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

Proceeding	91181182
Party	Plaintiff Burt's Bees, Inc.
Correspondence Address	Joseph H. Nanney Jr. Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail, Suite 300 Raleigh, NC 27607 UNITED STATES jnanney@wyrick.com, rjones@wyrick.com
Submission	Motion to Compel Discovery
Filer's Name	Joseph H. Nanney, Jr.
Filer's e-mail	jnanney@wyrick.com, srijo@wyrick.com
Signature	/JHN/
Date	08/06/2008
Attachments	Exhibit A - Opposer's 1st Set of Interrogatories.pdf (17 pages)(735371 bytes) Exhibit B - Opposer's 1st RFP.pdf (17 pages)(803453 bytes) Exhibit C - Opposer's Good Faith Ltr.pdf (3 pages)(258629 bytes)

Burt's Bees, Inc. v. Kenneth M. Noskin
Opposition No.: 91181182
Serial No.: 78922447
Mark: Bee Healthy

OPPOSER'S EXHIBIT
"A"

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

BURT'S BEES, INC.

Opposer,

Opposition No. 91181182
Serial No. 78/922,447

v.

KENNETH M. NOSKIN,

Applicant.

_____/

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer Burt's Bees, Inc. (hereinafter, "Opposer" or "Burt's Bees"), by and through its undersigned counsel, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, hereby submits the following First Set of Interrogatories (the "Interrogatories") directed to Applicant Kenneth M. Noskin (hereinafter, "Applicant" or "Noskin"), to be answered separately, in writing, under oath, and within the time prescribed by the aforesaid Rules, in accordance with the Definitions and Instructions set forth below.

DEFINITIONS AND INSTRUCTIONS

1. The term "Applicant" means and shall refer individually and collectively to Applicant Kenneth M. Noskin herein, each of his predecessors, subsidiaries, licenses, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on his behalf or under his control.

2. The term "Opposer" means and shall refer to Opposer Burt's Bees, Inc. ("Burt's Bees") herein, each of its predecessors, subsidiaries, licenses, divisions,

affiliates, directors, officers, employees, agents and attorneys and each person acting on its behalf or under its control.

3. The term "Person" as well as pronouns referring thereto shall include any business, legal or governmental entity or association, as well as natural persons.

4. The term "identify" or the phrase "give the identity of" shall mean:

a. In the case of a natural person: (1) his or her full name; (2) his or her present or last known address and telephone number; (3) his or her present or last known employer or business affiliation and business telephone number; (4) the title(s) or position(s) held at any time by such person with respect to such employer or business affiliation; and (5) the duties and responsibilities of such person within the position they held.

b. In the case of a corporation, business entity, or organization: (1) its full name; (2) the address of its principal place of business; (3) the identity of any and all of its officers, directors, and managing agents; and (4) if unincorporated, the nature of the entity or organization, i.e., sole proprietorship, partnership, etc.;

c. In the case of a document; (1) the author(s) of the document; (2) any and all persons who sent and/or received such document (including copies); (3) the date of such document; (4) the general subject matter of such document; (5) the date of preparation; (6) the date(s) and manner of distribution and publication, if any; (7) the location(s) of each copy and the identity of the present custodian(s); (8) the identity of person(s) who can identify it; (9) the contents of the document verbatim (in lieu of this

potion, a copy of the document may be supplied); and (10) if a privilege is claimed the specific basis therefore.

d. In the case of a product: (1) the generic name of the product; (2) the function of the product; and (3) the inclusive dates during which the product has been sold or offered for sale in the United States;

e. In the case of an instance or incident: (1) the identity of each person who participated in or who has knowledge of the instance or incident; (2) the circumstances surrounding the instance or incident; and (3) the date or the inclusive dates during which the instance or incident occurred.

5. The term "document" includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means, regardless of technology or form, and is used in its customary broad sense to include without limitation, the following items, whether printed, recorded, filmed, reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy, namely: agreements, communications, including intracompany communications; correspondence; cablegrams, radiograms and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings, and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications, and diaries, laboratory and engineering reports and notebooks; charts; plans; sketches and drawings; photographs; and other graphic reproductions; reports and/or summaries or investigations and/or surveys; opinions and reports of consultants; opinions of counsel;

reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets; advertisement; circulars, trade letters; press, publicity, trade and products releases; work sheets; bulletins; instructions; reports; drafts of original or preliminary notes on, and marginal comments appearing on, any document; other reports and records; and any other information containing paper, writing, or other physical things.

6. The term "date" means the exact date, if known, and, if not known, the approximate date.

7. With respect to each interrogatory to which an objection is made, state the specific grounds of the objection and answer any portion of the interrogatory which does not fall within the stated objection.

8. The terms "all" and "each" shall be construed as all and each to bring within the scope of the discovery request all responses that might be construed to be outside of its scope.

9. The term "Applicant's Mark" means and shall refer to Applicant's standard character mark "BEE HEALTHY," United States Trademark Application Serial Number 78/922,447, which is the subject of the instant Opposition proceeding.

10. The term "Opposer's Mark(s)" means and shall refer to Opposer's marks "BURT'S BEES" and "BABY BEE" Trademark Registration Numbers 2,171,302 and 2,169,521, respectively.

INTERROGATORIES

1. State the full name, address and title of the person(s) answering these Interrogatories on behalf of Applicant.

ANSWER:

2. State with specificity whether Applicant has applied to register or has registered the mark "Bee Healthy" in any State of the United States, and, if so, provide the following:

a. The identity of all States in which such term has been registered or in which an application to register the same has been filed;

b. The registration number and the application number of each such registration and application in each such State;

c. The date on which each such registration was obtained and the date on which each such application was filed;

d. The goods or services for which use is claimed in each such registration and application; and

e. The identity of all documents relating to each such registration and application.

ANSWER:

3. Identify all advertising and promotional materials that Applicant has created or used in connection with the use, sales and/or promotions of Applicant's Mark.

ANSWER:

4. Identify each publication or item of advertising or promotion material in which Applicant has advertised or promoted or will advertise or promote Applicant's subject product, including the date of each such publication or item of advertising or promotional material and the type of persons to whom the item was distributed.

ANSWER:

5. Identify all persons who participated in the development, design, adoption and use of the Applicant's Mark.

ANSWER:

6. Identify all persons or entities that are responsible for, or in any manner involved in, the advertisement and promotion of the Applicant's Mark.

ANSWER:

7. Describe the packaging of all goods on which you use, have used, or plan to use, Applicant's Mark, including descriptions of the style, font, size, and color of letters of the word(s) in Applicant's Mark, as well as descriptions of all symbols, pictures, and designs that will appear on the packaging of the goods.

ANSWER:

8. Identify with specificity the channels of trade through which products and/or services offered for sale or sold using Applicant's Mark will travel from Applicant to the ultimate consumers of the products in the United States.

ANSWER:

9. State with specificity the advertising and marketing budgets for the years 2007, 2008, and 2009 for any goods or services using Applicant's Mark.

ANSWER:

10. State whether any goods or services using Applicant's Mark use or incorporate any substances from honey bees, including but not limited to honey, bee hives. If so, identify with specificity the goods that will use the substances, and for each good identified, state what substance from bees will be used in that product.

ANSWER:

Respectfully submitted this 10th day of June, 2008.

WYRICK ROBBINS YATES & PONTON LLP

Joseph H. Nanney, Jr.
NC Bar No. 18355
P.O. Drawer 17803 (27619)
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607-7506
Telephone No. (919) 781-4000
Facsimile No. (919) 781-4865

COUNSEL FOR OPPOSER BURT'S BEES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Opposer's First Set of Interrogatories Directed to Applicant was served on this 10th day of June, 2008, upon Applicant, at the adders of record, by U.S. Mail, postage-prepaid, as follows:

Kenneth M. Noskin
217 East 86th Street
Suite 345
New York, NY 10028
E-Mail: kenn@nyc.rr.com

Joseph H. Nanney, Jr.

Burt's Bees, Inc. v. Kenneth M. Noskin
Opposition No.: 91181182
Serial No.: 78922447
Mark: Bee Healthy

OPPOSER'S EXHIBIT "B"

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

BURT'S BEES, INC.

Opposer,

Opposition No. 91181182
Serial No. 78922447

v.

KENNETH M. NOSKIN,

Applicant.

_____/

OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT

Opposer Burt's Bees, Inc. (hereinafter, "Opposer" or "Burt's Bees"), by and through its undersigned counsel, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, hereby submits the following First Request for Production of Documents (the "Requests") directed to Applicant Kenneth M. Noskin (hereinafter, "Applicant" or "Noskin"), to be produced at the offices of undersigned counsel, within the time prescribed by the aforesaid Rules, in accordance with the Definitions and Instructions set forth below. Documents to which a proper claim of privilege can be substantiated are expressly excluded from this request, except that Opposer requests that Applicant identify all documents for which privilege is claimed, and specify the exact grounds on which the claim for privilege is based.

DEFINITIONS AND INSTRUCTIONS

1. The term "Applicant" means an shall refer individually and collectively to Applicant Kenneth M. Noskin herein, each of his predecessors, subsidiaries, licenses, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on his behalf or under his control.

2. The term "Opposer" means and shall refer to Opposer Burt's Bees, Inc. ("Burt's Bees") herein, each of its predecessors, subsidiaries, licenses, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on its behalf or under its control.

3. The term "Person" as well as pronouns referring thereto shall include any business, legal or governmental entity or association, as well as natural persons.

4. The term "document" includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means, regardless of technology or form, and is used in its customary broad sense to include without limitation, the following items, whether printed, recorded, filmed, reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy, namely: agreements, communications, including intracompany communications; correspondence; cablegrams, radiograms and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings, and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications, and diaries, laboratory and engineering reports and notebooks; charts; plans; sketches and

drawings; photographs; and other graphic reproductions; reports and/or summaries or investigations and/or surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets; advertisement; circulars, trade letters; press, publicity, trade and products releases; work sheets; bulletins; instructions; reports; drafts of original or preliminary notes on, and marginal comments appearing on, any document; other reports and records; and any other information containing paper, writing, or other physical things.

If Applicant is aware that a document or a group of documents once existed but has been destroyed, this should be stated, and it should also be stated who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

5. With respect to each Request to which an objection is made, state the specific grounds of the objection and answer any portion of the Request which does not fall within the stated objection.

6. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate the answer to the Request.

7. The terms "all" and "each" shall be construed as all and each to bring within the scope of the discovery request all responses that might be construed to be outside of its scope.

8. As used herein, the term "Applicant's Mark" means and shall refer to Applicant's standard character mark "BEE HEALTHY," United States Trademark Application Serial Number 78/922,447, which is the subject of the instant Opposition proceeding.

9. As used herein, the term "Opposer's Mark(s)" means and shall refer to Opposer's marks "BURT'S BEES" and "BABY BEE" Trademark Registration Numbers 2,171,302 and 2,169,521, respectively.

REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

1. Produce any and all documents identified in Applicant's response to Opposer's First Set of Interrogatories Numbers 1 through 9.

RESPONSE:

2. Produce any and all documents that refer to or reflect Applicant's application to register, or registration of, Applicant's Mark "Bee Healthy" in any State of the United States or with the United States Patent and Trademark Office.

RESPONSE:

3. Produce any and all documents that reflect or refer to the design, selection, adoption, creation and development of Applicant's Mark.

RESPONSE:

4. Produce any and all documents that reflect or refer to Opposer and/or Opposer's Mark.

RESPONSE:

5. Produce a specimen of each and every brochure, business plan, marketing plan, proposal, or other document created at any time that describes the business of Applicant and Applicant's plan for goods bearing Applicant's Mark.

RESPONSE:

6. Produce a specimen or photograph or each product, including the packaging for each product that has been, is being, or will be sold using Applicant's Mark.

RESPONSE:

7. Produce any and all documents that reflect or refer to the date on which Applicant began using Applicant's Mark for any goods or services in commerce in the United States, or that Applicant expects to begin using Applicant's mark for any goods or services in commerce in the United States in the future.

RESPONSE:

8. Produce any and all documents that reflect or refer to the creation of any advertising or promotional materials that have been or will be used by Applicant and that contain Applicant's Mark.

RESPONSE:

9. Produce any and all documents that reflect or refer to each trademark search, clearance or other inquiry conducted by or on behalf of Applicant that refers or relates to Applicant's Mark or any variation thereof.

RESPONSE:

10. Produce any and all documents that refer to or reflect each trademark search, clearance or other inquiry conducted by or on behalf of Applicant that refers or relates to Opposer or Opposer's Marks.

RESPONSE:

11. Produce any and all documents that refer to or reflect the channels of trade through which products and/or services have been or will be offered for sale or sold using Applicant's Mark, or that refer to or reflect how such goods and/or services travel or will travel from Applicant to the ultimate consumers of the products in the United States.

RESPONSE:

12. Produce any and all documents that reflect or refer to Applicant's estimated or projected gross income to be derived from the sale of products offered for sale or sold using Applicant's Mark in the United States.

RESPONSE:

13. Produce any and all documents that reflect or refer to the geographical locations in which Applicant offers for sale and sells, or will offer for sale and sell, each product using Applicants' Mark.

RESPONSE:

14. Provide a representative sample of each class or type of promotional material, including, but not limited to, advertisements, catalogs, brochures, posters, sales sheets, point of sale displays, flyers and price lists, which is, has been, or is intended to be used to promote products using Applicant's Mark in the United States.

RESPONSE:

15. Produce any and all documents describing or identifying the customers to whom goods bearing Applicant's Mark are or will be produced.

RESPONSE:

16. Produce any and all documents that reflect or refer to any assignments, license agreements, distribution agreements, sponsorship agreements, or any other agreement, whether in draft or final form, wherein Applicant allows, allowed, or will allow the use of Applicant's Mark by another.

RESPONSE:

17. Produce any and all documents that reflect or refer to communications between Applicant and any other individual or entity concerning Applicant's Mark and/or Opposer's Mark.

RESPONSE:

18. Produce each document created by any expert who has been retained or particularly employed by Applicant in connection with this Opposition, or who may offer testimony in this proceeding.

RESPONSE:

19. Produce copies of all documents that have been provided to any expert who has been retained or particularly employed by Applicant in connection with this Opposition, or who may offer testimony in this proceeding

RESPONSE:

20. For each expert whose opinion may be relied upon in this proceeding, produce any and all documents related to the following:

a. Any opinions that may be presented at trial;

b. The reasons for any such opinions

c. Any data or information considered by the witness in forming the opinions;

d. Any exhibits used in support of or summarizing the opinions;

e. The compensation being paid to the witness; and

f. Any cases which the witness has testified at trial or by deposition from 1996 to present date.

RESPONSE:

21. Produce any and all documents that reflect or refer to any disputes, disagreements, controversies and/or litigation, including administrative proceedings of any type, other than this proceeding, in which Applicant has been involved, either as a party or otherwise, including but not limited to proceedings that involved any trademark, service mark, trade name, or copyright claims of any kind.

RESPONSE:

22. Produce any and all documents that reflect or refer to the date on which Applicant began or plans to begin using Applicant's Mark for any goods or services in commerce in the United States.

RESPONSE:

23. Produce any and all documents that reflect or refer to the creation or design of any advertising or promotional materials that Applicant plans to use and that contain Applicant's Mark.

RESPONSE:

This 10th day of June, 2008.

WYRICK ROBBINS YATES & PONTON LLP

Joseph H. Nanney, Jr.
NC Bar No. 18355
P.O. Drawer 17803 (27619)
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607-7506
Telephone No. (919) 781-4000
Facsimile No. (919) 781-4865

COUNSEL FOR OPPOSER BURT'S BEES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Opposer's First Set of Interrogatories Directed to Applicant was served on this 10th day of June 2008, upon Applicant, at his address of record, by U.S. Mail, postage-prepaid, as follows:

Kenneth M. Noskin
217 East 86th Street
Suite 345
New York, NY 10028
E-Mail: kenn@nyc.rr.com

Joseph H. Nanney, Jr.

Burt's Bees, Inc. v. Kenneth M. Noskin
Opposition No.: 91181182
Serial No.: 78922447
Mark: Bee Healthy

OPPOSER'S EXHIBIT "C"

WYRICK
ROBBINS
YATES
&PONTON
LLP

ATTORNEYS AT LAW

The Summit
4101 Lake Boone Trail
Suite 300
Raleigh, NC 27607.7506

PO Drawer 17803
Raleigh, NC 27619

ph 919.781-4000
fax 919.781-4865
www.wyrick.com

KEVIN J. STANFIELD
kstanfield@wyrick.com

July 24, 2008

Via U.S. Certified Mail, Return Receipt Requested, and
Via U.S. Mail, First Class
Kenneth M. Noskin
217 East 86th Street
Suite 345
New York, NY 10028

Re: Burt's Bees, Inc. v. Kenneth M. Noskin
U.S. Patent and Trademark Office
Opposition No. 91181181

Dear Mr. Noskin:

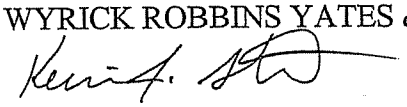
As you know, we represent Burt's Bees, Inc. ("Burt's Bees"). We have not yet received your responses to Burt's Bees' First Set of Interrogatories and Request for Production. The deadline for you to serve your responses to our discovery requests has passed. At this point, we consider your discovery responses untimely and all objections waived.

Please consider this letter as Burt's Bees' good faith effort to obtain your written discovery responses without the TTAB's involvement. If we have not received the requested discovery by Friday, August 1, 2008, we will have no choice but to proceed with a motion to compel.

Thank you for your attention to these important matters.

Sincerely,

WYRICK ROBBINS YATES & PONTON



Kevin J. Stanfield

cc: Joseph H. Nanney, Esq.

10489.163-544330 v1

2. Article Number

7160 3901 9846 1534 8539

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Kenneth M. Noskin
217 East 86th Street
Suite 345
New York, NY 10028

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery 9/12/08

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

PS Form 3811, January 2005 Domestic Return Receipt

10489.163 KJS