

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

REGAL WARE, INC., )  
 Opposer, )  
 v. )  
 ADVANCED MARKETING INT'L., INC. )  
 Applicant. )  
 \_\_\_\_\_ )

205 10 977

Opposition No.: 91164280  
 Atty. Docket No.: 9513.18067-LIT

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX TTAB – NO FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on the date set forth below.

August 22, 2005  
 Date of signature and of mail deposit

By:   
 Lori T. Milvain

**APPLICANT'S MOTION TO EXTEND DISCOVERY PERIOD**

Applicant, ADVANCED MARKETING INT'L., INC. ("AMI," or "Applicant"), hereby moves for an Order extending the discovery period in this matter, and states the following:

1. The discovery period in this matter is currently set to expire on September 11, 2005. However, as of the date of this motion, there are several issues pertaining to discovery that remain unresolved.

2. Specifically, the parties have been attempting to coordinate depositions for some time, but have been unsuccessful in establishing mutually agreeable dates prior to the close of the discovery period. Currently, Regal Ware has set the deposition of a representative of AMI to take place on September 13, 2005, several days after the current deadline for discovery. AMI has been attempting to coordinate dates for the depositions of certain Regal Ware



representatives, but has not been able to obtain mutually agreeable dates for those depositions at this time.

3. Additionally, AMI has recently filed a motion to compel better responses from Regal Ware to AMI's first set of interrogatories, first requests for admissions, and first requests for production, and that motion remains pending. Regal Ware has indicated that there may be certain additional materials and information that will be produced upon the entry of an appropriate confidentiality order, but has not yet responded to a proposed joint confidentiality order recently transmitted by AMI for discussion. There may also be a need to conduct additional discovery depending on what additional documents, information, or responses to discovery Regal Ware may provide in the event that the motion to compel is granted or upon entry of a confidentiality order.

4. As documented in the correspondence attached hereto as composite Exhibit "A," counsel for AMI has been attempting to discuss outstanding matters pertaining to discovery and conducting various depositions for some time. However, AMI has not received any substantive response from counsel for Regal Ware as to these issues nor as to whether Regal Ware opposes this motion for extension. *Id.*

5. AMI asserts that a short extension of the discovery period will not prejudice any party to these proceedings, or otherwise adversely affect these proceedings. Conversely, AMI asserts that it may suffer great prejudice if the discovery period is not extended in order to allow additional time for depositions and discovery.

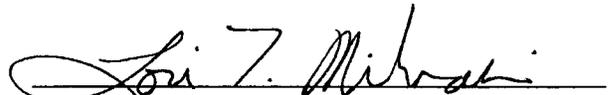
**WHEREFORE**, for the foregoing reasons, the Applicant, ADVANCED MARKETING INT'L., INC., respectfully requests that this Board enter an order extending the period for discovery for an additional 60 days past the current deadline of September 11, 2005.

**CERTIFICATE OF GOOD FAITH CONFERENCE**

Pursuant to Section 523.02(1) of the TTAB Manual, the undersigned certifies that counsel for ADVANCED MARKETING INT'L., INC. has conferred with counsel for REGAL WARE, INC. in a good faith effort to resolve the issues presented in the above motion. *See, e.g., Composite Exhibit "A."* However, as of the date of this motion, counsel for Regal Ware has not indicated whether it opposes or consents to this motion.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing has been furnished by U.S. Mail this 22<sup>nd</sup> day of August, 2005 to Joseph A. Kromholz, Esquire, Ryan Kromholz & Manion, S.C., P.O. Box 26618, Milwaukee, WI 53226-0618.



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August 12, 2005

VIA FACSIMILE (262) 783-1211 AND U.S. MAIL

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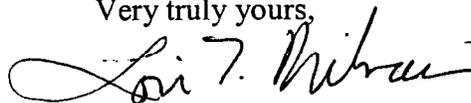
Re: *Opposition No. 91164280 filed on behalf of Regal Ware, Inc. against Advanced Marketing Int'l., Inc.*

Dear Mr. Johnson:

This letter shall serve to confirm my attempts to speak with you regarding depositions and discovery matters in the referenced matter. We spoke this morning wherein I offered the dates of September 12, 13 and 14 for the deposition of my client, Dave Hurley. I further proposed that we agree to a stipulation to extend the discovery period for a limited period of time, such as 60 days. I understand you are leaving for the weekend and will contact me Monday to discuss these matters.

I look forward to hearing from you on Monday. Thank you for your cooperation.

Very truly yours,



Lori T. Milvain

LTM:bpm

cc: Advanced Marketing Int'l, Inc.  
Michael J. Furbush, Esquire  
Scott D. Danahy, Esquire ✓

EXHIBIT "A"

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August 17, 2005

VIA FACSIMILE (262) 783-1211 AND U.S. MAIL

Daniel R. Johnson, Esq.  
Ryan Kromholz & Manion, S.C.  
P.O. Box 26618  
Milwaukee, WI 53226

Re: *Opposition No. 91164280 filed on behalf of Regal Ware, Inc. against Advanced Marketing Int'l., Inc.*

Dear Mr. Johnson:

This letter follows Lori Milvain's letter of August 12, 2005, regarding discovery.

As set forth in our previous letter, we have attempted to contact you several times in order to discuss deposition scheduling and the status of discovery in general. To date, we have received no response.

The purpose of this letter is to make a good faith effort, pursuant to Section 523.02(1) of the TTAB Manual, to discuss our intent to file a motion for extension for a 60 day extension of the discovery period in this matter.

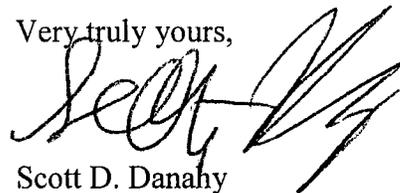
Please contact me at your earliest convenience to discuss the issues outlined in this letter, and to advise whether you agree to our proposed extension of the discovery period. If we do not hear back from you by noon EST on Friday, August 19, 2005, we will move unilaterally for an extension.

**GRONEK & LATHAM, LLP**

Daniel R. Johnson, Esq.  
August 17, 2005  
Page 2

We are also in receipt of your August 16, 2005 letter responding to Michael Furbush's August 12, 2005 letter pertaining to deficiencies in Regal Ware's responses to discovery. We do not believe that your response, indicating that you will review the discovery at issue and the proposed confidentiality agreement "in due course," is appropriate. Accordingly, we will proceed with our planned motion to compel unless the deficiencies addressed in our August 12, 2005 letter are appropriately remedied by Friday, August 19, 2005.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott D. Danahy", written in a cursive style.

Scott D. Danahy

cc: Advanced Marketing Int'l. Inc.  
Lori Milvain, Esq.  
Michael J. Furbush, Esq.

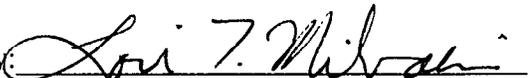
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August 22, 2005  
Date of signature and of mail deposit

By:   
Lori T. Milvain

**APPLICANT'S MOTION TO COMPEL DISCOVERY FROM OPPOSER AND  
INCORPORATED MEMORANDUM OF LAW IN SUPPORT THEREOF**

Applicant, ADVANCED MARKETING INT'L., INC. ("AMI," or "Applicant"), hereby moves for an Order compelling discovery and states the following:

**INTRODUCTION**

1. On, March 22, 2005, AMI served its First Request for Production of Documents and Things to Opposer, REGAL WARE, INC. ("Regal Ware"), Applicant's First Request for Admissions to Opposer, and Applicant's First Interrogatories to Opposer (copies of which are attached hereto).

2. Regal Ware's responses to the discovery served by AMI are deficient in several respects, as further detailed below. On August 12, 2005, AMI made a good faith effort to resolve the deficiencies in Regal Ware's responses to AMI's discovery. Specifically, AMI

served Regal Ware with a detailed letter discussing the various deficiencies and requesting that such deficiencies be remedied. *See Exhibit "A," attached hereto.*

3. As of the date of this motion, Regal Ware has not substantively responded to AMI's attempts to obtain appropriate discovery responses. To the contrary, Regal Ware's only response has been to state, on two separate occasions, that they will respond to the deficiencies raised by AMI "in due course." *See Composite Exhibit "B," attached hereto.* Regal Ware has not even indicated when AMI can expect to receive a substantive response to its correspondence raising the deficiencies, and has not made any attempt to even discuss the issues raised in the August 12, 2005 letter attached as *Exhibit "A."* Furthermore, although Regal Ware indicated in many of its responses to the subject discovery that additional information or documentation would be forthcoming upon the entry of an appropriate confidentiality order, Regal Ware has not yet responded to AMI's attempt to submit an appropriate joint confidentiality order to the Board.

#### **ARGUMENT AND CITATIONS TO AUTHORITY**

4. The specific deficiencies in Regal Ware's responses to the subject discovery are as follows:

##### **Responses to Requests for Admissions:**

5. Regal Ware has failed to make appropriate responses to AMI's third, fourth, and sixth requests for admissions. A complete copy of both AMI's Requests for Admissions, and Regal Ware's responses thereto, are attached hereto as *Composite Exhibit "C."*

6. AMI's third request for admission asks the following:

Admit that Opposer's counsel made an affirmative representation to counsel for Applicant on January 29, 2004 that the Applicant's use of WHERE CRAFTSMEN STILL CARE was permissible.

7. AMI's fourth request for admissions asks:

Admit that Opposer's counsel made an affirmative representation to counsel for Applicant on January 28, 2004 that if Applicant applied to register the trademark, WHERE CRAFTSMEN STILL CARE, and the U.S. Patent and Trademark office cited the WEST BEND Mark against the application, Opposer would be willing to enter into a consent agreement with Applicant.

8. AMI's sixth request for admission asks:

Admit that at least one point in time since 1978, Opposer ceased all use of the WEST BEND Mark.

9. Regal Ware propounded the exact same response to each of these three requests.

Specifically, Regal Ware responded as follows as to requests for admission 3, 4, and 6:

"Opposer can find no evidence to support this statement and therefore **Denies** the request."

10. This response is improper and insufficient pursuant to the Federal Rules of Civil Procedure. Rule 36(a) of the Federal Rules of Civil Procedure states, in relevant part, that an answer to a request for admission:

*" . . . shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter . . . An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny." (Emphasis added).*

11. Regal Ware cannot credibly claim that it is unable to either admit or deny these responses based on known information, or information readily obtainable. Requests 3 and 4 ask that Regal Ware admit that its counsel made certain representations to counsel for AMI. Determining whether these requests are properly admitted or denied should be as simple as inquiring of counsel whether they ever made the representations. Likewise, Regal Ware should clearly have information readily obtainable indicating whether or not it has ever ceased using the subject mark since 1978.

12. Accordingly, AMI asserts that Regal Ware should be compelled to serve better responses to these three requests, and should specifically be required to, in good faith, admit the requests, deny the requests, or set forth specific reasons why Regal Ware would not be able to admit or deny the request upon reasonable inquiry and based on the information readily obtainable.

**Responses to Interrogatories:**

13. Initially, there are several deficiencies that are repeatedly present in a number of Regal Ware's Responses to Interrogatories. A complete copy of AMI's Interrogatories, and Regal Ware's responses thereto, are attached hereto as *Composite Exhibit "D."* As one example, Regal Ware responded to many of the interrogatories by stating, at least in part, that "representative documents" will be produced. This is not a proper response, in part because it is ambiguous as to what "representative documents" means, and because it is unclear whether any documents are being withheld. Regal Ware specifically asserts in its responses to interrogatories 3, 5, 7, 8, 9, and 11 that "representative documents" will be produced, without any explanation of what that means, or if any responsive documents or information are being withheld.

14. Regal Ware also asserts that it will not produce certain information because it is subject to attorney client privilege or the work product privilege. Pursuant to Rule 26(b)(5) of the Federal Rules of Civil Procedure,:

"When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected will enable other parties to assess the applicability of the privilege or protection."

Accordingly, Regal Ware should be compelled to either provide the appropriate privilege log sufficiently describing any documents or information withheld based on an asserted privilege, or in the alternative, expressly state that no such documents have been withheld.

15. Furthermore, Regal Ware states in several of its responses that there are documents responsive to the interrogatories, but that such documents will only be produced upon the entry of an appropriate confidentiality order. AMI has provided a proposed confidentiality order to Regal Ware for its review. However, as of the date of this motion, Regal Ware has made no attempt to even confer with AMI regarding the proposed order, or even provided any information as to when AMI may expect to receive a meaningful response from Regal Ware regarding the proposed confidentiality order, other than that such a response will come “in due course.”

16. Additionally, the following deficiencies exist as to specific responses by Regal Ware to AMI’s interrogatories:

**Interrogatory No. 2:**

Interrogatory No. 2 asks that Regal Ware:

[i]dentify and describe each product sold by Opposer under the designation [symbol omitted] (the “WEST BEND mark”) and/or variants thereof, and identify a representative sample of materials such as brochures and pamphlets used in connection with the advertising and promotion of said products.

Regal Ware asserts a number of frivolous objections (*see composite exhibit “D”*), and then responds, in spite of the objections, by stating a one word answer: “Cookware.” *Id.*

This response is clearly not appropriate. Despite Regal Ware’s objections to the contrary, the information sought is clearly not objectionable, and goes to the very heart of the issues in this case. To simply respond to a request asking for *identification* and a *description of each product*

sold under the subject mark, and asking for identification of relative samples of brochures and pamphlets, by simply stating "cookware" is obviously not a good faith response.

**Interrogatory No. 7:**

Interrogatory No. 7 requests the following:

Pursuant to Fed. R. Civ. P. 26(a)(1)(A), in respect to the WEST BEND Mark, state the name, address and telephone number of each individual who is likely to have knowledge relevant to Opposer's selection, adoption and use of the Mark, including knowledge about:

- a. the nature, extent and dollar volume of all products and services sold under the WEST BEND Mark since the date first used by Opposer;
- b. the nature, extent and dollar volume of all advertising and promotional expenditures involving the WEST BEND Mark and the products or services sold under the WEST BEND MARK since the date of first use; and the geographic area in which Opposer uses and advertises the WEST BEND MARK.

Regal Ware again makes numerous frivolous objections to this interrogatory. *See, id.* However, given that the identity of any such witnesses, and the additional information requested, is highly relevant to the issues in this matter, and that it is imperative that AMI have this information to prepare its case, these objections are unfounded. This is particularly true considering that it will be necessary for Regal Ware, if it has any chance of prevailing in this matter, to produce such witnesses in order to support its case. AMI is clearly entitled to information concerning any such witnesses Regal Ware intends to use in this regard.

Furthermore, the response is deficient in that it does not identify one single witness that may have knowledge of the information addressed in the interrogatory.

**Interrogatory No. 9:**

Interrogatory 9 requests:

For each product and service sold under the WEST BEND Mark, describe the class of purchasers and identify five (5) representative purchasers.

Once again, Regal Ware propounds a number of frivolous objections in response, then states that:

“Further, subject to said objections, Regal more specifically states: Independent cookware distributors who sell to individual customers.”

Although a general class of purchasers is provided, there is no information provided as to representative purchasers. Accordingly, the response is deficient and incomplete.

**Interrogatory No. 22:**

Interrogatory Number 22 asks that Regal Ware:

“Identify those persons who made the decision to bring this opposition.”

In response to Interrogatory No. 22, Regal Ware again makes a number of objections and then states:

“Subject to the entry of an appropriate protective order Opposer will provide relevant information in response, if any.”

As stated above, AMI has provided a proposed confidentiality order to Regal Ware, but Regal Ware has refused to discuss the proposed order, other than to issue correspondence stating that it will respond to the proposed order in “due course.” AMI asserts that Regal Ware should either be compelled to produce responsive documents, or to execute an appropriate confidentiality agreement and then produced the responsive documents or information.

**Responses to Requests for Production:**

17. Initially, there are several deficiencies that appear repeatedly in a number of Regal Ware’s Responses to Requests for Production. A complete copy of AMI’s Requests for Production, and Regal Ware’s responses thereto, are attached hereto as *Composite Exhibit “E.”* The majority of Regal Ware’s responses to AMI’s requests for production include numerous objections, but seem to indicate that all responsive documents have been produced in spite of the

objections. It is unclear whether all documents responsive to the requests for production have been produced, or whether certain items are being withheld. Accordingly, Regal Ware should be compelled to specify whether it is withholding any documents encompassed by AMI's requests based on objections or privilege, and also produce the appropriate privilege log to the extent any documents are being withheld.

18. Regal Ware also asserts that it will not produce certain information because it is subject to attorney client privilege or the work product privilege. Pursuant to Rule 26(b)(5) of the Federal Rules of Civil Procedure, as quoted above, Regal Ware is required to submit the appropriate privilege log for any documents that are being withheld based on an assertion of a privilege.

19. Furthermore, Regal Ware states in several of its responses that there are documents responsive to the requests, but that such documents will only be produced upon the entry of an appropriate confidentiality order. AMI has provided a proposed confidentiality order to Regal Ware for its review. However, as of the date of this motion, Regal Ware has made no attempt to even confer with AMI regarding the proposed order, or even provided any information as to when AMI may expect to receive a meaningful response from Regal Ware regarding the proposed confidentiality order, other than that such a response will come "in due course."

20. Additionally, the following deficiencies exist as to specific responses by Regal Ware to AMI's requests for production:

**Request No. 22:**

Request Number 22 asks for:

All phone records of calls placed from the law firm of Ryan Kromholz & Manion, S.C., to the law firm of Gronek & Latham, L.L.P. or Lori Milvan of that firm, on January 29, 2004.

*See, Composite Exhibit "E."*

In response, Regal Ware again makes numerous frivolous objections, but then asserts that it will produce a redacted version of the requested documents upon entry of an appropriate protective order.

As stated above, AMI has provided a proposed confidentiality order to Regal Ware, but Regal Ware has refused to discuss the proposed order, other than to issue correspondence stating that it will respond to the proposed order in "due course." AMI asserts that Regal Ware should either be compelled to produce responsive documents, or to execute an appropriate confidentiality agreement and then produce the responsive documents or information.

**Request No. 23:**

Request Number 23 requests:

"All attorney time records of John Manion and all firm billing records of Ryan Kromholz & Manion, S.C., for work performed for Opposer or its affiliated or related companies on January 29, 2004."

Regal Ware objects to this Request on the basis that it allegedly requests documents that are subject to the attorney client and work product privilege. Without acknowledging that this objection is in any way valid, AMI offered, in the interest of compromise, to agree to narrow the scope of the request in order to limit it to all attorney records of John Manion and all firm billing records of Ryan Kromholz & Manion, S.C., entered or recorded on January 29, 2004 that in any way relate to conversations with counsel or representatives of AMI, or in any way reflect phone calls being made to counsel or representatives of AMI, or in any way reflect phone messages being left for counsel or representatives of AMI. *See, Exhibit "A."*

However, Regal Ware has refused to respond to this proposed compromise, other than to state that it will respond "in due course." In the event that Regal Ware believes any documents

responsive to this request are privileged, however, it should be compelled to, at the very least, provide a privilege log pursuant to Federal Rule of Civil Procedure 26(b)(5) sufficiently identifying any such documents.

**CONCLUSION**

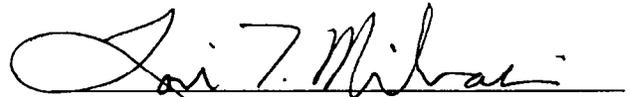
**WHEREFORE**, for the foregoing reasons, the Applicant, ADVANCED MARKETING INT'L., INC., respectfully requests that the Board enter an order compelling Opposer, REGAL WARE, INC., to provide better responses to ADVANCED MARKETING INT'L., INC.'s first set of interrogatories, first request for production of documents, and first request for admissions, as detailed above.

**CERTIFICATE OF GOOD FAITH CONFERENCE**

Pursuant to Section 523.02(1) of the TTAB Manual, the undersigned certifies that counsel for ADVANCED MARKETING INT'L., INC. has conferred with counsel for REGAL WARE, INC. in a good faith effort to resolve the issues presented in the above motion, but was unable to resolve the issues presented in this motion. *See, e.g., exhibit "A."*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 22 day of August, 2005 to Joseph A. Kromholz, Esquire, Ryan Kromholz & Manion, S.C., P.O. Box 26618, Milwaukee, WI 53226-0618.



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August 12, 2005

**VIA FACSIMILE (262) 783-1211 AND U.S. MAIL**

Daniel Johnson, Esq.  
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P.O. Box 26618  
Milwaukee, WI 53226

Re: *Opposition No. 91164280 filed on behalf of Regal Ware, Inc. against Advanced Marketing Int'l., Inc.*

Dear Mr. Johnson:

The purpose of this letter is to make a good faith effort, pursuant to Section 523.02(1) of the TTAB Manual, to resolve certain deficiencies in Regal Ware, Inc.'s Responses to Interrogatories, Responses to First Request of Production of Documents and Things, and Responses to First Request for Admissions. Please be advised that if the issues discussed below are not satisfactorily resolved prior to August 19, 2005, it will be necessary for AMI to file a motion to compel better responses to this discovery.

Initially, we note that many of your responses indicated that certain documents are being withheld until an appropriate protective order is entered. A proposed stipulated protective order will follow by e-mail on Monday. Following receipt of the proposed protective order, please advise as soon as possible if you have any objections to its form. If not, we will have the order entered as quickly as possible and request that you provide all documents or information that has been withheld on the basis of the need for a protective order as soon as possible.

Additionally, we note the following deficiencies in Regal Ware's Responses to Advanced Marketing's discovery:

**EXHIBIT "A"**

### **Responses to Interrogatories:**

Regal Ware responded to many of the interrogatories by stating, at least in part, that “representative documents” will be produced. We do not believe this is an appropriate response to interrogatories under the Federal Rules, in part because it is ambiguous as to what “representative documents” means, and because it is unclear whether any documents are being withheld. Pursuant to the Federal Rules of Civil Procedure, all documents responsive to the discovery requests should be produced, unless there is a claim of privilege. In the event that Regal Ware is asserting any privilege, an appropriate privilege log should be provided.

We request that Regal Ware please amend its responses to interrogatories 3, 5, 7, 8, 9, and 11 in order to clarify what is meant by “representative documents.” We further request that, to the extent Regal Ware has asserted that it may have any documents responsive to the interrogatories, that such documents be produced immediately. To the extent Regal Ware asserts a privilege as to any responsive documents, we request that Regal Ware immediately produce an appropriate privilege log.

Furthermore, Regal Ware states in several of its responses that there are documents responsive to the interrogatories, but that such documents will only be produced upon the entry of an appropriate confidentiality order. We believe that the protective order should resolve this issue and ask that Regal Ware provide any documents that have been withheld based on the confidentiality objection immediately upon entry of the order.

Regal Ware also asserts that it will not produce certain information because it is subject to attorney client privilege or the work product privilege. In accordance with the Federal Rules of Civil Procedure, we request that you please advise immediately whether any documents or information have been withheld based on such an asserted privilege, and also provide an appropriate privilege log.

Additionally, we note the following deficiencies in Regal Ware’s Responses to Interrogatories:

#### **Interrogatory No. 2:**

The response to this interrogatory is clearly insufficient. Although Regal Ware objects to the interrogatory as allegedly being “overly broad, burdensome and oppressive,” these objections are meritless given the issues in this case, and the information sought is clearly relevant to the issues in the case. Also, please describe in detail the “Cookware” sold by Regal Ware under the Mark.

We request that Regal Ware provide an amended response to this interrogatory that clarifies the response, and provides meaningful information responsive to the interrogatory.

#### **Interrogatory No. 7:**

Regal Ware makes numerous objections to this interrogatory, which requests information pertaining to any individual likely to have knowledge relevant to Regal Ware’s selection, adoption, and use of the Mark. However, given that the identity of any such witnesses, and the

additional information requested, is highly relevant to the issues in this matter, and that it is imperative that AMI have this information to prepare its case, these objections are unfounded. This is particularly true considering that it will be necessary for Regal Ware, if it has any chance of prevailing in this matter, to produce such witnesses in order to support its case. AMI is clearly entitled to information concerning any such witnesses Regal Ware intends to use in this regard.

Furthermore, the response is deficient in that it does not identify one single witness that may have knowledge of the information addressed in the interrogatory. Please provide an amended answer to this interrogatory that identifies any individuals believed by Regal Ware to have knowledge regarding the areas addressed.

**Interrogatory No. 9:**

This interrogatory asks for, among other information, five representative purchasers. Although a general class of purchasers is provided, there is no information provided as to representative purchasers. We request that Regal Ware provide an appropriately (amended response.

**Interrogatory No. 22:**

Regal Ware asserts that it is withholding information responsive to this interrogatory until such time as an appropriate confidentiality order is entered. We believe that the proposed protective order should resolve this issue and ask that Regal Ware provide any documents that have been withheld based on the confidentiality objection immediately upon entry of the protective order.

**Requests for Production**

The majority of Regal Ware's responses to AMI's requests for production include numerous objections, but seem to indicate that all responsive documents have been produced in spite of the objections. It is unclear to us whether all documents responsive to the requests for production have been produced. Please advise whether Regal Ware is withholding any documents encompassed by our requests based on objections or privilege, and also produce the appropriate privilege log to the extent any documents are being withheld. If it is Regal Ware's position that all responsive documents have been produced in spite of the objections, please confirm this to be the case.

Furthermore, Regal Ware states in several of its responses that certain responsive documents will only be produced upon the entry of an appropriate confidentiality order. We believe that the proposed protective order should resolve this issue and ask that Regal Ware provide any documents that have been withheld based on the confidentiality objection immediately upon entry of the protective order.

Regal Ware also asserts that it will not produce certain information because it is subject to attorney client privilege or the work product privilege. In accordance with the Federal Rules of Civil Procedure, we request that you please advise immediately whether any documents or information has been withheld based on such an asserted privilege, and also provide an appropriate privilege log.

Additionally, we note the following deficiencies in Regal Ware's Responses to Request for Production:

**Request No. 22:**

Regal Ware asserts that it will produce a redacted version of the requested documents upon entry of an appropriate protective order. We believe that the proposed protective order should resolve this issue and ask that Regal Ware provide any documents that have been withheld based on the confidentiality objection immediately upon entry of the protective order.

**Request No. 23:**

Regal Ware objects to this Request on the basis that it allegedly requests documents that are subject to the attorney client and work product privilege. Without acknowledging that this objection is in any way valid, AMI will, in the interest of compromise, agree to narrow the scope of the request in order to limit it to all attorney records of John Manion and all firm billing records of Ryan Kromholz & Manion, S.C., entered or recorded on January 29, 2004 that in any way relate to conversations with counsel or representatives of AMI, or in any way reflect phone calls being made to counsel or representatives of AMI, or in any way reflect phone messages being left for counsel or representatives of AMI.

In the even that Regal Ware still believes that any documents responsive to this narrowed request are privileged, please provide the appropriate privilege log immediately, as required by the Federal Rules of Civil Procedure.

**Requests for Admissions:**

**Requests No. 3, 4, and 6:**

As to each of these requests, Regal Ware asserts that:

"Opposer can find no evidence to support this statement and therefore **Denies** the request."

This response is clearly improper pursuant to the Federal Rules of Civil Procedure. Specifically, Rule 36(a) of the Federal Rules of Civil Procedure states, in relevant part that an answer to a request for admission:

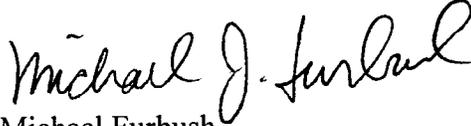
*" . . . shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter . . . An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny."*

*(Emphasis added).*

Accordingly, we request that Regal Ware provide amended responses to these requests for admissions that properly either admit or deny the requests within the time frame specified above.

Please contact me or my colleague, Scott Danahy, to discuss these matters further, if necessary. AMI will file the appropriate motion to compel unless we receive your amended responses to the discovery discussed above before the close of business on August 19, 2005.

Very truly yours,

  
Michael Furbush

cc: Advanced Marketing Int'l, Inc.  
Lori T. Milvan, Esq.

**RYAN KROMHOLZ & MANION, S.C.**  
ATTORNEYS AT LAW

---

Daniel D. Ryan  
Joseph A. Kromholz  
John M. Manion  
Laura A. Dable  
Daniel R. Johnson  
Patricia A. Limbach  
Patrick J. Fleis  
Melissa S. Hockersmith  
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Est. 1873

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Building Address:  
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Fond du Lac Office:  
104 S. Main Street, Suite 501  
Fond du Lac, WI 54935

Arnold J. Ericson (Of Counsel)  
Donald Caycn (Of Counsel)

August 16, 2005

VIA FACSIMILE AND US MAIL

Michael J. Furbush, Esq.  
Gronek & Latham, LLP  
390 North Orange Avenue  
Suite 600  
Orlando, FL 32801

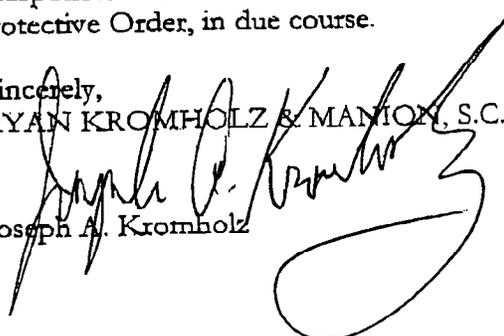
Re: Opposition No. 91164280

Dear Mr. Furbush:

We respond to your August 12, 2005 letter. You have had our discovery responses since April, and this is the first that we have heard of your objections to our responses. It is unreasonable for AMI to make this tardy complaint and expect supplemented responses within less than one week. We will address your complaints, as well as reviewing the Protective Order, in due course.

Sincerely,  
RYAN KROMHOLZ & MANION, S.C.

By:

  
Joseph A. Kromholz

JAK/pjp  
CC: Regal Ware, Inc.

**EXHIBIT "B"**

# RYAN KROMHOLZ & MANION, S.C.

ATTORNEYS AT LAW

Daniel D. Ryan  
Joseph A. Kromholz  
John M. Manion  
Laura A. Dable  
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Arnold J. Ericson (Of Counsel)  
Donald Cayen (Of Counsel)

August 17, 2005

Michael J. Furbush, Esq.  
Gronek & Latham, LLP  
390 North Orange Avenue  
Suite 600  
Orlando, FL 32801

VIA FACSIMILE AND US MAIL

Re: Opposition No. 91164280

Dear Mr. Furbush:

We are in receipt of a letter from Scott Danahy of your office dated August 17, 2005. As we indicated, we will respond in due course. You waited months to object and then expected an answer within days. That is simply unreasonable. I am in the process of attempting to accommodate your client and reschedule the depositions, as well as determine from my client whether an extension is warranted.

Sincerely,  
RYAN KROMHOLZ & MANION, S.C.

By:

Joseph A. Kromholz

JAK/pjp  
CC: Regal Ware, Inc.

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

REGAL WARE, INC.,	)	Opposition No.: 91164280
Opposer,	)	Serial No. 76/574977
v.	)	Mark: WHERE CRAFTSMEN STILL CARE
ADVANCED MARKETING INT'L., INC.,	)	Filing Date: February 10, 2004
Applicant.	)	

**APPLICANT'S FIRST REQUEST FOR ADMISSIONS TO OPPOSER**

Advanced Marketing Int'l., Inc. (hereinafter referred to as "Applicant"), by its undersigned counsel, pursuant to Rule 34 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and Rule 2.120 of the Trademark Rules of Practice, hereby requests that Regal Ware, Inc. ("Opposer"), by an officer or director or counsel, admit under oath or declaration within thirty (30) days, pursuant to Rule 36 of the Federal Rules of Civil Procedure an 37 C.F.R. § 2.120, the truth of the facts set forth herein following the Definitions.

**DEFINITIONS**

All terms used herein shall have the same meaning as stated in the definitions in Applicant's First Interrogatories to Opposer.

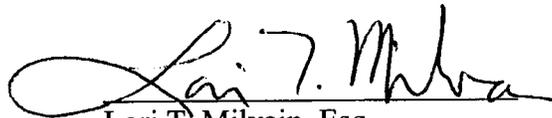
## REQUESTS



1. Admit that Opposer's Mark, \_\_\_\_\_, (the "WEST BEND Mark") is registered on the Supplemental Register of the United States Patent and Trademark Office.
2. Admit that the predominant feature of the WEST BEND Mark is "WEST BEND."
3. Admit that Opposer's counsel made an affirmative representation to counsel for Applicant on January 29, 2004 that the Applicant's use of WHERE CRAFTSMEN STILL CARE was permissible.
4. Admit that Opposer's counsel made an affirmative representation to counsel for Applicant on January 29, 2004 that if Applicant applied to register the trademark, WHERE CRAFTSMEN STILL CARE, and the U. S. Patent and Trademark Office cited the WEST BEND Mark against the application, Opposer would be willing to enter into a consent agreement with Applicant.
5. Admit that Opposer's WEST BEND Mark was registered by The West Bend Company in 1968, and amended in 1978.
6. Admit that at least one point in time since 1978, Opposer ceased all use of the WEST BEND Mark.

7. Admit that according to the U.S. Patent and Trademark Office records, the registration of the WEST BEND Mark in International Class 21 for ALUMINUM AND STAINLESS STEEL COOKING UTENSILS-NAMELY, SAUCEPANS, DOUBLE BOILERS, CASSEROLES, SKILLETS, DUTCH OVENS, EGG POACHERS, GRIDDLES, BAKING PANS, COOKIE SHEETS, MIXING BOWLS, TEA KETTLES, PERCOLATORS, BROILERS, FRENCH FRYERS, OVENETTES, has expired.

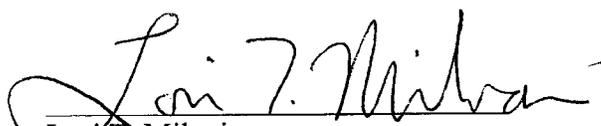
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lori T. Milvain". The signature is fluid and cursive, with a large initial "L" and "M".

Lori T. Milvain, Esq.  
GRONEK & LATHAM, LLP  
390 North Orange Ave., Suite 600  
Orlando, FL 32801  
(407) 481-5800  
(407) 481-5801 (fax)  
Counsel for Applicant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was served on Joseph A. Kromholz, Ryan Kromholz & Manion, S.C., P.O. Box 26618, Milwaukee, WI 53226 by U.S. Mail this 22<sup>nd</sup> day of March, 2005.

  
Lori T. Milvain

cc MJIF  
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Joseph A. Kromholz, Reg. No. 34,204  
Daniel R. Johnson, Reg. No. 46,204  
RYAN KROMHOLZ & MANION S.C.  
P. O. Box 26618  
Milwaukee, Wisconsin 53226-0618  
Telephone: (262) 783-1300  
Facsimile: (262) 783-1211

RECEIVED  
APR 2 2005  
Gronek & Latham

Attorneys for Regal Ware, Inc.

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

<p><b>Regal Ware, Inc.</b> <b>Opposer</b></p> <p>v.</p> <p><b>Advanced Marketing Int'l, Inc.</b> <b>Applicant</b></p>	<p>Opposition No.:91164280</p> <p>Atty. Docket No. :9513.18067-LIT</p>
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**OPPOSER'S RESPONSES TO APPLICANT'S REQUEST FOR ADMISSIONS TO**  
**OPPOSER**

Opposer, Regal Ware, Inc., by its attorneys, Ryan Kromholz & Manion, S.C. by Joseph A. Kromholz and Daniel R. Johnson, hereby responds to Applicant's Request for Admissions as follows

**DEFINITIONS**

All terms used herein shall have the same meaning as stated in the definitions in Applicant's First Interrogatories to Opposer.

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REQUESTS



I. Admit that Opposer's Mark, ,

(the "WEST BEND Mark") is registered on the Supplemental Register of the United States Patent and Trademark Office.

Response: **Admit.**

2. Admit that the predominant feature of the WEST BEND Mark is "WEST BEND."

Response: **Deny.**

3. Admit that Opposer's counsel made an affirmative representation to counsel for Applicant on January 29, 2004 that the Applicant's use of WHERE CRAFTSMEN STILL CARE was permissible.

Response: Opposer can find no evidence to support this statement and therefore **Denies** the request.

1           4. Admit that Opposer's counsel made an affirmative representation to  
2 counsel for Applicant on January 29, 2004 that if Applicant applied to register the  
3 trademark, WHERE CRAFTSMEN STILL CARE, and the U. S. Patent and Trademark  
4 Office cited the WEST BEND Mark against the application, Opposer would be willing to  
5 enter into a consent agreement with Applicant.

6  
7           Response: Opposer can find no evidence to support this statement and  
8 therefore **Denies** the request.

9  
10           5. Admit that Opposer's WEST BEND Mark was registered by The West  
11 Bend Company in 1968, and amended in 1978.

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13           Response: **Admit.**

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15           6. Admit that at least one point in time since 1978, Opposer ceased all use  
16 of the WEST BEND Mark.

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18           Response: Opposer can find no evidence to support this statement and  
19 therefore **Denies** the request.

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21           7. Admit that according to the U.S. Patent and Trademark Office records,  
22 the registration of the WEST BEND Mark in International Class 21 for ALUMINUM AND  
23 STAINLESS STEEL COOKING UTENSILS-NAMELY, SAUCEPANS, DOUBLE  
24 BOILERS, CASSEROLES, SKILLETTS, DUTCH OVENS, EGG POACHERS,  
25 GRIDDLES, BAKING PANS, COOKIE SHEETS, MIXING BOWLS, TEA KETTLES,  
26 PERCOLATORS, BROILERS, FRENCH FRYERS, OVENETTES, has expired.

27           Response: Opposer does not know what is meant by "records." U.S. Patent  
28 and Trademark Office online records indicate the aforesaid registration is expired in

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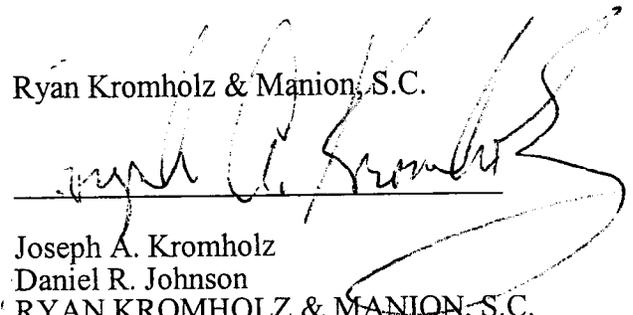
International Class 21. Written records issued by the U.S. Patent and Trademark Office on 7 March 1989 do not so indicate. Accordingly, Opposer admits as to U.S. Patent and Trademark Office online records and denies as to U.S. Patent and Trademark Office written records.

Respectfully submitted:

Date: April 21, 2005

Ryan Kromholz & Manion, S.C.

By: \_\_\_\_\_



Joseph A. Kromholz  
Daniel R. Johnson  
RYAN KROMHOLZ & MANION, S.C.  
P. O. Box 26618  
Milwaukee, Wisconsin 53226-0618

Attorneys for Regal Ware, Inc.

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Daniel R. Johnson, WI Bar No. 1,033,981  
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Facsimile: (262) 783-1211

Attorneys for Regal Ware, Inc.

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

<p><b>Regal Ware, Inc.</b> <b>Opposer</b></p> <p>v.</p> <p><b>Advanced Marketing Int'l, Inc.</b> <b>Applicant</b></p>	<p>Opposition No.:91164280</p> <p>Atty. Docket No. :9513.18067-LIT</p>
---	--

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of Opposer's Responses to Applicant's Request for Admissions to Opposer has been served on the following attorney of record by United States Mail Addressed as follows:

Lori T. Milvain, Esq.  
Gronek & Latham, LLP  
390 North Orange Avenue  
Suite 600  
Orlando, Florida 32801

this 21<sup>st</sup> day of April 2005.

  
\_\_\_\_\_  
Peggy Pechulis  
Ryan-Kromholz & Manion, S.C.  
P.O. Box 26618  
Milwaukee, WI 53226-0618

3/22

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

REGAL WARE, INC.,	)	Opposition No.: 91164280
	)	
Opposer,	)	Serial No. 76/574977
	)	
v.	)	Mark: WHERE CRAFTSMEN STILL CARE
	)	
ADVANCED MARKETING INT'L., INC.,	)	Filing Date: February 10, 2004
	)	
Applicant.	)	
	)	

**APPLICANT'S FIRST INTERROGATORIES TO OPPOSER**

Advanced Marketing Int'l., Inc. (hereinafter referred to as "Applicant"), by its undersigned counsel, hereby propounds for response by Opposer, the following written Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and Rule 2.120 of the Trademark Rules of Practice. These Interrogatories are continuing in nature, so as to require a prompt supplemental answer should Regal Ware, Inc. ("Opposer") obtain further information relating thereto between the time answers are served and the time of trial. Each Interrogatory is to be answered within thirty (30) days by Opposer, in writing, under oath.

**DEFINITIONS AND INSTRUCTIONS**

1. The term "Opposer" refers to Regal Ware, Inc., and shall include, as necessary and appropriate to make an answer as complete and accurate as possible, all predecessors and successors, as well as any corporation, company, partnership, association, joint venture, or other business entity or licensee which is, or has been at any

time, directly or indirectly controlled by Opposer or has been associated with Opposer in a formal or informal manner.

2. In the following interrogatories, the terms "document" and "documents" shall include, without limitation, originals and copies of all correspondence, literature, papers, memoranda, reports, notes, diaries, messages, e-mail memoranda and attachments thereof of any kind (including deleted and sent files residing on any computer network or in the memory of any computer owned or used by, or accessible to, Opposer), books, letters, ledgers, drawings, photographs, publications, advertisements, brochures, price lists, recordings (tape, disc, or other) of oral communications, graphs, sketches, announcements, analyses or statistical data, written communication of any kind, and facsimiles, whether or not they are privileged or within Opposer's possession, custody or control.

3. The words "thing" or "things" as used herein include any tangible thing or object other than a document regardless of whether it is privileged or within Opposer's possession, custody or control.

4. The terms "identify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Opposer, whether or not in the possession of Opposer and whether or not alleged to be privileged, including the following information:

- a. The present depository or depositories and the name and address of the person or persons having custody of any item to be identified unless the item is a patent, public document or person;

- b. Where the item to be identified is a person, his/her full name, address, job title, and present employer;
- c. Where the item to be identified is a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and
- d. Where the item to be identified is printed material, its title, author, publication date, volume, and the relevant page numbers.

5. The term "person" shall mean and include any natural person, business organization such as corporation, partnership, limited liability company, or the like.

6. In the following interrogatories, if privilege is alleged as to information or materials or if an interrogatory is otherwise not answered in full, state the specific grounds for not answering in full and answer said interrogatory to the extent to which it is not objected to including the identification of all information or materials for which privilege is claimed.

7. In lieu of identifying a document or tangible thing, Opposer may supply a copy or photograph thereof or produce the document or thing for inspection and copying by Applicant (each document to be designated as responsive to the particular interrogatory calling for its identification) pursuant to Applicant's First Request for Production of Documents and Things, unless further identification is requested or appropriate. However, if production of any document or tangible thing is refused, full identification of each such document or thing is requested.

8. Where an identified document is destroyed, or alleged to have been destroyed, state the date of and reason for its destruction, identify each person having any knowledge of its destruction, and each person responsible for its destruction.

## INTERROGATORIES

### INTERROGATORY NO. 1

Identify each person who has acted as a director or officer or managing agent of Opposer, indicating the period of time during which he/she served, the title of the office, and the nature of services performed.

### INTERROGATORY NO. 2

Identify and describe each product sold by Opposer under the designation



(the "WEST BEND Mark") and/or variants thereof, and

identify a representative sample of materials such as brochures and pamphlets used in connection with the advertising and promotion of all said products.

### INTERROGATORY NO. 3

For each product identified in response to Interrogatory NO. 2, state:

- a. the earliest date susceptible of proof when Opposer made such sale;
- b. the city and state in which such product was sold;
- c. the identity of all documents showing or describing such product; and
- d. the identity of all documents related to each such sale.

### INTERROGATORY NO. 4

State whether Opposer has made continuous use of the WEST BEND Mark since the dates specified in Interrogatory No. 3.

INTERROGATORY NO. 5

If the answer to Interrogatory No. 4 is yes, identify each document which relates to a showing that Opposer has made such continuous use of the WEST BEND Mark.

INTERROGATORY NO. 6

If the answer to Interrogatory No. 4 is no, state the dates for which such continuous use was interrupted, state the reasons for interruption of such continuous use, and identify all documents which relate to interruption of such continuous use.

INTERROGATORY NO. 7

Pursuant to Fed. R. Civ. P. 26(a)(1)(A), in respect to the WEST BEND Mark, state the name, address and telephone number of each individual who is likely to have knowledge relevant to Opposer's selection, adoption and use of the Mark, including knowledge about:

- a. the nature, extent and dollar volume of all products and services sold under the WEST BEND Mark since the date of first use by Opposer;
- b. the nature, extent and dollar volume of all advertising and promotional expenditures involving the WEST BEND Mark and the products or services sold under the WEST BEND Mark since the date of first use; and
- c. the geographic area in which Opposer uses and advertises the WEST BEND Mark.

INTERROGATORY NO. 8

Pursuant to Fed. R. Civ. P. 26(a)(1)(B), identify all documents, data compilations, and tangible things in Opposer's possession, custody, or control, that are relevant to the topics cited in the preceding Interrogatory.

INTERROGATORY NO. 9

For each product and service sold under the WEST BEND Mark, describe the class of purchasers and identify five (5) representative purchasers.

INTERROGATORY NO. 10

State whether any individual has ever been mistaken, confused or deceived due to any alleged similarity between the parties' marks, and if so, describe each such incident in detail, including the name, address and telephone number of each individual involved, the date of the incident, and all documents referring or relating to the incident.

INTERROGATORY NO. 11

Identify all documents that refer or relate to the adoption of the WEST BEND Mark.

INTERROGATORY NO. 12

Describe the channels of trade through which the products and/or services sold under the WEST BEND Mark are distributed and sold, and describe the customers for each such product or service.

INTERROGATORY NO. 13

State the dollar volume of expenditures for each type of advertising and promotion associated with the WEST BEND Mark since the date of first use, e.g., print, television, radio, etc.

INTERROGATORY NO. 14

Describe in detail the manner and extent, if any, in which Opposer offers cookware for sale under the WEST BEND Mark.

INTERROGATORY NO. 15

Identify all lawsuits, oppositions, cancellations or the like involving each of Opposer's trademark registrations and/or in any way involving the WEST BEND Mark and/or variants thereof.

INTERROGATORY NO. 16

Identify all documents which will be relied upon by Opposer in connection with the allegations of paragraph 3 of the Notice of Opposition.

INTERROGATORY NO. 17

Identify all documents which will be relied upon by Opposer in connection with the allegations of paragraph 4 of the Notice of Opposition.

INTERROGATORY NO. 18

Identify all documents which will be relied upon by Opposer in connection with the allegations of paragraph 5 of the Notice of Opposition.

INTERROGATORY NO. 19

Identify all documents which will be relied upon by Opposer in connection with the allegations of paragraph 8 of the Notice of Opposition.

INTERROGATORY NO. 20

Identify all documents which will be relied upon by Opposer in connection with the allegations of paragraph 9 of the Notice of Opposition.

INTERROGATORY NO. 21

Identify all persons who prepared any answer or portion of any such answer to these Interrogatories or who participated in such preparation by gathering the

information, documents or otherwise, and specify which answer or portion thereof each person provided or prepared.

INTERROGATORY NO. 22

Identify those persons who made the decision to bring this opposition.

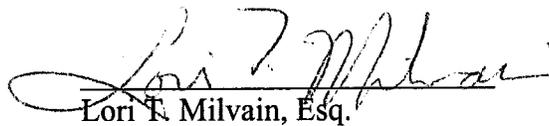
INTERROGATORY NO. 23

Identify any and all documents responsive to the foregoing interrogatories which are lost, stolen, or have been destroyed, and the dates of, and reasons for, the loss or destruction and the persons most knowledgeable about such loss or destruction.

INTERROGATORY NO. 24

State when Opposer first become aware of Applicant's use and application for the trademark, WHERE CRAFTSMEN STILL CARE.

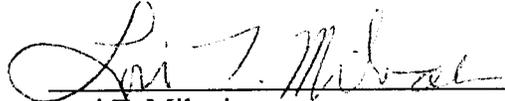
Respectfully submitted,



Lori T. Milvain, Esq.  
GRONEK & LATHAM, LLP  
390 North Orange Ave., Suite 600  
Orlando, FL 32801  
(407) 481-5800  
(407) 481-5801 (fax)  
Counsel for Applicant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was served on Joseph A. Kromholz, Ryan Kromholz & Manion, S.C., P.O. Box 26618, Milwaukee, WI 53226 by U.S. Mail this 24<sup>th</sup> day of March, 2005.

  
Lori T. Milvain

4/27

Joseph A. Kromholz, Reg. No. 34,204  
Daniel R. Johnson, Reg. No. 46,204  
RYAN KROMHOLZ & MANION S.C.  
P. O. Box 26618  
Milwaukee, Wisconsin 53226-0618  
Telephone: (262) 783-1300  
Facsimile: (262) 783-1211

Attorneys for Regal Ware, Inc.

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

<p>Regal Ware, Inc. Opposer</p> <p>v.</p> <p>Advanced Marketing Int'l, Inc. Applicant</p>	<p>Opposition No.:91164280</p> <p>Atty. Docket No. :9513.18067-LIT</p>
---	--

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST INTERROGATORIES TO**  
**OPPOSER**

Opposer, Regal Ware, Inc., by its attorneys, Ryan Kromholz & Manion, S.C. by Joseph A. Kromholz and Daniel R. Johnson, hereby responds to Applicant's first set of Interrogatories as follows

**GENERAL OBJECTIONS**

The General Objections apply to each and every Interrogatory and are set forth immediately below and are hereby incorporated into each response. The assertion of the same, similar or additional objections or the provision of partial answers in the individual responses to those requests does not waive any of Opposer's General Objections.

1. Opposer objects to each and every Interrogatory to the extent each and every Interrogatory seeks information or documents that are protected from disclosure under the attorney-client privilege or work product doctrine or immunity.

1  
2           2. The Opposer objects to each and every Interrogatory to the extent each and  
3 every Interrogatory seeks information or documents that are not relevant to a claim or defense of any  
4 party.

5  
6           3. To the extent that the Opposer has responded to any Interrogatory, the response  
7 should not be construed as a representation or admission that the response is admissible at trial and  
8 Opposer objects to any assertion that such a representation or admission has been made.

9  
10           4. Opposer objects to each and every Interrogatory to the extent it seeks  
11 information or documents in the possession, custody or control of Opposer.

12  
13           5. Opposer objects to each and every Interrogatory to the extent that it seeks to  
14 require Opposer to produce documents or information on behalf of or in the possession, custody or  
15 control of any entity or individual over whom Opposer has no authority or control.

16  
17           6. Opposer's search for documents, investigation of facts and information is  
18 ongoing. Opposer reserves the right to rely on any facts, documents or other evidence which may  
19 develop or come to Opposer's attention at a later time. Opposer's responses are based on information  
20 presently known to Opposer and are set forth without prejudice to Opposer's right to assert additional  
21 objections or supplemental responses should Opposer discover additional documents, information or  
22 grounds for objections. Opposer reserves the right to supplement or amend these responses at any  
23 time prior to trial of the action.

24  
25           7. Opposer is not producing any documents that are subject to a claim of attorney-  
26 client privilege, work product or other privilege. Any inadvertent production of a document that is  
27 properly the subject of a privilege shall not be intended or construed as a waiver, in whole or in part,  
28 of any such privilege.

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8. Opposer objects to each and every Interrogatory to the extent that they assume, imply, or require legal conclusions.

9. Opposer objects to each and every Interrogatory to the extent that any said Interrogatory seeks information or a response that is presently designated confidential pursuant to a protective order, confidentiality agreement, or stipulation in related litigation.

10. Opposer objects to each and every Interrogatory to the extent that any said Interrogatory mischaracterizes or otherwise mis-states any legal position of the Opposer.

11. Opposer objects to each and every Interrogatory to the extent that any said Interrogatory requests information that is not relevant to the claim or defense of any party.

12. Opposer objects to each and every Interrogatory to the extent that any said Interrogatory seeks confidential, proprietary, or trade secret information.

1 INTERROGATORIES

2 INTERROGATORY NO. 1

3 Identify each person who has acted as a director or officer or managing agent of  
4 Opposer, indicating the period of time during which he/she served, the title of the office, and the  
5 nature of services performed.

6  
7 Response: Regal Ware, Inc. (Regal) objects to this request on the grounds that it is overbroad,  
8 burdensome and oppressive. Regal further objects to this request in that it is clearly directed to include  
9 information that is simply not relevant to this case and therefore not calculated to lead to the discovery  
10 of admissible evidence. Regal further objects that the interrogatory requests proprietary business  
11 information. Regal is a privately held company and information about its directors, officers, and/or  
12 managing agents is confidential. Subject to said objections, Regal will provide relevant information in  
13 response to this request upon entry of an appropriate protective order.

14  
15 INTERROGATORY NO. 2

16 Identify and describe each product sold by Opposer under the designation



21 (the "WEST BEND Mark") and/or variants thereof, and identify a  
22 representative sample of materials such as brochures and pamphlets used in connection with the  
23 advertising and promotion of all said products.

1 Response: Regal Ware, Inc. (Regal) objects to this request on the grounds that it is overbroad,  
2 burdensome and oppressive. Regal further objects to this request in that it is clearly directed to include  
3 information that is simply not relevant to this case and therefore not calculated to lead to the discovery  
4 of admissible evidence. Subject to said objections, Regal responds: Cookware.

5  
6 **INTERROGATORY NO. 3**

7 For each product identified in response to Interrogatory NO. 2, state:

- 8 a. the earliest date susceptible of proof when Opposer made such sale; b. the city  
9 and state in which such product was sold;
- 10 c. the identity of all documents showing or describing such product; and  
11 d. the identity of all documents related to each such sale.

12  
13 Response: Regal objects to this interrogatory to the extent that it is overly broad, burdensome and  
14 oppressive, inquires into confidential, proprietary or privileged information, and is not calculated to  
15 lead to the discovery of admissible evidence. Subject to said objections, Regal responds that it  
16 purchased The West Bend Company in October of 2002. At that time the WEST BEND mark was in  
17 use. That use has never ceased. Regal continued that use. Subject to said objections Regal will  
18 provide representative documents that are in its possession, if any. To the extent there exist relevant  
19 documents that are subject to attorney client privilege or work product immunity, no such documents  
20 will be provided. Regal will not provide confidential or proprietary information, if any, absent entry  
21 of an appropriate protective order.

22  
23 **INTERROGATORY NO. 4**

24 State whether Opposer has made continuous use of the WEST BEND Mark since the  
25 dates specified in Interrogatory No. 3.

26  
27 Response: Subject to the objections previously stated in response to Interrogatory No. 3, yes.  
28

1 **INTERROGATORY NO. 5**

2 If the answer to Interrogatory No. 4 is yes, identify each document which relates to a  
3 showing that Opposer has made such continuous use of the WEST BEND Mark.

4  
5 Response: Subject to the objections previously stated in response to Interrogatory No. 4, Regal will  
6 provide representative documents that are in its possession.

7  
8 **INTERROGATORY NO. 6**

9 If the answer to Interrogatory No. 4 is no, state the dates for which such continuous  
10 use was interrupted, state the reasons for interruption of such continuous use, and identify all  
11 documents which relate to interruption of such continuous use.

12  
13 Response: No response required.

14  
15  
16 **INTERROGATORY NO. 7**

17 Pursuant to Fed. R. Civ. P. 26(a)(1)(A), in respect to the WEST BEND Mark, state the  
18 name, address and telephone number of each individual who is likely to have knowledge relevant to  
19 Opposer's selection, adoption and use of the Mark, including knowledge about:

20 a. the nature, extent and dollar volume of all products and services sold under the  
21 WEST BEND Mark since the date of first use by Opposer;

22 b. the nature, extent and dollar volume of all advertising and promotional  
23 expenditures involving the WEST BEND Mark and the products or services sold under the WEST  
24 BEND Mark since the date of first use; and

25 c. the geographic area in which Opposer uses and advertises the WEST BEND  
26 Mark.

1 Response: Regal objects to this interrogatory to the extent that it is overly broad, burdensome and  
2 oppressive, inquires into confidential, proprietary or privileged information, and is not calculated to  
3 lead to the discovery of admissible evidence. Subject to said objections Regal will provide  
4 representative documents that are in its possession, if any. To the extent there exist relevant  
5 documents that are subject to attorney client privilege or work product immunity, no such documents  
6 will be provided. Regal will not provide confidential or proprietary information, if any, absent entry  
7 of an appropriate protective order. Regal further states that the geographic area in which it uses and  
8 advertises the WEST BEND Mark is the U.S.A., Canada, Puerto Rico, Mexico, Taiwan, and Colombia.

9  
10 **INTERROGATORY NO. 8**

11 Pursuant to Fed. R. Civ. P. 26(a)(1)(B), identify all documents, data compilations, and  
12 tangible things in Opposer's possession, custody, or control, that are relevant to the topics cited in the  
13 preceding Interrogatory.

14  
15 Response: Regal objects to this interrogatory to the extent that it is overly broad, burdensome and  
16 oppressive, inquires into confidential, proprietary or privileged information, and is not calculated to  
17 lead to the discovery of admissible evidence. Subject to said objections Regal will provide  
18 representative documents that are in its possession, if any. To the extent there exist relevant  
19 documents that are subject to attorney client privilege or work product immunity, no such documents  
20 will be provided. Regal will provide relevant information in response to this request upon entry of an  
21 appropriate protective order.

1     **INTERROGATORY NO. 9**

2                     For each product and service sold under the WEST BEND Mark, describe the class of  
3 purchasers and identify five (5) representative purchasers.

4  
5     Response: Regal objects to this interrogatory to the extent that it is overly broad, burdensome and  
6 oppressive, inquires into confidential, proprietary or privileged information, and is not calculated to  
7 lead to the discovery of admissible evidence. Subject to said objections Regal will provide  
8 representative documents that are in its possession, if any. To the extent there exist relevant  
9 documents that are subject to attorney client privilege or work product immunity, no such documents  
10 will be provided. Regal will provide relevant proprietary or confidential information in response to  
11 this request upon entry of an appropriate protective order. Further, subject to said objections, Regal  
12 more specifically states: Independent cookware distributors who sell to individual consumers.

13  
14     **INTERROGATORY NO. 10**

15                     State whether any individual has ever been mistaken, confused or deceived due to any  
16 alleged similarity between the parties' marks, and if so, describe each such incident in detail, including  
17 the name, address and telephone number of each individual involved, the date of the incident, and all  
18 documents referring or relating to the incident.

19  
20     Response: Regal objects to this interrogatory to the extent that it is overly broad, burdensome and  
21 oppressive, inquires into confidential, proprietary or privileged information, and is not calculated to  
22 lead to the discovery of admissible evidence. Further, subject to said objections, Regal more  
23 specifically states: At present Regal is not aware of any instance of actual confusion.

1 **INTERROGATORY NO. 11:**

2 Identify all documents that refer or relate to the adoption of the WEST BEND  
3 Mark.

4  
5 Response: Regal objects to this interrogatory to the extent that it is overly broad, burdensome and  
6 oppressive, inquires into confidential, proprietary or privileged information, and is not calculated to  
7 lead to the discovery of admissible evidence. Subject to said objections Regal will provide  
8 representative documents that are in its possession, if any. To the extent there exist relevant  
9 documents that are subject to attorney client privilege or work product immunity, no such documents  
10 will be provided. Regal will provide relevant proprietary or confidential information in response to  
11 this request upon entry of an appropriate protective order.

12  
13 **INTERROGATORY NO. 12**

14 Describe the channels of trade through which the products and/or services sold under  
15 the WEST BEND Mark are distributed and sold, and describe the customers for each such product or  
16 service.

17  
18 Response: Direct sales through dinner parties, shows, and product demonstrations.

19  
20 **INTERROGATORY NO. 13**

21 State the dollar volume of expenditures for each type of advertising and promotion  
22 associated with the WEST BEND Mark since the date of first use, e.g., print, television, radio, etc.

23  
24 Response: Regal objects to this interrogatory to the extent that it is overly broad, burdensome and  
25 oppressive, inquires into confidential, proprietary or privileged information, and is not calculated to  
26 lead to the discovery of admissible evidence. To the extent there exist relevant documents that are  
27 subject to attorney client privilege or work product immunity, no such documents will be provided.  
28 Regal will provide relevant proprietary or confidential information in response to this request upon

1 entry of an appropriate protective order.

2  
3 **INTERROGATORY NO. 14**

4 Describe in detail the manner and extent, if any, in which Opposer offers cookware for  
5 sale under the WEST BEND Mark.

6  
7 Response: See response to Interrogatory No. 12.

8  
9 **INTERROGATORY NO. 15**

10 Identify all lawsuits, oppositions, cancellations or the like involving each of Opposer's  
11 trademark registrations and/or in any way involving the WEST BEND Mark and/or variants thereof.

12  
13 Response: None.

14  
15 **INTERROGATORY NO. 16**

16 Identify all documents which will be relied upon by Opposer in connection with the  
17 allegations of paragraph 3 of the Notice of Opposition.

18  
19 Response: Opposer objects to this request to the extent that it requires the identification or  
20 production of any document that is subject to the attorney client privilege or the work product  
21 immunity. Opposer further objects to the production of any relevant confidential or proprietary  
22 documents absent entry of an appropriate protective order. Subject to said objections: See the exhibits  
23 attached to the Amended Notice of Opposition and Opposer's responses to Applicant's Request for  
24 production of documents.

1 **INTERROGATORY NO. 17**

2 Identify all documents which will be relied upon by Opposer in connection with the  
3 allegations of paragraph 4 of the Notice of Opposition.

4  
5 Response: Opposer objects to this request to the extent that it requires the identification or  
6 production of any document that is subject to the attorney client privilege or the work product  
7 immunity. Opposer further objects to the production of any relevant confidential or proprietary  
8 documents absent entry of an appropriate protective order. Subject to said objections: See the exhibits  
9 attached to the Amended Notice of Opposition and Opposer's responses to Applicant's Request for  
10 production of documents.

11  
12 **INTERROGATORY NO. 18**

13 Identify all documents which will be relied upon by Opposer in connection with the  
14 allegations of paragraph 5 of the Notice of Opposition.

15  
16 Response: Opposer objects to this request to the extent that it requires the identification or  
17 production of any document that is subject to the attorney client privilege or the work product  
18 immunity. Opposer further objects to the production of any relevant confidential or proprietary  
19 documents absent entry of an appropriate protective order. Subject to said objections: See the exhibits  
20 attached to the Amended Notice of Opposition and Opposer's responses to Applicant's Request for  
21 production of documents.

22  
23 **INTERROGATORY NO. 19**

24 Identify all documents which will be relied upon by Opposer in connection with the  
25 allegations of paragraph 8 of the Notice of Opposition.

26  
27 Response: Opposer objects to this request to the extent that it requires the identification or  
28 production of any document that is subject to the attorney client privilege or the work product

1 immunity. Opposer further objects to the production of any relevant confidential or proprietary  
2 documents absent entry of an appropriate protective order. Subject to said objections: See the exhibits  
3 attached to the Amended Notice of Opposition and Opposer's responses to Applicant's Request for  
4 production of documents.

5  
6 **INTERROGATORY NO. 20**

7 Identify all documents which will be relied upon by Opposer in connection with the  
8 allegations of paragraph 9 of the Notice of Opposition.

9  
10 Response: Opposer objects to this request to the extent that it requires the identification or  
11 production of any document that is subject to the attorney client privilege or the work product  
12 immunity. Opposer further objects to the production of any relevant confidential or proprietary  
13 documents absent entry of an appropriate protective order. Subject to said objections: See the exhibits  
14 attached to the Amended Notice of Opposition and Opposer's responses to Applicant's Request for  
15 production of documents.

16  
17 **INTERROGATORY NO. 21**

18 Identify all persons who prepared any answer or portion of any such answer to these  
19 Interrogatories or who participated in such preparation by gathering the information, documents or  
20 otherwise, and specify which answer or portion thereof each person provided or prepared.

21  
22 Response: Opposer objects to this request to the extent that it requires the identification or  
23 production of any information that is subject to the attorney client privilege or the work product  
24 immunity. Opposer further objects to the production of any relevant confidential or proprietary  
25 documents absent entry of an appropriate protective order. Subject to said objections: David Beine.

1 **INTERROGATORY NO. 22**

2 Identify those persons who made the decision to bring this opposition.

3  
4 Response: Opposer objects to this interrogatory as inquiring into matters that are irrelevant to the  
5 scope of the present discovery. Regal Ware is bringing this opposition. The name or names of the  
6 person or persons who made the business decision to bring the opposition is irrelevant. Further, the  
7 Opposer is not responding to this Interrogatory at this time as it calls for the production of  
8 confidential information and inquires into information that is subject to attorney client privilege and  
9 work product immunity. Subject to the entry of an appropriate protective order Opposer will provide  
10 relevant information in response, if any.

11  
12 **INTERROGATORY NO. 23**

13 Identify any and all documents responsive to the foregoing interrogatories which are  
14 lost, stolen, or have been destroyed, and the dates of, and reasons for, the loss or destruction and the  
15 persons most knowledgeable about such loss or destruction.

16  
17 Response: Regal objects to this interrogatory on the grounds that is burdensome and oppressive.  
18 Regal can only reasonably comment on the documents that it has in its possession. Any documents  
19 that have been lost, stolen, or destroyed are by definition not in the custody or control of Regal. To  
20 the extent that any documents that were in the custody of Regal (and Regal retains knowledge of those  
21 documents), were lost, stolen, or destroyed and were subject to the attorney-client privilege or work  
22 product immunity, Regal invokes and maintains such privilege in said documents. Subject to said  
23 objections Regal responds: None.

1 INTERROGATORY NO. 24

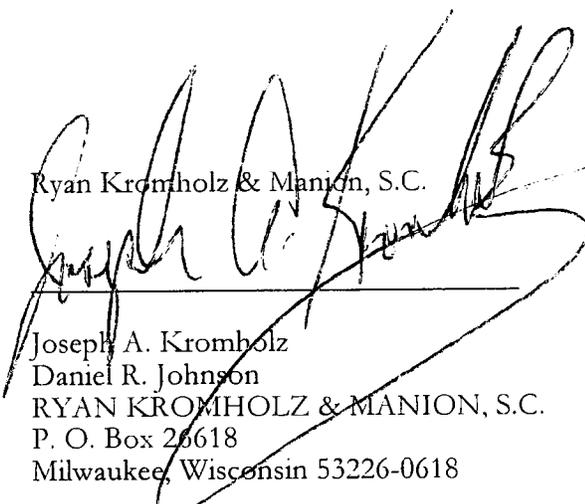
2 State when Opposer first become aware of Applicant's use and application for the  
3 trademark, WHERE CRAFTSMEN STILL CARE.

4  
5 Response: Regal objects to this interrogatory on the grounds that it is vague and ambiguous. Regal  
6 understands the interrogatory to request when Regal first became aware of Applicant's application for  
7 registration and responds that Regal became aware of Applicant's application upon its publication in  
8 the Official Gazette.

9  
10 Respectfully submitted as to  
objections and contentions:

11 Date: April 27, 2005

Ryan Kromholz & Manion, S.C.

12  
13 By: 

14 Joseph A. Kromholz  
15 Daniel R. Johnson  
16 RYAN KROMHOLZ & MANION, S.C.  
P. O. Box 26618  
Milwaukee, Wisconsin 53226-0618

17 Attorneys for Regal Ware, Inc.  
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3/22

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

REGAL WARE, INC.,	)	Opposition No.: 91164280
Opposer,	)	Serial No. 76/574977
v.	)	Mark: WHERE CRAFTSMEN STILL CARE
ADVANCED MARKETING INT'L., INC.,	)	Filing Date: February 10, 2004
Applicant.	)	

**APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
AND THINGS TO OPPOSER**

Advanced Marketing Int'l., Inc. (hereinafter referred to as "Applicant"), by its undersigned counsel, pursuant to Rule 34 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and Rule 2.120 of the Trademark Rules of Practice, hereby requests that Regal Ware, Inc. ("Opposer") produce for inspection and copying the following documents and things at the offices of Applicant's attorney, Lori T. Milvain, GRONEK & LATHAM, LLP, 390 North Orange Avenue, Suite 600, Orlando, Florida 32801 within thirty (30) days. Photocopies of the documents may be produced in lieu of the originals.

**DEFINITIONS AND INSTRUCTIONS**

1. All terms used herein shall have the same meaning as stated in the definitions in Applicant's First Interrogatories to Opposer.
2. With respect to each document which Opposer contends is privileged or otherwise immune from discovery, state the basis for the privilege or other grounds for

exclusion, the name and address of the author and the addressee, the date, the general subject matter, the name and address of every recipient of the original or any copy of the document, the name and address of each person who now has the original or any copy thereof and the identification and location of the files where the original and each copy are normally kept.

3. If Opposer knows of any document requested but cannot produce it, indicate that fact, give the particular reasons for such inability, and identify every person who is believed to have possession, custody or control of the document.

### REQUESTS

#### REQUEST NO. 1

All documents and things identified and/or requested to be identified in Applicant's First Set of Interrogatories to Opposer.

#### REQUEST NO. 2

All documents and things illustrating the use of Opposer's mark,



(the "WEST BEND Mark"), in connection with the

goods or services for which it is used by Opposer.

#### REQUEST NO. 3

All documents and things describing or illustrating the channels of trade for each product and service sold under the WEST BEND Mark.

REQUEST NO. 4

All documents and things describing or illustrating the classes of purchasers for each product and service sold under the WEST BEND Mark.

REQUEST NO. 5

Examples of all advertisements and promotional materials used for the goods and/or services sold in connection with the WEST BEND Mark.

REQUEST NO. 6

All documents and things describing or illustrating the outlets through which Opposer's products and services are sold under the WEST BEND Mark.

REQUEST NO. 7

Copies of all labels and other packaging materials illustrating the use of the WEST BEND Mark.

REQUEST NO. 8

All documents and things that describe or refer to the use of the WEST BEND Mark as a trademark or service mark.

REQUEST NO. 9

For each product and service sold under the WEST BEND Mark, all financial statements and records of account illustrating the annual sale of products and/or services in connection with the Mark.

REQUEST NO. 10

All documents and things disclosing Opposer's annual expenditures for each type of advertising and promotion involving the WEST BEND Mark.

REQUEST NO. 11

All documents and things illustrating, referring to or relating to Opposer's marketing for the goods and services sold under the WEST BEND Mark, including but not limited to dollar amount expenditures, target market, channels of trade and demographic studies.

REQUEST NO. 12

All documents and things illustrating, referring to or relating to any instances of actual or possible confusion, mistake, deception of association of any kind between Applicant or its WHERE CRAFTSMEN STILL CARE mark and Opposer or its WEST BEND Mark or goods or services.

REQUEST NO. 13

All documents and things that refer or relate to trademark usage and/or trademark rights in the marks at issue in this matter.

REQUEST NO. 14

All correspondence, memoranda, documents and records containing any reference to the value associated with the WEST BEND Mark.

REQUEST NO. 15

All documents and things relating or referring to Opposer's policy with respect to the protection and/or assertion of rights in the WEST BEND Mark.

REQUEST NO. 16

All licenses and agreements relating to or referring to the use of the WEST BEND Mark.

REQUEST NO. 17

A report from each witness who is retained or specially employed to provide expert testimony in this case, signed by such witness, containing a complete statement of all opinions to be expressed and the basis and reasons therefore, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years, the compensation to be paid for the study and testimony, and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

REQUEST NO. 18

To the extent not produced in response to the above, all documents constituting, relating or referring to surveys, marketing research, investigation or testing relating to the level of public recognition of the WEST BEND Mark or any portion thereof, the types of goods or services with which consumers associate such Mark, the level of public recognition thereof, and/or any confusion (or lack of confusion) between Applicant's mark (and/or goods or services offered or provided by Applicant in connection with such mark) and the WEST BEND Mark (and/or goods or services offered or provided by Opposer in connection with such Mark).

REQUEST NO. 19

All non-privileged documents prepared for use in this proceeding, including any communications with expert witnesses or research and investigative firms.

REQUEST NO. 20

A print-out of each World Wide Web page published or authorized by Opposer depicting, relating or referring to the WEST BEND Mark.

REQUEST NO. 21

To the extent not produced in response to the above, all documents and things upon which Opposer intends to rely at trial.

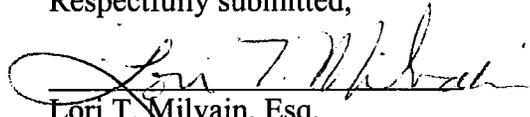
REQUEST NO. 22

All phone records of calls placed from the law firm of Ryan Kromholz & Manion, S.C. to the law firm of Gronek & Latham, LLP or Lori T. Milvain of that firm, on January 29, 2004.

REQUEST NO. 23

All attorney time records of John Manion and all firm billing records of Ryan Kromholz & Manion, S.C., for work performed for Opposer or its affiliated or related companies on January 29, 2004.

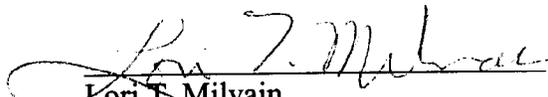
Respectfully submitted,



Lori T. Milvain, Esq.  
GRONEK & LATHAM, LLP  
390 North Orange Ave., Suite 600  
Orlando, FL 32801  
(407) 481-5800  
(407) 481-5801 (fax)  
Counsel for Applicant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Applicant's First Request for Production of Documents and Things to Opposer was served on Joseph A. Kromholz, Ryan Kromholz & Manion, S.C., P.O. Box 26618, Milwaukee, WI 53226 by U.S. Mail this 2<sup>nd</sup> day of March, 2005.

  
Lori T. Milvain

1 Joseph A. Kromholz, Reg. No. 34,204  
2 Daniel R. Johnson, Reg. No. 46,204  
3 RYAN KROMHOLZ & MANION S.C.  
4 P. O. Box 26618  
5 Milwaukee, Wisconsin 53226-0618  
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7 Facsimile: (262) 783-1211

8 Attorneys for Regal Ware, Inc.

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

11 <b>Regal Ware, Inc.</b> 12 <b>Opposer</b>	13 ) 14 ) 15 ) 16 ) 17 ) 18 ) 19 ) 20 )	21 Opposition No.:91164280  22 Atty. Docket No. :9513.18067-LIT
23 <b>v.</b>		
24 <b>Advanced Marketing Int'l, Inc.</b> 25 <b>Applicant</b>		

26 **OPPOSER'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR**  
27 **PRODUCTION OF DOCUMENTS AND THINGS OPPOSER**

28 Opposer, Regal Ware, Inc., by its attorneys, Ryan Kromholz & Manion, S.C. by Joseph A. Kromholz and Daniel R. Johnson, hereby responds to Applicant's First Request for Production of Documents and Things to Opposer as follows

**GENERAL OBJECTIONS**

The General Objections apply to each and every Request for Production and are set forth immediately below and are hereby incorporated into each response. The assertion of the same, similar or additional objections or the provision of partial answers in the individual responses to those requests does not waive any of Applicant's General Objections as set forth below.

1. Opposer objects to each and every Request for Production to the extent each and every Request for Production seeks information or documents that are protected from disclosure under the attorney-client privilege or work product doctrine or immunity.

2. The Opposer objects to each and every Request for Production to the

1 extent each and every Request for Production seeks information or documents that are not  
2 relevant to a claim or defense of any party.

3 3. To the extent that the Opposer has responded to any Request for  
4 Production, the response should not be construed as a representation or admission that the  
5 response is admissible at trial and Opposer objects to any assertion that such a representation  
6 or admission has been made.

7 4. Opposer objects to each and every Request for Production to the extent it  
8 seeks information or documents in the possession, custody or control of Opposer.

9 5. Opposer objects to each and every Request for Production to the extent  
10 that it seeks to require Opposer to produce documents or information on behalf of or in the  
11 possession, custody or control of any entity or individual over whom Opposer has no  
12 authority or control.

13 6. Opposer's search for documents, investigation of facts and information is  
14 ongoing. Opposer reserves the right to rely on any facts, documents or other evidence which  
15 may develop or come to Opposer's attention at a later time. Opposer's responses are based on  
16 information presently known to Opposer and are set forth without prejudice to Opposer's  
17 right to assert additional objections or supplemental responses should Opposer discover  
18 additional documents, information or grounds for objections. Opposer reserves the right to  
19 supplement or amend these responses at any time prior to trial of the action.

20 7. Opposer is not producing any documents that are subject to a claim of  
21 attorney-client privilege, work product or other privilege. Any inadvertent production of a  
22 document that is properly the subject of a privilege shall not be intended or construed as a  
23 waiver, in whole or in part, of any such privilege.

24 8. Opposer objects to any Document Request to the extent that such requests  
25 are for documents or information that are a matter of public record and are available to the  
26 Opposer.

27 9. Opposer objects to each and every Request for Production to the extent  
28 that they assume, imply, or require legal conclusions.



1 Response: Object on the grounds that the question is overly broad and oppressive. No  
2 confidential documents, if any, will be provided absent entry of an appropriate protective  
3 order. Subject to said objection, see Bates Nos. REG 00001 – REG 000130.  
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8 **REQUEST NO. 3:**

9 All documents and things describing or illustrating the channels of trade for  
10 each product and service sold under the WEST BEND Mark.

11 Response: Object on the grounds that the question is overly broad and oppressive and  
12 inquires into trade secrets. No confidential documents, if any, will be provided absent entry  
13 of an appropriate protective order. Subject to said objection, None.  
14  
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16 **REQUEST NO. 4:**

17 All documents and things describing or illustrating the classes of purchasers  
18 for each product and service sold under the WEST BEND Mark.

19  
20 Response: Object on the grounds that the question is overly broad, unduly vague,  
21 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
22 and inquires into trade secrets. No confidential documents, if any, will be provided absent  
23 entry of an appropriate protective order. Subject to said objection, NONE.  
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**REQUEST NO. 5:**

Examples of all advertisements and promotional materials used for the goods and/or services sold in connection with the WEST BEND Mark.

Response: Object on the grounds that the question is overly broad, unduly vague, ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence, and inquires into trade secrets. No confidential documents, if any, will be provided absent entry of an appropriate protective order. Subject to said objection, see Bates Nos. REG 00001 – REG 000130.

**REQUEST NO. 6:**

All documents and things describing or illustrating the outlets through which Opposer's products and services are sold under the WEST BEND Mark.

Response: Object on the grounds that the question is overly broad, unduly vague, ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence, and inquires into trade secrets. No confidential documents, if any, will be provided absent entry of an appropriate protective order. Subject to said objection, NONE.

1     **REQUEST NO. 7:**

2                     Copies of all labels and other packaging materials illustrating the use of the  
3 WEST BEND Mark.

4  
5     Response: Object on the grounds that the question is overly broad, unduly vague,  
6 ambiguous, and oppressive. Subject to said objection, see Bates Nos. REG 00001 – REG  
7 000130.

8  
9     **REQUEST NO. 8:**

10                    All documents and things that describe or refer to the use of the WEST  
11 BEND Mark as a trademark or service mark.

12  
13     Response: Object on the grounds that the question is overly broad, unduly vague,  
14 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
15 and inquires into trade secrets. Further object on the grounds that the question appears to  
16 request documents that are subject to attorney-client privilege or the work product  
17 immunity. No confidential documents, if any, will be provided absent entry of an  
18 appropriate protective order. No documents, if any, subject to attorney-client privilege or  
19 work product immunity will be provided. Subject to said objection, see Bates Nos. REG  
20 00001- REG 000130.

21  
22     **REQUEST NO. 9:**

23                    For each product and service sold under the WEST BEND Mark, all financial  
24 statements and records of account illustrating the annual sale of products and/or services in  
25 connection with the Mark.

26  
27     Response: Object on the grounds that the question is overly broad, unduly vague,  
28 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,

1 and inquires into trade secrets. No confidential documents, if any, will be provided absent  
2 entry of an appropriate protective order. Subject to said objection, there are no separate  
3 financial statements.

4  
5 **REQUEST NO. 10:**

6 All documents and things disclosing Opposer's annual expenditures for each  
7 type of advertising and promotion involving the WEST BEND Mark.

8  
9 Response: Object on the grounds that the question is overly broad, unduly vague,  
10 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
11 and inquires into trade secrets. No confidential documents, if any, will be provided absent  
12 entry of an appropriate protective order. Subject to said objection, see Opposer's Response  
13 to Request No. 9.

14  
15 **REQUEST NO. 11:**

16 All documents and things illustrating, referring to or relating to Opposer's  
17 marketing for the goods and services sold under the WEST BEND Mark, including but not  
18 limited to dollar amount expenditures, target market, channels of trade and demographic  
19 studies.

20  
21 Response: Object on the grounds that the question is overly broad, unduly vague,  
22 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
23 and inquires into trade secrets. No confidential documents, if any, will be provided absent  
24 entry of an appropriate protective order. Subject to said objection, see Opposer's Response  
25 to Request No. 9.

1 **REQUEST NO. 12:**

2 All documents and things illustrating, referring to or relating to any instances  
3 of actual or possible confusion, mistake, deception of association of any kind between  
4 Applicant or its WHERE CRAFTSMEN STILL CARE mark and Opposer or its WEST  
5 BEND Mark or goods or services.

6  
7 Response: Object on the grounds that the question is overly broad, unduly vague,  
8 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
9 and inquires into trade secrets. No confidential documents, if any, will be provided absent  
10 entry of an appropriate protective order. Subject to said objection, Opposer is not presently  
11 aware of instances of actual confusion.

12  
13 **REQUEST NO. 13:**

14 All documents and things that refer or relate to trademark usage and/or  
15 trademark rights in the marks at issue in this matter.

16  
17 Response: Object on the grounds that the question is overly broad, unduly vague,  
18 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
19 and inquires into trade secrets. Further object on the grounds that the question appears to  
20 request documents that are subject to attorney-client privilege or the work product  
21 immunity. No confidential documents, if any, will be provided absent entry of an  
22 appropriate protective order. No documents, if any, subject to attorney-client privilege or  
23 work product immunity will be provided. Subject to said objection, see Bates Nos. REG  
24 00001- REG 000130.

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**REQUEST NO. 14:**

All correspondence, memoranda, documents and records containing any reference to the value associated with the WEST BEND Mark.

Response: Object on the grounds that the question is overly broad, unduly vague, ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence, and inquires into trade secrets. Further object on the grounds that the question appears to request documents that are subject to attorney-client privilege or the work product immunity. No confidential documents, if any, will be provided absent entry of an appropriate protective order. No documents, if any, subject to attorney-client privilege or work product immunity will be provided. Subject to said objection, see Opposer's response to Request No. 9.

**REQUEST NO. 15:**

All documents and things relating or referring to Opposer's policy with respect to the protection and/or assertion of rights in the WEST BEND Mark.

Response: Object on the grounds that the question is overly broad, unduly vague, ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence, and inquires into trade secrets. Further object on the grounds that the question appears to request documents that are subject to attorney-client privilege or the work product immunity. No confidential documents, if any, will be provided absent entry of an appropriate protective order. No documents, if any, subject to attorney-client privilege or work product immunity will be provided. Subject to said objection, None.

1        **REQUEST NO. 16:**

2                    All licenses and agreements relating to or referring to the use of the WEST  
3 BEND Mark.

4  
5 Response: Object on the grounds that the question is overly broad, unduly vague,  
6 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
7 and inquires into trade secrets. Further object on the grounds that the question appears to  
8 request documents that are subject to attorney-client privilege or the work product  
9 immunity. No confidential documents, if any, will be provided absent entry of an  
10 appropriate protective order. No documents, if any, subject to attorney-client privilege or  
11 work product immunity will be provided. Subject to said objection, see Bates Nos. REG  
12 000122 – REG 000130.

13  
14        **REQUEST NO. 17:**

15                    A report from each witness who is retained or specially employed to provide  
16 expert testimony in this case, signed by such witness, containing a complete statement of all  
17 opinions to be expressed and the basis and reasons therefore, the data or other information  
18 considered by the witness in forming the opinions, any exhibits to be used as a summary of  
19 or support for the opinions, the qualifications of the witness, including a list of all  
20 publications authored by the witness within the preceding ten years, the compensation to be  
21 paid for the study and testimony, and a listing of any other cases in which the witness has  
22 testified as an expert at trial or by deposition within the preceding four years.

23  
24 Response: Object on the grounds that the question is overly broad, unduly vague,  
25 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
26 and inquires into trade secrets. Further object on the grounds that the question appears to  
27 request documents that are subject to attorney-client privilege or the work product  
28 immunity. No confidential documents, if any, will be provided absent entry of an

1 immunity. No confidential documents, if any, will be provided absent entry of an  
2 appropriate protective order. No documents, if any, subject to attorney-client privilege or  
3 work product immunity will be provided. Subject to said objection, NONE.

4  
5 **REQUEST NO. 18:**

6 To the extent not produced in response to the above, all documents  
7 constituting, relating or referring to surveys, marketing research, investigation or testing  
8 relating to the level of public recognition of the WEST BEND Mark or any portion thereof,  
9 the types of goods or services with which consumers associate such Mark, the level of  
10 public recognition thereof, and/or any confusion (or lack of confusion) between Applicant's  
11 mark (and/or goods or services offered or provided by Applicant in connection with such  
12 mark) and the WEST BEND Mark (and/or goods or services offered or provided by  
13 Opposer in connection with such Mark).

14  
15 Response: Object on the grounds that the question is overly broad, unduly vague,  
16 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
17 and inquires into trade secrets. Further object on the grounds that the question appears to  
18 request documents that are subject to attorney-client privilege or the work product  
19 immunity. No confidential documents, if any, will be provided absent entry of an  
20 appropriate protective order. No documents, if any, subject to attorney-client privilege or  
21 work product immunity will be provided. Subject to said objection, NONE.

22  
23 **REQUEST NO. 19:**

24 All non-privileged documents prepared for use in this proceeding, including  
25 any communications with expert witnesses or research and investigative firms.

26  
27 Response: Object on the grounds that the question is overly broad, unduly vague,  
28 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence.

1 and inquires into trade secrets. Further object on the grounds that the question appears to  
2 request documents that are subject to attorney-client privilege or the work product  
3 immunity. No confidential documents, if any, will be provided absent entry of an  
4 appropriate protective order. No documents, if any, subject to attorney-client privilege or  
5 work product immunity will be provided. Subject to said objection, NONE.

6  
7 **REQUEST NO. 20:**

8 A print-out of each World Wide Web page published or authorized by  
9 Opposer depicting, relating or referring to the WEST BEND Mark.

10  
11 Response: Object on the grounds that the question is overly broad, unduly vague,  
12 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
13 and inquires into trade secrets. Further object on the grounds that the question appears to  
14 request documents that are subject to attorney-client privilege or the work product  
15 immunity. No confidential documents, if any, will be provided absent entry of an  
16 appropriate protective order. No documents, if any, subject to attorney-client privilege or  
17 work product immunity will be provided. Subject to said objection, see the website  
18 [www.lifetime.com](http://www.lifetime.com).

19  
20 **REQUEST NO. 21:**

21 To the extent not produced in response to the above, all documents and things  
22 upon which Opposer intends to rely at trial.

23  
24 Response: Object on the grounds that the question is overly broad, unduly vague,  
25 ambiguous, and oppressive, not calculated to lead to the discovery of admissible evidence,  
26 and inquires into trade secrets. Further object on the grounds that the question appears to  
27 request documents that are subject to attorney-client privilege or the work product  
28 immunity. No confidential documents, if any, will be provided absent entry of an

1 work product immunity will be provided. Subject to said objection, see all prior responses.  
2 Opposer will also be relying upon all exhibits attached to the pleadings.  
3

4 **REQUEST NO. 22:**

5 All phone records of calls placed from the law firm of Ryan Kromholz &  
6 Manion, S.C. to the law firm of Gronek & Latham, LLP or Lori T. Milvain of that firm, on  
7 January 29, 2004.  
8

9 Response: The law firm of Ryan Kromholz & Manion, S.C. is not a party to the present  
10 action. The phone records of that firm are not the property of the Opposer. This is not a  
11 proper request under Federal Rule of Civil Procedure 34. Opposer does not have the  
12 requested documents in its possession. Subject to said objection, as a courtesy, a redacted  
13 copy of what is believed to be requested will be provided upon entry of an appropriate  
14 protective order.  
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**REQUEST NO. 23:**

All attorney time records of John Manion and all firm billing records of Ryan Kromholz & Manion, S.C., for work performed for Opposer or its affiliated or related companies on January 29, 2004.

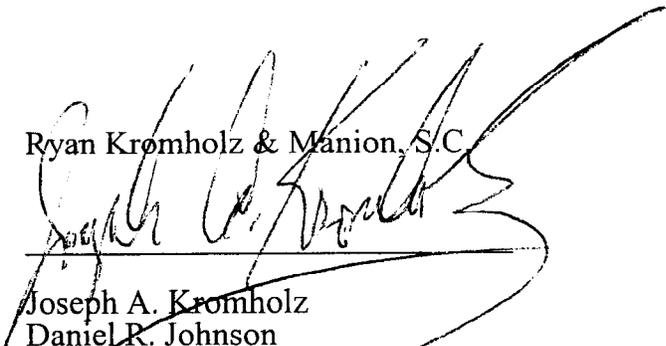
Response: Neither John Manion nor Ryan Kromholz & Manion are parties to the present action. These documents are subject to the attorney client privilege and work product immunity and will not be provided. Further, the request as worded is a disjointed compound question that is not understandable. Further, the request calls for confidential information. No Confidential documents, if any, will be provided absent entry of an appropriate protective order.

Respectfully submitted:

Date: April 28, 2005

By:

Ryan Kromholz & Manion, S.C.

  
Joseph A. Kromholz  
Daniel R. Johnson  
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