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

BIG O TIRES, LLC,

Opposer,

v.

WHEEL SPECIALTIES, LTD.,

Applicant.

78 264280

Opposition No. 91163791

NOTICE OF RELIANCE

Pursuant to 37 C.F.R. §2.120(j), Opposer, Big O Tires, LLC, hereby submits, and gives notice of its reliance on, certain of Applicant's responses to Opposer's written discovery.

Attached hereto are Opposer's written discovery and Applicant's discovery responses indicated below at the Exhibit Number specified below.

The following table indicates the identity of the applicable discovery response document (e.g., Applicant's Response to Opposer's First Set of Interrogatories), the specific response number and the corresponding Trial Exhibit Number:

Identity of Discovery Response Document	Specific Response Numbers	Trial Exhibit No
Opposer's First Set of Interrogatories	n/a	36
Opposer's Requests for Admissions to Applicant	n/a	37
Opposer's First Request for Production of Documents	n/a	38
Wheel Specialties, Ltd.'s Response to Opposer's First Set of Interrogatories	10, 23	39



06-09-2008

Identity of Discovery Response Document	Specific Response Numbers	Trial Exhibit No
Applicant's Response to Opposer's Requests for Admission	6 – 8, 10, 11, 15 – 17, 19, 20, 24 – 26, 28 – 30, 32, 34 – 37, 39 – 41, 43 – 45, 47, 49, 52 – 54, 62 – 64, 78 – 80, 87, 89 – 93, 98, 99, 108, 113 – 118, and 120 – 126.	40
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Respectfully submitted,

BIG O TIRES, LLC

By: _____



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June 9, 2008



CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2008, the foregoing NOTICE OF RELIANCE, in connection with the above opposition proceeding, was served on Applicant by first class mail, postage pre-paid, to the following counsel:

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NOTICE OF RELIANCE

Exhibit 36

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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BIG O TIRES, INC.,

Opposer,

vs.

WHEEL SPECIALTIES, LTD.,

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OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33, and Rule 2.120 of the Trademark Rules of Practice, Opposer requests that Applicant answer, in writing and under oath, the interrogatories propounded below. Such responses must be made within thirty (30) days of service of these interrogatories, in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

INTRODUCTION AND DEFINITIONS

A. As used herein, the term "person(s)" includes not only natural persons, officers, managing agents, supervisory personnel, and employees, but also includes, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.

B. "Opposer" shall mean the nominal Opposer, Big O Tires, Inc. [hereinafter "Big O" or "Opposer"], and any predecessor(s) or successor(s) in interest, subsidiaries, divisions, franchisees and related companies, directors, officers and employees thereof.

C. "Applicant" shall mean the nominal Applicant, Wheel Specialties, Ltd., as well as any predecessor(s) or successor(s) in interest, and any partnership and/or corporation in which Wheel

Specialties, Ltd., has an ownership interest and/or controls and which uses the opposed mark in any way, as well as all divisions, licensees, parent, subsidiary, affiliated or related companies thereof, and the partners, principals, directors, officers, agents and employees thereof. When an answer is supplied with respect to any predecessor or successor in interest, division, licensee, parent, subsidiary, affiliated or related company, this fact should be stated and such predecessor in interest, division, licensee, parent, subsidiary, affiliated or related company should be fully identified by name and principal place of business.

D. As used herein, the term "Opposer's Mark" shall refer individually and/or collectively to the marks/application/registrations pleaded in the Notice of Opposition, including, or in addition to, BIG O, BIG O TIRES, BIG FOOT, BIGFOOT COUNTRY, BIG HAUL, BIG LIFT, and any term incorporating "BIG" in any and all formats, used alone or in combination with any other word(s) or design(s), or symbol(s) and/or any other term or designation comprised in whole or in part of "BIG" as used by or on behalf of Opposer.

E. As used herein, the term "Applicant's Mark" refers to the mark of the opposed application and/or any other mark, name, or designation containing the term "BIGG", in any and all forms and formats, used alone or in combination with any other word(s), design(s) or symbol(s).

F. As used herein, the term "document" is used in its broadest sense, to include, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy; including but not limited to, communications, including intra-company communications and correspondence; cablegrams,

radio-grams and telegrams; facsimiles; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; e-mails; reports; customer lists; books, manuals, publications and diaries; laboratory engineering reports; reports of test results; notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; customer surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; instruction manuals; user manuals; computer software; web pages; Internet data and downloads; computer diskettes; computer hard drive; compact discs; computer tapes; graphics, and other data fixed or recorded by electronic means; databases; audio tapes; audio cassettes; video tapes; video cassettes; video discs; films; operation manuals; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for television commercials; circulars; trade letters; press publicity and trade and product releases; product descriptions; drafts of original or preliminary notes on, and marginal comments appearing on, any document; applications for approval by a governmental agency; other reports and records; and any other information-containing paper, writing or physical thing.

G. As used herein, "communication" is used in its broadest sense, to include, without limitation, the following:

- (1) any document, as defined hereinabove; and
- (2) any conversation, discussion, dialogue, conference, report, message, account, interview, exchange, and/or consultation, whether oral, written, or electronic.

H. "Identify" or "identification" with respect to a person, means provide the person's:

- (1) name;
- (2) last known residential address;
- (3) last known business address;
- (4) last known employer or business affiliation; and
- (5) occupation and business position held.

I. "Identify" or "identification" with respect to a company, partnership, firm, corporation or other non-juristic person, shall mean provide:

- (1) the name;
- (2) if incorporated, the place of incorporation;
- (3) if unincorporated, the name of the partners and/or principals; and
- (4) the address of such entity's principal place of business.

J. "Identify" or "identification" with respect to a document, shall mean provide:

- (1) the identity of the person or persons who prepared it, the sender, and all recipient(s), if any;
- (2) the title of the document;
- (3) a description of the general nature of its subject matter(s);
- (4) the date of preparation;
- (5) the date and manner of distribution and publication, if any;
- (6) the location of each copy, and the identity of the present custodian; and
- (7) the identity of the person or persons who can identify and/or authenticate it.

K. "Identify" or "identification" with respect to an act, occurrence, circumstance, or event (collectively "act"), shall mean providing:

- (1) a description of the act;
- (2) the date(s) the act occurred;
- (3) where the act occurred;
- (4) the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
- (5) the identity of all persons who have any knowledge or information, about or regarding the act, including the identity of each witness to the act;
- (6) when the act, or omission, first became known to Applicant; and
- (7) the circumstances and manner in which knowledge of the act was first obtained by Applicant.

L. "Identify" or "identification" with respect to goods, products, or services shall mean:

- (1) state the common descriptive name of said good, product or service;
- (2) state the model number, identify the manufacturer and location of manufacture thereof;
- (3) provide a detailed description of the purpose, function, and/or application of said good, product or service; and
- (4) describe in detail the channels of trade in which such product or service is sold and/or rendered.

M. “Identify” or “identification” with respect to a search (including but not limited to trademark searches), survey, poll, or other investigation (collectively “search”) shall mean:

- (1) state the date and location of the search;
- (2) identify and describe all documents examined or investigated in connection with the search;
- (3) if applicable, state the size of the sample surveyed, how that sample was selected, and the questions asked;
- (4) identify each person(s) who conducted the search;
- (5) state all results and conclusions of the search, including, if applicable, each answer to each question posed;
- (6) with respect to a search or similar investigation, identify each reference disclosed by providing the mark or name which is the subject of such reference, the owner of the mark or name, the registrant or applicant, the registration or serial number, and the goods and services listed in, or in connection with, such reference;
- (7) identify each person who rendered any conclusions or opinion relating to such search;
- (8) identify each person to whom the results, in whole or in part, of such search and/or any conclusion or opinion relating to such search, were communicated, and the date(s) of such communication;
- (9) identify each person who has knowledge or information with respect to the search; and

(10) identify all documents which contain any results of, and/or refer or relate in any way to, such search.

N. "Advertising" and/or "promotional materials" shall mean, without limitation, advertisements, including advertising copy, advertising slicks, and line art; product packaging, labels, brochures, photographs, product sheets, point of sale displays, audio or video tapes; catalogues or other product guide books; signage, price lists, warranty information, Internet sites, web sites and/or pages, and/or any other document or material used and/or distributed to promote and/or solicit business, shipments, sales, and/or orders of products or services of Applicant.

O. "Identify" or "identification" with respect to "channels of trade" with respect to a product or service shall mean, without limitation:

(1) describe the circumstances surrounding the sale, distribution and/or rendition of such product/service; and

(2) state whether sales are through any one, or more, of the following means:

- (a) retail,
- (b) wholesale,
- (c) direct mail,
- (d) electronic commerce,
- (e) visits by salespersons,
- (f) direct contact with customers,
- (g) provision of sample goods or services,
- (h) trade shows,

- (i) other means, and if so, describe the nature of the sale,
- (j) any combination of the above sub-sections (a) through (I) inclusive,

of this definition, and if so, identify the applicable channels.

P. As used herein, "media" or "medium" shall be construed to comprise newspapers, consumer magazines, trade publications, trade shows, catalogues, and any means of audio, video, and/or electronic transmission, and "identify" or "identification" with respect to "media" or "medium" shall mean, without limitation:

(1) provide, for each print medium: the name of the publication or print media; the date; volume number; geographical area and size of circulation; and if directed to a particular trade, industry, or type of reader/customer, describe such trade/ industry/reader;

(2) provide, for each audio and video transmission (including radio and television): the station and/or network on which such transmission was broadcast; the geographical area of broadcast; and the date of each broadcast.

(3) provide, for each direct mailing or other direct distribution (including electronic mailings): the geographic area and dates of such distribution; the number of such mailings/direct distributions sent or disseminated; a general description of the persons to whom distributed; and if a mailing list was used, the source and identification of each such mailing list.

(4) identify, for each medium referring or relating in any way to Applicant's products or services, the specifically referenced product(s) or service(s) and mark(s) therefor; and

(5) identify the persons employed or associated with Applicant who have most knowledge of same.

Q. “Identify” or “identification” with respect to any advertisement or promotional materials shall mean:

(1) identify the medium in which such advertisement/promotional material was published, broadcast or otherwise disseminated;

(2) identify each person who created, ordered, distributed and/or placed such advertisement;

(3) state where, when, and to whom said advertisement or promotional material, and/or copies of same, were distributed, and the number of copies distributed at each such place and time; and

(4) identify documents which would show when and where the advertisement was placed/broadcast/distributed and the costs thereof, including an identification of the advertisement itself.

R. “Identify” or “identification” with respect to any objection or complaint regarding the use of a name or mark, lawsuit, opposition, cancellation, or other *inter partes* proceeding, shall mean identify:

(1) the person making the objection or complaint and/or on whose behalf the objection or complaint was made and/or who brought such lawsuit, opposition, cancellation or other *inter partes* proceeding;

(2) the date when such objections, complaint, lawsuit, opposition, cancellation or other proceeding was made and/or instituted;

(3) with respect to any lawsuit or proceeding, the parties thereto;

- (4) the civil action or docket number and/or other identifying indicator used by the tribunal before whom such was brought;
- (5) the court or other tribunal before whom the proceeding was brought;
- (6) the trademark(s) and/or service mark(s) at issue; and
- (7) the disposition and/or resolution of such objection, complaint or proceeding.

S. “Identify” or “identification” with respect to a retail outlet or store shall mean:

- (1) the retail outlet or store name;
- (2) the address of the retail outlet or store;
- (3) the owner(s) of the retail outlet or store;
- (4) the date on which the retail outlet or store was first opened to the public; and
- (5) to identify the products, services, and business offered or rendered by or from

such retail outlet or store.

T. “Identify” or “identification” with respect to an agreement, an assignment, license, understanding, or other contract or grant or transfer of rights, (collectively “agreement”) shall mean:

- (1) identify the type of agreement — i.e. “assignment,” “license,” “consent to use,” “distributorship agreement,” etc.;
- (2) state the date and term of duration of the agreement, and whether such still is in effect;
- (3) identify the geographic scope of the agreement;
- (4) identify the parties to the agreement;
- (5) state whether the agreement is oral or in writing;

(6) describe in detail any rights and/or property transferred by the agreement, including whether the goodwill in any business, in whole or in part, was transferred as part of, or in connection with, the agreement and, if so, describe in detail the nature and extent of any goodwill assigned, licensed, granted, or transferred;

(7) if the agreement is a trademark or service mark license, identify the manner of control which is, or was, to be exercised with respect to the quality and character of the goods or services, on or in connection with which any affected mark was to be, or has been, used under such agreement;

(8) state whether the assignor, licensor, grantor, transferor still was doing business at the time of the assignment, license, understanding, grant, transfer;

(9) state whether the assignment/grant/transfer was one in bankruptcy;

(10) state whether the agreement was recorded in the Patent and Trademark Office or any other public record and, if so, state the date and place of such recordation(s);

(11) state in detail the conditions and terms of such agreement;

(12) identify all documents which evidence or refer or relate in any way to such agreement, including the agreement itself, if in writing;

(13) identify each person who drafted and/or participated in any way in the negotiations and/or drafting of the agreement, and/or who approved the same; and

(14) identify each person involved in or who has participated in the enforcement and/or execution of the agreement.

U. “Identify” or “identification” with respect to “expert witness,” shall mean, without limitation:

- (1) identify such person;
- (2) describe the qualifications for such expert;
- (3) identify all articles, books or other publications authored in whole or in part by such expert;
- (4) identify all documents which such expert has reviewed and/or upon which such expert may rely in connection with his or her testimony; and
- (5) provide all of the information set forth in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

V. “Identify” or “identification” with respect to a trademark or service mark registration or application shall mean:

- (1) the identification of the agency or office where filed, when filed, and/or who issued such registration;
- (2) the names of the applicant and registrant;
- (3) the serial and registration number;
- (4) the filing and issue date(s);
- (5) the present status thereof;
- (6) if registration was refused, the reason(s) for such refusal;
- (7) identify all documents referring to such registration/application filed in connection with such registration or application including the registration/application itself.

(8) identify whether any assignment or other documents have been received, and if so, what and when in connection with such registration application.

W. “Identify” or “identification” with respect to an instance of confusion or mistake and/or an instance where a person thought, arrived or otherwise indicated a belief there may be an association between the parties herein and/or other products or businesses means state:

- (1) the identity of the person(s) confused or mistaken;
 - (2) the details of such event, including the “mistake” made and the substance of the “confusion;”
 - (3) the date and place of such event and/or instance of mistake or confusion;
 - (4) a description of the details of the manner in which such confusion, mistake, belief, assumption or indication was communicated or came to the attention of Applicant;
 - (5) the details of the response or communication, if any, made by or on behalf of Applicant, directly or indirectly, to the person so confused or mistaken or who communicated such confusion or mistake to Applicant;
 - (6) the identity of each person having knowledge of such confusion or mistake;
- and
- (7) the identity of all documents and communications which refer or relate in any way to such confusion or mistake.

X. As used herein, “and” or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

Y. As used herein, “referring or relating to” means comprising, relating to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

Z. If Applicant is aware that a document or a group of documents once existed, but has been destroyed, in addition to the identification of the document as described herein, Applicant also is requested to state when the document or group of documents was destroyed, who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

AA. With respect to each document withheld on the ground of a claim of attorney privilege, identify such document in accordance with these definitions and instructions, and state in detail the basis and nature of such claim of privilege.

BB. These interrogatories shall be deemed to be continuing, requiring Applicant to serve upon Opposer amended or supplemental answers promptly after Applicant has acquired additional knowledge or information relating in any way to such interrogatories.

CC. With respect to any interrogatory which is asserted to be overbroad, or unduly burdensome, state all information requested which can be provided without undue burden, and/or which is relevant or might lead to the discovery of admissible evidence.

DD. Unless otherwise indicated, all discovery requests should be interpreted as referring to activities within the United States and/or interstate commerce and/or commerce which is regulatable by the Congress.

INTERROGATORIES

1. State the earliest date on which Applicant will rely in this proceeding to establish any rights in Applicant's mark *vis-a-vis* Opposer, and state in detail the basis for Applicant's claim of rights in Applicant's mark as of that date, including:

(a) a description of the manner of use of Applicant's mark as of that date (i.e., imprinted on the goods, on labels or tags for the goods, on packaging for the goods, in store displays, etc.);

(b) the identity of each person involved in any way in such use, including, but not limited to the identity of each witness who can testify on personal knowledge as to such use;

(c) the identification of each product and/or service in connection with which the mark was used on that date; and

(d) the identification of each document which evidences or supports such claim of use as of that date.

2. Identify each product and/or service with which Applicant's mark has been used, and with respect to each such product and/or service identify:

(a) the period of time during which Applicant's mark has been used with said product and/or service (*i.e.*, the date of Applicant's first sale of the product bearing Applicant's mark to the date of Applicant's last sale);

(b) if the use was by a person other than Applicant, identify that person, and state in detail the basis upon which Applicant claims such use inures, or will inure, to its benefit;

(c) the sales, on an annual basis, in terms of dollar volume and units, of such product and/or service from the date of first use of Applicant's mark in connection with such product and/or service, through the present;

(d) each price charged and/or to be charged by and/or paid to Applicant for such products and/or service; and

(e) each state in which such product and/or service has been or is intended to be sold under or in connection with Applicant's mark.

3. Identify each survey, search or other investigation conducted and/or obtained with respect to Opposer's Mark, Applicant's mark, the term "BIGG" or "BIG" as used as a trademark or part of a trademark, and/or the actual, potential, or intended market, and/or the actual, potential, or intended customers of, or consumers for, the goods to be offered for sale and/or sold under or in connection with any of Opposer's Mark and/or Applicant's mark.

4. (a) State the annual volume of advertising under and/or in connection with Applicant's mark in connection with the goods set forth in the opposed application for each year since such advertising commenced.

(b) Identify each medium in which Applicant's mark has been or is intended to be listed, advertised, promoted, offered for sale and/or sold, and/or in which the products sold under Applicant's mark have been listed, advertised, promoted, offered for sale and/or sold.

5. Identify each broker, sales representative, licensee, franchisee, dealer, distributor, wholesaler, each retail outlet, trade show, catalog, and Internet web site and/or other electronic means, to and/or through which Applicant's goods have been or are intended to be advertised, promoted, offered for sale, distributed and/or sold, under or in connection with Applicant's mark.

6. For each product and service in connection with which Applicant is using or intends to use Applicant's mark, identify, in detail, the channels of trade through which such products and/or services have been or are intended to be sold and/or rendered, including but not limited to a general description of the type of customers to whom Applicant does or intends to advertise, promote, and/or sell Applicant's products and/or services in connection with Applicant's mark.

7. Identify each agreement, assignment, license, contract, consent grant, or transfer of rights which concerns, refers or relates to Applicant's mark and/or any rights in connection with such mark.

8. Identify each person who participated in the selection, creation, and/or decision to adopt and/or to use Applicant's mark; and describe in detail the reasons for and/or relating to the selection and adoption of Applicant's mark.

9. (a) Identify all persons employed by Applicant, and/or persons affiliated with, or contracted by, Applicant, responsible for advertising Applicant's mark and/or the goods/services sold or are intended to be sold under Applicant's mark (including but not limited to the designer of Applicant's Internet website(s)); and

(b) Identify the person(s) responsible for, or if there is no such person, with the most knowledge of, the marketing of goods and/or services offered for sale under or in connection

with Applicant's mark. (As used in this interrogatory, the term "marketing" includes but is not limited to, the customers, channels of trade, and type(s) of outlets where such goods are or will be offered for sale and/or sold.)

10. (a) Identify the circumstances under which (including, but not limited to, the date) Applicant first became aware of Opposer's Mark, Opposer's stores, and/or Opposer; the actual or possible use in any manner by Opposer of Opposer's Mark; and/or any products sold or distributed, and/or services rendered, bearing any of Opposer's Mark.

11. (a) Prior to the institution of the instant proceeding, did Applicant ever consider Opposer and/or Opposer's Mark with respect to and/or in connection with Applicant's mark and/or the products sold or to be sold under Applicant's mark or otherwise in connection with Applicant's business?

(b) If the response to sub-paragraph (a) of this interrogatory is other than an unqualified negative, state the date of such consideration, the action considered, and identify each person involved in, and communication related to, such consideration.

12. Identify each and every trademark and service mark registration you believe relevant to this Opposition proceeding, including for each, the reason(s) why you believe such to be relevant.

13. (a) Is Applicant aware of any instance of confusion or mistake regarding it and Opposer, their respective goods, services, or businesses, and/or Applicant's mark and Opposer's Mark?

(b) Has Applicant received any communication addressed or directed to, or which mentions, refers or relates in any way to, Opposer, Opposer's Mark and/or Opposer's products/services?

(c) Is Applicant aware of any instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer, Applicant's mark and Opposer's Mark, and/or the respective products or services or businesses of Applicant and Opposer?

14. (a) If the answer to Interrogatory No. 13(a), above, is other than an unqualified negative, identify each instance of confusion or mistake.

(b) If the answer to Interrogatory No. 13(b), above, is other than an unqualified negative, identify each such communication to which that interrogatory refers.

(c) If the answer to Interrogatory No. 13(c), above, is other than an unqualified negative, identify each such instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer and/or their respective products, services or businesses.

15. Identify each and every actual, present use of a trademark consisting of or containing the terms "BIG" or "BIGG" of which Applicant is aware and which Applicant contends is relevant to any of the claims and/or defenses in this proceeding, including for each such mark, the dates of usage(s) of such mark, the goods/services sold in connection with the mark, the identity of the party so using the mark, where (name and address) these goods/services can be found in the marketplace,

the identity of each individual having knowledge of such use and whether that knowledge is personal knowledge or information and belief.

16. Identify each objection, complaint, lawsuit, opposition, cancellation and other *inter partes* proceeding involving and/or with respect to, and/or in which Applicant asserted any rights in, Applicant's Mark.

17. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) Applicant's denials to the Notice of Opposition as stated in Applicant's Answer to Opposer's Notice of Opposition filed in this proceeding.

18. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) each of Applicant's Affirmative Defenses to the Notice of Opposition as stated in Applicant's Answer to Opposer's Notice of Opposition filed in this proceeding.

19. Identify each person who furnished any information on which any part of an answer to these interrogatories is based, indicating the parts based on information so furnished by such person, and whether such information is within the personal knowledge of such person, and if not within such personal knowledge, identify the source of the information so furnished.

20. Identify each expert witness who has been consulted and/or who may be called by Applicant to testify in this proceeding.

21. Identify each person whom Applicant has consulted with respect to the Answer to Notice of Opposition herein and/or with respect to the possibility of testifying herein, and for each, summarize the information such person has regarding the Applicant's claims and/or this Opposition.

22. Identify, by request number, each request in Opposer's First Request for Production of Documents served in this opposition for which (a) Applicant has not or will not produce any documents; and/or (b) there are no responsive documents in Applicant's possession, custody or control.

23. Identify all third parties who sell Applicant's products bearing Applicant's Mark and also sell tires; offer automotive repair and maintenance services; and/or sell automotive parts and accessories.

BIG O TIRES, INC.

By:



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(202) 638-6666

Dated: April 19, 2005
Attorney Docket No.: I-5156

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2005, a true copy of the foregoing Opposer's First Set of Interrogatories was served by first-class mail, postage prepaid, upon counsel for Applicant:

Donald L. Otto, Esquire
Warren A. Sklar, Esquire
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115-2191



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Opposition No. 91163791

OPPOSER'S REQUESTS FOR ADMISSION TO APPLICANT

Opposer, through its counsel, hereby requests Applicant, within thirty (30) days after service of these requests, to make the following admissions, pursuant to Rule 36, Fed.R.Civ.P. and 37 C.F.R. § 2.120(h), and subject to all pertinent objections to admissibility which may be interposed at trial:

INSTRUCTIONS

A. The Instructions and Definitions set forth in Opposer's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference and made a part hereof, as if fully stated herein.

B. These Requests are continuing and to the extent that the answers may be enlarged, diminished or otherwise modified by information acquired by Applicant subsequent to the service of answers hereto, Applicant is requested promptly thereafter to serve supplemental answers reflecting such changes, where required by the Federal Rules of Civil Procedure.

C. In answering these Requests, Applicant is required to admit or deny each request based on information as is available to Applicant and its agents, including information in the possession of Applicant's attorneys, investigators and other representatives.

D. For each of these Requests to which Applicant responds by asserting that it lacks sufficient information and/or knowledge, state in detail the information required to answer said admission, and the steps taken by Applicant to investigate and/or obtain information in order to answer said admission request.

REQUESTS

1. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s).

2. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's pleaded registrations.

3. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with tires.

4. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the goods listed in the pleaded registrations.

5. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the services listed in the pleaded registrations.

6. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer.

7. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's stores.

8. Prior to Applicant's selection of Applicant's Mark, Applicant visited one ore more of Opposer's stores.

9. Prior to Applicant's selection of Applicant's Mark, Applicant visited Opposer's website.

10. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s).

11. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's pleaded registrations.

12. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with tires.

13. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the goods listed in the pleaded registrations.

14. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the services listed in the pleaded registration.

15. Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer.

16. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's stores.

17. Prior to the filing of the opposed application, Applicant visited one or more of Opposer's stores.

18. Prior to the filing of the opposed application, Applicant visited Opposer's website.

19. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s).

20. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's pleaded registrations.

21. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with tires.

22. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the goods listed in the pleaded registrations.

23. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the services listed in the pleaded registrations.

24. Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer.

25. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's stores.

26. Prior to using Applicant's Mark, Applicant visited one or more of Opposer's stores.

27. Prior to using Applicant's Mark, Applicant visited Opposer's website.
28. Applicant's BIGG WHEELS products are sold by third parties.
29. Applicant's BIGG WHEELS products are sold on a website located at www.wheelworld662.com.
30. Applicant's BIGG WHEELS products are sold on a website located at www.wheelworld662.com, with Applicant's consent.
31. Applicant's BIGG WHEELS products have been sold on a website located at www.wheelworld662.com.
32. Applicant's BIGG WHEELS products have been sold on a website located at www.wheelworld662.com, with Applicant's consent.
33. Attached hereto as Exhibit A is a true and correct copy of a partial printout from the website located at www.wheelworld662.com, as of or about April 18, 2005 concerning the BIGG WHEELS products.
34. Applicant's BIGG WHEELS products are sold on a website located at www.rimfinancing.com.
35. Applicant's BIGG WHEELS products are sold on a website located at www.rimfinancing.com, with Applicant's consent.
36. Applicant's BIGG WHEELS products have been sold on a website located at www.rimfinancing.com.
37. Applicant's BIGG WHEELS products have been sold on a website located at www.rimfinancing.com, with Applicant's consent.

38. Attached hereto as Exhibit B is a true and correct copy of a partial printout from the website located at www.rimfinancing.com, as of or about April 18, 2005.

39. The website located at www.rimfinancing.com sells wheels.

40. The website located at www.rimfinancing.com lists "BIGG" as hyperlinked text.

41. By clicking on the hyper-linked text of "BIGG", a visitor is transferred to a website locate at <http://aaron-katzman.com/wheels-rims-tires/2004BIGG.htm>.

42. Attached hereto as Exhibit C is a true and correct copy of a partial printout from the website located at <http://aaron-katzman.com/wheels-rims-tires/2004BIGG.htm>, as of or about April 18, 2005.

43. Applicant's has promoted its wheels under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

44. Applicant promotes its wheels under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

45. Applicant's wheels have been promoted under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

46. Applicant's wheels are promoted under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

47. Applicant has sold its wheels branded with the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

48. Applicant sells its wheels branded with the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

49. Applicant's wheels have been sold under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

50. Applicant's wheels are sold under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

51. Opposer sells tires in connection with Opposer's Mark.

52. Opposer sells wheels at its BIG O stores.

53. Opposer installs wheels at its BIG O stores.

54. Opposer promotes wheels at its Internet website.

55. Opposer sells the goods listed in its pleaded registrations in connection with Opposer's Mark.

56. Opposer sells tires in the automotive aftermarket in connection with Opposer's Mark.

57. Opposer's Mark is well-known in the United States.

58. Opposer's Mark is famous in the United States.

59. Opposer's Mark is well-known in the United States automotive market.

60. Opposer's Mark is famous in the United States automotive market.

61. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIG" in connection with tires (other than marks involved in this proceeding).

62. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIGG" in connection with tires.

63. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIG" in connection with wheels (other than marks involved in this proceeding).

64. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIGG" in connection with wheels (other than marks involved in this proceeding).

65. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIG" in connection with vehicular services (other than marks involved in this proceeding).

66. Applicant does not possess any documents which support Applicant's First Affirmative Defense as pleaded at paragraph 13 of Applicant's Answer to Notice of Opposition.

67. Applicant is not aware of any evidence which supports Applicant's First Affirmative Defense as pleaded at paragraph 13 of Applicant's Answer to Notice of Opposition.

68. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's First Affirmative Defense as pleaded at paragraph 13 of Applicant's Answer to Notice of Opposition.

69. Applicant does not possess any documents which support Applicant's Second Affirmative Defense as pleaded at paragraph 14 of Applicant's Answer to Notice of Opposition.

70. Applicant is not aware of any evidence which supports Applicant's Second Affirmative Defense as pleaded at paragraph 14 of Applicant's Answer to Notice of Opposition.

71. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Second Affirmative Defense as pleaded at paragraph 14 of Applicant's Answer to Notice of Opposition.

72. Applicant does not possess any documents which support Applicant's Third Affirmative Defense as pleaded at paragraph 15 of Applicant's Answer to Notice of Opposition.

73. Applicant is not aware of any evidence which supports Applicant's Third Affirmative Defense as pleaded at paragraph 15 of Applicant's Answer to Notice of Opposition.

74. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Third Affirmative Defense as pleaded at paragraph 15 of Applicant's Answer to Notice of Opposition.

75. Applicant does not possess any documents which support Applicant's Fourth Affirmative Defense as pleaded at paragraph 16 of Applicant's Answer to Notice of Opposition.

76. Applicant is not aware of any evidence which supports Applicant's Fourth Affirmative Defense as pleaded at paragraph 16 of Applicant's Answer to Notice of Opposition.

77. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Fourth Affirmative Defense as pleaded at paragraph 16 of Applicant's Answer to Notice of Opposition.

78. Applicant does not possess any documents which support Applicant's Fifth Affirmative Defense as pleaded at paragraph 17 of Applicant's Answer to Notice of Opposition.

79. Applicant is not aware of any evidence which supports Applicant's Fifth Affirmative Defense as pleaded at paragraph 17 of Applicant's Answer to Notice of Opposition.

80. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Fifth Affirmative Defense as pleaded at paragraph 17 of Applicant's Answer to Notice of Opposition.

81. Applicant does not possess any documents which support Applicant's Sixth Affirmative Defense as pleaded at paragraph 18 of Applicant's Answer to Notice of Opposition.

82. Applicant is not aware of any evidence which supports Applicant's Sixth Affirmative Defense as pleaded at paragraph 18 of Applicant's Answer to Notice of Opposition.

83. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Sixth Affirmative Defense as pleaded at paragraph 18 of Applicant's Answer to Notice of Opposition.

84. Applicant does not possess any documents which support Applicant's contention that "the term BIGG of applicant's mark creates an entirely different commercial impression than the term BIG-O and/or BIG O of the cited registrations," as stated in Applicant's Reply to Office Action of December 4, 2003 filed in support of the opposed application.

85. Applicant is not aware of any evidence which supports Applicant's contention that "the term BIGG of applicant's mark creates an entirely different commercial impression than the term BIG-O and/or BIG O of the cited registrations," as stated in Applicant's Reply to Office Action of December 4, 2003 filed in support of the opposed application.

86. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's contention that "the term BIGG of applicant's mark creates an entirely different commercial impression than the term BIG-O and/or BIG O of the cited

registrations,” as stated in Applicant’s Reply to Office Action of December 4, 2003 filed in support of the opposed application.

87. All documents produced by Applicant in response to Opposer’s First Request for Production in this proceeding are genuine pursuant to the Federal Rules of Evidence.

88. All documents produced by Applicant in response to Opposer’s First Request for Production in this proceeding are part of the business records of Applicant kept in the normal course of Applicant’s business.

89. All documents produced by Applicant in response to Opposer’s First Request for Production in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Applicant on the grounds of relevance.

90. The goods listed in the opposed application are marketed and sold in the automotive aftermarket.

91. The goods listed in the opposed application are marketed and sold in the automotive aftermarket under Applicant’s Mark.

92. Vehicle tires are marketed and sold in the automotive aftermarket.

93. Vehicle wheels are marketed and sold in the automotive aftermarket.

94. Opposer’s tires are marketed and sold in the automotive aftermarket under Opposer’s Mark.

95. Vehicle tires are related to the goods listed in the Opposed Application.

96. Vehicle tires are similar to the goods listed in the Opposed Application.

97. The services listed in the pleaded registrations are related to the goods listed in the Opposed Application.

98. Vehicle tires are sold through similar channels of trade as vehicle wheels.

99. After-market vehicle tires are sold through similar channels of trade as after-market vehicle wheels.

100. The goods listed in the Opposed Application are sold through similar channels of trade as Opposer sells its tires under Opposer's Mark.

101. The goods listed in the Opposed Application are sold through similar channels of trade as Opposer offers its services under Opposer's Mark.

102. The goods listed in the Opposed Application are sold under Applicant's Mark through similar channels of trade as Opposer sells its tires under Opposer's Mark.

103. The goods listed in the Opposed Application are sold under Applicant's Mark through similar channels of trade as Opposer sells its goods under Opposer's Mark.

104. The goods listed in the Opposed Application are sold under Applicant's Mark through similar channels of trade as Opposer offers its services under Opposer's Mark.

105. Applicant sells its goods under the opposed mark to the same general class of purchasers as Opposer sells its tires under Opposer's Mark.

106. Applicant sells its goods under the opposed mark to the same general class of purchasers as Opposer sells its goods under Opposer's Mark.

107. Applicant sells its goods under the opposed mark to the same general class of purchasers as Opposer offers its services under Opposer's Mark.

108. Purchasers of wheels for automobiles also purchase automobile tires.
109. The mark of the opposed application is identical to Opposer's Mark.
110. The mark of the opposed application is similar to Opposer's Mark.
111. Purchasers of wheels for automobiles purchase such wheels from retail stores featuring automotive parts and accessories.
112. Purchasers of wheels for automobiles also purchase tires under Opposer's Mark.
113. The United States Patent and Trademark Officer Examiner, who reviewed the opposed application, required Applicant to disclaim the word "WHEELS" in the opposed application.
114. Applicant disclaimed the word "WHEELS" in the opposed application.
115. The dominant portion of the BIGG WHEELS mark is the term "BIGG."
116. In Applicant's promotional materials, the term BIGG is in a larger size lettering than the word "WHEELS."
117. In the specimen Applicant submitted to the Trademark Examiner, the term BIGG is in a larger size lettering than the word "WHEELS."
118. The term "BIGG" of Applicant's BIGG WHEELS mark appears on Applicant's products in a larger size lettering than the term "WHEELS."
119. Retail outlets that sell Applicant's BIGG WHEELS products also sell tires.
120. At least some of the retail outlets that sell Applicant's BIGG WHEELS products also sell tires.

121. Some third parties who sell Applicant's BIGG WHEEL products also provide tire-related automotive services.

122. Some third parties who sell Applicant's BIGG WHEEL products also sell tires.

123. Some third parties who sell Applicant's BIGG WHEEL products also provide automotive maintenance services.

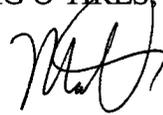
124. Some third parties who sell Applicant's BIGG WHEEL products also provide automotive repair services.

125. Some third parties who sell Applicant's BIGG WHEEL products also sell automotive parts.

126. Some third parties who sell Applicant's BIGG WHEEL products also sell automotive accessories.

BIG O TIRES, INC.

By:



Marsha G. Gentner
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

Dated: April 19, 2005
Attorney Docket No.: I-5156

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2005, a true copy of the foregoing Opposer's First Set of Requests for Admissions was served by first-class mail, postage prepaid, upon counsel for Applicant:

Donald L. Otto, Esquire
Warren A. Sklar, Esquire
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115-2191

A handwritten signature in cursive script, reading "Sheryl P. Harris", is written over a horizontal line.



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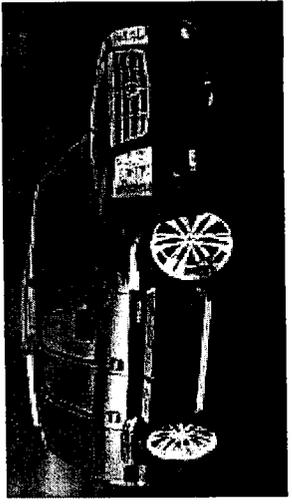
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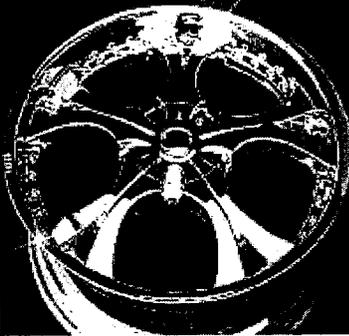
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Home
Wheel Gallery
AKUZA
AMERICAN EAGLE
AMERICAN RACING
ARELLI
ASA
ASANTI
↑ BIGG
CENTER LINE
DAVIN
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HIPNOTIC
KAIZER
LIMITED
MHT
MIZATI
ROX
STATUS

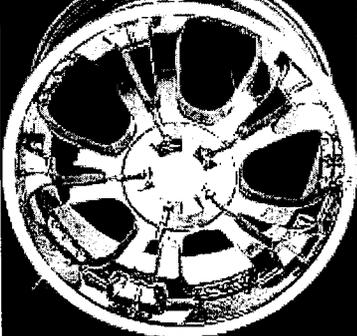
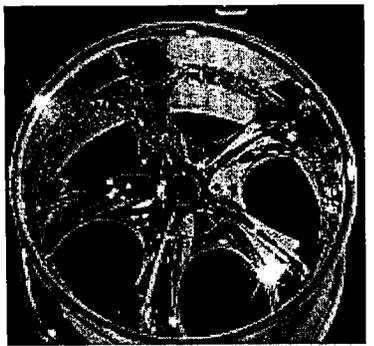
Images & Text Layout 6

BIGG WHEELS



abyss
(fwd)
18 x 7.5
20 x 8.5

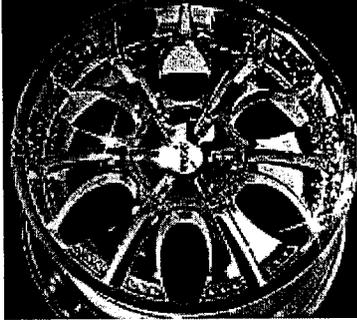
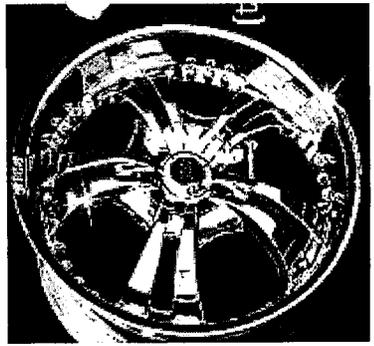
bet
(fwd)
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20 x 8.5
22 x 9.5


humongous
(truck/suv)
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22 x 9.5
24 x 9.5

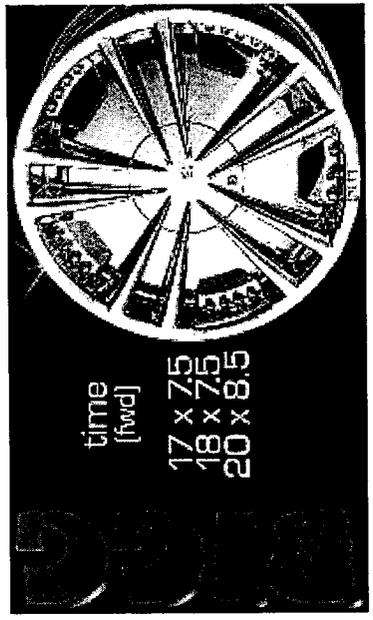
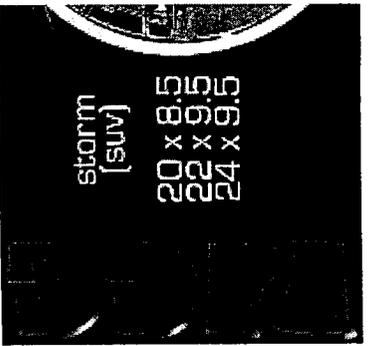
bigg

joe
(fwd)
17 x 7.5
18 x 7.5
20 x 8.5
(truck/suv)
20 x 8.5
22 x 9.5

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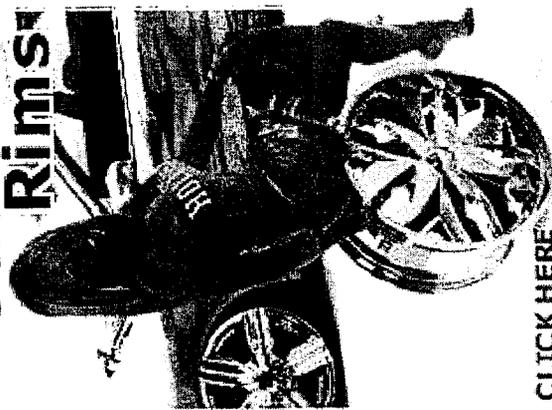
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FOOSE



BIGG

ION

MOTEGI RACING

NIKE *driv*

REPP

WHEEL REPLICAS

Pacer

OX

*Panther*TM

Ultra

MAAS

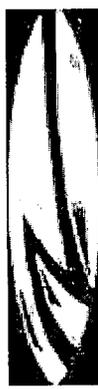
EQUUS WHEELS

platinum

Mega

Löwenhart

BAZO



Mossa

Cruiser ALLOY

AMG

ATZ



CUSTOM WHEELS SLIDESHOWS

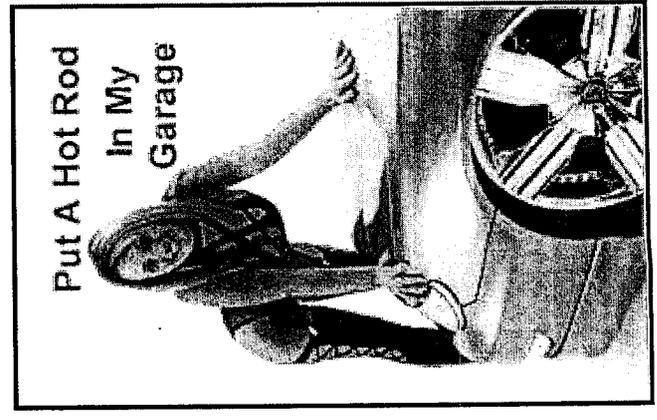
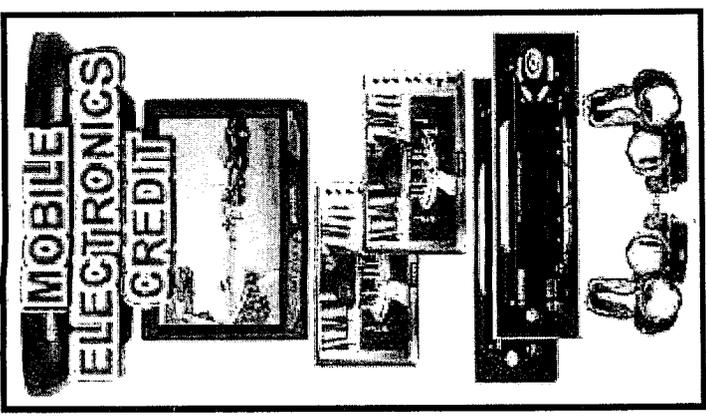
AKITA	DK ALLOYS	LOWENHART	SPORT METAL
ALBA	DOLCE	MAAS	TEAM DYNAMICS
AMERICAN RACING	DRIFZ	MAYA	TIS
AMG		MAZZI	
ASANTI	DRIV	MKW	ULTRA
AVENUE		MOGUL	
BACARAT	DUB	MOSSA	VELOCHE
BAZO	EQUUS	MOTEGI RACING	VERDE
BBS	EXCESS SPIN	NICHE	WHEEL REPLICA
BIGG	FALKEN	OE PERFORMANCE	ZINIK
BOYD CODDINGTON	FOOSE	PACER	ZORA
CENTERLINE	GEAR ALLOY	PANTHER	
CHROME EXPRESSIONS	ICW	PLATINUM	
CRAGAR	ION	RADD	
CRUISER ALLOY	JESSE JAMES	ROH	
CRUISERWIRE	KAOTIK	ROX	
DETROIT	KATANA	SACCHI	
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SLIDESHOWS

ALBA SLIDESHOW

BAZO SLIDESHOW

BOYD CODDINGTON

VISUALIZERS

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AMERICAN RACING



CUSTOM SLIDESHOW 1	MOTEGI RACING
CUSTOM SLIDESHOW 2	SOFT WHEELS
FALKEN SLIDESHOW	
GFG SLIDESHOW	
GIOVANNA SLIDESHOW	
MKW SLIDESHOW	

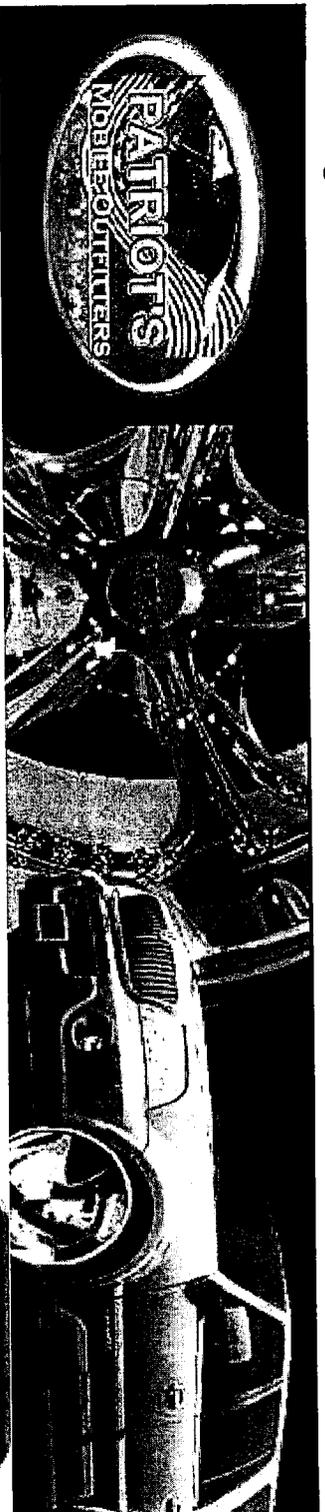
WE NEVER SELL SECONDS OR OVERRUNS ... ALL RIMS & TIRES ARE FIRST QUALITY

PATRIOTS MOBILE OUTFITTERS ROANOKE, VIRGINIA 2005

PURCHASE AGREEMENT

CUSTOM WHEELS

EXHIBIT C



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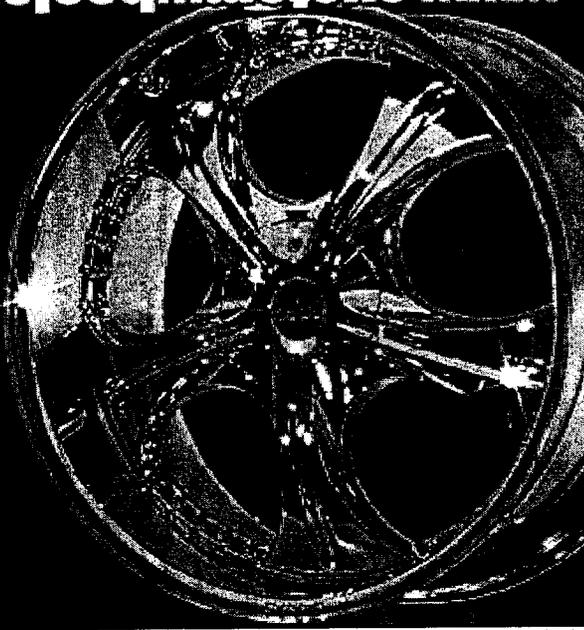
www.customwheelsunlimited.com

TRUCK/SUV
20X8.5
22X9.5

FWD
17X7.5
18X7.5
20X8.5

CHROME

BILL



BILL

BLACK
w/ Machined Lip

TRUCK/SUV
20X8.5
22X9.5

FWD
17X7.5
18X7.5
20X8.5



www.customwheelsunlimited.com

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BIG

GUNMETAL
w/ Machined Lip

7X7.5
18X7.5
20X8.5

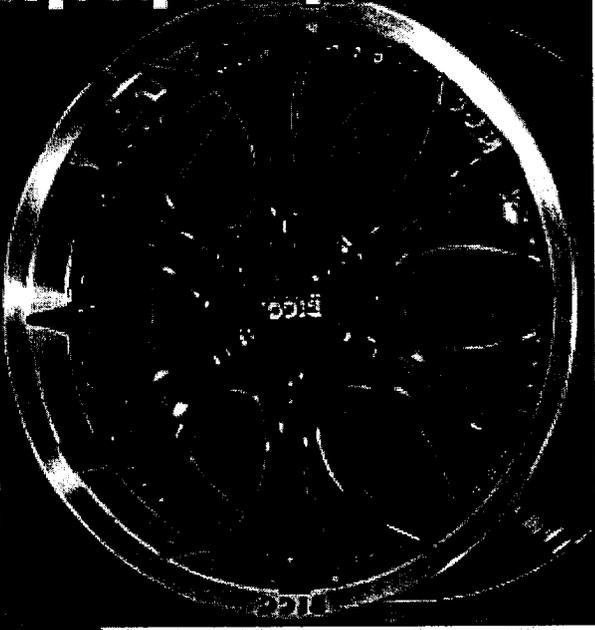
FWD

BILL

JOE

BLACK

w/ Machined Lip



TRUCK/SUV

20X8.5

22X9.5

24X9.5

FWD

7X7.5

18X7.5

20X8.5

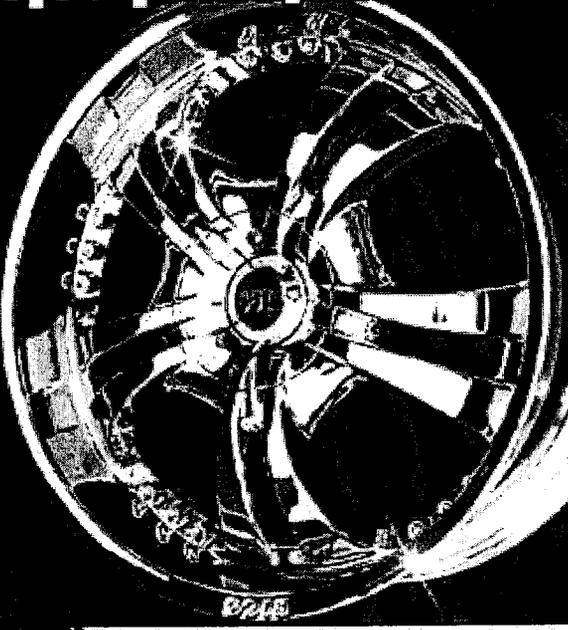
www.customwheelsunlimited.com

PLAYER

CHROME

TRUCK/SUV
20X8.5
22X9.5
24X9.5

FWD
17X7.5
18X7.5
20X8.5



www.customwheelsunlimited.com

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

BIG O TIRES, LLC,

Opposer,

v.

WHEEL SPECIALTIES, LTD.,

Applicant.

Opposition No. 91163791

NOTICE OF RELIANCE

Exhibit 38

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

BIG O TIRES, INC.,

Opposer,

vs.

WHEEL SPECIALTIES. LTD.,

Applicant.

Opposition No. 91163791

**OPPOSER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer hereby requests that Applicant produce for inspection and copying the documents listed below at the place where such documents usually are kept, or at such other time and place as agreed upon by the parties.

INSTRUCTIONS AND DEFINITIONS

A. The Instructions and Definitions set forth in Opposer's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference and made a part hereof, as if fully stated herein.

B. Applicant shall designate in its responses with respect to each document requested, whether any documents responsive to the request exist; whether such documents will be produced by Applicant, when and where the documents will be produced, and where such documents usually are kept.

DOCUMENT REQUESTS

1. The documents requested to be identified in Opposer's First Set of Interrogatories, served on Applicant concurrently herewith.

2. The documents referenced or identified by Applicant in response to Opposer's First Set of Interrogatories.

3. All documents that constitute, contain, comment on, refer to, relate to, reflect, describe, and/or disclose, any consideration, proposal or decision to adopt and/or use Applicant's Mark.

4. All documents which do, or may, support any claims or defenses of Applicant herein, and/or which Applicant believes would be admissible evidence on its behalf at the trial of this proceeding.

5. All documents which list, show, explain or describe each of the products sold and/or services offered by Applicant under Applicant's Mark and/or planned to be offered and/or sold under Applicant's Mark, including without limitation, each catalogue, brochure, or other printed materials or video/audio tapes.

6. A sample (or if due to the physical size of same, in lieu thereof a photograph sufficiently legible to show the product and any writing or marks thereon) of each product sold and/or intended to be sold under Applicant's Mark, and each display, tag, label, warranty, insert, and any other material included and/or intended to be included with such product when offered for sale, sold, and/or shipped in interstate commerce.

7. A sample of each sign, brochure, handbill, stationery, advertisement, business card, identification card, display, pre-printed contract or form, decal, badge, label, and other advertising, promotional, and/or printed materials on which Applicant's Mark has been displayed or has appeared.

8. All materials which have been produced, drafted, or proposed for use, including mock-ups for same, which display, refer or relate, in any way, to Applicant's Mark, whether or not such have ever been used, displayed, and/or disseminated.

9. A sample of each advertisement (including, but not limited to, television and/or radio commercials or spots) and promotional material (including, but not limited to audio and video tapes and CD's, Internet web site(s) and other material intended for viewing and/or listening by computer or other machine), bearing, mentioning or displaying Applicant's Mark and/or the products sold and/or offered for sale under Applicant's Mark.

10. A specimen of each label, tag, nameplate, packaging and other material (including, but not limited to, packaging, warranty cards, instruction sheets, promotional items, etc.) bearing, displaying and/or containing Applicant's Mark.

11. A sample of each and every document and thing bearing Applicant's Mark, or to which Applicant's Mark is affixed, whether or not such material ever has been used, distributed, disseminated, or displayed.

12. Documents sufficient to show and/or identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which Applicant's services or goods are advertised, promoted, sold, offered for sale, and/or distributed under Applicant's Mark.

13. All mailing lists and other lists of actual or potential customers, clients, sales representatives, brokers, dealers, and/or distributors of Applicant with respect to the products sold and/or to be sold in connection with Applicant's Mark.

14. All documents which evidence, support, refer, or relate to Applicant's knowledge of Opposer's Mark, and/or to the circumstances under which such knowledge was obtained, including but not limited to all documents referring or relating to Opposer or Opposer's Mark.

15. All documents which evidence, support, or show the denials in Applicant's Answer related to the Notice of Opposition.

16. All documents which were reviewed, consulted and/or relied upon by Applicant in making the denials in Applicant's Answer related to the Notice of Opposition.

17. All documents which evidence, support, or show Applicant's First Affirmative Defense as pleaded at paragraph 13 in Applicant's Answer.

18. All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's First Affirmative Defense in Applicant's Answer.

19. All documents which evidence, support, or show Applicant's Second Affirmative Defense as pleaded at paragraph 14 in Applicant's Answer.

20. All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's Second Affirmative Defense in Applicant's Answer.

21. All documents which evidence, support, or show Applicant's Third Affirmative Defense as pleaded at paragraph 15 in Applicant's Answer.

22. All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's Third Affirmative Defense in Applicant's Answer.
23. All documents which evidence, support, or show Applicant's Fourth Affirmative Defense as pleaded at paragraph 16 in Applicant's Answer.
24. All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's Fourth Affirmative Defense in Applicant's Answer.
25. All documents which evidence, support, or show Applicant's Fifth Affirmative Defense as pleaded at paragraph 17 in Applicant's Answer.
26. All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's Fifth Affirmative Defense in Applicant's Answer.
27. All documents which evidence, support, or show Applicant's Sixth Affirmative Defense as pleaded at paragraph 18 in Applicant's Answer.
28. All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's Sixth Affirmative Defense in Applicant's Answer.
29. All documents which refer or relate to Opposer.
30. All documents which refer or relate to Opposer's Mark.
31. All documents which refer or relate to Opposer's products.
32. All documents which refer or relate to Opposer's services.
33. All documents which refer or relate to Opposer's stores.
34. All documents which refer or relate to any of the registrations and application pleaded by Opposer in the Notice of Opposition.

35. All documents which refer or relate to the circumstances under which Applicant first became aware of the actual or possible use of Opposer's Mark.

36. All documents which evidence, relate or refer to the time Applicant first learned of Opposer.

37. All documents which evidence, relate or refer to the time Applicant first learned of Opposer's BIG O stores.

38. Documents sufficient to show Applicant's annual sales in numbers of units and in gross revenues, for products sold under Applicant's Mark, from the date of alleged first use of Applicant's Mark to the present.

39. Documents sufficient to show Applicant's annual sales in numbers of units and in gross revenues, for services offered under Applicant's Mark, from the date of alleged first use of Applicant's Mark to the present.

40. Documents sufficient to show or evidence Applicant's advertising expenditures in connection with Applicant's Mark and/or the products sold and/or services offered under Applicant's Mark, for each year from the date of alleged first use of Applicant's Mark through the present.

41. All documents relating and/or referring to the channels of trade through which services offered under, or products bearing, Applicant's Mark have been sold or are intended to be sold, including but not limited to documents describing the types of customers to whom Applicant advertises, promotes, and/or sells Applicant's products, and/or the retail and wholesale outlets in which Applicant's products in connection with Applicant's Mark are or have been used and/or sold.

42. All documents referring or relating to Applicant's Mark that have been filed with or received from any federal, state or local governmental office or regulatory agency, including without limitation all documents filed in connection with efforts to obtain approval to offer any services or sell any products under Applicant's Mark, or to obtain registration of Applicant's Mark.

43. All documents relied upon, either in whole or in part, as a basis for each opinion to be rendered by:

- (a) each expert witness that Applicant will or may call; and
- (b) each person from whom Applicant has obtained, or will obtain, statements or affidavits, or who is expected to give testimony in this case.

44. All documents constituting and/or comprising any opinion(s) and/or report(s) furnished by:

- (a) each expert witness that Applicant will or may call; and
- (b) each person from whom Applicant has obtained, or will obtain, statements or affidavits, or who is expected to give testimony in this case.

45. All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation concerning, referring or relating to Opposer's Mark or any trademark comprised in whole or in part of the term "BIG", and/or to the products sold and/or offered under Opposer's Mark.

46. All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation concerning, referring or relating to Applicant's Mark or any trademark comprised in whole or in part of the term "BIGG", and/or to the products sold and/or offered (or intended to be sold and/or offered) under Applicant's Mark.

47. All documents referring or relating to any United States service mark and trademark registrations, or applications, issued to, or filed by, Applicant, for any mark incorporating "BIG" or "BIGG" alone or in combination with other words, letters, or symbols.

48. All documents which evidence, refer, or relate to the strength (as that term is used in determining likelihood of confusion) of Opposer's Mark.

49. All documents which evidence, support, refer, or relate to any license, assignment, agreement, understanding, or other grant or transfer of rights referring or relating to Applicant's Mark.

50. Each document reviewed, consulted, or on which Applicant relied, to draft its answers to Opposer's First Set of Interrogatories, served concurrently herewith.

51. Each document reviewed, consulted, or on which Applicant relied, to draft its answers to Opposer's First Set of Requests for Admissions, served concurrently herewith.

52. Each document which shows, evidences, or supports Applicant's responses to Opposer's First Requests for Admissions, served concurrently herewith.

53. Each document which shows, evidences, or supports Applicant's responses to Opposer's First Set of Interrogatories, served concurrently herewith.

54. Each document which shows, evidences, or supports that Applicant's Mark, as used in connection with Applicant's goods, is not likely to be confused with Opposer's Mark.

55. All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Applicant relating to its sale or proposed sale of products bearing, and/or in connection with which Applicant uses, Applicant's Mark.

56. All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Applicant relating to its offer or proposed offer of services under and/or in connection with Applicant's Mark.

57. All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Applicant relating to the offer or proposed offer of goods under and/or in connection with Applicant's Mark.

58. If Applicant's response to any of the requests in Opposer's First Request for Admissions, served concurrently herewith, is anything other than an unqualified admission, for each such request, all documents which evidence, show and/or support the denial of such Request for admission, and/or Applicant's basis for Applicant's response to the Request for admission.

59. A complete copy of each version of any web site linked to a domain name registered to Applicant, including but not limited to the HTML code for same, from the creation of the web site through the present.

60. For each mark identified in response to Interrogatory Number 15, all documents which demonstrate, refer or relate to:

- a) the dates of usage(s) of such mark,
- b) the goods/services sold in connection with the mark,
- c) the identity of the party so using the mark, and
- d) where (name and address) these goods/services can be found in the

marketplace.

61. Produce a copy of the certificate of registration for each trademark or service mark registration identified in response to Interrogatory Number 12.

62. All documents relating to the price of each of the goods sold or to be sold under Applicant's Mark.

63. All documents relating to the price of the services offered or to be offered under Applicant's Mark.

64. All documents relating to any objection, lawsuit, opposition proceeding, cancellation proceeding or other proceeding involving or relating to Applicant's Mark.

65. With respect to each product and/or service with which Applicant's Mark has been used, documents sufficient to show whether or not Applicant's use of the mark in connection with such product/service has been continuous.

66. With respect to each product and/or service in connection with which Applicant's Mark has been used, all documents which evidence, refer, or relate to Applicant's first use in interstate commerce of Applicant's Mark in connection with each such product and/or service.

67. With respect to the earliest date on which Applicant will rely in this proceeding to establish Applicant's rights in Applicant's Mark, all documents which evidence, support, refer, or relate to such claim or rights in Applicant's Mark by Applicant as of that date.

68. All documents that reflect, relate to or refer to any confusion as to origin, endorsement, approval or sponsorship of goods or services sold, distributed or offered by Applicant under Applicant's Mark and/or by Opposer under Opposer's Mark.

69. For each year in which products have been sold under Applicant's Mark, documents sufficient to identify each state where such product was sold.

70. Documents sufficient to identify all automotive-related entities that purchased goods under Applicant's Mark.

71. Documents sufficient to identify all entities that sell tires and also purchased goods under Applicant's Mark.

72. Documents sufficient to identify all entities that have sold tires and also purchased goods under Applicant's Mark.

73. Documents sufficient to identify all entities that sell automotive parts and accessories and also purchased goods under Applicant's Mark.

74. Documents sufficient to identify all entities that have sold automotive parts and accessories and also have purchased goods under Applicant's Mark.

75. Documents sufficient to identify all entities that offer automotive repair and maintenance services and have purchased goods under Applicant's Mark.

76. Documents sufficient to identify all entities that have offered automotive repair and maintenance services and have purchased goods under Applicant's Mark.

77. Documents sufficient to identify all entities that offer tire-related automotive services and that have purchased goods under Applicant's Mark.

78. Documents sufficient to identify all entities that have offered tire-related automotive services and that have purchased goods under Applicant's Mark.

79. Documents sufficient to identify all automotive-related entities that sell Applicant's goods bearing Applicant's Mark.

80. Documents sufficient to identify all entities that sell tires and also sell Applicant's goods bearing Applicant's Mark.

81. Documents sufficient to identify all entities that have sold tires and also sold goods bearing Applicant's Mark.

82. Documents sufficient to identify all entities that sell automotive parts and accessories and also sold goods bearing Applicant's Mark.

83. Documents sufficient to identify all entities that have sold automotive parts and accessories and also have sold goods bearing Applicant's Mark.

84. Documents sufficient to identify all entities that offer automotive repair and maintenance services and have sold goods bearing Applicant's Mark.

85. Documents sufficient to identify all entities that have offered automotive repair and maintenance services and have sold goods bearing Applicant's Mark.

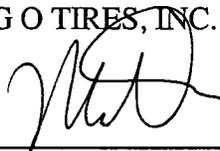
86. Documents sufficient to identify all entities that offer tire-related automotive services and that have sold goods bearing Applicant's Mark.

87. Documents sufficient to identify all entities that have offered tire-related automotive services and that have sold goods bearing Applicant's Mark.

88. Documents sufficient to identify all goods sold by Applicant in the automotive industry.

BIG O TIRES, INC.

By:



Marsha G. Gentner
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

April 19, 2005
Attorney Docket No. I-5156

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2005, a true copy of the foregoing Opposer's First Set of Document Requests was served by first-class mail, postage prepaid, upon counsel for Applicant:

Donald L. Otto, Esquire
Warren A. Sklar, Esquire
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115-2191

A handwritten signature in cursive script, reading "Sheryl S. Harris", is written over a horizontal line.

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

BIG O TIRES, LLC,

Opposer,

v.

WHEEL SPECIALTIES, LTD.,

Applicant.

Opposition No. 91163791

NOTICE OF RELIANCE

Exhibit 39

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

BIG O TIRES, INC.,	)	OPPOSITION No: 91163791
)	
Opposer,	)	SERIAL No: 78/264,260
)	
v.)	
)	
WHEEL SPECIALTIES, LTD.)	
)	
Applicant.)	

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

Applicant hereby responds to Opposer's first set of interrogatories as follows:

GENERAL OBJECTIONS/DEFINITIONS

1. Applicant has not concluded its investigation into the facts relating to this proceeding, its formal discovery, or its preparation for the trial of this proceeding. These responses represent Applicant's reasonable effort to provide the information requested based upon information in its possession, custody or control, and based upon its current knowledge. Applicant reserves the right to produce information regarding subsequently discovered facts, to alter or amend its responses as set forth herein and otherwise to assert factual and legal contentions as additional facts are ascertained, analyses are made and legal research completed.

2. Applicant objects to these interrogatories insofar as they may be construed as limiting or restricting its right to rely upon any document or

mark and/or the goods/services sold or are intended to be sold under Applicant's mark (including but not limited to the designer of Applicant's Internet website(s)); and

(b) Identify the person(s) responsible for, or if there is no such person, with the most knowledge of, the marketing of goods and/or services offered for sale under or in connection with Applicant's mark. (As used in this interrogatory, the term "marketing" includes but is not limited to, the customers, channels of trade, and type(s) of outlets where such goods are or will be offered for sale and/or sold.)

RESPONSE

Applicant objects to this interrogatory on the grounds that it is vague, ambiguous, over-broad, and unduly burdensome. Subject to and without waiving any objections, Applicant states that Mark Lamb, managing member of Applicant, is responsible for advertising and marketing of Applicant's products under Applicant's Mark.

10. (a) Identify the circumstances under which (including, but not limited to, the date) Applicant first became aware of Opposer's Mark, Opposer's stores, and/or Opposer; the actual or possible use in any manner by Opposer of Opposer's Mark; and/or any products sold or distributed, and/or services rendered, bearing any of Opposer's Mark.

RESPONSE

Applicant objects to this interrogatory on the grounds that it is vague, ambiguous, over-broad and unduly burdensome. Subject to and without waiving any objections, Applicant states that it first became aware of Opposer when Applicant first sold some vehicle wheels to Opposer in August 2002.

11. (a) Prior to the institution of the instant proceeding, did Applicant ever consider Opposer and/or Opposer's Mark with respect to and/or in connection with Applicant's mark and/or the products sold or to be sold under Applicant's mark or otherwise in connection with Applicant's business?

(b) If the response to sub-paragraph (a) of this interrogatory is other than an unqualified negative, state the date of such consideration, the action considered, and identify each person involved in, and communication related to, such consideration.

RESPONSE

Applicant objects to this interrogatory on the grounds that it is vague, ambiguous, over-broad and unduly burdensome. Further, Applicant objects to this interrogatory on the grounds that it seeks information protected by the attorney-client privilege and/or the attorney work product doctrine. Subject to and without waiving any objections, Applicant states that the only time Applicant considered Opposer's Mark with respect to Applicant's Mark prior to the institution of the instant proceeding was when the Examining Attorney in the first Office Action of December 4, 2003 refused registration of Applicant's Mark

23. Identify all third parties who sell Applicant's products bearing Applicant's Mark and also sell tires; offer automotive repair and maintenance services; and/or sell automotive parts and accessories.

RESPONSE

Applicant objects to this interrogatory on the grounds that it is over-broad and unduly burdensome and seeks confidential, proprietary business information of the Applicant. Subject to and without waiving any objections, Applicant states that a majority of Applicant's customers who sell Applicant's products bearing Applicant's Mark also sell tires, and/or offer automobile repair and maintenance services, and/or sell automotive parts and accessories.

Respectfully submitted,

WHEEL SPECIALTIES, LTD.
(As to Objections)
By Its Attorneys

Date: 5/24/05



Donald L. Otto
Warren A. Sklar
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115-2191
Phone: 216-621-1113
Fax: 216-621-6165

Attorneys for Applicant

VERIFICATION

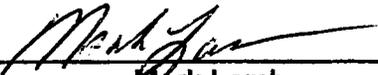
I, Mark Lamb, declare:

I am managing member of Wheel Specialties, Ltd. (Applicant). I am authorized to execute this Verification on behalf of Applicant.

The foregoing Applicant's Response to Opposer's First Set of Interrogatories was prepared with the assistance and advice of counsel for Applicant, upon whose advice Applicant and I rely. Further, it was necessary to obtain information to prepare such responses from various sources, including records of Applicant. Accordingly, Applicant reserves the right to make changes in these Responses if it appears at any time that omission or errors have been made therein, or more accurate information is available.

Subject to the statements herein and above set forth, I declare under penalty of perjury that the foregoing Responses are true and correct.

Executed on May 18, 2005.



Mark Lamb

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES was served on the following attorney of record for Opposer by depositing same in the United States mail, postage prepaid, this 24th day of May, 2005.

Marsha G. Gentner
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Donald L. Otto

Z:\SEC177\WHEL\101\PLEADINGS\APP RESP TO 1ST INTERROGS - 5-18-05.doc

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

BIG O TIRES, LLC,

Opposer,

v.

WHEEL SPECIALTIES, LTD.,

Applicant.

Opposition No. 91163791

NOTICE OF RELIANCE

Exhibit 40

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

BIG O TIRES, INC.,	)	OPPOSITION No:	91163791
)		
Opposer,	)	SERIAL No:	78/264,260
)		
v.)		
)		
WHEEL SPECIALTIES, LTD.)		
)		
Applicant.)		

**APPLICANT'S RESPONSE TO OPPOSER'S
REQUESTS FOR ADMISSION**

Applicant hereby responds to Opposer's Requests for Admission as follows:

REQUESTS FOR ADMISSION

1. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s).

RESPONSE

Denied.

2. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's pleaded registrations.

RESPONSE

Denied.

3. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with tires.

RESPONSE

Denied.

4. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the goods listed in the pleaded registrations.

RESPONSE

Denied.

5. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the services listed in the pleaded registrations.

RESPONSE

Denied.

6. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer.

RESPONSE

Admitted.

7. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's stores.

RESPONSE

Admitted.

8. Prior to Applicant's selection of Applicant's Mark, Applicant visited one ore [sic] more of Opposer's stores.

RESPONSE

Admitted.

9. Prior to Applicant's selection of Applicant's Mark, Applicant visited Opposer's website.

RESPONSE

Denied.

10. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s).

RESPONSE

Admitted.

11. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's pleaded registrations.

RESPONSE

Admitted.

12. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with tires.

RESPONSE

Denied.

13. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the goods listed in the pleaded registrations.

RESPONSE

Denied.

14. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the services listed in the pleaded registration.

RESPONSE

Denied.

15. Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer.

RESPONSE

Admitted.

16. Prior to the filing of the opposed application, Applicant had actual knowledge of one or more of Opposer's stores.

RESPONSE

Admitted.

17. Prior to the filing of the opposed application, Applicant visited one or more [sic] more of Opposer's stores.

RESPONSE

Admitted.

18. Prior to the filing of the opposed application, Applicant visited Opposer's website.

RESPONSE

Denied.

19. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s).

RESPONSE

Admitted.

20. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's pleaded registrations.

RESPONSE

Admitted.

21. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with tires.

RESPONSE

Denied.

22. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the goods listed in the pleaded registrations.

RESPONSE

Denied.

23. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's Mark(s) as used in connection with the services listed in the pleaded registrations.

RESPONSE

Denied.

24. Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer.

RESPONSE

Admitted.

25. Prior to using Applicant's Mark, Applicant had actual knowledge of one or more of Opposer's stores.

RESPONSE

Admitted.

26. Prior to using Applicant's Mark, Applicant visited one ore [sic] more of Opposer's stores.

RESPONSE

Admitted.

27. Prior to using Applicant's Mark, Applicant visited Opposer's website.

RESPONSE

Denied.

28. Applicant's BIGG WHEELS products are sold by third parties.

RESPONSE

Admitted.

29. Applicant's BIGG WHEELS products are sold on a website located at www.wheelworld662.com.

RESPONSE

Admitted.

30. Applicant's BIGG WHEELS products are sold on a website located at www.wheelworld662.com, with Applicant's consent.

RESPONSE

Admitted.

31. Applicant's BIGG WHEELS products have been sold on a website located at www.wheelworld662.com.

RESPONSE

Admitted.

32. Applicant's BIGG WHEELS products have been sold on a website located at www.wheelworld662.com, with Applicant's consent.

RESPONSE

Admitted.

33. Attached hereto as Exhibit A is a true and correct copy of a partial printout from the website located at www.wheelworld662.com, as of or about April 18, 2005 concerning the BIGG WHEELS products.

RESPONSE

Denied. Applicant does not know whether Exhibit A is a true and correct copy of what appeared on that website as of the date specified in this request.

34. Applicant's BIGG WHEELS products are sold on a website located at www.rimfinancing.com.

RESPONSE

Admitted.

35. Applicant's BIGG WHEELS products are sold on a website located at www.rimfinancing.com, with Applicant's consent.

RESPONSE

Admitted.

36. Applicant's BIGG WHEELS products have been sold on a website located at www.rimfinancing.com.

RESPONSE

Admitted.

37. Applicant's BIGG WHEELS products have been sold on a website located at www.rimfinancing.com, with Applicant's consent.

RESPONSE

Admitted.

38. Attached hereto as Exhibit B is a true and correct copy of a partial printout from the website located at www.rimfinancing.com, as of or about April 18, 2005.

RESPONSE

Denied. Applicant does not know whether Exhibit B is a true and correct copy of what appeared on that website as of the date specified in this request.

39. The website located at www.rimfinancing.com sells wheels.

RESPONSE

Admitted.

40. The website located at www.rimfinancing.com lists "BIGG" as hyperlinked text.

RESPONSE

Admitted.

41. By clicking on the hyper-linked text of "BIGG", a visitor is transferred to a website locate *[sic]* at http://aaron-katzman.com/wheels-rims-tires/2004BIGG.htm.

RESPONSE

Admitted.

42. Attached hereto as Exhibit C is a true and correct copy of a partial printout from the website located at <http://aaron-katzman.com/wheels-rims-tires/2004BIGG.htm>, as of or about April 18, 2005.

RESPONSE

Denied. Applicant does not know whether Exhibit C is a true and correct copy of what appeared on that website as of the date specified in this request.

43. Applicant's *[sic]* has promoted its wheels under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Admitted.

44. Applicant promotes its wheels under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Denied.

45. Applicant's wheels have been promoted under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Admitted.

46. Applicant's wheels are promoted under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Denied.

47. Applicant has sold its wheels branded with the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Admitted.

48. Applicant sells its wheels branded with the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Denied.

49. Applicant's wheels have been sold under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Admitted.

50. Applicant's wheels are sold under the single word mark "BIGG" (*i.e.*, without the word "WHEELS").

RESPONSE

Denied.

51. Opposer sells tires in connection with Opposer's Mark.

RESPONSE

Denied. Applicant objects to this request on the grounds that it is vague and ambiguous. Opposer has not identified which of Opposer's Marks in connection with which Opposer sells tires.

52. Opposer sells wheels at its BIG O stores.

RESPONSE

Admitted.

53. Opposer installs wheels at its BIG O stores.

RESPONSE

Admitted.

54. Opposer promotes wheels at its Internet website.

RESPONSE

Admitted.

55. Opposer sells the goods listed in its pleaded registrations in connection with Opposer's Mark.

RESPONSE

Denied.

60. Opposer's Mark is famous in the United States automotive market.

RESPONSE

Denied.

61. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIG" in connection with tires (other than markets involved in this proceeding).

RESPONSE

Denied.

62. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIGG" in connection with tires.

RESPONSE

Admitted.

63. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIG" in connection with wheels (other than marks involved in this proceeding).

RESPONSE

Admitted.

64. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIGG" in connection with wheels (other than marks involved in this proceeding).

RESPONSE

Admitted.

65. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "BIG" in connection with vehicular services (other than marks involved in this proceeding).

RESPONSE

Denied.

66. Applicant does not possess any documents which support Applicant's First Affirmative Defense as pleaded at paragraph 13 of Applicant's Answer to Notice of Opposition.

RESPONSE

Denied.

RESPONSE

Admitted that Applicant has not as yet produced any such documents.

78. Applicant does not possess any documents which support Applicant's Fifth Affirmative Defense as pleaded at paragraph 17 of Applicant's Answer to Notice of Opposition.

RESPONSE

Admitted.

79. Applicant is not aware of any evidence which supports Applicant's Fifth Affirmative Defense as pleaded at paragraph 17 of Applicant's Answer to Notice of Opposition.

RESPONSE

Admitted.

80. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Fifth Affirmative Defense as pleaded at paragraph 17 of Applicant's Answer to Notice of Opposition.

RESPONSE

Admitted.

87. All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are genuine pursuant to the Federal Rules of Evidence.

RESPONSE

Admitted.

88. All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are part of the business records of Applicant kept in the normal course of Applicant's business.

RESPONSE

Denied.

89. All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Applicant on the grounds of relevance.

RESPONSE

Admitted.

90. The goods listed in the opposed application are marketed and sold in the automotive aftermarket.

RESPONSE

Admitted.

91. The goods listed in the opposed application are marketed and sold in the automotive aftermarket under Applicant's Mark.

RESPONSE

Admitted.

92. Vehicle tires are marketed and sold in the automotive aftermarket.

RESPONSE

Admitted.

93. Vehicle wheels are marketed and sold in the automotive aftermarket.

RESPONSE

Admitted.

94. Opposer's tires are marketed and sold in the automotive aftermarket under Opposer's Mark.

RESPONSE

Denied. Applicant objects to this request on the grounds that it is unduly vague and ambiguous. Opposer has not identified which of Opposer's Marks it markets and sells its tires under in the automotive aftermarket.

95. Vehicle tires are related to the goods listed in the Opposed Application.

RESPONSE

Denied.

96. Vehicle tires are similar to the goods listed in the Opposed Application.

RESPONSE

Denied.

97. The services listed in the pleaded registrations are related to the goods listed in the Opposed Application.

RESPONSE

Denied.

98. Vehicle tires are sold through similar channels of trade as vehicle wheels.

RESPONSE

Admitted.

99. After-market vehicle tires are sold through similar channels of trade as after-market vehicle wheels.

RESPONSE

Admitted.

106. Applicant sells its goods under the opposed mark to the same general class of purchasers as Opposer sells its goods under Opposer's Mark.

RESPONSE

Denied. Applicant objects to this request on the grounds that it is unduly vague and ambiguous. Opposer has not identified which of Opposer's Marks it sells its goods under.

107. Applicant sells its goods under the opposed mark to the same general class of purchasers as Opposer offers its services under Opposer's Mark.

RESPONSE

Denied. Applicant objects to this request on the grounds that it is unduly vague and ambiguous. Opposer has not identified which of Opposer's Marks it offers its services under.

108. Purchasers of wheels for automobiles also purchase automobile tires.

RESPONSE

Admitted.

109. The mark of the opposed application is identical to Opposer's Mark.

RESPONSE

Denied.

110. The mark of the opposed application is similar to Opposer's Mark.

RESPONSE

Denied.

111. Purchasers of wheels for automobiles purchase such wheels from retail stores featuring automotive parts and accessories.

RESPONSE

Denied.

112. Purchasers of wheels for automobiles also purchase tires under Opposer's Mark.

RESPONSE

Denied.

113. The United States Patent and Trademark Office Examiner, who reviewed the opposed application, required Applicant to disclaim the word "WHEELS" in the opposed application.

RESPONSE

Admitted.

114. Applicant disclaimed the word "WHEELS" in the opposed application.

RESPONSE

Admitted.

115. The dominant portion of the BIGG WHEELS mark is the term "BIGG".

RESPONSE

Admitted.

116. In Applicant's promotional materials, the term BIGG is in a larger size lettering than the word "WHEELS".

RESPONSE

Admitted.

117. In the specimen Applicant submitted to the Trademark Examiner, the term BIGG is in a larger size lettering than the word "WHEELS".

RESPONSE

Admitted.

118. The term "BIGG" of Applicant's BIGG WHEELS mark appears on Applicant's products in a larger size lettering than the term "WHEELS".

RESPONSE

Admitted.

119. Retail outlets that sell Applicant's BIGG WHEELS products also sell tires.

RESPONSE

Denied.

120. At least some of the retail outlets that sell Applicant's BIGG WHEELS products also sell tires.

RESPONSE

Admitted.

121. Some third parties who sell Applicant's BIGG WHEEL products also provide tire-related automotive services.

RESPONSE

Admitted.

122. Some third parties who sell Applicant's BIGG WHEEL products also sell tires.

RESPONSE

Admitted.

123. Some third parties who sell Applicant's BIGG WHEEL products also provide automotive maintenance services.

RESPONSE

Admitted.

124. Some third parties who sell Applicant's BIGG WHEEL products also provide automotive repair services.

RESPONSE

Admitted.

125. Some third parties who sell Applicants BIGG WHEEL products also sell automotive parts.

RESPONSE

Admitted.

126. Some third parties who sell Applicant's BIGG WHEEL products also sell automotive accessories.

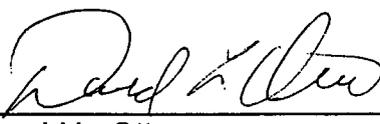
RESPONSE

Admitted.

Respectfully submitted,

WHEEL SPECIALTIES, LTD.
By Its Attorneys

Date: 5/24/05



Donald L. Otto
Warren A. Sklar
RENNER, OTTO, BOISSELLE & SKLAR, LLP

1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115-2191
Phone: 216-621-1113
Fax: 216-621-6165
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S REQUESTS FOR ADMISSION was served on the following attorney of record for Opposer by depositing same in the United States mail, postage prepaid, this 24th day of May, 2005.

Marsha G. Gentner
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Donald L. Otto

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

BIG O TIRES, LLC,

Opposer,

v.

WHEEL SPECIALTIES, LTD.,

Applicant.

Opposition No. 91163791

NOTICE OF RELIANCE

Exhibit 41

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

BIG O TIRES, INC.,	)	OPPOSITION No:	91163791
)		
Opposer,	)	SERIAL No:	78/264,260
)		
v.)		
)		
WHEEL SPECIALTIES, LTD.)		
)		
Applicant.)		

**APPLICANT'S SUPPLEMENTAL RESPONSES TO OPPOSER'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

By agreement between Opposing Counsel, Applicant has agreed to supplement its responses to the following document requests of Opposer.

Applicant incorporates by reference the GENERAL OBJECTIONS/ DEFINITIONS set forth in Applicant's initial responses to Opposer's first request for production of documents.

REQUESTS FOR PRODUCTION

REQUEST NO. 6

SUPPLEMENTAL RESPONSE

The warranty sheet that is included with Applicant's BIGG WHEELS products is being produced herewith as Production No. WSL261.

Applicant only produces one version of its catalog, poster and mini brochure each year in which its BIGG WHEELS products appears. Applicant has already produced one version of each of these.

REQUEST NO. 14

SUPPLEMENTAL RESPONSE

Applicant does not have any documents relating to Applicant's knowledge of Opposer prior to the August '02 sales order (Production No. WSL102). See Applicant's Supplemental Response to Opposer's Interrogatory No. 10. Also Applicant does not have any documents relating to Applicant's knowledge of any of Opposer's marks prior to the institution of this proceeding other than Opposer's marks identified in the Thomson search report being produced herewith.

REQUESTS NOS. 45 AND 46

SUPPLEMENTAL RESPONSE

The results of the USPTO trademark search conducted by Applicant's attorney Warren Sklar on June 12, 2003 are produced herewith as Production Nos. WSL264-285.

The Thomson search report dated June 16, 2003 is produced herewith as Production No. WSL286 (342 pages).

Respectfully submitted,

WHEEL SPECIALTIES, LTD.

By Its Attorneys



Date: 11/7/07

Donald L. Otto
Warren A. Sklar
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115-2191
Phone: 216-621-1113
Fax: 216-621-6165

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S SUPPLEMENTAL RESPONSES TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was served on the following attorney of record for Opposer by overnight courier, this 7th day of November, 2007.

Marsha G. Gentner
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Donald L. Otto

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

BIG O TIRES, LLC,

Opposer,

v.

WHEEL SPECIALTIES, LTD.,

Applicant.

Opposition No. 91163791

NOTICE OF RELIANCE

Exhibit 42

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

BIG O TIRES, INC.,	)	OPPOSITION No: 91163791
)	
Opposer,	)	SERIAL No: 78/264,260
)	
v.)	
)	
WHEEL SPECIALTIES, LTD.)	
)	
Applicant.)	

**APPLICANT'S SUPPLEMENTAL RESPONSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

By agreement between opposing counsel, Applicant has agreed to supplement its responses to the following interrogatories of Opposer's first set of interrogatories.

Applicant incorporates by reference the GENERAL OBJECTIONS/DEFINITIONS set forth in Applicant's responses to Opposer's first set of interrogatories.

INTERROGATORIES

INT. 2(e)

SUPPLEMENTAL RESPONSE

Applicant is producing herewith Production No. WSL250 which identifies all of the states in the US in which Applicant has sold its BIGG WHEELS products including the identity of the relevant invoice, customer, and date of first sale of its BIGG WHEELS products in each state.

2) Gordon Nicols - COO of Wheel Specialties, Ltd., dba Custom Wheels Unlimited, 10470 Wilden Avenue, Ashland, Virginia 23005.

INT. 10

SUPPLEMENTAL RESPONSE

The brand of wheel sold to Big O Tires in the August '02 sales order (Applicant's Production No. WSL102) was QUANTUM TECH.

The only prior knowledge Applicant had of Opposer was the inclusion of Opposer's name on a list of prospective customers that was used by Applicant's Kentucky location to call off of to solicit business for its wheel products. To Applicant's knowledge the list no longer exists.

INT. 11

SUPPLEMENTAL RESPONSE

Applicant did not consider Opposer or any of Opposer's marks with respect to and/or in connection with its selection of its BIGG WHEELS mark.

INT. 15

SUPPLEMENTAL RESPONSE

Applicant has already produced documents showing third party uses of the term "BIG" in connection with goods and/or services related to those of the Applicant and/or the Opposer. In addition, Applicant is producing herewith Production Nos. WSL251-260 which list Applicant's customers (excluding Opposer which is also a customer of

Applicant), that have the term "BIG" in their company names. Applicant does not know the length of time these various companies have used the term "BIG" in their company names.

INT. 22

SUPPLEMENTAL RESPONSE

Applicant has already produced or is producing with its supplemental responses to Opposer's first document requests non-privileged documents responsive to all of Opposer's first document requests except for Opposer's Request Nos. 8, 11, 13, 16-34, 38-40, 43, 44, 49-53, 55-59, 63, 64, 68 and 70-87.

Respectfully submitted,

WHEEL SPECIALTIES, LTD.
(As to Objections)
By Its Attorneys



Date: 11/7/07

Donald L. Otto
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1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115-2191
Phone: 216-621-1113
Fax: 216-621-6165

Attorneys for Applicant

VERIFICATION

I, Mark Lamb, declare:

I am managing member of Wheel Specialties, Ltd. (Applicant). I am authorized to execute this Verification on behalf of Applicant.

The foregoing Applicant's Supplemental Responses to Opposer's First Set of Interrogatories ("Supplemental Responses") was prepared with the assistance and advice of counsel for Applicant, upon whose advice Applicant and I rely. Further, it was necessary to obtain information to prepare such responses from various sources, including records of Applicant. Accordingly, Applicant reserves the right to make changes in these Supplemental Responses if it appears at any time that omission or errors have been made therein, or more accurate information is available.

Subject to the statements herein and above set forth, I declare under penalty of perjury that the foregoing Supplemental Responses are true and correct.

Executed on August 14th, 2007.



Mark Lamb

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S SUPPLEMENTAL RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES was served on the following attorney of record for Opposer by overnight courier this 7th day of November, 2007.

Marsha G. Gentner
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Donald L. Otto

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