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

Proceeding	91189418
Party	Plaintiff Speed Channel, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial Nos.:	77476098 77497086 77476107 77478035
Filed:	May 15, 2008 June 12, 2008 May 15, 2008 May 19, 2008
Marks:	SPEEDVISION SPEEDVISION SPEEDVISION HD SPEEDVISION (and Design)
Publication Date:	November 25, 2008 (for all opposed applications)

<p style="text-align: center;">SPEED CHANNEL, INC. Opposer,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">PHOENIX 2008 LLC Applicant.</p>	<p>)</p>	<p>Opposition No. 91189418</p>
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**SPEED CHANNEL, INC.’S NON-CONFIDENTIAL REPLY MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO (1) COMPEL APPLICANT’S RESPONSES TO
SPEED CHANNEL’S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS AND ITS FIRST SET OF INTERROGATORIES; (2) TEST THE
SUFFICIENCY OF APPLICANT’S RESPONSES TO SPEED CHANNEL’S REQUESTS
FOR ADMISSIONS; AND (3) SUSPEND**

**NON-CONFIDENTIAL
(REDACTED)**

In accordance with the provisions 37 CFR § 2.127(a) and TBMP §§ 502.02(b), Opposer Speed Channel, Inc. (“Speed Channel”) hereby submits its Reply Memorandum of Law in

Support of its Motion to (1) Compel Applicant's Responses To Speed Channel's First Set of Requests For Production Of Documents And Its First Set Of Interrogatories; (2) Test The Sufficiency Of Applicant's Responses To Speed Channel's Requests For Admissions and (3) Suspend (the "Motion").

I. INTRODUCTION

Speed Channel acknowledges Applicant's attempt to comply with its discovery obligations by supplementing its responses to Speed Channel's Interrogatories and its Request for Production of Documents. Speed Channel also acknowledges that Applicant has attempted to provide Speed Channel with a privilege log, and that Applicant has provided a limited number of documents that Applicant claims are responsive to Speed Channel's Discovery Requests.

Unfortunately, despite Applicant's contrary suggestions and its descent into unwarranted and inappropriate personal attacks upon Speed Channel and its counsel, significant issues remain, because Applicant's Discovery Responses remain deficient and inappropriate. In particular, and without limiting the scope of the foregoing, Applicant:

- (1) Incorrectly suggests that Speed Channel's Motion exceeds the Board's page limitation when the pages about which Applicant complains constitute Speed Channel's efforts to comply with 37 CFR § 2.120(e) and TBMP § 523.02, both of which require a party moving to compel to include in its motion "a copy of the request for designation or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection and copying;"

- (2) Continues to assert a series of unnecessary objections to Speed Channel's Discovery Requests;
- (3) Ignores the plain language of the Board's Standardized Protective Order by impermissibly redacting documents that it claims contain responsive information; and
- (4) Deliberately misinterprets Speed Channel's good faith attempt to resolve the instant dispute by misconstruing Speed Channel's September 10, 2009, letter regarding Applicant's discovery responses.

Based on the foregoing, the Board should find that Speed Channel has fully complied with the provisions of 37 C.F.R. § 2.120(d)(2) and TBMP §§ 510.03 and 523.01. The Board should also find that Applicant's discovery responses remain deficient, direct Applicant to further supplement its responses, without objection or redaction, direct Applicant to refrain from engaging in personal attacks and grant such further relief as it deems appropriate.

II. ARGUMENT

Notwithstanding Applicant's contrary suggestions that it has complied with Speed Channel's Discovery Requests, it has not. Instead, Applicant focuses unnecessarily on the length of Speed Channel's Motion and its September 10, 2009, Letter. Moreover, in lieu of producing relevant, responsive documents, Applicant continues to assert inappropriate objections in its supplemental Discovery Responses. Finally, instead of producing relevant, responsive documents, Applicant redacts a significant number of documents that Applicant apparently believes contain confidential trade secrets. In doing so, Applicant ignores the plain language of the Board's Standardized Protective Order, which does not contain any provisions permitting a party to redact documents, regardless of whether the documents are designated as containing commercially sensitive trade secrets or not.

A. Speed Channel's Motion Complies With 37 CFR § 2.120(e) and TBMP § 523.02.

As a preliminary matter, the Board should disregard Applicant's suggestion that Speed Channel's Motion exceeds the Board's page limits. Instead, the Board should recognize Speed Channel's need to comply with the Board's rules regarding motions to compel.

The Board imposes specific requirements upon a party moving to compel discovery responses. In particular, under 37 CFR § 2.120(e) and TBMP § 523.02, the moving party "shall include a copy of the request for designation or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection and copying." 37 CFR § 2.120(e); see *Fidelity Prescriptions, Inc. v. Medicine Chest Discount Centers, Inc.*, 191 USPQ 127 (Trademark Tr. & Appeal Bd. 1976) (Board must be able to render a meaningful decision on a motion to compel); *Amerace Corp. v. USM Corp.*, 183 USPQ 506 (Trademark Tr. & Appeal Bd. 1974); and *Helene Curtis Industries, Inc. v. John H. Breck, Inc.*, 183 USPQ 126 (Trademark Tr. & Appeal Bd. 1974).

In its Motion, Speed Channel complies with the Board's rules by including each of the Discovery Requests for which it seeks to compel Applicant's further response. Speed Channel also includes Applicant's response to each of the Discovery Requests and the bases for Speed Channel's Motion as it pertains to each of the Discovery Requests identified in its Motion. In other words, Speed Channel's Motion fully complies with the Board's rules. Moreover, Speed Channel's Motion permits the Board to evaluate and analyze each and every one of Applicant's discovery responses, together with the bases for Speed Channel's Motion. Speed Channel avers that this is, by far, the most effective means of addressing the issues in its Motion whilst

simultaneously complying with the Board's rules. Accordingly, the Board should disregard Applicant's strident complaints regarding the length of Applicant's Motion and allow the Motion on its terms.

B. Applicant Continues To Assert Inappropriate Objections. In Its Discovery Responses.

Applicant, perhaps recognizing the inherent weaknesses in its response to Speed Channel's Motion, attempts to comply with Speed Channel's requests by serving supplemental responses to Speed Channel's Interrogatories *See* Applicant's First Supplemental Response to Opposer's First Set of Interrogatories ("Applicant's Supplemental Answers to Interrogatories"), a true and accurate copy of which is annexed hereto as "Exhibit A." However, Applicant fails to cure the deficiencies in its earlier responses, because it continues to assert inappropriate objections. In particular, Applicant continues to suggest that significant quantities of information responsive to Speed Channels Discovery Requests is publicly available from the PTO, without stating where the information may be found. *See* Applicant's Supplemental Answers to Interrogatories, Nos. 6, 19. In doing so, Applicant ignores the fact that Applicant, rather than Speed Channel, bears the burden of responding to Speed Channel's Discovery Requests.

Applicant's other objections are also inappropriate. In particular, Applicant incorrectly suggests that Speed Channel seeks information that is not relevant. *Id.* at Interrogatory Nos. 2, 3, 5, 13. Applicant ignores the fact that the information Speed Channel seeks in these Interrogatories is highly relevant and discoverable.

Finally, Applicant's responses remain incomplete. In particular, in Interrogatory No. 14, Speed Channel seeks information regarding the identity of all third-parties with whom Applicant communicated with regarding Applicant's Marks. *Id.* at Interrogatory No. 14. Applicant's response indicates that it has engaged in such communications; however, it completely fails to

identify the third-parties with whom it communicated. *Id.* Applicant does so even though this information is clearly relevant and discoverable.

Based on the foregoing, the Board should find that Applicant's discovery responses remain inadequate and order Applicant to further supplement them.

C. Applicant Continues To Assert Inappropriate Objections In Its Discovery Responses.

Speed Channel acknowledges that Applicant has produced a minimal quantity of documents, which Applicant claims are responsive to Speed Channel's Discovery Requests. However, Applicant conveniently ignores the fact that it has chosen to redact many of the documents, all allegedly pursuant to the terms of the Board's Standardized Protective Order (the "Standardized Order"). *See* the true and accurate copies of letter dated November 9, 2009, from Applicant's counsel to Speed Channel's counsel regarding the production of certain documents, together with redacted documents bearing Bates Stamp Nos. "Confidential_PHXDISC_000105 - Confidential_PHXDISC_000193, (collectively, the "Redacted Documents"), copies of which are annexed hereto as "Exhibit B."

Speed Channel acknowledges circumstances may arise in which a party must redact information from its pleadings. Indeed, ESTAA, the Standardized Order and the Board's rules contain specific provisions that permit a party seeking to redact confidential information to file confidential and non-confidential versions of the pleading.

However, and notwithstanding the foregoing, the provisions in the TBMP, the Board's rules and the Standardized Order that permit a party to redact documents are generally directed to the redaction of information that would otherwise appear in pleadings on the public docket. At the same time, nothing in the TBMP, the Board's rules or the Standardized Order permits a party to redact information from documents produced in response to discovery requests. Indeed,

to permit a party to do so would expressly contradict the entire reason for the Board's adoption of the Standardized Order by vastly increasing the likelihood that a discovery dispute will arise. It would bar parties and outside counsel from gaining access to information that is otherwise discoverable, relevant and responsive.

That is precisely what is happening in this instance. In particular, Applicant's inappropriate redaction has effectively denied Speed Channel's outside counsel access to documents that Applicant concedes to be relevant and responsive to Speed Channel's Discovery Requests. Accordingly, and based on the foregoing, Speed Channel respectfully requests that the Board order Applicant to supplement its Discovery Responses by producing unredacted versions of the Redacted Documents.¹

D. Speed Channel Attempted To Resolve The Present Discovery Dispute In Good Faith.

Applicant suggests that Speed Channel failed to attempt to resolve the instant discovery dispute in good faith, as required by 37 CFR § 2.120(e), because Speed Channel did not give Applicant sufficient time to comply with its discovery obligations. Applicant is wrong.

Speed Channel served its Discovery Requests on June 4, 2009. Applicant served its responses on July 14, 2009. Applicant did not produce any responsive documents, or indicate when, if ever, it would produce its responsive documents or make them available for inspection.

Speed Channel made several attempts to address the deficiencies in Applicant's Discovery Responses. Speed Channel sent its September 10, 2009, Letter after it became clear that Applicant had no intention of complying with its discovery obligations. Even then, Speed Channel made an effort to identify the specific deficiencies in Applicant's Discovery Responses,

¹ Speed Channel reserves its right to challenge Applicant's claim that the Redacted Documents, or any of them, contain confidential information.

and to provide Applicant with an opportunity to correct them.

Applicant complains that Speed Channel gave Applicant one (1) day to respond to its September 10, 2009, letter. Once again, Applicant is incorrect. In its September 10, 2009, Letter, Speed Channel provided Applicant with what Speed Channel considered to be an acceptable resolution of the parties' discovery dispute and notified Applicant that Speed Channel intended to move to compel if Applicant persisted in its refusal to settle the discovery dispute. *See* September 10, 2009, Letter, p. 17.

Speed Channel's September 10, 2009, letter came after Speed Channel had attempted to secure Applicant's compliance with Applicant's discovery obligations, and came only after Applicant's recalcitrance forced Speed Channel to go the considerable effort involved in preparing the September 10, 2009, Letter. Indeed, Applicant's unwillingness to cooperate with Speed Channel was particularly frustrating, since considerable time had elapsed since Applicant's Discovery Responses were due and Speed Channel had discussed the deficiencies in Applicant's Discovery Responses, without resolution, on several prior occasions.

Speed Channel's request for Applicant's immediate response merely requested Applicant's prompt confirmation that it would comply with the September 10, 2009, Letter. *Id.* It did not, as Applicant incorrectly suggests, expressly require Applicant to perform its obligations by September 11, 2009. Thus, the Board should recognize that Speed Channel was merely seeking confirmation that Applicant would comply with Speed Channel's requests in a timely manner, and that it made a good faith attempt to resolve the problems with Applicant's Discovery Responses.

Based on the foregoing, the Board should find that Speed Channel complied with its obligations to make a good faith attempt to resolve the instant dispute.

III. CONCLUSION

For the foregoing reasons, Speed Channel respectfully requests that the Board grant the relief requested in its Motion, together with such other relief as it deems just and appropriate.

RESPECTFULLY SUBMITTED,
Speed Channel, Inc.

Dated: November 23, 2009

BY: /Daniel E. Bruso/
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CERTIFICATE OF SERVICE

I, Daniel E. Bruso, Esq., counsel to Opposer Speed Channel, Inc. in Opposition Proceeding No. 91189418, certify that, on the 23rd day of November 2009, I served a copy of

SPEED CHANNEL, INC.'S NON-CONFIDENTIAL REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO (1) COMPEL APPLICANT'S RESPONSES TO SPEED CHANNEL'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND ITS FIRST SET OF INTERROGATORIES; (2) TEST THE SUFFICIENCY OF APPLICANT'S RESPONSES TO SPEED CHANNEL'S REQUESTS FOR ADMISSIONS; AND (3) SUSPEND

via first class mail, postage prepaid, upon:

Brian J. Hurh, Esq.
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW
Suite 200
Washington, DC 20006-3402

 /Daniel E. Bruso/

Daniel E. Bruso

EXHIBIT A

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

Application Serial Nos.:	77476098 77497086 77476107 77478035
Filed:	May 15, 2008 June 12, 2008 May 15, 2008 May 19, 2008
Marks:	SPEEDVISION SPEEDVISION SPEEDVISION HD SPEEDVISION (and Design)
Publication Date:	November 25, 2008 (for all opposed applications)

<p>Speed Channel, Inc.</p> <p align="right">Opposer,</p> <p>v.</p> <p>Phoenix 2008 LLC,</p> <p align="right">Applicant.</p>

Opposition No. 91189418

**APPLICANT'S FIRST SUPPLEMENTAL RESPONSE TO OPPOSER'S
FIRST SET OF INTERROGATORIES**

Applicant Phoenix 2008 LLC ("Applicant") hereby submits its First Supplemental Response to Opposer Speed Channel, Inc.'s ("Opposer") First Set of Interrogatories ("Interrogatories"), originally served on June 4, 2009, pursuant to Fed. R. Civ. P. 26(e)(1) and the Trademark Trial and Appeal Board's ("Board") Manual of Procedure ("TBMP") § 408.03.¹

¹ The current available version of TBMP § 408.03 (v. 2004) cites to Fed. R. Civ. P. 26(e)(2). That rule was revised in 2007, and the duty to supplement is now set forth under Rule 26(e)(1). However, the revisions did not materially or substantively change the duty to supplement under the Federal Rules of Civil Procedure.

GENERAL OBJECTIONS

Applicant objects to Opposer's Interrogatories to the extent that such Interrogatories are not relevant to the claims asserted in this proceeding, or not calculated to lead to the discovery of admissible evidence.

Applicant objects to Opposer's Interrogatories to the extent that such Interrogatories relate to matters that are protected by the attorney-client privilege, the attorney work product privilege, or any other applicable privilege.

Applicant objects to Opposer's Interrogatories to the extent that such Interrogatories, including their definitions and instructions, seek to impose any obligation on Applicant beyond that required by the Federal Rules of Civil Procedure or the United States Patent and Trademark Office.

In supplementing its responses to these Interrogatories, Applicant does not waive any of the foregoing objections, or the specific objections set forth in the responses to particular Interrogatories. By making these supplemental responses, Applicant does not concede that its supplemental responses are relevant to this action or calculated to lead to the discovery of admissible evidence. Applicant expressly reserves the right to object to further discovery into the subject matter of these Interrogatories, to the introduction into evidence of any supplemental response or portion thereof, and to further supplement its response should further investigation disclose responsive information.

Applicant incorporates by reference the above General Objections into each of the supplemental responses below.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1:

Set forth all reasons why Applicant selected Applicant's Marks.

Applicant selected Applicant's Marks because all of the trademark or service mark registrations for "SPEEDVISION" formerly owned by Opposer were cancelled by the PTO for nonuse under Section 8 of the Trademark Act. These cancellations occurred over a span of more than four years without any attempt by Opposer to maintain these

registrations, constituting an express abandonment of any rights associated with these marks. Applicant, upon discovering that these cancelled marks were available for public use, applied for registration of Applicant's Marks. Applicant specifically selected the term SPEEDVISION due to its ability to uniquely symbolize motorsports and related goods and services.

INTERROGATORY NO. 2:

Describe with specificity the derivation of Applicant's Marks.

Applicant objects to Interrogatory No. 2 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects on the ground that the request is ambiguous as to the meaning and scope of "derivation" with respect to Applicant's Marks. Subject to, and without waiver of, this objection, there are no alternate forms of Applicant's Marks that Applicant considered for the Opposed Applications.

INTERROGATORY NO. 3:

Set forth with specificity the reason for selecting the term "SPEEDVISION" as a term used in Applicant's Marks.

Applicant objects to Interrogatory No. 3 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, see response to Interrogatory Nos. 1 and 2.

INTERROGATORY NO. 4:

State whether Applicant, or any entity acting for Applicant, is currently selling goods or providing services described in the Opposed Applications under the marks that are the subject of the Opposed Applications in the United States and, if so, fully describe the first sale of such goods or services.

Applicant is not currently selling any goods or providing any services described in the Opposed Applications under the marks that are the subject of the Opposed Applications in the United States, nor has Applicant ever sold such goods or provided such services.

INTERROGATORY NO. 5:

Set forth all facts to support the claim that at the time Applicant filed the Opposed Applications, Applicant had a *bona fide* intent to use the marks identified in each of the Opposed Applications on each of the goods and services identified therein.

Applicant objects to Interrogatory No. 5 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery

of admissible evidence. Subject to, and without waiver of, this objection, the Opposed Applications were filed on an intent-to-use basis pursuant to 15 U.S.C. §1051(b), which includes a sworn statement of a *bona fide* intention to use the mark in commerce, which represents evidence of a good faith intention to use Applicant's Marks. Accordingly, at the time of filing the Opposed Applications, Applicant had a *bona fide* intent to use the marks identified in each of the Opposed Applications on each of the goods and services identified therein, and still has a *bona fide* intent to use such marks on such goods and services. In addition, since approximately January 2008, Applicant or Applicant's sole member explored the possibility of producing and distributing television programming related to automobiles, and motorsports in general, with the potential of utilizing Applicant's Marks on such goods or services subject to Applicant's permissible use of such marks.

INTERROGATORY NO. 6:

Identify all third party marks (whether registered or not) of which You are aware that include the word element SPEED for goods or services in International Classes 38, 41, or either of them, within the United States.

Applicant objects to Interrogatory No. 6 to the extent that the request seeks information that is publicly available from the PTO. Applicant further objects to the extent that the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

INTERROGATORY NO. 7:

Describe in detail all uses that You made or make of the term SPEEDVISION or any marks that include the word element SPEEDVISION in connection with any goods in International Classes 38, 41, or either of them, within the United States.

Applicant is not currently using, nor has it ever used, the term SPEEDVISION or any marks that include the word element SPEEDVISION in connection with any goods in International Classes 38, 41, or either of them, within the United States.

INTERROGATORY NO. 8:

Identify (a) the persons who created and selected Applicant's Marks, and (b) the current employee of Applicant with the greatest knowledge concerning the selection of Applicant's Marks.

For subparts (a) and (b):

Roger Williams
Phoenix 2008 LLC
114 Ferris Hill Rd.
New Canaan, CT 06840

(203) 972-6447

INTERROGATORY NO. 9:

Fully describe each good offered or to be offered and each service provided or to be provided under Applicant's Marks within the United States.

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States. Accordingly, Applicant has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. In general, it is Applicant's intention to offer the following goods and provide the following services under Applicant's Marks within the United States:

For Application Serial No. 77497086,

Publications, namely, newsletters, magazines, and journals in the fields of automobiles, airplanes, motorcycles, boats, and other modes of transportation

For Application Serial No. 77478035

Shirts; Pants; Jackets; Footwear; Hats; Headwear; Sweat shirts; Coats; Gloves

Cable television broadcasting; Radio and television broadcasting services; Audio and video broadcasting services over the Internet

Entertainment services, namely, an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation provided through television broadcasts, cable and satellite television, radio broadcasts, mobile communications devices, wireless networks, and global computer networks; Entertainment services, namely, production of CDs, DVDs, videotapes, and pre-recorded digital media featuring an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation; Production of cable television programs

For Application Serial No. 77476107

Cable television broadcasting; Radio and television broadcasting services; Audio and video broadcasting services over the Internet

Entertainment services, namely, an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation provided through television broadcasts, cable and satellite television, radio broadcasts, mobile communications devices, wireless networks, and global computer networks; Entertainment services, namely, production of CDs, DVDs, videotapes, and pre-recorded digital media featuring an on-going series featuring automobiles,

airplanes, motorcycles, boats, and other modes of transportation; Production of cable television programs

For Application Serial No. 77476098

Cable television broadcasting; Audio and video broadcasting services over the Internet; Radio and television broadcasting services

Entertainment services, namely, an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation provided through television broadcasts, cable and satellite television, radio broadcasts, mobile communications devices, wireless networks, and global computer networks; Entertainment services, namely, production of CDs, DVDs, videotapes, and pre-recorded digital media featuring an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation; Production of cable television programs

INTERROGATORY NO. 10:

Fully describe the trade channels for each good offered or to be offered and service provided or to be provided under Applicant's Mark within the United States.

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant has not yet determined specific trade channels for each good or service that it may offer under Applicant's Marks in the United States. In general, it is Applicant's intention to offer its goods and/or provide its services in the following trade channels:

For entertainment and cable television services: television, radio, internet, CDs, DVDs, videotapes, and other pre-recorded digital media.

For publications: internet, retail outlets that sell publications; mail subscriptions.

For clothing: internet, retail outlets that sell clothing.

INTERROGATORY NO. 11:

Fully describe the intended consumer for each good offered or to be offered and service provided or to be provided under Applicant's Mark within the United States.

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant has not yet determined specific consumers for each good or service it may offer under Applicant's Marks in the United States. In general, it is Applicant's intention

to offer its goods and/or provide its services to consumers with interests in automobiles, and motorsports in general.

INTERROGATORY NO. 12:

Fully describe the source of all revenues that Applicant expects to receive from each good offered or to be offered and service provided or to be provided under Applicant's Marks within the United States.

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant cannot identify any specific source of revenue that Applicant expects to receive from each good offered or to be offered or service provided or to be provided under Applicant's Marks within the United States. In general, it is Applicant's expectation that it will derive revenue for Applicant's goods or services from:

For entertainment and cable television services: television, radio and internet advertisements; sale of CDs, DVDs, videotapes, and other pre-recorded digital media.

For publications: sale of publications at retail outlets, mail subscriptions and Internet sales.

For clothing: sale of clothing at retail outlets and Internet sales.

INTERROGATORY NO. 13:

Identify any good offered or to be offered and service provided or to be provided under Applicant's Marks that are not identified in the Opposed Applications.

Applicant objects to Interrogatory No. 13 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, Applicant is not currently offering any good or providing any service, and presently does not intend to offer any good, or provide any service, under Applicant's Marks that is not identified in the Opposed Applications.

INTERROGATORY NO. 14:

Identify all third-parties (including advertising agencies, public relations agencies or market research agencies) that Applicant has communicated with concerning the advertising, marketing, promoting or publicizing of goods or services to be sold or provided within the United States under Applicant's Marks, whether or not such third-parties are located within the United States.

Applicant has not communicated with any third-party concerning the advertising, marketing, promoting or publicizing of goods or services to be sold or provided within the United States under Applicant's Marks.

SUPPLEMENTAL RESPONSE

Applicant communicated with a third-party concerning the manufacturing of goods to be sold within the United States under Applicant's Marks. Sometime in late 2008, Applicant or Applicant's sole member discussed the manufacturing of goods bearing Applicant's Marks. As a result of that discussion, about a few weeks later, Applicant was provided with a sample of one of Applicant's Marks as it may be used or used on goods or in connection with services to be sold in the United States.

INTERROGATORY NO. 15:

Describe any information requested, conducted or received by or on behalf of Applicant concerning Applicant's Marks or the Speed Marks, or goods or services offered under any such marks, including but not limited to market research relating to any likelihood of or actual confusion between the parties' respective marks.

Applicant objects to Interrogatory No. 15 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine, and to the extent that the request for "information ... conducted" is incomprehensible. Subject to, and without waiver of, this objection, Applicant or Applicant's sole member has inquired and/or received information indicating that Speedvision Network changed to Speed Channel on or about February 2002, and that the previously registered SPEEDVISION marks became available upon cancellation by the PTO. Applicant also learned that several employees of Opposer, or one of its affiliates (including Fox), including David Hill, the current Chairman and CEO of Fox Sports, were involved with researching, investigating and instituting the discontinued use of SPEEDVISION and the use of SPEED to describe Opposer's goods and services following Opposer's acquisition of Speedvision Network.

INTERROGATORY NO. 16:

Identify all channels in which Applicant advertises or intends to advertise goods and services under Applicant's Marks within the United States.

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant cannot state specific channels in which Applicant advertises or intends to advertise its goods or services under Applicant's Marks within the United States. In general, it is Applicant's intention to advertise its goods and services through common advertising media, including but not limited to television, radio, print publications, and the Internet.

INTERROGATORY NO. 17:

Describe in detail all facts and evidence to support Applicant's denial of any allegation in Speed's Notice of Opposition, with reference to the specific allegation(s) to which the facts and evidence relate.

Applicant objects to Interrogatory No. 17 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant states that there is no likelihood of confusion between Applicant's Marks and Opposer's SPEED marks, and that Opposer has no rights in SPEEDVISION due to its non-use of such marks, its abandonment of such marks, and the cancellation of such marks by the PTO. Applicant is also aware that, in as early as 1999, Opposer, or one of its affiliates (including Fox), had planned to abandon the SPEEDVISION mark. See also Applicant's response to Interrogatory No. 15.

INTERROGATORY NO. 18:

Describe in detail all facts and evidence to support Applicant's Affirmative Defenses to Speed's Notice of Opposition, with reference to the specific Affirmative Defense(s) to which the facts and evidence relate.

Applicant objects to Interrogatory No. 18 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant states as follows:

Affirmative Defense	Basis for Defense
Failure to State a Claim	Opposer has failed to state a valid claim because Opposer has abandoned all rights to SPEEDVISION and there is no likelihood of confusion between Applicant's Marks and Opposer's SPEED marks.
Abandonment	Opposer has no rights to SPEEDVISION due to Opposer's non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO.
Doctrine of Unclean Hands	Applicant asserts the doctrine of unclean hands based on Opposer's attempt to claim rights to SPEEDVISION after Opposer's non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO, in addition to Opposer's attempt to assert rights in its Opposition that Opposer no longer has.
Doctrine of Estoppel	Applicant is estopped from claiming any right to SPEEDVISION due to its non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO, and from making any claim in its Opposition to rights that Opposer no longer has.
Doctrine of Bad Faith	Applicant asserts the doctrine of bad faith based on Opposer's attempt to

Faith	claim rights to SPEEDVISION due to Opposer's non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO, as well as Opposer's attempt to assert rights in its Opposition that Opposer no longer has.
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Applicant is also aware that, in as early as 1999, Opposer, or one of its affiliates (including Fox), had planned to abandon the SPEEDVISION mark. See also Applicant's response to Interrogatory No. 15. See also Applicant's response to Interrogatory No. 15. Applicant reserves the right to supplement or amend its response to this Request subject to Applicant's further investigation of this matter.

INTERROGATORY NO. 19:

To the extent You are relying upon third party marks in support of Applicant's denial of any of the allegations in Speed's Notice of Opposition, identify each third party mark and for each identify the owner, the goods, the annual sales of goods under the mark, and evidence of consumer recognition of the mark.

Applicant objects to Interrogatory No. 19 to the extent that it seeks information that is publicly available from the USPTO. Applicant further objects to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects to the extent that the request is overly broad and unduly burdensome. Subject to, and without waiver of, this objection, the following Speedvision marks (all previously owned by Speed Channel, Inc.) were abandoned by Opposer and cancelled by the PTO for nonuse under Section 8 of the Trademark Act:

- Speedvision (Registration No. 2049276) (cancelled)
- Speedvision Network (Registration No. 2067548) (cancelled)
- Speedvision (and design) (Registration No. 2140153) (cancelled)
- Speedvision News Raceweek (and design) (Registration No. 2433636) (cancelled)
- Speedvision GT Championship (Registration No. 2451685) (cancelled)
- Speedvision World Challenge (Registration No. 2453681) (cancelled)
- Speedvision Touring Car Championship (Registration No. 2453772) (cancelled)
- Speedvision.com (Registration No. 2464221) (cancelled)

INTERROGATORY NO. 20:

Identify each of Applicant's officers, managers and members.

Roger Williams
Phoenix 2008 LLC
114 Ferris Hill Rd.
New Canaan, CT 06840
(203) 972-6447

INTERROGATORY NO. 21:

If You contend that there is no likelihood of confusion between the Speed Marks and Applicant's Marks, describe in detail the basis for Your contention.

Applicant objects to Interrogatory No. 21 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects on the ground that the interrogatory seeks a conclusion of law regarding "likelihood of confusion." Subject to, and without waiver of, this objection, the word "speed" is highly suggestive or descriptive of Opposer's goods and services, thus warranting a very narrow scope of protection under U.S. trademark law. In fact, the U.S. Trademark Office database reveals many registrations and applications incorporating the word "speed" for numerous goods and services. Opposer's attempt to claim exclusive rights to a word that is commonly associated with and describes a feature of automobiles, and motorsports in general, contravenes trademark law and policy. Even if it were true that Opposer's Speed Marks have acquired some degree of fame, this does not afford Opposer absolute rights to that word, especially when used as one syllable of a non-confusingly similar multi-syllabic term. SPEEDVISION is sufficiently different from SPEED in terms of sight, sound and connotation to avoid confusion, particularly since the word "speed" is in common usage as a trademark and descriptive term, and when it is used in a highly suggestive or descriptive manner.

INTERROGATORY NO. 22:

Identify all documents that support or contravene Your answer to Interrogatory No. 21.

Applicant objects to Interrogatory No. 22 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Opposer is already in possession of Applicant's April 3, 2009 letter to Daniel E. Bruso, Esq., counsel for Opposer, in response to Opposer's March 25, 2009 letter to Brian J. Hurh, Esq., counsel for Applicant.

SUPPLEMENTAL RESPONSE

Subject to, and without waiver of the foregoing objection, Opposer is also in possession of certain documents and things, produced as part of Applicant's First Supplemental Response to Opposer's Request for Documents, that may relate to this Interrogatory.

INTERROGATORY NO. 23:

Describe in detail any instances of which you are aware in which any person has referred to Opposer, or Opposer's goods and services, using the term "SPEEDVISION," from December 4, 2004, through and including the date that Applicant responds to these Interrogatories.

Applicant is not aware of any instance in which any person has referred to Opposer, or Opposer's goods and services, using the term "SPEEDVISION," from December 4, 2004, through and including the date of Applicant's response to these Interrogatories.

INTERROGATORY NO. 24:

Describe how Applicant complied with its obligations to preserve all Documents, including but not limited to electronically stored information, relevant to the issues in this case, including by identifying all steps taken and the dates such steps were taken.

Upon receiving notice of Opposer's request for an extension of time to file a Notice of Opposition against the Opposed Applications, Applicant has made all reasonable efforts to preserve any potentially relevant documents.

INTERROGATORY NO. 25:

Identify the persons with the most knowledge about the substance of the Answers to Opposer's First Set of Interrogatories.

Roger Williams
Phoenix 2008 LLC
114 Ferris Hill Rd.
New Canaan, CT 06840
(203) 972-6447

INTERROGATORY NO. 26

Identify all persons who provided information or documents relating to Applicant's Answers to Opposer's First Set of Interrogatories.

Roger Williams
Phoenix 2008 LLC
114 Ferris Hill Rd.
New Canaan, CT 06840
(203) 972-6447

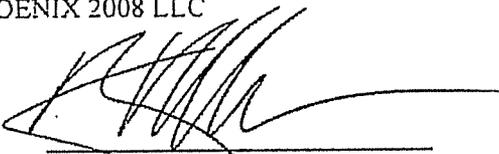
INTERROGATORY NO. 27:

Identify the specific person(s) who participated in the decision to file the Opposed Applications and their role.

Roger Williams
Phoenix 2008 LLC
114 Ferris Hill Rd.
New Canaan, CT 06840
(203) 972-6447

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

PHOENIX 2008 LLC

By: 

Roger Williams
Phoenix 2008 LLC
114 Ferris Hill Rd.
New Canaan, CT 06840
(203) 972-6447

November 2, 2009

As to all objections

By: 

Brian J. Hurh

DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Ave. NW
Washington, DC 20006
(202) 973-4200

Counsel for Phoenix 2008 LLC

November 2, 2009

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing "Applicant's Supplemental Response to Opposer's First Set of Interrogatories" was sent via first class mail, postage prepaid, this 2nd day of November, 2009 to the following:

Daniel E. Bruso, Esq.
Cantor Colburn LLP
20 Church Street, 22nd Floor
Hartford, CT 06103-3207



EXHIBIT B

(REDACTED)