TTAB

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

| | | |
|---|---|---|
| CKX, Inc. | ) | Opposition No. 91178593 |
| Opposer/Petitioner | ) | Cancellation No. 92047863 |
| | ) | |
| | ) | Serial Nos. 77/040,837; |
| | ) | 77/083,166;77/011,937; |
| | ) | 77/092,008 |
| Edward Kolos | ) | |
| Applicant/Registrant | ) | Registration Nos. 2,880,750; 3,167,267 |

APPLICANT'S FIRST SET OF INERROGATORIES TO OPPOSER

To: Opposer, CKX, Inc., and its attorneys, Douglas N. Masers, Loeb and Loeb. LLP, 321 North Clark Street, Suite 2300, Chicago, IL 60610.

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant, Edward Kolos ("Applicant"), hereby requests that Opposer, CKX, Inc. ("Opposer" or "CKX"), answer the interrogatories set forth below separately and fully in writing and under oath.

INSTRUCTIONS

1. The interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing consistent with the Federal Rules and Trademark Rules of Practice so that any additional information relating in any way to the subject matter of any of these interrogatories and requests which Opposer acquires or which become known to Opposer up to and including the time of trial shall be furnished to Applicant immediately after such information is acquired or becomes known.

2. The singular form or masculine gender, when used herein, shall include respectively, the plural and feminine or neuter as appropriate. The conjunctive form "and" and the disjunctive form "or" shall be mutually interchangeable and shall not be construed to limit any request.

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3. If you believe that a complete answer to a particular interrogatory or a part thereof is not possible, answer such interrogatory to the extent possible and furnish a statement specifically describing the reasons for your inability to answer the question further.

4. Attach all documents which support your answers to these interrogatories.

5. The present tense shall be construed to include the past tense and the past tense shall be construed to include the present tense as necessary to bring within the scope of these interrogatories any information that might otherwise be construed to be outside their scope.

6. If you refuse to answer any of the following interrogatories in full or in part, based upon a claim of privilege, provide a statement signed by an attorney representing you, setting forth as to each such interrogatories:

a. The specific claim of privilege;
b. The justification for the claim of privilege in sufficient detail to assess whether the assertion of privilege is valid;
c. The nature of the privileged information.

7. With respect to any document which you are required to identify in these interrogatories and which you claim to be privileged, set forth as to each such document:

a. The name and job title of each author of the document;

b. The name and job title of each recipient of the document or any copy;

c. The date the document was created and the date the document was received;

d. A brief description of the nature and subject matter of the document; and

e. the statute, rule or decision which is claimed to give rise to the privilege.

8. With respect to each communication described, identify the date of the communication, who was present, the words or substance of the communication, who said what, the method of communication (e.g., in writing, by telephone, or in person), the location of each of the participants, and all documents memorializing the communication.

9. With respect to each act or conduct described, identify the details of the act or conduct, who participated, when and where it occurred, what each person participating in such act or conduct did, and all documents memorializing the act or conduct.

10. Unless otherwise indicated, the scope of each Interrogatory shall include uses and intended uses through the World.

## DEFINITIONS

The following words and terms, when used in these Interrogatories, shall have the following meanings:

A. "Opposer" shall each mean CKX, Inc. and all other persons acting or purporting to act on behalf of it, as well as its affiliates, subsidiaries, divisions, firms, owners, managers, officers, directors, sub-contractors, employees, agents, representatives, licensees, licensor, assigns, accountants, and lawyers.

B. "Applicant" shall mean Edward Kolos.

C. "You" or "your" means Opposer as defined above.

D. The term "document" shall have the broadest and most comprehensive meaning permitted by Rule 34 of the Federal Rules of Civil Procedure.

E. The term "identify," to give the "identity" of, or to "describe" mean, in general, to give the fullest description known or ascertainable by Opposer, whether or not in the possession of Opposer and whether or not alleged to be privileged.

F. "Person" and "persons" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; partnership; firm; association; or other form of business entity; charitable, educational, governmental, or other non-profit institution, foundation body, or other organization; and shall include the entity itself, its officers, directors, employees, staff members, agents, representatives of all kinds (including, but not limited to legal representatives), and consultants.

G. "Applicant's Marks" means the marks: VET AID depicted in Serial No. 77/040,837; FIRST IN FIRST AID depicted in Serial No. 77/083,166; LEMON ICE depicted in Serial No. 77/011,937; E.N.R.G. depicted in Serial No. 77/092,008; H2OCEAN and Design depicted in Registration No. 2,880,750; H2OCEAN depicted in Registration No. 3,167,267.

H. "License" refers to any grant, acknowledgment, or permission, oral or written, of the right to use a mark.

I. "State" when used with a reference to a particular subject matter means to declare and describe all facts that are known to you which refer or relate to that subject matter.

J. "Refers," "referring," "relates," or "relating" means embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, or having any logical or factual connection whatsoever with the subject matter in question.

K. "Communications" means any transmission of information from one or more persons and/or between two or more persons by any means including but not limited to, telephone conversations, letters, telegrams, teletypes, telexes, telecopies, faxes, computer linkups, written memoranda, and face-to-face conversations.

L. "Opposer's Marks" means any registered trademarks including applications to register a trademark by Opposer for any personal care products, food, and clothing, that will allegedly be damaged by the Registrant's applications to register VET AID (Serial No. 77/040,837), FIRST IN FIRST AID (Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), E.N.R.G. (Serial No. 77/092,008), and continued registration of H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167, 267), and all words, phrases, symbols, slogans, and/or designs used to identify Opposer as the source of said products, goods and/or services.

M. "Opposer's Goods" means any goods, including but limited to personal care products, food, and clothing which Opposer markets that would allegedly be damaged by the Registrant's applications to register VET AID (Serial No. 77/040,837), FIRST IN FIRST AID (Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), E.N.R.G. (Serial No. 77/092,008), and continued registration of H2OCEAN and Design (Registration No. 2,880,750), and H2OCEAN (Registration No. 3,167, 267) and all words, phrases, symbols, slogans, and/or designs used to identify Opposer as the source of said products, goods and/or services.

N. "Opposer's Services" means all services which Opposer renders that would allegedly be damaged by the Registrant's applications to register VET AID (Serial No. 77/040,837), FIRST IN FIRST AID (Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), E.N.R.G. (Serial No. 77/092,008), and continued registration of H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167, 267), and all words, phrases, symbols, slogans, and/or designs used to identify Opposer as the source of said products, goods and/or services.

O. The term "identify" in relation to: (a) a person requests the name, address, telephone number and last known employer; (b) an entity requests the name, address, telephone number and contact person; and (c) a document requests the author, all recipients, the date, current custodian and a brief description of the subject matter of the document.

## INTERROGATORIES

1. For each person who provided information disclosed in the answers to interrogatories served by Applicant, please identify the interrogatories for which the person provided information, the information provided and identify that person. For each such person identified that is a

representative of a business entity, please state the name, address and telephone number of such business entity.

RESPONSE:

2. For each person who will be providing evidence or testimony on behalf of Opposer, please identify the person and state in detail the subject matter of his or her testimony. For each such person identified that is a representative of a business entity, please state the name, address and telephone number of such business entity.

RESPONSE:

3. For each person that Opposer may call, rely on, or use as an expert witness, please identify that person, all opinions to be expressed and the basis therefore, the qualifications of that person as an expert witness and the data information considered by the person in forming the opinions. For each such person identified that is a representative of a business entity, please state the name, address and telephone number of such business entity.

RESPONSE:

4. For each actual intended advertisement or promotion and/or use by on behalf of Opposer using or containing Opposer's Mark(s), Opposer's Goods, and Opposer's Services please identify each publication and/or use in which it was or will be published, the location at which it will be displayed or distributed, and the approximate dollar expenditure.

RESPONSE:

5. Identify all products, goods and/or services Opposer, by and through its licensees, has sold and/or currently sells.

RESPONSE:

6. Identify all products, goods and/or services Opposer by and through its licensees, has marketed and/or currently markets.

RESPONSE

7. Identify each product and/or service Opposer has sold or sells under Opposer's Marks.

RESPONSE:

8. Identify the date (s) on which such product and/or services have been offered for sale under Opposer's Marks.

RESPONSE:

9. Identify the geographic marketing area in which each product and/or service is sold or provided using Opposer's Marks.

RESPONSE:

10. Identify the channels of trade in which the products and/or services are offered or will be offered under Opposer's Marks.

RESPONSE:

11. Identify the person (s) responsible for supervising the quality of the products and/or services offered for sale under Opposer's Mark, Opposer's Goods, and Opposer's Services.

RESPONSE:

12. Identify why it was decided to market the products and/or service using Opposer's Marks and/or Opposer's Goods.

RESPONSE:

13. For each of the products sold under Opposer's Marks, state, both in units and in dollars, your annual sales of each product bearing the mark for each year in which you have sold such product.

RESPONSE:

14. Identify which of the goods listed in the identification of goods of the applications and registrations for Opposer's Marks which are not presently used in commerce by Opposer.

RESPONSE:

15. Identify which of the goods listed in the identification of goods of the applications and registrations for Opposers Marks which have never been used in commerce by Opposer.

RESPONSE:

16. Identify all efforts you have made to enforce any claimed rights in Opposer's Marks, Opposer's Goods, and Opposer's Services. If any such

effort resulted in litigation, please state the name of the plaintiff(s), the name of the defendant(s), as well as the court within which each such case was filed, the case number of each such case, the date the complaint was filed, and the result of the litigation.

RESPONSE:

17. Identify all communications directed to you that have challenged or questioned your right to use Opposer's Marks, Opposer's Goods, and/or Opposer's Services.

RESPONSE:

18. Please state the factual basis or evidence for Opposer's allegations of the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that "On information and belief, at the time he filed the opposed applications, Applicant lacked a *bona fide* intent to use the marks VET AID (Serial No. 77/040, 837), FIRST IN FIRST AID (Serial No. 77/083, 166), LEMON ICE (Serial No. 7/011, 937), and E.N.R.G. (Serial No. 77/092,008), in commerce in connection with each of the goods set for the in the respective applications."

RESPONSE:

19. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that "On information and belief, Applicant now lacks a *bona fide* intent to use each mark in commerce for each of the goods set forth in the respective applications."

RESPONSE:

20. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that "CKX, Inc...believes it will be damaged by applications to register VET AID (Serial No. 77/040,837), FIRST IN FIRST AID (Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), and E.N.R.G. (Serial No. 77/092, 008), and believes it is damaged by continued registration of H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167,267), all of which are owned by Edward Kolos("Kolos,""Applicant,"or"Registrant"), and opposes and petitions to cancel the same."

RESPONSE:

21. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that "Applicant's alleged marks, VET AID (Serial No. 77/040, 837) and FIRST IN FIRST AID (Serial No. 77/083, 166), are descriptive of the goods covered in the applications and have not acquired distinctiveness."

RESPONSE:

22. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that Applicant committed fraud by stating that "Applicant signed each of the applications for the marks VET AID (Serial No. 77/040, 837), FIRST IN FIRST AID ((Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), and E.N.R.G. (Serial No. 77/092, 008). In those applications, Applicant stated that he has a *bona fide* intention to use in commerce the mark in connection with the specific goods identified in each respective application. In each application, that statement was verified by Applicant under the declaration that "all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true."

RESPONSE:

23. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that Applicant committed fraud by stating that "Kolos signed both of the applications for the marks H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167,267). In those applications, Kolos stated that it "...is using the mark in commerce...on or in connection with the identified goods and/or services." In each application, that statement was verified by Applicant under the declaration that "all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true.""

RESPONSE:

24. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that Applicant committed fraud by stating that "Applicant committed fraud on the United States Patent and Trademark Office by virtue of the knowing, false, material claim regarding his intent to use the marks VET AID (Serial No. 77/040, 837), FIRST IN FIRST AID (Serial No. 77/083, 166), LEMON ICE (Serial No. 77/011, 937), and E.N.R.G. (Serial No. 77/092, 008). Applicant also committed fraud on the United States Patent and Trademark Office by virtue of the knowing, false, material claim regarding its use of the marks H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167,267)."

RESPONSE:

25. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that Registrant abandoned his mark by stating that "Registrant has ceased use, within the meaning of 15 U.S.C. 1127 , of the H2OCEAN marks shown in Reg. Nos. 2,880,750 and 3,167,267 for some of the goods set forth in the respective registrations."

RESPONSE:

26. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that Registrant abandoned his mark by stating that "On information and belief, Registrant has intent not to resume use of the H2OCEAN marks shown in Reg. Nos. 2,880,750 and 3,167,267 for some of the goods set forth in the respective registrations."

RESPONSE:

27. Please state the factual basis or evidence for Opposer's allegations in the combined Notice of Opposition and Petition to Cancel with particular interest in Opposer's conclusion that Registrant abandoned his mark by stating that "Registrant has abandoned Reg. Nos. 2,880,750 and 3,167,267."

RESPONSE:

28. For each instance in which Opposer has ever been involved in any contested matter with a third party relating to the Opposer's Marks, please identify the marks in controversy; the parties involved in the contested matter; and the outcome.

RESPONSE:

29. List all applications and registrations of any of Opposer's Marks made with any state of the United States of America. For each such application and registration, list the applicable state, date of first use, date of submission of each such application and registration, as well as the person of Opposer who prepared each such application.

RESPONSE:

30. List all international applications and registrations made relating in any way to Opposer's Marks. For each such application and registration, list the applicable international agency of registration, date of first use, date of submission of each such application and registration, as well as the person of Opposer who prepared each such application.

RESPONSE:

31. Identify all of the shareholders, officers and directors of CKX, Inc. For each such person, identify all trademark, service mark, trade name and/or trade dress related applications and registrations made by each, and include the applicable application/serial number.

RESPONSE:

32. For each such shareholder, officer and director of CKX, Inc., state all trademarks, service marks, trade names and/or trade dress that each own or have the rights to use in relation to any product, good and/or service.

RESPONSE:

33. For each and every license, regardless of scope or term, granted to Opposer to use any trademark, service mark, trade name and/or trade dress, state the name, address and telephone number of each such licensor, as well as the words, phrases, symbols, slogans, and/or designs subject to said license, and the products, goods and/or services applicable.

RESPONSE:

34. For each and every license, regardless or scope or term, granted by Opposer to a third party for use of any trademark, service mark, trade name and/or trade dress, state the name, address and telephone number of each such licensee, as well as the phrases, symbols, slogans, and/or

designs subject to said license, and the products, goods and/or services applicable.

RESPONSE:

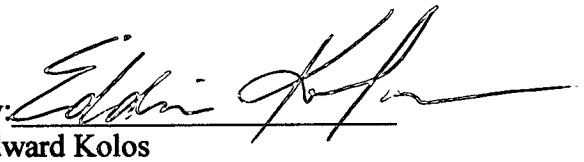
35. Identify the name, address and telephone number of each and any third party Opposer has paid for the use of any trademark, service mark, trade name and/or trade dress. For each such person identified that is a representative of a business entity, please state the name, address and telephone number of such business entity.

RESPONSE:

36. Identify the name, address and telephone number of each and any third party that Opposer has received compensation from in any form related to the use of any trademark, service mark, trade name and/or trade dress.

RESPONSE:

Respectfully Submitted,
Edward Kolos

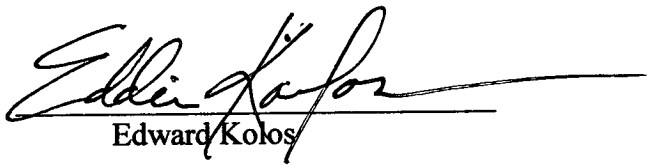
By: 
Edward Kolos

6151 Shadow Tree Lane
Lake Worth, Florida 33463
(561) 649-6151

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing FIRST SET OF INTERROGATORIES TO OPPOSER has been served upon Opposer's attorney, Doug N. Masters, Loeb & Loeb, LLP, 321 North Clark Street, Suite 2300, Chicago, IL, 60610, the address designated by said attorney for that purpose by depositing a true copy thereof with the United States Postal Service as first-class mail on October 15, 2007.

**Date: October 15, 2007**

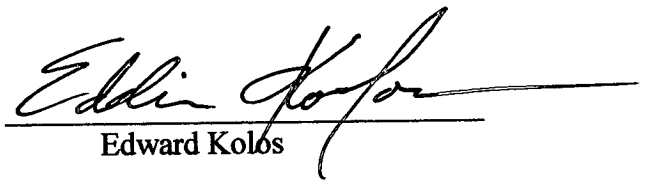


Edward Kolos

## CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing FIRST SET OF INTERROGATORIES TO OPPOSER has been filed electronically with the United States Patent and Trademark Office.

**Date: October 15, 2007**



Edward Kolos

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

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| CKX, Inc. | ) | Opposition No. 91178593 |
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| Edward Kolos | ) | |
| Applicant/Registrant | ) | Registration Nos. 2,880,750; 3,167,267 |

APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER

To: Opposer, CKX, Inc., and its attorneys, Douglas N. Masters, Loeb and Loeb. LLP, 321 North Clark Street, Suite 2300, Chicago, IL 60610.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant, Edward Kolos ("Applicant"), hereby requests that Opposer, CKX, Inc., ("Opposer"), produce for inspection and copying the following documents and other tangible things within the possession, custody or control of Opposer. These documents and things (or copies of them) should be made available at the residence of Edward Kolos, 6151 Shadow Tree Lane, Lake Worth, Florida 33463, within thirty days after service of this request, or at such other time and place as may be mutually agreed to by both parties.

The document requests shall be deemed continuing consistent with the Federal Rules and Trademark Rules of Practice so that any additional documents relating in any way to the subject matter of any of these requests which Opposer acquires or which become known to Opposer up to and including the time of trial shall be furnished to Applicant immediately after such documents are acquired or become known.

For the convenience of the Board and the parties, Applicant requests that each document request be quoted in full immediately preceding the response.

## DEFINITIONS

The following words and terms, when used in these Interrogatories, shall have the following meanings:

A. "Opposer" shall each mean CKX, Inc. and all other persons acting or purporting to act on behalf of it, as well as its affiliates, subsidiaries, divisions, firms, owners, managers, officers, directors, sub-contractors, employees, agents, representatives, licensees, licensor, assigns, accountants, and lawyers.

B. "Applicant" shall mean Edward Kolos.

C. "You" or "your" means Opposer as defined above.

D. The term "document" shall have the broadest and most comprehensive meaning permitted by Rule 34 of the Federal Rules of Civil Procedure.

E. The term "identify," to give the "identity" of, or to "describe" mean, in general, to give the fullest description known or ascertainable by Opposer, whether or not in the possession of Opposer and whether or not alleged to be privileged.

F. "Person" and "persons" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; partnership; firm; association; or other form of business entity; charitable, educational, governmental, or other non-profit institution, foundation body, or other organization; and shall include the entity itself, its officers, directors, employees, staff members, agents, representatives of all kinds (including, but not limited to legal representatives), and consultants.

G. "Applicant's Marks" means the marks: VET AID depicted in Serial No. 77/040,837; FIRST IN FIRST AID depicted in Serial No. 77/083,166; LEMON ICE depicted in Serial No. 77/011,937; E.N.R.G. depicted in Serial No. 77/092,008; H2OCEAN and Design depicted in Registration No. 2,880,750; H2OCEAN depicted in Registration No. 3,167,267.

H. "License" refers to any grant, acknowledgment, or permission, oral or written, of the right to use a mark.

I. "State" when used with a reference to a particular subject matter means to declare and describe all facts that are known to you which refer or relate to that subject matter.

J. "Refers," "referring," "relates," or "relating" means embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, or having any logical or factual connection whatsoever with the subject matter in question.

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L. "Opposer's Marks" means any registered trademarks including applications to register a trademark by Opposer for any personal care products, food, and clothing, that will allegedly be damaged by the Registrant's applications to register VET AID (Serial No. 77/040,837), FIRST IN FIRST AID (Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), E.N.R.G. (Serial No. 77/092,008), and continued registration of H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167, 267), and all words, phrases, symbols, slogans, and/or designs used to identify Opposer as the source of said products, goods and/or services.

M. "Opposer's Goods" means any goods, including but limited to personal care products, food, and clothing which Opposer markets that would allegedly be damaged by the Registrant's applications to register VET AID (Serial No. 77/040,837), FIRST IN FIRST AID (Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), E.N.R.G. (Serial No. 77/092,008), and continued registration of H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167, 267), and all words, phrases, symbols, slogans, and/or designs used to identify Opposer as the source of said products, goods and/or services.

N. "Opposer's Services" means all services which CDK, Inc. renders that would allegedly be damaged by the Registrant's applications to register VET AID (Serial No. 77/040,837), FIRST IN FIRST AID (Serial No. 77/083,166), LEMON ICE (Serial No. 77/011, 937), E.N.R.G. (Serial No. 77/092,008), and continued registration of H2OCEAN and Design (Registration No. 2,880,750) and H2OCEAN (Registration No. 3,167, 267), and all words, phrases, symbols, slogans, and/or designs used to identify Opposer as the source of said products, goods and/or services.

O. The term "identify" in relation to: (a) a person requests the name, address, telephone number and last known employer; (b) an entity requests the name, address, telephone number and contact person; and (c) a document requests the author, all recipients, the date, current custodian and a brief description of the subject matter of the document.

## REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1: All documents bearing, referring to, or relating to Opposer's Marks.

REQUEST NO. 2: All documents that evidence, refer to, or relate to the selection, clearance, or adoption of Opposer's Marks.

REQUEST NO. 3: All documents sufficient to identify the persons involved in the conception, evaluation, clearance, development, or selection of Opposer's Marks.

REQUEST NO. 4: All documents that evidence, refer to, or relate to any application to register Opposer's Marks with the United States Patent and Trademark Office or with any state.

REQUEST NO. 5: All documents that evidence, refer to, or relate to any communications with the United States Patent and Trademark Office or any state agency or office in connection with Opposer's Marks.

REQUEST NO. 6: All documents that describe, discuss, or relate to any changes, modifications, or variations in Opposer's Marks since you first adopted them.

REQUEST NO. 7: All documents that describe, discuss, or relate to the development of graphics, packaging, trade dress, or designer label that you use with respect to products bearing Opposer's Marks.

REQUEST NO. 8: For each of Opposer's Marks, documents sufficient to show all the products and services Opposer has sold, currently sells, and intends to sell under the mark.

REQUEST NO. 9: For each of the Opposer's Marks, documents sufficient to identify the date on which you commenced use of the mark for each separate line or category of products on which the mark has been used.

REQUEST NO. 10: For each of the Opposer's Marks, documents sufficient to show the geographic area in which you have sold or currently sell products or services under the mark..

REQUEST NO. 11: For each of the Opposer's Marks, documents sufficient to identify and describe the channels of trade through which products sold under the mark are sold or distributed.

REQUEST NO. 12: For each of the Opposer's Marks, documents sufficient to show the price at chich each separate product or line of products has been sold under the mark from the date of first use to the present.

REQUEST NO. 13: For each of Opposer's Marks, document sufficient to show the actual unit and dollar sales of each separate product or lone of products sold under the mark from the date of first use to the present.

REQUEST NO. 14: All documents and things that reflect, refer to, relate to, or evidence any studies, searches, investigations and legal opinions, whether or not a claim of privilege is made, conducted or prepared with respect to Opposer's Marks, including, but limited to, those conducted or prepared to determine the availability or the protectibility of Opposer's Marks, or to determine the existence of any possible conflicts, legal or otherwise. If a claim of privilege is made, identify the documents for which such a claim is made and the basis for the claim.

REQUEST NO. 15: All documents and things identifying or relating to all trade shows, symposia, seminars, or other meetings of two or more people at which you have advertised, promoted, marketed, offered for sale, or discussed any goods or services provided or intended to be provided under or in connection with Opposer's Mark's.

REQUEST NO. 16: Documents sufficient to identify and describe the demographics of the customers of Opposer's Goods and Opposer's Services.

REQUEST NO. 17: Documents sufficient to identify and describe the target or intended customers of Opposer's Goods and Opposer's Services.

REQUEST NO 18: Documents sufficient to identify the market that you target in your marketing, promotional, or advertising efforts with respect to products bearing Opposer's Marks.

REQUEST NO. 19: Documents sufficient to identify the types of classes of persons who make the decisions to purchase the products or services Opposer offers under Opposer's Marks.

REQUEST NO. 20: All documents that evidence, refer to, or relate to the types of purchasers, end users, expected purchasers, or expected end users of Opposer's Goods for:

REQUEST NO. 21: All documents and things concerning, involving, or otherwise relating to the manner in which Opposer's customers or prospective customers come to the decision to purchase products or services sold under either Opposer's Marks, including documents reflecting the types of people who made these decisions, their job responsibilities, and the procedures and bases under which they made these decisions.

REQUEST NO. 22: All documents identifying or relating to your sales agent, sales representatives, or any other person who has offered to sell or has sold any of Opposer's Goods in connection with Opposer's Marks.

REQUEST NO. 23: All documents that reflect, refer to, relate to, or evidence any communication with any advertising agency or public relation firm regarding Opposer's Marks or any product or service offered under Opposer's Marks.

REQUEST NO. 24: All documents and things that reflect, refer to, relate to, evidence, or consist of press releases, articles from trade publications, news stories and/or news clippings, regardless of medium, referencing or containing Opposer's Marks.

REQUEST NO. 25: All visual identity manuals, brand identity manuals, or trademarks/service marks manuals that concern, refer to, or relate to Opposer's Marks.

REQUEST NO. 26: All documents that describe, discuss, or relate to any assignment of Opposer's Marks.

REQUEST NO. 27: All documents that describe, discuss, or relate to any license of Opposer's Marks.

REQUEST NO. 28: All documents that describe, discuss, or relate to communication from or to consumers (including complaints), correspondence, or consumer relations regarding any product or service sold under Opposer's Marks.

REQUEST NO. 29: For each of Opposer's Marks, all documents that reflect, refer to, relate to, or evidence instructions given to or received from employees, agents, customers, licensees, a licensor, or any other third party relating to the use of the mark.

REQUEST NO. 30: For each of Opposer's Marks, documents sufficient to show the advertising and promotional channels through which the products or services offered under the mark advertised and promoted.

REQUEST NO. 31: For each of Opposer's Marks, documents sufficient to identify and quantify all actual marketing, promotional, or advertising efforts or activities, including money spent, with respect to any products bearing the mark from the date of first use to present.

REQUEST NO. 32: For each of Opposer's Marks, all documents that evidence, refer to, or relate to the advertising and promotional means used by Opposer to advertise and promote the products or services offered under the Opposer's Marks.

REQUEST NO. 33: For each of Opposer's Marks, representative samples of each advertising or promotional item containing the mark used by Opposer to advertise or promote the products or services offered under the mark.

REQUEST NO. 34: An original of each and every label, tag, decal, imprint, package, package insert, wrapper, container, or display on which Opposer's Mark's have appeared.

REQUEST NO. 35: All documents that evidence, refer to, or relate to any public opinion poll, report, study, focus group, survey, market research, or other analysis concerning Opposer's Marks.

REQUEST NO. 36: All documents that describe, discuss, or relate to any consumer research performed in connection with Opposer's Marks, including but not limited to any such consumer research to determine whether or not there is a likelihood of consumer confusion between Applicant's Marks and Opposer's Marks or any of its products.

REQUEST NO. 37: All document and things concerning any exposure that consumers have to Opposer's Marks.

REQUEST NO. 38: All documents relating to any assertions , interactions, or claims by or against you, other than assertions, interactions or claims involving Applicant that Opposer's Marks are similar to another mark, that another mark is similar to Opposer's Marks, that your rights in Opposer's Marks are limited in any way due to the existence of another mark, that your rights in Opposer's Marks are extinguished in any way due to the existence of another mark, or that your use of Opposer's Marks infringes the rights of another person.

REQUEST NO. 39: All documents relating to each and every action taken by Opposer against another person regarding that person's use or intended use of the term "H2Ocean" or any similar term as, or as part of, any trademarks, service marks, trade name, trade dress, or Internet domain name.

REQUEST NO. 40: All documents and things that reflect, refer to, relate to, or evidence any instances of actual or possible confusion or mistake of third persons in the public as to a possible relationship between the products or services of Opposer and the products or services of Applicant.

REQUEST NO. 41: All documents that relate to any incidence of actual or possible confusion between Opposer and Applicant, as to source, sponsorship, connection, affiliation, or approval.

REQUEST NO. 42: All documents that relate to any incidence involving persons inquiring or commenting about ay possible relationship between Opposer and Applicant.

REQUEST NO. 43: All documents and things provided to you or relied upon by any expert witness who has been retained as a consulting or testifying expert in connection with this proceeding.

REQUEST NO. 44: All documents referring or relating to inquiries, investigations, complaints, actions, or the like by government agencies concerning Opposer's Marks, the products offered under Opposer's Marks, and/or the advertising of the products offered under Opposer's Marks.

REQUEST NO. 45: All documents identified or relied upon by Opposer in any responses to Applicant's First Set of Interrogatories.

REQUEST NO. 46: All documents, other than those produced in response to any of the foregoing requests, upon which Opposer intends to rely in connection with this proceeding.

Respectfully Submitted,
Edward Kolos

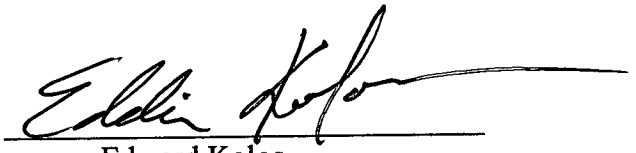
By:
Edward Kolos

6151 Shadow Tree Lane
Lake Worth, Florida 33463
(561) 649-6151

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER has been served upon Opposer's attorney, Doug N. Masters, Loeb & Loeb, LLP, 321 North Clark Street, Suite 2300, Chicago, IL, 60610, the address designated by said attorney for that purpose by depositing a true copy thereof with the United States Postal Service as first-class mail on October 15, 2007.

**Date: October 15, 2007**

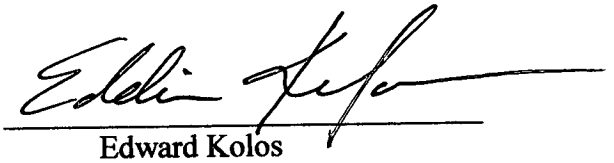


Edward Kolos

## CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER has been filed electronically with the United States Patent and Trademark Office.

**Date: October 15, 2007**



Edward Kolos