

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

TTAB

YELLOWSTONE IMPORTS, INC.,

Opposer,

Opposition No. 91/164,028

v.

JAY-Y ENTERPRISE CO., INC.

Applicant.

Commissioner for Trademarks - Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

TRANSMITTAL LETTER

Sir:

Enclosed herewith for submission please find a courtesy copy of Opposer's First Set of Interrogatories to Applicant and Opposer's First Set of Document Requests to Applicant. The discovery papers have been served on Applicant.

In the event of any fee due in connection with this transmittal, the Commissioner is authorized and directed to debit our deposit account No. 02-2105 for the amount of such deficiency.

Date: May 3, 2005

Respectfully submitted,

Levisohn, Berger & Langsam, LLP
805 Third Avenue, 19th Floor
New York, NY 10022


Jane Linowitz, Esq.
Attorney for Opposer

Certificate of Mailing

I certify that this document and fee are being deposited with the U.S. Postal Service as First Class Mail, addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board, PO Box 1451, Alexandria, VA 22313-1451 on May 3, 2005.


Ann Marie Hunter
Mailing Date: May 3, 2005

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05-05-2005

U.S. Patent & TMO/TM Mail Rpt Dt. #72

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

YELLOWSTONE IMPORTS, INC.,

Opposer,

v.

JAY-Y ENTERPRISE CO., INC.

Applicant.

Opposition No. 91/164,028

OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

Opposer Yellowstone Imports, Inc. ("Yellowstone") in accordance with Rule 34 of the Federal Rules of Civil Procedure, TBMP§ 408 and 37 C.F.R. § 2.120, propounds the following document requests to be responded to, and for responsive documents to be produced at Levisohn, Berger & Langsam, LLP, 805 Third Avenue, New York, New York 10022 within thirty (30) days after service on Applicant. These document requests are deemed to be continuing so as to require a prompt supplemental answer and document production should Applicant obtain further information relating thereto between the time the answers are served and the time of the closing of the Testimony Period.

DOCUMENT REQUESTS

1. All labels, packaging, point-of-sale displays, brochures, advertisements and catalogs showing the trademark MISCELLANEOUS DESIGN.
2. Samples of Applicant's goods sold under the MISCELLANEOUS DESIGN.
3. Documents and things sufficient to show Applicant's first use of the trademark MISCELLANEOUS DESIGN in commerce.
4. Price lists for goods sold under the trademark MISCELLANEOUS DESIGN.
5. Documents in Applicant's possession concerning products sold by Applicant under the MISCELLANEOUS DESIGN mark, Applicant's use of the MISCELLANEOUS DESIGN mark and/or the existence of the MISCELLANEOUS MARK.
6. All documents referring or relating to the similarity or dissimilarity between Applicant's trademarks DIAMOND JEWELRY FOR TODAY, TOMORROW ... FOREVER and Opposer's MISCELLANEOUS DESIGN.
7. Documents concerning how much Applicant has spent yearly on advertising in connection with Applicant's trademark MISCELLANEOUS DESIGN.
8. All documents that refer to Applicant's searches to determine availability of the trademark MISCELLANEOUS DESIGN and/or decision to use MISCELLANEOUS DESIGN as a trademark, or a component of trademarks.

9. All documents relating or referring to the significance of the trademark MISCELLANEOUS DESIGN to consumers.
10. All licenses, assignments, or documents relating to the grant of any right in or to Applicant's trademark MISCELLANEOUS DESIGN.
11. All media releases referring to MISCELLANEOUS DESIGN.
12. A copy of each survey, analyses and/or research report related to:
 - a. Applicant's MISCELLANEOUS DESIGN products;
 - b. Applicant's trademark MISCELLANEOUS DESIGN as perceived by customers, purchasers or potential customers and purchasers;
 - c. Confusion between Applicant's trademark MISCELLANEOUS DESIGN and the mark, term or name of any other entity, including Opposer.
15. Any document relating to the likelihood of confusion of the trademark MISCELLANEOUS DESIGN.
16. Applicant's plans to expand its use of the trademark MISCELLANEOUS DESIGN to any new goods, services or fields.
17. All documents in Applicant's possession, custody or control referring or relating to Opposer in connection with its MISCELLANEOUS DESIGN mark.
18. Documents sufficient to identify all companies with which Applicant has strategic partnerships and/or co-marketing arrangements for use of the MISCELLANEOUS DESIGN mark.

19. Documents sufficient to identify each trade show or conference at which Applicant has promoted its products using MISCELLANEOUS DESIGN for each year.

20. Documents sufficient to identify all channels of trade for each product Applicant has offered for sale under the trademark MISCELLANEOUS DESIGN for each year.

21. Documents sufficient to identify the sales, in units and dollars, of Applicant's goods sold under the trademark MISCELLANEOUS DESIGN for each year.

22. Documents sufficient to identify each type (category) of end user for each product Applicant has offered under the trademark MISCELLANEOUS DESIGN for each year.

23. Documents sufficient to identify each type (category) of purchaser for each product Applicant has offered under the trademark MISCELLANEOUS DESIGN for each year.

24. Documents sufficient to identify Applicant's record retention policy.

25. Documents sufficient to identify those companies deemed by Applicant to be its main competitors for the provision of products that Applicant sells under the trademark MISCELLANEOUS DESIGN.

26. All pleadings in legal proceedings, other than the instant proceeding, involving Applicant's trademark MISCELLANEOUS DESIGN.

27. All papers and things submitted to and/or received from the United States Patent and Trademark Office in connection with Applicant's application(s) to register the trademark MISCELLANEOUS DESIGN.

28. Applicant's Annual Reports and year-end financial statements for the past three (3) years.

29. Documents sufficient to identify each geographic location where Applicant's MISCELLANEOUS DESIGN products were sold during each year.

30. All documents relating or referring to Applicant's training of its sales force, employees, distributors or purchasers regarding the proper use of Applicant's trademark MISCELLANEOUS DESIGN.

31. All documents relating to Applicant's allegations in the Opposition.

32. Documents relating to Applicant's past, current and future marketing plans for goods sold under the trademark MISCELLANEOUS DESIGN.

33. Documents relating to Applicant's promotional products associated with Applicant's trademark MISCELLANEOUS DESIGN.

34. All documents and things relating to actual confusion between Applicant and Opposer, their businesses or their trademark MISCELLANEOUS DESIGN and MISCELLANEOUS DESIGN.

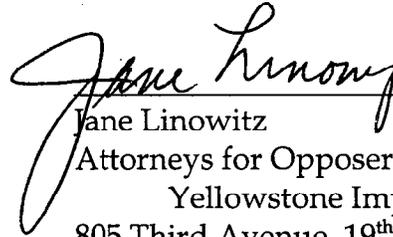
35. The organizational charts of Applicant for the past three years.

36. All opinions, reports and/or memorandum referring or relating to Applicant's mark MISCELLANEOUS DESIGN.

Dated: May 3, 2005

Respectfully submitted,

LEVISOHN, BERGER & LANGSAM, LLP

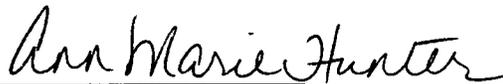
A handwritten signature in cursive script, reading "Jane Linowitz", is written over a horizontal line.

Jane Linowitz
Attorneys for Opposer -
Yellowstone Imports, Inc.
805 Third Avenue, 19th Floor
New York, NY 10022
Telephone: (212) 486-7272

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Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposer's First Set of Document Requests to Applicant has been served on attorney for Applicant by mailing said copy on May 3, 2005, via First Class Mail, postage prepaid to Constance R. Lindman, Esq., c/o Overhauser Law Offices, LLC, 737 W. Green Meadows Drive, Suite 300, Greenfield, IN 46140.



Ann Marie Hunter

Mailing Date: May 3, 2005

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

YELLOWSTONE IMPORTS, INC.,

Opposer,

v.

JAY-Y ENTERPRISE CO., INC.,

Applicant.

Opposition No. 91/155,668

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer, Yellowstone Imports, Inc. ("Yellowstone"), in accordance with Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, propounds the following written interrogatories to be answered within thirty (30) days after service by Applicant, Jay-Y Enterprise Co., Inc. in writing under oath. These interrogatories are deemed to be continuing so as to require a prompt supplemental answer should Applicant obtain further information relating thereto between the time the answers are served and the time of trial.

INTERROGATORIES

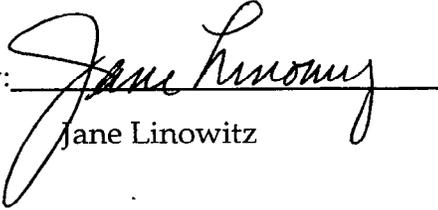
1. Describe the principal business activities of Applicant.
2. Identify the employee(s) of Applicant most knowledgeable concerning the allegations in the Opposition.

3. Identify the person most knowledgeable concerning Applicant's use of the trademark MISCELLANEOUS DESIGN.
4. Describe each of Applicant's products and/or services sold under the trademarks MISCELLANEOUS DESIGN as of the dates of first use of Applicant's trademarks through the present.
5. Describe in detail all channels of trade for the goods sold under Applicant's trademarks as of the dates of first use of Applicant's trademarks through the present.
6. Describe in detail the classes of customers for products sold under Applicant's trademarks as of the dates of first use of Applicant's trademarks through the present.
7. Describe the characteristics of the buyers of products sold under Applicant's trademarks.
8. Describe the decision of Applicant to select and adopt the trademarks MISCELLANEOUS DESIGN.
9. Identify all advertisements through which Applicant has advertised goods under the trademark MISCELLANEOUS DESIGN.
10. Identify all proceedings between Applicant and third parties relating or referring to the trademarks trademark MISCELLANEOUS DESIGN.
11. Identify all person(s) employed by Applicant who is responsible for marketing products offered under Applicant's trademark MISCELLANEOUS DESIGN.
12. Identify all trade shows and conferences at which Applicant has promoted the trademark MISCELLANEOUS DESIGN.
13. Identify each person(s) on whom Applicant expects to rely for testimony as an expert in this proceeding; and for each person state:
 - a. The subject matter on which the expert is expected to give evidence;

- b. The substance of the opinions to which the expert is expected to give evidence; and
 - c. A summary of the grounds for each opinion.
- 14. Identify all geographic areas in which Applicant sold or to which Registrant shipped goods using the trademark MISCELLANEOUS DESIGN for each year of sale.
- 15. Identify all licenses relating to Applicant's trademark MISCELLANEOUS DESIGN.
- 16. State the sales by Applicant of MISCELLANEOUS DESIGN products on an annual basis in units and in dollars.
- 17. Identify market research conducted by or on behalf of Applicant with respect to the trademark MISCELLANEOUS DESIGN.
- 18. Identify each outside agency engaged by Applicant for advertising or promoting goods under the trademark MISCELLANEOUS DESIGN.
- 19. Identify the customers for Applicant's goods used with the trademark MISCELLANEOUS DESIGN.
- 20. Identify any incidents or reports of alleged confusion relating to the trademark MISCELLANEOUS DESIGN or goods sold under that trademark.
- 21. Identify any third party uses of the trademark MISCELLANEOUS DESIGN.
- 22. Describe Applicant's plans to expand its use of the trademark MISCELLANEOUS DESIGN to any new goods, services or fields.
- 23. Describe the quality of Applicant's products and services sold under the trademark MISCELLANEOUS DESIGN.
- 24. Describe all uses of the trademark MISCELLANEOUS DESIGN by Applicant.

Dated: May 3, 2005

Levisohn, Berger & Langsam, LLP

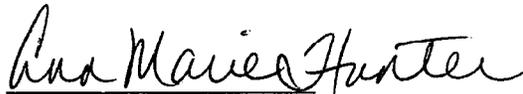
By: 
Jane Linowitz

805 Third Avenue, 19th Floor
New York, New York 10022
(212) 486-7272
Attorney for Opposer
Yellowstone Imports, Inc.

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Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposer's First Set of Interrogatories to Applicant has been served on attorney for Applicant by mailing said copy on May 3, 2005, via First Class Mail, postage prepaid to Constance R. Lindman, Esq., c/o Overhauser Law Offices, LLC, 737 W. Green Meadows Drive, Suite 300, Greenfield, IN 46140.



Ann Marie Hunter

Mailing Date: May 3, 2005