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

Proceeding	91181380
Party	Plaintiff E. & J. Gallo Winery
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

E. & J. GALLO WINERY, Opposer, v. MIMULANI AG Applicant.	**Opposition No. 91181380** Opposition No. 91181381 Opposition No. 91181383 Opposition No. 91181384 Opposition No. 91181385 Opposition No. 91181386 Opposition No. 91181388 (Consolidated)

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL

Opposer E. & J. Gallo Winery ("Opposer") hereby opposes the motion to compel filed by Applicant Mimulani AG ("Applicant"). Applicant did not make a good faith effort to "meet and confer" prior to filing its motion, as required by the Trademark Rules. Moreover, Applicant's position with regard to discovery has no merit.

FACTS

On November 11, 2008, Opposer served timely responses to Applicant's voluminous requests for admission, requests for production, and interrogatories.[1] [Reidl Decl., ¶ 2]

Over a month later, on December 16, Applicant's counsel, Mark Lebow, sent Opposer's Associate General Counsel, Paul W. Reidl, an email complaining about many of Opposer's responses. Later that same day, Mr. Reidl emailed a brief reply explaining that he was in New York on other pressing business that week and "unable to respond substantively" at that time, but would arrange to do so when he returned to his office in California. [Reidl Decl., ¶ 3]

Mr. Lebow replied that "we look forward to hearing back from you upon your return from

[1] Some of Opposer's responses are included as Exhibits G-L to Applicant's motion to compel. Opposer also served timely responses to additional sets of requests for admission and production. In total, Applicant served 170 discovery requests, and Opposer timely responded to all of them. [Reidl Decl., ¶ 2]

New York." [Reidl Decl., ¶ 4]

Three days later, another of Applicant's counsel, Jeff Goehring, sent Mr. Reidl an email stating that Applicant's own discovery responses – which had been overdue for several months – had been mailed to the wrong address. Mr. Goehring also cited three cases that he claimed supported one of the points raised in Mr. Lebow's December 16 email.[2] [Reidl Decl., ¶ 4]

The foregoing communications constitute the entirety of the parties' communications concerning Opposer's responses to Applicant's discovery requests. Applicant did not follow up with Opposer. Moreover, Applicant never asked for a response to Mr. Lebow's December 16 email by a specific date. [Reidl Decl., ¶ 5; *see* Mot., pp. 1-2]

Upon Mr. Reidl's return to his office during the holiday-shortened work week of December 22, Opposer engaged outside counsel, Peter Harvey of Harvey Siskind LLP, to handle this matter and to respond to opposing counsel. On the morning of Monday, December 29, Mr. Harvey left voicemails for Messrs. Lebow and Goehring identifying himself as new counsel for Opposer and requesting a return call to discuss pending discovery matters. At that point Mr. Harvey and his firm had already researched various legal issues in connection with Applicant's discovery requests and Opposer's responses, including points raised in Mr. Lebow's December 16 email. [Harvey Decl., ¶ 2]

Having no response to his voicemail messages to Mr. Lebow and Mr. Goehring, Mr. Harvey sent them both an email that afternoon requesting that they contact him "as soon as possible." [Harvey Decl., ¶ 3]

Mssrs. Lebow and Goehring did not respond to Mr. Harvey's voicemails or email. Instead, the following day, while Mr. Harvey awaited a return call, Applicant filed the present motion to compel. [Harvey Decl., ¶ 4]

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[2] Applicant's failure to properly serve responses to Opposer's discovery requests is discussed in more detail in Opposer's motion to reopen and supporting declarations, filed on December 31, 2008. Mr. Goehring's December 19 email is attached as Exhibit A to Mr. Reidl's declaration in support of that motion.

On December 31—the day after Applicant filed its motion to compel—Mr. Lebow sent an email to Mr. Harvey acknowledging that he had received Mr. Harvey call on December 29. Mr. Lebow stated that Applicant had nonetheless filed its motion, and he attached a "courtesy copy." [Harvey Decl., ¶ 4]

The events described above do not come close to satisfying Applicant's good faith "meet and confer" obligations under the Trademark Rules. Instead, Applicant implemented a calculated strategy to avoid these obligations. The whole point of the "meet and confer" requirement is to narrow the parties' differences and focus their discovery disputes, to save time and avoid wasting Board resources. It is not a game to be won by sharp maneuvering. Because Applicant has so blatantly flaunted its duties here, the Board must deny its motion to compel.

Insofar as the Board chooses to consider the substance of Applicant's motion, it should nevertheless deny it in its entirety, as Opposer's discovery responses are sufficient.

ARGUMENT

A. Applicant Did Not Make a Good Faith Effort to "Meet and Confer" Before Bringing its Motion to Compel.

The Trademark Rules are clear:

> A motion to compel . . . discovery must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences.

37 CFR § 2.1119(e). There has been no such good faith effort here. Applicant filed the present motion despite Opposer's assurance that Opposer would promptly provide a substantive response to Applicant's concerns. Moreover, ***Applicant filed the present motion despite voicemails and an email from Opposer's counsel the previous day, which Applicant's counsel did not return until after filing its motion to compel.***

Applicant acknowledges that Mr. Reidl's December 16 email was "preliminary." [Mot., p. 1] Yet Applicant inexplicably maintains that it has satisfied the "meet and confer"

requirement. It has not.[3]

In light of Mr. Reidl's December 16 email, it was incumbent on Applicant to wait for Opposer's substantive response to Mr. Lebow's December 16 email before moving to compel. If Applicant truly believed that no such response was forthcoming, and it now claims, it had an obligation to follow up with Opposer before filing its motion. Not only did Applicant not follow up with Opposer; Applicant ignored multiple communications from Opposer's new counsel on December 29 requesting that Applicant's counsel call him.

Applicant made no serious attempt to "meet and confer," and it in fact evaded Opposer's attempt to do so.

Applicant has not fulfilled its "meet and confer" obligations, and the Board should reject Applicant's motion on that basis alone. *MacMillan Bloedel Limited v. Arrow-M Corporation*, 203 USPQ 952, 954 (TTAB 1979) ("Inasmuch as applicant has indicated that no attempt was made to resolve the matter raised in the instant motion to compel prior to the filing thereof, the motion will be given no consideration at the present time.").

Had Applicant allowed the "meet and confer" process to run its course, at the very least the parties would have been able to narrow the issues in dispute. Instead, Applicant burdens the Board by asking it to consider 60 different requests and responses.

In *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 1986 TTAB LEXIS 94 (TTAB 1986), the Board explained:

> When the Trademark Rules of Practices were amended . . . to substantially adopt for use in cases such as this the liberal discovery procedures provided under the Federal Rules of Civil Procedure, it was contemplated that parties would seriously endeavor to cooperate with one another in the discovery process. . . . [W]here the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve

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[3] The proper remedy where a party is dissatisfied with responses to requests for admission is a motion to test the sufficiency of responses, not a motion to compel. 37 CFR § 2.120(h). As with a motion to compel, a motion to test the sufficiency of responses "must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement." *Id.*

> their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement. Inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.

Id., at *4-6.

In particular, the Board faulted opposer for sending a letter disputing applicant's objections, but then bringing a motion to compel without waiting for applicant's response.

> Opposer, while attempting by its correspondence of August 7, 1985 to resolve the dispute, did not even wait for a reply thereto before filing its motion to compel. While we understand opposer's concern over the running of dates, a motion to extend time to allow the parties to engage in an effort to settle the discovery dispute would have been proper. As a consequence, the parties and the Board have been saddled with needless motions to compel which, in the Board's view, would have been avoided had the parties sought to deal with each other in a good faith cooperative manner, as, for example, by seeking to eliminate by agreement those interrogatories or production requests that both felt to be objectionable.

Id., at *7.

As in *Sentrol*, Applicant here is wasting the Board's time and resources by bringing a motion to compel without first making a good faith effort to resolve the parties' discovery dispute amicably. The Board should not tolerate this abuse of the discovery process. It should deny Applicant's motion.

B. Opposer's Responses to Applicant's Discovery Requests are Sufficient.

In the event the Board chooses to consider the substance of Applicant's motion to compel, it should nevertheless deny the motion in its entirety. Opposer's responses to Applicant's discovery requests are satisfactory, and its objections are justified—as Opposer would have explained to Applicant, had the parties engaged in the required "meet and confer" process.

1. Applicant's Request for Admission Nos. 5, 23, and 26, and Request for Production No. 1 [Mot., pp. 2-3]

Applicant's request for admission Nos. 5, 23, and 26 ask Opposer to admit that it has not opposed, petitioned to cancel, or otherwise challenged certain trademarks. These requests are

compound and disjunctive, and objectionable on that basis. *See United States ex rel. Englund v. Los Angeles*, 235 F.R.D. 675, 684 (E.D. Cal. 2006) ("Requests for admissions may not contain compound, conjunctive, or disjunctive (e.g., 'and/or') statements.").

Subject to its general objections, Opposer responded to request for admission Nos. 5, 23, and 26 by specifically admitting these matters in part, and denying them in part. Even if Applicant's requests were proper, there would be nothing improper about Opposer's responses. *See* FRCP 36(a)(4) ("when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest").[4]

Opposer stated in response to Applicant's request for production No. 1 that it will produce a document in support of its partial denial regarding request for admission No. 23. It still intends to do so. Applicant assumes without any apparent basis that Opposer has documents in support of its partial denial of request for admission Nos. 5 and 26. To the extent that any such documents exist, and are within the scope of discovery, Opposer intends to produce them as well.

The timing and other details concerning production of documents are regularly determined by the parties, acting in good faith. Applicant's decision to needlessly involve the Board in this routine matter is wasteful, and insulting to both Opposer and the Board.

Applicant's complaint that Opposer has not yet produced documents pertaining to request for admission No. 23 is particularly troubling since Applicant itself has not produced any documents in response to Opposer's document requests, even though it agreed to do so in its responses, which are dated October 6, 2008—that is, *over three months ago*. [Reidl Decl., ¶ 6] [5]

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[4] By way of example, Applicant's request for admission No. 5 asks Opposer to "admit that Opposer did not oppose the third party registration referenced in Request No. 4 above, has not petitioned for cancellation of it, and has not otherwise challenged the use of said mark in U.S. commerce." Opposer responded: "Subject to the General Objections, Opposer admits that it neither opposed nor petitioned to cancel [that] registration, but denies the remainder of Request for Admission No. 5." This response is precisely what the rules call for.

[5] As discussed in Opposer's motion to reopen and supporting declarations, Opposer did not receive Applicant's responses until December 19.

2. Applicant's Interrogatory Nos. 3 and 4, and Request for Production Nos. 4 and 5 [Mot., pp. 3-4]

Applicant's interrogatory Nos. 3 and 4, and request for production Nos. 4 and 5, ask Opposer to identify and produce agreements between Opposer and third parties. These discovery requests are not limited in geographic scope and therefore, as Applicant admits in its motion, they "encompass agreements relating to any jurisdiction, foreign and domestic." Opposer has objected to these requests because, *inter alia*, they are overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Most if not all of the agreements called for by these requests, such as agreements between Opposer and third parties concerning trademarks that are not at issue here (*see* interrogatory No. 3), simply have no bearing on the present dispute.

Moreover, use of marks outside the U.S. (and Opposer's agreements concerning the same) does not have any impact on Opposer's trademark rights within the U.S., which is all that matters for purposes of this proceeding. Therefore, any information or documents concerning use outside the U.S. is not discoverable. *See* TBMP § 414(13) ("information concerning a party's foreign use of its involved mark is usually irrelevant to the issues in a Board proceeding, and thus not discoverable").

It is fundamental that trademark law is territorial. *See* 5 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 29:1 at 29-4 ("In the United States, the rule of territoriality of marks 'is basic to American trademark law.'"). Thus, in *Double J of Broward, Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1991 TTAB LEXIS 44 (TTAB 1991), the Board granted Applicant's motion for a protective order "to the extent that applicant need not answer the discovery requests as they relate to foreign activities." *Id.*, at *14. It explained: "Information concerning applicant's foreign activities, including foreign trademark applications and/or registrations, is not relevant to the issues in an opposition proceeding." *Id.*, at *12-13. Similarly, Opposer is not be required to provide information or documents concerning foreign use here.

3. Applicant's Request for Admission Nos. 59, 61, 62, 65, 68, 71, 75, 78, 79, 80, 84, 88, 92, 95, 99, 103, 106, 109, and 112 [Mot., pp. 4]

Applicant's request for admission Nos. 59, 61, 62, 65, 68, 71, 75, 78, 79, 80, 84, 88, 92, 95, 99, 103, 106, 109, and 112 ask Opposer to admit that Applicant's exhibits "fairly and accurately" represent printouts from the USPTO database concerning various third party registrations. Opposer has objected to and denied these requests. Opposer has no obligation to search the USPTO database to confirm (or dispute) the accuracy of the Applicant's exhibits. *See* TBMP § 414(9) ("Information concerning a party's awareness of third-party use and/or registration of the same or similar marks for the same or closely related goods or services as an involved mark, is discoverable to the extent that the responding party has actual knowledge thereof (without performing an investigation) and that the information appears to be reasonably calculated to lead to the discovery of admissible evidence.").

Opposer has no personal knowledge of the matters raised in request Nos. 59, 61, 62, 65, 68, 71, 75, 78, 79, 80, 84, 88, 92, 95, 99, 103, 106, 109, and 112, and therefore it cannot admit these matters. *See T. Rowe Price Small-Cap Fund v. Oppenheimer & Co.*, 174 F.R.D. 38, 44 (S.D.N.Y. 1997) ("'reasonable inquiry' is limited to review and inquiry of those persons and documents that are within the responding party's control"). *Cf. Bouchard v. United States*, 241 F.R.D. 72, 76-77 (D. Me. 2007) (ordering responding to party to admit or deny authenticity of "documents [that] reflect events in [his] life," since he "either has personal knowledge of the events documented in these records or he has the legal authority to obtain confirmation as to their authenticity, genuineness, and completeness.").[6]

4. Applicant's Request for Admission Nos. 63, 66, 69, 72, 76, 81, 85, 89, 93, 96, 100, 104, 107, 110, and 113 [Mot., pp. 4-5]

Applicant's request for admission Nos. 63, 66, 69, 72, 76, 81, 85, 89, 93, 96, 100, 104,

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[6] Request for admission Nos. 59, 61, 62, 65, 68, 71, 75, 78, 79, 80, 84, 88, 92, 95, 99, 103, 106, 109, and 112 are also improperly argumentative. *Cf. Stearns v. Flores*, 2006 U.S. Dist. LEXIS 50805, at *10 (E.D. Cal. 2006) ("Defendant has appropriately objected on the ground that the request is argumentative and seeks to compel Defendant to conduct legal research on Plaintiff's behalf.").

107, 110, and 113 ask Opposer to admit whether its lack of knowledge of use of certain marks is based on "lack of interest or inquiry." Opposer has objected on the ground that these requests are vague, misleading, and argumentative. Indeed, the "lack of interest or inquiry" language is so unclear that Opposer cannot possibly admit or deny the matter. For example, there is simply no way of knowing whether Opposer's "interest" level meets whatever "interest" threshold Applicant has in mind.

Applicant's "lack of interest or inquiry" language is not found in any statute or decision. Applicant apparently came up with this vague terminology in the hope of conveniently fitting Opposer's response into a brief, in order to lead (and likely to mislead) the Board its accepting its position. Moreover, the "lack of interest or inquiry" language is improperly argumentative, and the requests do not require a response on this additional basis. *See Willis v. Ritter*, 2007 U.S. Dist. LEXIS 62596, at *9 (S.D. Cal. 2006).

5. Applicant's Request for Admission Nos. 64, 67, 70, 73, 82, 86, 90, 94, 97, 101, 105, 108, 111, and 114 [Mot., pp. 5-6]

Applicant's request for admission Nos. 64, 67, 70, 73, 82, 86, 90, 94, 97, 101, 105, 108, 111, and 114 ask Opposer to search the USPTO's database to confirm (or dispute) the content of certain records. As with the requests discussed in Section 3 above, Opposer has objected to and denied these requests. Again, Opposer is under no obligation to investigate third party registrations. TBMP § 414(9). Again, Opposer has no personal knowledge of the matters raised in request Nos. 64, 67, 70, 73, 82, 86, 94, 97, 101, 105, 108, 111, and 114. *See T. Rowe Price Small-Cap Fund*,174 F.R.D. at 44; *Cf. Bouchard*, 241 F.R.D. at 76-77.

At any rate, to the extent that Opposer could find the registrations cited by Applicant in the USPTO's database, it would be in no better position to make any representations about them than Applicant. Therefore, Applicant's request for admission Nos. 64, 67, 70, 73, 82, 86, 94, 97, 101, 105, 108, 111, and 114 serve no purpose other than to harass Opposer and (Applicant hopes) to invoke responses that Applicant can use to mislead the Board.

6. Applicant's Request for Admission Nos. 74, 83, 87, 98, and 102 [Mot., pp. 6-7]

Applicant's request for admission Nos. 74, 83, 87, 90, 98, and 102 ask Opposer to admit that certain products are available for sale in commerce. Opposer has denied each of these requests. Based on Opposer's personal knowledge, after a reasonable inquiry, it has no basis for admitting the matters raised therein.

Applicant apparently expects Opposer to admit request Nos. 74, 83, 87, 90, 98, and 102 on the basis of web page printouts that Applicant has provided. Opposer has no affiliation with these web pages, and had never seen them prior to this proceeding. It has no way of knowing whether they are current or accurate. These web page printouts would not even be admissible at trial in this proceeding absent "the testimony of a person who can clearly and properly authenticate and identify [them], including identifying the nature, source and date of the materials." TBMP § 704.08. Clearly Opposer is not such a person.

CONCLUSION

For the reasons stated above, the Board should deny Applicant's motion to compel in its entirety.

Dated: January 21, 2009

Respectfully submitted,

HARVEY SISKIND LLP

/s/

By: Seth I. Appel

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E. & J. Gallo Winery

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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E. & J. GALLO WINERY, Opposer, v. MIMULANI AG Applicant.	**Opposition No. 91181380** Opposition No. 91181381 Opposition No. 91181383 Opposition No. 91181384 Opposition No. 91181385 Opposition No. 91181386 Opposition No. 91181388 (Consolidated)

DECLARATION OF PAUL W. REIDL
IN SUPPORT OF OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL

I, Paul W. Reidl, declare as follows:

1. I am Associate General Counsel for Opposer E. & J. Gallo Winery ("Opposer"). I make this declaration freely and of my own personal knowledge. If I were called as a witness, I could and would competently testify to the matters set forth.

2. On November 11, 2008, Opposer served timely responses to Applicant's voluminous requests for admission, requests for production, and interrogatories. Some of Opposer's responses are included as Exhibits G-L to Applicant's motion to compel. Opposer also served timely responses to additional sets of requests for admission and production. In total, Applicant served 170 discovery requests, and Opposer timely responded to all of them.

3. Over a month later, on December 16, Applicant's counsel, Mark Lebow, sent me an email complaining about many of Opposer's responses. Later that same day, I emailed a brief reply explaining that I was in New York on other pressing business that week and "unable to respond substantively" at that time, but would arrange to do so when I returned to my office in California. Mr. Lebow's email and my reply are attached as Exhibit A to applicant's motion to compel.

4. That night, I received an email from Mr. Lebow in reply, stating that "we look forward to hearing back from you upon your return from New York." Three days later, another

of Applicant's counsel, Jeff Goehring, sent me an email stating that Applicant's own discovery responses – which had been overdue for several months – had been mailed to the wrong address. Mr. Goehring also cited three cases that he claimed supported one of the points raised in Mr. Lebow's December 16 email. Mr. Goehring's December 19 email is attached as Exhibit A to my declaration in support of Opposer's motion to reopen, filed on December 31, 2008.

5. The foregoing communications constitute the entirety of the parties' communications concerning Opposer's responses to Applicant's discovery requests. Applicant did not follow up with Opposer. Moreover, Applicant never asked for a response to Mr. Lebow's December 16 email by a specific date.

6. Opposer served its first set of document requests on Applicant on August 18, 2008. Opposer did not receive any responses until December 19, 2008, over two months after the due date, when it received responses as an attachment to an email from Mr. Goehring. Applicant claims that it served responses by mail *to the wrong address* on October 6, 2008, yet Opposer still has not received any responses in the mail. Applicant's responses, which bare the date October 6, 2008, state that Applicant will produce documents in response to many requests. However, Applicant still has not produced any documents.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed this 21st day of January, 2009, in Modesto, California.

/s/

Paul W. Reidl

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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E. & J. GALLO WINERY, Opposer, v. MIMULANI AG Applicant.	**Opposition No. 91181380** Opposition No. 91181381 Opposition No. 91181383 Opposition No. 91181384 Opposition No. 91181385 Opposition No. 91181386 Opposition No. 91181388 (Consolidated)

DECLARATION OF D. PETER HARVEY
IN SUPPORT OF OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL

I, D. Peter Harvey, declare as follows:

1. I am a member of Harvey Siskind LLP, counsel for Opposer E. & J. Gallo Winery ("Opposer"). I make this declaration freely and of my own personal knowledge. If I were called as a witness, I could and would competently testify to the matters set forth.

2. On the morning of Monday, December 29, I left voicemails for Mark Lebow and Jeff Goehring, counsel for Applicant, identifying myself as new counsel for Opposer in this case and requesting a return call. I explained in my voicemails that in light of Paul Reidl's unavailability on another active litigation matter I wished to address pending discovery matters with them. At that point our firm had already researched various legal issues in connection with Applicant's discovery requests and Opposer's responses, including points raised in Mr. Lebow's December 16 email to Mr. Reidl.

3. When I did not hear back from either Mr. Lebow or Mr. Goehring, I sent an email and attached letter to them both that afternoon requesting that they contact me "as soon as possible."

4. The following day, December 30, without responding to my messages, Messrs. Lebow and Goehring filed Applicant's motion to compel. They then waited until the afternoon of December 31 - New Year's Eve - to respond to my calls and emails. That afternoon, I

received an email from Mr. Lebow acknowledging that he had received my call on Monday asking to talk about discovery matters. Mr. Lebow stated that Applicant had filed its motion on Tuesday and attached a "courtesy copy."

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed this 21st day of January, 2009, in San Francisco, California.

/s/

D. Peter Harvey

CERTIFICATE OF TRANSMISSION

I hereby certify that true and correct copies of the following documents in Opposition No. 91181380 (Consolidated) are being electronically transmitted to the Trademark Trial and Appeal Board on January 21, 2009:

- Opposer's Opposition to Applicant's Motion to Compel
- Declaration of Paul W. Reidl in Support of Opposer's Opposition to Applicant's Motion to Compel
- Declaration of D. Peter Harvey in Support of Opposer's Opposition to Applicant's Motion to Compel

/s/
Seth I. Appel

Date: January 21, 2009

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the following documents in Opposition No. 91181380 (Consolidated) were served on Applicant via first-class mail, postage prepaid, addressed to Mark Lebow, Esq. and Jeff Goehring, Esq., Young & Thompson, 209 Madison Street, Suite 500, Alexandria, VA 22314, on January 21, 2009:

- Opposer's Opposition to Applicant's Motion to Compel
- Declaration of Paul W. Reidl in Support of Opposer's Opposition to Applicant's Motion to Compel
- Declaration of D. Peter Harvey in Support of Opposer's Opposition to Applicant's Motion to Compel

/s/
Seth I. Appel

Date: January 21, 2009