

# HINSHAW

& CULBERTSON LLP

TTAB

November 3, 2005

VIA EXPRESS MAIL  
U.S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**ATTORNEYS AT LAW**

222 North LaSalle Street  
Suite 300  
Chicago, IL 60601-1081

312-704-3000  
312-704-3001 (fax)  
www.hinshawlaw.com

**Re: Notice of Opposition regarding "HWA plus Design" (Opposition  
No. 91165596) (Serial No. 76545073)**

Dear Sir or Madame:

Enclosed for filing with the Trademark Trial and Appeal Board are the following documents:

1. Applicant's Motion to Compel Answers to Interrogatories, with exhibits;
2. Applicant's Motion to Test the Sufficiency of Response to Admission Request, with exhibits; and
3. Certificate of Mailing for each Motion.

If a filing fee is required, please debit our Deposit Account No. 503165 accordingly. Should you have any questions or concerns regarding this matter, please feel free to contact me.

Very truly yours,

HINSHAW & CULBERTSON LLP



Kourtney A. Mulcahy

Direct 312-704-3336

kmulcahy@hinshawlaw.com

KAM:kam

Encls.

cc: James M. Gibson (w/encls.)



11-03-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #01



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

THE HEISMAN TROPHY TRUST,	:	
	:	
Opposer,	:	Opposition No.: 91165596
	:	
vs.	:	Serial No.: 76/545,073
	:	
HEISMAN WINNERS ASSOCIATION, LLC	:	
	:	
Applicant.	:	
	:	

**MOTION FOR ORDER COMPELLING ANSWERS TO INTERROGATORIES  
TO OPPOSER**

NOW COMES Applicant, HEISMAN WINNERS ASSOCIATION, LLC, by and through its attorneys, Alan R. Lipton and Kourtney A. Mulcahy of the law firm Hinshaw & Culbertson, LLP, and for its Motion for an Order Compelling Answers to Interrogatories to Opposer, states as follows:

1. On or about August 18, 2005, Applicant served its first set of interrogatories on Opposer. A true and correct copy of which is attached hereto as Exhibit A.

2. Applicant served one (1) interrogatory contemporaneously with its seventy-four (74) requests for admissions. Said interrogatory requires a response only in the event Opposer's response to any request for admission is anything other than an unqualified admission. For each response that is not an unqualified admission the Opposer is required to state: (a) the number of that request for admission; (b) each and every fact that supports the Opposer's response; (c) the name and contact information for

any person who has knowledge of those facts; and (d) any documents that supports the response. See Exhibit A

3. On September 20, 2005, Opposer responded to Applicant's interrogatories by making a general objection on the ground of excessive numbering. Because of said objection, Opposer did not respond to any interrogatory requests. A true and correct copy is attached hereto as Exhibit B.

4. Applicant disputes that the interrogatory numbering is excessive.

5. On or about October 10, 2005, Applicant made a good faith effort by written correspondence to resolve this discovery dispute. See the October 10, 2005 letter from Applicant's counsel to Opposer's counsel, attached hereto as Exhibit C.

6. In said letter, Applicant pointed out that interrogatory subparts are counted as part of a single interrogatory if they are logically or factually subsumed within and necessarily related to the primary issue addressed by the interrogatory. Thus, a single interrogatory asking for related items of information on the same topic is counted as only one interrogatory. *Kendall v. Ges Exposition Services, Inc.* 174 F.R.D. 684, 685-686 (D. Nevada). See also, Exhibit C.

7. In this instance, each interrogatory subpart is logically and factually related to the factual basis, if any, for Opposer's refusal to give an unqualified admission in response to any of Applicant's requests for admissions.

8. This one single interrogatory is well within the 75 interrogatory limit set by the Board.

9. Even if Opposer contends that such an interrogatory is 74 separate interrogatories, Applicant is still within the 75 interrogatory limit.

10. Accordingly, Applicant demanded that Opposer provide appropriate responses to Applicant's interrogatories within 14 days of the date of said letter; i.e. October 24, 2005.

11. Opposer has neither complied with said demand nor contacted Applicant's counsel to further discuss this matter.

12. Opposer's failure to comply with Applicant's outstanding written discovery has prejudiced its ability to fully investigate and prepare its defense.

**WHEREFORE**, Applicant, HEISMAN WINNERS ASSOCIATION, LLC prays that the Board enter an order compelling Opposer to answer Applicant's interrogatories, and order Opposer to pay Applicant the sum of \$412.50 as reasonable expenses incurred in obtaining such order on the ground that said refusal was without substantial justification.

Respectfully Submitted

HEISMAN WINNERS ASSOCIATION, LLC

By:   
One of its Attorneys

Alan R. Lipton  
Kourtney A. Mulcahy  
HINSHAW & CULBERTSON, LLP  
222 North LaSalle Street, Suite 300  
Chicago, Illinois 60601  
312-704-3000

Date of Deposit: November 3<sup>rd</sup>, 2005

I hereby certify that a true and correct copy of this Motion for an Order Compelling Answers to Interrogatories to Opposer regarding Application for "HWA Plus Design" (Serial No. 76545073) is being deposited with the United States Postal Services "Express Mail Post Office to Address" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451 and certify that this Motion for an Order Compelling Answers to Interrogatories to Opposer was deposited with the United States Postal Services on the date indicated above and is addressed to James M. Gibson, Fitzpatrick, Cella, Harper & Scinto, New York, New York 10112-3800.

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

Kourtney A. Mulcahy

Attorney for Applicant

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

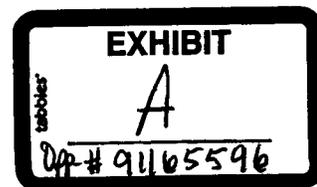
THE HEISMAN TROPHY TRUST,	:	
	:	
Opposer,	:	Opposition No.: 91165596
	:	
vs.	:	Serial No.: 76/545,073
	:	
HEISMAN WINNERS ASSOCIATION, LLC	:	
	:	
Applicant.	:	

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

NOW COMES the Applicant, HEISMAN WINNERS ASSOCIATION, LLC, by and through its attorneys, Alan R. Lipton and Kourtney A. Mulcahy of the law firm of Hinshaw & Culbertson LLP, and propound the following interrogatories to the Opposer, THE HEISMAN TROPHY TRUST, as follows:

1. If your response to any request for admission served contemporaneously with these interrogatories is anything other than an unqualified admission, then for each response that is not an unqualified admission state: (a) the number of that request for admission; (b) each and every fact upon which you base your response; (c) the names, addresses and telephone numbers of each and every person who has knowledge of those facts; and (d) identify with particularity sufficient to support a request for production of documents, all documents and other tangible things that support your response along with the name, address and telephone number of the person who has possession, custody or control of each document or thing.

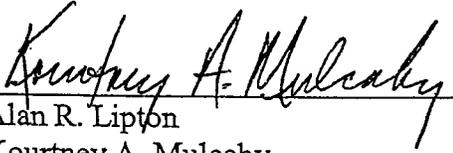
ANSWER:



Respectfully submitted,

HEISMAN WINNERS ASSOCIATION, LLC

By:



Alan R. Lipton

Kourtney A. Mulcahy

HINSHAW & CULBERTSON LLP

222 North LaSalle Street

Suite 300

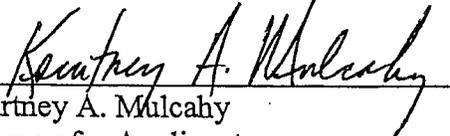
Chicago, Illinois 60601

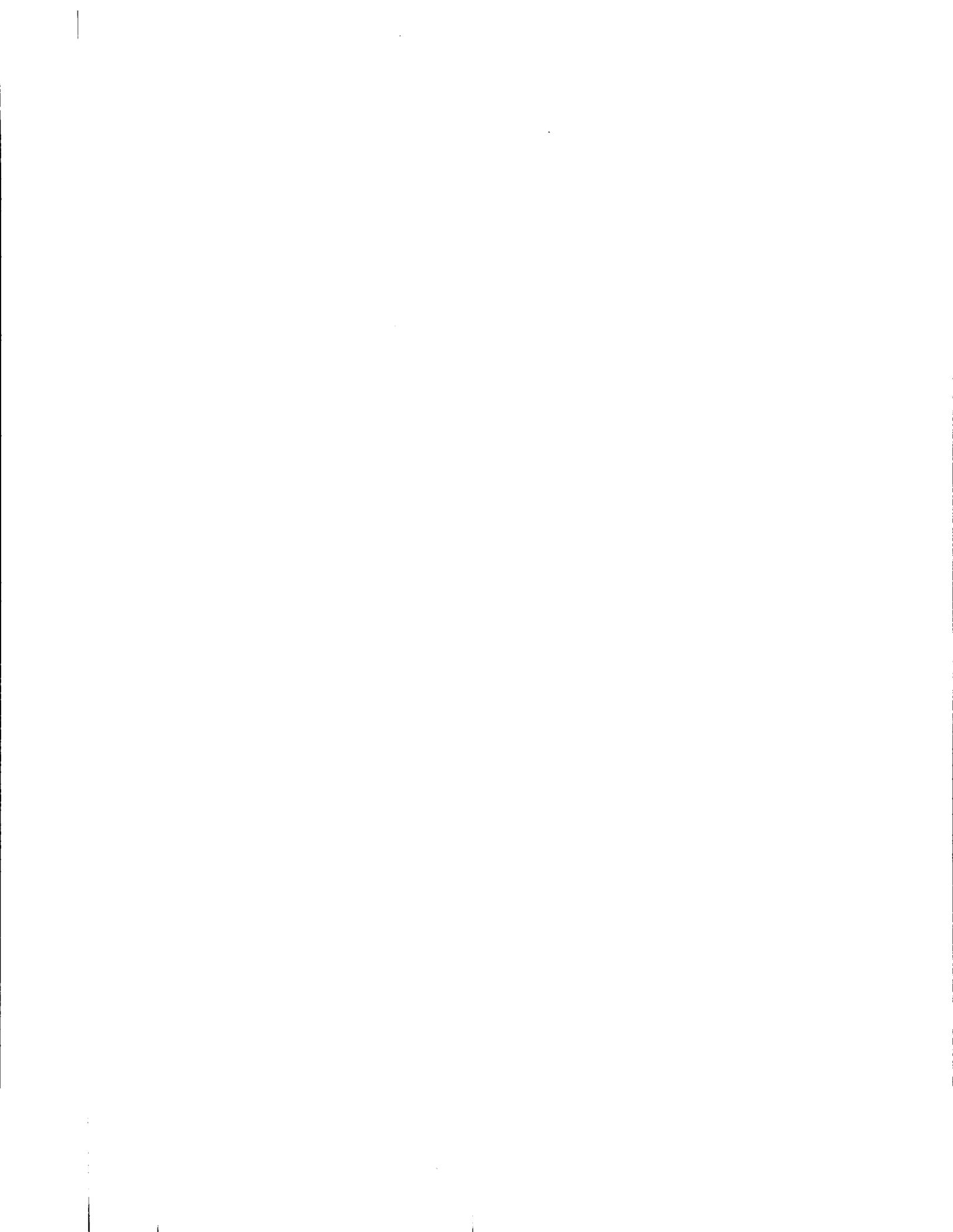
Attorneys for Applicant

CERTIFICATE OF MAILING

Date of Deposit: August 18<sup>th</sup>, 2005

I hereby certify that these Interrogatories regarding Application for "HWA and Design" (Serial No. 76545073) is being deposited with the United States Postal Services on the date indicated above and is addressed to James M. Gibson, Fitzpatrick, Cella, Harper & Scinto, 30 Rockefeller Plaza, New York, New York 10112-3800.

  
\_\_\_\_\_  
Kourtney A. Mulcahy  
Attorney for Applicant



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

-----X	
THE HEISMAN TROPHY TRUST,	:
	:
Opposer,	:
	:
v.	:
	:
HEISMAN WINNERS ASSOCIATION,	:
LLC,	:
	:
Applicant.	:
	:
-----X	

Opposition No.: 91165596

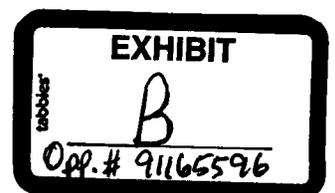
Serial No.: 76/545,073

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

Opposer, The Heisman Trophy Trust (hereinafter "Opposer"), by its undersigned attorneys, hereby responds and objects to Applicant's First Set of Interrogatories to Opposer, as follows:

**INTERROGATORY 1.**

If your response to any request for admission served contemporaneously with these interrogatories is anything other than an unqualified admission, then for each response that is not an unqualified admission state: (a) the number of that request for admission; (b) each and every fact upon which you base your response; (c) the names, addresses and telephone numbers of each and every person who has knowledge of those facts; and (d) identify with particularity sufficient to support a request for production of documents, all documents and other tangible things that support your response along with

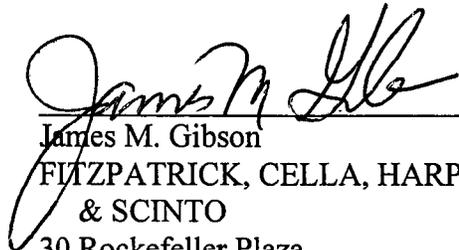


the name, address and telephone number of the person who has possession, custody or control of each document or thing.

**GENERAL OBJECTION**

Opposer objects to Applicant's First Set of Interrogatories in its entirety. Applicant's Interrogatories exceed the total number allowed under Rule 33 of the Federal Rules of Civil Practice and 37 C.F.R. §2.120(d)(1).

Dated: September 20, 2005

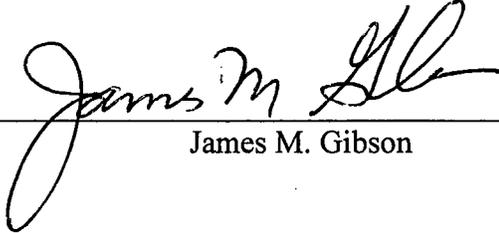
  
James M. Gibson  
FITZPATRICK, CELLA, HARPER  
& SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3800  
Telephone (212) 218-2100  
  
Attorneys for Opposer  
THE HEISMAN TROPHY TRUST

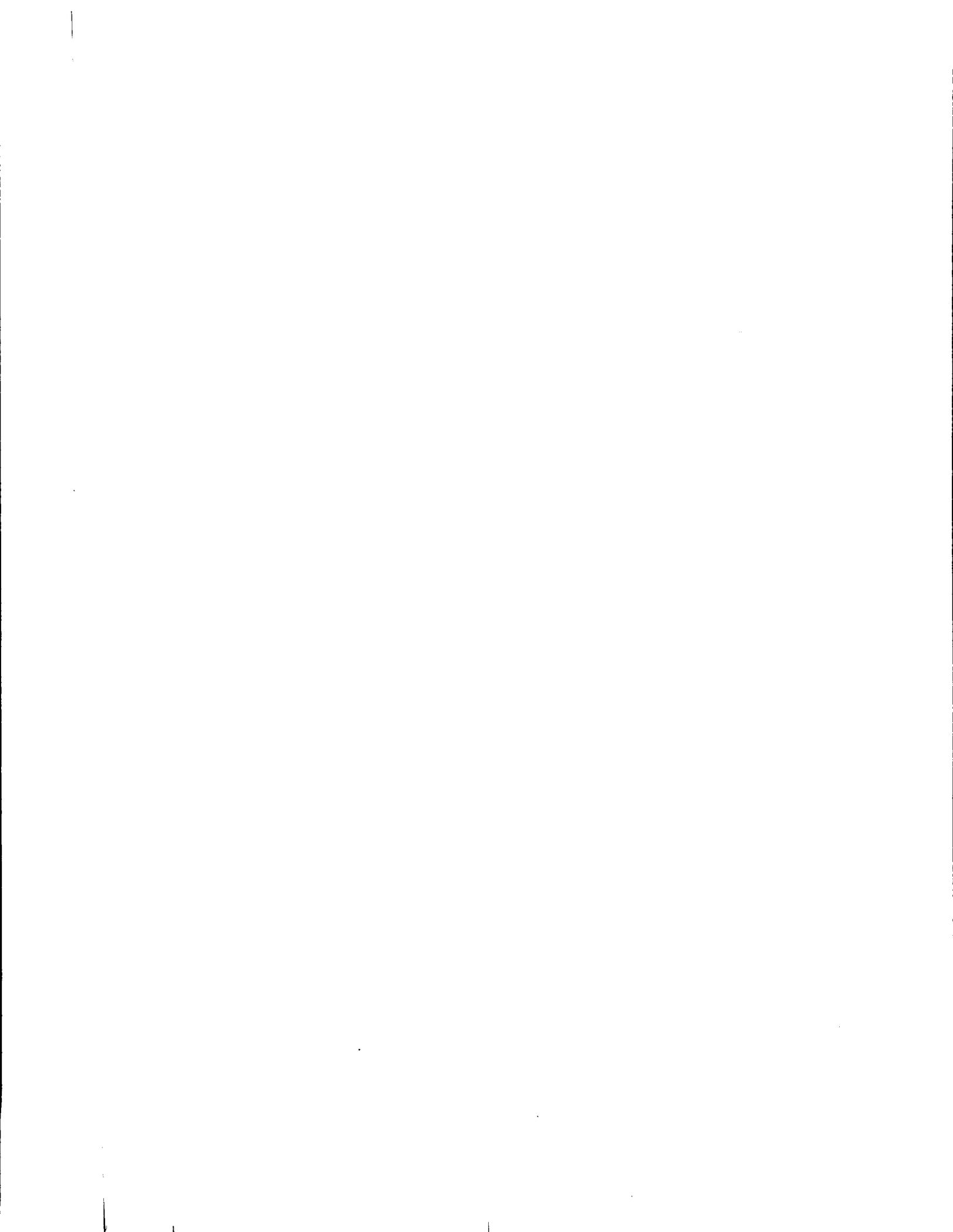
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S FIRST SET OF INTERROGATORIES was served upon counsel for Applicant at the address set forth below, on this 20th day of September 2005 by First Class mail, postage prepaid:

Alan R. Lipton, Esq.  
Kourtney A. Mulcahy  
Hinshaw & Culbertson L.L.P.  
222 North LaSalle Street  
Suite 300  
Chicago Illinois 60601

FITZPATRICK, CELLA, HARPER & SCINTO

  
\_\_\_\_\_  
James M. Gibson



# HINSHAW

& CULBERTSON LLP

October 10, 2005

Via Facsimile and U.S. Mail  
Mr. James M. Gibson  
Fitzpatrick, Cella, Harper & Scinto  
30 Rockefeller Plaza  
New York, New York 10112-3800

**ATTORNEYS AT LAW**

222 North LaSalle Street  
Suite 300  
Chicago, IL 60601-1081

312-704-3000  
312-704-3001 (fax)  
www.hinshawlaw.com

Re: **Notice of Opposition regarding HWA (Opposition No. 91165596) (Serial No. 76545073)**

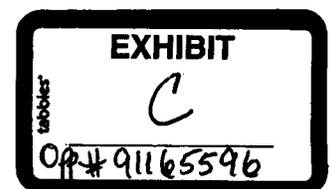
Dear Mr. Gibson:

We have received and reviewed your client's September 20, 2005 Responses to Applicant's Interrogatories and Requests for Admissions. Unfortunately, certain responses fail to adhere to the requirements of the Trademark Trial and Appeal Board (TTAB) and the Federal Rules of Civil Procedure. Please consider this letter to constitute our attempt to confer in good faith pursuant to Rule 37(a)(2)(A). *See also*, TBMP § 524.02.

**Opposer's Responses to Applicant's Interrogatories are Inappropriate.**

The TTAB adheres to the Code of Federal Regulations when determining the total number of interrogatories to be served upon another party. For example, 37 CFR § 2.120(d)(1) states "[t]he total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts . . ." Interrogatory subparts are to be counted as part of one interrogatory if they are logically or factually subsumed within and necessarily related to the primary question. *Kendall v. Ges Exposition Services, Inc.*, 174 F.R.D. 684, 685-686 (D. Nevada); *Myers v. United States Paint Co.*, 116 F.R.D. 165,166 (D.Mass. 1987) (holding that subparts need not be counted as separate interrogatories if they are a "logical extension of the basic interrogatory"). Thus, a single question asking for several bits of information relating to the same topic counts as only one interrogatory. *See Kendall, supra; Myers, supra.*

In this case, Applicant served an interrogatory that asks Opposer to provide its basis for any unqualified admission that was a response to any of Applicant's request for admissions (RFA). The interrogatory includes the identification of every fact, witness, and document supporting any unqualified admission. In this instance, each interrogatory subpart is logically and factually related to Opposer's basis for any unqualified admission in response to Applicant's RFAs. Thus, this interrogatory is one single question that asks for several bits of information related to the same topic. This one single question is well within the 75 interrogatory limit set by the TTAB. Even if Opposer contends that such an interrogatory is 74 separate interrogatories, Applicant is still with the 75 interrogatory limit. Accordingly, Opposer must provide its basis for any unqualified admission in response to any of Applicant's RFAs.



Additionally, FRCP 33(a) requires that each interrogatory be responded to "separately and fully." The response may be either an answer or objection. The answer to each interrogatory must be complete in itself and "furnish all information that is available to the party." Thus, if the information is known to persons in the party's employ, or over whom it has control, the responding party is under a duty to obtain such information and provide it. See *Continental Ill. Nat'l Bank & Trust Co. of Chicago v. Caton*, 136 FRD 682.

In this instance, Applicant's interrogatory asks Opposer to provide its basis for any unqualified admission that was a response to Applicant's RFAs. Opposer denied RFA Nos 1-8, 10, 22-24, 31-34, 36, 38, 40, 42, 44, 46, 48, and 54-74. Thus, Opposer should have provided its basis for said denial, including the identification of every fact, witness, and document supporting each unqualified admission. Instead of responding to Applicant's interrogatory request, Opposer provided a general objection based on Applicant's alleged use of excessive interrogatories. As stated above, Applicant did not exceed the 75 interrogatory limit. Thus, Opposer's responses to Applicant's interrogatory fails to adhere to the requirements of FRCP 33(a).

**Opposer's Responses to Applicant's Request for Admissions are Inappropriate.**

FRCP 36(a) requires that a response to a Request for Admission consist of either an objection or an answer. An answer must be either an admission, a denial or a statement detailing why the answering party is unable to admit or deny the matter. See FRCP 36(a); *Asea, Inc. v. Southern Pac. Transp. Co.*, 669 F.2d 1242-1245-1246 (9<sup>th</sup> Cir. 1981). Opposer's responses to Applicant's RFAs 1-8 are evasive and inappropriate because it is not grounds for objection that the request is "ambiguous" unless so ambiguous that the responding party cannot, in good faith, frame an intelligent reply. See *Marchand v. Mercy Med. Ctr.* 22 F.3d 933, 938 (9<sup>th</sup> Cir. 1994). If an intelligent reply cannot be provided, then Opposer is required to "admit to the fullest extent possible, and explain in detail why other portions of the request may not be admitted." *Id.*

RFAs 1-8 specifically asks Opposer to either admit or deny that Applicant's mark and Opposer's marks contain the letters "HWA" together. In order to minimize any ambiguity, Applicant provided a visual representation of its mark and provided the exact wording of each of Opposer's marks. Thus, Opposer's objections based on ambiguity are disingenuous. Opposer must admit the portions of these requests that are truthful or provide a detailed explanation of what portion of the request is ambiguous.

Opposer's objections to RFAs 36, 38, 40, 42, 44, and 46 based on ambiguity is evasive and inappropriate as well. Each of these RFAs asks Opposer to either admit or deny that Opposer's services, listed in connection with several of its registrations or applications for registration, are not used in connection with sports memorabilia or clothing. In order to minimize any ambiguity, Applicant provided the exact wording of goods/services listed on the Patent and Trademark Office (PTO) database associated with the marks addressed in Applicant's RFAs. For example, the PTO database lists the goods associated with Opposer's marks HEISMAN TROPHY AWARD (U.S. Registration No. 1397161); HEISMAN (U.S. Registration

Mr. James M. Gibson  
October 10, 2005  
Page 3

No. 1397160); and HEISMAN MEMORIAL TROPHY (U.S. Registration No. 0936853) as “promoting interest, excellence, and sportsmanship in inter-collegiate football through the medium of an annual award.” Clearly, this description of goods/services does not include sports memorabilia or clothing. Opposer’s failure to admit the portions of the RFAs that are truthful and provide an explanation of the portion that is ambiguous is in bad faith.

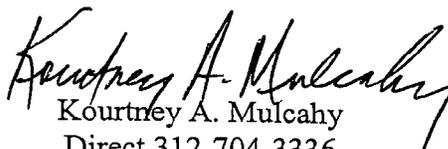
Opposer’s objections to RFAs 31-32 based on “lacks sufficient information” is inappropriate. A party responding in this manner must state that it has made “reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.” *Asea, Inc*, 669 F2d at 1245-46. Moreover, FRCP 36(a) requires the responding party to undertake a “good faith” investigation of sources reasonably available to it in formulating its responses to RFAs.

RFAs 31 and 32 asks Opposer to either admit or deny that the goods listed in connection with Applicant’s Application Serial No. 76545073 are “sports memorabilia, namely resin figurines, bobble heads, and collectible football helmets” and “clothing, namely jerseys and hats.” The description of Applicant’s goods used in connection with its mark can be found on its application for registration. Applicant’s application for registration can easily be obtained by a review of the PTO’s website at [www.uspto.gov](http://www.uspto.gov). The PTO website is a free website and is available to Opposer. Any reasonable investigation in preparation for responding to Applicant’s RFAs would have included a review of this website. Thus, Opposer’s objections are in bad faith.

Unless we receive appropriate responses within 14 days of the date of this letter, we will have no alternative but to make the appropriate motion. We trust that will not be necessary. Should you have any questions or concerns, please feel free to contact me.

Very truly yours,

HINSHAW & CULBERTSON LLP



Kourtney A. Mulcahy

Direct 312-704-3336

[kmulcahy@hinshawlaw.com](mailto:kmulcahy@hinshawlaw.com)

KAM:kam

cc: Mark Panko  
Alan Lipton

HINSHAW CULBERTSON LLP

JOB #344

DATE TIME  
001 10/10 2:32P

TO/FROM MODE MIN/SEC  
1 212 218 2200 EC--S 00' 39"

PGS STATUS  
604 OK *JK*

# HINSHAW

& CULBERTSON LLP

October 10, 2005

### FACSIMILE TRANSMISSION

TO BE DELIVERED IMMEDIATELY

**ATTORNEYS AT LAW**  
222 N. LaSalle Street  
Suite 300  
Chicago, IL 60601-1081

T  
F 312-704-3001  
www.hinshawlaw.com

TO: James Gibson COMPANY: Fitzpatrick, Cella, Harper & Scinto FAX NO.: 212-218-2200 PHONE NO.: 212-218-2100

FROM: Kourtney A. Mulcahy USER ID: 1267

MATTER NAME: 811744 MATTER NO.: HWA

NO. OF PAGES (including this Cover): 4 SENDING OPERATOR: \_\_\_\_\_

RETURN TO: (other than above) KAM

Sent by Office Services: 312-704-3340  Sent by *JK*

COMMENTS, IF ANY:

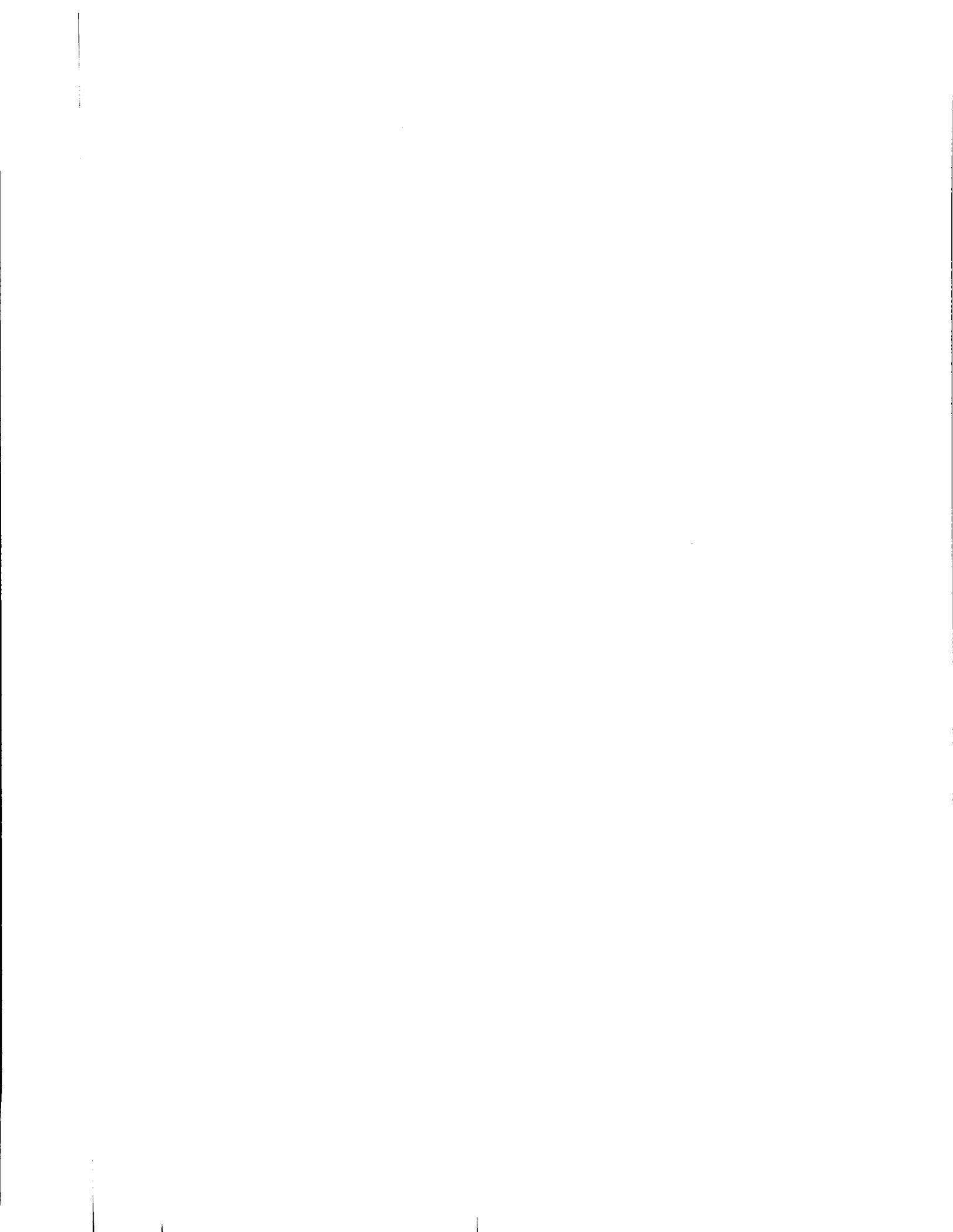
**HARD COPY:**

Will follow by mail  Will follow by overnight mail  Will not follow

If you do not receive the number of pages listed above, please call 312-704-3336. The documents that accompany this facsimile contain confidential and privileged information and are intended solely for the use of the individual or entity to whom this transmission is directed. Any disclosure of the information herein is unauthorized and strictly prohibited. If you are not the intended recipient of this facsimile, please respond by facsimile to the number above or call the sending operator at our expense immediately so that we may arrange for the return of this document to us at no cost to you. Thank you.

Hinshaw & Culbertson LLP is an Illinois registered limited liability partnership that has elected to be governed by the Illinois Uniform Partnership Act (1997).

2005 OCT 10 PM 2:36



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

THE HEISMAN TROPHY TRUST,	:	
	:	
Opposer,	:	Opposition No.: 91165596
	:	
vs.	:	Serial No.: 76/545,073
	:	
HEISMAN WINNERS ASSOCIATION, LLC	:	
	:	
Applicant.	:	

**MOTION TO TEST THE SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST**

NOW COMES Applicant, HEISMAN WINNERS ASSOCIATION, LLC, by and through its attorneys, Alan R. Lipton and Kourtney A. Mulcahy of the law firm Hinshaw & Culbertson, LLP, and for its Motion to Test the Sufficiency of Response to Admission Request, states as follows:

1. On or about August 18, 2005, Applicant served its Requests to Admit Facts on Opposer. A true and correct copy of which is attached hereto as Exhibit A.
2. On September 20, 2005, Opposer responded to Applicant's RTAs. However, certain responses consisted of inappropriate objections. A true and correct copy of which is attached hereto as Exhibit B.
3. Applicant disputes the basis of Opposer's objections to Applicant's RTAs 1-8; 31-32; and 36, 38, 40, 42, 44, 46.
4. On October 10, 2005, Applicant made a good faith attempt by written correspondence to resolve this discovery dispute. See October 10, 2005 letter from

Applicant's counsel to counsel for Opposer, a true and correct copy of which is attached hereto as Exhibit C.

5. Said letter pointed out that Opposer's objections to RTA 1-8, 36, 38, 40, 42, 44, and 46 on grounds of ambiguity were inappropriate and evasive because an objection on grounds of ambiguity requires that the responding party cannot, in good faith, frame an intelligent reply. If an intelligent reply cannot be provided, then the responding party is required to admit to the fullest extent possible, and explain in detail why other portions of the request may not be admitted. See Exhibit C.

6. Opposer failed to respond to RTA 1-8, 36, 38, 40, 42, 44, and 46 in the appropriate manner.

7. Said letter further pointed out that Opposer's objections to RTA 31-32 based on "lacks sufficient information" were inappropriate. A party responding in this manner must state that it has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. See Exhibit C.

8. Opposer failed to respond to RTA 31-32 in the appropriate manner.

9. Because Opposer's objections were not well taken, Applicant demanded that Opposer provide appropriate responses to the RTAs within 14 days of the date of said letter. Thus, Opposer was to provide appropriate, amended, responses by October 24, 2005. See Exhibit C.

10. Opposer has neither complied with said demand nor contacted Applicant's counsel to discuss this matter further.

11. Opposer's failure to comply with Applicant's outstanding written discovery has prejudiced its ability to fully investigate and prepare its defense.

**WHEREFORE**, Applicant, HEISMAN WINNERS ASSOCIATION, LLC prays that the Board enter an order compelling Opposer to provide sufficient responses to Applicant's Requests to Admit, and order Opposer to pay Applicant the sum of \$412.50 as reasonable expenses incurred in obtaining such order on the ground that said refusal was without substantial justification.

Respectfully Submitted

HEISMAN WINNERS ASSOCIATION, LLC

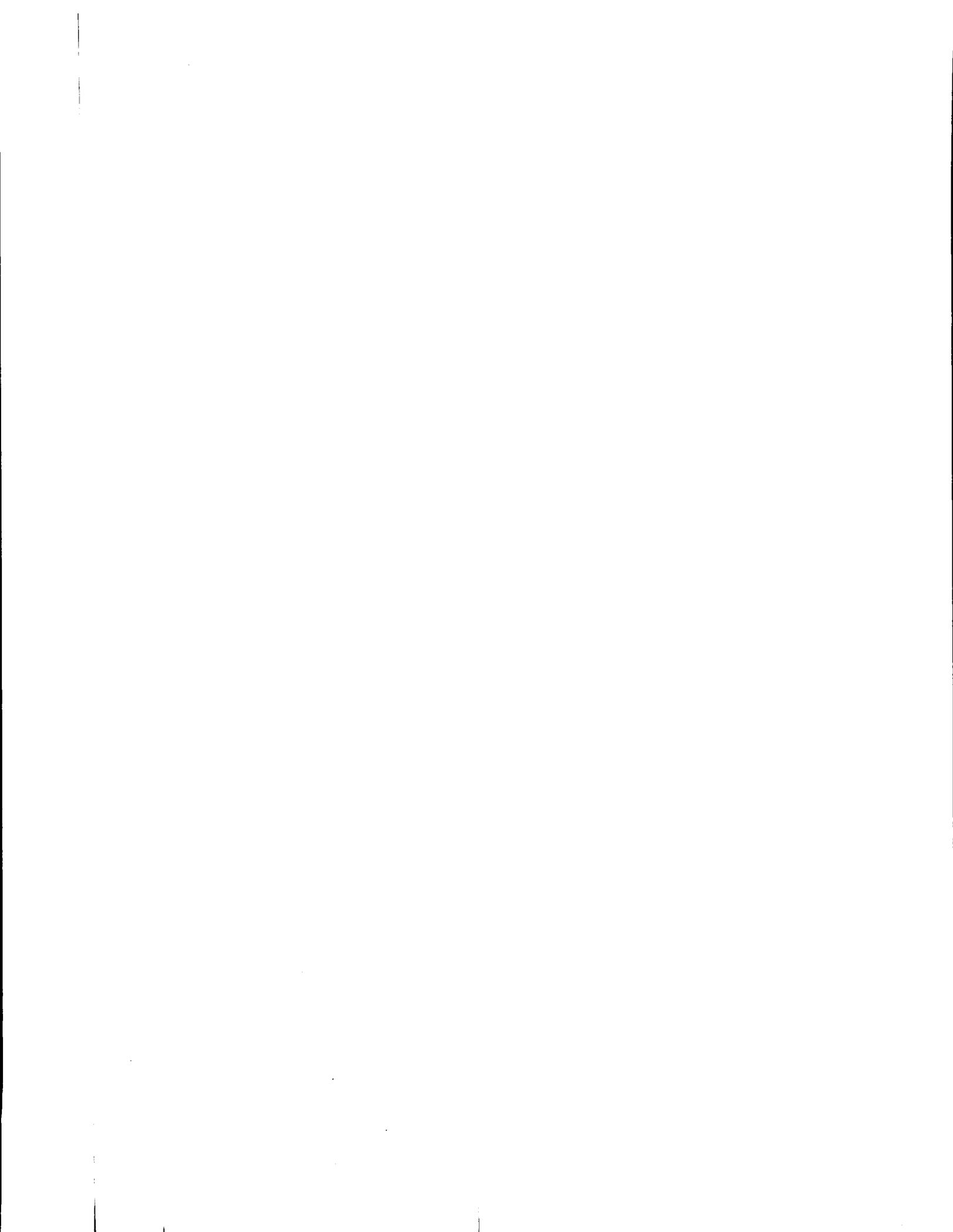
By:   
One of its Attorneys

Alan R. Lipton  
Kourtney A. Mulcahy  
HINSHAW & CULBERTSON, LLP  
222 North LaSalle Street, Suite 300  
Chicago, Illinois 60601  
312-704-3000

Date of Deposit: November 3<sup>rd</sup>, 2005

I hereby certify that a true and correct copy of this Motion to Test the Sufficiency of Response to Admission Request regarding Application for "HWA Plus Design" (Serial No. 76545073) is being deposited with the United States Postal Services "Express Mail Post Office to Address" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451 and certify that this Motion to Test the Sufficiency of Response to Admission Request was deposited with the United States Postal Services on the date indicated above and is addressed to James M. Gibson, Fitzpatrick, Cella, Harper & Scinto, New York, New York 10112-3800.





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

THE HEISMAN TROPHY TRUST, :  
: :  
Opposer, : Opposition No.: 91165596  
: :  
vs. : Serial No.: 76/545,073  
: :  
HEISMAN WINNERS ASSOCIATION, LLC :  
: :  
Applicant. :  
:

**APPLICANT'S REQUEST TO ADMIT FACTS DIRECTED TO OPPOSER**

Applicant, HEISMAN WINNERS ASSOCIATION, LLC, pursuant to Fed. R. Civ. P. 36, hereby request the Opposer, The Heisman Trophy Trust to admit or deny the following facts within twenty eight (28) days of service of this request on Opposer's counsel:

1. Applicant's mark



contains the letters "HWA"

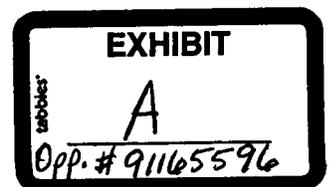
together.

2. Opposer's U.S. Registration No. 0936852 for



THE HEISMAN MEMORIAL TROPHY AND

DESIGN does not contain the letters "HWA" together.



3. Opposer's U.S. Registration No. 1397161 for HEISMAN TROPHY AWARD does not contain the letters "HWA" together.

4. Opposer's U.S. Registration No. 1397160 for HEISMAN does not contain the letters "HWA" together.

5. Opposer's U.S. Registration No. 0936853 for HEISMAN MEMORIAL TROPHY does not contain the letters "HWA" together.

6. Opposer's U.S. Application Serial No. 75835860 for HEISMAN TROPHY does not contain the letters "HWA" together.

7. Opposer's U.S. Application Serial No. 75835852 for HEISMAN STORE does not contain the letters "HWA" together.

8. Opposer's U.S. Application Serial No. 75835844 for HEISMAN HEROES does not contain the letters "HWA" together.

9. Applicant's mark



does not contain the words "Heisman," "Memorial" or "Trophy."

10. Opposer's U.S. Registration No. 0936852 for



THE HEISMAN MEMORIAL TROPHY AND DESIGN contains the words "Heisman," "Memorial" and "Trophy."

11. Applicant's mark



does not contain the words  
“Heisman,” “Trophy” or “Award.”

12. Opposer's U.S. Registration No. 1397161 for HEISMAN TROPHY AWARD  
contains the words “Heisman,” “Trophy” and “Award.”

13. Applicant's mark



does not contain the word  
“Heisman.”

14. Opposer's U.S. Registration No. 0936853 for HEISMAN MEMORIAL TROPHY  
contains the words “Heisman,” “Memorial” and “Trophy.”

15. Applicant's mark



does not contain the words  
“Heisman” or “Trophy.”

16. Opposer's U.S. Application Serial No. 75835860 for HEISMAN TROPHY  
contains the words “Heisman” and “Trophy.”

17. Applicant's mark



does not contain the words "Heisman" or "Store."

18. Opposer's U.S. Application Serial No. 75835852 for HEISMAN STORE contains the words "Heisman" and "Store."

19. Applicant's mark



does not contain the words "Heisman" or "Heroes."

20. Opposer's U.S. Application Serial No. 75835844 for HEISMAN HEROES contains the words "Heisman" and "Heroes."

21. Applicant's mark



contains a depiction of a football player that appears to be running and holding a football to his body using his right hand and arm.

22. Opposer's U.S. Registration No. 0936852 for



THE HEISMAN MEMORIAL TROPHY AND DESIGN contains a depiction of a football player that appears to be on top of a solid base and holding a football to his body using his left hand and arm.

23. Applicant's mark



contains a depiction of a football player that does not have an outstretched arm.

24. Opposer's U.S. Registration No. 0936852 for



THE HEISMAN MEMORIAL TROPHY AND DESIGN contains a depiction of a football player whose right arm is outstretched in a straight-arm position.

25. Opposer's U.S. Registration No. 1397161 for HEISMAN TROPHY AWARD does not contain a depiction of a football player.

26. Opposer's U.S. Registration No. 1397160 for HEISMAN does not contain a depiction of a football player.

27. Opposer's U.S. Registration No. 0936853 for HEISMAN MEMORIAL TROPHY does not contain a depiction of a football player.

28. Opposer's U.S. Application Serial No. 75835860 for HEISMAN TROPHY does not contain a depiction of a football player.

29. Opposer's U.S. Application Serial No. 75835852 for HEISMAN STORE does not contain a depiction of a football player.

30. Opposer's U.S. Application Serial No. 75835844 for HEISMAN HEROES does not contain a depiction of a football player.

31. The goods listed in connection with Applicant's Application Serial No. 76545073 for the mark



is "sports memorabilia, namely resin figurines, bobble heads, and collectible football helmets."

32. The goods listed in connection with Applicant's Application Serial No. 76545073



for the mark is "clothing, namely jerseys and hats."

33. The services listed in connection with Opposer's U.S. Registration No. 0936852



for the mark

THE HEISMAN MEMORIAL TROPHY AND

DESIGN is "promoting interest, excellence and sportsmanship in intercollegiate football through the medium of an annual award."

34. The services listed in connection with Opposer's U.S. Registration No. 0936852



for the mark

THE HEISMAN MEMORIAL TROPHY AND

DESIGN is not for sports memorabilia or clothing.

35. The services listed in connection with Opposer's U.S. Registration No. 1397161 for the mark HEISMAN TROPHY AWARD is "promoting interest, excellence and sportsmanship in intercollegiate football through the medium of an annual award."

36. The services listed in connection with Opposer's U.S. Registration No. 1397161 for the mark HEISMAN TROPHY AWARD is not for sports memorabilia or clothing.

37. The services listed in connection with Opposer's U.S. Registration No. 1397160 for the mark HEISMAN is "promoting interest, excellence and sportsmanship in intercollegiate football through the medium of an annual award."

38. The services listed in connection with Opposer's U.S. Registration No. 1397160 is not for sports memorabilia or clothing.

39. The services listed in connection with Opposer's U.S. Registration No. 0936853 for the mark HEISMAN MEMORIAL TROPHY is "promoting interest, excellence and sportsmanship in intercollegiate football through the medium of an annual award."

40. The services listed in connection with Opposer's U.S. Registration No. 0936853 for the mark HEISMAN MEMORIAL TROPHY is not for sports memorabilia or clothing.

41. The services listed in connection with Opposer's Application Serial No. 75835860 for the mark HEISMAN TROPHY is "promoting interest, excellence and sportsmanship in intercollegiate football through the medium of an annual award" and "clothing, namely, t-shirts, polo shirts, jackets, sweatshirts, sweat pants, shorts, hats, and wind resistant jackets."

42. The services listed in connection with Opposer's Application Serial No. 75835860 for the mark HEISMAN TROPHY is not for sports memorabilia.

43. The services listed in connection with Opposer's Application Serial No. 75835852 for the mark HEISMAN STORE is "clothing, namely, t-shirts, polo shirts, jackets, sweatshirts, sweat pants, shorts, hats, and wind resistant jackets."

44. The services listed in connection with Opposer's Application Serial No. 75835852 for the mark HEISMAN STORE is not for sports memorabilia.

45. The services listed in connection with Opposer's Application Serial No. 75835844 for the mark HEISMAN HEROES is "clothing, namely, t-shirts, polo shirts, jackets, sweatshirts, sweat pants, shorts, hats, and wind resistant jackets."

46. The services listed in connection with Opposer's Application Serial No. 75835844 for the mark HEISMAN HEROES is not for sports memorabilia.

47. Applicant's mark



contains an abbreviation

consisting of three (3) letters.

48. Opposer's U.S. Registration No. 0936852 for the mark



THE HEISMAN MEMORIAL TROPHY AND

DESIGN contains four (4) words and no abbreviation.

49. Opposer's U.S. Registration No. 1397161 for the mark HEISMAN TROPHY AWARD contains three (3) words and no abbreviation.

50. Opposer's U.S. Registration No. 1397160 for the mark HEISMAN contains one (1) word and no abbreviation.

51. Opposer's U.S. Registration No. 0936853 for the mark HEISMAN MEMORIAL TROPHY contains three (3) words and no abbreviation.

52. Opposer's Application Serial No. 75835860 for the mark HEISMAN TROPHY contains two (2) words and no abbreviation.

53. Opposer's Application Serial No. 75835844 for the mark HEISMAN HEROES contains two (2) words and no abbreviation.

54. Applicant's mark



is different in sight from Opposer's U.S.



Registration No. 0936852 for the mark

THE HEISMAN

MEMORIAL TROPHY AND DESIGN.

55. Applicant's mark



is different in sound from Opposer's U.S.



Registration No. 0936852 for the mark

THE HEISMAN

MEMORIAL TROPHY AND DESIGN.

56. Applicant's mark



is different in commercial impression

from Opposer's U.S. Registration No. 0936852 for the mark



THE HEISMAN MEMORIAL TROPHY AND

DESIGN.

57. Applicant's mark



is different in sight from

Opposer's U.S. Registration No. 1397161 for the mark HEISMAN TROPHY AWARD.

58. Applicant's mark



is different in sound from

Opposer's U.S. Registration No. 1397161 for the mark HEISMAN TROPHY AWARD.

59. Applicant's mark



is different in commercial

impression from Opposer's U.S. Registration No. 1397161 for the mark HEISMAN TROPHY AWARD.

60. Applicant's mark



is different in sight from

Opposer's U.S. Registration No. 1397160 for the mark HEISMAN.

61. Applicant's mark



is different in sound from

Opposer's U.S. Registration No. 1397160 for the mark HEISMAN.

62. Applicant's mark



is different in commercial

impression from Opposer's U.S. Registration No. 1397160 for the mark HEISMAN.

63. Applicant's mark



is different in sight from

Opposer's U.S. Registration No. 0936853 for the mark HEISMAN MEMORIAL TROPHY.

64. Applicant's mark



is different in sound from

Opposer's U.S. Registration No. 0936853 for the mark HEISMAN MEMORIAL TROPHY.

65. Applicant's mark



is different in commercial

impression from Opposer's U.S. Registration No. 0936853 for the mark HEISMAN MEMORIAL TROPHY.

66. Applicant's mark



is different in sight from

Opposer's U.S. Application Serial No. 75835860 for the mark HEISMAN TROPHY.

67. Applicant's mark



is different in sound from

Opposer's U.S. Application Serial No. 75835860 for the mark HEISMAN TROPHY.

68. Applicant's mark



is different in commercial impression from Opposer's U.S. Application Serial No. 75835860 for the mark HEISMAN TROPHY.

69. Applicant's mark



is different in sight from Opposer's U.S. Application Serial No. 75835852 for the mark HEISMAN STORE.

70. Applicant's mark



is different in sound from Opposer's U.S. Application Serial No. 75835852 for the mark HEISMAN STORE.

71. Applicant's mark



is different in commercial impression from Opposer's U.S. Application Serial No. 75835852 for the mark HEISMAN STORE.

72. Applicant's mark



is different in sight from

Opposer's U.S. Application Serial No. 75835844 for the mark HEISMAN HEROES.

73. Applicant's mark



is different in sound from

Opposer's U.S. Application Serial No. 75835844 for the mark HEISMAN HEROES.

74. Applicant's mark



is different in commercial

impression from Opposer's U.S. Application Serial No. 75835844 for the mark HEISMAN HEROES.

Respectfully submitted,

HEISMAN WINNERS ASSOCIATION, LLC

By:

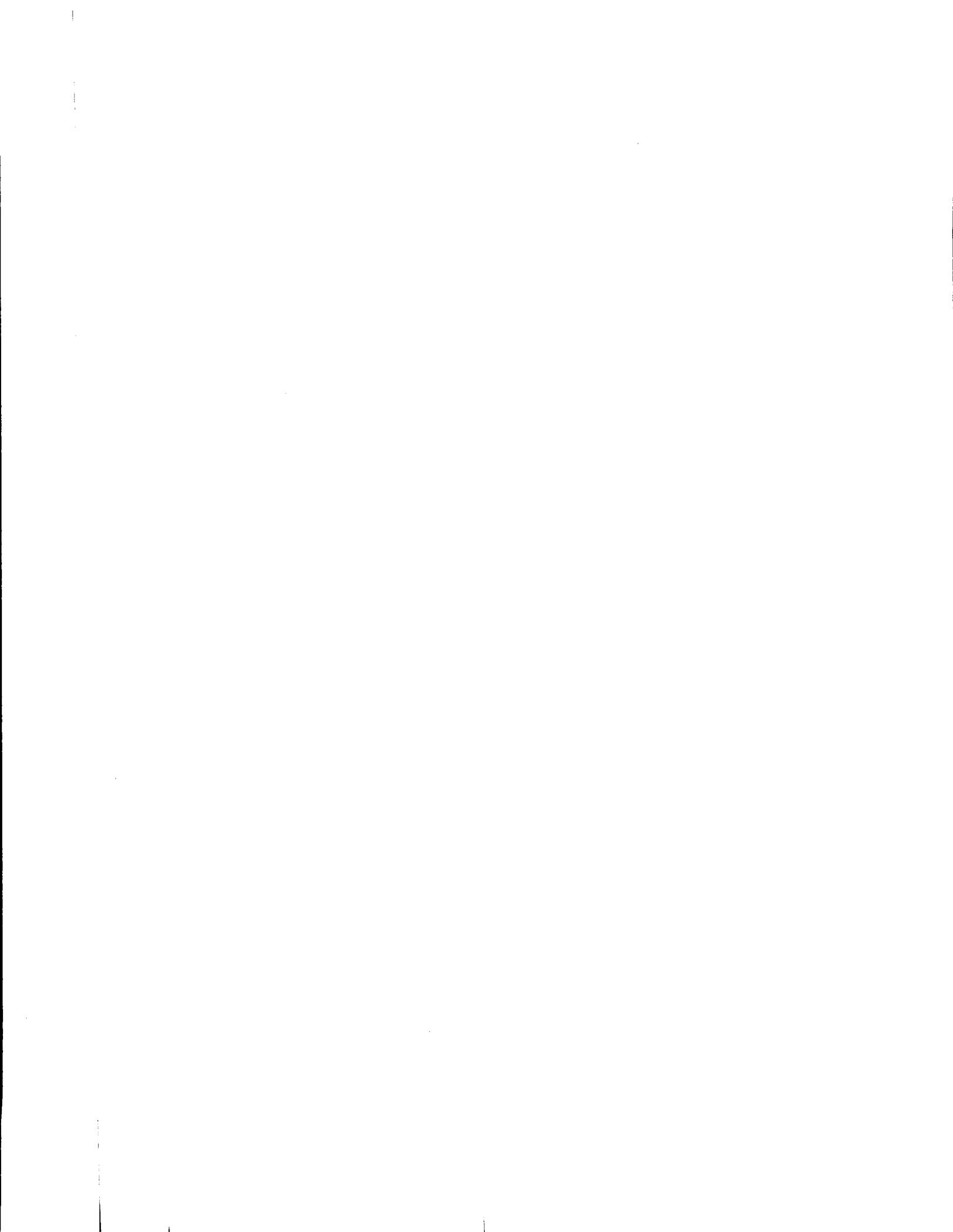
\_\_\_\_\_  
Alan R. Lipton  
Kourtney A. Mulcahy  
HINSHAW & CULBERTSON LLP  
222 North LaSalle Street, Suite 300  
Chicago, Illinois 60601  
Attorneys for Applicant

CERTIFICATE OF MAILING

Date of Deposit: August 18<sup>th</sup>, 2005

I hereby certify that this Request to Admit Facts regarding Application for "HWA and Design" (Serial No. 76545073) is being deposited with the United States Postal Services on the date indicated above and is addressed to James M. Gibson, Fitzpatrick, Cella, Harper & Scinto, New York, New York 10112-3800.

  
Kourtney A. Mulcahy  
Attorney for Applicant



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

-----X	:	
THE HEISMAN TROPHY TRUST,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.: 91165596
	:	
HEISMAN WINNERS ASSOCIATION,	:	
LLC,	:	Serial No.: 76/545,073
	:	
Applicant.	:	
-----X	:	

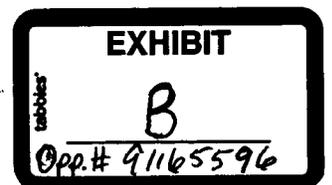
**OPPOSER'S OBJECTIONS AND RESPONSES TO  
APPLICANT'S REQUESTS TO ADMIT FACTS**

Opposer, The Heisman Trophy Trust (hereinafter "Opposer"), by and through its undersigned attorneys, hereby responds and objects to Applicant's Request to Admit Facts Directed to Opposer, as follows:

**GENERAL OBJECTIONS**

The following general objections are incorporated by reference into Opposer's response to each and every Request below:

1. Opposer objects to each Request for Admission to the extent it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privileges or immunities.
2. Opposer objects to each Request for Admission to the extent it seeks information that is not relevant to the claims or defenses of the parties to this matter.



3. Opposer objects to each Request for Admission to the extent it is vague and ambiguous and therefore not capable of response as propounded.

4. Opposer objects to each Request for Admission to the extent it is overly broad, unduly burdensome and/or harassing.

5. Opposer objects to each Request for Admission to the extent that Opposer has not yet received adequate discovery from the Applicant that would allow Opposer to form a belief as to the truth of each Request.

6. Opposer objects to each Request for Admission to the extent that they are unlimited in time, and call for information that may have occurred several years ago.

7. Opposer reserves its right to modify, amend and/or supplement its responses and objections.

#### **SPECIFIC OBJECTIONS AND RESPONSES**

1. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

2. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

3. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

4. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

5. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

6. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

7. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

8. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

9. Subject to and without waving the General Objections provided in this response, Opposer admits this Request.

10. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

11. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

12. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

13. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

14. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

15. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

16. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

17. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

18. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

19. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

20. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

21. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

22. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

23. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request as vague and ambiguous and therefore denies the same.

24. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

25. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

26. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

27. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

28. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

29. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

30. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

31. Subject to and without waiving the General Objections provided in this response, Opposer lacks sufficient information to admit or deny this Request and therefore denies the same.

32. Subject to and without waiving the General Objections provided in this response, Opposer lacks sufficient information to admit or deny this Request and therefore denies the same.

33. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

34. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

35. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

36. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

37. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

38. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

39. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

40. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

41. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

42. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

43. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

44. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

45. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

46. Subject to and without waiving the General Objections provided in this response, Opposer objects to this Request on the ground that it is vague and ambiguous and therefore denies the same.

47. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

48. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

49. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

50. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

51. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

52. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

53. Subject to and without waiving the General Objections provided in this response, Opposer admits this Request.

54. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

55. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

56. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

57. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

58. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

59. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

60. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

61. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

62. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

63. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

64. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

65. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

66. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

67. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

68. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

69. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

70. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

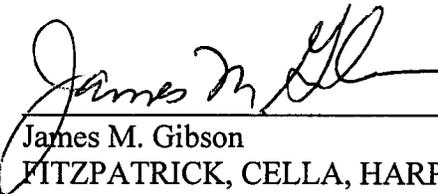
71. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

72. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

73. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

74. Subject to and without waiving the General Objections provided in this response, Opposer denies this Request.

Dated: September 20, 2005



---

James M. Gibson  
FITZPATRICK, CELLA, HARPER  
& SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3800  
Telephone (212) 218-2100

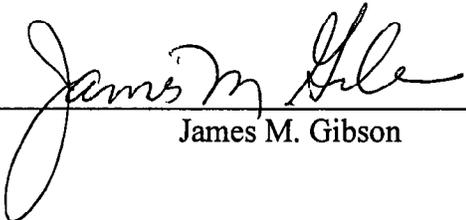
Attorneys for Opposer  
THE HEISMAN TROPHY TRUST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S REQUEST TO ADMIT FACTS was served upon counsel for Applicant at the address set forth below, on this 20th day of September 2005 by First Class mail, postage prepaid:

Alan R. Lipton, Esq.  
Kourtney A. Mulcahy  
Hinshaw & Culbertson L.L.P.  
222 North LaSalle Street  
Suite 300  
Chicago Illinois 60601

FITZPATRICK, CELLA, HARPER & SCINTO

  
\_\_\_\_\_  
James M. Gibson



# HINSHAW

& CULBERTSON LLP

October 10, 2005

Via Facsimile and U.S. Mail  
Mr. James M. Gibson  
Fitzpatrick, Cella, Harper & Scinto  
30 Rockefeller Plaza  
New York, New York 10112-3800

**ATTORNEYS AT LAW**

222 North LaSalle Street  
Suite 300  
Chicago, IL 60601-1081

312-704-3000  
312-704-3001 (fax)  
www.hinshawlaw.com

Re: Notice of Opposition regarding HWA (Opposition No.  
91165596) (Serial No. 76545073)

Dear Mr. Gibson:

We have received and reviewed your client's September 20, 2005 Responses to Applicant's Interrogatories and Requests for Admissions. Unfortunately, certain responses fail to adhere to the requirements of the Trademark Trial and Appeal Board (TTAB) and the Federal Rules of Civil Procedure. Please consider this letter to constitute our attempt to confer in good faith pursuant to Rule 37(a)(2)(A). *See also*, TBMP § 524.02.

**Opposer's Responses to Applicant's Interrogatories are Inappropriate.**

The TTAB adheres to the Code of Federal Regulations when determining the total number of interrogatories to be served upon another party. For example, 37 CFR § 2.120(d)(1) states "[t]he total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts . . ." Interrogatory subparts are to be counted as part of one interrogatory if they are logically or factually subsumed within and necessarily related to the primary question. *Kendall v. Ges Exposition Services, Inc.*, 174 F.R.D. 684, 685-686 (D. Nevada); *Myers v. United States Paint Co.*, 116 F.R.D. 165,166 (D.Mass. 1987) (holding that subparts need not be counted as separate interrogatories if they are a "logical extension of the basic interrogatory"). Thus, a single question asking for several bits of information relating to the same topic counts as only one interrogatory. *See Kendall, supra; Myers, supra.*

In this case, Applicant served an interrogatory that asks Opposer to provide its basis for any unqualified admission that was a response to any of Applicant's request for admissions (RFA). The interrogatory includes the identification of every fact, witness, and document supporting any unqualified admission. In this instance, each interrogatory subpart is logically and factually related to Opposer's basis for any unqualified admission in response to Applicant's RFAs. Thus, this interrogatory is one single question that asks for several bits of information related to the same topic. This one single question is well within the 75 interrogatory limit set by the TTAB. Even if Opposer contends that such an interrogatory is 74 separate interrogatories, Applicant is still with the 75 interrogatory limit. Accordingly, Opposer must provide its basis for any unqualified admission in response to any of Applicant's RFAs.

EXHIBIT

C

Opp.# 91165596

Additionally, FRCP 33(a) requires that each interrogatory be responded to "separately and fully." The response may be either an answer or objection. The answer to each interrogatory must be complete in itself and "furnish all information that is available to the party." Thus, if the information is known to persons in the party's employ, or over whom it has control, the responding party is under a duty to obtain such information and provide it. See *Continental Ill. Nat'l Bank & Trust Co. of Chicago v. Caton*, 136 FRD 682.

In this instance, Applicant's interrogatory asks Opposer to provide its basis for any unqualified admission that was a response to Applicant's RFAs. Opposer denied RFA Nos 1-8, 10, 22-24, 31-34, 36, 38, 40, 42, 44, 46, 48, and 54-74. Thus, Opposer should have provided its basis for said denial, including the identification of every fact, witness, and document supporting each unqualified admission. Instead of responding to Applicant's interrogatory request, Opposer provided a general objection based on Applicant's alleged use of excessive interrogatories. As stated above, Applicant did not exceed the 75 interrogatory limit. Thus, Opposer's responses to Applicant's interrogatory fails to adhere to the requirements of FRCP 33(a).

#### **Opposer's Responses to Applicant's Request for Admissions are Inappropriate.**

FRCP 36(a) requires that a response to a Request for Admission consist of either an objection or an answer. An answer must be either an admission, a denial or a statement detailing why the answering party is unable to admit or deny the matter. See FRCP 36(a); *Asea, Inc. v. Southern Pac. Transp. Co.*, 669 F.2d 1242-1245-1246 (9<sup>th</sup> Cir. 1981). Opposer's responses to Applicant's RFAs 1-8 are evasive and inappropriate because it is not grounds for objection that the request is "ambiguous" unless so ambiguous that the responding party cannot, in good faith, frame an intelligent reply. See *Marchand v. Mercy Med. Ctr.* 22 F.3d 933, 938 (9<sup>th</sup> Cir. 1994). If an intelligent reply cannot be provided, then Opposer is required to "admit to the fullest extent possible, and explain in detail why other portions of the request may not be admitted." *Id.*

RFAs 1-8 specifically asks Opposer to either admit or deny that Applicant's mark and Opposer's marks contain the letters "HWA" together. In order to minimize any ambiguity, Applicant provided a visual representation of its mark and provided the exact wording of each of Opposer's marks. Thus, Opposer's objections based on ambiguity are disingenuous. Opposer must admit the portions of these requests that are truthful or provide a detailed explanation of what portion of the request is ambiguous.

Opposer's objections to RFAs 36, 38, 40, 42, 44, and 46 based on ambiguity is evasive and inappropriate as well. Each of these RFAs asks Opposer to either admit or deny that Opposer's services, listed in connection with several of its registrations or applications for registration, are not used in connection with sports memorabilia or clothing. In order to minimize any ambiguity, Applicant provided the exact wording of goods/services listed on the Patent and Trademark Office (PTO) database associated with the marks addressed in Applicant's RFAs. For example, the PTO database lists the goods associated with Opposer's marks HEISMAN TROPHY AWARD (U.S. Registration No. 1397161); HEISMAN (U.S. Registration

Mr. James M. Gibson  
October 10, 2005  
Page 3

No. 1397160); and HEISMAN MEMORIAL TROPHY (U.S. Registration No. 0936853) as “promoting interest, excellence, and sportsmanship in inter-collegiate football through the medium of an annual award.” Clearly, this description of goods/services does not include sports memorabilia or clothing. Opposer’s failure to admit the portions of the RFAs that are truthful and provide an explanation of the portion that is ambiguous is in bad faith.

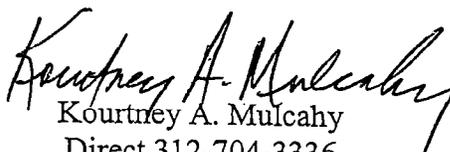
Opposer’s objections to RFAs 31-32 based on “lacks sufficient information” is inappropriate. A party responding in this manner must state that it has made “reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.” *Asea, Inc*, 669 F2d at 1245-46. Moreover, FRCP 36(a) requires the responding party to undertake a “good faith” investigation of sources reasonably available to it in formulating its responses to RFAs.

RFAs 31 and 32 asks Opposer to either admit or deny that the goods listed in connection with Applicant’s Application Serial No. 76545073 are “sports memorabilia, namely resin figurines, bobble heads, and collectible football helmets” and “clothing, namely jerseys and hats.” The description of Applicant’s goods used in connection with its mark can be found on its application for registration. Applicant’s application for registration can easily be obtained by a review of the PTO’s website at [www.uspto.gov](http://www.uspto.gov). The PTO website is a free website and is available to Opposer. Any reasonable investigation in preparation for responding to Applicant’s RFAs would have included a review of this website. Thus, Opposer’s objections are in bad faith.

Unless we receive appropriate responses within 14 days of the date of this letter, we will have no alternative but to make the appropriate motion. We trust that will not be necessary. Should you have any questions or concerns, please feel free to contact me.

Very truly yours,

HINSHAW & CULBERTSON LLP



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cc: Mark Panko  
Alan Lipton

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October 10, 2005

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