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

Proceeding	91177828
Party	Defendant Todd Meagher
Correspondence Address	TODD MEAGHER 2101 LEGACY CT KELLER, TX 76248-8449 UNITED STATES toddme@gher.com
Submission	Motion for Summary Judgment
Filer's Name	Erik M. Pelton
Filer's e-mail	emp@tm4smallbiz.com
Signature	/ErikMPelton/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SNOCAP, INC.,)	
Opposer,	)	Opposition No. 91177828
v.	)	Application. Serial No. 78853866
Todd Meagher.	)	Mark: MYSTORE.COM
Applicant.)	

APPLICANT’S MOTION FOR SUMMARY JUDGMENT
OR ALTERNATIVELY TO COMPEL DISCOVERY

Applicant Todd Meagher (“Applicant”) moves for summary judgment to dismiss this Opposition regarding the MYSTORE.COM mark in Application Serial No. 78853866 or, alternatively, to compel Opposer to produce discovery.

Motion for Summary Judgment

Summary judgment should be granted where, as here, it is shown that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Federal Rule of Civil Procedure (“FRCP”), Rule 56(c). These general principles of summary judgment under FRCP 56 also apply to inter-parties proceedings before the Board. See, e.g., *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 US.P.Q.2d 1793, 1797 (Fed. Cir. 1987). Thus, summary judgment is an appropriate method of disposing of an opposition in which there is no genuine issue of material fact on the question of likelihood of confusion. *Kellogg Co. v. Pack’Em Enter., Inc.*, 14 US.P.Q. 2d 1545 (T.T.A.B. 1990). As the Federal Circuit stated in *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 222 US.P.Q. 741, 743 (Fed. Cir. 1984):

The basic purpose of summary judgment procedure is one of judicial economy -- to save the time and expense of a full trial when it is unnecessary because the essential facts necessary to decision of the issue can be adequately developed by less costly procedures, as contemplated by the FRCP rules here involved, with a net benefit to society.

Likewise, summary judgment in an opposition proceeding is designed to save the time and

expense of a full opposition proceeding where there is no genuine issue as to any material fact. *Bet Lock Corp. v. Schlage Lock Co.*, 413 F.2d 1195 (C.C.P.Q. 1969).

The Court of Appeals for the Federal Circuit has encouraged the Trademark Trial and Appeal Board (the "Board") to award summary judgment when the situation so warrants:

The practice of the U.S. Claims Court and of the former U.S. Claims Court in routinely disposing of numerous cases on the basis of cross motions for summary judgment has much to commend it. The adoption of similar practice is to be encouraged in inter partes cases before the Trademark Trial and Appeal Board, which seems particularly suitable to this type of disposition. Too often we see voluminous records which would be appropriate to an infringement or unfair competition suit but are wholly unnecessary to the resolution of the issue of registerability of a mark.

Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624,627 n.2 (Fed. Cir. 1984).

Trademark Rule 2.122(e) permits reliance on official records and printed publications which are "available to the general public in libraries or of general circulation among ... that segment of the public which is relevant to an issue in the proceeding." A party may support its motion for summary judgment by submitting and indicating its reliance upon such documents which qualify as being admissible evidence under this rule. *See Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1369 (TTAB 1998); *see also* Trademark Rules 2.122(b), 2.122(d)(2), 2.122(e), 2.122(f) and 2.122(e)(2).

Opposer's Notice of Opposition asserts as the basis for its claim that Applicant's mark is descriptive or generic. See Notice of Opposition at paragraphs 4-5. As a matter of law, Applicant's mark is neither descriptive nor generic.

The test for determining whether a mark is *merely* descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used. *In re Abcor Development Corp.*, 588 F.2d 811 (CCPA 1978).

TMEP §1209.01(b), 5th ed., states that

A mark is considered merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. *See In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE held merely descriptive of potpourri); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986) (BED & BREAKFAST REGISTRY held merely descriptive of lodging reservations services); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984) (MALE-P.A.P. TEST held merely descriptive of clinical pathological immunoassay testing services for detecting and monitoring prostatic cancer); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979) (COASTER-CARDS held merely descriptive of a coaster suitable for direct mailing).

TMEP §1209.01(b), 5th ed., further states that

The determination of whether or not a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods/services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace. *See In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). The mark need not describe all the goods and services identified, as long as it merely describes one of them. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1041, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) (“[T]he Trademark Office may require a disclaimer as a condition of registration if the mark is merely descriptive for at least one of the products or services involved.”)

Here, Applicant’s mark is MYSTORE.COM. Here, Applicant’s services are

“Advertising and information distribution services, namely, providing classified advertising space via a global computer network; promoting the goods and services of others over the Internet; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads.” Applicant’s mark, as a whole, is a compound term.

Applicant’s mark, as a whole, does not have a descriptive meaning in relation to Applicant’s services. Applicant’s mark, as a whole, does not describe any ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. There is no competitive need by Opposer or by any other party to use the compound term MYSTORE.COM descriptively.

The term MYSTORE.COM was coined by Applicant. The term MYSTORE.COM is not contained in any dictionary or industry reference materials. The term MYSTORE.COM is not used by any party other than Opposer and Opposer’s affiliates, such use being an infringement of Applicant’s trademark rights.

The term MYSTORE.COM is a composite mark. Composite marks, under the anti-dissection rule, must be reviewed by looking at it as a whole. “The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety.” *Estate of P.D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920).

The record of the United States Patent and Trademark Office (“USPTO”) regarding related marks makes it quite clear that Applicant’s MYSTORE.COM mark is not descriptive. The USPTO records contain numerous current “live” registrations which show that MY and STORE, when used together, have repeatedly not been found descriptive. Trademarks registered on the Principal Register of the USPTO which contain the terms MY and STORE, without any disclaimer or claim of acquired distinctiveness regarding both of those terms, include:

Registration No.	Mark
2809162	MYSCHOOLBOOKSTORE
2555965	MY BABY STORE
2628975	MYUNIVERSITYSTORE.COM
2598869	MYBENEFITSTORE
2773847	MYLOCALSTORE
2413861	MY LOCAL HARDWARE STORE!
2531343	MYBIZWEBSTORE.COM

2663703	MY CORPORATE STORE
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See attached Exhibit G. Printouts of patent and trademark documents obtained from the USPTO's Internet search system are admissible evidence on summary judgment. See TBMP § 703.02(b). Trademark Rule 2.122(d)(1), as amended recently, permits a party to provide proof of status and title of pleaded registration by filing copies of records from USPTO electronic databases.

Trademarks formerly registered on the Principal Register of the United States Patent and Trademark Office which contain the terms MY and STORE, without a disclaimer or claim of acquired distinctiveness of both terms, include:

Registration No.	Mark
1253266	MY STORE
1641386	MY STORE
2561645	MY STORE

Opposer's own website, at www.snocap.com, demonstrates that Opposer's use of the term "MyStore" is not descriptive, but rather as a trademark or as part of a trademark.¹ See Exhibit H.

If, when the goods or services are encountered under a mark, a multistage reasoning process, or resort to imagination, is required in order to determine the attributes or characteristics of the product or services, the mark is suggestive rather than merely descriptive. See *In re Abcor Development Corp.*, supra; and *In re Atavio*, 25 USPQ 136 (TTAB 1992). To the extent that there is any doubt in drawing the line of demarcation between a suggestive mark and a merely descriptive mark, such doubt must be resolved in applicant's favor. *In re*

¹ Opposer consistently uses the term "MyStore" in connection with the mark SNOCAP to indicate a "SNOCAP MyStore" is the source of Opposer's services. Opposer consistently uses the term "MyStore" as one term with capital "M" and "S", indicated it is using the term as a source indicator and not in a descriptive manner.

Atavio, supra at 1363.

When doubts exist as to whether a term is descriptive as applied to the goods or services for which registration is sought, it is the practice of the Trademark Trial and Appeal Board to resolve doubts in favor of the applicant. *In re Grand Metropolitan Foodservice, Inc.*, 30 USPQ2d 1974 (TTAB 1994).

There is no genuine issue of material fact. No fact alleged or stated by Opposer is capable of demonstrating that Applicant's mark is descriptive or generic in light of the mark itself, the Applicant's services, and the evidence provided herein. Applicant's mark, Applicant's services, and the records of the U.S.P.T.O. regarding other current registrations are all established irrefutable facts.

Because there is no genuine issue of material fact and Applicant's MYSTORE.COM mark is neither descriptive nor generic, summary judgment dismissing the Opposition is warranted in this case. Applicant respectfully requests the Board to rule in favor of this motion for summary judgment, finding that the moving party has met its burden to show that there are no material facts at issue and as a matter of law Applicant is entitled to a determination that its MYSTORE.COM mark is not descriptive nor generic.

WHEREFORE, Applicant respectfully requests that the Board grant this Motion for Summary Judgment and dismiss Notice of Opposition and permit registration of Application Serial Number 78853866.

Motion to Compel

In the alternative, if the Board denies Applicant's Motion for Summary Judgment, Applicant hereby moves the Board to compel sufficient discovery responses from Opposer.

In support of this Motion, Applicant states as follows:

On July 23, 2007, Applicant served Opposer with Interrogatories (Exhibit A and Declaration of Erik M. Pelton) and Requests for Production (Exhibit B and Declaration of Erik M. Pelton).

On or about August 27, 2007, Opposer served responses to Applicant's Interrogatories (Exhibit C and Declaration of Erik M. Pelton) and Request for Production (Exhibit D and Declaration of Erik M. Pelton).

Opposer's response to Applicant's Interrogatories consists entirely of general objections along with the following objection:

RESPONSE TO INTERROGATORIES NOS. 1 - 24:
Opposer generally objects to each and every Interrogatory Nos. 1 - 24 on the grounds that the total number of interrogatories served, counting sub-parts and using Applicant's Definitions and Instructions, is excessive and beyond the seventy-five allowed by the Rules.

See Exhibit C.

Opposer's response to Applicant's requests for production did not include any documents. See Exhibit D.

To date, Opposer has not produced a single document nor made any documents available for inspection and copying.

Opposer's response to Applicant's requests for production did not identify any responsive documents. See Exhibit D.

Opposer's response to Applicant's requests for production contained numerous claims of privilege without any privilege log. See Exhibit D.

Opposer's response to Applicant's requests for production contained numerous objections based on confidentiality. See Exhibit D.

On August 31, 2007, counsel for Applicant faxed and mailed a letter to counsel for Opposer regarding the objection to the number of interrogatories and the insufficiency of the responses to requests for production. (the “August 31st letter”). See Exhibit E and Declaration of Erik M. Pelton.

The August 31st letter included a good faith attempt by Applicant to address the outstanding issues of Applicant’s discovery responses, including Opposer’s claim that Applicant serviced more than seventy-five interrogatories. See Exhibit E.

The August 31st letter contained the following response from Applicant’s counsel:

In both form and spirit, the number of interrogatories including subparts does not exceed seventy-five. Pursuant to TBMP § 405.03(d), “[I]f an interrogatory requests ‘all relevant facts and circumstances’ concerning a single issue, event, or matter; or asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party’s involved marks, it will be counted as a single interrogatory.” The large majority of Applicant’s Interrogatories concern a single issue, event or matter.

See Exhibit E.

Applicant maintains that nearly all of the interrogatories served on Opposer, and contained in Exhibit A, relate to a single issue, event, or matter under any reasonable interpretation. When an interrogatory potentially applies to more than one mark (note that the parties have agreed to a consolidation of two Opposition proceedings regarding two marks) or because an interrogatory potentially relates to a subject in any time - the past, present and future – it does not equate to multiple interrogatories for the purposes of counting seventy-five. Following the counting advocated by Opposer, it would be nearly impossible to obtain any depth of information in seventy-five questions.

Applicant, in the instructions accompanying the interrogatories, defines Opposer's entity, "Snocap, Inc." as including SNOCAP, INC., "SNOCAP" "you," "your," or "Opposer" means SNOCAP, INC., its officers, directors, employees, counsel, agents, representatives, or other persons under its control, any predecessor or successor whether incorporated or not, any division, subsidiary or affiliate thereof, and those persons in active concert or participation with it or them; and "Identify" as including:

- a. With respect to a natural person, provide:
 - i. Full name;
 - ii. Present or last known business address (including telephone number and email address), occupation and business position or title held; and
 - iii. Present or last known residence address (including telephone number and email address).
- b. With respect to a firm, corporation, company, partnership, joint venture or other entity which is not a natural person provide:
 - i. Full name;
 - ii. Place of incorporation or organization (if any); and
 - iii. Principal place of business.

See Exhibit A at pp. 1, 4. Opposer has contended though counsel in teleconferences that because Snocap, Inc. has multiple officers and/or directors, and because an address is separate from a name, that Applicant's Interrogatory No. 1 ("Identify, as described in Instruction No. 3, the Opposer, SNOCAP, INC.") contains a multitude of potential questions. Such counting defies common sense and reason.

Opposer extends similar logic to the counting of other interrogatories which may be

reasonably interpreted to relate to a single issue, event, or matter; or asks that a particular piece of information.

Opposer's claims regarding the number of interrogatories – and subsequent failure to explain them in writing in response to two letters from counsel for Applicant – are clearly an attempt to avoid discovery and delay this proceeding which Opposer initiated.

The August 31st letter included a note that as of August 31, 2007, the Board's standard Protective Order is applicable in every pending case which does not already have a protective order in place, and therefore any objections based on confidentiality are moot and inapplicable. See Exhibit E.

The August 31st letter included the following: "Regarding the numerous objections to nearly every request that it is 'unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence,' kindly justify and explain in detail the basis for the objection, particularly in light of the established discovery guidelines provided in TBMP § 414." See Exhibit E.

The August 31st letter included the following: "Regarding the numerous objections to nearly every request that it is 'unnecessary and harassing,' kindly justify and explain in detail the basis for the objection, particularly in light of the established discovery guidelines provided in TBMP § 414." See Exhibit E.

The August 31st letter included the following: "Regarding the numerous objections to nearly every request that "the terms or phrases used in the request are vague and ambiguous," kindly justify and explain in detail the basis for the objection, including a description of which particular term or terms are "vague and ambiguous."” See Exhibit E.

Opposer objected to Request No. 19 which requested any relevant search reports. See Exhibit D.

The August 31st letter included the following: “Regarding Request No. 19, TBMP § 414 provides that “Search reports are discoverable.” As a result, the documents requested in No. 19 are clearly discoverable.” See Exhibit E.

The August 31st letter included an offer by counsel for Applicant to set up a telephone conference with the Interlocutory Attorney to discuss the interrogatory and request for production issues. See Exhibit E.

Counsel for Applicant and Opposer discussed the issues raised in the August 31st letter by telephone on or about September 19th and again on September 20th without reaching any resolution. See Declaration of Erik M. Pelton.

Counsel for Applicant sent a follow up letter and fax on October 9, 2007, (the “October 9th letter”) in an additional attempt to discuss and resolve the outstanding issues regarding Opposer’s discovery responses. (Exhibit F and Declaration of Erik M. Pelton)

To date, no written response has been received in response to the October 9th letter. See Declaration of Erik M. Pelton.

On October 16, 2007, counsel for Opposer sent an email to Counsel for Applicant (the “October 16, 2007, email”). See Exhibit I. The October 16, 2007, email was sent at 5:51 PM E.S.T., after the normal close of business. The October 16, 2007, email does not include any substantive response to Applicant’s interrogatories or requests for production. The October 16, 2007, email also notes that counsel for Applicant stated he will be sending additional responsive documents. Applicant has already responded to the Opposer’s interrogatories and requests for production *substantively* and produced some documents. Applicant’s responses to Opposer’s

discovery are irrelevant to the current motion. Furthermore, Opposer has never, in writing, indicated any objections to Applicant's discovery responses.

To date, Opposer has failed to answer substantively any interrogatories or requests for documents and things, and failed to justify its objections.

Specifically, each of Applicant's Interrogatory Nos. 1 through 24 has not been completely answered in compliance with the Rules of this Board.

Specifically, each of Applicant's Requests for Production Nos. 1 through 26 has not been completely answered in compliance with the Rules of this Board.

Pursuant to TMBP §403.05, a party is permitted to serve up to 75 interrogatories on another party in an Opposition proceeding.

Applicant does not and cannot know the nature of other information and documents which Opposer has withheld from its discovery responses because Opposer has as a whole failed to comply with the spirit of discovery or make a sufficient good faith effort to provide Applicant with the information and materials requested in a timely manner.

Opposer has asserted numerous unfounded objections and has responded to numerous Requests for Production with incomplete responses.

Opposer's responses are evasive and non-responsive regarding the substance of the interrogatories and requests for production.

Opposer has failed to sufficiently answer Applicant's interrogatories and requests for production pursuant to Rule 26 and Rule 37 of the Federal Rules of Civil Procedure and TMBP § 411 and 523.

Opposer has failed to sufficiently address Applicant's good faith efforts regarding the insufficiency and incompleteness of Opposer's discovery responses and objections.

Applicant has attached a statement from counsel regarding his good faith effort to resolve this discovery dispute without interference from the Board pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02. See Declaration of Erik M. Pelton.

WHEREFORE, Applicant moves this Board for an Order compelling Opposer to fully and completely respond to all of Applicant's July 23, 2007, Interrogatories and Requests for Production within ten (10) days from the date of the Order; and

Applicant moves this Board for an Order including substantial sanctions and penalties for Opposer if Opposer continues to violate the rules and spirit of discovery; and

Applicant moves this Board for an Order pursuant to TBMP § 411.04 preventing Opposer from introducing any new evidence or testimony in support of its claims; and

Applicant moves this Board to require Opposer to pay Applicant's costs, expenses and attorney fees incurred in connection with this Motion, pursuant to F.R.C.P. Rule 37(a)(4); and

Applicant further moves this Board to dismiss this Opposition with prejudice; and

Applicant further moves this Board for any other relief it deems appropriate; and

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board grant its Motion to Compel and grant all other appropriate relief.

Applicant requests that if these proceedings are suspended pending the determination of the Motion, any suspension order explicitly state that it shall not suspend any already pending discovery obligations.

Dated this 16 day of October, 2007

/ErikMPelton/

Erik M. Pelton, Esq.
Attorney for Applicant, TODD MEAGHER

Erik M. Pelton & Associates, PLLC
PO Box 100637
Arlington, VA 22210
703-525-8009 (phone)
703-525-8089 (fax)
emp@tm4smallbiz.com

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2007, the Applicant's Motion for Summary Judgment or Alternatively to Compel Discovery and Declaration of Erik M. Pelton was served on counsel for Opposer attorney, sent by First Class Mail postage prepaid to the following address:

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

/ErikMPelton/

Erik M. Pelton, Esq.

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

SNOCAP, INC.,)	
Opposer,	)	Opposition No. 91177828
v.	)	Application. Serial No. 78853866
Todd Meagher.	)	Mark: MYSTORE.COM
Applicant.)	

DECLARATION OF ERIK M. PELTON, ESQ.

I, Erik M. Pelton, Esq., declare as follows:

1. I represent Applicant Todd Meagher. in this matter.

2. Unless otherwise indicated, I have personal knowledge of the facts stated in this Declaration, and I could and would competently testify to these facts if called upon to do so. All exhibits attached hereto are true and correct copies of the documents so identified.

3. Applicant's First Set Interrogatories and Applicant's First Requests for Production of Documents and Things were served on Opposer on July 23, 2007.

4. On or about August 27, 2007, Opposer served responses to Applicant's Interrogatories (Exhibit C and Declaration of Erik M. Pelton) and Request for Production (Exhibit D and Declaration of Erik M. Pelton).

5. Opposer's response to Applicant's Interrogatories consists entirely of general objections along with the following objection:

RESPONSE TO INTERROGATORIES NOS. 1 - 24:

Opposer generally objects to each and every Interrogatory Nos. 1 - 24 on the grounds that the total number of interrogatories served, counting sub-parts and using Applicant's Definitions and Instructions, is excessive and beyond the seventy-five allowed by the Rules.

See Exhibit C.

6. Opposer's response to Applicant's requests for production did not include any documents. See Exhibit D.

7. To date, Opposer has not produced a single document nor made any documents available for inspection and copying.

8. Opposer's response to Applicant's requests for production did not identify any responsive documents. See Exhibit D.

9. Opposer's response to Applicant's requests for production contained numerous claims of privilege without any privilege log. See Exhibit D.

10. Opposer's response to Applicant's requests for production contained numerous objections based on confidentiality. See Exhibit D.

11. On August 31, 2007, counsel for Applicant faxed and mailed a letter to counsel for Opposer regarding the objection to the number of interrogatories and the insufficiency of the responses to requests for production. (the "August 31st letter"). See Exhibit E.

12. On September 19, 2007 and on September 20, 2007, I had a teleconference with Martin Greenstein, counsel for Opposer, wherein various discovery issues were discussed including the number of interrogatories served on Opposer and the failure of Opposer to produce any documents or make any documents available for inspection and copying.

13. During the September 20, 2007 teleconference, Mr. Greenstein indicated that he would follow-up our discussion by responding in writing within a few days to the August 31, 2007, letter.

14. On October 9, 2007, I sent a following letter to Mr. Greenstein requesting a written response no later than October 16, 2007.

2809162, 2555965, 2628975, 2598869, 2773847, 2413861, 2

19. I printed the webpage printouts contained in E
available snocap.com website on the dates indicated on the pr
2007 and July 24, 2007.

I declare under penalty of Perjury that all of the forego

Executed on this 16th day of October, 2007 at Alexan

E

EXHIBIT A

Applicant's First Set of Interrogatories to Opposer of July 23, 2007

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

SNOCAP, INC.,)	
Opposer,	)	Opposition No. 91177827
v.	)	Application. Serial No. 78853849
Todd Meagher.	)	Mark: MYSTORE
Applicant.)	

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120, and the Trademark Rules of Practice, Applicant Todd Meagher ("Applicant"), by counsel, hereby requests that Opposer SNOCAP, INC. ("Opposer") answer fully under oath the following interrogatories within thirty (30) days after service thereof. These answers are to be sent to Erik M. Pelton & Associates, PLLC, PO Box 100637, Arlington, Virginia 22210.

DEFINITIONS

The following definitions apply to and are deemed incorporated into each question in this first set of interrogatories:

1. "SNOCAP, INC.," "SNOCAP" "you," "your," or "Opposer" means SNOCAP, INC., its officers, directors, employees, counsel, agents, representatives, or other persons under its control, any predecessor or successor whether incorporated or not, any division, subsidiary or affiliate thereof, and those persons in active concert or participation with it or them.
2. "Document" shall refer to all items within the scope of Rule 34, Federal Rules of Civil Procedure.
3. "Person" or "persons" shall refer to any individual, corporation, proprietorship, partnership, association, joint venture, business trust, receiver, estate syndicate government

agency or other entity, including the parties to this suit and their officers, agents, employees and representatives.

4. "MYSTORE Marks" includes the marks in U.S. Trademark Applications Serial Number 78853849 and 78853866, MYSTORE.COM, MY STORE, MYSTORES, MY STORES, and all variations thereof including variations in which not all of its letters are capitalized, variations in which it is combined with a superscript such as "TM," "SM," "Tm," "Sm," "tm," "sm" or "®."

5. The term "mark" includes any trademark, service mark, trade name, collective mark or certification mark, as defined by 15 U.S.C. § 1127, and any other phrase or symbol used as a source identifier for a particular good or service.

6. The words "and" and "or" are construed both conjunctively and disjunctively, and each includes the other wherever such dual construction will serve to bring within the scope of this request any documents which would otherwise not be brought within its scope. All such terms, as well as other conjunctions and prepositions, are interpreted in the manner that provides the most complete answer and information.

7. "Each" means each and every.

8. "Communication" means all discussions, conversations, interviews, negotiations, cable grams, mail grams, e-mails, telegrams, telexes, facsimile transmissions, cables, letters, confirmations, or other forms of written or verbal discourse, however transmitted, including reports, notes, electronic files and databases, memoranda, lists, agents and other documents and records.

9. The term "date" means the exact day, month and year, if ascertainable, and if not, the best approximation, including any relationship to any other events.

10. "Employee or agent" and "employees or agents" shall mean all persons currently or previously employed, including, without limitation, officers, directors, employees, agents, attorneys, accountants, representatives, or others acting for or on behalf of a person.

11. "challenge" - shall refer to any legal action or threat of legal action, including, but not limited to Federal Court actions, Trademark Trial and Appeal Board opposition or cancellation proceedings, proceedings before the Bureau of Customs or Federal Trademark Commission, warning letters, cease and desist letters, or other communications regarding or threatening legal action.

12. "adoption or use" - shall refer to any use in intrastate or interstate commerce in the United States, any use in commerce outside of the United States, any use not in commerce within or without the United States, any registration or application to register the **mark**, any adoption of the **mark** without use in commerce, and any acquisition of the **mark**.

13. "service provider" - shall refer to advertising agencies, public relations agencies, market research agencies, and other providers of promotional services.

14. "promote" - shall refer to advertising, marketing, or other means of making the public more aware of the mark, or good or service.

15. "trademark search" - shall refer to any search or investigation of the records of the U.S. Patent and Trademark Office, or of any other records or publications, whether conducted by Opposer, or by an agent or employee of Opposer.

16. "authorized use" - shall refer to any instance where Opposer has licensed franchised, or otherwise authorized another entity to use the mark, or any variation thereof.

17. "authorized user" - shall refer to any entity allowed the **authorized use** of the **mark** as defined above.

INSTRUCTIONS

The following definitions apply to and are deemed incorporated into each question in this first set of interrogatories:

1. In construing each of these interrogatories, the singular form of a word shall be interpreted in the plural and vice versa, the words "and" and "or" shall be construed conjunctively or disjunctively, and verb tenses shall be interpreted to include past, present and future tenses, whichever meaning makes the interrogatory more inclusive.
2. Any pronoun shall be construed to refer to the masculine, feminine or neutral gender, in singular or plural, as in each case is most appropriate,
3. A request to "identify" or "state with particularity" requires the following information:
 - a. With respect to a natural person, provide:
 - i. Full name;
 - ii. Present or last known business address (including telephone number and email address), occupation and business position or title held; and
 - iii. Present or last known residence address (including telephone number and email address).
 - b. With respect to a firm, corporation, company, partnership, joint venture or other entity which is not a natural person provide:
 - i. Full name;
 - ii. Place of incorporation or organization (if any); and
 - iii. Principal place of business.
 - c. With respect to a document, provide;
 - i. The date of the document;

- ii. The identity of each person who authorized, signed, created or prepared the document;
- iii. The identity of each addressee and recipient of the document;
- iv. The title and subject matter of the document;
- v. The number of pages in the document;
- vi. The identity of the persons having possession, custody or control of the original copies of the document; and
- vii. A present location of the document.

4. With respect to a communication, specify the form of the communication. If the communication was in written form, identify the communication in the manner that a document is to be identified under Paragraph 3 of these initial instructions. If the communication was not in written form, specify:

- a. The manner in which the communication was made (e.g., telephone, conversation, speech, etc.);
- b. The identity of each person who participated in or witnessed the communication;
- c. The subject matter and content of the communication; and
- d. The date of the communication.

5. The scope of these interrogatories shall be business conducted within the United States or between the United States and a foreign country, territory or jurisdiction, including Canada.

6. All relevant, non-privileged information which you or your employees possess or control is to be divulged. Should you claim privilege, immunity, confidentiality or protection of any kind with respect to any documents or communications concerning which information is requested by any of the following interrogatories, you shall list such documents and communications and shall

identify each document or communication in the manner prescribed by Paragraph 3 of these initial instructions, and additionally you shall state the specific type of privilege or protection claimed as a basis for withholding the document and/or communication and the grounds on which the claim of privilege rests.

7. If, after exercising due diligence to secure the information requested, you cannot respond to a request or any portion thereof in full, so state, answer to the extent possible, specify the reasons you were unable to provide a full and complete answer and state what information and knowledge you do have concerning the unanswered portion.

8. If, after answering, you acquire additional knowledge or information requested by the following interrogatories, Applicant requests that you serve upon Applicant amended or supplemental responses in accordance with Fed. R. Civ. P. 26(e), no more than thirty (30) days after you acquire such knowledge or information.

9. If information is withheld on grounds of privilege or work-product immunity,

a. Identify the information with sufficient particularity to allow the matter to be brought before the Court, including a description of the information's type (e.g. event, conversation, occurrence), subject matter, date, and participants; and

b. State briefly the legal and factual basis for the claim of privilege or work-product protection.

INTERROGATORIES

Interrogatory No. 1

Identify, as described in Instruction No. 3, the Opposer, **SNOCAP, INC.**

ANSWER:

Interrogatory No. 2

Identify every product and services that Opposer sells, has sold, or plans to sell, in connection with a term or mark consisting in whole or in part of the "MYSTORE Marks"

ANSWER:

Interrogatory No. 3

Identify each and every third party known to Opposer that has been involved, or is involved, in online advertising, online classified listings, online commerce or online store services

ANSWER:

Interrogatory No. 4

Identify each and every third party known to Opposer that has used, or is using, a term consisting in whole or in part of the "MYSTORE Marks" or a phonetic equivalent in connection with online advertising, online classified listings, online commerce or online store services.

ANSWER:

Interrogatory No. 5

For each party identified in response to Interrogatory No. 4, please provide the brand name of each product or service for which that third party has used, or is using, a term consisting in whole or in part of the or a phonetic equivalent.

ANSWER:

Interrogatory No. 6

Describe each instance known to Opposer in which a consumer or other third party has used a term consisting in whole or in part of the "MYSTORE Marks" or a phonetic equivalent in connection with online advertising, online classified listings, online commerce or online store services.

ANSWER:

Interrogatory No. 7

Identify the manner in which Opposer has used, uses, or plans to use a term consisting in whole or in part the "MYSTORE Marks" or a phonetic equivalent to refer to online advertising, online classified listings, online commerce or online store services.

ANSWER:

Interrogatory No. 8

Identify the individual employed by Opposer most knowledgeable about third-party use of a term consisting in whole or in part of the "MYSTORE Marks" or a phonetic equivalent.

ANSWER:

Interrogatory No. 9

Identify each trademark search or investigation that has been conducted regarding, referring to, or relating to a term consisting in whole or in part of the "MYSTORE Marks" or a phonetic equivalent.

ANSWER:

Interrogatory No. 10

Identify the individuals most knowledgeable about each trademark search or investigation identified in response to Interrogatory No. 9.

ANSWER:

Interrogatory No. 11

Identify each market study, survey, focus group, poll, or other research that has been conducted regarding, referring to, or relating to a term consisting in whole or in part of one of the "MYSTORE Marks", or a phonetic equivalent.

ANSWER:

Interrogatory No. 12

Identify the individuals most knowledgeable about study, survey, focus group, poll, or other research identified in response to Interrogatory No. 11.

ANSWER:

Interrogatory No. 13

Describe the date and circumstance how Opposer first became aware of Applicant's use of its "MYSTORE Marks".

ANSWER:

Interrogatory No. 14

Describe the date and circumstance of how Opposer first became aware of Applicant's application to register its "MYSTORE Marks".

ANSWER:

Interrogatory No. 15

Identify the individuals employed by Opposer most knowledgeable about Applicant's use of its "MYSTORE Marks".

ANSWER:

Interrogatory No. 16

Identify all documents in Opposer's possession which refer or relate to Applicant or to use of the "MYSTORE Marks", or any variations thereof, by Applicant.

ANSWER:

Interrogatory No. 17

Describe all relevant facts and circumstances relating to any **challenges** Opposer has made against any third party concerning a **mark** allegedly confusingly similar to Opposer's use of "my stores" or "mystores."

ANSWER:

Interrogatory No. 18

Describe all relevant facts and circumstances relating to any **challenges** a third party has made against Opposer concerning the alleged similarity between Opposer's use of "my stores" or

“mystores” and the mark of a third party.

ANSWER:

Interrogatory No. 19

Describe all relevant facts and circumstances relating to any **challenges** Opposer has made against any third party concerning the descriptiveness or genericness of an application or registration containing MY or STORE, or a variation thereof.

ANSWER:

Interrogatory No. 20

Identify the facts which support Opposer’s claim, contained in paragraph 4 of the Notice of Opposition, that “the alleged mark mystore (stylized) is merely descriptive of the services for which registration is sought and therefore not registrable.”

ANSWER:

Interrogatory No. 21

Identify the facts which support Opposer’s claim, contained in paragraph 5 of the Notice of Opposition, that “the alleged mark mystore (stylized) is a generic term identifying personal online stores, and is therefore not registrable.”

ANSWER:

Interrogatory No. 22

Identify the facts which support Opposer's claim, contained in paragraph 6 of the Notice of Opposition, that "the alleged mark mystore (stylized) is merely descriptive of a personal, online website or "store" at which products and services can be obtained or other business conducted."

ANSWER:

Interrogatory No. 23

If Opposer intends to rely upon the opinion of an expert in connection with this proceeding, provide the information set forth in Rule 26(a)(2), Fed.R.Civ.P., for each expert.

ANSWER:

Interrogatory No. 24

For each of the preceding Interrogatories, **identify**: all **persons** who were consulted or participated in the preparation of the answer to each Interrogatory; all **persons** who are presently knowledgeable as to any of the facts recited in the answer to each Interrogatory; whether or not such **persons** were consulted or participated in the preparation of the answer; and all files and areas searched in attempting to locate any **documents** requested to be identified by each Interrogatory.

ANSWER:

Dated: July 23, 2007

By: 
Erik M. Pelton, Esq.

Erik M. Pelton & Associates, PLLC
PO Box 100637
Arlington, Virginia 22210
TEL: (703) 525-8009
FAX: (703) 525-8089

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Applicant's First Set of Interrogatories to Opposer was deposited as First Class mail with the United States Postal Service on July 23, 2007, to counsel for Opposer at:

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

By: 
Erik M. Pelton, Esq.

EXHIBIT B

Applicant's First Request for Production of Documents and Things of July 23, 2007

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

SNOCAP, INC.,)
Opposer,) Opposition No. 91177827
v.) Application. Serial No. 78853849
Todd Meagher.) Mark: MYSTORE
Applicant.)

**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, Applicant, Todd Meagher ("Applicant"), by counsel, hereby requests that Opposer, SNOCAP, INC. ("Opposer"), produce the following documents and things that are in Opposer's possession, custody, or control. These documents and things are to be produced, or made available for copying and inspection, at the offices of Erik M. Pelton & Associates, PLLC, PO Box 100637, Arlington, Virginia 22210, within thirty (30) days of service hereof.

DEFINITIONS

The following definitions apply to and are deemed incorporated into each of the requests to produce herein.

1. "SNOCAP, INC.," "SNOCAP" "you," "your," or "Opposer" means SNOCAP, INC., its officers, directors, employees, counsel, agents, representatives, or other persons under its control, any predecessor or successor whether incorporated or not, any division, subsidiary or affiliate thereof, and those persons in active concert or participation with it or them.
2. The terms "MYSTORE Marks" or "Applicant's Marks" include the marks in U.S. Trademark Applications Serial Number 78853849 and 78853866, MYSTORE.COM, MY

STORE, MYSTORES, MY STORES, and all variations thereof including variations in which not all of its letters are capitalized, variations in which it is combined with a superscript such as "TM," "SM," "Tm," "Sm," "tm," "sm" or "®."

3. The words "and" and "or" are construed both conjunctively and disjunctively, and each includes the other wherever such dual construction will serve to bring within the scope of this request any documents which would otherwise not be brought within its scope. All such terms, as well as other conjunctions and prepositions, are interpreted in the manner that provides the most complete answer and information.

4. "Each" means each and every.

5. "Communication" means all discussions, conversations, interviews, negotiations, cable grams, mail grams, e-mails, telegrams, telexes, facsimile transmissions, cables, letters, confirmations, or other forms of written or verbal discourse, however transmitted, including reports, notes, electronic files and databases, memoranda, lists, agenda and other documents and records.

6. The term "date" means the exact day, month and year, if ascertainable, and if not, the best approximation, including any relationship to any other events.

7. The term "document" and "documents" are intended to be comprehensive and to include, without limitation, any and all written, printed, typed, photographic, electronic files and databases, recorded, or graphic materials, however produced or reproduced, whether readable visually or with the assistance of any machine, including all originals, copies, drafts, additions, forms, or versions of all notes, files, reports, books, book entries, accounting materials, ledgers, orders, invoices, statements, bills, checks and vouchers, studies, summaries, surveys, searches, statistical compilations, analyses, diagrams, illustrations, charts, minutes, resolutions, letters,

correspondence, inter-office communications, electronic mail or the equivalent, computer print outs, memoranda, telegrams, teletypes, cables, publications, facsimile transmissions, telexes, information that has or will be posted on the Internet, contracts, agreements, applications, pleadings, court papers, recordings, video or audio tapes, photographic records, sound recordings, transcripts, magnetic storage media, records, corporate or business records of forms, manuals, brochures, schedules, price lists, calendars, telephone bills or logs, diaries, and any evidence, reports, or recordings of in person or telephone communications, interviews, conferences, committee meetings, meetings or other communications by or with any person or entity and includes the original of such document or a copy of the original if the original is not available as well as any copies not identical to the original including any copies that are different by reason of notes, changes, initials, or identification Mark and including, without limitation, any draft of such documents. "Documents" also shall be construed to mean each and every copy of such writings or records where the original is not in the possession, custody or control of Applicant, and each and every copy of such writing or record, where such copy contains any commentary or notation whatsoever that does not appear on the original. In all cases where originals and/or non-identical copies are not available, "documents" also means identical copies of original documents and copies of non-identical documents.

8. The term "identify":

- (a) When used in reference to a natural person, requests such person's full name, date of birth, business affiliation, present or last known residence and business addresses, job title, dates of employment, and business and residential telephone number.
- (b) When used in reference to an organization or entity, requests the

organization's full and complete name, the principal place of business, the legal nature of the organization, the state of incorporation or partnership, the date on which the organization commenced doing business, each and every officer in the organization, and the principals of the organization.

- (c) When used in reference to a document, requests the name and type of the document, the date of the document, the preparer, sender, and recipient of the document, a brief description of the document's subject matter, the date and manner of distribution and/or publication, if any, the location of each copy and the identity of the present custodians with sufficient particularity as would allow the document to be sought by *subpoena duces tecum* or under Rule 35 of the Federal Rules of Civil Procedure, the identity of the person or person who can identify it, the contents of the document verbatim, and if privilege is claimed, the specific basis therefor. Documents to be identified include both documents in Applicant's possession, custody, and control, and all other documents of which Applicant has knowledge.
- (d) in connection with oral statements, communications, negotiations or discussions, to stated when and where they took place, identify each of the participants and witnesses thereto, and al others present, indicate the form of communication, and state the substance of the communication.
- (e) When used in reference to a thing or an event, requests a brief description of the thing or event, the date, the identities of all persons who have personal or corporate knowledge of it, and the identity of the documents

relating to it.

9. "Person" and "persons" shall refer to any natural person, association, partnership, corporation, organization, business trust, joint venture, receiver, estate syndicate or any other combination acting as a unit or acting as form of legal entity, including the parties to this suit and their officers, agents, employees and representatives.

10. "Referring", "relating to", "concerning", and "pertaining to" mean mentioning, discussing, summarizing, describing, referring to, depicting, evidencing, reflecting, embodying, constituting, concerning, containing, contradicting, identifying, responding to, comprising, constituting, including, regarding, reporting or in any way involving.

11. "Employee or agent" and "employees or agents" shall mean all persons currently or previously employed, including, without limitation, officers, directors, employees, agents, attorneys, accountants, representatives, or others acting for or on behalf of a person.

12. "Goods" include all items of merchandise, supplies, or finished goods, including goods that are used or bought for use by any person.

13. In order to bring within the scope of these document production requests any documents or things that might otherwise be considered outside their purview, any word written in the singular are construed as plural, and in the plural as singular; verb tenses are construed to include past, present, and future tenses.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the ordinary course of business, or, in the alternative, organized and labeled so as to correspond to the document requests.

2. These requests are intended to cover all documents and things in your possession, custody or control. A document or thing is deemed to be in your possession, custody, or control

if:

- (a) it is in your physical control; or
- (b) if it is in the physical control of any other person or entity, and you
 - (i) own the document or thing in whole or in part;
 - (ii) have right by contract, statute, or otherwise to use, inspect, examine or copy that document or thing on any terms; or
 - (iii) have, as a practical matter, been able to use, inspect, examine or copy that document or thing when it is sought to do so or could do so.

3. If any document requested was formerly in your possession, custody, or control and has since been lost or destroyed, you shall submit, in lieu of each such document, a written statement that:

- (a) identifies the document by providing the author(s), addressee(s), recipient(s), title, date, subject matter, and number of pages and identifies all persons who ever possessed copies; and
- (b) states when and how the document was lost or destroyed and, if destroyed, identifies each person having knowledge concerning such destruction or loss, the person(s) requesting and performing such destruction, the reasons for such destruction, and each document evidencing the document's prior existence and/or facts concerning its destruction.

4. If any document or thing is withheld on grounds of privilege or work-product immunity, (i) identify the document or thing with sufficient particularity, including a description of the document's type (event, conversation, occurrence), subject matter, date, and participants, and (ii) state the legal and factual basis for the claim of privilege or work-product protection.

5. Insofar as any of these document production requests concern use of any mark or designation, such requests concern use in the United States of America and in commonwealths, territories, or other territory within the federal judicial system of the federal government of the United States of America, and not use in foreign nations.

6. Each request herein for any documents or things to be produced contemplates production of the documents or things in their entirety, without abbreviation, deletions, or redacted material and as they are kept in the ordinary course of business. File folders and notebooks with tabs or labels identifying documents must be produced in an intelligible format or with a description of the system from which the information was collected sufficient to permit rendering the materials readable, usable and subject to copying.

7. Pursuant to the Federal Rules of Civil Procedure Rule 26(e) and Rule 34, the Opposer has a duty to supplement regularly any prior response to the extent of documents, objects, or tangible things that subsequently come into Opposer's possession or control or become known to Opposer.

REQUESTS FOR PRODUCTION

Please produce the following documents and things.

1. All documents identified or described in response to Applicant's First Set of Interrogatories to Petitioner.

2. All advertisements, brochures, marketing materials, promotional materials, educational materials, public relations materials, catalogues, flyers, consumer correspondence or inquiries, purchase orders, and sales documents relating to or referring to online advertising, online classified listings, online commerce or online store services sold, offered for sale, or planned to be sold, by Opposer.

3. Print-outs of any and all Internet websites, including past and present versions thereof, on which Opposer has discussed or discusses, has sold or sells, or has offered or offers to sell, online advertising, online classified listings, online commerce or online store services.

4. All documents referring or relating to concerning any change in the content of any Internet website on which Opposer has discussed or discusses, has sold or sells, or has offered or offers to sell, online advertising, online classified listings, online commerce or online store services.

5. All documents supporting Opposer's contention that Applicant's MYSTORE Marks are merely descriptive when applied to the services of Applicant and third parties.

6. All documents describing or constituting instances in which Opposer has used a term consisting in whole or in part of the MYSTORE Marks, or a phonetic equivalent.

7. All documents describing or constituting instances in which a third party has used a term consisting in whole or in part of MYSTORE or its phonetic equivalent.

8. All documents referring or relating to online advertising, online classified listings, online commerce or online store services which Opposer has marketed, markets, or plans to market.

9. All documents identifying the names, marks, designs, symbols, and/or logos under which Opposer has marketed, markets, or plans to online advertising, online classified listings, online commerce or online store services.

10. All documents referring or relating to the selection, creation, or adoption of the names, marks, designs, symbols, and/or logos identified in response to Request No. 10.

11. All documents constituting, or referring or relating to, any third-party use of a term consisting in whole or in part of the "MYSTORE Marks", or a phonetic equivalent in connection

with marketing online advertising, online classified listings, online commerce or online store services.

12. All documents referring or relating to the brand name of each online advertising, online classified listings, online commerce or online store services with which a third party has used, or is using, a term consisting in whole or in part of the "MYSTORE Marks", or a phonetic equivalent.

13. All documents supporting Opposer's contention that Applicant's "MYSTORE Marks" are generic terms for the services offered by Opposer, Applicant, and/or any third party.

14. All documents supporting Opposer's contention that Applicant's "MYSTORE Marks" are descriptive terms for the services offered by Opposer, Applicant, and/or any third party.

15. All documents constituting, or referring or relating to, instances in which a third party has used a term consisting in whole or in part of the "MYSTORE Marks" or a phonetic equivalent to refer to online advertising, online classified listings, online commerce or online store services.

16. All documents constituting, or referring or relating to, instances in which a third party has used a term consisting in whole or in part of the "MYSTORE Marks", or its phonetic equivalent to refer to a product other than a online advertising, online classified listings, online commerce or online store services.

17. All documents referring or relating to the manner in which Opposer has used, uses, or plans to use a term consisting in whole or in part of the "MYSTORE Marks", or its phonetic equivalent in any marketing, advertising, promotion, and/or sales of goods and services.

18. All documents referring or relating to the manner in which third parties have used, use, or plan to use a term consisting in whole or in part of the "MYSTORE Marks", or its phonetic equivalent in any marketing, advertising, promotion, and/or sales of goods and services.

19. All documents constituting, or referring or relating to, each and every trademark search or investigation that has been conducted regarding, referring to, or relating to a term consisting in whole or in part of the "MYSTORE Marks", or its phonetic equivalent.

20. All documents constituting, or referring or relating to, any market study, survey, focus group, poll, or other research referring or relating to a term consisting in whole or in part of the "MYSTORE Marks", or its phonetic equivalent.

21. All documents referring or relating to public perception of Applicant's "MYSTORE Marks, or a phonetic equivalent.

22. All documents constituting, or referring or relating to, any trademark application or registration for any mark consisting in whole or in part of the "MYSTORE Marks" or a phonetic equivalent.

23. All documents referring or relating to Applicant.

24. All documents referring or relating to any online advertising, online classified listings, online commerce or online store services sold or advertised by Applicant.

25. All documents and things referring to, relating to, or comprising any challenges, including, but not limited to, federal court actions, Trademark Trial and Appeal Board oppositions or cancellations, and cease and desist letters, that Opposer has ever made against any third party, and/or any challenges that a third party made against Opposer, concerning the use or registration of any phrase, service mark, trademark, or trade name.

26. All documents and things, other than those produced in response to any of the

foregoing requests, upon which Opposer intends to rely in connection with this Opposition proceeding.

Dated: July 23, 2007

By: 

Erik M. Pelton, Esq.

Erik M. Pelton & Associates, PLLC
PO Box 100637
Arlington, Virginia 22210
TEL: (703) 525-8009
FAX: (703) 525-8089

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Applicant's First Request for Production of Documents and Things was deposited as First Class mail with the United States Postal Service on July 23, 2007, to the following:

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

By: 

Erik M. Pelton, Esq.

EXHIBIT C

Opposer's Objections and Responses to Applicant's First Set of Interrogatories to Opposer

SNOCAP, INC.,

Opposer,

v.

TODD MEAGHER,

Applicant.

Consolidated Oppositions

Opposition No.: 91-177,827

Trademark: **MYSTORE**

Appln No. **78/853,849**

And

Opposition No.: 91-177,828

Trademark: **MYSTORE.COM**

Appln No. **78/853,866**

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

Pursuant to Federal Rules of Civil Procedure 26 and 33 and Trademark Rule 2.120, Opposer, SNOCAP, Inc. ("SNOCAP" or "Opposer") makes the following objections and responses to Applicant's First Set of Interrogatories to Opposer.

GENERAL OBJECTIONS

1. Opposer SNOCAP objects to each and every interrogatory by Applicant Meagher to the extent that it is cumbersome, unduly burdensome, and/or imposes or attempts to impose greater obligations on Opposer than those authorized by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

2. Opposer SNOCAP objects to Applicant's First Set of Interrogatories to Opposer to the extent that they mis-characterize Opposer, Opposer's products, services, or any fact alleged by Opposer. By responding to Applicant's First Set of Interrogatories to Opposer, Opposer does not admit that Applicant's characterizations are accurate or correct.

3. These general objections are applicable to and are incorporated into each specific

response to any particular interrogatory shall not be construed as a waiver of such objection in any other response.

4. SNOCAP's internal inquiries and discovery are ongoing. Opposer therefore objects to Applicant's First Set of Interrogatories to Opposer to the extent that they cut off or purport or may have the effect of cutting off Opposer's right to supplement its responses. Opposer reserves its right to supplement its responses up to and including time of trial.

5. Opposer objects to each and every Interrogatory to the extent that Applicant requests information or responses relating to information to which Opposer has objected.

6. Opposer objects to each and every Interrogatory on the basis that it is not stated simply or directly, and/or uses compound terms.

7. Opposer objects to each and every Interrogatory on the basis that it contains interdependent, compound issues, and/or is premised on a fact that is denied, and/or contains words, terms or phrases that are vague and ambiguous, and therefore not subject to succinct response.

8. Opposer objects to each and every Interrogatory to the extent that and on the basis that it goes beyond the permissible scope of discovery, including but not limited to the fact that it goes beyond the marks and goods/services at issue in this proceeding, and/or is not limited to commerce which may be lawfully regulated by Congress. To the extent any answer to an interrogatory is provided, it is provided with respect to the United States, use in the United States, or use in commerce which may be lawfully regulated by Congress.

9. Opposer objects to each and every overly expansive and vague "Definition" and "Instruction" which Applicant purports to impose herein and which renders the discovery sought irrelevant, not likely to lead to relevant information, overly burdensome and beyond the scope of permissible discovery, including, but not limited to, the overly expansive definitions of "Opposer" and "SNOCAP", Inc., of "Person(s)", of the "MYSTORE Marks" to the extent they include descriptive uses, of "adoption or use", of "service provider", and of "promote".

10. Opposer objects to each and every Interrogatory to the extent that and on the basis that it relates to or requests information regarding matters immaterial to this proceeding and/or which raise or relate to international issues beyond the jurisdiction of the Board, including - but not limited to - use outside of the United States.

11. SNOCAP objects to each and every Interrogatory on the basis that it is vague, uncertain, ill-defined and not capable of response because of the vagueness and uncertainty created by overly broad definitions and instructions.

12. SNOCAP objects to each and every Interrogatory to the extent that it asks a question that is not reasonably understood or subject to interpretation, and thus is not capable of response.

13. SNOCAP objects to each and every Interrogatory to the extent that it asks for information about future plans, non-public information, confidential information, confidential business information, trade secrets or otherwise protected information unless such production is pursuant to an appropriate protective order for the information at question.

RESPONSE TO INTERROGATORIES NOS. 1 - 24 :

Opposer generally objects to each and every Interrogatory Nos. 1 - 24 on the grounds that the total number of interrogatories served, counting sub-parts and using Applicant's Definitions and Instructions, is excessive and beyond the seventy-five allowed by the Rules.

Dated: August 27, 2007

AS TO OBJECTIONS:

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5237
Tel: 408-266-4700 Fax: 408-864-2044
E-mail: MRG@TechMark.com
By: /Martin R Greenstein
Martin R. Greenstein
Attorneys for Opposer, SNOCAP, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** is being served by first class mail postage prepaid on this 27th day of August, 2007, on Applicant's attorneys:

Erik M. Pelton, Esq.
Erik M. Pelton & Associates, PLLC
PO Box 100637
Arlington, VA 22210
Tel: 703-525-8009

/Martin R Greenstein/
Martin R. Greenstein

EXHIBIT D

Opposer's Objections and Responses to Applicant's First Requests for Production of Documents and Thing

SNOCAP, INC.,

Opposer,

v.

TODD MEAGHER,

Applicant.

Consolidated Oppositions

Opposition No.: 91-177,827

Trademark: MYSTORE

Appln No. 78/853,849

And

Opposition No.: 91-177,828

Trademark: MYSTORE.COM

Appln No. 78/853,866

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

Pursuant to Federal Rules of Civil Procedure 26 and 34 and Trademark Rule 2.120, Opposer, SNOCAP, Inc. ("SNOCAP" or "Opposer") makes the following objections and responses to Applicant's First Request for Production of Documents and Things to Opposer.

GENERAL OBJECTIONS

1. Opposer SNOCAP objects to each and every request for production by Applicant Meagher to the extent that it is cumbersome, unduly burdensome, and/or imposes or attempts to impose greater obligations on Opposer than those authorized by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

2. Opposer SNOCAP objects to Applicant's First Request for Production of Documents and Things to Opposer to the extent that they mis-characterize Opposer, Opposer's products, services, or any fact alleged by Opposer. By responding to Applicant's First Request for Production of Documents and Things to Opposer, Opposer does not admit that Applicant's characterizations are accurate or correct.

3. These general objections are applicable to and are incorporated into each specific response herein, with or without further reference. Insertion of specific objections in the

other response.

4. SNOCAP's internal inquiries and discovery are ongoing. Opposer therefore objects to Applicant's First Request for Production of Documents and Things to Opposer to the extent that they cut off or purport or may have the effect of cutting off Opposer's right to supplement its responses. Opposer reserves its right to supplement its responses up to and including time of trial.

5. Opposer objects to each and every request for production to the extent that Applicant requests information or responses relating to information to which Opposer has objected.

6. Opposer objects to each and every request for production on the basis that it is not stated simply or directly, and/or uses compound terms.

7. Opposer objects to each and every request for production on the basis that it contains interdependent, compound issues, and/or is premised on a fact that is denied, and/or contains words, terms or phrases that are vague and ambiguous, and therefore not subject to succinct response.

8. Opposer objects to each and every request for production to the extent that and on the basis that it goes beyond the permissible scope of discovery, including but not limited to the fact that it goes beyond the marks and goods/services at issue in this proceeding, and/or is not limited to commerce which may be lawfully regulated by Congress. To the extent any response to a request for production is provided, it is provided with respect to the United States, use in the United States, or use in commerce which may be lawfully regulated by Congress.

9. Opposer objects to each and every overly expansive and vague "Definition" and "Instruction" which Applicant purports to impose herein and which render the discovery sought irrelevant, not likely to lead to relevant information, overly burdensome and beyond the scope of

“Opposer” and “SNOCAP”, Inc., of “Person(s)”, of the “MYSTORE Marks” to the extent they include descriptive uses, of “communication”, of “document(s)”, and of “identify”.

10. Opposer objects to each and every request for production to the extent that and on the basis that it relates to or requests information regarding matters immaterial to this proceeding and/or which raise or relate to international issues beyond the jurisdiction of the Board, including - but not limited to - use outside of the United States.

11. SNOCAP objects to each and every request for production on the basis that it is vague, uncertain, ill-defined and not capable of response because of the vagueness and uncertainty created by overly broad definitions and instructions.

12. SNOCAP objects to each and every request for production to the extent that it asks a question that is not reasonably understood or subject to interpretation, and thus is not capable of response.

13. SNOCAP objects to each and every request for production to the extent that it asks for documents or things related to future plans, non-public information, confidential information, confidential business information, trade secrets or otherwise protected information unless such production is pursuant to an appropriate protective order for the information at question.

14. SNOCAP objects to the designated place of production at the office of Applicant’s attorney in Arlington, VA. Applicant is located in Texas, Opposer and Opposer’s counsel are located in the San Francisco Bay area. Documents and things will be produced at the place where the documents and things are usually kept, which is generally in the San Francisco Bay area, in accordance with the applicable rules.

RESPONSE TO REQUEST 1: Subject to the foregoing general objections, No Response Required at this time.

RESPONSE TO REQUEST 2: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 3: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 4: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous,

of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 5: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 6: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Opposer further objects to this request on the grounds it does not use any of the indicated terms as "Marks". Subject to the foregoing and to the General Objections, Opposer's descriptive uses of the terms in question are all located on Opposer's website at <http://www.snocap.com>, and readily accessible by Applicant. If and to the extent any other uses exist, representative non-privileged and non-confidential documents

2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 7: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 8: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous, and is simply not capable of being understood.

RESPONSE TO REQUEST 9: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Subject to the foregoing and to the General Objections, Opposer's current uses, to the extent understood, are all located on Opposer's website at <http://www.snocap.com>, and readily accessible by Applicant. Opposer will provide

relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 10: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 11: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Subject to the foregoing and to the General Objections, see Response to Request 7, which asks for the same production.

RESPONSE TO REQUEST 12: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request is unnecessary

used in the request are vague and ambiguous. Subject to the foregoing and to the General Objections, see Response to Request 7, which asks for the same production.

RESPONSE TO REQUEST 13: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 14: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 15: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Opposer further objects on the grounds that the request

objects on the grounds that this request is repetitive and duplicative of several prior requests.

RESPONSE TO REQUEST 16: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Opposer further objects on the grounds that this request is repetitive and duplicative of several prior requests.

RESPONSE TO REQUEST 17: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Opposer further objects on the grounds that this request is repetitive and duplicative of several prior requests.

RESPONSE TO REQUEST 18: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Opposer further objects on the grounds that this request is repetitive and duplicative of several prior requests.

RESPONSE TO REQUEST 19: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 20: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 21: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Opposer further objects on the grounds that this request is repetitive and duplicative of several prior requests.

RESPONSE TO REQUEST 22: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request is unnecessary and

in the request are vague and ambiguous. Opposer further objects on the grounds that this request is repetitive and duplicative of several prior requests.

RESPONSE TO REQUEST 23: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to the General Objections, Opposer will provide relevant, representative non-privileged and non-confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 24: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague and ambiguous. Opposer further objects on the grounds that the request is unnecessary and harassing. Opposer further objects to this request on the grounds that the terms or phrases used in the request are vague and ambiguous. Opposer further objects on the grounds that this request is repetitive and duplicative of several prior requests, and on the grounds that all such documents are uniquely in the possession, control and knowledge of Applicant, who has better and more complete access to same than does Opposer.

RESPONSE TO REQUEST 25: In addition to the foregoing objections, Opposer objects to this request as overly broad and unduly burdensome, and on the grounds that it is vague, ambiguous, unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence. Opposer further objects on the grounds that the request asks for and seeks production of attorney work product and is thus privileged. Subject to the foregoing and to

confidential documents, if and to the extent same exist, at the place where same are usually kept, pursuant to Rule 2.120(d)(2), at a mutually convenient time.

RESPONSE TO REQUEST 26: In addition to the foregoing objections, Opposer reserves any and all additional objections until such time as it is determined which documents, if any, fall under this request. As of the date of this response, this has not yet been determined, so no other response can be provided.

Dated: August 27, 2007

AS TO OBJECTIONS:

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5237
Tel: 408-266-4700 Fax: 408-864-2044
E-mail: MRG@TechMark.com
By: /Martin R Greenstein
Martin R. Greenstein
Attorneys for Opposer, SNOCAP, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** is being served by first class mail postage prepaid on this 27th day of August, 2007, on Applicant's attorneys:

Erik M. Pelton, Esq.
Erik M. Pelton & Associates, PLLC
PO Box 100637
Arlington, VA 22210
Tel: 703-525-8009

/Martin R Greenstein/
Martin R. Greenstein

EXHIBIT E

August 31, 2007, letter from Erik M. Pelton to Martin R. Greenstein

August 31, 2007

SENT VIA FACSIMILE TO 408-864-2044 & VIA FIRST CLASS MAIL

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

COPY

Re: T.T.A.B. Opposition Nos. 91177827 & 91177828

Dear Mr. Greenstein,

I am in receipt of "Opposer's Objections and Responses to Applicant's First Set of Interrogatories to Opposer" along with "Opposer's Objections and Responses to Applicant's First Request for Production of Documents and Things." I write in conformance with the requirements of Trademark Rule 2.120(e) and to make a good faith effort to resolve the issues presented by your objections and lack of answers.

Opposer's Objections and Responses to Applicant's First Set of Interrogatories to Opposer

Regarding your response to Interrogatories Nos. 1 through 24 namely, that "the total number of interrogatories served, counting sub-parts and using Applicant's Definitions and Instructions, is excessive and beyond the seventy-five allowed by the Rules," I respectfully disagree. In both form and spirit, the number of interrogatories including subparts does not exceed seventy-five. Pursuant to TBMP § 405.03(d), "[I]f an interrogatory requests 'all relevant facts and circumstances' concerning a single issue, event, or matter; or asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party's involved marks, it will be counted as a single interrogatory." The large majority of Applicant's Interrogatories concern a single issue, event or matter.

If substantive responses to Applicant's Interrogatories Nos. 1 through 24 are not received by Friday, September 7, 2007, I will file a Motion to Compel responses with the Board. If you wish to discuss this matter, or to request a telephone conference with the interlocutory attorney at the Board to discuss this matter, do not hesitate to contact me.

Opposer's Objections and Responses to Applicant's First Request for Production of Documents and Things

In general, Opposer has not identified the name, type, date, or subject matter, as requested in paragraph 3(c) of the Request for Production instructions, regarding any of the documents produced in its responses. Furthermore, Opposer has not produced any documents, even those which are not confidential. Kindly produce and identify, as indicated in the Instructions, all responsive documents and things.

Note that pursuant to amended Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242 (August 1, 2007), Rule 2.116(g), as of today, August 31, 2007, the Board's standard Protective Order is applicable

Regarding the numerous objections of "privilege," which do not include the identification of any documents, I remind you that, in general, the identification of discovery documents is neither privileged nor confidential. TBMP § 414. In addition, the instructions in the Request for Production requested that "If any document or thing is withheld on grounds of privilege or work-product immunity, (i) identify the document or thing with sufficient particularity, including a description of the document's type (event, conversation, occurrence), subject matter, date, and participants, and (ii) state the legal and factual basis for the claim of privilege or work-product protection." Kindly provide such information regarding any such document or thing withheld on grounds of privilege or work-product immunity.

Regarding the numerous objections to nearly every request that it is "unrelated to and not relevant to the current opposition and not calculated to lead to the discovery of admissible evidence," kindly justify and explain in detail the basis for the objection, particularly in light of the established discovery guidelines provided in TBMP § 414.

Regarding the numerous objections to nearly every request that it is "unnecessary and harassing," kindly justify and explain in detail the basis for the objection, particularly in light of the established discovery guidelines provided in TBMP § 414.

Regarding the numerous objections to nearly every request that "the terms or phrases used in the request are vague and ambiguous," kindly justify and explain in detail the basis for the objection, including a description of which particular term or terms are "vague and ambiguous."

Regarding requests numbers 15, 16, 17, and 18, you have objected that they are "duplicative." These requests are not duplicative since they concern a variety of documents regarding use of the marks by Opposer and by third parties, and since the requests are not all in relation to the same services. Because Opposer has alleged that the marks are descriptive, examples of Opposer's and third parties' use of the marks is clearly relevant.

Regarding Request No. 19, TBMP § 414 provides that "Search reports are discoverable." As a result, the documents requested in No. 19 are clearly discoverable.

With regard to each paragraph above, kindly provide and identify all responsive documents immediately. If these matters cannot be resolved by September 7, I will file a Motion to Compel with the Board. If you have any questions with regard to the above, do not hesitate to contact me.

Sincerely,



Erik M. Pelton

TIME : 08/31/2007 15:30
NAME :
FAX : 7035258089
SER.# : BR0L5F987563

DATE, TIME	08/31 15:29
FAX NO./NAME	4088642044
DURATION	00:01:15
PAGE(S)	03
RESULT	OK
MODE	STANDARD

TO:Martin R. Greenstein

FAX NUMBER:408-864-2044

DATE:August 31, 2007

FROM:

ERIK M. PELTON
ATTORNEY AT LAW
PO Box 100637
Arlington, Virginia 22210

TOTAL NUMBER OF PAGES (including cover):3

COMMENTS:

See attached.

If there are any transmission errors or questions regarding this fax, please contact Mr. Pelton

telephone
703-525-8009

fax
703-525-8089

email
emp@tm4smallbiz.com

Practice Limited to Trademark and Copyright. Admitted in New Jersey Only.

EXHIBIT F

October 9, 2007, letter from Erik M. Pelton to Martin R. Greenstein

October 9, 2007

SENT VIA FACSIMILE TO 408-864-2044 & VIA FIRST CLASS MAIL

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

Re: T.T.A.B. Opposition Nos. 91177827 & 91177828

Dear Mr. Greenstein,

I write to follow up my fax and letter of August 31, 2007, and our telephone conversations of September 19 and 20, 2007.

To date, I have received no written response from you following our telephone conversations. I have requested that you explain the justification and counting which form the basis for Opposer's response to Interrogatories Nos. 1 through 24, namely, that "the total number of interrogatories served, counting sub-parts and using Applicant's Definitions and Instructions, is excessive and beyond the seventy-five allowed by the Rules." As I have noted, it is my position that the large majority of Applicant's Interrogatories concern a single issue, event or matter.

In addition, Opposer has not produced, or made available for production, any documents. Kindly produce and identify, as indicated in the Instructions, all responsive documents and things.

I look forward to a written response from you no later than October 16, 2007. As I have noted, I am willing to schedule a telephone conference with the T.T.A.B. interlocutory attorney regarding these matters if it can assist in resolving this discovery impasse.

Sincerely,



Erik M. Pelton

TIME : 10/09/2007 17:28
NAME :
FAX : 7035258089
SER.# : BR0LSF967563

DATE, TIME	10/09 17:27
FAX NO./NAME	4088542844
DURATION	00:00:39
PAGE(S)	02
RESULT	OK
MODE	STANDARD

TO: Martin Greenstein

FAX NUMBER: 408-864-2044

DATE: October 9, 2007

FROM:

ERIK M. PELTON
ATTORNEY AT LAW
PO Box 100637
Arlington, Virginia 22210

TOTAL NUMBER OF PAGES (including cover):2

COMMENTS:

See attached.

If there are any transmission errors or questions regarding this fax, please contact Mr. Pelton

telephone
703-525-8009

fax
703-525-8089

email
emp@tm4smallbiz.com

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EXHIBIT G

U.S.P.T.O. Registration Numbers

2809162, 2555965, 2628975, 2598869, 2773847, 2413861, 2531343, and 2663703

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,809,162

Registered Jan. 27, 2004

SERVICE MARK
PRINCIPAL REGISTER

myschoolbookstore

J. F. FLANNERY COMPANY, INC. (CALIFORNIA CORPORATION)
13123 ALROSPACE DRIVE
VICTORVILLE, CA 92394

FIRST USE 7-13-2003; IN COMMERCE 7-13-2003.

SN 76-384,107. FILED 3-18-2002.

FOR: ONLINE RETAIL STORE SERVICES IN THE
FIELD OF TEXTBOOKS, NOVELS, DICTIONARIES,
AND BOOK COVERS TO SCHOOLS AND STUDENTS,
IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

MARY ROSSMAN, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,555,965

United States Patent and Trademark Office

Registered Apr. 2, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

MY BABY STORE

MY BABY STORE, LLC (SOUTH CAROLINA
LIMITED LIABILITY CORPORATION)
638 COLEMAN BLVD.
MT. PLEASANT, SC 29464

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BABY STORE", APART FROM
THE MARK AS SHOWN.

FOR: RETAIL FURNITURE STORE SERVICES, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).

SER. NO. 76-294,716, FILED 8-6-2001.

FIRST USE 2-14-1997; IN COMMERCE 8-0-1997.

ESTHER BELENKER, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,628,975

Registered Oct. 1, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

MYUNIVERSITYSTORE.COM

DESIGNS IN STITCH, INC. (TEXAS CORPORATION)
P.O. BOX 487
ADDISON, TX 75001

FOR: ON-LINE RETAIL STORE SERVICES FEATURING UNIVERSITY EMBROIDERED MERCHANDISE, SCREEN-PRINT MERCHANDISE

AND PROMOTIONAL PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-4-2000; IN COMMERCE 9-19-2001.

SN 76-066,153, FILED 6-8-2000.

MICHAEL BAIRD, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,598,869

Registered July 23, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

MYBENEFITSTORE

RKM PARTNERS IN TRUST, INC. (CALIFORNIA
CORPORATION)
STEVE HUBERT
2445 FIFTH AVENUE, SUITE 300
SAN DIEGO, CA 92101

FIRST USE 1-5-2000; IN COMMERCE 1-5-2000.

SN 76-045,048. FILED 5-11-2000.

FOR: BUSINESS MARKETING CONSULTING
SERVICES AND BUSINESS CONSULTATION SER-
VICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

TONI HICKEY, EXAMINING ATTORNEY

Int. Cls.: 25, 35, and 42

Prior U.S. Cls.: 22, 39, 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,773,847

Registered Oct. 14, 2003

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

MYLOCALSTORE

DIFFUSION SOFTWARE INC. (CANADA CORPORATION)
UNIT 115 - 383 PROVENCHER BLVD.
WINNIPEG, MANITOBA, CANADA R2H 0G9

FOR: CLOTHING, NAMELY T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-6-2001; IN COMMERCE 11-6-2001.

FOR: FRANCHISING, NAMELY, OFFERING TECHNICAL ASSISTANCE IN THE ESTABLISHING AND OR OPERATION OF TRANSACTION PROCESSING SERVICES, ADVERTISING SERVICES AND CATALOGING FOR RETAILERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-6-2001; IN COMMERCE 11-6-2001.

FOR: COMPUTER SERVICES, NAMELY PROVIDING SEARCH ENGINES FOR OBTAINING A LISTING OF SERVICES AND PRODUCTS ON A GLOBAL COMPUTER NETWORK, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 11-6-2001; IN COMMERCE 11-6-2001.

PRIORITY CLAIMED UNDER SEC. 44(D) ON CANADA APPLICATION NO. 1049328, FILED 3-2-2000, DATED 0-0-0000.

SN 76-007,096, FILED 3-22-2000.

PRISCILLA MILTON, EXAMINING ATTORNEY

Prior U.S. Cl.: 200

Reg. No. 2,413,861

United States Patent and Trademark Office

Registered Dec. 19, 2000

**COLLECTIVE MEMBERSHIP
PRINCIPAL REGISTER**

MY LOCAL HARDWARE STORE!

MINNESOTA DAKOTAS RETAIL HARDWARE AS-
SOCIATION, THE (MINNESOTA CORPORATION)
23 NINTH AVENUE
HOPKINS, MN 55343

FOR: INDICATING MEMBERSHIP IN AN ORGA-
NIZATION OF RETAIL HARDWARE STORES, IN
CLASS 200 (U.S. CL. 200).

FIRST USE 5-11-1998; IN COMMERCE 5-11-1998.
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT
TO USE "LOCAL HARDWARE STORE", APART
FROM THE MARK AS SHOWN.

SER. NO. 75-802,744, FILED 9-17-1999.
STEVEN BERK, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,531,343

Registered Jan. 22, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

MYBIZWEBSTORE.COM

**MPK, INC. (MARYLAND CORPORATION)
9693A GERWIG LANE
COLUMBIA, MD 21046**

FOR: ON-LINE RETAIL STORE SERVICES FEATURING ARTS AND CRAFTS SUPPLIES; LAWN AND GARDEN PRODUCTS; LIQUOR; MEDICAL SUPPLIES; OFFICE SUPPLIES; SHOES; CLOTHING; COMPUTERS; FLOWERS; FORMAL WEAR; FURNITURE; JEWELRY; SPORTING GOODS; BEAUTY

SALON PRODUCTS; AND DISSEMINATION OF ADVERTISING FOR OTHERS VIA AN ON-LINE ELECTRONIC COMMUNICATIONS NETWORK, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-30-1999; IN COMMERCE 9-30-1999.

SER. NO. 75-917,300, FILED 2-15-2000.

CAITLIN RILEY, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,663,703

Registered Dec. 17, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

MY CORPORATE STORE

DESIGNS IN STITCH, INC. (TEXAS CORPORATION)
17817 DAVENPORT, SUITE 115
DALLAS, TX 75252

FOR: ON-LINE RETAIL STORE SERVICES FEATURING CORPORATE EMBROIDERED MERCHANDISE, SCREEN-PRINT MERCHANDISE AND PROMOTIONAL PRODUCTS , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-8-2000; IN COMMERCE 5-8-2001.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CORPORATE STORE", APART FROM THE MARK AS SHOWN.

SN 75-791,807, FILED 9-3-1999.

KARAN CHHINA, EXAMINING ATTORNEY

EXHIBIT H

Snocap.com webpage printouts

Email:

Password:

[Forgot your password?](#)

[Sign Up](#)

Artists: Get a SNOCCAP MyStore!

Sell your music on MySpace and beyond

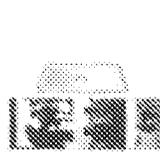
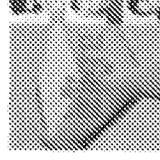
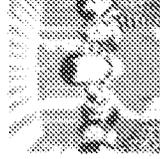
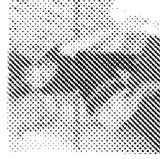
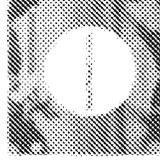
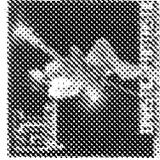
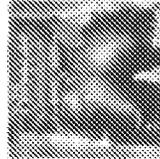
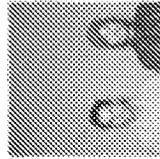
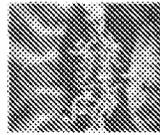
Easily upload your music

Set your own prices

Monitor your sales on a daily basis

It's your music - you keep all the rights

Only \$30 per year (the first year is FREE)



Find more artists with SNOCCAP MyStores »

Sell your music on MySpace and beyond

Let your fans buy directly from your SNOCCAP MyStore. [more »](#)

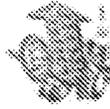
Control your own price and distribution

You also gain access to our network of online retailers. [more »](#)

Track sales online and get paid monthly

SNOCCAP manages payments between retailers and you. [more »](#)

Spotlights



SNOCCAP and MySpace team up to take you inside the Warped Tour for access to artists and free downloads. [Check it out »](#)



SNOCCAP Backstage! Exclusive access to the best in free music from some of our favorite artists. Are you on our guest list? [Come inside to find out more »](#)



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Email:

Password:

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[Sign Up](#)

Search for SNOCAP MyStores by artist or track title

Enter artist name, track title, or both.

Artist:

Title:

[Search](#)

HOT SNOCAP MyStores for Monday, October 15:

Bob Schneider Fresh Tracks

TRACK	PRICE
changing your mind	\$0.99
The Blue Mountain	\$0.99
Slower Deer	\$0.99
Happy Endings	\$0.99
Bicycle vs Car	\$0.99
Everything I have Pleas Nothing to me Now	\$0.99
Brown	\$0.99
California	\$0.99
Math	\$0.99

Subtotal: \$0.00 [Checkout](#)

powered by **SNOCAP**

[Find on MySpace >>](#)

I Set My Friends On Fire

TRACK	PRICE
I Set My Friends On Fire	\$0.99
I Set My Friends On Fire	\$0.99
I Set My Friends On Fire	\$0.99

Subtotal: \$0.00 [Checkout](#)

[Chris E...](#)
[Then D...](#)
[Christm...](#)
[Novemb...](#)
[Early 200...](#)

[Unsign...](#)
[Want...](#)
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[Use our...](#)
[Free R...](#)
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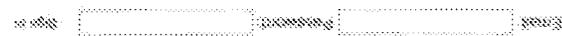
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Search for SNOCAP MyStores by artist or track title

Enter artist name, track title, or both.

Artist: Title:

HOT SNOCAP MyStores for Monday, October 15:

Bob Schneider Fresh Tracks

Working with me...	...	...
The Blue Mountain	...	...
Power Over	...	...
Happy Endings	...	...
Blacks in the	...	...
Overriding 2 Love Hours Talking to the Sun	...	...
Book	...	...
Callings	...	...
Book	...	...

[Find on MySpace >>](#)

I Set My Friends On Fire

I Set My Friends On Fire	Ask	...
I Set My Friends On Fire	Stand Up (Acoustic) Boy	...
I Set My Friends On Fire	Seaway Dr In the Trees Of The...	...

[Find on MySpace >>](#)

Andrew Hyra

Andrew Hyra	Open All Night	...
Andrew Hyra	Book	...
Andrew Hyra	I Believe In Heaven	...
Andrew Hyra	Boy in the Tree House	...
Andrew Hyra	With You For Now	...
Andrew Hyra	Angel Eyes	...
Andrew Hyra	Here and Now	...
Andrew Hyra	Money Box	...
Andrew Hyra	Shower Song	...

[Find on MySpace >>](#)



Chris Brown, Fast?
Then Don't Miss "The Christmas" in Theaters November 01st
www.snocap.com/TheChristmas

Unsigned Bands - Meet!
New community for Unsigned bands Create your Band Profile for Free!
www.snocap.com

Illustrators & Animators
100+ stunning illustrators and animators work
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Download Music
Contracts
Music contracts and legal forms for immediate download.
www.snocap.com

Business Team Protection?
Use our useful checklist Free Resource Guide for Avoiding Fraud.
www.snocap.com

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Media Coverage

Press Releases

Press Contacts

For SNOCAP:
Swan LLC Media for SNOCAP
Susan Celia Swan
(917) 865-6603
swan@swanllc.com

SNOCAP ANNOUNCES NEW LOWER FEE PER TRACK FOR UNSIGNED ARTISTS

San Francisco, CA — January 29, 2007 — SNOCAP, the premier music technology company for direct artist-to-fan online distribution, is reducing the fee for tracks sold through SNOCAP MyStores to \$.39 for unsigned artists. SNOCAP's pricing is competitive, and in many cases more favorable, than other distribution services available to unsigned artists.

SNOCAP's proprietary technology powers the digital storefronts for thousands of artists on MySpace. Using SNOCAP's MyStores, artists set their own pricing, sell the songs directly from their MySpace page and any other website or blog that accepts html, and via SNOCAP's online retailers anywhere, anytime.

With the SNOCAP MyStore, artists have the freedom to upload songs and have the tracks available for download almost immediately. In the six short weeks since the SNOCAP MyStore service launched on MySpace, artists are using their MyStores in really creative ways. Some are recording new tracks and posting them immediately, some are posting live tracks, some are posting the songs from their CDs and others are posting old tracks and rarities. Several artists have sponsored contests with prizes for fans that posted MyStores to their own MySpace profiles and web pages .

To purchase music, fans simply create a SNOCAP account and download the tracks they want directly from the artist. The tracks are MP3 format and playable on nearly all portable music devices, including iPods. Fans can also support their favorite artist by posting the artist's SNOCAP MyStore to their own MySpace profiles, websites or blogs, virally spreading the word through the power of the social network.

Originally, SNOCAP had priced the fee per track at \$.45, but quickly found efficiencies and passed them on to the artists.

Check out SNOCAP's SXSW Motherload Contest, www.snocap.com/sxsw and win a chance to do SXSW in style!

###

EXHIBIT I

October 16, 2007, 5:51 PM E.S.T. email from Martin R. Greenstein to Erik M. Pelton

Erik Pelton

From: Martin R. Greenstein [MRG@TechMark.com]
Sent: Tuesday, October 16, 2007 5:51 PM
To: Erik Pelton
Cc: Mariela P. Vidolova
Subject: SNOCAP v Todd MEAGHER, Oppo #91/177,287 ag TM: mystore (stylized)

Hi Erik:

This will confirm receipt yesterday of your letter dated 9 October 2007. I also received the fax copy last week, but I was out with the flu for much of the week, and then working on my taxes all weekend and yesterday - finally done!

When we last talked about these issues I explained that I had numerous objections to your letter raising objections to our requests to produce. I pointed out that you were, in fact, raising many (most?) of the very same objections to our discovery that you were complaining about in our objections to your discovery. However, during that conversation you told me that you would be sending a further package of documents to me later that week (i.e., on 20-21 September 2007) and I said I would review those before providing my comments and letter. We still haven't received those - were they ever sent?

During our discussions on the interrogatory count issue, we discussed the specific points of disagreement, and I thought we both agreed that we were unlikely to reach any consensus on the counting methodology. My impression was that you were going to frame that in a discovery motion, and I still think that is the appropriate way to address this. Telephone conferences with a Board Interlocutory Attorney can be very useful for single or narrow issue questions, but I don't think it is appropriate or useful to ask an Interlocutory Attorney to sit through a point by point analysis of so many things. The proper procedure is for you to file a motion and we will respond accordingly, and each party can argue its position in a clear and concise manner. I do agree that as to the interrogatory count issue the time is ripe for such a motion.

As to the documents issues, because of the nature and scope of the objections, we cannot yet identify responsive documents for the vast majority of the requests. That will change once we resolve some of the more basic objections, including why you think it is appropriate for you to raise objections to our requests on certain grounds, but not appropriate when we raise essentially those same objections. Here I thought we had agreed to revisit these once I received the additional documents you said were coming, and I had a better understanding of what you were actually objecting to.

I look forward to receiving those documents, and then continuing our discussions on the production. Again, I think we are at a far too early stage in the document production discussions to warrant involving an Interlocutory Attorney, but unlike the situation with the interrogatory count issue, I don't think the document production issue has been sufficiently discussed to the point where it is ripe for a motion.

Regards,
Marty

--
Martin R. Greenstein
TechMark a Law Corporation
Trademark & Intellectual Property Law
4820 Harwood Road, 2nd Floor, San Jose, CA 95124-5273
Tel: 1-408-266-4700 Fax: 1-408-864-2044
E-Mail: MRG@TechMark.com

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