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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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Date	09/28/2009
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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)

SPEED CHANNEL, INC. Opposer,)	
)	
v.)	Opposition No. 91189418
)	
PHOENIX 2008 LLC Applicant.)	
)	

**OPPOSER SPEED CHANNEL, INC.'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO APPLICANT PHOENIX 2008 LLC**

In accordance with the provisions of Rule 34 of the Federal Rules of Civil Procedure and TBMP § 406, Opposer Speed Channel, Inc. ("Speed") requests that Applicant, PHOENIX 2008 LLC ("Applicant") produce the documents and things, identified below, that are in its possession, custody or control, for inspection and copying. Production shall conform in all respects to the Federal Rules of Civil Procedure and TBMP § 406.

Instructions and Definitions:

1. As used herein, the following definitions shall apply:
 - a. The term "Applicant" means PHOENIX 2008 LLC, together with Applicant's

principals, shareholders, members, officers, directors, employees, agents, representatives, predecessors, successors, attorneys and any business entity owned or controlled by or under Applicant's direct or indirect control or management or otherwise acting on Applicant's behalf.

- b. The term "Applicant's Marks" mean the marks that are the subject of United States Trademark Application Serial Nos. 77476098, 77497086, 77476107 and 77478035.
- c. The terms "Speed" or "Opposer" mean Opposer Speed Channel, Inc.
- d. The term "Speed Marks" means Opposer's well-known trademarks and service marks that incorporate the term "SPEED," and that are identified in Paragraphs 5 and 6, and Exhibits A and B, of the Notice of Opposition filed in this proceeding.
- e. The term "Speed Applications" means the United States Trademark Applications for the Speed Marks identified in paragraph 6 of the Notice of Opposition filed in this proceeding. Copies of data extractions from the United States Patent and Trademark Office's TARR and TESS databases regarding the Speed Applications are annexed as Exhibit B to the Notice of Opposition filed in this proceeding.
- f. The term "Speed Registrations" shall mean the United States Trademark Registrations for the Speed Marks identified in paragraph 5 of the Notice of Opposition filed in this proceeding. Copies of data extractions from the United States Patent and Trademark Office's TARR and TESS databases regarding the Speed Registrations are annexed as Exhibit A to the Notice of Opposition filed in this proceeding.
- g. The term "Speedvision Mark" means the SPEEDVISION Mark identified in

paragraph 7 of the Notice of Opposition filed in this proceeding.

- h. The term "Opposed Applications" means United States Trademark Application Serial Nos. 77476098, 77497086, 77476107 and 77478035.
 - i. "Documents" or "documents and things" shall mean those items enumerated in Rule 34 of the Federal Rules of Civil Procedure, and shall include, without limitation, writings, drawings, graphs, charts, photographs, models, prototypes, commercial goods, photo records, films, microfilms, microfiche, audio tapes, video tapes, magnetic media, optical media, and any other data compilations from which information can be obtained or translated, if necessary, by electronic devices into reasonably useable form. Any document or thing that differs from the original or another duplicate thereof because of additions and/or deletions, or any document that is a non-changed duplicate but which appears in a different file, shall be considered an original and shall be separately produced.
 - j. Documents or documents and things include, but are not limited to, electronic mail ("email"), electronically stored information and metatext.
- 2. Production of the requested documents and things shall be as the materials are kept in the ordinary course of business or organized and labeled to correspond with the categories in this request.
 - 3. Whenever a requested document or thing or group of documents or things is kept or found in a file, notebook, or other organizer, attach thereto a copy of the organizer label, number or title, or if kept unlabeled, produce an identification of the source of the document(s) or thing(s).
 - 4. Each document and thing produced should be given a consecutive identification number

reflecting the sequence in which the documents have been kept in the regular course of business (including documents withheld for any reason) and a letter or other symbol indicating the party that produced the document.

5. In producing the requested documents and things, Applicant is required to furnish all requested documents and things available to it, including, by way of illustration only, and not limited to, documents in the possession, custody or control of Applicant's attorneys or their consultants or investigators, or in the possession of Applicant's consultants, _____ advisors, agents or associates.
6. As to any portion of any request which refers to documents or things that Applicant is aware of that were at one time within Applicant's possession, custody or control, but which are not now within or subject to Applicant's custody or control, identify each such document or thing in a manner sufficient to describe such for a subpoena *duces tecum* and give the name, telephone number and address of the person last known by Applicant to have been in possession, custody or control of the document or thing.
7. All document requests herein are intended to embrace within their scope both non-privileged documents and documents for which privilege is claimed. As to any document to which Applicant claims privilege, Applicant's response should state separately with respect to each such document or tangible thing as to which Applicant claims privilege:
 - a. the number of the request calling for the document;
 - b. the names of the authors;
 - c. the date of the document;
 - d. the identification of all persons who have possessed, read, or reviewed the document at any time;

- e. a brief description of the nature and subject matter of the document; and
 - f. the grounds for the claimed privilege.
8. If after responding to the following requests for production and before trial, Applicant, their counsel or anyone representing their interests, learn that any response, though correct when made, is no longer true or is in some material respect incomplete or incorrect, Applicant must seasonably supplement or amend its response to these requests and produce the requested information.
 9. These Document Requests shall be deemed continuing, so as to require additional answers if Applicant obtains further information between the time these Document Requests are served and the time of hearing of this action.
 10. Document requests herein shall be deemed to include each document in the possession of or under the control of all past and present directors, officers, agents, representatives, employees, attorneys, and accountants of Applicant.
 11. Any document requests set forth below that request a visual inspection of original documents, samples, specimens, proofs, and/or any other documents and things not already produced, the Applicant shall produce such documents for inspection at least **forty-eight (48) hours prior to the deposition** time and date set forth in any Notice Of Taking Deposition.
 12. If Applicant objects to any portion of a request, please provide all documents requested by any portion of the request to which Applicant does not object.
 13. If Applicant objects to a request on the ground that it is too broad, please provide all requested documents that Applicant concedes are relevant or reasonably calculated to lead to the discovery of admissible evidence.

14. If Applicant objects to a request on the ground that the request constitutes an undue burden, please provide all documents that can be produced without causing what in Applicant's opinion would be an undue burden.
15. If Applicant is aware that a document or group of documents once existed, but has been lost, purged, mutilated, erased, destroyed, or otherwise rendered illegible or unavailable, please provide the information requested in paragraph 7(a)-(e) of these Instructions, and also state when and by whom the document or group of documents was destroyed, the reason for the destruction of the document(s), and the circumstances under which the destruction of said document(s) occurred.
16. Pursuant to the law of and Federal court decisions throughout the United States, responsive documents in the possession of Applicant are required to be produced.

REQUESTS

REQUEST NO. 1:

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

REQUEST NO. 2:

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

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.

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.

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.

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.

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.

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.

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.

REQUEST NO. 10:

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

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.

REQUEST NO. 12:

All documents concerning the actual or planned advertising and marketing of the goods or services offered or to be offered under Applicant's Marks in the United States.

REQUEST NO. 13:

Representative samples of advertisements (regardless of media), signage, point of sale displays, catalogues, brochures, promotional materials and other marketing materials showing the manner in which Applicant has used or intends to use Applicant's Marks in the United States.

REQUEST NO. 14:

Representative samples of goods offered or sold, services offered or provided, or intended to be offered, sold or provided, under Applicant's Marks within the United States.

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.

REQUEST NO. 16:

Documents sufficient to show the dates of first use of Applicant's Marks in the United States.

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.

REQUEST NO. 18:

All Documents concerning Applicant's business plans for offering goods or providing services under Applicant's Marks or any other name or mark that includes the word element SPEED within the United States.

REQUEST NO. 19:

All documents concerning any plans to expand the goods offered the services provided under Applicant's Marks beyond those identified in the Opposed Applications, within the United States.

REQUEST NO. 20:

Press releases, press kits, or news clippings concerning Applicant.

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.

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.

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.

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.

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.

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.

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.

REQUEST NO. 28:

Documents sufficient to show Applicant's total actual or planned expenditures to advertise, market or promote the goods or services offered under Applicant's Marks within the United States.

REQUEST NO. 29:

Documents sufficient to show Applicant's total sales under Applicant's Marks, Applicant's anticipated sales under Applicant's Marks, or both, within the United States.

REQUEST NO. 30:

All Documents evidencing financial projections, budgets, marketing or advertising forecasts or projections related to Applicant's use or planned use of Applicant's Marks in the United States.

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.

REQUEST NO. 32:

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

REQUEST NO. 33:

All documents that Applicant intends to introduce during its trial testimony.

REQUEST NO. 34:

All documents concerning any instructions by Applicant to preserve electronically stored information.

REQUEST NO. 35:

Documents sufficient to show Applicant's document retention and document destruction policies.

REQUEST NO. 36:

All documents identified in Applicant's Initial Disclosures.

REQUEST NO. 37:

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

REQUEST NO. 38:

Applicant's current organizational chart.

REQUEST NO. 39:

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

REQUEST NO. 40:

All documents related to Speedvision Network LLC.

REQUEST NO. 41:

All documents and things related to any use of the Speedvision Mark within the United States to refer to Speed by any person or entity.

REQUEST NO. 42:

All documents and things related to consumers association of the Speedvision Mark with Speed, Speed's products, Speed's services, or any of the foregoing.

REQUEST NO. 43:

All documents and things related to consumers referring to Speed as Speedvision from December 4, 2004, through and including the date that Applicant responds to these Requests.

REQUEST NO. 44:

All documents and things prepared by or for Applicant that relate to consumers' association, or lack of association, of Speed with the Speedvision Mark.

REQUEST NO. 45:

All documents and things prepared by or for Applicant that relate to Speed's rights in the Speedvision Mark.

REQUEST NO. 46:

All documents and things related to consumers association of the Speed Marks with Speed, Speed's products, Speed's services, or any of the foregoing.

REQUEST NO. 47:

All documents and things related to consumers referring to Speed using the Speed Marks.

REQUEST NO. 48:

All documents and things prepared by or for Applicant that relate to consumers' association, or lack of association, of Speed with the Speed Marks.

REQUEST NO. 49:

All documents and things prepared by or for Applicant that relate to Speed's rights in the Speed Marks.

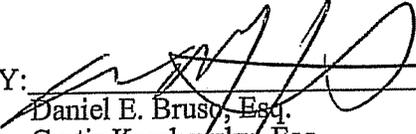
REQUEST NO. 49:

All documents and things that support or contravene Applicant's denial of Speed's claim that Applicant's Mark is confusingly similar to the Speed Marks, the Speedvision Marks, or any of them.

RESPECTFULLY SUBMITTED,
Speed Channel, Inc.

Dated: June 4, 2009

BY: _____

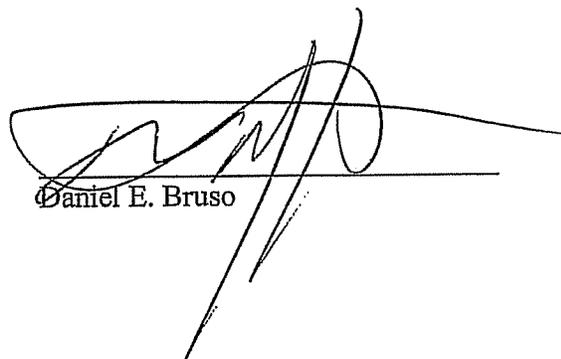

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Opposer's Matter Reference No.: FEG0573OPPUS

CERTIFICATE OF SERVICE

I, Daniel E. Brusio, Esq., counsel to Opposer Speed Channel, Inc. in Opposition No: 91187158, certify that, on the 4th day of June 2009, I served a copy of OPPOSER SPEED CHANNEL, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT PHOENIX 2008 LLC, via first class mail, postage prepaid, upon Applicant's attorney of record and to the additional persons identified below:

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



Daniel E. Brusio