

ESTTA Tracking number: **ESTTA332509**

Filing date: **02/17/2010**

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

Proceeding	91187465
Party	Defendant LIBERTY PETROLEUM, LLC
Correspondence Address	THOMAS W. COLE ROBERTS, MLOTKOWSKI Safran & Cole P.C. PO Box 10064 MC LEAN, VA 22102 UNITED STATES tcole@rmsclaw.com
Submission	Motion to Compel Discovery
Filer's Name	Thomas W. Cole
Filer's e-mail	tcole@rmsclaw.com
Signature	/Thomas W. Cole/
Date	02/17/2010
Attachments	742160-19MotionToCompel.pdf (42 pages)(1060006 bytes)

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

Davis Industries, Inc.	
OPPOSER	Opposition No.: 91187465
v.	Serial Nos.: 77411015, 77410925,
Liberty Petroleum, LLC	77410965 AND 7741091
APPLICANT	Marks: LIBERTY and LIBERTY + DESIGN

APPLICANT'S MOTION TO COMPEL RESPONSES TO DISCOVERY

Pursuant to Rule 37(a)3(B) of the Federal Rules of Civil Procedure and 37 C.F.R § 2.120 of the Trademark Rules of Practice, Liberty Petroleum, LLC (hereinafter Applicant) hereby moves to compel Davis Industries, Inc. (hereinafter Opposer) to respond in good faith to the discovery requests served on the Opposer on November 30, 2009. Thus far no responses whatever have been received. Moreover, as is evident from the Statement of Fact and attached Exhibits, Applicant has made a good faith effort via correspondence to resolve the issues presented in this motion but has been unable to do so.

Statement of Facts

On November 30, 2009, Applicant served discovery requests on the Opposer, including "Applicant's First Set of Interrogatories to Opposer" and "Applicant's First Set of Requests for the Production of Documents and Things to Opposer" (see attached Exhibit 1).

In an e-mail dated December 31, 2009, (see attached Exhibit 2) Opposer's counsel Robert J. Carlson requested a thirty day extension to respond to the discovery requests, which would reset the date for response to February 3, 2010.

In an e-mail dated January 1, 2010 (see attached Exhibit 3) Applicant's counsel proposed filing a one-month suspension of proceedings to consider the latest settlement terms proposed by Opposer and to give Opposer "...until February 3rd to respond to the outstanding discovery requests should no agreement be reached between our respective clients." Id. In an e-mail dated January 4, 2010 (id.) Opposer's counsel agreed to the filing of a one month suspension of proceedings, which was duly granted by the TTAB in an order dated January 4, 2010.

Applicant's counsel, having not received any response to the discovery requests that were due on February 4th, sent an e-mail to Opposer's counsel on February 8, 2010 (Exhibit 4) stating that

"As you know, responses to our discovery request were due Thursday, February 4th. Thus far, we have not received them. Please let me know if you have sent them or not."

On this same date, Applicant's counsel left a voice mail with Opposer's counsel asking him to reply to the e-mail of February 8th. However, no response to either the e-mail or the voice mail was received.

On February 9, 2010, Applicant's counsel sent another e-mail to Opposer's counsel (see attached Exhibit 5) asking him to "[p]lease confirm that you have received the e-mail below." Applicant's counsel also left a voice mail with the secretary of Opposer's counsel, Kathi Milner, asking her to confirm that Mr. Carlson had been receiving all of the aforementioned e-mails and voice mails. Again, no response was received from either Mr. Carlson or his secretary.

On February 12, 2010, a letter (see attached Exhibit 6) was sent to Opposer's counsel. The first paragraph of this letter reads:

Please consider this letter as official notice of our intention to file a Motion to Compel Responses to the discovery requests that were served on you on November 30th, 2009. This motion will be served on you on Tuesday, February 16, 2010 unless full and complete responses are received before that time.

This letter then recounts all of the previously referred to unanswered correspondence. Again, Applicant has received absolutely no response from Opposer to either the

discovery requests served November 30, 2009, or the correspondence and e-mails summarized above.

Legal Analysis

Rule 37(a)(3)(B) of the Federal Rules permits a party to move the Board for an Order to compel if “ a party fails to answer an interrogatory submitted under Rule 33; or a party fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34. FRCP 37(a)(3)(B)(iii) and (iv). In this case, Applicant has served written discovery in the form of interrogatories and document requests which have gone unanswered. Applicant’s counsel has made a good faith effort to communicate with Opposer’s counsel to no avail and the outstanding discovery remains unanswered and Opposer’s counsel has since become unresponsive.

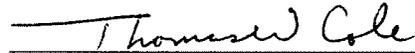
Whereas in the instant case, a party utterly fails to answer or respond to written discovery the Board may enter an Order compelling the non-cooperative party to “answer completely and without objection.” See Envirotech Corp. v. Compagnie Des Lampes, 219 USPQ 448, 450 (TTAB 1979).

WHEREFORE Applicant requests that the Board Grant Applicant’s instant motion to compel and

- 1) Warn Opposer that in the event it fails to respond to Applicant’s discovery requests Applicant may file for a motion for judgment pursuant to Trademark Rule 2.120(g), 37 CFR 2.120(g);
- 2) Suspend this matter as of the filing date of this motion and reset the trial dates pending the Board’s decision on this motion to include extension of the discovery period through April 17, 2010;
- 3) Order Applicant to respond without objection to the outstanding discovery within ten (10) days of the Board’s Order in the event Applicant has not already fully Answered and complied with discovery requested.

Respectfully submitted,

Date: February 17, 2010



Thomas W. Cole

Roberts Mlotkowski Safran & Cole P.C.
P.O. Box 10064
McLean, VA 22102
Telephone: (703) 677-3001
Facsimile: (703) 848 2981

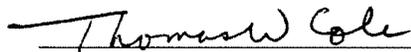
Attorneys for Applicant

Certificate of Service

The undersigned hereby certifies that a complete copy of this paper has been served upon all parties, at their address record both by first class mail, facsimile, and email (by agreement only) to Davis Industries' counsel, Robert J. Carlson, Christensen O'Connor Johnson Kindness PLLC located at 1420 Fifth Avenue, Suite 2800, Seattle, Washington 98101 on this date.

Respectfully submitted,

Date: February 17, 2010



Thomas W. Cole

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P.O. Box 10064
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EXHIBIT 1

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

	Davis Industries, Inc.	
	OPPOSER	Opposition No.: 91187465
v.		Serial Nos.: 77411015, 77410925,
	Liberty Petroleum, LLC	77410965 AND 7741091
	APPLICANT	Marks: LIBERTY and
		LIBERTY + DESIGN

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Liberty Petroleum, LLC (hereinafter referred to as "Applicant") by its attorney, hereby submits to Davis Industries, Inc. (hereinafter referred to as "Opposer") the following First Set of Interrogatories and requests that separate and full answers be served on Thomas W. Cole of Roberts Mlotkowski Safran & Cole in accordance with Rule 33 of the Federal Rules of Civil Procedure. These interrogatories should be deemed to be continuing and should be supplemented as new information is obtained.

DEFINITIONS

As used in the following Interrogatories and the accompanying First Requests for Production of Documents and Things:

1. The term “Applicant” shall refer to Liberty Petroleum, LLC as well as its licensees, officers, employees, agents and attorneys.

2. The term “Opposer” shall refer to Davis Industries, Inc. including all corporate parents, subsidiaries, divisions, affiliates, predecessors-in-interest, successors-in-interest, assigns, agents, employees, or other entities or individuals, and those in legal privity with Opposer or under control of Opposer or purporting to act with or on its behalf, including any of its officers, directors, employees, agents, partners, licensees, attorneys or representatives, including without limitation entities responsible for promulgating the marks LIBERTY or formative version of the mark LIBERTY with additional matter.

3. The term “LIBERTY mark” shall refer to any trademark or service mark, based on federal or common law that includes the term LIBERTY in any form either in stand alone form or in combination with designs or additional matter.

4. The phrase “evidencing, relating to, or referring to” shall be construed in the broadest sense and shall include facts or documents and things alluded to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, evidencing, showing, describing, reflecting, analyzing, and/or constituting the subject matter of the request.

5. The term “Any” shall be deemed to include and encompass the words “each” and “all.”

6. The terms “document” or “documents,” when used herein, shall mean any minutes, letters, memoranda, agreements, licenses, diagrams, handwritten notes, periodicals or other publication, and pamphlets; catalogs, advertisements, reports, records, studies, service manuals, instruction sheets, log sheets, data sheets, diaries, drawings, blueprints, photographs, charts, papers, graphs, indices, emails, tapes, databases, software, diskettes, CD ROMS, or other magnetic or electronic media, and other written, printed, typewritten, reproduced, or recorded material of every kind, whether or not they are privileged or within Applicant’s possession, custody, or control. Any copy of a document containing thereon or having attached thereto any alterations, notes, comments, or other material not included in the original or other copies of such document shall be deemed a separate document within the foregoing definition.

7. The terms “thing” or “things” shall mean any tangible thing or object other than a document, whether or not privileged or within Applicant’s possession, custody, or control. Unless otherwise specified, identification of “thing” shall be made by description and by drawing, sketch, or photograph to disclose the nature and construction of the thing to be identified.

8. The term “person” or “persons” shall mean any natural or juristic entity, agency, association, proprietorship or organization, business entities, companies, corporations, and divisions thereof, as well as individuals.

9. The term “products” shall mean goods that are offered for sale in the field of petroleum fuels and/or lubricants.

10. The term “services” shall mean any services offered by the Opposer in the field of petroleum fuels and/or lubricants.

INSTRUCTIONS

1. In answering the following Interrogatories and the accompanying First Requests for Production of Documents and Things to OPPOSER, a document shall be identified by stating (a) type of document (e.g., letter, report, etc.); (b) its date; (c) its author; (d) title, caption, or subject; (e) a brief summary of the subject matter of the contents; (f) identity of person having custody thereof; and (g) whether OPPOSER will produce the document or make the document available for inspection and copying.

2. In answering the following Interrogatories and the accompanying First Requests for Production of Documents and Things to OPPOSER, identification of “person” or “persons” means stating (a) the full name of such persons; (b) his or her employer, job title, and address of the place of employment or business at the time to which the Request relates; and (c) his or her present or last known employer, job title, and business and home addresses. Companies are to be identified by giving the company name and address.

3. With respect to the following Interrogatories, OPPOSER is requested to fully answer each part of every part of every multiple-part Interrogatory separately and, with respect to matters which may be continuing or in progress (such as certain searches,

studies, investigations, etc.), OPPOSER is requested to include in its answers all information known to OPPOSER as of the time of answering such Interrogatories.

4. If OPPOSER contends that it is entitled on the basis of any claim of privilege or other right to withhold any information in its responses to these interrogatories, provide the following information with respect to such information:

- A) the nature of the information
- B) the identities of all persons who created, sent, received, or have ever been given access to the information;
- C) the basis of or grounds for the claim of privilege;
- D) the person on whose behalf the claim of privilege is being asserted; and
- E) the interrogatory(ies) to which the information is responsive.

5. If OPPOSER objects to any interrogatory below or any part thereof, then OPPOSER shall identify the interrogatory or part thereof to which OPPOSER objects, state with specificity all grounds for OPPOSER's objection, and respond to any portion of the interrogatory to which OPPOSER does not object.

6. If OPPOSER objects to any interrogatory below on the grounds that it is overly broad or unduly burdensome, then OPPOSER shall answer the interrogatory narrowed to the least extent necessary, in OPPOSER's judgment, to render it not overbroad or unduly burdensome, and state specifically the extent to which OPPOSER has narrowed that answer for purposes of OPPOSER's response.

7. Applicant's counsel is ready and willing to meet and confer in person or by telephone with OPPOSER's counsel concerning any of the Interrogatories, Definitions, Instructions, in these written discovery requests, to resolve any dispute that might arise in the course of discovery.

8. The following Interrogatories are deemed to be continuing so as to require supplemental answers if OPPOSER obtains further information after the answers are filed.

INTERROGATORIES

1. With respect to paragraphs (2) and (3) of the Notice of Opposition filed in this proceeding, alleging that “[c]ontinuously, and since long prior to any date upon which Applicant can rely, Opposer has used the trademark LIBERTY in association with the retail sales of petroleum fuels and lubricants,…” and further alleging that such use of the LIBERTY trademark was “in interstate commerce”, please designate

- (a) the date when OPPOSER first used the LIBERTY mark;
- (b) the location where OPPOSER first used the LIBERTY mark;
- (c) the manner in which OPPOSER used the LIBERTY mark in association with the retail sales of petroleum fuels and lubricants;

(d) the total annual sales revenue for each year from the date of first use designated in OPPOSER's answer to Interrogatory 1(a) to the present of products associated with the LIBERTY mark used by OPPOSER;

(e) the identity of all documents that OPPOSER intends to rely on in support of its answers to Interrogatories 1(a)-(d), and in support of its allegations that OPPOSER's use of the LIBERTY mark "since long prior to any date upon which Applicant can rely" has been continuous and "in interstate commerce...", and

(f) the identity of all witnesses whose testimony OPPOSER intends to rely upon in support of its answers to Interrogatories 1(a)-(d), and in support of its allegations that OPPOSER's use of the LIBERTY mark "since long prior to any date upon which Applicant can rely" has been continuous and "in interstate commerce".

2. If OPPOSER has used the mark in any other location other than the location given in its answer to Interrogatory 1(b), please designate:

(a) each of these other locations;

(b) the date when OPPOSER first used the LIBERTY mark in each of these other locations;

(c) Whether the use in each of these other locations has been continuous since the date of first use designated in Interrogatory 2(b) to the present;

(d) Whether the use in each of these other locations has been in interstate commerce;

(e) the total annual sales revenue for each year for each location designated in OPPOSER's answer to Interrogatory 2(a) from the date of first use designated in OPPOSER's answer to Interrogatory 2(b) to the present of products associated with the LIBERTY mark used by OPPOSER;

(f) the identity of all documents that OPPOSER intends to rely on in support of its answers to Interrogatories 2(a)-2(e), and

(g) the identity of all witnesses whose testimony OPPOSER intends to rely upon in support of its answers to Interrogatories 2(a)-2(e).

3. Please designate the date when OPPOSER first obtained actual knowledge of APPLICANT's United States Trademark Registration Nos. 2,307,665 for LIBERTY + Design for motor oil in IC 004, Registration No. 2,669,918 for the word mark LIBERTY for "retail and wholesale distributorship featuring petroleum fuels and lubricants" in IC 035, and Registration No. 2,669,919 for LIBERTY + Design for "retail and wholesale distributorship featuring petroleum fuels and lubricants" in IC 035 and designate the date of Opposer's first knowledge of Applicant's actual use of the LIBERTY mark if earlier.

4. Identify all persons who provided information or documents for responses to these interrogatories or Applicants First Request for Production of Documents and Things.

5. Identify any civil actions or trademark *Inter Partes* proceedings made by or against Opposer regarding trademark infringement or trademark rights concerning the LIBERTY marks.
6. Identify any communications between Opposer its employees past and/or current, and Applicant or any employee or agent of Applicant.
7. Identify each person Opposer plans to call as a witness during the trial period in this proceeding and state the substance of the anticipated testimony of each such witness.
8. Identify all documents, correspondence or opinions which Opposer plans to rely on or which exists and supports and/or belie the Opposer's allegations as set forth in the Opposition.
9. Identify all different documents promulgated by the Opposer which use, advertise, or tout the LIBERTY mark from 1994 to the current day.
10. With respect to any instance of which OPPOSER is aware of confusion, mistake or deception involving OPPOSER and/or any product or services offered by OPPOSER, on the one hand and Applicant and /or any products services offered by Applicant on the other hand:
 - (i) State the date of the instance of confusion;

- (ii) Identify the person or entity that was confused, mistaken or deceived;
- (iii) Describe the nature of the confusion, mistake or deception;
- (iv) Identify all persons having knowledge of the instance of confusion; and
- (v) Describe the manner in which and state the date on which the instance of confusion first came to your attention.

12. Describe the manner in which Opposer decides how the Liberty mark is selected for inclusion in any marketing or advertising touting the Opposer or Opposer's products/services including any criteria for inclusion or exclusion.

13. Identify all documents filed with the United States Patent and Trademark Office or communications referencing federal registrations or applications for the LIBERTY mark including identifying all persons knowledgeable about any federal registration or applications including but not limited to U.S. Registration No. 1692113 and/or any attempts to maintain the '113 registration.

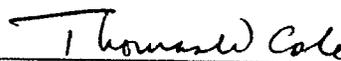
14. Identify the following individuals and describe the individual's involvement with OPPOSER's business activities including responsibilities:

- (a) Michael Davis;
- (b) Nathan Davis; and
- (c) Steffi Davis

15. Identify all "business associates" as referenced in OPPOSER's initial disclosures with knowledge of OPPOSER's continuous use of the LIBERTY mark from 1994 to the current day.

Respectfully submitted,

Date: November 30, 2009



Thomas W. Cole

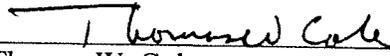
Roberts Mlotkowski Safran & Cole P.C.
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Telephone: (703) 677-3001
Facsimile: (703) 848 2981
Attorneys for Applicant

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record both by first class mail, facsimile and email (by agreement only) to Davis Industries' counsel, Robert J. Carlson, Christensen O'Connor Johnson Kindness PLLC located at 1420 Fifth Avenue, Suite 2800, Seattle, Washington 98101 on this date.

Respectfully submitted,

Date: November 30, 2009



Thomas W. Cole

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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	APPLICANT	Marks: LIBERTY and
		LIBERTY + DESIGN

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

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Liberty Petroleum, LLC (hereinafter Applicant) serves this First Set of Requests for the Production of Documents and Things on Davis Industries Inc, (hereinafter referred to as "Opposer") and requests that Opposer produce the requested documents and things within thirty (30) days of service.

Applicant incorporates by reference the Definitions and Instructions set forth in Applicant's First Set of Interrogatories to Opposer.

Requests for the Production of Documents and Things

1. All documents and things identified or requested to be identified in Applicant's First Set of Interrogatories to Opposer.

2. All documents and things referred to, reviewed, and consulted in connection with the preparation of Opposer's responses to Applicant's First Set of Interrogatories to Opposer.
3. All documents and things referring or relating to Opposer's selection, adoption, and clearance of Opposer's LIBERTY Mark, including but not limited to, searches, investigations, reports, and opinions.
4. All documents and things evidencing the first use of Opposer's LIBERTY Mark anywhere.
5. All documents and things evidencing the first use of Opposer's LIBERTY Mark in United States commerce.
6. Documents sufficient to show or identify each and every product or service advertised, marketed, sold, and/or offered for sale under Opposer's LIBERTY Mark from the first use of the LIBERTY Mark to the present.
7. Representative price lists and/or documents sufficient to identify the price(s) for each of Opposer's services offered or products branded with the LIBERTY mark, from the first offering of Opposer's products and/or services to the present.
8. Documents sufficient to show per annum the total sales, in both dollars and numbers of units, of Opposer's products and/or services.
9. Documents sufficient to show all geographic locations where Opposer's products have ever been sold or services ever offered.
10. Documents sufficient to identify each channel of trade through which Opposer currently markets, offers, and sells; has marketed offered, and sold; and intends to market, offer, and sell products or services in connection with the LIBERTY mark.

11. Documents sufficient to identify the nature, identity, or characteristics of each class or type of end users or purchasers to whom Opposer's products or services offered in connection with the LIBERTY mark are currently marketed, offered, and sold; have been marketed, offered, and sold; and are intended to be marketed, offered, and sold.

12. All communications to, from, or between any advertising or marketing agencies or consultants referring or relating to the use, merchandising, marketing, advertising, and/or promotion of Opposer's LIBERTY Mark.

13. All documents referring or relating to Opposer's past, present and planned marketing, promotion, and advertising of Opposer's products or services, including but not limited to marketing, advertising, business, and market research plans and reports.

14. Representative advertising and promotional materials in each media utilized (e.g., print, television, radio, Internet, billboards) featuring, displaying, or containing Opposer's LIBERTY Mark, from the first use of the LIBERTY Mark to the present.

15. Documents sufficient to show the manner(s) in which Opposer's LIBERTY Mark is or has been depicted, displayed, or used, from the first use of the LIBERTY Mark to the present.

16. Documents sufficient to show the media (e.g., newspapers, magazines, radio, television, Internet) in which Opposer has advertised or promoted Opposer's LIBERTY Mark and/or Opposer's products or services in connection with the LIBERTY mark, including but not limited to media schedules, advertising plans, and reports.

17. All documents and things consisting of, comprising, referring to, or relating to any trademark searches, research, reports, surveys, polls, studies, or investigations concerning the LIBERTY Mark.

18. All documents and things comprising, referring, or relating to any research, reports, surveys, polls, studies, or investigations regarding consumer or customer perception of the LIBERTY Mark.

19. All documents and things comprising, referring, or relating to any trademark searches, research, reports, surveys, polls, studies, or investigations concerning Applicant.

20. All non-privileged documents, including but not limited to internal memoranda prepared by Opposer, referring or relating to: (a) the circumstances surrounding Opposer's first knowledge of Applicant's use and/or federal registrations or applications for the LIBERTY Mark; (b) any potential objections by Opposer to Applicant's registration and/or use of Applicant's LIBERTY Mark; (c) the present opposition proceeding; and, (d) the actual objections made by Opposer to the registration of Applicant's LIBERTY Mark.

21. All documents and things referring or relating to any and all judicial and administrative proceedings in any forum, including but not limited to the United States Patent and Trademark Office, federal court, state court, and any federal or state agency or other forum, involving the LIBERTY Mark.

22. All documents and things referring or relating to Opposer's decision not to challenge or oppose any use, registration, and/or application to register any marks, names, or designations comprised of or containing the LIBERTY mark.

23. All documents and things consisting of or referring or relating to agreements between Opposer and third parties concerning the use and/or registration of any mark, name, or designation comprised of or containing the term LIBERTY including but not limited to product development agreements, license agreements, franchise agreements, consent agreements, coexistence agreements, assignments, and settlement agreements.

24. All documents and things referring or relating to any assignment, acquisition, purchase, or other ownership transfer of Opposer's LIBERTY Mark.

25. All documents and things concerning any assertions or claims that in any way involve, affect, or purport to affect Opposer's ownership of, title to, or rights in of Opposer's LIBERTY Mark.

26. All documents and things evidencing Opposer's use of the LIBERTY mark in U.S. commerce at the time Opposer filed its application based on use on March 7, 1991 in connection with U.S. Registration No. 1692113.

27. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to 2008.

28. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at or about 1803 Fruitvale, Yakima, WA 98106 (also known as LIBERTY #901).

29. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at or about Unocal Bayview Center, 2846 Highway 525, Freeland, WA 98249 (also known as LIBERTY #902-WHIDBY CITY EXXON).

30. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at or about 5988 South Langley Rd., Langley, WA 98260(also known as LIBERTY #903-NAOMI's EXXON).

31. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at or about 9857 17th Avenue SW, Seattle, WA 98106 (also known as LIBERTY #904-Arco).

32. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants

fuels and any business located at or about 415 Cleavland, Turnwater, WA 98501 (also known as LIBERTY #905-Arco).

33. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants fuels and any business located at or about 920 Adele, Bremerton, WA 98132 (also known as LIBERTY #907- Arco).

34. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at or about 2435 Highway 101, East Port Angeles, WA 98362 (also known as LIBERTY #908).

35. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at or about 408 112th St. SW, WA 98204 (also known as LIBERTY #910-MARINER BP).

36. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising,

touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at or about Airport Way & Lander, Seattle, WA 98124 (also known as LIBERTY #915).

37. Representative documents and things evidencing Opposer's continuous use of the LIBERTY mark in U.S. commerce for each year from 1994 to the current day in connection with alleged uses by OPPOSER of the LIBERTY mark in advertising, touting and/or promoting services in connection with petroleum fuels and/or lubricants and any business located at any business location other than those identified or mentioned in requests for documents numbered 28 through 37 above.

38. All documents and things consisting of or referring or relating to agreements between Opposer and third parties concerning the use and/or registration of any mark, name, or designation comprised of or containing the term LIBERTY including but not limited to product development agreements, license agreements, franchise agreements, consent agreements, coexistence agreements, assignments, and settlement agreements for each of the business locations identified in requests for documents numbered 28 through 37 above.

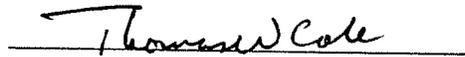
39. For each expert witness Opposer intends to call to provide testimony or evidence in this proceeding: (a) any written report provided by such expert relating to the subject matter of this proceeding; (b) a complete written statement of all opinions and/or conclusions to be expressed by the expert in this proceeding and the basis and reasons therefore; (c) all documents reflecting the data or other information considered by the expert in forming his/her opinions and/or conclusions; (d) all exhibits to be used and/or relied upon by the expert as a summary of or support for his/her opinions and/or

conclusions; (e) those documents stating the qualifications of the expert, such as would be reflected in a resume, curriculum vitae, biography, summary, or otherwise; (f) a written list of all publication authored by the witness within the last ten years; (g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and, (h) a written list of any other cases in which the witness has testified as an expert at trial, in an administrative proceeding, or by deposition within the past four (4) years.

40. Each and every document not already provided in response to these Requests upon which Opposer will rely in this opposition proceeding.

Respectfully submitted,

Date: November 30, 2009

A handwritten signature in cursive script that reads "Thomas W. Cole". The signature is written in black ink and is positioned above a solid horizontal line.

Thomas W. Cole

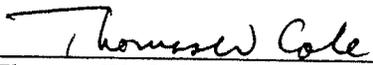
Roberts Mlotkowski Safran & Cole P.C.
P.O. Box 10064
McLean, VA 22102
Telephone: (703) 677-3001
Facsimile: (703) 848 2981
Attorneys for Applicant

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record both by first class mail, facsimile, and email (by agreement only) to Davis Industries' counsel, Robert J. Carlson, Christensen O'Connor Johnson Kindness PLLC located at 1420 Fifth Avenue, Suite 2800, Seattle, Washington 98101 on this date.

Respectfully submitted,

Date: November 30, 2009



Thomas W. Cole

Roberts Mlotkowski Safran & Cole P.C.
P.O. Box 10064
McLean, VA 22102
Telephone: (703) 677-3001
Facsimile: (703) 848 2981

EXHIBIT 2



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From: Bob Carlson [mailto:carlson@cojk.com]
Sent: Thursday, December 31, 2009 6:30 PM
To: Thomas Cole
Cc: Kathi Milner
Subject: Davis v. Liberty Your Ref. 742160-19 COJK Ref. DAVIN-6-3089

Dear Tom,

I'd like to have your response on two or three issues related to this matter. First, you mailed your first set of interrogatories and request for production of documents on November 30, making responses due Monday January 4. Because of the intervening holidays, we have not been able to complete responses, so I'd like to ask you for a 30 day extension to respond, until Wednesday, February 3, 2010.

Second, some of the information responsive to the discovery is of a confidential nature, so I'd like to ask if you and your client will agree to entry of the TTAB's standard protective order: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>. It has some disadvantages, but seems to be a lot easier to get approved by the Board than a custom order.

[[TEXT REDACTED]]

Please let me know if your client will accept this proposal, and if so, we can resolve the matter quickly.

Thanks as always for your courtesy, and best wishes for the coming year.

Bob

<<WA map.pdf>>

Robert J. Carlson
Christensen O'Connor Johnson Kindness^{PLLC}
1420 Fifth Avenue, Suite 2800
Seattle, Washington 98101-2347

Direct Dial: (206) 695-1723

Fax: (206) 224-0779

E-mail: carlson@cojk.com

<http://www.cojk.com>

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EXHIBIT 3

Thomas Cole

Subject: FW: Davis v. Liberty Our Ref. 742160-19; COJK Ref. DAVIN-6-3089

From: Thomas Cole
Sent: Monday, January 04, 2010 1:46 PM
To: 'Bob Carlson'
Cc: 'Blackie Bowen'; 'Frayser White'; 'John Patrick'
Subject: FW: Davis v. Liberty Your Ref. 742160-19 COJK Ref. DAVIN-6-3089

Bob,

Thanks for your prompt reply. I will forward a copy of our one-month request this afternoon. Hopefully it will be granted today.

Best regards,
Tom
Thomas W. Cole
Roberts Mlotkowski Safran & Cole P.C.
7918 Jones Branch Drive, #500
McLean, Virginia 22102
Ph: 703 677 3001
Ex: 703 848 2981



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From: Bob Carlson [mailto:carlson@cojk.com]
Sent: Monday, January 04, 2010 12:31 PM
To: Thomas Cole
Subject: RE: Davis v. Liberty Your Ref. 742160-19 COJK Ref. DAVIN-6-3089

Thanks, Tom. I think the suspension is a good idea, and I agree with it. I look forward to your client's response to our recent proposal. Thanks again.

Bob

-----Original Message-----

From: Thomas Cole [mailto:Tcole@RMSCLAW.COM]
Sent: Monday, January 04, 2010 8:11 AM
To: Bob Carlson
Subject: FW: Davis v. Liberty Your Ref. 742160-19 COJK Ref. DAVIN-6-3089

Bob,

Please let me know today if you are in agreement with a one-month suspension of proceedings, as detailed below.

Best regards,

Tom

Thomas W. Cole

Roberts Mlotkowski Safran & Cole P.C.

7918 Jones Branch Drive, #500

McLean, Virginia 22102

Ph: 703 677 3001

Fx: 703 848 2981



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From: Thomas Cole

Sent: Friday, January 01, 2010 11:06 AM

To: 'Bob Carlson'

Subject: RE: Davis v. Liberty Your Ref. 742160-19 COJK Ref. DAVIN-6-3089

Dear Bob:

My best wishes to you for 2010 also.

In view of the travel schedules of the principals of Liberty, I won't be able to get you an answer with respect to your settlement proposal for at least a week. I should however have an answer for you in about two weeks.

With respect to your request for an extension by which to respond, I understand the difficulty of preparing such responses during the holidays. To solve this problem while preserving all of our options, I propose to file a motion with the TTAB for a one month suspension of proceedings, with the understanding between us that you would have until February 3rd to respond to the outstanding discovery requests should no agreement be reached between our respective clients. Such a course of action would of course extend the time for discovery for both of us should we need to continue this proceeding.

Please let me know if you are agreeable to a one month suspension of proceedings.

Best regards,

Tom

Thomas W. Cole

Roberts Mlotkowski Safran & Cole P.C.

7918 Jones Branch Drive, #500

McLean, Virginia 22102

Ph: 703 677 3001

Fx: 703 848 2981

EXHIBIT 4

Thomas Cole

Subject: FW: Davis v. Liberty Our Ref. 742160-19; COJK Ref. DAVIN-6-3089

From: Thomas Cole
Sent: Monday, February 08, 2010 3:45 PM
To: 'Bob Carlson'
Cc: 'Blackie Bowen'; 'Frayser White'; 'John Patrick'; 'Jeffrey H. Greger'
Subject: FW: Davis v. Liberty Our Ref. 742160-19; COJK Ref. DAVIN-6-3089

Bob,

As you know, responses to our discovery request were due Thursday, February 4th.

Thus far, we have not received them. Please let me know if you have sent them or not.

Mail service is two days behind due to the recent blizzard we have had on the east coast, so there is a possibility that you have sent your responses, but we have not yet received them.

Also, we reiterate our request that you designate three consecutive days between Wednesday, February 24th and Wednesday, March 3rd when depositions may be held.

Best regards,

Tom

Thomas W. Cole

Roberts Mlotkowski Safran & Cole P.C.

7918 Jones Branch Drive, #500

McLean, Virginia 22102

Ph: 703 677 3001

Ex: 703 848 2981



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From: Thomas Cole
Sent: Friday, January 15, 2010 1:37 PM
To: 'Bob Carlson'
Subject: FW: Davis v. Liberty Our Ref. 742160-19; COJK Ref. DAVIN-6-3089

Bob,

The principals of Liberty Petroleum have now had an opportunity to consider in detail the settlement offer that you proposed on December 31st, 2009.

EXHIBIT 5

Thomas Cole

From: Thomas Cole
Sent: Tuesday, February 09, 2010 2:11 PM
To: 'Bob Carlson'
Cc: 'Kathi Milner'
Subject: FW: Davis v. Liberty Our Ref. 742160-19; COJK Ref. DAVIN-6-3089

Bob,

Please confirm that you have received the e-mail below.

Best regards,

Tom

Thomas W. Cole

Roberts Mlotkowski Safran & Cole P.C.

7918 Jones Branch Drive, #500

McLean, Virginia 22102

Ph: 703 677 3001

Fx: 703 848 2981



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From: Thomas Cole
Sent: Monday, February 08, 2010 3:45 PM
To: 'Bob Carlson'
Cc: 'Blackie Bowen'; 'Frayser White'; 'John Patrick'; 'Jeffrey H. Greger'
Subject: FW: Davis v. Liberty Our Ref. 742160-19; COJK Ref. DAVIN-6-3089

Bob,

As you know, responses to our discovery request were due Thursday, February 4th.

Thus far, we have not received them. Please let me know if you have sent them or not.

Mail service is two days behind due to the recent blizzard we have had on the east coast, so there is a possibility that you have sent your responses, but we have not yet received them.

Also, we reiterate our request that you designate three consecutive days between Wednesday, February 24th and Wednesday, March 3rd when depositions may be held.

Best regards,

Tom

Thomas W. Cole

EXHIBIT 6



Roberts Mlotkowski Safran & Cole, P.C.

Intellectual Property Law

7918 Jones Branch Drive • Suite 500 • McLean, VA 22102 • Tel: 703.584.3270 • Fax: 703.848.2981 • Email: rmsclaw.com

Thomas W. Cole

• Phone: (703) 677-3001

• E-mail: tcole@rmsclaw.com

February 12, 2010

VIA FACSIMILE – 2 Pages
CONFIRMATION VIA FEDEX

Mr. Robert J. Carlson
Christensen O'Connor Johnson Kindness PLLC
1420 Fifth Avenue, Suite 2800
Seattle, Washington 98101-2347

Re: Davis v. Liberty
Your Reference: COJK Ref. DAVIN-6-3089
Our Reference: 742160-19

Dear Bob:

Please consider this letter as official notice of our intention to file a Motion to Compel Responses to the discovery requests that were served on you on November 30th, 2009. This motion will be served on you on Tuesday, February 16, 2010 unless full and complete responses are received before that time.

You have had ample time to prepare such responses, and ample notification of our concern over your tardiness. At your request on Friday, January 1st, 2010, I agreed to a one-month extension for you to respond to the discovery requests filed November 30th. In my e-mail to you dated January 15, 2010, I informed you that the principals of Liberty had rejected your client's latest settlement offer and told you that "we look forward to receiving your responses by the extended due date of February 4, 2010." On Monday, February 8th, I sent you an e-mail stating "[a]s you know, responses to our discovery request were due Thursday, February 4th. Thus far, we have not received them. Please let me know if you have sent them or not." On Tuesday, February 9th, I sent you an e-mail asking you to confirm that you have received the e-mail of February 8th. Also on Tuesday, February 8th, I left you a voice mail asking you to reply to my e-mails of February 8th and 9th. Today, I left a voice mail with your secretary Kathi Milner asking whether you were in the office and had received my latest e-mails.

I have received no response whatever from either you or your secretary regarding these inquiries.

Mr. Robert J. Carlson
February 12, 2010
Page 2

In our e-mail to you dated January 15, 2010 we further stated that we are “agreeable to signing the US Trademark Office standard protective order prior to receiving your discovery responses.” We confirm that this is still the case.

Very truly yours,

A handwritten signature in black ink that reads "Tom".

Thomas W. Cole

TWC/slt

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO	1331
RECIPIENT ADDRESS	12062240779
DESTINATION ID	
ST. TIME	02/12 18:33
TIME USE	01'09
PAGES SENT	2 ✓
RESULT	OK



Roberts Mlotkowski Safran & Cole, P.C.

Intellectual Property Law

7918 Jones Branch Drive • Suite 500 • McLean, VA 22102 • Tel: 703.584.3270 • Fax: 703.848.2981 • Email: rmsclaw.com

Thomas W. Cole

Phone: (703) 677-3001

E-mail: tcole@rmsclaw.com

February 12, 2010

VIA FACSIMILE – 2 Pages
CONFIRMATION VIA FEDEX

Mr. Robert J. Carlson
 Christensen O'Connor Johnson Kindness PLLC
 1420 Fifth Avenue, Suite 2800
 Seattle, Washington 98101-2347

Re: Davis v. Liberty
 Your Reference: COJK Ref. DAVIN-6-3089
 Our Reference: 742160-19

Dear Bob:

Please consider this letter as official notice of our intention to file a Motion to Compel Responses to the discovery requests that were served on you on November 30th, 2009. This motion will be served on you on Tuesday, February 16, 2010 unless full and complete responses are received before that time.

You have had ample time to prepare such responses, and ample notification of our concern over your tardiness. At your request on Friday, January 1st, 2010, I agreed to a one-month extension for you to respond to the discovery requests filed November 30th. In my e-mail to you dated January 15, 2010, I informed you that the principals of Liberty had rejected your client's latest settlement offer and told you that "we look forward to receiving your responses by the extended due date of February 4, 2010." On Monday, February 8th, I sent you an e-mail stating "[a]s you know, responses to our discovery request were due Thursday, February 4th.


Shipment Receipt
Address Information**Ship to:**

Robert J. Carlson
Christensen O'Connor
Johnson Kindne
1420 5TH AVE STE 2800

SEATTLE, WA
98101-1344
US
(206) 695-1723

Ship from:

Thomas W. Cole
ROBERTS MLOTKOWSKI
SAFRAN & COLE

7918 Jones Branch Drive
Suite 500
MC LEAN, VA
22102
US
(703) 677-3001

Shipping Information

Tracking number: 793267802143
Ship date: 02/12/2010
Estimated shipping charges: 19.86

Package Information

Service type: Standard Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 1LBS
Declared value: 0.00USD
Special Services:
Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information

Bill transportation to: Sender
Your reference: 742160-19
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with Fedex ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable [FedEx Service Guide](#) or the FedEx Rate Sheets for details on how shipping charges are calculated.