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

Proceeding	91169227
Party	Plaintiff Mi Casa Real Estate Co. Mi Casa Real Estate Co. ,
Correspondence Address	J. Charles Dougherty Wright, Lindsey & Jennings, LLP 200 West Capitol Avenue, Suite 2300 Little Rock, AK 72201 UNITED STATES jdougherty@wlj.com
Submission	Motion to Compel Discovery
Filer's Name	J. Charles Dougherty
Filer's e-mail	jdougherty@wlj.com
Signature	/chuck dougherty/
Date	06/28/2007
Attachments	Mot_Compel.pdf ( 12 pages )(276841 bytes )

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

Mi Casa Real Estate Co.	§	Opp. No.:	92043894
	§		
v.	§	App. No.:	78/317,032
	§		
Gelt Industries, Inc. and P & R Investment Group, Inc.	§	Mark:	MI CASA PUBLICACION
	§		

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S MOTION TO COMPEL**

Opposer Mi Casa Real Estate Co. submits the following as its motion to compel pursuant to 37 C.F.R. § 2.120(e) with respect to Gelt Industries, Inc.:

1. On November 3, 2006, Opposer served upon defendant Gelt Industries, Inc. its First Set of Interrogatories and Requests for Production of Documents and Things. A copy of this set of interrogatories and requests for production are attached hereto as Exhibit 1.

2. The responses of Gelt Industries, Inc. to this set of discovery were due on or before December 8, 2006. On December 11, 2006, counsel for Gelt Industries, Inc. filed a request to withdraw as its attorney. This request was granted by the Board on December 22, 2006. Further proceedings were suspended until January 21, 2007 in order to allow Gelt Industries, Inc. sufficient time to appoint new counsel.

3. On January 22, 2007, Gelt Industries, Inc. filed a motion seeking an additional sixty days in which to find new counsel. This motion was granted by order of the Board entered on February 14, 2007, and Gelt Industries was given until April 15, 2007 to

appoint new counsel.

4. On April 16, 2007, Gelt Industries Inc.'s former counsel filed a motion seeking to substitute P & R Investment Group, Inc. in place of Gelt Industries, Inc. in this opposition, noting that all right, title and interest in and to the subject application had been assigned by Gelt Industries, Inc. to P & R Investment Group, Inc. In an order dated April 18, 2007, the Board denied this motion, and joined P & R Investment Group, Inc. in the action rather than substituting it in place of Gelt Industries, Inc. Gelt Industries, Inc. thus remains a party to this opposition.

5. To date, Gelt Industries Inc. has failed to appoint counsel to represent it in this opposition. On April 26, 2007, Opposer's counsel contacted former counsel for Gelt Industries Inc. (and current counsel for P & R Investment Group, Inc.) by email concerning the overdue discovery responses. Former counsel for Gelt Industries, Inc. replied on May 10, 2007, indicating that "Gelt Industries will not be participating in this opposition unless something changes."

6. Opposer's counsel has since tried to contact Robert Gelt, who was the named signatory on the January 22, 2007 motion filed on behalf of Gelt Industries Inc., by telephone. While the party answering the telephone has indicated that the telephone number is correct for Mr. Gelt, Mr. Gelt has not to date returned the phone calls of Opposer's counsel.

7. To date, Gelt Industries Inc. has failed to respond in any way to the discovery requests, and has neither objected to the discovery requests nor sought any further extension of time to respond.

8. Opposer contends that its attempts to reach Gelt Industries, Inc. through its

former counsel and its self-identified representative indicate a good faith effort to resolve the issues presented, as required by 37 C.F.R. § 2.120(e).

9. Opposer hereby moves for an order compelling production of responses from Gelt Industries, Inc. to the above referenced discovery requests.

WHEREFORE, the above premises considered, Opposer Mi Casa Real Estate Co. moves the Board to grant its motion to compel Gelt Industries, Inc. to respond to its interrogatories and requests for production, as well as any and all other just and proper relief.

Date: 6-28-2007



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J. Charles Dougherty  
PTO Reg. No. 41, 715  
Wright, Lindsey & Jennings LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, Arkansas 72201  
(501) 371-0808

Attorneys for Opposer

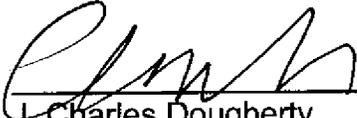
Certificate of Service

I hereby certify that a true and complete copy of the foregoing has been served on each of the following parties by deposit of said copy with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to:

Darren S. Rimer, Esq.  
Rimer & Mathewson LLP  
28202 Cabot Road, Suite 300  
Laguna Niguel, CA 92677

Gelt Industries Inc.  
24307 Magic Mountain Parkway, Suite 501  
Valencia, CA 91355

Date: 6-28-2007

  
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J. Charles Dougherty

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mi Casa Real Estate Co.

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Opp. No.:

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MI CASA PUBLICACION

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**OPPOSER'S FIRST SET OF INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Opposer requests that Applicant answer all of the following interrogatories as required by Trademark Trial and Appeal Board Manual of Procedure § 405 and Federal Rule of Civil Procedure 33, and answer all of the following requests for production of documents and things as required by Trademark Trial and Appeal Board Manual of Procedure § 406 and Federal Rule of Civil Procedure 34.

Applicable Definitions

A. The terms "you," "your," and "Applicant" shall mean Gelt Industries, Inc., any subsidiaries, predecessors, or divisions, any partnerships or joint ventures in which such entities have participated, and any present or former attorneys, agents, trustees, employees, representatives, shareholders, or other persons acting or purporting to act on behalf of any such entities.

B. The term "document" shall mean any written, printed, drawn, recorded, or graphic matter of any kind or character whatsoever and includes, but is not limited to,



the originals and all drafts and non-identical copies (whether different from the originals by reason of notations made on such copies or otherwise) of all formulas, tests, test results, protocols, methods, procedures, charges, grievances, notes, assignments, contracts, agreements, certificates, affidavits, statements, papers, books, pamphlets, brochures, catalogs, periodicals, publications, advertisements, schedules, accounts, writings, drawings, templates, specifications, plans, graphs, charts, analyses, budget summaries, diaries, photographs, letters, correspondence, inter- or intra-company communications, facsimile transmissions, telegrams, telexes, telephone records, notes, memoranda, books of account, ledgers, files, work papers, journals, computer runs, computer programs, financial and business records, checks and checkbooks, bank statements, orders, receipts, invoices, bills, delivery documents, work orders, materials manifests, work sheets, manuals, reports, surveys, studies, tabulations, memoranda or notes of telephone or other conversations, or written communications, minutes of meetings, magnetic or computer tapes, computer diskettes, tape recordings, electronic or video tape recordings, and any other data or data compilations from which information can be obtained and translated, if necessary, into reasonably usable form by the person from whom discovery is sought, of any nature whatsoever and all renewal, extensions, or modifications of any of the above which presently are in your possession, custody, or control.

C. Whenever any interrogatory asks you to "describe" a document, the answer shall include the general subject matter of the document, the number of pages in the document, the date of the document, the name of the person who signed or prepared the document, the names of the persons to whom the document was

addressed or copied, and the name, address, and telephone number of the person having possession, custody, or control of the document. Alternatively, you may provide a copy of the document with your responses in which case no further description is required.

D. Whenever any interrogatory asks you to "describe" a discussion or meeting, the answer shall include the date and place of the discussion or meeting, the names, addresses, and telephone numbers of the participants, the substance of the discussion or meeting, including what was said by each participant, and whether any notes were taken of the discussion or meeting, and if so a description of such notes.

E. The term "person" shall mean any individual, firm, corporation, partnership, joint venture, governmental agency, or any other form of entity, together with any officers, directors, partners, trustees, employees, representatives, shareholders, or agents thereof.

F. The term "discussion" shall mean, without limitation of its generality, statements, correspondence, discussions, conversations, speeches, meetings, remarks, questions, and answers, whether written or oral. The term includes, without limitation of its generality, communications and statements that are face-to-face and those that are transmitted by writing or by media such as intercoms, telephones, including cellular phones, computers, television, or radio.

G. The term "Mark" shall mean the mark that is the subject of the federal trademark application to which this opposition is directed.

## Interrogatories

● State the names, addresses, and telephone numbers of all persons who have knowledge or information concerning or in connection with your adoption, use, or application to register the Mark, and for each such person state the area of such person's knowledge or information.

2. Describe your corporate organizational structure, and identify each person who occupies or has occupied any executive or managerial position within this organizational structure since 2000, and the dates during which each such person held each such position.

3. State the names, addresses and telephone numbers of all persons who will or may be called as lay or expert witnesses or whose testimony will or may be presented on your behalf at the trial of this case, identifying each as a lay or expert witness, as applicable.

4. With respect to each expert witness, state the subject matter on which such person is expected to testify, the substance of the facts and opinions to which such person is expected to testify, and a summary of the grounds for each opinion.

5. State the reason for your decision to begin using the Mark, the date of such decision, and describe each and every document and discussion related to your decision to begin and to continue using the Mark.

6. Describe the channels of trade through which your goods or services sold under the Mark are made available to customers.

7. State whether you have ever performed or had performed a trademark screen search or opinion with regard to the Mark, and if so describe each and every document and discussion pertaining to each such trademark screen, search or opinion.

8. Other than the application that is the subject of this opposition, state whether you have ever registered or applied to register the Mark with any governmental authority, and if so state the location, date, and registration or application number, as applicable, of each such registration or application.

9. Identify each and every good or service that you have sold under the Mark, and for each such good or service identify the total revenues derived from such sales for each year since such good or service was first provided.

10. State the address and telephone number of each and every business location from which you claim to have provided goods or services under the Mark, and for each such business location state:

- (a) the date on which the Mark was first used at such business location;
- (b) each and every good or service provided under the Mark at such business location;
- (c) the total sales for all goods and services provided under the Mark at such business location for each year of operation;
- (d) the geographic area that such business location serves;
- (e) any time periods during which the Mark was not in use at such business location since the Mark was first used at such business location; and
- (f) the manner in which the Mark was and is used at such business location, including the place and manner of display, the form in which the Mark is

rendered, and any other terms, marks, or pictorial or graphical elements

● used in conjunction with the Mark.

11. State whether you have ever advertised any good or service using the Mark, and if so describe each such advertisement, including a description of the form, date, time, place, and cost of such advertisements, and if documents were used as a part of such advertisements, describe such documents.

12. Identify each person or agency who has participated in the creation or distribution of advertisements or promotions incorporating the Mark, and the period of time during which each such person or agency has participated.

13. State Applicant's yearly expenditure to date with respect to the advertising and promotion incorporating the Mark.

14. State whether you believe you have acquired secondary meaning in the Mark, and if so state the geographic area in which such secondary meaning has been acquired, the date on which secondary meaning was acquired in each area, the facts upon which you will rely to support your contention that the term has acquired secondary meaning, and describe each and every document that supports or relates to your claim that the Mark has acquired secondary meaning.

15. Identify all assignments, licenses or other transfer of rights in the Mark granted by or to Applicant.

16. State the date on which you first learned of Opposer's use of the term MI CASA, and describe each and every document drafted since such date concerning Opposer's use of such term, and describe each and every discussion or meeting occurring since such date concerning Opposer's use of such term.

17. State whether you are aware of any instances of actual confusion between the Mark and the Opposer's use of the term MI CASA, and if so state the name, address, and telephone number of the person actually confused; the date, place, and circumstances of each incident of actual confusion; and describe each and every document and discussion relating to each incident of actual confusion.

18. State whether you have conducted or intend to conduct any survey to investigate the extent of either a likelihood of confusion between the Mark and the Opposer's use of the term MI CASA or the secondary meaning you have acquired in the Mark, and if so describe each and every document and discussion embodying or pertaining to such survey.

19. State whether you are aware of any use by a third party of the term MI CASA in connection with real estate or real estate-related goods or services, and if so state the name, address, and telephone number of the person using such term, the date, place, and manner of use, the date you received notice of such use, what action you took in response to such use, and describe each and every document and discussion relating to such use.

20. Describe each and every document not already described that you may or will present at trial.

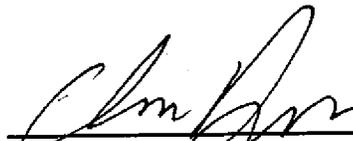
21. Identify each and every person (including attorneys) who assisted in answering these interrogatories, specifying which answers these persons prepared or helped prepare.

Requests for Production of Documents and Things

● Produce each and every document for which a description is sought in the interrogatories presented herein.

2. Produce specimens evidencing each and every form and manner in which you have used the Mark.

Date: 11-3-2006



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J. Charles Dougherty  
PTO Reg. No. 41, 715  
Wright, Lindsey & Jennings LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, Arkansas 72201  
(501) 371-0808

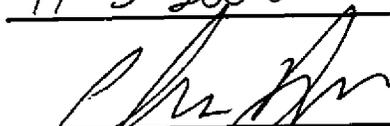
Attorneys for Opposer

Certificate of Service

I hereby certify that a true and complete copy of the foregoing has been served on Gelt Industries, Inc. by deposit of said copy with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to:

Darren S. Rimer, Esq.  
Rimer & Mathewson LLP  
28202 Cabot Road, Suite 300  
Laguna Niguel, CA 92677

Date: 11-3-2006



\_\_\_\_\_  
J. Charles Dougherty