ESTTA Tracking number: **ESTTA124439**

Filing date: **02/12/2007**

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

Proceeding	91173189
Party	Defendant Logniko, Igor Logniko, Igor Apt. 2a, Brooklyn 7115 3rd Ave. , NY 11209
Correspondence Address	Richard S. Ross, Esq. 4801 South University DriveSuite 237 Ft. Lauderdale, FL 33328 UNITED STATES prodp@ix.netcom.com
Submission	Motion to Compel Discovery
Filer's Name	RICHARD S. ROSS, ESQ.
Filer's e-mail	prodp@ix.netcom.com
Signature	/richard ross/
Date	02/12/2007
Attachments	opp6.il.pdf (5 pages)(45578 bytes) Exhibit A.pdf (13 pages)(428504 bytes) Exhibit B.pdf (16 pages)(556746 bytes)

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

In the matter of application Serial No. 78/612,360 TEMPLATEMONSTER

MONSTERCOMMERCE, LLC

Opposer,

v Opposition No. 91173189

IGOR LOGNIKOV

Applicant.

_____/

APPLICANT'S MOTION FOR ORDER COMPELLING DISCOVERY

COMES NOW, the Applicant, IGOR LOGNIKOV ("Applicant"), by and through his undersigned counsel, who respectfully moves this Board pursuant to Fed.R.Civ.P. 37 and the Trademark Rules of Practice for an order compelling MONSTERCOMMERCE, LLC'S ("Opposer") to respond to Applicant's first set of interrogatories and requests for production. Opposer's responses to the written discovery were so devoid of merit and deficient under the rules, that they evidence bad faith sufficient to strike the opposition and grant judgment in favor of the Applicant. Accordingly, the Applicant respectfully requests such a remedy.

In an attempt to resolve the issues presented in the motion, counsel for the parties communicated. However, the pervasiveness of Opposer's deficient responses made the communication ill-fated. For example, counsel for Opposer wanted to discuss each and every response which Applicant disputed. Because Opposer asserted multiple objections to every interrogatory and request, Opposer's counsel was provided the general basis of each category of dispute. Applicant then invited the Opposer to review its responses to the discovery to address each

category. Opposer was not inclined to do so.

Attached to this motion are the Opposer's responses and objections to Applicant's first set of interrogatories (Exhibit A) and first requests for production (Exhibit B). As set forth below, the responses are wholly deficient, interject baseless and unsupported objections, and violate the rules in other manners, as follows:

1. For each interrogatory and request for production, the Opposer objected specifically, and, in addition, asserted eleven general objections. The rules do not permit a party to generally object. Opposer refused to withdraw the general objections.

2. Opposer produced no documents with its response whatsoever. Instead, Opposer stated, from response to response, that it "will produce" documents. *See, e.g.,* Request Nos. 1, 4 and 5.[1] Opposer supplemented after the conference and produced documents it contends are those that it was "willing" to produce. However, those documents are not marked to correspond with the request numbers in violation of Fed.R.Civ.P. 34(b). Thus, Applicant cannot tell whether the documents match up with the respective "will produce" responses, whether the document production of the "will produce" documents is complete, or whether there are still some "will produce" documents that have not been produced.[2]

3. The Opposer refused to answer interrogatories or produce documents under the guise that the discovery called for confidential information. *See, e.g.,* Request Nos. 2, 3, 7, 10-16, 18-20;

---

[1]Applicant, by providing examples of deficiencies throughout this motion, is not conceding that other responses to interrogatories or requests for production are not also deficient. The examples provided simply show the respective categories of deficiency and rules violation.

[2]The "will produce" documents are just a part of the overall documents requested. Further, most of the "will produce" documents actually produced are simply printouts of each page of the Opposer's web site.

Interrogatory Nos. 2, 12, 13. For example, Request No. 2 asks Opposer to produce documents which evidence, refer or relate to creation, selection and adoption of its mark(s). Opposer will be hard-pressed to establish the confidential nature of this request. Nonetheless, that parties are in the process of preparing a Stipulated Protective Order. The last draft is in the hands of Opposer who has yet to state agreement or disagreement with the proposed terms.

4. Opposer liberally asserted attorney-client privilege and the work product doctrine in refusing to produce responses. *See, e.g.,* Request Nos. 3, 6, 7, 10, 14-21, 23; Interrogatory Nos. 6, 12. However, Opposer failed to produce a privilege log as is required, so that the alleged privilege could be challenged. *See* Fed.R.Civ.P. 26(b)(5).

5. Next, Opposer refused to respond to the category of discovery seeking its prior knowledge of the Applicant on the grounds that it is not calculated to lead to the discovery of admissible evidence. *See, e.g.,* Request Nos. 6, 17, 18, 22; Interrogatory No. 7. Applicant has raised defenses related to Opposer's prior knowledge which makes it an issue in this proceeding.

6. Opposer also shows disregard for the right of Applicant to take discovery by improperly and arbitrarily restricting responses. For example, on a number of occasions, Opposer restricts its response to that which it believes is "sufficient to show" or "sufficient to identify". In other responses, Opposer arbitrarily seeks to limit responses to the previous five years *See, e.g.*, Request Nos. 4, 5, 8, 9, 11-13; Interrogatory No. 3. First, the rules do not permit a party to delimit production based upon that party's subjective contention of what is sufficient, or by capping an answer to a limited time period. Second, what Opposer contends is sufficient to show or identify may not be Applicant's contention.

7. Regarding actual confusion discovery, Opposer alleged the existence of some, but refused to provide details of persons involved, statements made, or relevant documents that exist. *See, e.g.,* Request Nos. 7, 16; Interrogatory No. 10. Opposer only agreed to produce specific information to Interrogatory No. 10, but to date has failed to do so.

8. Finally, Opposer states in response to Request No. 21 that the term "disputed" is vague. Based upon this specific objection, the eleven general objections, attorney-client privilege and the work-product doctrine, Opposer refused to answer the request. "Disputed" is not vague and it is clear that it means where the Opposer has contested the right of another to use a mark that it contends it owns.

Opposer's response to Request No. 21 typifies the egregiously deficient responses and lack of good faith in which Opposer has addressed Applicant's preliminary written discovery. The harm caused by Opposer's bad faith litigation tactics in asserting multiple objections to every interrogatory and request for production should not be borne by Applicant. Accordingly, Applicant moves this Board to strike the opposition and grant judgment for Applicant. Opposer would still have an opportunity to seek cancellation, if it so chooses, and thus would not be without remedy. Yet, it would not be rewarded for its overt, dilatory conduct in prosecuting discovery.

Respectfully submitted,

s/Richard S. Ross, Esq.
RICHARD S. ROSS, ESQ.
Fla. Bar. No. 436630
Attorney for Applicant
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Tel (954) 252-9110
Fax (954) 252-9192
E mail prodp@ix.netcom.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Postal Service first class regular mail, and addressed to counsel for the Opposer:

Brian J. Winterfeldt
Tricia McDermott Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

this 12th day of February, 2007.

s/Richard S. Ross, Esq.
Richard S. Ross, Esq.

Attorney Docket No. 42896.00.049336

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

In the matter of Application Serial No. 78/612,360
Published in the *Official Gazette* on May 30, 2006

TEMPLATEMONSTER

MONSTERCOMMERCE, LLC, Opposer, v. IGOR LOGNIKO, Applicant	)	Opposition No. 91173189

OPPOSER'S RESPONSES AND OBJECTIONS TO
APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer, MonsterCommerce, LLC. ("Opposer"), by its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, hereby responds to Applicant's First Set of Interrogatories ("Interrogatories") as follows:

GENERAL OBJECTIONS

1. Opposer objects to Applicant's Interrogatories insofar as they are overly broad, unduly burdensome, vague, ambiguous and otherwise seek to impose a greater obligation on Opposer than that imposed by the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Opposer objects to Applicant's Interrogatories insofar as they seek information that is irrelevant and/or not likely to lead to the discovery of admissible evidence.

3. Opposer objects to Applicant's Interrogatories insofar as they seek, or a response would disclose, information subject to the attorney-client privilege or work product doctrine or which is otherwise protected under the Federal Rules of Civil Procedure and governing law.

4. Opposer objects to Applicant's Interrogatories insofar as they seek information that is not in Opposer's possession, custody or control.

5. Opposer objects to Applicant's Interrogatories insofar as they seek information that is confidential or a trade secret, or otherwise proprietary in nature, the disclosure of which would cause harm to Opposer.

6. Opposer's responses and production of documents do not concede the relevance or materiality of any information disclosed by Opposer.

7. Opposer objects to Applicant's Interrogatories to the extent they are not limited to a definite time period.

8. Opposer objects to Applicant's Interrogatories to the extent that they are not limited in scope to the United States. Any information or documents provided in response to the Interrogatories is limited to the United States.

9. Opposer objects to Applicant's Interrogatories to the extent that they seek information pertaining to Opposer's future intentions, actions, plans or strategies.

10. Opposer states that discovery is ongoing and reserves the right to supplement, revise, correct and/or clarify any of the answers submitted herein.

11. Opposer's production of documents or information in response to the Interrogatories, which documents or information are or may be the subject of any of the

foregoing objections, is not intended to be nor shall it be deemed a waiver of objections with respect to such documents or information or withheld documents or information.

SPECIFIC OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Interrogatory 1:

With respect to Opposer:

a) state the address and telephone number of each location at which Opposer has maintained or now maintains an office or other place of business in the U.S. and describe the functions carried out at each such place or other place of business;

b) briefly state the nature of Opposer's principal business and the period in which it has conducted such business; and

c) list any and all trademarks, service marks and trade names used or adopted for use or intended to be used in connection with Opposer's business since first adopting the MONSTER marks.

RESPONSE:

Opposer objects to this Request as overly broad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Opposer states the address and telephone number at which Opposer has maintained or now maintains an office or other place of business is: MonsterCommerce, LLC, 1 Bronze Pointe, Suite 1-C, Belleville, IL. Opposer further states that its MONSTER marks include the following:. **MONSTERCOMMERCE** (U.S. Reg. No. 2,947,268); **MONSTERLOCAL** (U.S. Application Serial No. 76/658,138); and, **MONSTERMARKETPLACE** (U.S. Application Serial No. 76/662,639); **MONSTER**; **MONSTER WEB PROMOTION; MONSTER WEB DESIGN; MONSTER DOMAIN REGISTRATION; MONSTERSMALLBUSINESS; MONSTER SELLERS**, among others. Opposer further states that it will produce documents from which the nature and functions of Opposer's business that uses the MONSTER marks can be ascertained.

Interrogatory 2:.

(a) state the date Opposer decided to adopt the MONSTER marks; and

(b) identify the person(s) who first conceived of the MONSTER marks for use by Opposer and identify all documents referring or relating to such first conception.

RESPONSE:

Opposer objects to this Request to the extent it seeks the confidential and proprietary documents and information of Opposer. Subject to and without waiving the foregoing objections, Opposer states that it will produce documents from which this information can be ascertained following the entry of a suitable protective order.

Interrogatory 3:

Identify by common commercial descriptive name each type of product sold, and/or service rendered, offered for sale, advertised and/or promoted or intended to be sold, rendered, advertised and/or promoted by Opposer which bears or will bear the MONSTER marks and for each type of goods and/or services:

(a) state the first use in the United States in conjunction with the type of goods and/or services and describe the circumstances surrounding such first use;

(b) state the first use anywhere in conjunction with the type of goods and/or service and describe the circumstances surrounding such first use;

(c) identify all documents relating to each such first use mentioned in response to subparts a), and b);

(d) state the annual dollar volume of sales in the United States for the goods and/or services rendered or under the MONSTER marks from the date of first use to the present;

(e) state the annual unit volume of sales in the United States for the goods and/or services rendered under the MONSTER marks from the date of first use to the present;

(f) state the annual dollar volume expended and to be expended by Opposer in the United States in advertising or promoting the goods and/or services rendered or to be rendered under the MONSTER marks; and

(g) state the date of each first shipment of goods and/or services bearing the MONSTER marks into any state into which Opposer has shipped such product or has rendered or plans to render such services.

RESPONSE:

Opposer objects to this Request because it is overly broad, unduly burdensome and seeks the confidential and proprietary documents and information of Opposer. Opposer further objects to this Request to the extent it seeks Opposer's future advertising, promotional, marketing and sales strategies because such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to subpart (g) of this Request as vague and inapplicable to Opposer's business.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to identify the dates of first use for its MONSTER marks in the United States, its annual sales of products and services in the United States bearing the MONSTER marks for the past five years, and its annual advertising, marketing and sales expenditures in the United States for products and services bearing the MONSTER marks for the past five years.

Interrogatory 4:

Identify the person(s) most knowledgeable about Opposer's sales, marketing and channels of distribution for each of its products and/or services bearing or rendered under the MONSTER marks.

RESPONSE:

Subject to and without waiving the General Objections, Opposer identifies Dan P. Kennedy and Allan M. Goodloe III.

Interrogatory 5:

Identify representative copies of all tags, labels, packaging, posters, flyers, advertisements, catalogs, brochures and any other advertising or promotional materials used or being considered for use by Opposer in connection with its goods and/or services offered under the MONSTER marks.

RESPONSE:

Opposer objects to this Request to the extent it seeks Opposer's future advertising, promotional, marketing and sales strategies because such information is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and reveals Opposer's confidential and proprietary information.

Subject to and without waiving the foregoing objections, Opposer will produce representative copies of existing advertising and promotional materials used by Opposer in connection with the services offered under the MONSTER marks.

Interrogatory 6:

State whether a trademark search or any other type of search was conducted by Opposer in connection with its decision to oppose the TEMPLATEMONSTER service mark application. If so, identify all documents referring or relating to such search(es) and identify the person(s) most knowledgeable thereof. Furthermore, identify all registrations, applications or uses located by such search(es).

RESPONSE:

Opposer objects to this Request because it seeks information protected by the attorney-client privilege and attorney work product doctrine.

Interrogatory 7:

State whether Opposer had knowledge of Applicant, and of Applicant's mark TEMPLATEMONSTER, or www.templatemonster.com, prior to the Notice of Publication of the TEMPLATEMONSTER service mark application, and if so state:

a) whether Opposer considered the issue of, and/or received any opinions concerning a likelihood of confusion between TEMPLATEMONSTER and Opposer's MONSTER marks;

b) identify all documents referring or relating to Opposer's consideration of this issue, and/or opinion(s) received by Opposer with respect to this issue; and

c) identify all documents referring or relating to Applicant, TEMPLATEMONSTER, or www.templatemonster.com.

RESPONSE:

Opposer objects to this Request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 8:

Identify by publication, title, issue date and page number, all publications in which Opposer has or plans to advertise or otherwise refer to products to be offered for sale and/or services to be rendered in association with the MONSTER marks.

RESPONSE:

Opposer objects to this Request to the extent it seeks Opposer's future advertising, promotional, marketing and sales strategies because such information is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and reveals Opposer's confidential and proprietary information.

Subject to and without waiving the foregoing objections, Opposer will produce documents identifying the publications in which it has advertised its services under the MONSTER marks.

Interrogatory 9:

Identify by name, date and location every trade show or fair (past or present) in the United States where Opposer has or plans to display, promote, advertise, offer for sale or sell its products and/or services in connection with the MONSTER marks.

RESPONSE:

Opposer objects to this Request to the extent it seeks Opposer's future advertising, promotional, marketing and sales strategies because such information is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and reveals Opposer's confidential and proprietary information.

Subject to and without waiving the foregoing objections, Opposer will produce documents from which information concerning the trade shows in the United States where it has promoted, advertised, offered for sale or sold its services can be ascertained.

Interrogatory 10:

State whether Opposer is aware of any instance in which any person, firm, corporation, association or other entity has been confused or has indicated by correspondence, oral statement, telephone call or otherwise that he, she or it has been confused, deceived, or mistaken as to the source or origin of Applicant's or Opposer's goods and/or services or other activities as a result of Opposer's concurrent use or planned use of the MONSTER marks and Applicant's TEMPLATEMONSTER mark; and

(a) describe the circumstances surrounding each such instance, including all persons present;

(b) state whether a record was made of any such instances and, if so, identify the records or any other documents relating to each such instance and the persons having knowledge and custody thereof.

RESPONSE:

Opposer objects to this Request as vague and ambiguous to the extent it refers to confusion about Opposer's planned use of the MONSTER marks and Applicant's TEMPLATEMONSTER mark.

Subject to and without waiving the foregoing objections, Opposer answers yes. Opposer states that its sales force regularly receives inquiries from persons and entities who believe that Applicant's TEMPLATEMONSTER templates are created specifically for Opposer's MONSTERCOMMERCE service. Opposer further states that persons and entities have also indicated to Opposer that they believe that Opposer and Applicant are the same entity.

Interrogatory 11:

Identify all surveys conducted by Opposer, and by any and all other entities affiliated with, related to or sponsored by Opposer, concerning the MONSTER marks, and TEMPLATEMONSTER, and for each such survey, identify all documents embodying the results of each such survey and all other documents relating to each such survey.

RESPONSE:

Opposer objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Request because it seeks the confidential and proprietary information of Opposer.

Subject to and without waiving the foregoing objections, Opposer states that it has not conducted any surveys concerning the MONSTER marks and TEMPLATEMONSTER.

Interrogatory 12:

Identify all objections made or received by Opposer and all legal proceedings instituted or defended by Opposer having to do with use of trade names, trademarks, service marks or other designations of third parties relating to Opposer's perceived rights in its MONSTER marks and/or related marks and for each the foregoing objections or legal proceeding:

(a) state the name and address of the third party;

(b) identify all documents related to or pertaining to the objection or legal proceeding; and;

(c) identify each and every person with knowledge or information relating to Opposer's response to this interrogatory and briefly describe what relevant knowledge or information each identified person possesses.

RESPONSE:

Opposer objects to this Request because the term "objections" is vague and ambiguous and because it seeks information that is protected by the attorney-client privilege and the work product doctrine. Opposer further objects to this Request to the extent that it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer states that is unaware of any federal, state or Trademark Trial and Appeal Board proceedings that have been instituted or defended by Opposer in the United States concerning its MONSTER marks other than the instant proceeding. Opposer further states that it has instituted UDRP proceedings relating to its MONSTER marks and will produce documents concerning those proceedings, upon entry of a suitable protective order.

Interrogatory 13:

Identify all agreements, including but not limited to, licenses, permissions or consents entered into by Opposer and any other entities relating to the MONSTER marks and/or related marks and identify all documents relating to or referring to each such agreement.

RESPONSE:

Opposer objects to this Request as overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to

this Request to the extent that it seeks the confidential and proprietary documents and information of Opposer.

Interrogatory 14:

Identify each and every person known by Opposer to have supplied information for or participated in responding to these interrogatories and Applicant's First Requests for Production of Documents to Opposer.

RESPONSE: Opposer identifies Dan P. Kennedy, Allan M. Goodloe III and Andy Ketter.

By: _____

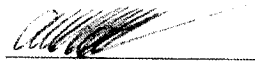
Brian J. Winterfeldt
Hara K. Jacobs
Tricia M. Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

(202) 661-7650 Telephone
(202) 626-9065 Fax
Attorneys for MONSTERCOMMERCE, LLC

Dated: January 24, 2007

VERIFICATION

I declare under penalty of perjury that the foregoing Opposer's Responses and Objections to Applicant's First Set of Interrogatories are true and correct, based upon the information presently available to me.



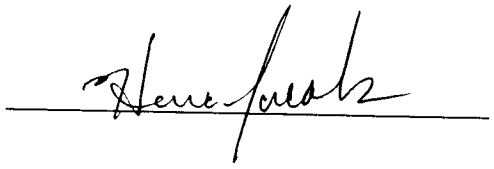
Allan M. Goodloe, III

CERTIFICATE OF SERVICE

I, Hara K. Jacobs, hereby certify that on today's date, a true and correct copy of the foregoing Opposer's Responses and Objections to Applicant's First Set of Interrogatories was served by United States First Class mail, postage prepaid, on counsel for Applicant as set forth below:

Richard S. Ross, Esq.
Attorney for Applicant
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Tel (954) 252-9110
Fax (954) 252-9192
E mail prodp@ix.netcom.com

Dated: January 24, 2007



Attorney Docket No. 42896.00.049336

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

In the matter of Application Serial No. 78/612,360
Published in the *Official Gazette* on May 30, 2006

TEMPLATEMONSTER

MONSTERCOMMERCE, LLC,

Opposer,

v.

IGOR LOGNIKO,

Applicant.

Opposition No. 91173189

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

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer, MonsterCommerce, LLC ("Opposer"), by its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, hereby responds to Applicant's First Requests for the Production of Documents and Things ("Requests") as follows:

GENERAL OBJECTIONS

1. Opposer objects to Applicant's Requests insofar as they are overly broad, unduly burdensome, vague, ambiguous and otherwise seek to impose a greater obligation on Opposer than that imposed by the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Opposer objects to Applicant's Requests insofar as they seek information that is irrelevant and/or not likely to lead to the discovery of admissible evidence.

3. Opposer objects to Applicant's Requests insofar as they seek, or a response would disclose, information subject to the attorney-client privilege or work product doctrine or which is otherwise protected under the Federal Rules of Civil Procedure and governing law.

4. Opposer objects to Applicant's Requests insofar as they seek information that is not in Opposer's possession, custody or control.

5. Opposer objects to Applicant's Requests insofar as they seek information that is confidential or a trade secret, or otherwise proprietary in nature, the disclosure of which would cause harm to Opposer.

6. Opposer's responses and production of documents do not concede the relevance or materiality of any information disclosed by Opposer.

7. Opposer objects to Applicant's Requests to the extent they are not limited to a definite time period.

8. Opposer objects to Applicant's Requests to the extent that they are not limited in scope to the United States. Any documents provided in response to these Requests is limited to the United States.

9. Opposer objects to Applicant's Requests to the extent that they seek information pertaining to Opposer's future intentions, actions, plans or strategies.

10. Opposer states that discovery is ongoing and reserves the right to supplement, revise, correct and/or clarify any of the answers submitted herein.

11. Opposer's production of documents or information in response to the Requests, which documents or information are or may be the subject of any of the foregoing objections, is not intended to be nor shall it be deemed a waiver of objections with respect to such documents or information or withheld documents or information.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Subject to and without waiving the foregoing General Objections, which apply to each Request as if set forth fully below, Opposer makes the following specific objections and responses to the Requests.

Request No. 1

Specimens of all current and proposed advertising documents, educational andpromotional materials, including journals, catalogues, circulars, sales sheets, price lists, leaflets, direct mail pieces, newspaper and magazine advertisements, telephone book advertisements, press releases, web sites and any such other materials bearing the alleged MONSTER family of marks including the MONSTERCOMMERCE mark used by Opposer or any predecessor or related company.

RESPONSE:

Opposer objects to this Request because it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Opposer will produce specimens of its current advertising materials bearing the MONSTER family of marks and the MONSTERCOMMERCE mark.

Request No. 2

All documents which evidence, refer or relate to the creation, selection, and adoption of the alleged MONSTER family of marks including the MONSTERCOMMERCE mark used by Opposer or any related or predecessor companies.

RESPONSE

Opposer objects to this Request because it is overly broad, unduly burdensome and seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce documents evidencing the creation, selection and adoption of the MONSTER family of marks including the MONSTERCOMMERCE mark, if any, following the entry of a suitable protective order.

Request No. 3

All documents relating or referring to any searches undertaken by or on behalf of Opposer which relate or refer to the alleged MONSTER family of marks including the MONSTERCOMMERCE mark.

RESPONSE

Opposer objects to this Request to the extent it seeks information protected by the attorney-client privilege or work-product doctrine and to the extent it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce any non-privileged documents in its possession, custody or control, that are responsive to this Request, upon the entry of a suitable protective order.

Request No. 4

All documents which evidence, refer or relate to the earliest use, and the earliest use in interstate commerce, of the alleged MONSTER family of marks, and separately the MONSTERCOMMERCE mark used by Opposer or any related predecessor companies, including all documents which evidence, refer or relate to the earliest use and the earliest use in interstate commerce of the alleged MONSTER family of marks including the MONSTERCOMMERCE mark used by Opposer for those goods and services identified in Paragraph 2 and 4 (First Occurrence) of the Amended Notice of Opposition.

RESPONSE

Opposer objects to this Request because it is vague, overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's or any related predecessor company's earliest use and earliest use in commerce of the MONSTER family of marks and the MONSTERCOMMERCE mark.

Request No. 5

All documents which evidence, refer or relate to any use of the alleged MONSTER family of marks including the MONSTERCOMMERCE mark used by Opposer or any related companies, including but not limited to the mark itself, the type of goods or services in connection with which the mark was used, and the geographical areas and channels of trade in which the mark was used.

RESPONSE

Opposer objects to this Request because it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show its use of the MONSTER family of marks, including the MONSTERCOMMERCE mark and the services in connection with which the marks are used.

Request No. 6

All documents which evidence, refer or relate to knowledge of Opposer of Applicant's use or intended use of the TEMPLATEMONSTER mark, and the scope of that knowledge.

RESPONSE

Opposer objects to this request as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and to the extent it seeks information protected by the attorney-client privilege and the work-product doctrine.

Request No. 7

All documents which evidence, refer or relate to statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer, competitor or other third party as to the relationship between Applicant and Opposer or their respective goods and/or services.

RESPONSE

Opposer objects to this Request to the extent it seeks the confidential and proprietary documents and information of Opposer.

Opposer will produce any non-privileged documents in its possession, custody or control that are responsive to this Request, following the entry of a suitable protective order.

Request No. 8

All packaging and labeling materials for Opposer's products or services bearing the alleged MONSTER family of marks including the MONSTERCOMMERCE mark and all prototypes, drafts and sketches for said packaging and labeling, and all documents relating or referring to the design and/or creation of said packaging and labeling.

RESPONSE

Opposer objects to this Request because it is vague, overly broad, unduly burdensome, and not reasonably calculated to the lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Opposer will produce representative existing samples of its labeling materials for its services bearing the MONSTER family of marks including the MONSTERCOMMERCE mark.

Request No. 9

All documents sufficient to identify each publication in which Opposer has advertised or promoted, is advertising or promoting, or plans to advertise or promote any and all of its goods and/or services with the alleged MONSTER family of marks including the MONSTERCOMMERCE mark.

RESPONSE

Opposer objects to this Request to the extent it seeks Opposer's future advertising and promotional strategies because such information is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and reveals Opposer's confidential and proprietary information.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to identify the publications in which it has advertised or promoted its services with the alleged MONSTER family of marks including the MONSTERCOMMERCE mark.

Request No. 10

All documents relating to any investigation such as a service mark, trademark, trade name, or corporate name search related to the use or registration of the alleged MONSTER family of marks including the MONSTERCOMMERCE mark, alone or in conjunction with other terms, designs or marks.

RESPONSE

Opposer objects to this Request to the extent it seeks information protected by the attorney-client privilege or work-product doctrine and to the extent it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce any non-privileged documents in its possession, custody or control that are responsive to this Request, upon the entry of a suitable protective order.

Request No. 11

All documents relating or referring to and/or showing the channels of distribution through which Opposer's products or services are sold, are intended to be sold, are under consideration to be sold and/or were under consideration to be sold, and the categories of consumers with whom Opposer does or intends to do business or to whom Opposer offers or intends to offer its products or services under the alleged MONSTER family of marks including the MONSTERCOMMERCE mark.

RESPONSE

Opposer objects to this Request to the extent it seeks the confidential and proprietary documents and information of Opposer. Opposer further objects to this Request to the extent it seeks Opposer's future business plans and strategies because such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to identify the channels of distribution and categories of customers for its products and services offered under the MONSTER family of marks including the MONSTERCOMMERCE mark following the entry of a suitable protective order.

Request No. 12

All documents relating or referring to the dollar value of Opposer's actual and projected sales of products or services under the alleged MONSTER family of marks including the MONSTERCOMMERCE mark, and separately for those products and services identified in Paragraphs 2 and 4 (First Occurrence) of the Amended Notice of Opposition.

RESPONSE

Opposer objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Request because it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show its annual sales of products and services for the past five years

under the MONSTER family of marks including the MONSTERCOMMERCE mark following the entry of a suitable protective order.

Request No. 13

All documents relating or referring to the amount of money expended and budgeted by Opposer to advertise or promote products or services under the alleged MONSTER family of marks including the MONSTERCOMMERCE mark, and separately for those products and services identified in Paragraphs 2 and 4 (First Occurrence) of the Amended Notice of Opposition.

RESPONSE

Opposer specifically objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Request because it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show its annual advertising, promotional and sales expenditures for the past five years for products under the MONSTER family of marks including the MONSTERCOMMERCE mark following the entry of a suitable protective order.

Request No. 14

All studies, surveys, market research tests or memoranda including, but not limited to demographic or consumer profile studies, relating to the purchasers or potential purchasers of Opposer's products and/or services sold, offered for sale, advertised or promoted under the alleged MONSTER family of marks including the MONSTERCOMMERCE mark or intended to be sold, advertised or promoted under the alleged MONSTER family of marks including the MONSTERCOMMERCE mark.

RESPONSE

Opposer objects to this Request because it seeks the confidential and proprietary documents and information of Opposer. Opposer further objects to this Request to the extent it seeks Opposer's future business plans and strategies because such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Opposer will produce any non-privileged documents in its possession, custody or control that are responsive to this Request and that relate to Opposer's products or services sold, advertised or promoted under the MONSTER family of marks including the MONSTERCOMMERCE mark, upon entry of a suitable protective order.

Request No. 15

All studies, surveys, market research tests, memoranda and other documents relating thereto, relating or referring to the use of the alleged MONSTER family of marks including the MONSTERCOMMERCE mark in connection with any product and/or service sold, offered for sale, advertised or promoted by Opposer, or intended to be sold, advertised or promoted, including, but not limited to, those relating to confusion or likelihood of confusion between Applicant's products and/or services and Opposer's products and/or services.

RESPONSE

Opposer objects to this Request because it seeks the confidential and proprietary documents and information of Opposer and to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. Opposer further objects to this Request to the

extent it seeks Opposer's future business plans and strategies because such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Opposer will produce any non-privileged documents in its possession, custody or control that are responsive to this Request and that relate to Opposer's products or services sold, offered for sale, advertised or promoted under the MONSTER family of marks including the MONSTERCOMMERCE mark, upon entry of a suitable protective order.

Request No. 16

All documents relating or referring to any instance in which a person has been confused, mistaken, or deceived as to the source of Opposer's products and/or services sold or to be sold under the alleged MONSTER family of marks including the MONSTERCOMMERCE mark.

RESPONSE

Opposer objects to this Request to the extent it seeks information protected by the attorney-client privilege or work-product doctrine and to the extent it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce any non-privileged documents in its possession, custody or control, that are responsive to this Request, upon the entry of a suitable protective order.

Request No. 17

All documents relating or referring to (a) the date and circumstances under which Opposer became aware of use and/or application of Applicant's mark TEMPLATEMONSTER; (b) Opposer's awareness of Applicant and of Applicant's mark; or (c) any action taken by Opposer in response to its awareness of Applicants mark.

RESPONSE

Opposer objects to this Request to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. Opposer further objects to this Request

because it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 18

All documents in the custody, control or possession of Opposer which contain any of Applicant's mark(s) or which relate or refer in any way to any of Applicant's products and/or services under Applicant's mark(s).

RESPONSE

Opposer objects to this Request as overly broad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Request to the extent it seeks information protected by the attorney-client privilege or work-product doctrine and to the extent it seeks the confidential and proprietary documents and information of Opposer.

Request No. 19

All licenses granted by Opposer to any person to use the alleged MONSTER family of marks including the MONSTERCOMMERCE mark, or any of them, in connection with any product or service, including all amendments or modifications to any such licenses, and all documents relating or referring to any such license and/or amendments or modifications thereto.

RESPONSE

Opposer objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Request to the extent it seeks information protected by the attorney-client privilege or work-product doctrine and to the extent it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce any licenses granted by Opposer for use of any of the MONSTER family of marks including the

MONSTERCOMMERCE mark, following the entry of a suitable protective order, and in accordance with any disclosure limitations in any such licenses.

Request No. 20

All documents relating to any law suit or other legal proceeding involving the alleged MONSTER family of marks including the MONSTERCOMMERCE mark, or any of them.

RESPONSE

Opposer objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Request to the extent it seeks information protected by the attorney-client privilege or work-product doctrine and to the extent that it seeks the confidential and proprietary documents and information of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to identify any lawsuits or legal proceedings (other than the instant proceeding) in which Opposer asserted ownership of any of its MONSTER marks in the United States and the outcome of such proceedings following the entry of a suitable protective order

Request No. 21

All documents pertaining to the alleged MONSTER family of marks including the MONSTERCOMMERCE mark where Opposer disputed the right of another to use Opposer's marks, including documents describing the outcome of any such disputes.

RESPONSE

Opposer objects to this Request because the term "disputed" is vague. Opposer further objects to the extent that it seeks information protected by the attorney-client privilege or work-product doctrine.

Request No. 22

All documents between the Opposer and www.templatemonster.com, including payments made by Opposer to www.templatemonster.com.

RESPONSE

Opposer objects to this Request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 23

All documents, including corporate documents pertaining to the allegations of Paragraph 3 of the Amended Notice of Opposition.

RESPONSE

Opposer objects to this Request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because the issue to which the allegations of Paragraph 3 applies is now moot following the Board's Order dated December 13, 2006. Opposer further objects to this Request to the extent that it seeks information protected by the attorney-client privilege or work-product doctrine.

Request No. 24

All documents not otherwise requested and identified in response to the interrogatories.

RESPONSE

Opposer will produce any responsive, unobjectionable non-privileged documents identified in its responses to the Interrogatories.

By: _____

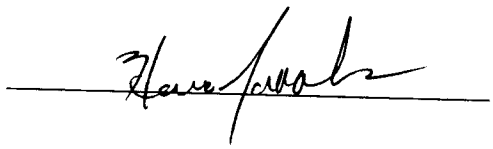
Brian J. Winterfeldt
Hara K. Jacobs
Tricia M. Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

(202) 661-7650 Telephone
(202) 626-9065 Fax
Attorneys for MONSTERCOMMERCE, LLC

Dated: January 24, 2007

CERTIFICATE OF SERVICE

I, Hara K. Jacobs, hereby certify that on today's date, a true and correct copy of the foregoing Opposer's Responses and Objections to Applicant's First Request for Production of Documents was served by United States First Class mail, postage prepaid, on counsel for Applicant as set forth below:

Richard S. Ross, Esq.
Attorney for Applicant
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Tel (954) 252-9110
Fax (954) 252-9192
E mail prodp@ix.netcom.com

Dated: January 24, 2007