Request No. 2

Produce all documents sufficient to identify the products and/or services offered by Applicant or the businesses with which he is affiliated or involved.

Request No. 3

Produce all documents sufficient to identify the three products offered by Applicant which achieved the highest gross sales over the past three years with respect to each and every business identified in Applicant’s Response to Interrogatory No. 1 of Opposer’s First Set of Interrogatories to Applicant served in this proceeding.

Request No. 4

Produce all documents sufficient to identify the three services offered by Applicant which achieved the highest gross sales over the past three years with respect to each and every business identified in Applicant’s Response to Interrogatory No. 1 of Opposer’s First Set of Interrogatories to Applicant served in this proceeding.

Request No. 5

With respect to those products identified in Applicant's Response to Interrogatory No. 3 of Opposer's First Set of Interrogatories to Applicant served in this proceeding, documents sufficient to identify the gross sales figures for such products over the past three years.

Request No. 6

With respect to those products identified in Applicant's Response to Interrogatory No. 4 of Opposer's First Set of Interrogatories to Applicant served in this proceeding, documents sufficient to identify the gross sales figures for such services over the past three years.

Request No. 7

Produce all documents and things that refer or relate to or reflect the creation and adoption of Applicant's Mark.

Request No. 8

Produce all documents and things that refer or relate to or reflect the decision by Applicant to adopt and use Applicant's Mark.

Request No. 9

Produce all documents and things that refer or relate to or reflect any investigation conducted by or on behalf of Applicant regarding the availability of Applicant's Mark for use and registration, including, but not limited to, trademark searches.

Request No. 10

Produce all documents and things (including all analyses, opinions and commentary, legal or otherwise, of any type in written form), regarding the right to use or register Applicant's Mark, and any documents reflective thereof or which refer or relate thereto.

Request No. 11

Produce all documents and things (including all analyses, opinions and commentary, legal or otherwise, of any type in written form) regarding Opposer's right to use or register Opposer's ENYCE Mark(s), and any documents reflective thereof or which refer or relate thereto.

Request No. 12

Produce all documents and things that refer or relate to or reflect any survey (including pilot, preliminary and informal surveys), poll, questionnaires or other or inquiry regarding Applicant's Mark.

Request No. 13

Produce all documents and things that refer or relate to or reflect any survey (including pilot, preliminary and informal surveys), poll, questionnaires or other or inquiry regarding Opposer's ENYCE Mark(s).

Request No. 14

Produce all documents and things that support the allegations contained in paragraph 9 of the Answer to Opposer's Notice of Opposition in this proceeding.

Request No. 15

Produce all documents and things that refer or relate to or reflect any marks for which Applicant has obtained, has sought to obtain, or is seeking to obtain federal or state trademark registrations or domain name registrations, which incorporate the term "ENYCE".

Request No. 16

Produce any trademark manual, trademark policy guide or other document which sets forth guidelines for trademark usage by Applicant and/or its views of trademark usage by others.

Request No. 17

Produce all documents and things sufficient to identify each kind of product on which, or service in connection with which, Applicant has used, currently uses or intends to use Applicant's Mark in interstate commerce.

Request No. 18

For each different product or service designated by Applicant under Applicant's Mark, provide representative samples of hang tags, labels, packaging, advertising and other items bearing Applicant's Mark.

Request No. 19

Produce all documents and things that refer or relate to or reflect the first use in interstate commerce by Applicant of Applicant's Mark on each product or service as to which it has been or is used.

Request No. 20

If Applicant's Mark is or was in use in commerce, produce all documents and things sufficient to reflect continuous use on each product and/or service on which the Applicant's Mark was used until the present.

Request No. 21

Produce all documents and things that refer or relate to or reflect any actual or considered discontinuance of Applicant's Mark.

Request No. 22

Produce all documents and things that refer or relate to or reflect any actual or considered suspension of use of Applicant's Mark by Applicant.

Request No. 23

Produce all documents and things that refer or relate to Applicant's contention that "If an individual consumer was aware of Opposer's Mark, said consumer would not be confused with applicants [sic] Mark as the goods, services and products of International Class 25 have nothing in common with the goods, services and products of International Class 12" in paragraph 9 of the Answer to Opposer's Notice of Opposition filed by Applicant in this proceeding.

Request No. 24

Produce all documents and things that refer or relate to or reflect any objection by anyone to any use or registration (whether state or federal) of Applicant's Mark.

Request No. 25

Produce all documents and things which refer or relate to or reflect any actual or considered restriction, limitation or modification on Applicant's use of Applicant's Mark.

Request No. 26

Produce all documents and things that support or rebut the assertion contained in paragraph 9 of the Answer to Opposer's Notice of Opposition in this proceeding that "Applicant does not believe that consumers are aware of [Opposer's] Mark as applicant was not aware of said Mark."

Request No. 27

Produce all documents and things that refer or relate to or reflect any objection by Applicant to any third party use of a trademark or service mark based upon Applicant's Mark.

Request No. 28

With regard to each product on which, or service in connection with which Applicant's Mark has been or is being used and for which a price has been charged, provide documents sufficient to identify each such price and the volume distributed at such price for each year in which each said product or service was provided.

Request No. 29

With regard to each product on which, or service in connection with which Applicant's Mark has been or is being used which is provided on a complimentary basis, produce documents and things sufficient to identify the volume distributed for each year in which each said product or service was provided.

Request No. 30

Produce all press releases or other informational statements prepared by, or on behalf of, Applicant with the intention of being disseminated to consumers, the public or press, that refer or relate to or reflect any products or services marketed and/or sold or proposed to be marketed and/or sold by Applicant under Applicant's Mark.

Request No. 31

Produce all documents and things sufficient to identify the publications in which Applicant has advertised or has plans to advertise any of the products or services designated or which Applicant intends to designate by Applicant's Mark.

Request No. 32

For each different product or service designated by Applicant under Applicant's ENYCE Mark, provide samples of all print advertising for each year from the date of the first advertisement to the current date along with any documents that refer or relate to or reflect where and when said advertising appeared and the cost thereof.

Request No. 33

Produce all documents and things sufficient to identify all geographical areas, by city and state, in which Applicant has sold or distributed, is selling or distributing, and/or intends to sell or distribute Applicant's goods and/or services using Applicant's Mark.

Request No. 34

Produce all documents and things sufficient to identify the address and telephone number of each location at which Applicant has maintained or maintains an office or other place of business, and the functions carried out at such office(s) or other place of business.

Request No. 35

For each type of product and/or service identified in Applicant's response to Interrogatory Nos. 14 and 15 of Opposer's First Set of Interrogatories to Applicant served in this proceeding, produce all documents and things sufficient to identify the channels of trade and distribution through which Applicant has sold or distributed, is selling or distributing, and/or intends to sell or distribute such products and/or services in connection with Applicant's Mark.

Request No. 36

For each type of product and/or service identified in Applicant's response to Interrogatory Nos. 14 and 15 of Opposer's First Set of Interrogatories to Applicant served in this

proceeding, produce all documents and things sufficient to identify the class of ultimate consumers of each product and/or service for Applicant's Mark.

Request No. 37

Produce all documents and things concerning the consideration by or on behalf of Applicant of any alternatives to use of Applicant's Mark.

Request No. 38

Produce all documents and things concerning whether other persons had used any mark(s) similar to Applicant's Mark.

Request No. 39

Produce all documents and things concerning the likelihood of confusion between Opposer's Marks and Applicant's Mark.

Request No. 40

Produce all documents and things sufficient to reflect the annual dollar amount spent or intended to be spent by Applicant in connection with advertising and promotion of each different product or service intended to be sold under Applicant's Mark in interstate commerce from the date of the first advertisement to the current date.

Request No. 41

Produce all documents and things sufficient to identify Applicant's ten largest customers and/or potential customers and the means of distribution and channels of trade related thereto regarding any product or service offered or intended to be offered under Applicant's Mark.

Request No. 42

Produce all documents and things that refer or relate to or reflect the attributes, profiles, preferences, purchasing habits or level of sophistication of the customers for each of Applicant's products and services offered or intended to be offered under Applicant's Mark.

Request No. 43

Produce all documents and things sufficient to identify, and all documents that comment upon, the means of distribution and channels of trade for each product or service marketed and/or sold, or proposed to be marketed or sold, by Applicant under Applicant's Mark.

Request No. 44

Produce all documents and things sufficient to identify any Trade Show at which Applicant's products or services provided under Applicant's Mark was used, offered for sale or displayed, and all documents identifying or relating to actual or prospective customers thereat.

Request No. 45

Produce all documents and things sufficient to identify all Intermediaries used or employed by Applicant with respect to the sale, distribution or provision or proposed sale, distribution or provision of products or services in interstate commerce provided under Applicant's Mark.

Request No. 46

Produce all documents and things that refer or relate to, reflect or embody Applicant's contracts with Intermediaries for the distribution of products or services under Applicant's Mark.

Request No. 47

Produce all documents and things regarding any court or administrative proceeding (including any opposition or cancellation actions) involving Applicant's Mark.

Request No. 48

Produce all documents and things that refer or relate to or reflect the first time Applicant became aware of Opposer's ENYCE Mark(s).

Request No. 49

Produce all documents and things in Applicant's possession which refer or relate to Opposer or Opposer's ENYCE Marks.

Request No. 50

Produce all minutes and notes from any meetings of Applicant or meetings attended by Applicant relating to Applicant's use of Applicant's Mark and/or Opposer's Marks.

Request No. 51

Produce all documents and things identified, requested to be identified, consulted, referred to or relied upon in response to Opposer's First Set of Interrogatories to Applicant.

Request No. 52

Produce all documents and things concerning Applicant's policy concerning document retention and destruction.

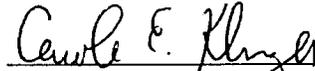
Request No. 53

Produce all documents and things upon which Applicant intends to rely in support of its position in this Opposition and/or for purposes of this Opposition.

Dated: New York, New York
December 23, 2004

By:

KRAMER LEVIN NAFTALIS
& FRANKEL LLP


Carole E. Klinger

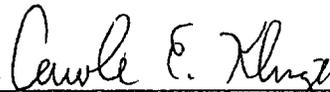
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
(212) 715-9100
Attorneys for Applicant
L.C. Licensing, Inc.

CERTIFICATE OF SERVICE

Opposition No. 91162330

I hereby certify that on December 23, 2004, I caused one true and correct copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS to be served by first class mail upon Applicant Cary Berman by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Applicant as follows:

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035



Carole E. Klinger

Opposer L.C. Licensing, Inc.
Opposition No. 91162330
L.C. Licensing, Inc. v. Cary Berman

EXHIBIT C

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

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
(610) 227-5600

L. C. Licensing, Inc.

Opposer,

Opposition No. 91162330
Serial No. 78320850

**ANSWER TO OPPOSER'S FIRST SET
OF INTERROGATORIES TO
APPLICANT**

v.

CARY B. BERMAN

Applicant

In re Application Serial No. : 78/320850
Mark : ENYCE
International Class : 12
Applicant : Cary Berman
Filed : October 30, 2003
Published : August 24, 2004

Applicant, representing himself pro se submits this ANSWER to Opposer's FIRST SET OF INTERROGATORIES which was dated December 23, 2004 but received on January 26, 2005. Applicant assumes that the Opposer listed an incorrect date however Applicant respectfully requests that all future correspondence have some type of delivery date confirmation.

The Applicant is Cary Berman. Cary Berman is a law abiding U.S. citizen living at 1917 Lafayette Rd., Gladwyne, Pa. 19035. Applicant is not represented by council and represents himself pro se. Applicant respectfully asks that all parties please correspond directly with Applicant at the address listed.

Applicant believes that it should receive registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004.

Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

Answers to Opposer's FIRST SET OF INTERROGATORIES by numbered paragraph.

1. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

2. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

3. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

4. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

5. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

6. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

7. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

8. Applicant does not understand this question.

9. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

10. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

11. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

12. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

13. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

14. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

15. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

16. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

17. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

18. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

19. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

20. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute

21. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

22. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

23. Applicant is not aware of any litigation (other than this litigation) involving Applicant's Mark.

24. Applicant has not received any such correspondence.

25. Applicant has not sent any such correspondence.

26. Applicant received a letter from Opposer's council in July of 2004. Applicant took no action.

27. Confusion does not exist as the products are dissimilar.

28. Confusion does not exist as the products are dissimilar. Applicant finds it difficult to understand why a clothing company thinks that automobile products are similar to clothing products.

29. Applicant finds it difficult to understand why automobile products would "cause injury and damage" a clothing company.

30. No response as a question is not asked.

31. Cary Berman.

32. Cary Berman.

33. Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

34. Opposer's council needs to walk out of her office and ask one hundred people if they have ever heard of Opposer's Mark. Perhaps then Opposer will apologize to Applicant and we can all move forward.

35. Cary Berman.

36. None.

37. Cary Berman.

38. Cary Berman and an expert witness.

SUBMITTED this 3rd day of February, 2005.

CARY BRETT BERMAN



Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
Phone-610-227-5600
Fax- 610-667-9517
autocary@aol.com

Opposer L.C. Licensing, Inc.
Opposition No. 91162330
L.C. Licensing, Inc. v. Cary Berman

EXHIBIT D

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

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
(610) 227-5600

L. C. Licensing, Inc.

Opposer,

Opposition No. 91162330
Serial No. 78320850

**ANSWER TO OPPOSER'S FIRST SET
OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

v.

CARY B. BERMAN

Applicant

In re Application Serial No. : 78/320850
Mark : ENYCE
International Class : 12
Applicant : Cary Berman
Filed : October 30, 2003
Published : August 24, 2004

Applicant, representing himself pro se submits this ANSWER TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS which was dated December 23, 2004 but received on January 26, 2005. Applicant assumes that the Opposer listed an incorrect date however Applicant respectfully requests that all future correspondence have some type of delivery date confirmation.

The Applicant is Cary Berman. Cary Berman is a law abiding U.S. citizen living at 1917 Lafayette Rd., Gladwyne, Pa. 19035. Applicant is not represented by council and represents himself pro se. Applicant respectfully asks that all parties please correspond directly with Applicant at the address listed.

Applicant believes that it should receive registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004.

Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

Answers to OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS by numbered paragraph. "Document" shall mean documents and things. "Exist" shall mean in exist at all or exist in Applicants possession.

1. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

2. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

3. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

4. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

5. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

6. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

7. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

8. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

9. No documents exist that are responsive to this request.

10. No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

11. No documents other than those received from opposer exist.

12. No documents exist that are responsive to this request.

13. No documents exist that are responsive to this request.

14. No documents exist that are responsive to this request.

15. No documents other than those submitted to or received from the United States Department of Commerce Patent and Trademark Office exist.

16. No documents exist that are responsive to this request.

17. No documents exist that are responsive to this request.

18. No documents exist that are responsive to this request.

19. No documents exist that are responsive to this request.

20. No documents exist that are responsive to this request.

21. No documents exist that are responsive to this request.

22. No documents exist that are responsive to this request.

23. No documents exist that are responsive to this request.

24. No documents other than those received from opposer exist.

25. No documents exist that are responsive to this request.

26. No documents exist that are responsive to this request.

27. No documents exist that are responsive to this request.

28. No documents exist that are responsive to this request.

29. No documents exist that are responsive to this request.

30. No documents exist that are responsive to this request.

31. No documents exist that are responsive to this request.

32. No documents exist that are responsive to this request.

33. No documents exist that are responsive to this request.

34. Applicant has applied for registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

35.No documents exist that are responsive to this request.

36.No documents exist that are responsive to this request.

37.No documents exist that are responsive to this request.

38.No documents exist that are responsive to this request.

39. Applicant reserves the right to bring automobile products (wheels, brake pads,etc.) to the testimony period and hold said products up next to Opposer's clothing products to determine if confusion would exist between the products.

40.No documents exist that are responsive to this request.

41.No documents exist that are responsive to this request.

42.No documents exist that are responsive to this request.

43.No documents exist that are responsive to this request.

44.No documents exist that are responsive to this request.

45.No documents exist that are responsive to this request.

46.No documents exist that are responsive to this request.

47.No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

48. Applicant received a letter from Opposer's council in July of 2004. Applicant did not keep a copy of said letter.

49.No documents other than those received from opposer exist.

50. No documents exist that are responsive to this request.

51.No documents exist that are responsive to this request.

52. Applicant is an individual representing himself pro se. Applicant does not have a document policy.

53. Applicant intends to hire an expert witness and utilize an expert witness report and testimony.

SUBMITTED this 3rd day of February, 2005.

CARY BRETT BERMAN



Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
Phone-610-227-5600
Fax- 610-667-9517
autocary@aol.com

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

-----X
L.C. Licensing, Inc. :
 Opposer, :
 v. : Opposition No. 91162330
Cary Berman, : Application Serial No. 78/320,850
 Applicant. :
-----X

**AFFIDAVIT OF CAROLE E. KLINGER IN SUPPORT OF
OPPOSER'S MOTION TO COMPEL DISCOVERY**

I, Carole E. Klinger, after being duly sworn, declare as follows:

1. I am an attorney with the law firm of Kramer Levin Naftalis & Frankel LLP, counsel representing Opposer L.C. Licensing, Inc. in the above-captioned opposition proceeding.
2. This Affidavit is submitted in support of Opposer's Motion To Compel Discovery.
3. On December 23, 2004, Opposer served Opposer's First Set of Interrogatories to Applicant on Applicant. Attached as Exhibit A to Opposer's Motion to Compel Discovery accompanying this Affidavit is a true and accurate copy of Opposer's First Set of Interrogatories to Applicant.
4. On December 23, 2004, Opposer served Opposer's First Set of Requests for Production of Documents and Things on Applicant. Attached as Exhibit B to Opposer's Motion to Compel Discovery accompanying this Affidavit is a true and accurate copy of Opposer's First Set of Requests for Production of Documents and Things.

5. On February 4, 2005, Applicant served Applicant's Answer to Opposer's First Set of Interrogatories on Opposer. Attached as Exhibit C to Opposer's Motion to Compel Discovery accompanying this Affidavit is a true and accurate copy of Applicant's Answer to Opposer's First Set of Interrogatories to Applicant.

6. Applicant has provided identical, nonresponsive responses to Interrogatories #1-7 and virtually identical nonresponsive responses #9-16 and #19-22.

7. Attached as Exhibit D to Opposer's Motion to Compel Discovery accompanying this Affidavit is a true and accurate copy of Applicant's Answer to Opposer's First Set of Requests for Production of Documents and Things. Applicant has provided identical, nonresponsive responses to Requests #1-6 and 34, stating that the information requested by Opposer is irrelevant, and Applicant has responded that no documents exist which respond to Requests #7, #9, #11-14, #16-33, #35-38, #40-46, #49-51.

8. Applicant has not provided Opposer with any of the responses, documents or things requested by Opposer.

9. On February 15, 2005, and again on March 8, 2005, I telephoned Applicant Cary Berman, who is representing himself *pro se* in this proceeding, and attempted in good faith to resolve this discovery dispute by requesting that Mr. Berman respond to Opposer's requests and interrogatories. Mr. Berman replied that he did not believe the requested information was relevant to the proceedings and consequently that he would not provide the requested

information. I then informed Mr. Berman that Opposer would prepare a motion to compel his compliance with Opposer's discovery requests.

Dated: April 7, 2005

By: Carole E. Klinger
Carole E. Klinger
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
(212) 715-9100

SUBSCRIBED AND SWORN TO BEFORE ME,
this __th day of April 7, 2005

Allana Salandy

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Trademarks,
P.O. Box 1451, Alexandria, VA 22313-1451,
Attention: Trademark Trial and Appeal Board
on April 7, 2005.

Carole E. Klinger
Name of Applicant, Assignee or Representative
Carole E. Klinger
Signature
April 7, 2005
Date of Signature

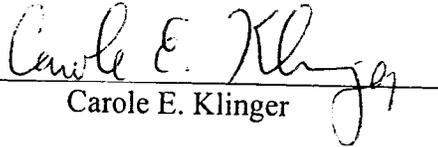
U.S. State of New York
No. 0199943864
Created by Queens County
Notary Public

CERTIFICATE OF SERVICE

Opposition No. 91162330

I hereby certify that on April 7, 2005, I caused one true and correct copy of the foregoing
AFFIDAVIT OF CAROLE E. KLINGER IN SUPPORT OF OPPOSER'S MOTION TO
COMPEL DISCOVERY to be served by first class mail upon the following individual:

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035


Carole E. Klinger