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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 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**

In accordance with the provisions of 37 C.F.R. § 2.120(d)(2) and TBMP §§ 510.03 and 523.01, Opposer Speed Channel, Inc. (“Speed Channel”) hereby moves to:

1. Compel Applicant Phoenix 2008 LLC (“Applicant”) to:
 - a. Supplement Applicant’s responses to Speed Channel’s First Set of

Interrogatories (the “Interrogatories”) and First Set of Requests for Production of Documents (the “Requests for Production”), without objection;

- b. Produce a privilege log that identifies all documents that Applicant is withholding on the basis of the attorney-client privilege, the attorney work product doctrine, or otherwise, and that is sufficiently detailed to allow Speed Channel to assess and challenge the basis for Applicant’s privilege claims;
- c. Produce all of its responsive, non-privileged documents and things for inspection and copying; and
- d. Fully describe Applicant’s investigation regarding the existence of responsive documents and things.

Speed Channel further moves the Board to test the sufficiency of Applicant’s responses to Speed Channel’s First Set of Requests for Admissions, find that they are insufficient and direct Applicant to file supplemental responses, all pursuant to TBMP § 524 and Fed. R. Civ. P. 36(a) and 37 C.F.R. 2.120(h).

Finally, Speed Channel moves to suspend this proceeding pending disposition of the instant Motion, all pursuant to TBMP § 523.01 and 37 C.F.R. §2.120(e).

Speed Channel avers that, pursuant to TBMP § 523.02(a), 524.02, 37 C.F.R. § 2.120(e) and 37 C.F.R. §2.120(h), it undertook a good faith effort, by conference and correspondence, to resolve the issues presented in the instant Motion with Applicant’s counsel. Unfortunately, the parties have been unable to reach agreement.

In support of the instant Motion, Speed Channel relies upon the pleadings filed to date and states as follows.

1. This is an Opposition proceeding currently pending before the Board.

2. Opposer owns and operates the “SPEED television network,” a 24-hour cable television network featuring television programming about automotive subjects and motor sports. The Speed television network is currently available in more than 68 million homes in North America.
3. Additionally, Opposer produces original television programming on its SPEED television network, and sells and distributes merchandise associated with the SPEED television network and its television programs under its SPEED trademarks.
4. Speed Channel owns several trademarks registered with the United States Patent and Trademark Office for a variety of goods and services that incorporate the word “SPEED” (collectively, the “SPEED Marks”) and which are associated with Opposer’s television network, including, but not limited to United States Trademark Registration Nos.:
 - a. 3128705, for SPEED, covering “production and distribution of television and radio programs featuring sports and entertainment” in International Class 41;
 - b. 3302139, for SPEED (and Design), covering “production and distribution of television and radio programs featuring motorsports and entertainment; entertainment services in the nature of television and radio programming featuring motorsports; providing on-line information in the field of motorsports and entertainment via the Internet and wireless devices” in International Class 41;
 - c. 2780662, for SPEED CHANNEL (and Design), covering “Streaming of audio materials on the Internet and streaming of video materials on the Internet” in International Class 38 and “Production and distribution of television and radio programs featuring sports and entertainment” in International Class 41;

- d. 2805030, for SPEED ON DEMAND, covering “Entertainment services in the nature of sports television programs available via a global communications network” in International Class 41;
 - e. 3318207, for SPEED REPORT, covering “Entertainment services in the nature of an ongoing television program featuring sports” in International Class 41;
 - f. 3463037, for SPEED ROAD TOUR CHALLENGE, covering “Entertainment services in the nature of a television series in the reality genre” in International Class 41 (collectively, the foregoing registrations are the “SPEED Marks”).
5. Speed Channel also owns United States Trademark Application Serial No. 78969990 (the “Speed Application”), for SPEED GARAGE, covering “Entertainment services in the nature of providing television programs and downloadable television programs featuring automotive repairs via the Internet; entertainment services in the nature of video programs featuring motor vehicles transmitted via wireless communication devices, namely cell phones, personal digital assistants, computers, and wireless handhelds; production and distribution of audio visual entertainment namely, video programs featuring motor vehicles transmitted via mobile communication devices, namely cell phones, personal digital assistants, computers, and wireless handhelds” in International Class 41.
6. Speed Channel is the successor-in-interest to Speedvision Network, LLC (“Speedvision Network”). Prior to converting from the Limited Liability Company known as Speedvision Network to a corporation known as Speed Channel, Inc., Speedvision

Network operated the SPEED television network using the trademark SPEEDVISION (the “SPEEDVISION Mark”) to identify its products and services, at least as early as 1996.

7. By virtue of the long use of the SPEEDVISION Mark and consumers’ continued association of the SPEEDVISION Mark with Speed Channel and the Speed television network, Speed Channel retains significant residual good will in the SPEEDVISION Mark.
8. Applicant seeks to register SPEEDVISION with the United States Patent and Trademark Office. In connection therewith, Applicant’s is attempting to register the marks identified in United States Trademark Application Serial Nos. 77476098 (SPEEDVISION), 77497086 (SPEEDVISION), 77476107 (SPEEDVISION HD) and 77478035 (SPEEDVISION (and Design)) (collectively, the “Opposed Marks” and the “Opposed Applications”).
9. Each of the Opposed Applications published for opposition on November 25, 2008.
10. On or about March 25, 2009, , Speed Channel commenced the instant proceeding by filing a timely Notice of Opposition with the Board. Speed Channel opposes registration of each of the Opposed Marks in each class for which Applicant seeks registration.
11. On or about June 4, 2009, Speed Channel served its Initial Disclosures upon Applicant’s counsel of record. In addition, Speed Channel and Applicant, both acting by and through counsel, participated in a Discovery Conference.
12. Under the terms of the Board’s March 25, 2009 scheduling order (the “Scheduling Order”), Discovery in this matter opened June 3, 2009.
13. On or about June 4, 2009, Speed Channel served written discovery upon Applicant.

More particularly, Speed Channel served Interrogatories, Requests for Production and Requests for Admission upon Applicant's counsel.

14. True and accurate copies of Speed Channel's Requests for Production, Interrogatories and Requests for Admission are annexed hereto as "Exhibit A," "Exhibit C," and "Exhibit E," respectively.
15. On or about July 13, 2009, and after Speed Channel agreed to at Applicant's request to extend the deadline for it to respond to Speed Channel's Discovery Requests, Applicant served copies of its responses to Speed Channel's Discovery Requests.
16. True and accurate copies of Applicant's responses to Speed Channel's Requests for Production, Interrogatories and Requests for Admissions are annexed hereto as "Exhibit B," "Exhibit D," and "Exhibit F," respectively.
17. Applicant's responses to Speed Channel's Requests for Production and Interrogatories are woefully inadequate. In particular, and despite several requests, Applicant failed to produce a single document or thing. Instead, and as set forth more fully below, Applicant relies upon a series of frivolous and contradictory objections. Other examples of the deficiencies in Applicant responses to Speed Channel's Requests for Production include Applicant's claim that substantially all of its responsive documents fall within the scope of the attorney-client privilege, even though Applicant apparently believes that its documents are publicly available at the PTO. In yet another example of Applicant's attempt to avoid its discovery obligations, Applicant fails to identify or produce any responsive documents, or provide substantive answers to Speed Channel's Interrogatories, whilst simultaneously objecting to producing any documents, apparently because Applicant believes that doing so will be unduly burdensome. *See e.g.*, Exhibit B

(Applicant's Responses to Speed Channel's Request for Production), and Exhibit D (Applicant's Answers to Speed Channel's Interrogatories). Additionally, despite the fact that Applicant repeatedly invokes the attorney-client privilege in its responses to Speed Channel's Discovery Requests, Applicant also fails to produce a privilege log.

18. As of the date of the instant Motion, Applicant has yet to produce a single document. Applicant has also failed to supplement its responses to Speed Channel's Discovery Requests and refuses to produce a privilege log.
19. On or about September 2, 2009, Speed Channel, by and through its counsel, stated in an e-mail to Applicant's counsel that he would be calling counsel to discuss, *inter alia*, Applicant's responses to Speed Channel's Discovery Requests, together with Speed Channel's responses to Applicant's discovery requests. *See* the true and accurate copy of the e-mail from Daniel E. Brusco to Brian Hurh dated September 2, 2009.¹
20. On September 4, 2009, counsel for both parties participated in a joint discussion. During the call, Speed Channel's counsel informed Applicant's counsel that Speed Channel objected to Applicant's responses to Speed Channel's Discovery Requests. Speed Channel's counsel identified the bases for Speed Channel's objections to Applicant's Discovery Responses, which included an identification of the issues described above. Speed Channel's counsel reminded Applicant's counsel of Applicant's ongoing discovery obligations, requested that Applicant produce its documents for inspection and copying, requested that Applicant supplement its responses to Speed Channel's Discovery Requests and requested that Applicant produce a privilege log. Speed Channel's counsel

¹ The Board may note a reference to a conflict of interest in the September 2, 2009, e-mail. This matter relates to Applicant's counsel's firm's prior representation of Speed Channel's predecessor-in-interest. Speed Channel reserves all of its rights to address this conflict of interest; however, it is not requesting Board involvement at this time.

also requested that Applicant supplement its responses to Applicant's Discovery Requests by, *inter alia*, removing Applicant's frivolous objections to Speed Channel's Discovery Requests. Speed Channel also requested that Applicant describe the manner in which Applicant searched for responsive documents and include enough information in its privilege log for Speed Channel to evaluate the basis for Applicant's privilege claim and determine whether to challenge the designation.

21. During the aforementioned discussion, Applicant refused to commit to providing any responsive documents. Instead, Applicant and its counsel maintained that any responsive documents in its possession were privileged and that Applicant possesses no non-privileged documents. Additionally, Applicant refused to supplement its responses to Speed Channel's Discovery Requests, refused to remove its frivolous objections and refused to produce a privilege log.
22. Speed Channel's counsel reiterated Speed Channel's request for responsive documents, a privilege log and supplemental responses to Speed Channel's Discovery Requests.
23. As of September 10, 2009, neither Applicant nor its counsel had provided Speed Channel with any of the items that Speed Channel had requested. Accordingly, on September 10, 2009, Speed Channel, acting pursuant to TBMP § 423.02 and 37 C.F.R. § 2.120(e), sent Applicant's counsel a detailed letter (the "September 10, 2009, Letter") identifying the general and specific bases for Speed Channel's objections to Applicant's responses to Speed Channel's Discovery Requests.
24. A true and accurate copy of the September 10, 2009, letter is annexed hereto as "Exhibit G."
25. In its September 10, 2009, Letter, Speed Channel's counsel provided Applicant with a

detailed description of its general objections to Applicant's responses to Speed Channel's Requests for Production. *See* Exhibit G, September 10, 2009, Letter, pp. 3 – 6. Speed Channel requested that Applicant confirm that it would comply with Speed Channel's requests by September 11, 2009. *See* Exhibit G, September 10, 2009, Letter, page 17.

26. Speed Channel also requested that Applicant:

1. Produce a privilege log no later than September 18, 2009;
2. Supplement its Responses no later than September 18, 2009; and
3. Arrange for Speed Channel to inspect Applicant's documents and things no later than September 25, 2009.

See Exhibit G, September 10, 2009, Letter, p. 17.

27. On September 11, 2009, Applicant's counsel responded to Speed Channel's September 10, 2009, Letter. In a letter dated September 11, 2009 (the "September 11, 2009, Letter"), Applicant's counsel stated that "As counsel for Phoenix 2008 LLC, the Applicant in the above-referenced proceeding, I am writing to let you know that I am in receipt of your 18 page, single-spaced letter dated September 10, 2009, and will respond accordingly to that letter in a timely manner."

28. A true and accurate copy of the September 11, 2009, Letter is annexed hereto as "Exhibit H."

29. After receiving the September 11, 2009, Letter, Speed Channel, acting by and through counsel, continued its efforts to resolve its objections to Applicant's responses to Speed Channel's Discovery Requests.² In particular, and without limiting the scope of the

² Speed Channel also attempted to resolve the issues relating to an ongoing conflict of interest involving Applicant's counsel's prior representation of Speedvision, Speed Channel's predecessor-in-interest. While Speed Channel reserves its right to take action in order to preserve its right, these issues are outside the scope of the instant Motion.

foregoing, Speed Channel's counsel left Applicant's counsel voicemails requesting that Applicant's counsel contact him to discuss the dispute.

30. Unfortunately, Speed Channel's efforts to resolve this dispute have come to naught. Instead of agreeing to produce relevant, responsive documents, supplement its responses to Speed Channel's discovery requests or produce a privilege log, Applicant's counsel has engaged in *ad hominem* attacks upon Speed Channel's counsel. In particular, and without limiting the scope of the foregoing, Applicant's counsel refuses to provide any of the information that Speed Channel requests in its September 10, 2009, letter. Instead, on September 16, 2009, Applicant rejected Speed Channel's September 10, 2009, requests. In an e-mail dated September 16, 2009 (the "September 16, 2009, E-Mail"), Applicant mischaracterized the requests relating to Applicant's responses to Speed Channel's Discovery Requests as "frivolous and hypercritical." See the true and accurate copy of an e-mail from Applicant's counsel to Speed Channel's counsel dated September 16, 2009 (the "September 16, 2009, e-mail"), annexed hereto as "Exhibit I."
31. Speed Channel's counsel has repeatedly requested that Applicant's counsel contact him to discuss the instant dispute. However, despite at least two (2) voicemail messages from Speed Channel's counsel to Applicant's counsel, as of the date of the instant Motion, Applicant has failed to respond to Speed Channel's attempts to resolve this dispute. Applicant still has not produced a single document, a privilege log or any supplemental responses to Speed Channel's Discovery Requests. Instead, Applicant refuses to supplement its responses to Speed Channel's Discovery Requests, produce a privilege log, produce responsive documents or undertake any of the actions requested in Speed Channel's September 10, 2009, Letter.

32. Based on the foregoing, it appears clear that Applicant intends to ignore its discovery obligations, that it has absolutely no intention of producing responsive documents or a privilege log. It further appears that Applicant has no intention of providing discovery responses that are not replete with frivolous and absurd objections.
33. Pursuant to TBMP § 523.02 and 37 C.F.R. § 2.120(e), copies of Speed Channel's Requests for Production and its Interrogatories are annexed hereto as Exhibits A and C, respectively. Copies of Applicant's responses to Speed Channel's Requests for Production are annexed hereto as "Exhibit B," while copies of Applicant's Responses to Speed Channel's Interrogatories are annexed hereto as "Exhibit D." In addition, the bases for Speed Channel's objections to Applicant's responses to Speed Channel's Discovery Requests appear in Exhibit G, the September 10, 2009, Letter.
34. In addition, for the Board's convenience, copies of each of Speed Channel's Requests for Production, Applicant's objection and response to each of Speed Channel's Requests for Production and each of Speed Channel's objections to Applicant's objection and response, as set forth in the September 10, 2009, Letter, appear below:

REQUEST NO. 1:

All documents identified in response to Opposer's First Set of Interrogatories to Applicant served on June 4, 2009.

APPLICANT'S OBJECTION AND RESPONSE:

Any document identified in response to any of Opposer's Interrogatories shall be disclosed to Opposer subject to any applicable objection or privilege.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR

SUPPLEMENTATION

Applicant states that it will “disclose” any document identified in response to any of Speed Channel’s Interrogatories. To date, however, Applicant failed to disclose anything. Additionally, it is unclear what Applicant means when it states that documents will be “disclosed.” as the term “disclose” is vague and ambiguous. Accordingly, Speed Channel requests that the Board direct Applicant to produce all relevant documents and things for inspection as required under the Federal Rules of Civil Procedure and the TBMP.

Additionally, Applicant’s response indicates that it is “disclosing” documents subject to “any applicable objection or privilege.” Applicant did not object to this Request, fails to identify any privilege and has therefore waived these objections. Accordingly, Speed Channel requests that the Board order Applicant to produce all responsive documents.

REQUEST NO. 2:

All documents concerning the creation or adoption of Applicant's Marks including why and how Applicant's Marks were adopted.

APPLICANT’S OBJECTION AND RESPONSE:

Applicant objects to Request No. 2 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of,

this objection, Applicant has not identified any non-privileged documents responsive to this Request.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Applicant claims that all of its responsive documents are privileged. This response lacks merit, as it is inconceivable that Applicant did not undertake any effort to create or adopt its mark without relying entirely upon privileged communications with counsel. This is particularly troublesome since Applicant made specific factual representations relating to its *bona fide* intent-to-use the marks and its belief that it is entitled to registration when it applied to register its marks.

Speed Channel is entitled to discover this information. In addition, Speed Channel is entitled to seek an order excluding all evidence regarding Applicant's creation and adoption of its marks, including without limitation its *bona fide* intent-to-use the marks in commerce. Finally, Speed Channel is entitled to discover documents for which Applicant's counsel served as a conduit for information passing between Applicant and the PTO. Accordingly, and for the foregoing reasons, Speed Channel requests that the Board order Applicant to produce relevant, responsive documents or identify them on its privilege log.

REQUEST NO. 3:

All documents concerning Applicant's use or proposed use of the word element SPEED, or any mark that includes in whole or in part the word element SPEED, other than Applicant's Marks, within the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 3 on the ground that it is vague and ambiguous. It is not clear whether Opposer seeks "documents concerning ... any mark that includes in whole or in part the word element SPEED," or "documents concerning ...Applicant's use of... any mark that includes in whole or in part the word element SPEED." Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, non-privileged documents concerning Applicant's use or proposed use of SPEED consist of the Opposed Applications, which are already publicly available to Opposer.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Applicant incorrectly suggests that this Request is vague and ambiguous; however, Applicant fails to identify the basis for its objection by stating which portion of the Request is vague or ambiguous. Applicant also suggests that all of its responsive documents are privileged. Finally, Applicant objects to this

Request as seeking documents that are publicly available. However, Applicant fails to identify these documents or their location.

The Board should order Applicant to identify all privileged documents on its privilege log. Additionally, the Board should find that Applicant cannot leave it to Speed Channel to find and identify responsive documents, including without limitation documents that Applicant believes are publicly available. Instead, the Board should order to produce all non-privileged documents.

REQUEST NO. 4:

All documents that support the allegation made in the Opposed Applications that, at the time that Applicant filed the Opposed Applications, Applicant had a *bona fide* intent to use the mark identified in each of the Opposed Applications for each of the goods and services identified therein.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 4 to the extent that it seeks documents that are publicly available from the PTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, non-privileged documents responsive to this Request consist of the Opposed Applications, which were filed on an intent-to-use basis

and are already publicly available to Opposer.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

The Board should order Applicant to identify all documents for which it claims privilege on its privilege log. Additionally, The Board should find that Applicant must produce all documents that relate to its *bona fide* intent-to-use the marks identified in the Opposed Applications in commerce. Alternatively, the Board should direct Applicant to confirm that no such documents exist.

REQUEST NO. 5:

To the extent that you claim that third parties used the word element "SPEED" in connection with marks for goods in International Class 38,41, or either of them, or are otherwise intending to rely on any such third party marks, all documents concerning such third party marks including all research or investigations about such third party marks.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 5 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR

SUPPLEMENTATION

Once again, the Board should order Applicant to identify all privileged documents on its privilege log. In addition, the Board should find that Applicant's response is deficient in that it does not indicate whether Applicant has any documents responsive to this Request and, if so, order Applicant to produce them.

Applicant provides no basis for its claim that Applicant may require Speed Channel to search for heretofore unidentified documents that are allegedly available from the PTO. The Board should recognize that Applicant, not Speed Channel, bears the burden of identifying and producing these documents. Accordingly, Speed Channel requests that the Board order Applicant to produce these documents. Speed Channel also requests that the Board direct Applicant to produce search reports. *See* TBMP §414(6).

REQUEST NO. 6

All documents concerning any investigation by Applicant regarding Speed or the sale of products or services under the Speed Marks, including without limitation where the products or services are sold or otherwise provided, the consumers of such products or services and the trade channels of such products or services.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 6 to the extent that it seeks

documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, Applicant has not identified any non-privileged documents responsive to this Request.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

This response is nonsensical, as it improperly suggests that the USPTO maintains documents related to Applicant's investigation of Speed Channel and Speed Channel's products or services. Obviously, this is not the case. The Board should order Applicant to supplement its response and produce responsive documents forthwith.

REQUEST NO. 7:

All documents that identify the actual or intended trade channels for goods sold or services provided, or to be sold or provided, under Applicant's Marks within the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 8:

All documents concerning the clearance of Applicant's Marks

within the United States, including without limitation any legal opinions regarding Applicant's Marks, the Speed Marks, the Speedvision Mark, or any of them.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 8 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request. Accordingly, the Board should order Applicant to identify all privileged documents on its privilege log and produce all non-privileged documents.

REQUEST NO. 9:

All search reports obtained for or reviewed by or on behalf of Applicant in connection with adopting or clearing Applicant's Marks in the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 10:

All documents concerning the meaning or commercial impression of Applicant's Marks within the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant has not identified any documents responsive to this Request.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION OF REQUESTS FOR PRODUCTION NOS. 8 – 10.

Speed Channel reserves its right to object to any attempt by Applicant to introduce documents or evidence that are responsive to these Request Nos. 8 - 10.

Speed Channel is particularly concerned that Applicant objects to Request No. 8 as seeking documents that are protected by the attorney-client privilege, whilst simultaneously claiming that no responsive documents exist. Applicant cannot have it both ways. Either the documents exist, or they do not. Regardless, the Board should order Applicant produce these documents, identify them on Applicant's privilege log, or affirmatively state that they do not exist. Accordingly, Speed Channel requests that the Board order Applicant to supplement its responses by amending its responses to Request for Production Nos. 8 - 10 accordingly.

REQUEST NO. 11:

All documents concerning any investigations of any marks done by or on behalf of Applicant in connection with clearing Applicant's Marks in the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 11 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Under TBMP § 414(6), search reports are discoverable. Accordingly, to the extent that search reports exist, Applicant must produce them. Accordingly, Speed Channel requests that the Board order Applicant to either produce responsive documents, identify them on a privilege log or affirmatively state that no such documents exist. Speed Channel reserves its right to object if Applicant attempts to introduce responsive documents into evidence.

REQUEST NO. 15:

Documents sufficient to show the goods on or services in connection with Applicant actually uses, or intends to use, Applicant's Marks in the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 15 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that that the request for documents sufficient to show goods or services "in connection with Applicant

actually uses, or intends to use ..." is incomprehensible. Subject to, and without waiver of, this objection, documents responsive to this Request consist of the Opposed Applications, which are already publicly available to Opposer.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Once again, Applicant takes the absurd position that (1) the PTO maintains documents that are responsive to the Speed Channel's Requests; and (2) Speed Channel bears the burden of searching for and identifying these documents. Speed Channel requests that the Board order Applicant produce responsive documents for inspection forthwith.

REQUEST NO. 17:

Documents sufficient to show how Applicant's Marks are, or will be, actually used in commerce in the United States and the dates of first use.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 17 to the extent that it seeks documents that are publicly available from the USPTO. Subject to, and without waiver of, this objection, documents responsive to this Request consist of the Opposed Applications, which are already publicly available to Opposer.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR

SUPPLEMENTATION

Applicant takes maintains its absurd position that (1) the PTO maintains documents that are responsive to the Speed Channel's Requests; and (2) Speed Channel bears the burden of searching for and identifying these documents. Speed Channel requests that the Board supplement its responses by removing its frivolous objections, and that it order Applicant to produce responsive documents for inspection forthwith.

REQUEST NO. 21:

All documents concerning Agreements, including any drafts, whether or not currently in force, and negotiations with any person or entity concerning Applicant's Marks in the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 21 on the ground that it is vague and ambiguous to the extent that the term "Agreements" is not defined. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 22:

All documents concerning any agreements, whether or not they are currently in force, including documents relating to the use or

intended use of Applicant's Marks in the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 22 to the extent that it is duplicative of Request No. 21. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Speed Channel finds it difficult to perceive why Applicant found the term Agreement vague or ambiguous. Regardless, Speed Channel defined the term "Agreement" in the September 10 2009, Letter. Having done so, Speed Channel has removed any ambiguity. Accordingly, Speed Channel requests that the Board order Applicant to produce relevant, responsive documents, or to identify them on its privilege log.

With regard to Request No. 22, the Board should note that it differs from Request No. 21. Accordingly, Speed Channel requests that the Board's order extend to both Requests for Production.

REQUEST NO. 23:

All documents concerning market research whether conducted for

marketing purposes, litigation purposes, or other purposes, which relates or refers to Applicant, Applicant's Marks, Speed, the Speed Marks, the Speedvision Mark, or any of the foregoing.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 23 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Speed Channel reiterates its earlier disagreement with Applicant's ridiculous suggestion that Applicant's market research is not relevant. To the contrary, this information is directly relevant to Speed Channel's claims, including its claims that Applicant lacked, and continues to lack, a *bona fide* intent-to-use any of the marks contained in the Opposed Applications. Speed Channel requests that the Board direct Applicant to produce all responsive documents forthwith, and that it identify all allegedly privileged documents on its privilege log.

REQUEST NO. 24:

All documents concerning investigations into the nature of Speed's use of the Speed Marks, the Speedvision Mark, or any of the foregoing, in the United States.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 24 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, Applicant has not identified any non-privileged documents responsive to this Request.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Despite Applicant's apparent belief that documents related to Applicant's investigation of the nature of Speed Channel's use of its marks are publicly available from the PTO, this is not the case. Applicant's suggestion that it does not possess any responsive documents is also troubling because it goes to the scope of the investigation that Applicant conducted prior to answering the Notice of Opposition and responding to Speed Channel's discovery requests. Applicant's response, together with its responses to substantially all of the other Requests and the Interrogatories, strongly suggests that Applicant has not conducted any

investigation or otherwise searched for responsive documents. Accordingly, Speed Channel requests that the Board order Applicant to produce all responsive documents, or to identify them on its privilege log.

REQUEST NO. 25:

All documents referring to, relating to, or concerning the Speed Mark, products sold and services provided, other than the pleadings in this opposition proceeding or communications and correspondence between counsel for the parties in this proceeding.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 25 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

The Board should order Applicant to produce representative samples of responsive documents and things. TBMP § 414(2). The Board should also order Applicant to identify the quantity of

responsive documents and explain why producing additional documents will be unduly burdensome.

REQUEST NO. 26:

All documents referring to, relating to, or concerning Applicant's Marks, products sold, or to be sold, services provided, or to be provided, thereunder, other than the pleadings in this opposition proceeding or communications and correspondence between counsel for the parties in this proceeding.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 26 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Speed Channel requests that the Board order Applicant to produce representative samples of responsive documents and things, *See* TBMP § 414(2), and to explain why it cannot produce more than a representative sample.

Regardless, the Board should recognize that it defies logic for Applicant to seriously contend that information relating to its sales of goods and services under the marks identified in the Opposed Applications are irrelevant, or are somehow privileged. Applicant's contrary suggestion violates the provisions of TBMP § 414(5), (17).

REQUEST NO. 27:

All documents in Applicant's possession regarding Speed, the Speed Marks, the Speedvision Mark, or any of them, including documents relating to Applicant's first awareness of Speed, the Speed Marks, the Speedvision Mark, or any of them.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 27 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Under TBMP § 414(6), (9) and (19), this information is discoverable. The Board should order Applicant to produce it.

REQUEST NO. 31:

All documents that support or contravene Applicant's denial of any allegation set forth in Opposer's Notice of Opposition, including the specific allegation(s) to which the documents relate.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 31 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

The Board should recognize the inherently absurd nature of Applicant's position. Speed Channel has no obligation to search the PTO website for responsive documents , Instead, Applicant bears the burden of producing relevant, responsive documents. This obligation exists regardless of the location where the documents are stored. Accordingly, Speed Channel requests that the Board order Applicant to supplement its Responses, produce its documents or identify them on a privilege log.

REQUEST NO. 32:

All documents that support or contravene Applicant's Affirmative Defenses, including the specific Affirmative Defense(s) to which

the documents relate.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 32 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Applicant is under an obligation to produce responsive documents. Accordingly, the Board should order Applicant to produce them.

REQUEST NO. 36:

All documents identified in Applicant's Initial Disclosures.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant has disclosed all relevant and non-privileged documents that it has identified to be responsive to Opposer's Document Requests and Interrogatories.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Applicant's suggestion that it has "disclosed" documents is incorrect. To date, Applicant has produced a single document. Accordingly, Speed Channel requests that the Board order Applicant to produce responsive documents forthwith.

REQUEST NO. 37:

Drafts of all documents responsive to any of the foregoing Requests.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 37 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Drafts of responsive documents are discoverable and must be produced. Accordingly, Speed Channel requests that the Board order Applicant to produce all responsive documents. Speed Channel further requests that the Board remind Applicant that electronic drafts, which includes documents in which changes may be identified using a "track changes" or similar function, are also discoverable. Finally, Speed Channel requests that the Board remind Applicant that correspondence between an attorney and a third party, including the PTO, is not privileged and must be produced.

REQUEST NO. 38:

Applicant's current organizational chart.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 38 to the extent that it seeks documents that are 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 has not identified any documents responsive to this Request.

REQUEST NO. 39:

Documents sufficient to identify each of Applicant's officers, managers and members.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 39 to the extent that it seeks documents that are 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 has not identified any documents responsive to this Request.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR
SUPPLEMENTATION OF REQUEST FOR PRODUCTION
NOS. 38 – 39**

Applicant's organizational chart and the identity of its corporate officers are discoverable under TBMP § 414(12). Accordingly, Speed Channel requests that the Board order that documents responsive to Request Nos. 38 – 39 be produced.

REQUEST NO. 40:

All documents related to Speedvision Network LLC.

APPLICANT'S OBJECTION AND RESPONSE:

Applicant objects to Request No. 40 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION

Applicant's suggestion that it will be overburdened if it is required to produce documents relating to a business that Applicant's principal sold to Speed Channel is absurd. This is particularly true since Applicant disputes Speed Channel's claim that Speed Channel holds rights in the Speedvision Mark, and disputes that it holds any responsive documents. Speed Channel requests that the