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

Proceeding	91164764
Party	Plaintiff Brink's Network, Incorporated
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Date	10/01/2009
Attachments	Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann.pdf (5 pages)(171656 bytes) Memo in Support of Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann.pdf (9 pages)(371007 bytes) Declaration of Nancy S. Lapidus in Support of Opposer's Motion to Compel Discovery Deposition.pdf (3 pages)(63049 bytes) Declaration of Kristin T D'Andrea in Support of Opposer's Motion to Compel Discovery Deposition.pdf (71 pages)(2430803 bytes)

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

BRINK'S NETWORK, INCORPORATED Opposer v. THE BRINKMANN CORPORATION Applicant	Opposition No. 91164764

OPPOSER'S MOTION TO COMPEL DISCOVERY
DEPOSITION OF MR. J. BAXTER BRINKMANN

Opposer Brink's Network, Incorporated, in accordance with Rule 37 Fed. R. Civ. P. and Rule 2.120(e) of the Trademark Rules of Practice, hereby moves the Trademark Trial and Appeal Board to compel Applicant Brinkmann Corporation to produce Mr. J. Baxter Brinkmann, President of Applicant, in response Opposer's Notice of Taking Discovery Deposition, and to supplement its discovery responses in response to the deficiencies raised by Opposer. Due to the continued pattern and practice of delay demonstrated by Applicant in connection with the deposition, Opposer requests that Applicant be required to produce Mr. Brinkmann for his deposition in Washington, D.C. at a location mutually agreeable to Opposer and Applicant. Opposer also requests the Board to stay proceedings in the above-captioned opposition pending disposition of this motion.

The grounds for this motion are as follows:

(1) On May 26, 2009, Applicant served answers to Opposer's Second Set of Interrogatories. In its answer to Interrogatory No. 24, Applicant identified Mr. J. Baxter Brinkmann, President of Applicant, as a witness whose testimony Applicant intends to present in this proceeding.

(2) On May 28, 2009, Opposer advised Applicant of its intention to take the discovery deposition of Mr. Brinkmann and proposed seven possible dates, ranging from June 24, 2009, – July 2, 2009, for that deposition. Applicant did not respond to that communication.

(3) As indicated in the supporting Declaration of Kristin T. D'Andrea, over the following four months Opposer made repeated efforts to obtain a commitment from Applicant as to a date on which Mr. Brinkmann would appear for his deposition.

(4) Despite such repeated requests, Applicant has failed to provide a single date on which Mr. Brinkmann could be deposed.

(5) As indicated in the supporting Declaration of Nancy S. Lapidus, on August 6, 2009, when counsel for the parties were present for Applicant's Rule 30(b)(6) deposition of Opposer in Richmond, Virginia, counsel for Opposer and Applicant discussed the continued delay in scheduling Mr. Brinkmann's deposition. At that time, Applicant's counsel advised Opposer's counsel that Mr. Brinkmann had not been responsive to repeated requests for dates on which to schedule the deposition and suggested that Opposer should proceed to serve the Notice of Deposition.

(6) Accordingly, on August 14, 2009, Opposer served the Notice of Deposition of Mr. Brinkmann for October 6, 2009.

(7) On August 20, 2009, Applicant informed Opposer that it was in the process of confirming Mr. Brinkmann's availability on October 6, 2009, and, in the event he would be unavailable, Applicant would provide alternative dates.

(8) In preparation for Mr. Brinkmann's deposition, Opposer identified deficiencies in Applicant's earlier, written discovery responses and requested supplemental information and documents in sufficient time for the deposition of Mr. Brinkmann to go forward on October 6, 2009. To date, Applicant has failed to supplement its discovery responses.

(9) On September 23, 2009 -- more than six weeks after service of the original Notice of Deposition of Mr. Baxter Brinkmann -- Applicant advised without any explanation that Mr. Brinkmann is unavailable for the deposition scheduled for October 6, 2009.

(10) Applicant has not provided alternative dates for Mr. Brinkmann's deposition, further evidencing Brinkmann's intent to continue the unacceptable pattern of delay.

(11) On September 28, 2009, Opposer sent e-mail correspondence to Applicant requesting Applicant to produce Mr. Brinkmann for his deposition on October 14, 2009, and informed Applicant of its intent to file this Motion to Compel in the absence of a favorable response to that request. In response, Applicant informed Opposer that it could not respond to Opposer's proposed date of October 14, 2009, for Mr. Brinkmann's deposition but did not provide alternative dates for the deposition.

(12) Applicant's continued pattern of refusal to cooperate in responding to and proceeding with discovery in an orderly and timely manner merits the relief sought by this motion.

In accordance with Rule 2.120(e) of the Trademark Rules of Practice, Opposer certifies that its counsel has made a good faith effort by correspondence with Applicant's counsel to resolve the issues presented by the present motion and has been unable to reach an agreement.

For the reasons stated above, Opposer submits that the relief sought by the foregoing motion is fully warranted and that Applicant should be directed by the Board to:

(1) Within two weeks following the Board's Order granting this motion, Applicant shall provide notice of at least three proposed dates for the deposition of Mr. Brinkmann to take place in Washington, D.C. The three proposed dates shall be within a four-week period following said notification. The date and location

selected for the deposition of Mr. Brinkmann must be mutually agreeable to Opposer and Applicant.

(2) Supplement Applicant's discovery responses to address all deficiencies raised by Opposer within two weeks following the Board's Order granting this motion.

The current discovery period ends on November 6, 2009. Accordingly, Opposer also requests that the Board stay proceedings pending disposition of this motion and reset the discovery and testimony periods.

A Memorandum in support of this Motion and the supporting Declarations of Kristin T. D'Andrea and Nancy S. Lapidus are submitted concurrently herewith.

BRINK'S NETWORK, INCORPORATED

Date: October 1, 2009

By: _____

Alan S. Cooper
Nancy S. Lapidus
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800
Fax: (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann was served on the following counsel of record for Applicant by depositing the same in the U.S. Mail, first class mail postage prepaid, this 1st day of October, 2009:

Gary Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Nancy Lapidus

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

BRINK'S NETWORK, INCORPORATED Opposer v. THE BRINKMANN CORPORATION Applicant	Opposition No. 91164764

MEMORANDUM IN SUPPORT OF OPPOSER'S
MOTION TO COMPEL DISCOVERY
DEPOSITION OF MR. J. BAXTER BRINKMANN

I. INTRODUCTION

This matter is before the Board on Opposer's motion pursuant to Rule 37 Fed. R. Civ. P. and Rule 2.120(e) of the Trademark Rules of Practice to compel Applicant Brinkmann Corporation to produce Mr. J. Baxter Brinkmann, President of Applicant, in response to Opposer's Notice of Taking Discovery Deposition, and to supplement its discovery responses in response to the deficiencies raised by Opposer. Due to the continued pattern and practice of delay demonstrated by Applicant in connection with the deposition, Opposer requests that Applicant be required to produce Mr. Brinkmann for his deposition in Washington, D.C. at a location mutually agreeable to Opposer and Applicant. Opposer also requests the Board to stay proceedings in the above-captioned opposition pending disposition of this motion.

II. FACTUAL BACKGROUND

On January 17, 2003, Applicant filed Application Serial No. 76/483,115 seeking to register the mark BRINKMANN for a variety of goods including home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets (the "Opposed Application"). The Opposed Application was published for opposition on October 5, 2004. Opposer filed a timely Notice of Opposition to the Opposed Application on April 1, 2005.

On May 26, 2009, during the course of discovery, Applicant served answers to Opposer's Second Set of Interrogatories. In its answer to Interrogatory No. 24, Applicant identified Mr. J. Baxter Brinkmann, President of Applicant, as a witness whose testimony Applicant intends to present in this proceeding.[1] On May 28, 2009, Opposer advised Applicant of its intention to take the discovery deposition of Mr. Brinkmann and proposed seven possible dates, ranging from June 24, 2009 – July 2, 2009, for that deposition.[2] Applicant did not respond to that communication.

By email dated June 11, 2009, Opposer proposed an extension of the discovery deadline to accommodate the discovery depositions of both parties, namely Applicant's 30(b)(6) deposition of Opposer, which had been scheduled for August 6, 2009, and Opposer's depositions of Mr. Brinkmann and Applicant's expert witness Dr. Alex Simonson, which had yet to be scheduled.[3] In that email, Opposer again inquired as to Mr. Brinkmann's availability for the deposition in order to insure that the requested extension

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[1] A true copy of Applicant's Answer to Opposer's Interrogatory No. 24 is annexed as Appendix A to the Declaration of Kristin T. D'Andrea in Support of Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann (hereinafter "D'Andrea Declaration"), which is filed concurrently herewith.

[2] A true copy of the May 28, 2009 email from Nancy Lapidus, counsel for Opposer, to Susan Hwang, counsel for Applicant is annexed as Appendix B to the D'Andrea Declaration.

[3] A true copy of the June 11, 2009 email from Ms. Lapidus to Ms. Hwang is annexed as Appendix C to the D'Andrea Declaration.

would accommodate the deposition schedule. In response, on June 11, 2009, Applicant agreed that an extension of the discovery period would be necessary and indicated that Opposer would be provided with proposed dates for Mr. Brinkmann's deposition.[4]

On June 25, 2009, Applicant stated again that it was "still obtaining dates for Mr. Brinkmann's deposition" and would respond early the following week.[5] When Applicant did not make any timely response, Opposer contacted Applicant again on June 29, 2009.[6] In response, Applicant stated that it was "still waiting to hear back from Brinkmann on availability dates" for Mr. Brinkmann's deposition and proposed a 90-day extension of the discovery period.[7] Opposer consented to the 90-day extension and again requested Applicant to provide dates on which Mr. Brinkmann would be available for the deposition.[8] Continuing the same pattern of delay, Applicant did not respond or otherwise provide dates for Mr. Brinkmann's discovery deposition.

Consequently, Opposer contacted Applicant again on July 9, 2009, requesting dates for Mr. Brinkmann's deposition.[9] Approximately 2 weeks later, on July 21, 2009, Applicant advised that it still could not provide Opposer with any specific dates on which Mr. Brinkmann would be available for the deposition and was working on obtaining proposed dates.[10] However, no such dates were forthcoming.

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[4] A true copy of the June 11, 2009 email from Ms. Hwang to Ms. Lapidus is annexed as Appendix D to the D'Andrea Declaration.
[5] A true copy of the June 25, 2009 email from Ms. Hwang to Ms. Lapidus is annexed as Appendix E to the D'Andrea Declaration.
[6] A true copy of the June 29, 2009 email from Ms. Lapidus to Ms. Hwang is annexed as Appendix F to the D'Andrea Declaration.
[7] A true coy of the June 29, 2009 email from Ms. Hwang to Ms. Lapidus is annexed as Appendix G to the D'Andrea Declaration.
[8] A true copy of the June 29, 2009 email from Ms. Lapidus to Ms. Hwang is annexed as Appendix H to the D'Andrea Declaration.
[9] A true copy of the July 9, 2009 email from Ms. Lapidus to Ms. Hwang is annexed as Appendix I to the D'Andrea Declaration.
[10] A true copy of the July 21, 2009 email from Ms. Hwang to Ms. Lapidus is annexed as Appendix J to the D'Andrea Declaration.

On August 6, 2009, when counsel for the parties were present for Applicant's 30(b)(6) deposition of Opposer in Richmond, Virginia, counsel for Opposer and counsel for Applicant discussed the continued delay in scheduling Mr. Brinkmann's deposition. At that time, Applicant's counsel advised Opposer's counsel that Mr. Brinkmann had not been responsive to repeated requests for dates on which to schedule his deposition and suggested that Opposer should proceed to serve the Notice of Deposition.[11] Accordingly, on August 14, 2009, Opposer served the Notice of Deposition of Mr. Brinkmann for October 6, 2009.[12]

On August 20, 2009, Opposer requested confirmation that Mr. Brinkmann would be produced for a deposition on October 6, 2009.[13] In response, Applicant informed Opposer that it was in the process of confirming Mr. Brinkmann's availability on October 6 and, in the event he would be unavailable, Applicant would provide alternative dates.[14]

In preparation for Mr. Brinkmann's deposition, Opposer identified deficiencies in Applicant's earlier, written discovery responses and production of documents and requested supplemental information and documents in sufficient time for the deposition of Mr. Brinkmann to go forward on October 6.[15] To date, Applicant has failed to supplement its discovery responses.

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[11] See Declaration of Nancy S. Lapidus in Support of Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann.

[12] A true copy of the Notice of Taking Deposition of Mr. Brinkmann is annexed as Appendix K to the D'Andrea Declaration. Upon noticing a typographical error in the Notice, on August 26, 2009, Opposer served an Amended Notice of Deposition of Mr. Baxter Brinkmann for October 6, 2009. A true copy of the Amended Notice of Taking Deposition of Mr. Brinkmann is annexed as Appendix L to the D'Andrea Declaration.

[13] A true copy of the August 20, 2009 letter from Ms. Lapidus to Ms. Hwang is annexed as Appendix M to the D'Andrea Declaration.

[14] A true copy of the August 20, 2009 letter from Ms. Hwang to Ms. Lapidus is annexed as Appendix N to the D'Andrea Declaration.

[15] True copies of the August 25, 2009 and September 3, 2009 letters from Ms. Lapidus to Ms. Hwang are annexed as Appendices O and Q to the D'Andrea Declaration.

On August 31, 2009, Applicant indicated that it would "remain flexible" in scheduling the date of Mr. Brinkmann's deposition in the event he is not available on October 6, 2009.[16]

On September 23, 2009 -- more than six weeks after service of the original Notice of Deposition of Mr. Brinkmann -- Applicant advised without any explanation that Mr. Brinkmann is unavailable for the deposition scheduled for October 6, 2009.[17] Applicant did not provide any alternative dates for Mr. Brinkmann's deposition, further evidencing Brinkmann's intent to continue the unacceptable pattern of delay.

On September 28, 2009, Opposer sent email correspondence to Applicant requesting Applicant to produce Mr. Brinkmann for his deposition on October 14, 2009, and informed Applicant of its intent to file this Motion to Compel in the absence of a favorable response to that request.[18] In response, Applicant informed Opposer that it could not respond to Opposer's proposed October 14, 2009, date for the deposition.[19] However, Applicant did not provide alternative dates for the deposition.

Since May 28, 2009, and despite Opposer's repeated requests, Applicant has refused to provide a single date on which Mr. Brinkmann is available for a deposition. To further its delay of the deposition of Mr. Brinkmann, Applicant has failed to supplement its discovery responses.

In view of the circumstances discussed above, Opposer has no alternative but to file the subject motion to compel.

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[16] A true copy of the August 31, 2009 letter from Ms. Hwang to Ms. Lapidus is annexed as Appendix P to the D'Andrea Declaration.
[17] A true copy of the September 23, 2009 letter from Ms. Hwang to Ms. Lapidus is annexed as Appendix R to the D'Andrea Declaration.
[18] A true copy of the September 28, 2009 email from Ms. Lapidus to Ms. Hwang is annexed as Appendix S to the D'Andrea Declaration.
[19] A true copy of the September 29, 2009 email from Ms. Hwang to Ms. Lapidus is annexed as Appendix T to the D'Andrea Declaration.

III. ARGUMENT

Applicant's conduct reflects a flagrant disregard for the obligations of parties to an *inter partes* proceeding before the Trademark Trial and Appeal Board. Applicant has done everything in its power to delay the deposition of its President, Mr. Brinkmann, and has taken no affirmative steps to cooperate. Applicant stated in its Answer to Interrogatory No. 24 that it intends to rely on the testimony of Mr. Brinkmann in the defense of this proceeding. Accordingly, Opposer is legally entitled to take the discovery deposition of Mr. Brinkmann.

At the time Opposer advised Applicant of its intent to take the deposition of Mr. Brinkmann, Opposer proposed *seven* dates for that deposition. Applicant advised that Mr. Brinkmann would not be available on any of those dates. Over the next four months, Opposer repeatedly asked for dates on which Mr. Brinkmann would be available for the deposition. In response to each request, Applicant stated that it would respond but never provided specific dates. Applicant's counsel acknowledged the unresponsiveness of its client and suggested that Opposer proceed to serve the Notice of Taking Deposition. After Opposer served the Notice of Deposition at the suggestion of Applicant's counsel, Applicant stated more than six weeks later that Mr. Brinkmann would be unavailable without any further explanation. Even then, Applicant failed to provide specific alternative dates.

Applicant's offers to "remain flexible" in the scheduling of Mr. Brinkmann's deposition are little more than a thinly veiled attempt to hide Applicant's continuing pattern and practice of delay, which no longer can be tolerated.

Applicant suggests that the deposition of Mr. Brinkmann should be postponed until all depositions that *may* take place in Dallas are scheduled by the parties. It is unfair to tie Opposer's deposition of Mr. Brinkmann to depositions that Applicant *may* take when Opposer has been waiting since May, 2009, to schedule Mr. Brinkmann's deposition and

Applicant has not noticed the depositions it supposedly wishes to take. The "convenience factor" cited by Applicant is just another tactic by Applicant to deny Opposer the opportunity to take the deposition of Mr. Brinkmann.

Opposer has demonstrated diligent efforts to schedule the deposition of Mr. Brinkmann as well as extraordinary patience, waiting month after month for Applicant to provide dates on which Mr. Brinkmann is available for his deposition. Opposer should not be forced to wait any longer to exercise its right to depose Mr. Brinkmann. *See HighBeam Marketing, LLC v. Highbeam Research, LLC*, 85 USPQ2d (TTAB 2008) (granting applicant's motion to compel discovery depositions upon finding that "despite extensive efforts by applicant to schedule the depositions at issue, opposer has failed to cooperate in the scheduling and taking of the discovery depositions at issue.")

Applicant's intentional pattern and practice of delay and its ongoing efforts to deny Opposer the opportunity to depose Mr. Brinkmann even after being put on notice of Opposer's intent to file this Motion to Compel, warrants the imposition of an appropriate sanction. Accordingly, Opposer requests that the Board require Applicant to produce Mr. Brinkmann in Washington, D.C. at a location mutually agreeable to Opposer and Applicant. This type of sanction has been imposed by the Board in the past,[20] and Opposer believes that the same relief is warranted under the present circumstances.

IV. CONCLUSION

For all of the foregoing reasons, Opposer respectfully requests the Board to grant its Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann. Given Applicant's failure to cooperate in the scheduling of Mr. Brinkmann's deposition and repeated pattern and practice of delay tactics, Applicant should be directed to produce Mr. Brinkmann for a

[20] *See NationsBank Corp. v. First Nations Financial Services Co.,* 2000 TTAB LEXIS 69 (TTAB 2000) (not citable as precedent).

deposition at a mutually agreeable location in Washington, D.C., where Opposer's counsel are located. Opposer also requests that the Board stay proceedings pending disposition of the Opposer's Motion to Compel.

BRINK'S NETWORK, INCORPORATED

Dated: October 1, 2009

By: _____

Alan S. Cooper
Nancy S. Lapidus
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800
Fax: (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support of Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann was served on the following counsel of record for Applicant by depositing the same in the U.S. Mail, first class mail postage prepaid, this 1st day of October, 2009:

Gary Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Nancy Lapidus

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

BRINK'S NETWORK, INCORPORATED Opposer v. THE BRINKMANN CORPORATION Applicant	Opposition No. 91164764

DECLARATION OF NANCY S. LAPIDUS
IN SUPPORT OF OPPOSER'S MOTION TO COMPEL
DISCOVERY DEPOSITION OF MR. J. BAXTER BRINKMANN

Nancy S. Lapidus declares as follows:

(1) I am a Partner in the firm of Howrey LLP, counsel for Opposer Brink's Network, Incorporated in the above-captioned opposition proceeding. The facts set forth below are based on my personal knowledge. If called as a witness, I could and would testify competently with respect to these facts.

(2) On August 6, 2009, when counsel for the parties were present for Applicant's deposition of Opposer's Rule 30(b)(6) witness in Richmond, Virginia, counsel for Opposer and counsel for Applicant discussed the continued delay in scheduling Mr. Brinkmann's deposition. At that time, Applicant's counsel advised Opposer's counsel that Mr. Brinkmann had not been responsive to repeated requests for dates on which to schedule the deposition and suggested that Opposer should proceed to serve the Notice of Deposition.

In accordance with 28 U.S.S. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C., this 1st day of October, 2009.

Nancy Lapidus

Nancy S. Lapidus

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Declaration of Nancy S. Lapidus in Support of Opposer's Motion to Compel the Discovery Deposition of J. Baxter Brinkmann was served on the following counsel of record for Applicant by depositing the same in the U.S. Mail, first class mail postage prepaid, this 1st day of October, 2009:

Gary Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Nancy Lapidus

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

BRINK'S NETWORK, INCORPORATED Opposer v. THE BRINKMANN CORPORATION Applicant	)	Opposition No. 91164764

DECLARATION OF KRISTIN T. D'ANDREA
IN SUPPORT OF OPPOSER'S MOTION TO COMPEL
DISCOVERY DEPOSITION OF MR. J. BAXTER BRINKMANN

KRISTIN T. D'ANDREA declares as follows:

(1) I am a Litigation Case Manager employed by Howrey LLP, counsel for Opposer Brink's Network, Incorporated, in the above-referenced opposition proceeding and have responsibility for maintaining the files in connection with that proceeding. The facts set forth below are based on my personal knowledge and, if called as a witness, I could and would testify competently with respect to these facts.

(2) A true copy of Applicant's Answer to Opposer's Interrogatory No. 24 is annexed hereto as Appendix A.

(3) A true copy of an email dated May 28, 2009, from Nancy Lapidus, counsel for Opposer, to Susan Hwang, counsel for Applicant, is annexed hereto as Appendix B.

(4) A true copy of an email dated June 11, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix C.

(5) A true copy of an email dated June 11, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix D.

(6) A true copy of an email dated June 25, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix E.

(7) A true copy of an email dated June 29, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix F.

(8) A true copy of an email dated June 29, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix G.

(9) A true copy of an email dated June 29, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix H.

(10) A true copy of an email dated July 9, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix I.

(11) A true copy of an email dated July 21, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix J.

(12) A true copy of the Notice of Taking Deposition of Mr. Brinkmann is annexed hereto as Appendix K.

(13) A true copy of the Amended Notice of Deposition of Mr. Brinkmann is annexed hereto as Appendix L.

(14) A true copy of a letter dated August 20, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix M

(15) A true copy of a letter dated August 20, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix N.

(16) A true copy of a letter dated August 25, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix O.

(17) A true copy of a letter dated August 31, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix P.

(18) A true copy of a letter dated September 3, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix Q.

(19) A true copy of a letter dated September 23, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix R.

(20) A true copy of an email dated September 28, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix S.

(21) A true copy of an email dated September 29, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix T.

In accordance with 28 U.S.S. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C., this 1st day of October, 2009.

Kristin T. D'Andrea

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Declaration of Kristin T. D'Andrea in Support of Opposer's Motion to Compel the Discovery Deposition of J. Baxter Brinkmann was served on the following counsel of record for Applicant by depositing the same in the U.S. Mail, first class mail postage prepaid, this 1st day of October, 2009:

Gary Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Nancy Capidus

APPENDIX A

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

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

BRINK'S NETWORK, INCORPORATED, Opposer, v. THE BRINKMANN CORPORATION, Applicant.	Opposition No. 91164764

APPLICANT BRINKMANN'S RESPONSES TO
OPPOSER BRINK'S SECOND SET OF INTERROGATORIES

Pursuant to FED. R. CIV. P. 33 and 37 C.F.R. § 2.120, Applicant The Brinkmann Corporation ("Brinkmann") hereby responds to OPPOSER BRINK'S NETWORK, INCORPORATED'S SECOND SET OF INTERROGATORIES served by Opposer Brink's Network, Incorporated ("Brink's Network") by first class mail on April 20, 2009.

GENERAL OBJECTIONS

1. Brinkmann objects to each interrogatory insofar as it is vague, overly broad, oppressive, harassing or vexatious; imposes burden or expense that outweighs its likely benefit; seeks a legal conclusion; and/or seeks information not relevant to the claim or defense of any party.

2. Brinkmann objects to each interrogatory insofar as it seeks information or documents protected against disclosure by the attorney client privilege, the work product

SPECIFIC OBJECTIONS AND RESPONSES TO BRINK'S NETWORK'S INTERROGATORIES

INTERROGATORY NO. 24:

Identify all witnesses whose testimony Applicant intends to present during its testimony period in this opposition proceeding and, with respect to each such witness, identify the area of testimony.

RESPONSE TO INTERROGATORY NO. 24:

In addition to the grounds set forth in the General Objections, which are incorporated by reference, Brinkmann objects to this interrogatory on the following grounds:

Brinkmann objects that this interrogatory is premature because discovery has not yet concluded, and Brinkmann does not yet know, and cannot be expected to know without further investigation and discovery, the witnesses on which it will rely in support of its position. In this regard, Brinkmann notes that Brink's Network has filed a Motion for Leave to File Amended Notice of Opposition, which, if granted, will require additional testimony by Applicant.

Subject to and without waiving the General Objections, which are incorporated by reference, Brinkmann states that the potential witnesses that Brinkmann may rely on for testimony in this proceeding are:

Mr. J. Baxter Brinkmann, President, The Brinkmann Corporation. Mr. Brinkmann may testify on the history of Brinkmann, Brinkmann's trademark registrations, Brinkmann's use of the mark BRINKMANN, Brinkmann's products, and its sales, marketing, channels of trade and classes of customers and other likelihood of confusion and dilution factors.

Ms. Helen L. Dunham, Director of Creative Services, The Brinkmann Corporation. Ms. Dunham may testify on the marketing and packaging of Brinkmann's products and Brinkmann's decision to file Application Serial No. 76/483,115 for the mark BRINKMANN.

Brinkmann reserves the right to amend and/or supplement this response as its investigations and discovery progress.

INTERROGATORY NO. 25:

Identify all expert witnesses whose testimony Applicant intends to present during its testimony period in this opposition proceeding and, with respect to each such expert witness, identify the area of testimony and all documents comprising any expert report.

RESPONSE TO INTERROGATORY NO. 25:

In addition to the grounds set forth in the General Objections, which are incorporated by reference, Brinkmann objects to this interrogatory on the following grounds:

Brinkmann objects that this interrogatory is premature because discovery has not yet concluded, and Brinkmann does not yet know, and cannot be expected to know without further investigation and discovery, the expert witnesses on which it will rely in support of its position.

Subject to and without waiving the General Objections, which are incorporated by reference, Brinkmann states that Brinkmann intends to present the testimony of Mr. Alex Simonson of Simonson Associates in connection with an analysis of the RL Associates Consumer Perception Survey dated December 2005. To date, Mr. Simonson has not prepared an expert report.

INTERROGATORY NO. 29:

State whether Applicant's Declaration of Use in connection with U.S. Registration No. 1,153,730 of the mark BRINKMANN executed by Martin P. Donoghue on May 16, 2001, included a statement that Applicant was using the mark BRINKMANN on or in connection with all goods listed in Registration No. 1,153,730 except for "radar detectors, and electronic metal detectors, head phones and search coils," in Class 9.

RESPONSE TO INTERROGATORY NO. 29:

In addition to the grounds set forth in the General Objections, which are incorporated by reference, Brinkmann objects to this interrogatory on the following grounds:

Brinkmann objects to this interrogatory to the extent it not relevant to the claim or defense of any party.

Brinkmann objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and/or the work product doctrine.

Subject to and without waiving the General Objections, which are incorporated by reference, Brinkmann states the opposed goods in this proceeding are, "Home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets." None of these goods were registered in connection with Applicant's U.S. Registration No. 1,153,730 for the mark BRINKMANN and none of these goods were at issue in the renewal of Registration No. 1,153,730.

As to objections:

Dated: May 26, 2009

Gary A. Clark, Esq.
Susan Hwang, Esq.

VERIFICATION

I, J. Baxter Brinkmann, do hereby declare:

I have read Brinkmann's Responses to Opposer's SECOND SET OF INTERROGATORIES and know its contents.

I am employed by The Brinkmann Corporation ("Brinkmann"), a party to this action, and am authorized to make this verification on its behalf. These responses are based upon information available to Brinkmann and its counsel. Based upon information and belief, the matters stated in these Responses are true.

To the extent that the responses require legal conclusions or the application of law to fact, I have relied on counsel for Brinkmann.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Dallas, Texas on the 20th day of May, 2009

J. Baxter Brinkmann

J. BAXTER BRINKMANN

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing "Applicant Brinkmann's Responses To Opposer Brink's Second Set Of Interrogatories" by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Nancy S. Lapidus, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.

Dated: May 26, 2009

Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071
Tel.: (213) 620-1780
Fax: (213) 620-1398

Attorneys for Applicant
THE BRINKMANN CORPORATION

APPENDIX B

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

D'Andrea, Kristin

From: Lapidus, Nancy
Sent: Thursday, May 28, 2009 1:26 PM
To: 'Susan Hwang'
Cc: _gclark@sheppardmullin.com; Cooper, Alan; Peacock, Skyler
Subject: Brinks v. Brinkmann; Depositions

Susan:

Brinkmann's Response to Interrogatory No. 24 identifies Mr. J. Baxter Brinkmann, President of The Brinkmann Corporation, as a witness for Brinkmann in the proceeding. Brink's intends to notice the deposition of Mr. Brinkmann. Please let us know which of the following dates would work for Mr. Brinkmann's deposition: June 24, 25, 26, 29, 30 or July 1 or 2.

Brinkmann's Response to Interrogatory No. 25 identifies Mr. Alex Simonson of Simonson Associates as an expert witness in the proceeding. Response No. 25 also states that Mr. Simonson has not prepared an expert report to date. Brink's intends to take the deposition of Mr. Simonson after the expert report is served. Please let us know when you expect to serve the expert report so we can find a mutually convenient time to schedule Mr. Simonson's deposition.

Regards,
Nancy

Nancy S. Lapidus
Partner

HOWREY LLP
1299 Pennsylvania Ave NW
Washington, DC 20004-2402
Direct: +1 202.383.6865
Fax: +1 202.383.7195
LapidusN@howrey.com
www.howrey.com

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APPENDIX C

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Lapidus, Nancy
Sent: Thursday, June 11, 2009 2:11 PM
To: 'Susan Hwang'
Cc: Gary Clark; Cooper, Alan
Subject: Discovery Responses

Susan:

Brink's responses to Brinkmann's second set of discovery requests are due June 15. We request a 2-week extension until June 29 to serve responses to these requests. We are expecting to receive more documents and information from Brink's and its outside law firm, and I will be out of the office for most of next week. We also intend to serve supplemental answers to Brink's first set of interrogatories by June 29 as well. Please let us know whether Brinkmann consents to the requested 2-week extension.

We note that the discovery cut-off date currently is June 30. The parties need to request an extension of the deadline to accommodate the August 6 deposition of Mr. Lennon, as well as the deposition of Mr. Brinkmann and Mr. Simonson. In order to determine whether a 60-day extension is sufficient or whether a longer extension is necessary, please let us know whether Mr. Brinkmann is available on one of the proposed dates set forth in my email of May 28 or propose an alternative date, and please let us know when you expect to serve the expert report so we can consider the timing of Mr. Simonson's deposition.

Regards,
Nancy

Nancy S. Lapidus
Partner

HOWREY LLP
1299 Pennsylvania Ave NW
Washington, DC 20004-2402
Direct: +1 202.383.6865
Fax: +1 202.383.7195
LapidusN@howrey.com
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APPENDIX D

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Susan Hwang [SHwang@sheppardmullin.com]
Sent: Thursday, June 11, 2009 11:02 PM
To: Lapidus, Nancy
Cc: _gclark@sheppardmullin.com; Cooper, Alan
Subject: Re: Discovery Responses

Nancy,

The two-week extension is acceptable and we concur that an extension of the discovery cut-off is necessary but cannot confirm whether 60 days is sufficient, at this point. We will follow up with you on that as soon as we have deposition availability dates.

Susan

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
ATTORNEYS AT LAW

333 South Hope Street
48th Floor
Los Angeles, CA 90071-1448
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213.620.1398 *fax*
www.sheppardmullin.com

Susan Hwang
213.617.4279 *direct* | 213.443.2892 *direct fax*
SHwang@sheppardmullin.com | Bio

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Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

From: Lapidus, Nancy <LapidusN@howrey.com>
To: Susan Hwang
Cc: Gary Clark; Cooper, Alan <CooperA@howrey.com>
Sent: Thu Jun 11 11:10:58 2009
Subject: Discovery Responses

Susan:

Brink's responses to Brinkmann's second set of discovery requests are due June 15. We request a 2-week extension until June 29 to serve responses to these requests. We are expecting to receive more documents and information from Brink's and its outside law firm, and I will be out of the office for most of next week. We also intend to serve supplemental answers to Brink's first set of interrogatories by June 29 as well. Please let us know whether Brinkmann consents to the requested 2-week extension.

We note that the discovery cut-off date currently is June 30. The parties need to request an extension of the deadline to accommodate the August 6 deposition of Mr. Lennon, as well as the deposition of Mr. Brinkmann and Mr. Simonson. In order to determine whether a 60-day extension is sufficient or whether a longer extension is necessary, please let us know whether Mr. Brinkmann is available on one of the proposed dates set forth in my email of May 28 or propose an alternative date, and please let us know when you expect to serve the expert report so we can consider the timing of Mr. Simonson's deposition.

Regards,
Nancy

Nancy S. Lapidus
Partner

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APPENDIX E

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Susan Hwang [SHwang@sheppardmullin.com]
Sent: Thursday, June 25, 2009 4:51 PM
To: Lapidus, Nancy
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Nancy,

August 5 is acceptable. Please note that we are still obtaining dates for Mr. Brinkmann's deposition and will try to get back to you early next week on that issue.

Susan

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
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Susan Hwang
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SHwang@sheppardmullin.com | *Bio*

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From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Thursday, June 25, 2009 1:47 PM
To: Susan Hwang
Cc: Cooper, Alan; D'Andrea, Kristin
Subject: Deposition of Mr. Lennon

Susan: We had scheduled the deposition of Mr. Lennon on August 6. Can we change the deposition to Wednesday, August 5? Mr. Lennon is no longer available on the 6th. Please let me know.

Regards,
Nancy

Nancy S. Lapidus
Partner

HOWREY LLP
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APPENDIX F

Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Lapidus, Nancy
Sent: Monday, June 29, 2009 2:37 PM
To: 'Susan Hwang'
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Susan: The discovery cut-off date is tomorrow, so the parties should file a joint request to extend the deadline today. Please let us know the proposed dates for the deposition of Mr. Brinkmann and whether a 60-day extension is sufficient to accommodate the deposition of Mr. Brinkmann and Mr. Simonson.

Later today we will be serving our answers and responses to Brinkmann's second set of discovery. In addition, we will be sending you responsive documents via Federal Express. We are still waiting on supplemental information and documents responsive to certain of Brinkmann's first set of interrogatories. We intend to serve the supplemental answers to Brinkmann's first set of interrogatories by Thursday.

Regards,
Nancy

From: Susan Hwang [mailto:SHwang@sheppardmullin.com]
Sent: Thursday, June 25, 2009 4:51 PM
To: Lapidus, Nancy
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Nancy,

August 5 is acceptable. Please note that we are still obtaining dates for Mr. Brinkmann's deposition and will try to get back to you early next week on that issue.

Susan

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
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333 South Hope Street
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Susan Hwang
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SHwang@sheppardmullin.com | *Bio*

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received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Thursday, June 25, 2009 1:47 PM
To: Susan Hwang
Cc: Cooper, Alan; D'Andrea, Kristin
Subject: Deposition of Mr. Lennon

Susan: We had scheduled the deposition of Mr. Lennon on August 6. Can we change the deposition to Wednesday, August 5? Mr. Lennon is no longer available on the 6th. Please let me know.

Regards,
Nancy

Nancy S. Lapidus
Partner

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APPENDIX G

Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Susan Hwang [SHwang@sheppardmullin.com]
Sent: Monday, June 29, 2009 3:07 PM
To: Lapidus, Nancy
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Nancy,

We are still waiting to hear back from Brinkmann on availability dates. We suggest extending the discovery cut-off by 90 days so that we don't have to extend again if it turns out that 60 days is insufficient.

Susan

From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Monday, June 29, 2009 11:37 AM
To: Susan Hwang
Cc: Cooper, Alan; D'Andrea, Kristin; Gary Clark
Subject: RE: Deposition of Mr. Lennon

Susan: The discovery cut-off date is tomorrow, so the parties should file a joint request to extend the deadline today. Please let us know the proposed dates for the deposition of Mr. Brinkmann and whether a 60-day extension is sufficient to accommodate the deposition of Mr. Brinkmann and Mr. Simonson.

Later today we will be serving our answers and responses to Brinkmann's second set of discovery. In addition, we will be sending you responsive documents via Federal Express. We are still waiting on supplemental information and documents responsive to certain of Brinkmann's first set of interrogatories. We intend to serve the supplemental answers to Brinkmann's first set of interrogatories by Thursday.

Regards,
Nancy

From: Susan Hwang [mailto:SHwang@sheppardmullin.com]
Sent: Thursday, June 25, 2009 4:51 PM
To: Lapidus, Nancy
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Nancy,

August 5 is acceptable. Please note that we are still obtaining dates for Mr. Brinkmann's deposition and will try to get back to you early next week on that issue.

Susan

---

333 South Hope Street
48th Floor
Los Angeles, CA 90071-1448
213.620.1780 *office*

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
ATTORNEYS AT LAW

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Susan Hwang
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From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Thursday, June 25, 2009 1:47 PM
To: Susan Hwang
Cc: Cooper, Alan; D'Andrea, Kristin
Subject: Deposition of Mr. Lennon

Susan: We had scheduled the deposition of Mr. Lennon on August 6. Can we change the deposition to Wednesday, August 5? Mr. Lennon is no longer available on the 6th. Please let me know.

Regards,
Nancy

Nancy S. Lapidus
Partner

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APPENDIX H

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Lapidus, Nancy
Sent: Monday, June 29, 2009 4:21 PM
To: 'Susan Hwang'
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Susan: We will file a consent motion to extend the discovery deadline for 90 days. Please let us know as soon as possible when Mr. Brinkmann will be available. Thanks.

Regards,
Nancy

From: Susan Hwang [mailto:SHwang@sheppardmullin.com]
Sent: Monday, June 29, 2009 3:07 PM
To: Lapidus, Nancy
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Nancy,

We are still waiting to hear back from Brinkmann on availability dates. We suggest extending the discovery cut-off by 90 days so that we don't have to extend again if it turns out that 60 days is insufficient.

Susan

From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Monday, June 29, 2009 11:37 AM
To: Susan Hwang
Cc: Cooper, Alan; D'Andrea, Kristin; Gary Clark
Subject: RE: Deposition of Mr. Lennon

Susan: The discovery cut-off date is tomorrow, so the parties should file a joint request to extend the deadline today. Please let us know the proposed dates for the deposition of Mr. Brinkmann and whether a 60-day extension is sufficient to accommodate the deposition of Mr. Brinkmann and Mr. Simonson.

Later today we will be serving our answers and responses to Brinkmann's second set of discovery. In addition, we will be sending you responsive documents via Federal Express. We are still waiting on supplemental information and documents responsive to certain of Brinkmann's first set of interrogatories. We intend to serve the supplemental answers to Brinkmann's first set of interrogatories by Thursday.

Regards,
Nancy

From: Susan Hwang [mailto:SHwang@sheppardmullin.com]
Sent: Thursday, June 25, 2009 4:51 PM
To: Lapidus, Nancy
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Nancy,

August 5 is acceptable. Please note that we are still obtaining dates for Mr. Brinkmann's deposition and will try to get back to you early next week on that issue.

Susan

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
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From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Thursday, June 25, 2009 1:47 PM
To: Susan Hwang
Cc: Cooper, Alan; D'Andrea, Kristin
Subject: Deposition of Mr. Lennon

Susan: We had scheduled the deposition of Mr. Lennon on August 6. Can we change the deposition to Wednesday, August 5? Mr. Lennon is no longer available on the 6th. Please let me know.

Regards,
Nancy

Nancy S. Lapidus
Partner

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APPENDIX I

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Lapidus, Nancy
Sent: Thursday, July 09, 2009 1:20 PM
To: 'Susan Hwang'
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Susan:

Where will the deposition of Mr. Lennon be held on August 5? The location of the deposition has a bearing on our travel logistics.

Please advise us of the dates Mr. Brinkmann is available for his deposition.

Regards,
Nancy

From: Susan Hwang [mailto:SHwang@sheppardmullin.com]
Sent: Thursday, June 25, 2009 4:51 PM
To: Lapidus, Nancy
Cc: Cooper, Alan; D'Andrea, Kristin; _gclark@sheppardmullin.com
Subject: RE: Deposition of Mr. Lennon

Nancy,

August 5 is acceptable. Please note that we are still obtaining dates for Mr. Brinkmann's deposition and will try to get back to you early next week on that issue.

Susan

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
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Susan Hwang
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From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Thursday, June 25, 2009 1:47 PM
To: Susan Hwang
Cc: Cooper, Alan; D'Andrea, Kristin
Subject: Deposition of Mr. Lennon

Susan: We had scheduled the deposition of Mr. Lennon on August 6. Can we change the deposition to Wednesday, August 5? Mr. Lennon is no longer available on the 6th. Please let me know.

Regards,
Nancy

Nancy S. Lapidus
Partner

HOWREY LLP
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APPENDIX J

Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Susan Hwang [SHwang@sheppardmullin.com]
Sent: Tuesday, July 21, 2009 6:13 PM
To: Lapidus, Nancy
Cc: _gclark@sheppardmullin.com; Cooper, Alan
Subject: Brink's Network and Brinkmann

Nancy,

Brinkmann's survey expert Alex Simonson is available September 24 for his deposition. Please confirm whether you are available on that day.

We are working on getting Mr. Baxter Brinkmann's availability for his deposition and will let you know as soon as we are advised of dates.

Please also confirm everyone from your firm who will be present for Mr. Lennon's deposition on August 5, so that McGuireWoods can register the names with their security.

Susan

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
ATTORNEYS AT LAW

333 South Hope Street
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APPENDIX K

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Docket 05666.0002

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

BRINK'S NETWORK, INCORPORATED	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91164764
	)	
THE BRINKMANN CORPORATION	)	
	)	
Applicant	)	

OPPOSER'S NOTICE OF TAKING
DEPOSITION OF J. BAXTER BRINKMANN

Please take notice that Opposer, in accordance with Rule 30(a) Fed. R. Civ. P. and Rule 2.120(b) of the Trademark Rules of Practice, will take the discovery deposition of J. Baxter Brinkmann, President of Applicant The Brinkmann Corporation, on October 6, 2006, at 9:30 am, at the offices of Carrington, Coleman, Sloman & Blumenthal, LLP, 200 Crescent Court, Suite 1500, Dallas, Texas 75201, or at such other time, date and place as may subsequently be agreed upon by counsel for the parties.

The deposition shall be taken upon oral examination pursuant to the Federal Rules of Civil Procedure before an officer authorized to administer oaths by the laws of the United States or the place where the examination is held.

Counsel for Applicant is invited to attend and cross-examine.

BRINK'S NETWORK, INCORPORATED

Dated: August 14, 2009

By: _____

Alan S. Cooper
Nancy S. Lapidus
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800
Fax: (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Taking Deposition of J. Baxter Brinkmann was served on the following counsel of record for Applicant by email transmission, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 14th day of August, 2009:

Gary A. Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

APPENDIX L

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Docket 05666.0002

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

BRINK'S NETWORK, INCORPORATED	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91164764
	)	
THE BRINKMANN CORPORATION	)	
	)	
Applicant	)	

OPPOSER'S AMENDED NOTICE OF TAKING
DEPOSITION OF J. BAXTER BRINKMANN

Please take notice that Opposer, in accordance with Rule 30(a) Fed. R. Civ. P. and Rule 2.120(b) of the Trademark Rules of Practice, will take the discovery deposition of J. Baxter Brinkmann, President of Applicant The Brinkmann Corporation, on October 6, 2009, at 9:30 am, at the offices of Carrington, Coleman, Sloman & Blumenthal, LLP, 200 Crescent Court, Suite 1500, Dallas, Texas 75201, or at such other time, date and place as may subsequently be agreed upon by counsel for the parties.

The deposition shall be taken upon oral examination pursuant to the Federal Rules of Civil Procedure before an officer authorized to administer oaths by the laws of the United States or the place where the examination is held.

Counsel for Applicant is invited to attend and cross-examine.

BRINK'S NETWORK, INCORPORATED

Dated: August 26, 2009

By: Alan Cooper/NSL

Alan S. Cooper
Nancy S. Lapidus
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1299 Pennsylvania Avenue, N.W.
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Fax: (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Taking Deposition of J. Baxter Brinkmann was served on the following counsel of record for Applicant by email transmission, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 26th day of August, 2009:

Gary A. Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Nancy Capiolus

APPENDIX M

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

HOWREY LLP

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T 202.383.6865
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August 20, 2009

Via E-mail
Confirmation Copy by US Mail

Susan Hwang, Esquire
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Re: Brink's Network, Incorporated v. The Brinkmann Corp.
Opposition No. 91164764, Our File No. 05666.0002

Dear Susan:

We reviewed the draft transcript of Frank Lennon's discovery deposition taken on August 5, 2009. The testimony pages and exhibits listed below should be designated confidential. The page references are to page number and line number separated by a colon. As we discussed at the conclusion of Mr. Lennon's deposition, please request that the court reporter prepare two transcripts to separate the confidential and non-confidential testimony and exhibits. Upon receipt of the transcripts, we will forward them to Mr. Lennon for review.

(1) 25:12 – 26:21

(2) 30:10 – 32:1

(3) 32:18 – 36:19

(4) 36:23 – 37:13

(5) 40:23 – 43:1

(6) 43:18 – 45:4 and Exhibit B-5

(7) 70:15 – 72:17

(8) 73:23 – 78:3

(9) 78:4 – 78:16

(10) 82:15 – 83:2

(11) 103:8 – 103:20

(12) 105:7 – 105:11

(13) 105:12 – 106:2

(14) 106:3 – 106:9

(15) 108:6 – 110:1

(16) 110:22 – 113:12

(17) 124:9 – 124:11

(18) 132:6 - 132:14

(19) 133:18 - 138:8 and Exhibit B-19

(20) 138:14 – 142:22 and Exhibits B-20 through B-27

(21) 143:24 – 145:20

(22) 146:14 – 149:16 and Exhibit B-30

(23) 149:17 – 152:9 and Exhibit B-31

(24) 152:10 – 153:18

(25) 153:19 – 154:8

(26) 154:9 – 156:9 and Exhibit B-32

(27) 156:10 – 162:4 and Exhibits B-33, B-34 and B-35

(28) 163:4 – 164:9 and Exhibits B-36 and B-37

(29) 164:20 – 165:24 and Exhibits B-39 through B-43

(30) 167:4 – 167:11

(31) 168:8 – 170:1

(32) 174:18 – 175:9

Turning to other matters in this proceeding, please confirm that Mr. Brinkmann will be available for the deposition noticed for October 6, 2009 in Dallas, Texas.

As previously advised, we will be representing Hampton Products International Corporation ("Hampton") in connection with the document production and deposition pursuant to the subpoenas attached to your email of August 10, 2009. Hampton has informed us that it was not served with the Subpoena to Produce Documents attached to your email of August 10, 2009. If you believe that such service was effected, please provide us with a copy of the completed Proof of Service. In any event, after consultation with Hampton, we have determined that it would not be possible to produce the large number of requested documents by the August 25 deadline set forth in the subpoena. Hampton will endeavor to gather the responsive documents in the next few weeks. Further to Alan's email of August 14, please let us know of dates in mid-October that are feasible for the deposition of Hampton.

If you have any questions regarding the above, please let us know.

Sincerely,

Nancy S. Lapidus

NSL/lnf

Cc: Kevin Yocum, Esq.
Alan Cooper, Esq.

APPENDIX N

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

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Susan Hwang
Writer's Direct Line: 213-617-4279
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Our File Number: 0SEM-116943

August 20, 2009

VIA E-MAIL

Nancy S. Lapidus, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
Facsimile: (202) 383-7195

Re: TTAB Opposition Proceeding No. 91164764
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

We are in receipt of your letter dated today regarding the confidentiality designations for Mr. Lennon, deposition availability dates for Mr. Brinkmann and Hampton Products and the Subpoena to Produce Documents served on Hampton.

We have forwarded the confidentiality designations to the court reporter and will forward the final transcripts to you as soon as we receive them. We are confirming that Mr. Brinkmann is available for his deposition noticed for October 6 and will advise you as soon as we receive confirmation. If he is not available that day, we will provide alternative dates. We are also reviewing availability dates for Hampton's deposition in October and will advise you as soon as we have such dates. Finally, you have stated that Hampton was not served with the Subpoena to Produce Documents and you have asked for a copy of the executed proof of service. A copy of the proof of service for the Subpoena to Produce Documents is enclosed.

Please contact us if you have any questions.

Very truly yours,

Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH\401852453.1

Encl.

APPENDIX O

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

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August 25, 2009

Via E-mail
Confirmation Copy by US Mail

Susan Hwang, Esquire
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Re: Brink's Network, Incorporated v. The Brinkmann Corp.
Opposition No. 91164764, Our File No. 05666.0002

Dear Susan:

Based on our review of Brinkmann's Responses to Brink's discovery requests, we have concluded that the responses and objections are insufficient, as discussed below. We are writing this meet and confer letter to request complete responses to Opposer's First, Second and Third Sets of Interrogatories and Opposer's First and Second Sets of Requests for Production, and thus hopefully avoid burdening the Board with a motion to compel.

A. Incomplete Production of Documents

Each Response in Applicant's Responses to Opposer's First and Second Sets of Requests for Production of Documents and Things states that Applicant "will produce responsive documents." Please confirm that Applicant has produced all responsive documents to each Request in Opposer's First and Second Sets of Requests for Production of Documents and Tangible Things.

B. Failure to Identify Bates Numbers of Responsive Documents

In addition, please provide supplemental responses to each of Opposer's Requests for Production and supplemental answers to each of Opposer's Interrogatories to identify the Bates numbers of the specific responsive documents. As you will recall, upon your request, Opposer provided the Bates numbers of specific documents produced in response to Applicant's discovery requests. Accordingly, we see no obstacle to Applicant's prompt and complete response to the same request made by Opposer.

C. Interrogatory No. 7

Interrogatory No. 7 requests that Applicant state the dollar amount of revenues related to its sale of home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets under the mark BRINKMANN since the date on which Applicant commenced use of the mark for such goods.

In its First Amended and Supplemental Response to Interrogatory No. 7, Applicant pointed to a document identified as BM 13005 entitled "Motion Sensitive Light Sales – Complete History through November 30, 2006. Based on the title of the document identified as BM 13005, the information contained therein relates only to sales of motion sensitive lights and thus is incomplete. Applicant's First Amended and Supplemental Response to Interrogatory No. 6 identified seven products it considers to be included in the description "home security systems and components therefor." Please provide us with the dollar amounts of revenues attributed to the sales of all products identified in Applicant's First Amended and Supplemental Response to Interrogatory No. 6 since the date of first use of the mark BRINKMANN in connection with such goods.

Please advise whether the numbers contained in each row and column of document BM 13005 are dollar amounts, as requested, or reflect the number of products sold. Please also revise document BM 13005 to clearly state whether the numerical figures reflect dollar amounts in the thousands, ten thousands, or hundred thousands. As you will recall, when Ms. Dunham was asked about the figures shown in BM 13005 during her deposition on February 16, 2007, she acknowledged that the information was "not real clear."

The document identified as BM 13005 includes information covering the period 1989-2006. Opposer requests supplemental information detailing the annual dollar amount of revenues related to Applicant's sale of home security systems and components for the period 2007 to the present. This request is consistent with the parties' continuing obligation to supplement information and documents produced during discovery.

D. Interrogatory No. 8

In its First Amended and Supplemental Response to Interrogatory No. 8, Applicant pointed to a document identified as BM 13006 entitled "The Brinkmann Corporation Net Sales – Fiscal Year 1992 through Fiscal Year 2006. Opposer requests supplemental information detailing the annual dollar amount of revenues related to Applicant's sale of all products and services under the mark BRINKMANN for Fiscal Years 2007 - 2009. This request is consistent with the parties' continuing obligation to supplement information and documents produced during discovery.

E. Interrogatory No. 9

Interrogatory No. 9 requests that Applicant state the dollar amount spent by or on behalf of Applicant on advertising and/or promoting its home security systems and components therefor under the mark BRINKMANN since the date on which it commenced use of the mark BRINKMANN for such goods.

In its First Amended and Supplemental Response, Applicant pointed to a document identified as BM 13005 entitled "Motion Sensitive Light Sales – Complete History through November 30, 2006." Based on the title of the document identified as BM 13005, the information contained therein relates only to the advertising of motion sensitive lights and thus is incomplete. Applicant's answer to Interrogatory No. 6 identified seven products it considers to be included in the description "home security systems and components therefor." Please provide us with the dollar amount spent on advertising and promotion of all products identified in Applicant's answer to Interrogatory No. 6 since the date of first use of the mark BRINKMANN in connection with such goods.

Please advise whether the numbers contained in the row labeled "Earned Advertising" in BM 13005, which is referenced in Applicant's First Amended and Supplemental Answer to Interrogatory No. 9, reflect dollar amounts, as requested. Please also revise document BM 13005 to clearly state whether the numerical figures reflect dollar amounts in the thousands, ten thousands, or hundred thousands.

The document identified as BM 13005 includes information covering the period 1989-2006. Opposer requests supplemental information detailing the annual dollar amount spent by or on behalf of Applicant on advertising and/or promoting its home security systems and components therefor under the mark BRINKMANN for the period 2007 to the present. This request is consistent with the parties' continuing obligation to supplement information and documents produced during discovery.

F. Interrogatory No. 10

In its First Amended and Supplemental Response to Interrogatory No. 8, Applicant pointed to a document identified as BM 13006 entitled "The Brinkmann Corporation Net Sales – Fiscal Year 1992 through Fiscal Year 2006. Opposer requests supplemental information detailing the annual dollar amount spent by or on behalf of Applicant on advertising and/or promoting all goods and services under the mark BRINKMANN for Fiscal Years 2007 - 2009. This request is consistent with the parties' continuing obligation to supplement information and documents produced during discovery.

G. Interrogatory No. 12

In response to Opposer's Interrogatory No. 12, Applicant produced documents BM 013007 – 013037, which are described as the "Brinkmann Customer List." Opposer requests Applicant to update the Brinkmann Customer List to identify retailers that sell Applicant's home security systems and components therefor for the time period 2007-2009. This request is consistent with the parties' continuing obligation to supplement information and documents produced during discovery.

H. Interrogatory No. 13

Interrogatory No. 13 requested Applicant to describe purchasers and prospective purchasers of Applicant's home security and components therefor. In its First Amended and Supplemental Response to Interrogatory No. 13, Applicant merely states that "the consumers who shop and purchase products through the channels of trade described in the Response to Interrogatory No. 13 [sic] above are the purchasers and prospective purchasers of Brinkmann's products." This response is wholly insufficient. TBMP § 405.04(b) provides that parties should answer an interrogatory "fully" and that business records may only be produced in lieu of an answer if the burden of ascertaining the information is substantially the same for the propounding party as it is for the responding party. In this instance, the burden is not the same because Applicant is in a much better position of understanding and explaining any information contained within BM 013007 – 013037, which purport to describe the purchasers and prospective purchasers of Applicant's BRINKMANN home security systems and components therefor. Please amend your response to provide a complete Response to Interrogatory No. 13.

I. Interrogatory No. 14

Applicant has stated in response to Interrogatory No. 14 that it is not aware of any instances in which Applicant's use of the mark BRINKMANN has resulted in any confusion or mistake with respect to the source and/or sponsorship of Applicant's home security systems and components therefor. Please confirm that Applicant has produced any supplemental information and documents responsive to Interrogatory No. 14, consistent with its ongoing discovery obligations in this case.

J. Interrogatory Nos. 16, 18 and 21

Interrogatory Nos. 16, 18 and 21 request that Applicant identify all documents upon which it intends to rely to support the denials in ¶¶ 20, 21 and 24 of its Answer. In its response to each Interrogatory, Applicant stated that it will identify the requested documents. Please confirm that all documents responsive to Interrogatory Nos. 16, 18 and 21 have been produced, and identify with specificity the Bates numbers of documents Applicant intends to rely upon to support the denials in ¶¶ 20, 21 and 24 of its Answer.

K. Interrogatory Nos. 26 and 27 and Request for Production Nos. 4 and 5.

In its Answers to Interrogatory Nos. 26 and 27, Applicant identified eight examples of how the mark BRINKMANN is used in connection with the marketing and sale of home security systems and components, including specific products Applicant had described as home security products and components in its Answer to Interrogatory No 6. In response to Request for Production Nos. 4 and 5, Applicant stated it "will produce" representative

examples of Applicant's use, advertising and promotion of the BRINKMANN home security systems and components. Further to our general request above to identify Bates numbers of the documents responsive to each of Opposer's discovery requests, please amend Applicant's responses to identify the Bates numbers of the specific documents that demonstrate use of the mark BRINKMANN for home security systems and components in each of the categories described in subparagraphs (i) – (viii) of in Applicant's Answers to Interrogatory Nos. 26 and 27.

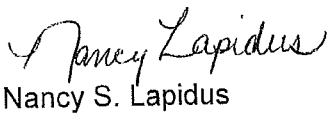
L. Failure to Verify Answers to Interrogatories

Finally, once more we raise Applicant's failure to comply with Rule 33 Fed. R. Civ. P. Neither Applicant's First Amended and Supplemental Responses to Opposer's First Set of Interrogatories nor Applicant's Supplemental Response to Opposer's Interrogatory No. 22 have been verified. We raised this issue on February 16, 2007 at the deposition of Helen Dunham (Dunham Dep. p. 6) and on several occasions since that time, most recently at the deposition of Frank Lennon on August 5, 2009. Applicant's continuing disregard of its obligations under the Federal Rules of Procedure cannot be justified. Please provide us with the proper verification by no later than September 10, 2009, failing which Opposer will be forced to file a motion to compel production of the required verified Answers. Opposer is entitled to offer these interrogatory answers into evidence by Notice of Reliance during its testimony period, and Applicant cannot interfere with that evidentiary offer by refusing to supply the requested verification.

* * *

In light of Mr. Brinkmann's deposition on October 6, we request receipt of supplemental responses and any additional documents by no later than **September 10, 2009**. Please do not hesitate to contact me with any questions.

Sincerely,



Nancy S. Lapidus

NSL/lnf

cc: Kevin L. Yocum, Esq.
Alan S. Cooper, Esq.

APPENDIX P

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

SHEPPARD MULLIN
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Our File Number: 0SEM-116943

August 31, 2009

VIA E-MAIL

Nancy S. Lapidus, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
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Facsimile: (202) 383-7195

Re: TTAB Opposition Proceeding No. 91164764
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

We are in receipt of your letter of August 25, 2009 requesting supplementation of Brinkmann's document production and interrogatory responses by September 10, 2009. We are currently working with Brinkmann on supplementation, as applicable, but cannot confirm that it will be completed by September 10, 2009.

We are also waiting for confirmation from Mr. Brinkmann that he is available for his deposition noticed for October 6, 2009. We will, of course, cooperate and remain flexible in moving Mr. Brinkmann's deposition date, if Brink's Network is concerned about sufficient preparation time.

Please contact us if you have any questions.

Very truly yours,

Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH\402172169.1

APPENDIX Q

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

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September 3, 2009

Via E-mail
Confirmation Copy by US Mail

Susan Hwang, Esquire
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Re: Brink's Network, Incorporated v. The Brinkmann Corp.
Opposition No. 91164764, Our File No. 05666.0002

Dear Susan:

Further to our letter dated August 25, 2009, Brinkmann's objections and responses to Opposer's Interrogatory Nos. 28 and 29 are deficient, as discussed below. Please provide supplemental answers to these interrogatories by no later than **September 10, 2009**.

Interrogatory Nos. 28 and 29 are directed to the scope of goods covered by U.S. Registration No. 1,153,730 of the mark BRINKMANN. Brinkmann objected to Interrogatory Nos. 28 and 29 on the ground that they are not relevant to the claims and defenses in this proceeding. Paragraph 34 of Brinkmann's Answer to Opposer's Second Amended Notice of Opposition, Affirmative Defenses and Counterclaims specifically relies on Registration No. 1,153,730 as a basis for an affirmative defense identified by Brinkmann as the "doctrine of prior registration." Accordingly, Brinkmann's objections to Interrogatory Nos. 28 and 29 on relevance grounds are misplaced.

Following each objection, Brinkmann stated its response to Interrogatory Nos. 28 and 29 as follows:

> Subject to and without waiving the General Objections, which are incorporated by reference, Brinkmann states that the opposed goods in this proceeding are "Home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets." None of these goods were registered in connection with Applicant's U.S. Registration No. 1,153,730 for the mark BRINKMANN and none of these goods were at issue in the renewal of Registration No. 1,153,730.

A restatement of the opposed goods in this proceeding does not answer the questions set forth in Opposer's Interrogatory Nos. 28 and 29. Therefore, the answers Brinkmann provided are insufficient.

We look forward to receiving Brinkmann's supplemental answers by no later than **September 10, 2009.**

Sincerely,

Nancy Lapidus

Nancy S. Lapidus

NSL/lnf

cc: Kevin L. Yocum, Esq.
Alan S. Cooper, Esq.

APPENDIX R

Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann

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Susan Hwang
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Our File Number: 0SEM-116943

September 23 2009

VIA E-MAIL

Nancy S. Lapidus, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: TTAB Opposition Proceeding No. 91164764
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

This in response to your letter of September 18, 2009, with respect to Mr. Brinkmann's deposition and the depositions that Brinkmann intends to take of Broadview Security and various Broadview and Brink's Network individuals.

We have been advised that Mr. Brinkmann is not available for his deposition on October 6, 2009, so his deposition will have to be moved to a new date. Before we follow up with Mr. Brinkmann on alternative availability dates, however, we would like to hear from you on availability dates for Broadview Security and Mr. Robert Allen. As we previously advised you, we prefer to schedule Mr. Brinkmann's deposition so that it can be taken on the same trip as the deposition of Broadview Security and Mr. Allen. We will require sufficient time to review documents to be produced before taking Broadview's deposition. Similarly, Brinkmann is working on supplementing its discovery to Brink's Network and we assume that you wish for sufficient time to review such discovery before taking Mr. Brinkmann's deposition.

With respect to Mr. McAlister Marshall, Brinkmann has a legitimate basis for taking his deposition. We understand Brink's Network's concerns about attorney-client privilege. However, Mr. Lennon testified that "somebody in our legal department" would be the best person to testify about The Brink's Company's trademark enforcement activities. Mr. Lennon further testified that Mr. Kevin Yocum has only been at The Brink's Company for a few years. The Brink's Company's trademark enforcement activities go back well before that date according to the documents that have been produced in this proceeding. Mr. Marshall, then, is a logical person in The Brink's Company's legal department to testify about such matters and Brinkmann intends to take his deposition.

With respect to Messrs. Yocum and Cage, you have represented that the Broadview Security 30(b)(6) deponent and Mr. Nasser Chanda will be knowledgeable about Brink's Network's relationship with Hampton Products prior to and subsequent to the October 31, 2008 spin-off, and that you will consider producing Mr. Yocum and/or Mr. Cage for depositions if the depositions of the Broadview Security 30(b)(6) deponent and Mr. Nasser Chanda are not sufficient. We are amenable to such an arrangement, reserving the right to take both Mr. Yocum and Mr. Cage's depositions at a later date if we determine, in our discretion, that the other depositions are not sufficient. However, please also confirm that Mr. Marshall will be able to sufficiently testify about The Brink's Company's trademark enforcement activities such that Mr. Yocum and Mr. Cage's testimony will not be necessary. If, in fact, it is necessary to "cobble together" Messrs. Marshall, Yocum and Cage's testimony in order to gain a sufficient understanding of The Brink's Company's enforcement activities, Brinkmann needs to know this.

With respect to Mr. Robert Allen's deposition, you have stated that "[t]he mere fact that Mr. Allen signed a license does not necessarily mean that he is the most knowledgeable individual with respect to the implementation of the terms of that license." Are you representing, then, that Mr. Allen has no knowledge at all about the Hampton license other than the fact that he signed the license? Please confirm this. Otherwise, if Mr. Allen does have knowledge beyond the mere signing of the license, Brinkmann is entitled to such testimony. Nor are there any attorney-client privilege issues with respect to Mr. Allen.

Please advise us whether you be representing the individual deponents, and if so, whether we can agree that the individual depositions can go forward on notice alone or, alternatively, whether you will accept service of subpoenas for them. We would appreciate hearing from you on availability dates as well.

We look forward to your reply. Please contact us if you have any questions.

Very truly yours,

Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH\402236886.1

APPENDIX S

Opposer's Motion to Compel Discovery
Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Lapidus, Nancy
Sent: Monday, September 28, 2009 9:08 AM
To: 'Susan Hwang'
Cc: Gary Clark; Cooper, Alan; D'Andrea, Kristin
Subject: Brinks v. Brinkmann

Dear Susan:

We are in receipt of your letter dated September 23, 2009, indicating that Mr. Baxter Brinkmann, an officer of Applicant, will not appear at his deposition noticed for October 6, 2009. Mr. Brinkmann's refusal to appear at the deposition is the most recent evidence of Applicant's disregard of the rules of practice and procedure which govern the current proceeding, as set forth in detail below. Accordingly, this letter is being sent in accordance with Rule 2.120(e) of the Trademark Rules of Practice. By no later than 12:00 PM, Eastern Standard Time, on Tuesday, September 29, 2009, please confirm that Mr. Brinkmann shall be produced for a deposition on Wednesday, October 14, 2009.

We first contacted you on May 28, 2009, indicating Opposer's intention to take the discovery deposition of Mr. Brinkmann and proposed seven possible dates, ranging from June 24 – July 2, for that deposition. There was never any response to that request.

On June 11, 2009, we proposed an extension of the discovery deadline to accommodate the discovery depositions of both parties, namely Mr. Lennon's deposition, which had been scheduled for August 6, and the depositions of Mr. Brinkmann and Dr. Simonson. Again, we inquired as to Mr. Brinkmann's availability for the deposition in order to insure that the requested extension would accommodate the deposition schedule. On the same date, you agreed to an extension of the discovery period and indicated that you would provide us with proposed dates for Mr. Brinkmann's deposition. On June 25, 2009, you stated again that you would obtain dates for Mr. Brinkmann's deposition and would respond to us early the following week. However, no response was received.

In the absence of a response, we contacted you again on June 29, 2009. At that time, you indicated that dates for Mr. Brinkmann's deposition could not be provided and proposed a 90-day extension of the discovery period. Opposer consented and again asked for dates on which Mr. Brinkmann would be available for the deposition. Continuing the same pattern, there was no response to that request for dates for Mr. Brinkmann's discovery deposition.

Consequently, we contacted you again on July 9, 2009, requesting that you provide us with dates for Mr. Brinkmann's deposition. Approximately 2 weeks later, on July 21, 2009, you stated that you were "working on getting Mr. Brinkmann's availability for his deposition" and would revert to us as soon as possible. Again, no dates were forthcoming..

Accordingly, during Mr. Lennon's discovery deposition in Richmond, Virginia on August 6, 2009, we again indicated Opposer's intent to take Mr. Brinkmann's deposition and noted the continued delay in advising us of Mr. Brinkmann's availability. Following that discussion, on August 14, 2009, we served a Notice of Deposition of Mr. Brinkmann for October 6, 2009. Upon noticing of a typographical error in the Notice, on August 26, 2009, we served an

Amended Notice of Deposition of Mr. Baxter Brinkmann for October 6, 2009. In preparation for Mr. Brinkmann's deposition, we sent you letters on August 25 and September 3, 2009, identifying the deficiencies in Brinkmann's discovery responses and requesting supplemental information and documents in sufficient time for the October 6 deposition to go forward.

More than six weeks after service of the Notice of Deposition, you now advise that Mr. Brinkmann is unavailable for the deposition scheduled for October 6, 2009, without any explanation. Nor have you provided alternative dates for Mr. Brinkmann's deposition, further evidencing Brinkmann's intent to continue the unacceptable pattern of delay. Furthermore, Brinkmann has failed to supplement its discovery responses.

The foregoing conduct reflects a pattern of unreasonable delay and a flagrant disregard for the obligations of parties to an *inter partes* proceeding before the Trademark Trial and Appeal Board. Brinkmann's offer to "remain flexible" is little more than a thinly veiled attempt to hide its continuing pattern and practice of delay, which no longer can be tolerated.

As requested above, by no later than 12:00 PM, Eastern Standard Time, on Tuesday, September 29, 2009, please confirm that Mr. Brinkmann shall appear for his deposition on Wednesday, October 14, 2009. If we do not receive confirmation that Mr. Brinkmann will appear for his deposition on October 14, 2009, Opposer will no alternative but to file a motion to compel seeking appropriate sanctions.

Regards,
Nancy

Nancy S. Lapidus
Partner

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APPENDIX T

Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann

Lapidus, Nancy

From: Susan Hwang [SHwang@sheppardmullin.com]
Sent: Tuesday, September 29, 2009 12:10 AM
To: Lapidus, Nancy
Cc: _gclark@sheppardmullin.com; Cooper, Alan; D'Andrea, Kristin
Subject: RE: Brinks v. Brinkmann

Nancy,

We are stunned by your e-mail regarding the scheduling of Mr. Brinkmann's deposition and your threat to file a motion to compel. We make the following points in response, including facts which are notably missing from your characterization of this matter.

1. You fail to state that at Mr. Lennon's deposition on August 6, 2009, Gary Clark and Alan Cooper expressly agreed that whatever date Brink's Network selected for Mr. Brinkmann's deposition would be subject to change. I was in the deposition conference room with Gary and Alan, and I thought you were also in the room when this exchange occurred, but perhaps you stepped out for a minute. The October 6, 2009 date was selected arbitrarily by Brink's Network and we never made a representation at Mr. Lennon's deposition or at any other time that Mr. Brinkmann was available on October 6.

2. You fail to state that we sent you a letter on August 31, 2009, advising you that we were working on supplementation and amendment, as applicable, of Brinkmann's discovery responses and that we were still trying to confirm Mr. Brinkmann's availability on October 6, 2009. We stated that we remained flexible on scheduling of the deposition.

3. You fail to state that we sent you an e-mail on August 27, 2009, advising you that Brinkmann intended to take the depositions of Broadview Security and Messrs. Kevin Yocum, McAlister C. Marshall II, Nasser Chanda, Chris Cage and Robert B. Allen. We stated that we wished to schedule the depositions of Broadview Security and Messrs. Allen and Cage on the same trip as the deposition of Mr. Brinkmann, since all deponents were located in the Dallas area. We have not received any response from you on any such availability dates, including whether those depositions could proceed the week of October 6 or of October 14, the new date that you now single-sidedly propose. In fact, the current issue only involves scheduling difficulties. Mr. Brinkman has never, at any time, refused to appear for his deposition. This is in marked contrast to the position taken by Brink's Network with respect to the depositions that Brinkmann intends to take. Your letter of September 18, 2009 states that Brink's Network does not believe that the depositions of Messrs. Kevin Yocum, McAlister C. Marshall II, Chris Cage and Robert B. Allen are necessary. You offer to produce Messrs. Yocum and/or Cage only if it turns out that the depositions if Broadview Security and Mr. Chanda "are not sufficient." Your silence with respect to Messrs. Marshall and Allen leads us to conclude that Brink's Network is refusing to produce those individuals for depositions, even though Brinkmann has every right to take such depositions, as outlined in our letter to you on September 23, 2009.

We have already forwarded your e-mail of today to Brinkmann and are awaiting a response. If you consider this our "meet and confer" before filing your motion to compel, we will point out that we have, at all times, remained flexible with respect to Mr. Brinkmann's deposition date, that Brink's Network is not harmed because the proceeding is currently suspended with discovery cut-off to be reset, and that, frankly, your motion may be moot by the time the motion is heard.

Regardless of whether you file the motion to compel, we will revert to you when we hear from our client. We still remain cooperative and flexible in scheduling the depositions not only of Mr. Brinkmann but also of the depositions we intend to notice of Broadview Security and the individuals identified above. To that end, we would appreciate hearing from you on availability dates.

Susan

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From: Lapidus, Nancy [mailto:LapidusN@howrey.com]
Sent: Monday, September 28, 2009 6:08 AM
To: Susan Hwang
Cc: Gary Clark; Cooper, Alan; D'Andrea, Kristin
Subject: Brinks v. Brinkmann

Dear Susan:

We are in receipt of your letter dated September 23, 2009, indicating that Mr. Baxter Brinkmann, an officer of Applicant, will not appear at his deposition noticed for October 6, 2009. Mr. Brinkmann's refusal to appear at the deposition is the most recent evidence of Applicant's disregard of the rules of practice and procedure which govern the current proceeding, as set forth in detail below. Accordingly, this letter is being sent in accordance with Rule 2.120(e) of the Trademark Rules of Practice. By no later than 12:00 PM, Eastern Standard Time, on Tuesday, September 29, 2009, please confirm that Mr. Brinkmann shall be produced for a deposition on Wednesday, October 14, 2009.

We first contacted you on May 28, 2009, indicating Opposer's intention to take the discovery deposition of Mr. Brinkmann and proposed seven possible dates, ranging from June 24 – July 2, for that deposition. There was never any response to that request.

On June 11, 2009, we proposed an extension of the discovery deadline to accommodate the discovery depositions of both parties, namely Mr. Lennon's deposition, which had been scheduled for August 6, and the depositions of Mr. Brinkmann and Dr. Simonson. Again, we inquired as to Mr. Brinkmann's availability for the deposition in order to insure that the requested extension would accommodate the deposition schedule. On the same date, you agreed to an extension of the discovery period and indicated that you would provide us with proposed dates for Mr. Brinkmann's deposition. On June 25, 2009, you stated again that you would obtain dates for Mr. Brinkmann's deposition and would respond to us early the following week. However, no response was received.

In the absence of a response, we contacted you again on June 29, 2009. At that time, you indicated that dates for Mr. Brinkmann's deposition could not be provided and proposed a 90-day extension of the discovery period. Opposer consented and again asked for dates on which Mr. Brinkmann would be available for the deposition. Continuing the same pattern, there was no response to that request for dates for Mr. Brinkmann's discovery deposition.

Consequently, we contacted you again on July 9, 2009, requesting that you provide us with dates for Mr. Brinkmann's deposition. Approximately 2 weeks later, on July 21, 2009, you stated that you were "working on getting Mr. Brinkmann's availability for his deposition" and would revert to us as soon as possible. Again, no dates were forthcoming..

Accordingly, during Mr. Lennon's discovery deposition in Richmond, Virginia on August 6, 2009, we again indicated Opposer's intent to take Mr. Brinkmann's deposition and noted the continued delay in advising us of Mr. Brinkmann's availability. Following that discussion, on August 14, 2009, we served a Notice of Deposition of Mr. Brinkmann for October 6, 2009. Upon noticing of a typographical error in the Notice, on August 26, 2009, we served an Amended Notice of Deposition of Mr. Baxter Brinkmann for October 6, 2009. In preparation for Mr. Brinkmann's deposition, we sent you letters on August 25 and September 3, 2009, identifying the deficiencies in Brinkmann's discovery responses and requesting supplemental information and documents in sufficient time for the October 6 deposition to go forward.

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Regards,
Nancy

Nancy S. Lapidus
Partner

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