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

Proceeding	91162370
Party	Plaintiff De Boule Diamond & Jewelry, Inc. De Boule Diamond & Jewelry, Inc. De Boule Diamond & Jewelry, Inc. 6821 Preston Road Dallax, TX 75205 UNITED STATES
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Date	01/31/2007
Attachments	Opposer's Response to Applicant's Motionn for Discovery Sanctions & Exhibit A.pdf (62 pages)(3407586 bytes)

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

DE BOULLE DIAMOND & JEWELRY, INC.,

Opposer,

v.

DE BEERS LV LTD.,

Applicant.

Consolidated Opposition No.: 91162370

Opposition No.'s: 91162370

91162469

91164615

91165285

91165465

**OPPOSER'S RESPONSE TO APPLICANT'S
MOTION FOR DISCOVERY SANCTIONS**

Opposer, De Boulle Diamond & Jewelry, Inc. ("Opposer" and/or "De Boulle"), hereby files this Response to Applicant's Motion for Discovery Sanctions, filed by Applicant, De Beers LV Ltd. ("Applicant" and/or "De Beers") in this Proceeding (the Motion¹), and in support of same will respectfully show:

I.

Procedural History

1. De Beers filed Applications for federal registration of the marks in issue in this Proceeding on the following dates: (i) DB LOGO (Serial No. 78/245,219), applied May 2, 2003; (ii) DB STAR (Serial No. 78/245,795), applied May 5, 2003; (iii) DB SIGNATURE (Serial No. 78/245,210), applied May 2, 2003; (iv) DB MONOGRAM

¹ By agreement between counsel for De Beers and De Boulle, Opposer's time to file this Response was extended by forty-eight (48) hours, until January 31, 2007.

(Serial No. 78/245,779), applied November 15, 2002; and (v) SO DB Mark (Serial No. 79/000,478) applied November 25, 2003 (hereinafter collectively referred to as the “De Beers Marks”).

2. De Boulle timely filed separate oppositions against federal registration of the De Beers Marks; namely, Opposition No. 91162370 (DB LOGO), Opposition No. 91162469 (DB MONOGRAM), Opposition No. 91164615 (DB SIGNATURE), Opposition No. 91165285 (DB STAR), and Opposition No. 91165465 (SO DB).

3. On May 2, 2005, by Order entered on that date, the Board consolidated Opposition Nos. 91162370, 91162469, and 91164615, under Opposition No. 91162370. On July 20, 2005, the Board further consolidated Opposition No.’s 91165285, and 91165465 with the earlier Consolidated Opposition No. 91162370, as Consolidated Opposition No. 91162370² (the “Proceeding”).

II.

De Boulle’s Responses to Discovery in This Proceeding

4. On or about July 27, 2005, De Boulle served it First Set of Requests for Production of Documents and Things, First Set of Interrogatories, and First Requests for Admissions on De Beers in this Proceeding (the “De Boulle Discovery”).

² The Board in its Order dated July 20, 2005, consolidating the listed Oppositions, designated Opposition No. 91165285, as the parent of all five Oppositions. By Order dated January 27, 2006, the Board corrected its initial designation, and designated Opposition No. 91162370 as the parent for all of the Oppositions made the subject matter of this Proceeding.

5. On or about October 3, 2005, De Beers served its answers and objections to the De Boulle Discovery in this Proceeding, a true and correct copy of which is attached as Exhibit "A"^{3/4}.

6. On or about November 18, 2005, De Beers served its First Set of Requests for Production of Documents and Things, First Set of Interrogatories, and First Requests for Admissions on De Boulle in this Proceeding (the "De Beers Discovery").

7. On December 31, 2005, De Boulle served Opposer's Objections and Responses Subject Thereto to Applicant's First Set of Requests for Production of Documents and Things; and Opposer's Objections to Applicant's First Set of Interrogatories; and Opposer's Objections and Answers to Applicant's First Requests for Admissions, true and correct copies of which are attached hereto as Exhibits "B", "C" and "D" in response to the De Beers Discovery⁵.

³ By agreement between counsel for De Beers and De Boulle, Applicant's time to respond to the De Boulle Discovery was on extended on several different occasions by a total of twenty-three (23) days.

⁴ In responding to the De Boulle Discovery, De Beers objected to and completely failed to answer forty (40) of Opposer's First Requests for Admissions; thirteen (13) of Opposer's First Set of Interrogatories, and twenty-four (24) of Opposer's First Set of Requests for Production of Documents and Things. In addition, De Beers objected to and provided evasive and partial answers only to four (4) of Opposer's First Set of Interrogatories; for a total of seventeen (17) out of twenty-five (25) Interrogatories to which no response at all, or evasive and partial responses, were provided. In addition, to date De Beers has only produced nineteen (19) pages of documents in response to Opposer's First Set of Requests for Production of Documents and Things in this Proceeding.

⁵ By agreement between counsel for De Beers and De Boulle, Opposer's time to respond to the discovery was extended by eight (8) days

8. Pursuant to the initial Scheduling Order in this Proceeding, the Discovery Deadline was set to expire on December 25, 2005. On December 27, 2005, De Beers filed a Motion to Extend Discovery and Testimony Periods (the "De Beers Extension Request").

9. Subsequently, De Boufle and De Beers entered into discussions to reach an agreement regarding their respective responses to the opposing party's discovery, and the De Beers Extension Request. In this regard, by May 9, 2006, De Boufle and De Beers both agreed that they would (a) supplement their initial responses to discovery; and (b) enter into an Agreed Protective Order to protect their respective trade secrets and other confidential and privileged information. A true and correct copy of correspondence from counsel for De Beers to counsel for De Boufle dated May 9, 2006 in this regard is attached as Exhibit "E".

10. On March 2, 2006, by Stipulation Regarding Motion to Extend Discovery and Testimony Periods, Opposer consented to the extensions requested by the De Beers Extension Request. Accordingly, on April 11, 2006, the Board entered a revised Scheduling Order in this Proceeding.

11. In addition, on or about May 10, 2006, Opposers served Objections to Applicant's First Set of Interrogatories, a true and correct copy of which is attached hereto as Exhibit "F".

12. On May 31, 2006, De Beers summarily filed a Motion to Compel Discovery in this Proceeding (the "Motion to Compel"). On June 6, 2006, the Board suspended all proceedings pending the outcome of its ruling on the Motion to Compel Discovery. By

Order dated July 26, 2006 the Board Granted the Motion, and further revised the Scheduling Order in this Proceeding (the "Discovery Order").

13. De Boulle did not receive a copy of the Discovery Order, and had no notice of the Board's ruling until it received a copy of the Motion from its previous lead counsel in this Proceeding, David A. Harlow, of the firm of Nelson Mullins Riley & Scarborough, L.L.P. See Affidavit of Denis J. Bouille, attached as Exhibit "G" Prior to that time, De Bouille understood that all proceedings in this matter were still suspended, pending the outcome of the Board's ruling on the Motion to Compel Discovery, according to the Board's June 6, 2006, Order.

14. De Bouille immediately engaged the firm of Griggs Bergen LLP, to substitute as lead counsel for Mr. Harlow and his firm. *Id.* The file is in the process of being transferred to Griggs Bergen LLP. Griggs Bergen LLP has confirmed with Mr. Harlow, that he did receive a copy of the Discovery Order, but has no record of submitting it to De Bouille. Furthermore, Mr. Harlow has no record of any contact or communication from counsel for De Beers in this Proceeding whatsoever between the date of the filing of the Motion to Compel and the date of Motion currently before the Board for consideration.

15. To the extent the previous responses by De Bouille to the De Beers Discovery, attached hereto as Exhibits "B", "C", "D" and "F", are deemed insufficient, De Bouille has undertaken to supplement such responses by the production of documents, yet to be produced, within ten (10) days of the date hereof. In addition, De Bouille has requested that opposing counsel notify it of any other responses reasonably deemed

insufficient by them, and has further undertaken to supplement any such responses within ten (10) days of being notified of any deficiency by Opposing Counsel.

16. De Boule respectfully requests that the Board grant it the additional opportunity requested hereby to more fully comply with the Discovery Order, to the extent its previous responses are deemed insufficient.

17. In *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership et al.*, 507 U.S. 380 (1993), as discussed by the Board in *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), the Supreme Court clarified the meaning and scope of “excusable neglect,” finding that “excusable neglect” “is a somewhat ‘elastic concept’ and is not limited strictly to omissions caused by circumstances beyond the control of the movant.” *Pioneer*, 507 U.S. at 392. Specifically, the Court held that the determination as to whether a party’s neglect is excusable is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include . . . [1] the danger of prejudice to the [nonmovant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

18. In this regard De Boule would respectfully show the Board that any failure to comply with the Discovery Order was not through manifest neglect or intentional disregard of the Board’s Order, but the result of negligence and a failure in communication between De Boule and its prior lead counsel. There is no evidence that De Boule’s delay, if any, in complying with the Discovery Order was willful or the result of bad faith.

19. De Boulle would further respectfully show the Board that De Beers has not and will not be prejudiced by the additional opportunity afforded De Boulle, as requested hereby. Counsel for De Beers did not communicate with De Boulle's counsel at all during the more than five (5) months that have transpired since the entry of the Discovery Order, to ascertain Opposer's intent to comply with the Discovery Order. De Beers has made no showing of lost evidence or unavailable witnesses, as a result of any delay by De Boulle, if any, in complying with the Discovery Order. *See Pratt v. Philbrook*, 109 F.3d 18, 22 (1st Cir. 1997); *Paolo's Associates Ltd. Partnership v. Paolo Bodo*, 21 USPQ2d 1899, 1904 (Comm'r 1990). Also, De Beers will bear no greater cost in defending this matter than it would have if De Boulle had properly complied with the Discovery Order. There is no evidence of De Beers having taken action in this case in reliance upon De Boulle's inaction. In addition, the Applicant's Testimony Period has not yet commenced. Supplemental responses, to the extent required to bring De Boulle's responses to the De Beers Discovery in compliance with the Discovery Order, can be affected in short order, and De Beers will have adequate further opportunity to obtain answers to the De Beers Discovery by deposition or other testimony in a timely fashion to allow it to prepare its defense in this Proceeding.

20. Lastly, the sanctions sought by De Beers by its Motion are extreme. The law favors the disposition of litigation on its merits. *Davis v. Parkhill-Goodloe Co.*, 302 F.2d 489 (5th Cir. 1962) In the absence of bad faith, [a court] court should impose the least severe sanction that will result in compliance with discovery obligations. *See United States v. Golyansky*, 291 F.3d 1245, 1249 (10th Cir. 2002); *Crabtree v. National Steel*

Corp., 261 F.3d 715, 720 (7th Cir. 2001) (citations omitted); *Chrysler Corp. v. Carey*, 186 F.3d 1016, 1019 (8th Cir. 1999); *Advanced Display System, Inc. v. Kent State University*, 212 F.3d 1272, 1288 (Fed. Cir. 2000) (citations omitted) “[D]ismissal is usually appropriate only where a lesser sanction would not serve the interest of justice.” *Meade v. Grubbs*, 841 F.2d 1512, 1520 (10th Cir. 1988) (citation omitted).

III.

Prayer

21. Opposer, De Boulle Diamond & Jewelry, Inc., therefore respectfully prays that the Motion for Discovery Sanctions filed by Applicant, De Beers LV Ltd, be denied without prejudice, and that the Board grant it the additional opportunity requested hereby to fully comply with Discovery Order requested by this Response, to the extent its previous responses are deemed insufficient, and that the Board grant it such other and further relief, legal and equitable, general and special, to which De Boulle may show itself justly entitled

This the 31st day of January, 2007.

Respectfully submitted,



Scott J. Griggs

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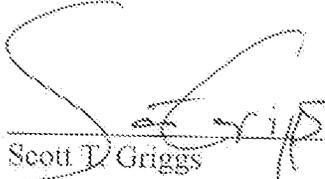
214-653-2401 -- [telecopier]

COUNSEL FOR OPPOSER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document upon counsel of record by mailing a true copy thereof, through the United States Mail, first class, postage prepaid, on this the 31st day of January, 2007, and addressed as follows:

Darrell Saunders, Esq.
Vincent P. Rao, II, Esq.
Kirkpatrick & Lockhart Preston Gates Ellis LLP
599 Lexington Avenue
New York, NY 10022-6030



Scott D. Griggs

Exhibit A

A. Applicant objects to the instructions, definitions, and requests for admissions to the extent that they seek to impose duties over and above those required by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board.

B. Applicant objects to each request to the extent that it seeks the disclosure of privileged communications and documents, attorney work product, or trial preparation material, including material prepared by or for counsel in anticipation of, or after the commencement of this action.

C. Applicant objects to each request to the extent that it is vexatious or seeks information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to each request to the extent that it seeks information that is unduly burdensome to obtain and to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

E. Applicant objects to each request to the extent that it is ambiguous, vague, logically flawed or otherwise incomprehensible.

F. Applicant objects to each request to the extent that it seeks a response which is duplicative of responses to one or more of Opposer's requests for admissions.

G. Applicant objects to each request to the extent that it requests information pertaining to Application Serial No. 78/140,378 for D AND B, which is not the subject of this Opposition.

H. In addition to the Objections set forth above, Applicant will also state other specific objections to each request where appropriate, including objections that are not generally applicable to all of the requests. By setting forth such specific objections, Applicant does not

intend to limit or restrict the Objections set forth above. To the extent that Applicant responds to a request for admission to which they object, such objections are not waived. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

K. The responses given herein shall not waive any claim of privilege or immunity Applicant may have as to any response, or any question or right of objection as to competency, relevance, materiality or admissibility, or any objection Applicant may have as to a demand for further response to these or other requests.

L. Nothing contained herein may be construed as an admission relative to the existence or non-existence of any document, and no response is an admission respecting the relevance of any statement or characterization contained in any request.

M. The responses will be made without waiver of, or prejudice to, any objections herein made or hereafter made, and all such objections are hereby expressly reserved.

N. Applicant's responses to the requests for admissions may not be complete since discovery in this matter is ongoing. Applicant will not be limited by its responses herein if, as this matter progresses, Applicant gathers additional information responsive to the requests or any request set forth therein.

O. These general objections are made to and are incorporated in each specific response herein without further reference.

RESPONSES

1. Applicant has not yet used Applicant's Marks in interstate commerce in the United States.

Response: Admitted with respect to DB LOGO, DB MONOGRAM and DB STAR. Denied with respect to DB SIGNATURE and SO DB.

2. At the time of filing Applicant's Marks, Applicant was aware of Opposer's Marks.

Response: Denied.

3. Applicant intends to market fine jewelry, including diamonds, timepieces and other goods identified in International Class 14 under Applicant's Marks.

Response: Admitted.

4. Opposer markets fine jewelry, including diamonds, timepieces and other goods identified in International Class 14 under Opposer's Marks.

Response: Applicant admits that the records of the United States Patent and Trademark Office ("USPTO") show that the goods listed in Opposer's applications include jewelry, diamonds and timepieces, and otherwise denies the allegations set forth in Request No. 4.

5. The goods which Applicant intends to market under Applicant's Marks are related to the goods which Opposer markets under Opposer's Marks.

Response: Applicant objects to this request as vague. Notwithstanding the foregoing objection, Applicant admits that the goods listed in its subject applications before the the USPTO include, among several other things, jewelry, diamonds, and watches and the records of the USPTO show that the goods listed in Opposer's applications include jewelry, diamonds, and timepieces, and otherwise denies the allegations set forth in Request No. 5.

6. Opposer markets its products under Opposer's Marks to the general public and jewelry and watch specialty distributors.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request, Applicant admits that Opposer owns a jewelry store in Texas and markets its goods and services to consumers of jewelry in the Texas area, and otherwise denies the allegations set forth in Request No. 6.

7. Applicant intends to market its products under Applicant's Marks to the general public.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request, Applicant admits that it intends to market goods directly to consumers.

8. Applicant intends to market its products under Applicant's Marks to jewelry and watch specialty distributors.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Notwithstanding the foregoing objection, Applicant presently markets its products via Applicant's own stores, but admits that it may revise its marketing strategy in the future.

9. The target audience to whom Applicant intends to advertise its products under Applicant's Marks includes consumers and specialty distributors of fine jewelry, including diamonds, and timepieces.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Notwithstanding the foregoing objection, Applicant presently markets its products directly to consumers via Applicant's own stores, but admits that it may revise its marketing strategy in the future.

10. The target audience to whom Opposer advertises its products under Opposer's Marks includes consumers and specialty distributors of fine jewelry, including diamonds, and timepieces.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 10.

11. Applicant's products bearing Applicant's Marks and Opposer's products bearing Opposer's Marks may be used or received by the same person.

Response: Applicant objects to this request as vague, ambiguous, logically flawed, and otherwise incomprehensible.

12. Applicant's products bearing Applicant's Marks and Opposer's products bearing Opposer's Marks may be bought or sold by the same person.

Response: Applicant objects to this request as vague, ambiguous, logically flawed, and otherwise incomprehensible.

13. Applicant intends to market its products under Applicant's Marks through public advertising.

Response: Admitted.

14. Applicant intends to market its products under Applicant's Marks through specialty jewelry stores.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request, Applicant admits that it presently intends to distribute its jewelry via Applicant's own jewelry stores.

15. Customers have come to identify Opposer's Marks with jewelry, including diamonds, and timepieces which are of the highest quality.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 15.

16. Customers have come to identify Opposer's Marks with fine jewelry, including diamonds, and timepieces which originate from Opposer.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 16.

17. Fine jewelry distributors have come to identify Opposer's Marks with jewelry, including diamonds, and timepieces which are of the highest quality.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 17.

18. Fine jewelry distributors have come to identify Opposer's Marks with fine jewelry, including diamonds, and timepieces which originate from Opposer.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 18.

19. Opposer's Marks are a valuable asset of Opposer.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 19.

20. Opposer's Marks carry considerable goodwill and customer and distributor acceptance of the goods offered under Opposer's Marks.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 20.

21. Opposer's customers and distributors and potential customers and distributors have come to recognize Opposer's Marks as representing the quality of Opposer's fine jewelry, including diamonds, and timepieces.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 21.

22. Applicant intends to market its products under Applicant's Marks to some of the same types or classes of purchasers as Opposer is marketing its products under Opposer's Marks.

Response: Applicant objects to this request as vague. Notwithstanding the foregoing objection, after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 22.

23. Applicant's Goods bearing Applicant's Marks will likely be offered in and through some of the same channels of commerce as Opposer's products bearing Opposer's Marks.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Notwithstanding the foregoing objection, after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 23.

24. Applicant's Marks are visually similar to Opposer's Marks.

Response: Denied.

25. Applicant's Marks are similar in sound to Opposer's Marks.

Response: Denied.

26. The term "deB" contained within Opposer's Marks, is similar in appearance to the term "DB", contained within Applicant's Marks.

Response: Denied.

27. The term "deB" contained within Opposer's Marks, creates a commercial impression similar to that created by the term "DB", contained within Applicant's Marks.

Response: Denied.

28. Applicant's Marks create a commercial impression similar to that created by Opposer's Marks.

Response: Denied.

29. The similarity of Applicant's Marks to Opposer's Marks is likely to result in confusion, to cause mistake or to deceive users and purchasers.

Response: Denied.

30. When Applicant's Marks are used with Applicant's Goods, confusion is likely to result with respect to Opposer's goods provided under Opposer's Marks.

Response: Denied.

31. Purchasers and users of Opposer's products sold under Opposer's Marks are likely to assume that Applicant's Goods sold under Applicant's Marks originate with or are endorsed by Opposer.

Response: Denied.

32. Purchasers and users of Applicant's Goods bearing Applicant's Marks are likely to assume that Applicant is associated with or related to Opposer.

Response: Denied.

33. Purchasers and users of Applicant's Goods bearing Applicant's Marks are likely to assume that Applicant's Goods are associated with or related to the goods of Opposer.

Response: Denied.

34. Applicant's Marks are confusingly similar to Opposer's Marks.

Response: Denied.

35. Purchasers and users familiar with Opposer's goods provided under Opposer's Marks are likely to believe that Applicant's Goods provided under Applicant's Marks are associated with or related to the goods of Opposer.

Response: Denied.

36. Purchasers and users familiar with Opposer's goods provided under Opposer's Marks are likely to believe that Applicant's Goods provided under Applicant's Marks are actually the goods of Opposer.

Response: Denied.

37. Purchasers familiar with Opposer's Marks are likely to confuse Opposer's Marks with Applicant's Marks and purchase Applicant's Goods sold under Applicant's Marks in the mistaken belief that they are purchasing goods originating from the same source as the goods bearing Opposer's Marks.

Response: Denied.

38. Purchasers familiar with Opposer's Marks are likely to confuse Opposer's Marks with Applicant's Marks.

Response: Denied.

39. Purchasers familiar with Opposer's Marks are likely to confuse Opposer's Marks with Applicant's Marks and purchase Applicant's Goods sold under Applicant's Marks in the mistaken belief that they are purchasing goods associated with, endorsed by or related to Opposer.

Response: Denied.

40. Purchasers and users of Applicant's Goods provided under Applicant's Marks are likely to assume that Opposer has expanded its fine jewelry, including diamonds, and timepiece lines to include Applicant's Goods.

Response: Denied.

41. Applicant's Marks are derived from the mark or trade-name "De Beers".

Response: Admitted.

42. De Beers LV's mission is to expand and develop the global consumer brand potential of the "De Beers" name, including in the United States.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Applicant also objects to this request as seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

43. DBSA has transferred and assigned to De Beers LV the worldwide rights to use the "De Beers" name and mark for luxury goods in consumer markets.

Response: Applicant objects to this as vague, ambiguous, and otherwise incomprehensible. Applicant also objects to this request to the extent it is overbroad, seeks information irrelevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

44. Applicant's Marks are designed to connote and build upon the history, goodwill, and business reputation of De Beers.

Response: Applicant objects to this as vague, ambiguous, and otherwise incomprehensible. Applicant also objects to this request as seeking information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

45. Applicant's Marks were not used in trade or commerce in the United States prior to 2002.

Response: Admitted.

46. Opposer has conducted business under the name "De Boule" in the United States since 1989.

Response: After reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 46.

47. Opposer has used the mark "De Boule" in trade or commerce in the United States since 1989.

Response: After reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 47.

48. Opposer has derived considerable commercial prestige and goodwill from the use of the mark "De Boulle" in trade or commerce in the United States.

Response: After reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 48.

49. Opposer has used the mark "De B" in trade or commerce in the United States since 2001.

Response: Applicant admits that Opposer has claimed before the USPTO that it has used its "De B" designation since 2001, and otherwise denies the allegations set forth in Request No. 49.

50. Opposer has used the mark "DB" in trade or commerce in the United States since 2001.

Response: Applicant admits that Opposer has claimed before the USPTO that it has used its "DB" designation since 2001, and otherwise denies the allegations set forth in Request No. 50.

51. The mark "De Beers" was not used in trade or commerce, in association with the sale of any goods or services in the United States prior to 2004.

Response: Applicant objects to this request as seeking information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence

52. The mark "De Boulle" is similar to the mark "De Beers".

Response: Denied.

53. The similarity of the marks "De Boulle" and "De Beers" is likely to result in confusion, to cause mistake or to deceive users and purchasers.

Response: Denied.

54. In 2004, DBCAG pled guilty to an Indictment pending in the United States District Court for the Southern District of Ohio, Case No. CR-2-94-019, admitting that it formed, joined and participated in a criminal conspiracy in violation of Title 15 U.S.C. § I (the "Anti-Trust Indictment").

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

55. DBCAG was sentenced to pay a \$10,000,000.00 fine for its conduct described in the Anti-Trust Indictment.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

56. Prior to DBCAG's 2004 guilty plea to the Anti-Trust Indictment, De Beers was unable to directly conduct business in the United States.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

57. De Beers did not conduct business in the United States until after DBCAG's 2004 guilty plea to the Anti-Trust Indictment.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

58. In or about 1945, the United States Department of Justice brought an action against De Beers for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

59. In or about 1957, the United States Department of Justice brought an action against De Beers for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

60. In or about 1973, the United States Department of Justice convened a grand jury to investigate criminal charges against De, Beers for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

61. In 1994 DBCAG was indicted in the United States for its participation in a criminal conspiracy in violation of Title 15 U.S.C. § 1.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

62. For approximately thirty (30) years prior to 2004, De Beers was under investigation by the United States Department of Justice for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

63. For approximately thirty (30) years prior to 2004, De Beers had a policy not to do business in the United States.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

64. For approximately thirty (30) years prior to 2004, De Beers did not conduct business in the United States.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

65. The *United Nations Report of the Panel of Experts on Sierra Leone. Diamonds and Arms, December 2000*, found that De Beers must accept some responsibility for the trade in so-called, "conflict diamonds," or "blood diamonds".

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

66. DBCM was incorporated in South Africa more than a century ago, and De Beers has had a long-standing business presence in South Africa.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

67. De Beers was associated with the apartheid-era regimes in South Africa.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

68. One or more of The De Beers Group has been sued in the United States for human rights abuses against victims of South Africa's apartheid-era regimes.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

69. De Beers has within the past fifteen years purchased so-called, "conflict diamonds," "blood diamonds", and/or other illicit diamonds which were mined in Angola.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

70. Within the past fifteen years, De Beers has been accused of purchasing so-called, "conflict diamonds," "blood diamonds" and/or other illicit diamonds which were mined in Angola.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

71. De Beers has within the past fifteen years purchased so-called, "conflict diamonds," "blood diamonds" and/or other illicit diamonds which were mined in Sierra Leone.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

72. Within the past fifteen years, De Beers has been accused of purchasing so-called, "conflict diamonds," "blood diamonds" and/or other illicit diamonds which were mined in Sierra Leone.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

73. Gary Ralfe Managing Director of the De Beers Group has publicly declared in 2005, that "De Beers is in no hurry to start doing business in America."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

74. Nicky Oppenheimer, has publicly declared: "I am chairman of De Beers, a company that likes to think of itself as the world's best known and longest running monopoly."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

75. Nicky Oppenheimer publicly declared in October 1999 that De Beers sets out, as a matter of policy, to break the commandments of the Sherman Act, and that De Beers makes no pretense that it is seeking to manage the diamond market, to control supply, to manage prices and to act collusively with its partners in the business.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

76. Nicky Oppenheimer has publicly declared that over the years De Beers has "been very careful not to have any business in the United States which would make it liable to American law."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

77. The legal issues facing De Beers in the United States have been extensively broadcast and published in interstate commerce over the past approximately 30 years.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

78. The legal issues facing De Beers in the United States have received extensive coverage in TV, broadcast and print media in the United States over the past 30 years.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

79. De Beers' alleged association with so-called, "conflict diamonds," "blood diamonds" and/or other illicit diamonds has received extensive coverage in TV, broadcast and print media in the United States since approximately 2000.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

80. Since 2002, De Beers has been accused of causing the relocation of thousands of Gana and Gwi 'Bushmen' from their ancestral land in the Central Kalahari Gaming Reserve as part of its mining practices.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

81. Public protests accompanied the opening of De Beers LV's first store in London.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

82. DBSA owns 100% of DBCM and controls its operations.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

83. DBSA owns 100% of DBCAG and controls its operations.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

84. The *Human Rights Watch Angola Report, 1994* found that: "The De Beers diamond cartel and other international dealers are buying gems mined in rebel-held territory in violation of Angolan law."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

85. Global Witness, the London-based human-rights group, published a report in October 1998 that showed - citing De Beers' own annual reports - how the cartel had pumped large amounts of money into the coffers of the Angolan UNITA rebels as the war escalated.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

86. Gary Ralfe Managing Director of the De Beers Group publicly declared at a press conference with Alrossa Company and De Beers on or about October 21, 1997: "You are absolutely right to say that in fact it is Unita that has over the recent few years been responsible for most of the production in Angola. One of the essential jobs that we De Beers (sic) carry out worldwide is to ensure that diamonds coming onto the markets do not threaten the overall price structure and therefore although we know (sic) direct relationship with Unita, there is no doubt that we buy many of those diamonds that emanate from the Unita-held areas in Angola, second hand on the markets of Antwerp and Tel Aviv. And as the diamond markets have weakened recently (inaudible)... in buying up this Angolan production which otherwise will be threatening the overall price structure has increased."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

87. That De Beers has purchased diamonds sourced by The Revolutionary United Front ("RUF") in Sierra Leone.

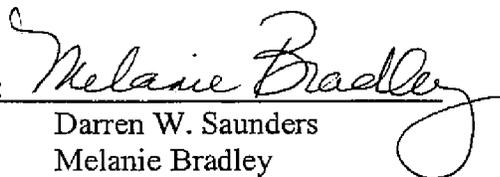
Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

Kirkpatrick & Lockhart Nicholson Graham LLP
Attorneys for Applicant

Dated: New York, New York
October 3, 2005

By:



Darren W. Saunders
Melanie Bradley
599 Lexington Avenue
New York, NY 10022-6030
Tel. No.: (212) 536-4063

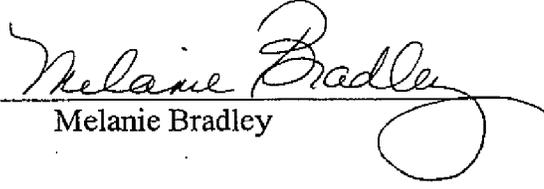
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS was served by First Class Mail, with sufficient postage prepaid, on this the 3rd day of October, 2005, upon applicant's attorneys:

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Dated: New York, New York
October 3, 2005

By 
Melanie Bradley

A. Applicant objects to the instructions, definitions, and document requests to the extent that they seek to impose duties over and above those required by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board.

B. Applicant objects to each document request to the extent that it seeks the disclosure of privileged communications and documents, attorney work product, or trial preparation material, including material prepared by or for counsel in anticipation of, or after the commencement of this action, on the ground that such discovery is not permissible under the Federal Rules of Civil Procedure.

C. Applicant objects to each document request to the extent that it is vexatious or seeks information and documents irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to each document request to the extent that it seeks information and documents which are unduly burdensome to obtain and to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

E. Applicant objects to each document request to the extent that it is ambiguous, vague, logically flawed or otherwise incomprehensible.

F. Applicant objects to each document request to the extent that it seeks a response which is duplicative of responses to one or more of Opposer's requests.

G. Applicant objects to each document request to the extent that it is overbroad, including each document request which asks for "any and all" documents of a particular category.

H. Applicant objects to each request to the extent that it requests information pertaining to Application Serial No. 78/140,378 for D AND B, which is not the subject of this Opposition.

I. In addition to the Objections set forth above, Applicant will also state other specific objections to each document request where appropriate, including objections that are not generally applicable to all of the document requests. By setting forth such specific objections, Applicant does not intend to limit or restrict the Objections set forth above. To the extent that Applicant responds to a document request to which they object, such objections are not waived. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

J. Where Applicant has indicated that requested information is of a confidential nature, but has offered to produce the same, such production is offered subject to the entry of a protective order to be entered by the Trademark Trial and Appeal Board concerning confidential documents and information produced during discovery.

K. The responses given herein, or the production of documents or tangible things by Applicant in response to any one or more of the document requests, shall not waive any claim of privilege or immunity Applicant may have as to any response, document or thing, or any question or right of objection as to competency, relevance, materiality or admissibility, or any objection Applicant may have as to a demand for further response to these or other requests.

L. Nothing contained herein may be construed as an admission relative to the existence or non-existence of any document, and no response is an admission respecting the relevance for admissible in evidence of any statement or characterization contained in any document request.

M. The responses to document requests, when made, will be made without waiver of, or prejudice to, any objections herein made or hereafter made, and all such objections are hereby expressly reserved.

N. Applicant's responses to the document requests may not be complete since discovery in this matter is ongoing. Applicant will not be limited by its responses herein if, as this matter progresses, Applicant gathers additional information responsive to the document requests or any request set forth therein.

O. These general objections are made to and are incorporated in each specific response herein without further reference. The insertion of specific objections in the response to any document request shall not be construed as a waiver of such objection in any other response.

RESPONSES

1. All documents and things which reflect, refer to, or relate in any way to the first use in commerce and first use in interstate commerce in the United States of Applicant's Marks on or in connection with each of Applicant's Goods.

Response:

Applicant objects to this request to the extent it is vague, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

2. If Applicant has not yet sold any goods bearing or in connection with Applicant's Marks in the United States, then produce representative documents, specimens and things which indicate, reflect, refer to, or relate in any way to Applicant's use of Applicant's Marks to identify Applicant's products in countries other than the United States, including without limitation documents identifying the dates of said use.

Response:

Applicant objects to this response as overbroad, unduly burdensome, irrelevant to the subject matter of this dispute, and not reasonably calculated to lead to the discovery of admissible evidence.

3. All documents and things which illustrate, describe, discuss, document, chart or otherwise refer to or relate to the conception, development, selection, adoption, use or intended use of Applicant's Marks, including without limitation all representative drawings, photographs, blueprints and samples of all marks considered and documents created during the development and selection of Applicant's Marks and of all marks considered as replacements or alternatives for Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, seeks information and documents irrelevant to the subject matter of this action, is vague, overbroad and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

4. Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation magazine and trade journal advertisements, brochures, reports, leaflets, print or broadcast advertisements, bulletins, point of purchase materials, trade letters, press releases or other documents or things relating to or displaying Applicant's Marks which have been distributed or displayed by or on behalf of Applicant to other persons or used in any way since the selection and adoption of Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, seeks information and documents irrelevant to the subject matter of this action, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

5. All documents and things which refer or relate to Applicant's application to register, or registration of, Applicant's Marks in any state of the United States or in the United States Patent and Trademark Office, and all amendments, office actions, examiner's amendments, responses to office actions, notices, declarations, specimens, or any other paper or document filed in connection with, or otherwise related to, said applications.

Response:

Applicant objects to this request to the extent it seeks information readily available to the public on the United States Patent and Trademark Office web site. Applicant further objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

6. All documents and things constituting, pertaining to, resulting from, referring to, or relating to, any study, search or investigation, opinion or request for opinion referring to or relating to Applicant's Marks, including without limitation all trademark and service mark search reports and results of any computer searches.

Response:

Applicant objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Applicant further objects to this request to the extent it is overbroad and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

7. All documents and things relating or referring to, or tending or relevant to show the registrability of Applicant's Marks.

Response:

Applicant objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Applicant further objects to this request to the extent it is vexatious, vague, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

8. All surveys, market studies, opinion polls or other sampling of attitudes or opinions concerning, referring to, or relating to Applicant's Marks or any of Applicant's Goods sold thereunder.

Response:

Applicant objects to this request to the extent it is vexatious, vague, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

9. All surveys, market studies, opinion polls, or other sampling of attitudes or opinions concerning, referring to, or relating to any of Opposer's Marks or products sold thereunder.

Response:

Applicant objects to this request to the extent it is overbroad and unduly burdensome. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

10. To the extent not otherwise produced, all documents and things showing, reflecting, referring or relating to Opposer or Opposer's Marks, including without limitation all documents relating to the circumstances surrounding Applicant becoming initially aware of Opposer's Marks.

Response:

Applicant objects to this request to the extent it is vague, ambiguous, overbroad and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

11. All documents which refer or relate to any and all investigations by Applicant into Opposer's Goods which are sold or provided under Opposer's Marks.

Response:

Applicant objects to this request to the extent it is overbroad and unduly burdensome. Notwithstanding the foregoing objection, documents responsive to this request will be produced to the extent Applicant is able to locate any following a reasonable search of its records.

12. All documents and things that were reviewed, considered, or discussed during the preparation or prosecution of Applicant's applications for United States trademark registration of Applicant's Marks, or any foreign applications which correspond in whole or in part to said U.S. application.

Response:

Applicant objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Applicant further objects to this request to the extent it is vague, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

13. All documents and things showing, reflecting, representing, or relating to the number of units sold and dollar volume of sales of goods or services in connection with Applicant's Marks, including all summaries, abstracts and compilations thereof.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB, subject to the entry of an appropriate protective order. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

14. All documents and things showing, reflecting, referring, or relating to the advertising and marketing expenditures relating to the sale or offering for sale of goods in connection with Applicant's Marks has been or will be used, including summaries, abstracts and compilations thereof.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB, subject to the entry of an appropriate protective order. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

15. Representative documents and things identifying the channels of distribution of the goods with which Applicant uses or intends to use Applicant's Marks, including without limitation the channels of trade through which Applicant offers, has offered or intends to offer same for sale under Applicant's Mark.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

16. Representative documents and things identifying the types or classes of potential or actual consumers, recipients and/or users of Applicant's Goods which are or will be sold under Applicant's Marks.

Response:

Applicant objects to this request to the extent it is confusing, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

17. To the extent not otherwise produced, all documents and things relating or referring to, showing, or reflecting Applicant's Goods with which Applicant uses or intends to use Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

18. All documents and things showing, reflecting, referring, or relating to the type or sophistication of Applicant's clients whom Applicant alleges are not likely to be confused by Applicant's Marks and Opposer's Marks.

Response:

Applicant objects to this request to the extent it is confusing, overbroad, and unduly burdensome. Applicant also objects to this request to the extent it is duplicative of Request No. 16.

19. All documents, agreements, correspondence, oppositions, complaints, pleadings, or other writings constituting, referring to, or relating to any assertions, interactions or claims by or against Applicant, or between Applicant and any other entity (other than Opposer), which in any way assert or claim that Applicant's Marks are similar to such entity's mark, that any such entity's mark is similar to Applicant's Marks, that Applicant's rights in Applicant's Marks are limited in any way due to the existence of such entity's mark, or that Applicant's rights in Applicant's Marks are extinguished in any way due to the existence of such entity's mark.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

20. All documents that refer or relate to any complaints related in any way to Applicant's goods bearing Applicant's Marks or to any of Applicant's Goods related thereto.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

21. All documents and things that refer or relate to any incidents of actual confusion between Opposer and Applicant or between Opposer's Marks and Applicant's Marks, including without limitation any such incidents involving persons inquiring or commenting about any relationship between Opposer and Applicant; incidents involving persons inquiring about or requesting products where there is any indication that such persons were confused or mistaken about the source of such products or the relationship of Opposer and Applicant; or any other incident involving a question about the relationship, source of goods, or other confusion of or between Opposer and Applicant or their respective marks.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

22. All documents disclosing persons to whom Applicant has sold Applicant's Goods under Applicant's Marks since the introduction of such goods.

Response:

Applicant objects to this request as vexatious, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this request as impermissibly seeking disclosure of confidential documents and information.

23. All documents which refer or relate to any plans of Applicant to expand, including, but not limited to, expansion of marketing lines, consumer base, or geographical areas served.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objection, Applicant will produce documents responsive to this request.

24. All documents which refer or relate to any acquisition of any rights in Applicant's Marks by Applicant.

Response:

Applicant objects to this request as ambiguous, vague, and otherwise incomprehensible. Notwithstanding the foregoing objections and to the extent Applicant understands this request, Applicant does not possess documents responsive to this request.

25. All documents which refer or relate to any authorization, license, franchise, contract, assignment or grant from Applicant to any other person or entity giving the other person or entity the right to use Applicant's Marks.

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

26. Representative documents which evidence the geographic extent to which Applicant has used or intends to use Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objections and to the extent Applicant understand this request, Applicant will produce documents responsive to this request.

27. All documents which refer or relate to any plans of Applicant to develop use of Applicant's Marks in connection with the sale of jewelry, watches and other items comprising Applicants' Goods.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

28. All documents, agreements, and correspondence constituting, referring to, or relating to any assertions, interactions, or claims by or between Applicant and any other entity which in any way involve, affect or purport to affect Applicant's ownership, title to, or rights in Applicant's Marks, including but not limited to any consent agreements relating to any oppositions to registration of Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

29. All documents not produced as part of your responses to these Requests, but which were referred in the preparation of, or otherwise identified in Applicant's answers to, Opposer's First Set of Interrogatories to Applicant in this cause.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

30. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain DBCAG's Indictment in the United States District Court for the Southern District of Ohio, in Case No. CR-2-94-019 (the "Anti-Trust Indictment").

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

31. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any strategy, plan or design by, or the ability of, De Beers to directly conduct business in the United States prior to 2004.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

32. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), in or about 1945.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

33. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), in or about 1957.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

34. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), in or about 1973.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

35. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), other than those referred to in Requests no's 32 through 34 above.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

36. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to lawsuits against one or more of the De Beers Group brought in the United States based, in whole or in part, on allegations of human rights abuses against victims of South Africa's apartheid-era regimes.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

37. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to lawsuits against one or more of the De Beers Group brought in the United States based, in whole or in part, on allegations of violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance).

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

38. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the source or origin of diamonds mined in Angola, purchased or otherwise acquired, directly or indirectly, by one or more of the De Beers Group.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

39. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the source or origin of diamonds or other gems mined in Sierra Leone, purchased or otherwise acquired, directly or indirectly, by one or more of the De Beers Group.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

40. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any deal, contract, agreement, or understanding, directly or indirectly, between De Beers and the Government of Botswana pertaining to the mining of diamonds and other gems in the Central Kalahari Gaming Reserve.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

41. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to contacts and communications, whether written or oral, between De Beers and the Government of Botswana pertaining to the mining of diamonds and other gems in the Central Kalahari Gaming Reserve.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

42. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any deal, contract, agreement, or understanding (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support), directly or indirectly, between De Beers and the Angolan UNITA rebels.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

43. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to contacts and communications (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support) whether written or oral, directly or indirectly, between De Beers and the Angolan UNITA rebels.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

44. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any deal, contract, agreement, or understanding (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support), directly or indirectly, between De Beers and the Revolutionary United Front ("RUF") in Sierra Leone.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

45. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to contacts and communications (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support), whether written or oral, between De Beers and The Revolutionary United Front ("RUF") in Sierra Leone.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

46. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the De Beers/LVMH Joint Venture.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

47. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV Trade Mark Limited;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV Trade Mark Limited;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV Trade Mark Limited;

(d) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (a) through (d) above.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

48. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV;

(d) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (a) through (d) above.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

49. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the business policy or practice of De Beers as articulated by its Chairman, Nicky Oppenheimer to be "very careful not to have any business in the United States which would make it liable to American law."

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

50. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and N.W. Ayer.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

51. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and JWT.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

52. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain, directly or indirectly, to any claim or allegation that De Beers has violated the Sherman Act, or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance.

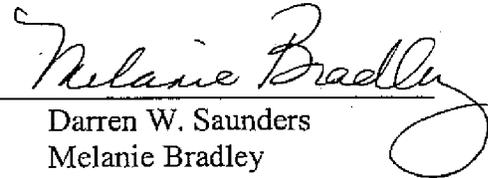
Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

Kirkpatrick & Lockhart Nicholson Graham LLP
Attorneys for Applicant

Dated: New York, New York
October 3, 2005

By: 

Darren W. Saunders
Melanie Bradley
599 Lexington Avenue
New York, NY 10022-6030
Tel. No.: (212) 536-4063

CERTIFICATE OF SERVICE

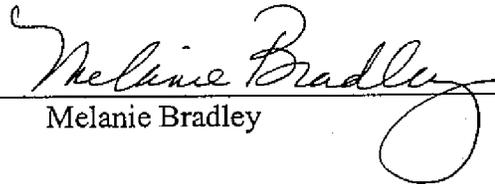
I hereby certify that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF DOCUMENT REQUESTS was served by First Class Mail, with sufficient postage prepaid, on this the 3rd day of October, 2005, upon applicant's attorneys:

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Dated: New York, New York
October 3, 2005

By


Melanie Bradley

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

Atty. Ref. No.: 0820278.0103

-----	X
DEBOULLE DIAMOND & JEWELRY, INC.,	:
	:
<i>Opposer,</i>	:
	:
v.	:
	:
DE BEERS LV LTD.,	:
	:
<i>Applicant.</i>	:
-----	X

Consolidated Opposition
No. 91165285

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Applicant De Beers LV Ltd., hereby responds to Opposer's First Set of Interrogatories to Applicant as follows:

GENERAL OBJECTIONS

Applicant hereby makes the following objections to Opposer's First Set of Interrogatories:

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OCT - 6 2005
Raleigh I.P.

A. Applicant objects to the instructions, definitions, and interrogatories to the extent that they seek to impose duties over and above those required by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board.

B. Applicant objects to each interrogatory to the extent that it seeks the disclosure of privileged communications and documents, attorney work product, or trial preparation material, including material prepared by or for counsel in anticipation of, or after the commencement of this action.

C. Applicant objects to each interrogatory to the extent that it is vexatious or seeks information and documents irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to each interrogatory to the extent that it seeks information and documents which are unduly burdensome to obtain and to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

E. Applicant objects to each interrogatory to the extent that it is ambiguous, vague, logically flawed or otherwise incomprehensible.

F. Applicant objects to each interrogatory to the extent that it seeks a response which is duplicative of responses to one or more of Opposer's interrogatories.

G. Applicant objects to each interrogatory to the extent that it is overbroad, including each interrogatory which asks for "any and all" documents of a particular category.

H. Applicant objects to each interrogatory to the extent that it requests information pertaining to Application Serial No. 78/140,378 for D AND B, which is not the subject of this Opposition.

I. In addition to the Objections set forth above, Applicant will also state other specific objections to each interrogatory where appropriate, including objections that are not generally applicable to all of the interrogatories. By setting forth such specific objections, Applicant does not intend to limit or restrict the Objections set forth above. To the extent that Applicant responds to an interrogatory to which they object, such objections are not waived. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

J. Where Applicant has indicated that requested information is of a confidential nature, but has offered to produce the same, such production is offered subject to the entry of a protective order to be entered by the Trademark Trial and Appeal Board concerning confidential documents and information produced during discovery.

K. The responses given herein, or the production of documents or tangible things by Applicant in response to any one or more of the interrogatories, shall not waive any claim of privilege or immunity Applicant may have as to any response, document or thing, or any question or right of objection as to competency, relevance, materiality or admissibility, or any objection Applicant may have as to a demand for further response to these or other interrogatories.

L. Nothing contained herein may be construed as an admission relative to the existence or non-existence of any document, and no response is an admission respecting the relevance for admissible in evidence of any statement or characterization contained in any interrogatory.

M. The responses to interrogatories, when made, will be made without waiver of, or prejudice to, any objections herein made or hereafter made, and all such objections are hereby expressly reserved.

N. Applicant's responses to the interrogatories may not be complete since discovery in this matter is ongoing. Applicant will not be limited by its responses herein if, as this matter progresses, Applicant gathers additional information responsive to the interrogatories or any interrogatory set forth therein.

O. These general objections are made to and are incorporated in each specific response herein without further reference. The insertion of specific objections in the response to any interrogatory shall not be construed as a waiver of such objection in any other response.

RESPONSES

1. Identify the individual(s) responding to these interrogatories or to Opposer's First Set of Requests for Production of Documents and Things or who contributed information used in responding to these interrogatories or to Opposer's First Set of Requests for Production of Documents and Things.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant identifies Amanda Fogg, as responding to these Interrogatories.

2. For each Request for Admission served upon Applicant and denied, specify with particularity each and every fact that you rely on to support such denial and identify all documents that support or relate to such allegations.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome.

3. Indicate Applicant's country of incorporation, and any U.S. states or foreign countries where it intends to provide Applicant's Goods under Applicant's Marks.

Response:

Applicant objects to this interrogatory to the extent it seeks information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, Applicant De Beers LV Ltd. is a corporation organized and existing under the laws of the United Kingdom. Within the United States market (the only relevant market at issue in this proceeding), Applicant intends to use its Marks nationally.

4. Identify all individuals currently or formerly employed by the Applicant, who were involved in the decision to select and register each of Applicant's Marks for use with Applicant's Goods.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant hereby identifies Jean-Christophe Gaudon as being knowledgeable about the decision to select Applicant's Marks for use with Applicant's Goods.

5 Describe in detail the process by which the Applicant selected and applied to register each of Applicant's Marks for use with Applicant's Goods, including the following:

- (a) the date (or approximate date) Applicant first considered adoption of the Mark;
- (b) the date (or approximate date) Applicant decided to adopt the Mark;
- (c) the date, location and attendees of any meetings or discussions held by Applicant at which the consideration, selection, approval or adoption of the Mark was discussed; and
- (d) identify all documents relating or referring to the meeting or discussion.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant will provide documents sufficient to identify the information requested in Interrogatory No. 5.

6. Identify each mark, name or symbol ever considered by Applicant as an alternative to the selection, adoption, acquisition, or use of each of Applicant's Marks and for each such alternative:

- (a) state the date and place when such alternative was considered;
- (b) state the persons who were present at such consideration;
- (c) state the persons who suggested such alternative;
- (d) state the reasons why such alternative was not adopted; and
- (e) identify all documents relating or referring to the alternative term, name or symbol

Response:

Applicant objects to this interrogatory as vexatious, overbroad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

7. Has any person ever recommended or advised against Applicant's acquisition, adoption or use of any of Applicant's Marks?

Response:

Applicant objects to this interrogatory to the extent it seeks the disclosure of privileged information. Notwithstanding the foregoing objection, Applicant was not so advised.

8. If the answer to Interrogatory 7 is anything by an unqualified negative, then:

- (a) identify each such person;
- (b) state the date, Mark, and substance of such advice or recommendation;
- (c) identify each person receiving such advice or recommendation; and
- (d) identify all documents referring or relating to such advice or recommendation.

Response:

See Response to Interrogatory No. 7, which is incorporated herein by reference.

9. Identify when each of Applicant's Marks were first used in interstate commerce in the United States; or if any of Applicant's Marks have not yet been used in commerce, when Applicant intends to use such Mark in interstate commerce in the United States.

Response:

Applicant commenced use of DB SIGNATURE in the United States on June 23, 2005. Applicant commenced use of SO DB in the United States on June 25, 2005. Applicant has not commenced use of DB LOGO, DB MONOGRAM or DB STAR in the United States. Applicant intends to use DB LOGO, DB MONOGRAM and DB STAR within the next two years.

10. Identify each type of Applicant Good(s) made, sold or offered for sale by Applicant using trademarks other than Applicant's Marks and what trademarks were used and the general or common name or term used to denote the Applicant's Good(s).

Response:

Applicant objects to this interrogatory as vexatious, confusing, overbroad, unduly burdensome and seeking information irrelevant to the subject matter of this action.

11. Identify each person who participated, participates or anticipates participating in any way in the sale, advertisement or marketing of Applicant's Goods under Applicant's Marks, and for each such person state:

(a) the Mark, and date upon which each such person began/will begin such participation; and

(b) the period of time by dates during which each such person performed/will perform said participation; and

(c) how such person participated/will participate in the sale, advertisement or marketing of products or services sold under the Mark.

Response:

Applicant objects to this interrogatory as vexatious, overbroad, unduly burdensome and seeking information irrelevant to the subject matter of this action. Notwithstanding the foregoing objection, Applicant identifies Fabrice Paget, Director of Marketing and Communications, as generally knowledgeable about the sale, advertisement and marketing of Applicant's Goods under Applicant's Marks.

12. Identify all documents which comprise, relate to or refer to any plans, projections, market strategies or estimates of the number or dollar value of sale of Applicant's Goods under each of Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Notwithstanding the foregoing objections, responsive documents, to the extent Applicant is able to locate any following a reasonable search of its records, will be produced as indicated in Applicant's Response to Opposer's First Set of Requests for Production of Documents and Things to Applicant, subject to the entry of an appropriate protective order.

13. Describe in detail each and every reason why Applicant contends that use of each of Applicant's Marks are not likely to cause a likelihood of confusion with each of Opposer's Marks.

Response:

Applicant objects to this interrogatory to the extent that it seeks the disclosure of privileged communications, attorney work product, or trial preparation material. Notwithstanding the foregoing objection, there is no likelihood of confusion between Applicant's Marks and Opposer's Marks for reasons including, but not limited to, the differences in the Marks and channels of distribution, and the sophistication of purchasers of upscale jewelry items.

14. Identify the date Applicant first became aware of each of Opposer's Marks, how Applicant became aware of such Mark, and what steps Applicant took to avoid any likelihood of confusion that could potentially be caused by any Mark owned, claimed, or designed by Applicant, after becoming aware of such Mark.

Response:

Applicant first became aware of Opposer's Mark on August 4, 2005 when it received the Notice of Opposition to Application No. 78/245,779 for DB MONOGRAM.

15. Identify all applications filed by Applicant anywhere in the world which have sought trademark registration of any of Applicant's Marks.

Response:

Applicant objects to this interrogatory as vexatious, overbroad, unduly burdensome, seeking information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

16. Identify each federal or state registration or application by or on behalf of Applicant covering a mark consisting or including each of Applicant's Marks, and with respect to each such registration or application state:

- (a) its serial, registration or application number, the date of filing, and any date of issue, and where applicable, indicate each state or geographical area of the application or registration;
- (b) identify the goods or services specified therein;
- (c) indicate its present status; and
- (d) identify all documents relating thereto.

Response:

Applicant object to this request to the extent it seeks information readily available to the public on the United States Patent and Trademark Office web site. Applicant further objects to this request to the extent it is confusing, overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, Applicant will provide documents sufficient to identify the information requested in Interrogatory No. 16.

17. Describe in detail any instances of actual or possible confusion, mistaken identity or mistaken relationship between Opposer and Applicant or between Opposer's Marks and Applicant's Marks (including without limitation any such incidents involving persons inquiring or commenting about any relationship between Opposer and Applicant, and incidents involving persons inquiring about or requesting products where there is any indication that such persons were confused or mistaken about the source of such products or a relationship between Opposer and Applicant), and identify the dates and all persons Applicant is aware of that can offer any evidence, information and/or testimony of any such actual or possible confusion.

Response:

Applicant has not encountered any instances of actual or possible confusion.

18. Identify all persons with whom Applicant has entered into any agreements concerning authorization to use any of Applicant's Marks.

Response:

Applicant objects to this interrogatory to the extent it is vexatious, seeks information and documents irrelevant to the subject matter of this action, is vague, overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant has granted an oral license to De Beers LV (USA) to use Applicant's Marks in the United States.

19. Describe all communications, including but not limited to all telephone conversations, letters, or emails relating to any opinion from legal counsel that Applicant has obtained concerning its rights to use each of Applicant's Marks as a trademark in connection with fine jewelry, including diamonds, and timepieces.

Response:

Applicant objects to this interrogatory as seeking information subject to the attorney-client privilege. Notwithstanding the foregoing objection, Applicant will provide relevant non-privileged documents sufficient to identify the information requested in Interrogatory No. 19, to the extent there are any.

20. Identify each advertising, marketing or promotional item created by or on behalf of Applicant using or containing each of Applicant's Marks ever commissioned, produced, published, broadcast or displayed, including without limitation advertisements in newspapers and magazines, advertisements in trade journals, catalogs, handbills, promotion flyers, sales literature brochures, tags, labels, containers or other packaging materials, and for each such advertisement state the date on which such advertisement was commissioned, produced, published or displayed.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Notwithstanding the foregoing objections, Applicant will provide documents sufficient to identify the information requested in Interrogatory No. 20, to the extent Applicant is able to locate any following a reasonable search of its records.

21. With respect to the De Beers/LVMH Joint Venture, please identify with specificity and in detail:

(a) the parties, date and particulars of each deal, contract, agreement, or understanding pertaining or relating thereto;

(b) each constituent document or instrument (certificate of formation, or its equivalent, partnership agreement, or its equivalent, etc.) pertaining or relating to each entity formed or organized pursuant to its terms;

(c) name, address, telephone number, and relationship to you of each of each party or participant, of each of the documents or instruments identified in your response to (a) and (b);

(d) the parties, date and particulars of each modification or amendment to the documents or instruments identified in your response to (a) and (b);

(e) identify any and all documents or tangible things which evidence, refer, or relate to your answers to (a) through and (d) above;

(f) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (a) through (e) above.

Response:

Applicant objects to this interrogatory as vexatious, seeking information and documents irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

22. For De Beers LV Trade Mark Limited, please state:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV Trade Mark Limited;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV Trade Mark Limited;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV Trade Mark Limited;

(d) identify any and all documents or tangible things which evidence, refer, or relate to your answers to (a) through and (c) above;

(e) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (d) above.

Response:

Applicant objects to this interrogatory as vexatious, seeking information and documents irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

23. For De Beers LV Ltd. please state:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV;

(d) identify any and all documents or tangible things which evidence, refer, or relate to your answers to (a) through and (c) above;

(e) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (d) above.

Response:

Applicant objects to this interrogatory to the extent it is vexatious, duplicative, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, Applicant herewith identifies Guy Leymarie, CEO and Amanda Fogg, Legal Counsel and Company Secretary as officers of De Beers LV Ltd.

24. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and N.W. Ayer, including but not limited to the dates of communication, the means of communication, the persons communicating, and the purpose of any such communication.

Response:

Applicant objects to this interrogatory to the extent it is vexatious, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

25. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and JWT, including but not limited to the date of communication, the means of communication, the persons communicating, and the purpose of any such communication.

Response:

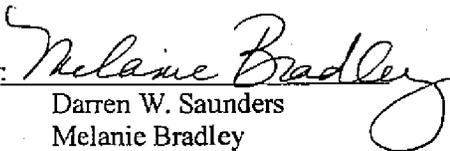
Applicant objects to this interrogatory to the extent it is vexatious, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

As to the Objections:

Kirkpatrick & Lockhart Nicholson Graham LLP
Attorneys for Applicant

Dated: New York, New York
October 3, 2005

By: 
Darren W. Saunders
Melanie Bradley
599 Lexington Avenue
New York, NY 10022-6030
Tel. No.: (212) 536-4063

As to the Interrogatories:

De Beers LV Ltd.

Dated: October 3, 2005

By: 
Name: Amanda Fogg
Title: Legal Counsel & Company Secretary

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES was served by First Class Mail, with sufficient postage prepaid, on this the 3rd day of October, 2005, upon applicant's attorneys:

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Dated: New York, New York
October 3, 2005

By Melanie Bradley
Melanie Bradley