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Filing date: **05/29/2009**

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

| | |
|------------------------|---|
| Proceeding | 91176744 |
| Party | Plaintiff DC Comics and Marvel Characters, Inc. |
| Correspondence Address | Jonathan D. Reichman Kenyon & Kenyon, LLP One Broadway New York, NY 10004 UNITED STATES mmorris@kenyon.com, jreichman@kenyon.com, mmarsh@kenyon.com, plum@kenyon.com, rcollins@kenyon.com |
| Submission | Motion for Summary Judgment |
| Filer's Name | Michelle C. Morris |
| Filer's e-mail | mmorris@kenyon.com, jreichman@kenyon.com, mmarsh@kenyon.com, rcollins@kenyon.com |
| Signature | /Michelle C. Morris/ |
| Date | 05/29/2009 |
| Attachments | JDR Ex B-F.pdf (60 pages)(1067434 bytes) |

EXHIBIT B

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

Applicant: Michael Craig Silver
Application Ser. No.: 78/823,155
Filing Date: 2/24/06
Mark: SUPER HERO
Date of Publication in OG: 1/16/07
Opposer: DC Comics and Marvel Characters, Inc.

DC COMICS and
MARVEL CHARACTERS, INC.,

Opposer,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

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

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposers DC Comics and Marvel Characters, Inc. (collectively, "Opposer") request that Applicant Michael Craig Silver ("Applicant") produce for inspection and copying at the Offices of Kenyon & Kenyon LLP, One Broadway, New York, New York

10004, or such other location as shall be mutually agreed upon by counsel for the parties, within thirty (30) days of service hereof, the documents and things identified below.

DEFINITIONS

For the purposes of these requests, the definitions set forth in Opposer's concurrently served "Opposer's First Set of Interrogatories to Applicant" are hereby incorporated by reference as if fully set forth herein, except as changed herein. Reference to a particular interrogatory herein refers to the corresponding interrogatory from "Opposer's First Set of Interrogatories to Applicant."

INSTRUCTIONS

All documents shall be segregated and identified by the number of the request to which they are primarily responsive.

For each document requested herein which is sought to be withheld by Applicant under a claim of privilege or other objection, provide the following information:

1. the nature of the privilege, e.g., work product, which is being claimed;
2. the place, approximate date, and manner of recordation or preparation of the document;
3. the name and title of the sender and the name and title of each recipient of the document;
4. the name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;
5. the name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization;
6. the number of the request herein to which the document is responsive;

7. a brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).

DOCUMENTS REQUESTED

1. All documents identified by Applicant in response to "Opposer's First Set of Interrogatories to Applicant" which are not otherwise covered by these requests.
2. All documents concerning any topic of inquiry contained in "Opposer's First Set of Interrogatories to Applicant."
3. All documents concerning Applicant's conception of, adoption of, or decision to use SUPER HERO.
4. Documents sufficient to show Applicant's use or intended use of SUPER HERO in connection with any Products or Services sold or offered for sale or distributed by Applicant, or intended to be sold or offered for sale or distributed by Applicant.
5. Representative samples of each Product or Service ever sold or offered for sale, or distributed by Applicant, or intended to be sold or offered for sale or distributed by Applicant, in connection with SUPER HERO, as well as any and all accompanying product packaging, labels, tags, product literature and/or instruction manuals.
6. Representative samples of purchase orders, invoices, communications, and/or any other documents or materials related to any of Applicant's Products or Services sold, offered for sale, rendered, or distributed in connection with SUPER HERO for each year since the date of first use.

7. Representative samples sufficient to illustrate Applicant's present, past and/or intended use of SUPER HERO on letterhead, signs, websites, invoices, labels, tags, and product packaging.
8. All documents concerning Applicant's licensing policy with regard to SUPER HERO.
9. All documents concerning any assignment of SUPER HERO.
10. All documents concerning any license or other agreement regarding SUPER HERO.
11. All documents concerning any negotiations for licenses or other agreements regarding SUPER HERO.
12. All documents concerning any effort to exploit or commercialize any Product or Service under SUPER HERO.
13. All documents concerning any application for registration, registration, or attempted registration by Applicant for SUPER HERO for any Product or Service:
 - (a) in the United States Patent and Trademark Office (other than the subject application); and
 - (b) in any state or states of the United States.
14. Documents sufficient to show total sales, by year, in terms of revenue, gross profits, and net profits, regardless of whether such sales were made directly by Applicant, a licensee of Applicant, or other third party, by volume and dollar amount, for each Product or Service sold, or offered for sale, under SUPER HERO.
15. All documents concerning any civil action, or proceeding in the United States Patent and Trademark Office (other than this Opposition), filed by or against Applicant, concerning SUPER HERO, including without limitation:
 - (a) Copies of all pleadings and documents submitted in support or in defense

of any such action or proceeding; and

- (b) Copies of any settlement agreement, coexistence agreement, final judgment, or consent decree.

16. Representative samples of advertisements, promotional items, marketing materials, letters, posters, brochures, leaflets, or flyers printed, disseminated, or commissioned by Applicant in which SUPER HERO has appeared.
17. Copies of each television commercial, video presentation, or radio script prepared or commissioned by Applicant, regardless of whether the television commercial, video presentation, or radio script was actually released, aired or used, in which SUPER HERO has ever appeared, currently appears, or will appear.
18. Documents sufficient to show Applicant's actual or planned annual expenditures on efforts to advertise, market, or otherwise promote, through any form of media, including but not limited to print, television, radio, trade shows and the Internet, any of its Products or Services sold or offered for sale under SUPER HERO.
19. All documents concerning the channels of trade utilized, or planned to be utilized, by Applicant, including but not limited to the Internet, retail establishments, buying agents, individuals, or corporations, in selling or offering for sale Applicant's Products and Services under SUPER HERO.
20. All documents concerning any actual or planned participation or appearance by Applicant, or any licensee of Applicant, at trade shows, conventions, seminars, or any event open to the public, where Products and Services sold or offered for sale under SUPER HERO were or are planned to be displayed, including but not limited to photographs of each exhibit, booth, table, and the like, and samples of all flyers, advertisements, mailers, and any other

promotional materials, whether distributed or not, created by or for Applicant for use at said trade shows, conventions, seminars, or events open to the public.

21. All documents concerning any investigation, market study, survey, including pre-tests, or poll conducted by Applicant, or by any person or persons acting for or on behalf of Applicant, concerning any matter relating to the instant proceeding.

22. All documents concerning any investigation of the marketplace conducted by or for Applicant with respect to SUPER HERO or Opposer's Marks.

23. All documents concerning any surveys, consumer research, marketing studies, consumer recognition studies and/or consumer opinion polls conducted by or on behalf of Applicant in connection with SUPER HERO or Opposer's Marks.

24. All reports, memoranda, notes, correspondence, communications, or other documents relating to, bearing upon, commenting on, concerning, or discussing the retention or possible retention of expert witnesses for use by Applicant in connection with this Opposition.

25. All reports, memoranda, notes, correspondence, communications, or other documents concerning the opinion of any experts consulted or retained by Applicant, or by any person or persons acting for or on Applicant's behalf, in connection with this Opposition.

26. All documents concerning Applicant's knowledge of Opposer and/or Opposer's use of Opposer's Marks.

27. All documents concerning the first time Applicant obtained knowledge or information concerning Opposer's Marks.

28. All documents, communications, or inquiries received by Applicant from any third party regarding questions or confusion as to the existence of an affiliation or connection of any kind between Applicant and Opposer.

29. All documents concerning any inquiry or unsolicited comments by any member of the media or the public, whether by publication, letter, telephone, email, or any other form, regarding SUPER HERO.
30. All documents concerning any inquiry or unsolicited comments by any member of the media or the public, whether by publication, letter, telephone, email, or any other form, regarding Opposer's Marks.
31. All documents concerning any instances of actual confusion as to the existence of an affiliation, connection, partnership or relationship between Applicant and Opposer.
32. All documents concerning any warning, complaint, or objection by Applicant, or by any person acting for or on behalf of Applicant, to any use, application for registration, or registration, by any third party, of any mark claimed by Applicant to be confusingly similar to SUPER HERO.
33. Copies of any and all statements or opinions of any person, other than an attorney rendering legal advice to Applicant, regarding this Opposition.
34. All search reports, including without limitation trademark clearance search reports, or other investigation materials regarding any search or investigation conducted by or on behalf of Applicant concerning SUPER HERO, Opposer's Marks, or any marks or names similar thereto.
35. All documents embodying, explaining, or discussing Applicant's document retention policy associated with SUPER HERO.

Dated: May 5, 2008

KENYON & KENYON LLP

By:



Jonathan D. Reichman

Michael J. Freno

One Broadway

New York, New York 10004

(212) 425-7200

Attorneys for Opposer

PROOF OF SERVICE

I hereby certify that a true and complete copy of OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT has been served on May 5, 2008 by mailing said copy via first-class mail and by overnight delivery by commercial courier to:

Michael Craig Silver
3229 Steiner Street
San Francisco, California 94123
530.320.6488


Michael J. Freno

EXHIBIT C

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

Applicant: Michael Craig Silver
Application Ser. No.: 78/823,155
Filing Date: 2/24/06
Mark: SUPER HERO
Date of Publication in OG: 1/16/07
Opposer: DC Comics and Marvel Characters, Inc.

DC COMICS and
MARVEL CHARACTERS, INC.,

Opposer,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 2.120(d)(1) of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposers DC Comics and Marvel Characters, Inc. (collectively "Opposer") request that Applicant Michael Craig Silver ("Applicant") answer the following interrogatories fully and separately in writing and under oath within thirty (30) days of service hereof.

DEFINITIONS

As used herein:

1. The term "Applicant" collectively refers to Michael Craig Silver, his licensees or licensors, and any other person or entity in privity with him, including, but not limited to, that entity's affiliates, partnerships, predecessor, parent, subsidiary, licensor, licensee, officer, director, partner, or attorney. In any instance where an interrogatory answer differs as between Applicant and any entity's predecessors, parents, subsidiaries, licensors, licensees, officers, directors, partners, attorneys, or other person or entity in privity with Applicant, or is applicable only to one of them, the answer shall so state, setting forth such difference and stating separately all information applicable to Applicant and all information applicable to any other party.
2. The term "Opposer" refers collectively to DC Comics and Marvel Characters, Inc.
3. The term SUPER HERO refers to Applicant's mark as embodied in Application Serial No. 78/823,155, which is the subject of Opposition No. 91/176,744 filed by Opposer, unless otherwise stated or unless obvious from the context of the interrogatory.
4. The term "Opposer's Marks" collectively refers to Opposer's trademarks as embodied in each of the registrations, applications and common law rights cited by Opposer in its Notice of Opposition filed against SUPER HERO on April 13, 2007, including without limitation U.S. Reg. No. 825,835 (SUPER HERO), Reg. No. 1,140,452 (SUPER HEROES), and Reg. No. 1,179,067 (SUPER HEROES), Appl. No. 78/946,654 (MY FIRST SUPER HERO).
5. The term "Notice of Opposition" refers to the Notice of Opposition filed by Opposer in connection with Opposition No. 91/176,744.

6. The term "Applicant's Products and Services," "Products," "Product," "Services," or "Service" means each or all products or services ever sold or offered for sale, rendered, or distributed, or intended to be sold or offered for sale, rendered, or distributed by or with the authorization of Applicant, in connection with SUPER HERO, as well as any written or printed materials, including advertisements and marketing materials, related thereto.

7. The term "sold," as used in these definitions and interrogatories, means products or services paid for, transferred, rendered, or provided free of charge.

8. The terms "communication," "writing," and "document" are used in their customary broad sense as described in Federal Rule of Civil Procedure 34 and include, but are not limited to, copies of orders, acknowledgements thereof, contracts, invoices, bills, receipts, checks, books, records, reports, financial statements, letters, telegrams, notes, memoranda, calculations, diaries, worksheets, drafts, advertisements, and other tangible things, including without limitation originals and copies, whether typed, handwritten, or on tape, computer disc, some other recording or in electronic format, from whatever source, and any material underlying, supporting, or used in the preparation of any of such document or documents.

9. The term "identify," when used in reference to a natural person, means to:

- (a) state his or her full name;
- (b) state his or her present or last-known address;
- (c) state his or her present or last-known employer or business affiliation; and
- (d) state his or her occupation and business position held and the length of time in such position.

10. The term "identify," when used in reference to a corporation, partnership, or other business entity, means to:

- (a) state its full name;
- (b) state its present or last-known principal place of business;
- (c) state the nature of its business;
- (d) in the case of a corporation, set forth its State of incorporation;
- (e) state the identities of persons having knowledge of the matter with respect to which the company is named; and
- (f) state the identity(ies) of the executive officer or officers of the company.

11. The term "identify," when used in reference to a document, means to:

- (a) state the date, author, recipient, and type of document (e.g., invoice, delivery receipt, etc.) or some other means of distinguishing the document;
- (b) state the identity of each person who prepared the document;
- (c) state the identity of each person who received the document;
- (d) state the present location of the document;
- (e) state the manner and dates of distribution and publication of the document, if any; and
- (f) state the identity of each person having possession, custody, or control of the document.

12. The phrase "describe in detail" means that Applicant is requested to state with specificity each and every fact, ultimate fact, particular circumstance, incident, act, omission, detail, event,

and date, and to identify each and every document, as herein defined, relating thereto or in any way whatsoever concerning the matters inquired of.

13. The singular form of a word shall be understood to include the plural, and vice versa.

14. The conjunctive shall be understood to include the disjunctive, and vice versa.

INSTRUCTIONS

In answering each Interrogatory:

1. Identify each document or tangible thing and each oral communication which forms the basis, in whole or in part, for the answer given or which corroborates or negates the answer given or the substance of which is given, and either annex true copies of each such document or offer to make the same available for inspection and copying. The unexplained failure to annex a true copy of such document or to offer to make the same available for inspection and copying shall constitute a representation that such document does not exist.

2. In lieu of identifying a document or tangible thing, Applicant's production of a copy or photograph thereof or production of the document or thing for inspection and copying by Opposer's counsel (pursuant to the request for production) shall be deemed sufficient unless such further identification of each such document or thing is requested. The particular interrogatory to which the document is responsive must be designated for each document produced.

3. If a document which corroborates or negates an answer given, or the substance of which is given, is not in the possession of or available to Applicant, then supply a copy thereof, identified as required by Definition No. 11 above, within ten (10) days after such document comes into the possession of or becomes available to Applicant, or offer to make same available for inspection and copying.

4. If a document has been destroyed or is alleged to have been destroyed, then

state the date of and the reason for its destruction, and identify each person having knowledge of the document's destruction and each person responsible for the document's destruction.

5. State whether the information furnished is within the personal knowledge of the individual signing the interrogatory answers, and, if not, identify each person to whom the information is a matter of personal knowledge, if known.

6. With respect to each answer or document which Applicant contends is privileged or otherwise excludable from discovery, provide the information required by Fed. R. Civ. P. 26(b)(5) and, in addition, state the basis for the privilege or other grounds for exclusion, as well as the name and address of the author, the date of the privileged information, the general subject matter, the name and address of every recipient of the original or any copy of the document, the name and address of each person who now has the original or any copy, and the identification and location of the files where the original and each such copy are normally kept.

7. When producing any document or thing in partial or full response to any of the Interrogatories, reference the Interrogatory or Interrogatories to which the document or thing is responsive.

8. These interrogatories are continuing in character and with respect to any information hereinafter becoming known or any document hereinafter coming to the attention of Applicant, Applicant is requested to supply the same pursuant to the provisions of Federal Rule of Civil Procedure 26(e).

INTERROGATORIES

1. Identify and describe each Product or Service.
2. For each Product or Service identified in response to Interrogatory No. 1, state:

- (a) the date SUPER HERO was first used anywhere and the date SUPER HERO was first used in interstate commerce;
 - (b) the manner in which Applicant uses, or intends to use, SUPER HERO;
 - (c) the period or periods (specifying dates) during which each such Product or Service was rendered, offered, sold, promoted, marketed or distributed by or under the authority of Applicant;
 - (d) total sales, by year, in terms of units, revenue and profits, regardless of whether such sales were made directly by Applicant or under the authority of Applicant.
3. Identify the person most knowledgeable about Applicant's advertising and promotion of Products or Services for each year since SUPER HERO was first used, or about Applicant's intended advertising or promotion.
 4. Identify the person most knowledgeable about Applicant's sales of Products or Services for each year since SUPER HERO was first used, or about Applicant's intended sales.
 5. Identify the person most knowledgeable about the actual or intended manufacture, construction, formulation, design, development, or creation of each of Applicant's Products or Services.
 6. Describe all channels of trade through which Applicant's Products or Services are, or are intended to be, distributed from Applicant on through to the ultimate purchasers or users of such Products or Services.
 7. Describe the average consumer whom Applicant believes is most likely to be interested in purchasing his Products or Services, including the average income, age, and profession of such average consumer.

8. Identify each publication or type of publication in which any advertisement or promotion for Applicant's Products or Services has appeared or is planned to appear, including, but not limited to, newspapers, magazines, or Internet websites.
9. Identify each television station, radio station, or Internet website on which any advertisement for Applicant's Products or Services has been, is currently being, will be, or is planned to be, broadcast or exhibited.
10. Identify any use of SUPER HERO, or any marks similar thereto, by any third party.
11. State, by year, the total cost of advertising, marketing, or promoting Applicant's Products or Services through any and all forms of media, including, but not limited to, print, television, radio, trade shows, and the Internet.
12. State the retail and wholesale prices at which Applicant has sold, or plans to sell, each of its Products or Services.
13. Identify the retail stores, or types of retail stores, in which Applicant has sold, or plans to sell, each of its Products or Services.
14. Identify and describe the consumers (identified by gender, age group(s), education level(s), and socioeconomic status) to whom Applicant has sold, or plans to sell, each of its Products or Services.
15. Identify the person most knowledgeable about Applicant's conception and creation of SUPER HERO.
16. State when Applicant first became aware of any of Opposer's Marks.
17. Identify and describe the circumstances and resolution of any inquiry, question, comment, concern or belief expressed by any third party to Applicant, including but not limited to individuals, media, corporations or any governmental body or office, as to the origin

of any of Applicant's Products or Services, or any third party products or services including those of Opposer, which bear SUPER HERO or Opposer's Marks.

18. Identify and describe the circumstances and resolution of any complaint, protest, objection, or comment directed to Applicant by any third party relating to Applicant's Products or Services, or to Applicant's use of SUPER HERO.

19. State whether Applicant, or anyone acting on Applicant's behalf, has ever conducted any market study, survey, or opinion poll concerning SUPER HERO or Opposer's Marks.

20. Identify any disputes, including, but not limited to, lawsuits, oppositions, written objections, or threatened litigations, concerning the use, application, or registration of (a) SUPER HERO, or (b) any mark or name which Applicant claimed might violate his purported rights in SUPER HERO.

21. State whether Applicant, or anyone acting on Applicant's behalf, ever conducted an investigation, including but not limited to a trademark search, regarding the availability of SUPER HERO, and, if so, provide the particulars of same.

22. State whether Applicant has ever sought or received the opinion of an attorney regarding the trademark availability of SUPER HERO.

23. State whether Applicant, or anyone acting on Applicant's behalf, has ever entered into a license, assignment or other agreement regarding SUPER HERO and, if so, provide the particulars of same.

24. State whether Applicant, or anyone acting on Applicant's behalf, has ever entered into negotiations with a potential licensee or other third party regarding the exploitation of any Product or Service under SUPER HERO and, if so, provide the particulars of same.

25. State whether Applicant, or anyone acting on Applicant's behalf, has made any effort to exploit or commercialize any Product or Service under SUPER HERO and, if so, provide the particulars of same.
26. Describe why Applicant selected SUPER HERO as a trademark for his Products or Services.
27. Has Applicant taken any steps towards manufacturing, distributing, selling, and/or promoting any Products or Services under the SUPER HERO trademark? If so, please describe all such steps.

Dated: May 5, 2008

KENYON & KENYON LLP
By: 
Jonathan D. Reichman
Michael J. Freno
One Broadway
New York, New York 10004
(212) 425-7200

Attorneys for Opposer

PROOF OF SERVICE

I hereby certify that a true and complete copy of OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT has been served on May 5, 2008 by mailing said copy via first-class mail and by overnight delivery by commercial courier to:

Michael Craig Silver
3229 Steiner Street
San Francisco, California 94123
530.320.6488



Michael J. Freno

EXHIBIT D

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

Applicant: Michael Craig Silver
Application Ser. No.: 78/823,155
Filing Date: 2/24/06
Mark: SUPER HERO
Date of Publication in OG: 1/16/07
Opposer: DC Comics and Marvel Characters, Inc.

DC COMICS and
MARVEL CHARACTERS, INC.,

Opposer,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, Opposers DC Comics and Marvel Characters, Inc. (collectively, "Opposer") request that Applicant Michael Craig Silver ("Applicant") admit in writing and under oath the truth of the following requests within thirty (30) days of service hereof. These requests for admission are deemed to be continuing, and any further information that may be discovered

subsequent to the service of Applicant's answers should be brought to Opposer's attention through supplemental admissions within a reasonable time following such discovery.

DEFINITIONS AND INSTRUCTIONS

For the purposes of these requests for admission, the definitions set forth in Opposer's concurrently served "Opposer's First Set of Interrogatories to Applicant" are hereby incorporated by reference as if fully set forth herein, except as follows:

1. The term "Skin Care Products" means the products covered in Applicant's Application Serial No. 78/823,155.
2. The term "Class 3 Products" means the following products falling within International Class 3: soaps, perfumery, essential oils, cosmetics, hair lotions, and dentifrices.

The following instructions also apply:

1. If any Request for Admission is not answered, pursuant to Fed.R.Civ.P. 36, such Request will be deemed admitted.
2. Any answer to these Requests for Admission shall specifically admit or deny the admission requested or set forth in detail the reason why Applicant cannot truthfully admit or deny the admission. For any responses which are anything other than an unqualified admission, Applicant shall admit whatever portion of the Request is conceded to be true, and explain the basis for denying the balance of the Request.

REQUESTS FOR ADMISSION

1. Admit that Applicant is not currently using SUPER HERO on any Skin Care Products.
2. Admit that Applicant is not currently using SUPER HERO on, or in connection with, any Products or Services.
3. Admit that Applicant has not used SUPER HERO in commerce.

4. Admit that, since prior to February 24, 2006, Applicant has been aware of Opposer's mark SUPER HEROES and variations thereof (including, without limitation, "SUPER HERO").
5. Admit that, since prior to February 24, 2006, Applicant has been aware that the mark SUPER HEROES, and variations thereof (including "SUPER HERO"), have been used by Opposer.
6. Admit that Opposer has used and/or licensed its character properties and trademarks for use in connection with Class 3 Products.
7. Admit that Opposer has used and/or licensed one or more of its character properties and trademarks for use in connection with cosmetics, namely lipstick, lip gloss and non-medicated lip balm; mascara; nail enamel; face powder, face cream, skin lotion and skin gel; bath powder and perfumed body powder; bath oil, bath gel and non-medicated bath salts; baby oil, baby powder, baby gel and baby lotion; hand cream and lotion; body cream and lotion; sunscreen preparation, namely cream and lotion; shaving cream and after-shave lotion, skin cleanser and non-medicated body soaks; body deodorant, cologne and perfume; soaps namely liquid bath soap, gel soap and bar soap; detergent soap, namely, liquid and powder; fabric softener; deodorant soap, skin soap; shampoo and shampoo conditioner; and hairstyling gel.
8. Admit that Opposer has used and/or licensed one or more of its character properties and trademarks for use in connection with cologne.
9. Admit that Opposer has used and/or licensed one or more of its character properties and trademarks for use in connection with bubble bath.
10. Admit that the public associates "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.

11. Admit that distributors who distribute Skin Care Products associate "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.
12. Admit that retailers who sell, or offer for sale, Skin Care Products associate "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.
13. Admit that advertisers who advertise Skin Care Products associate "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.
14. Admit that distributors who distribute Class 3 Products associate "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.
15. Admit that retailers who sell, or offer for sale, Class 3 Products associate "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.
16. Admit that advertisers who advertise Class 3 Products associate "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.
17. Admit that cartoon characters owned by third parties have been used on or in connection with Skin Care Products.
18. Admit that cartoon characters owned by third parties have been used on or in connection with Class 3 Products.
19. Admit that Winnie the Poo has appeared on Skin Care Products.

20. Admit that Tinker Bell has appeared on Skin Care Products.
21. Admit that Little Mermaid has appeared on Skin Care Products.
22. Admit that Nemo has appeared on Skin Care Products.
23. Admit that Superman has appeared on a band-aid product.
24. Admit that Wolverine has appeared on a toothpaste product.
25. Admit that Spider-Man has appeared on a toothbrush product.
26. Admit that Superman has appeared on a toothbrush product.
27. Admit that Spider-Man has appeared on a vitamin product.
28. Admit that Skin Care Products are typically sold in drug stores.
29. Admit that consumers expect to find Skin Care Products in drug stores.
30. Admit that Class 3 Products are typically sold in drug stores.
31. Admit that consumers expect to find Class 3 Products in drug stores.
32. Admit that Skin Care Products are typically sold in supermarkets.
33. Admit that consumers expect to find Skin Care Products in supermarkets.
34. Admit that Class 3 Products are typically sold in supermarkets.
35. Admit that consumers expect to find Class 3 Products in supermarkets.
36. Admit that Skin Care Products can be found at "big box" retail stores such as Wal-Mart and Target.
37. Admit that consumers expect to find Skin Care Products at "big box" retail stores such as Wal-Mart and Target.
38. Admit that Class 3 Products can be found at "big box" retail stores such as Wal-Mart and Target.

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39. Admit that consumers expect to find Class 3 Products at "big box" retail stores such as Wal-Mart and Target.
 40. Admit that toys are typically sold in drug stores.
 41. Admit that consumers expect to find toys in drug stores.
 42. Admit that comic books are typically sold in drug stores.
 43. Admit that consumers expect to find comic books in drug stores.
 44. Admit that masquerade costumes are typically sold in drug stores.
 45. Admit that consumers expect to find masquerade costumes in drug stores.
 46. Admit that stationery products are typically sold in drug stores.
 47. Admit that consumers expect to find stationery products in drug stores.
 48. Admit that toys are typically sold in supermarkets.
 49. Admit that consumers expect to find toys in supermarkets.
 50. Admit that comic books are typically sold in supermarkets.
 51. Admit that consumers expect to find comic books in supermarkets.
 52. Admit that masquerade costumes are typically sold in supermarkets.
 53. Admit that consumers expect to find masquerade costumes in supermarkets.
 54. Admit that stationery products are typically sold in supermarkets.
 55. Admit that consumers expect to find stationery products in supermarkets.
 56. Admit that toys are typically sold in "big box" retail stores such as Wal-Mart and Target.
 57. Admit that consumers expect to find toys in "big box" retail stores such as Wal-Mart and Target.
 58. Admit that comic books are typically sold in "big box" retail stores such as Wal-Mart and Target.

59. Admit that consumers expect to find comic books in "big box" retail stores such as Wal-Mart and Target.
60. Admit that masquerade costumes are typically sold in "big box" retail stores such as Wal-Mart and Target.
61. Admit that consumers expect to find masquerade costumes in "big box" retail stores such as Wal-Mart and Target.
62. Admit that stationery products are typically sold in "big box" retail stores such as Wal-Mart and Target.
63. Admit that consumers expect to find stationery products in "big box" retail stores such as Wal-Mart and Target.
64. Admit that children are generally more impulsive consumers than adults.
65. Admit that Applicant is not aware of any third party using, or proposing to use, SUPER HERO (or any similar trademark) in connection with Skin Care Products.
66. Admit that Applicant is not aware of any third party using, or proposing to use, SUPER HERO (or any similar trademark) in connection with Class 3 Products.
67. Admit that Opposer holds exclusive rights in SUPER HERO as a trademark for masquerade costumes.
68. Admit that Opposer holds exclusive rights in SUPER HEROES as a trademark for toy figurines.
69. Admit that Opposer holds exclusive rights in SUPER HEROES as a trademark for comic books.
70. Admit that Opposer holds exclusive rights in SUPER HEROES as a trademark for notebooks and stamp albums.

71. Admit that DC Comics intends to use MY FIRST SUPER HERO as a trademark for face powder, face cream, skin lotion and skin gel, body powder, bath oil, bath gel and non-medicated bath salts, hand cream and lotion, body cream and lotion, sunscreen preparation, namely cream and lotion, shaving cream and after-shave lotion, skin cleanser and non-medicated body soaks.
72. Admit that Opposer has previously used SUPER HERO as a trademark for toilet soap.
73. Admit that Opposer has previously used SUPER HEROES as a trademark for tote bags.
74. Admit that Opposer has previously used SUPER HERO as a trademark for cake pan sets consisting of cake pan, decorative emblems and decorating instructions.
75. Admit that Opposer has previously used SUPER HEROES as a trademark for sheets, pillow cases and bedspreads.
76. Admit that Opposer has previously used SUPER HEROES as a trademark for toy banks, launching toys, puppets, and equipment for playing target games (and balls).
77. Admit that Opposer has previously used SUPER HEROES as a trademark for cookies.
78. Admit that the exploitation of character trademarks on Class 3 Products reflects a popular trend in consumer merchandising.
79. Admit that Skins Care Products are low-priced items over which consumers do not devote extensive consideration.
80. Admit that Class 3 Products are low-priced items over which consumers do not devote extensive consideration.
81. Admit that Applicant is not aware of any third party using SUPER HERO (or any similar trademark) as a trademark or service mark.
82. Admit that Skin Care Products and toys are purchased by the same types of consumers.

83. Admit that Skin Care Products and comic books are purchased by the same types of consumers.
84. Admit that Skin Care Products and masquerade costumes are purchased by the same types of consumers.
85. Admit that Skin Care Products and stationery products are purchased by the same types of consumers.
86. Admit that Skin Care Products and toys are sold in the same types of retail stores.
87. Admit that Skin Care Products and comic books are sold in the same types of retail stores.
88. Admit that Skin Care Products and masquerade costumes are sold in the same types of retail stores.
89. Admit that Skin Care Products and stationery products are sold in the same types of retail stores.
90. Admit that Class 3 Products and toys are purchased by the same types of consumers.
91. Admit that Class 3 Products and comic books are purchased by the same types of consumers.
92. Admit that Class 3 Products and masquerade costumes are purchased by the same types of consumers.
93. Admit that Class 3 Products and stationery products are purchased by the same types of consumers.
94. Admit that Class 3 Products and toys are sold in the same types of retail stores.
95. Admit that Class 3 Products and comic books are sold in the same types of retail stores.

96. Admit that Class 3 Products and masquerade costumes are sold in the same types of retail stores.
97. Admit that Class 3 Products and stationery products are sold in the same types of retail stores.
98. Admit that toy figurines are low-priced items over which consumers do not devote extensive consideration.
99. Admit that comic books are low-priced items over which consumers do not devote extensive consideration.
100. Admit that masquerade costumes are low-priced items over which consumers do not devote extensive consideration.
101. Admit that stationery products are low-priced items over which consumers do not devote extensive consideration.

Dated: May 5, 2008

By:

KENYON & KENYON LLP


Jonathan D. Reichman
Michael J. Freno
One Broadway
New York, New York 10004
(212) 425-7200

Attorneys for Opposer

PROOF OF SERVICE

I hereby certify that a true and complete copy of OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT has been served on May 5, 2008 by mailing said copy via first-class mail and by overnight delivery by commercial courier to:

Michael Craig Silver
3229 Steiner Street
San Francisco, California 94123
530.320.6488

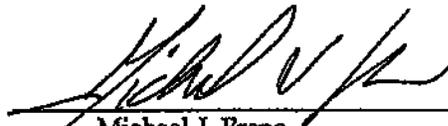

Michael J. Preno

EXHIBIT E

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

In re Application of : Michael Craig Silver
Serial No. : 78/823,155
Filed : February 24, 2006
For : SUPER HERO
Published Official Gazette : 1/16/07
Opposer : DC Comics and Marvel Characters, Inc.

DC COMICS and :
MARVEL CHARACTERS, INC. :
:
Opposers, :
:
vs. :
:
MICHAEL CRAIG SILVER :
:
Applicant, :
X

Opposition # 91/176744

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

1.
 - a. The nature of the privilege: Work product
 - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
 - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
 - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
 - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
 - f. The number of the request herein to which the document is responsive: 0
 - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

2.
 - a. The nature of the privilege: Work product
 - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
 - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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 - f. The number of the request herein to which the document is responsive: 0
 - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

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 - a. The nature of the privilege: Work product
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 - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

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 - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

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- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

5.

- a. The nature of the privilege: Work product
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- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

6.

- a. The nature of the privilege: Work product
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- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

7.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

8.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
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- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

9.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

10.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

11.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

12.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

13.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

14.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
 - f. The number of the request herein to which the document is responsive: 0
 - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

15.
 - a. The nature of the privilege or objection: Not applicable because no other civil action or proceeding exists.

16.
 - a. The nature of the privilege: Work product
 - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/08
 - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
 - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
 - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
 - f. The number of the request herein to which the document is responsive: 0
 - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

17.
 - a. The nature of the privilege: Work product
 - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
 - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
 - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
 - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
 - f. The number of the request herein to which the document is responsive: 0
 - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying

the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

18.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

19.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

20.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.

- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

21.

- a. The nature of the privilege: Work product
- h. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- i. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- j. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- k. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- l. The number of the request herein to which the document is responsive: 0
- m. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

22.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
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- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

23.

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- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

24.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
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25.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

26.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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27.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

28.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
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- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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 - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.
31. No documents exist as no instance of any actual confusion has occurred as to the existence of an affiliation, connection, partnership or relationship between Applicant and Opposer.
32. No documents exist as no instance has occurred of any warning, complaint, or objection by Applicant, or by any person acting for or on behalf of Applicant, to any use, application for registration, or registration, by any third party, of any mark claimed by applicant to be confusingly similar to SUPER HERO.
33. No copies of any statements or opinions of any person exist regarding this Opposition as no such statements or opinions have occurred.
34. No search reports on behalf of Applicant concerning SUPER HERO, Opposer's Marks, or any other marks or names similar thereto exist, as no such reports were done.
- 35.
- a. The nature of the privilege: Work product
 - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
 - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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Dated: June 6, 2008

By: 
Michael Silver
3229 Steiner Street
San Francisco, CA 94123
(530) 320-6488

Applicant

PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS has been served by mailing said copy on June 6, 2008 via first class mail, to:

Kenyon & Kenyon LLP
Jonathan D. Reichman
One Broadway
New York, New York 10004


Michael C. Silver

EXHIBIT F

- 3. Excludable or Privileged Information**
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege
Name and Address of Author: Michael Silver
Date of Privileged Information: 2/24/06
Subject Matter: SUPERHERO Trademark Application
Recipient of original or copy of information: Michael Silver
Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123
Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123
- 4. Excludable or Privileged Information**
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- 15. Excludable or Privileged Information**
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- 16. Excludable or Privileged Information**
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege
Name and Address of Author: Michael Silver
Date of Privileged Information: 1/31/07
Subject Matter: SUPERHERO Trademark Application
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- 17. Excludable or Privileged Information**
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Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

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Dated: June 6, 2008

By:



Michael Silver

3229 Steiner Street

San Francisco, CA 94123

(530) 320-6488

Applicant

PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF INTERROGATORIES has been served by mailing
said copy on June 6, 2008, via first class mail, to:

Kenyon & Kenyon LLP
Jonathan D. Reichman
One Broadway
New York, New York 10004


Michael C. Silver