

ESTTA Tracking number: **ESTTA345820**

Filing date: **05/05/2010**

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

Proceeding	91192318
Party	Defendant TROIKA domovari GmbH
Correspondence Address	Ralph E. Locher Lerner Greenberg Stemer, LLP P.O. Box 2480 Hollywood, FL 33022-2480 UNITED STATES trademarks@patentusa.com
Submission	Motion to Compel Discovery
Filer's Name	Ralph E. Locher
Filer's e-mail	trademarks@patentusa.com, locher@patentusa.com
Signature	/Ralph E. Locher/
Date	05/05/2010
Attachments	H&WT-9571 TROIKA Motion to Compel.pdf ( 32 pages )(188066 bytes )

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

In re Applications of: TROIKA domovari GmbH

Serial No.: 77/569,857

Mark: HEROIKA

Serial No.: 77/452,485

Mark: TROIKA

JOSE A. COPIN, JR.,

Opposer

v.

TROIKA DOMOVARI GMBH,

Applicant

Opposition No. 91192318

**APPLICANT'S MOTION TO COMPEL SUFFICIENT ANSWERS TO APPLICANT'S**  
**FIRST INTERROGATORIES**

Applicant pursuant to Trademark Rule 37 C.F.R. §2.210(e) and Rule 37 of the Federal Rules of Civil Procedure, hereby files this motion and moves the Trademark Trial and Appeal Board (hereinafter "Board") to determine the sufficiency of many of Opposer's objections and for an order compelling Opposer to provide full and complete written responses to Applicant's First Set of Interrogatories to Opposer. Opposer has served written responses to Applicant's interrogatories that include what Applicant believes to be insufficient objections and responses.

## **STATEMENT OF THE FACTS**

### **I. THE PLEADINGS**

1. On October 16, 2009, Opposer filed a Notice of Opposition to oppose the registration of application serial numbers Serial Nos. 77/569,857 for the mark HEROIKA and 77/452,485 for the mark TROIKA (Notice of Opposition 91192318).

2. On November 25, 2009, Applicant filed an Answer to the Notice of Opposition.

### **II. EVENTS LEADING UP TO THE MOTION TO COMPEL**

3. Applicant mailed its First Set of Interrogatories to Opposer on February 12, 2010. A copy of Applicant's Set of Interrogatories to Opposer follows this motion.

4. Opposer filed its Responses to Applicant's First Set of Interrogatories to Opposer on March 15, 2010. A copy of Opposers responses follows this Motion.

5. On March 23, 2010, Applicant sent Opposer a letter expressing dissatisfaction with Opposer's responses under 37 C.F.R. 2.120(e) and requested a telephone conference call.

6. On March 25, 2010 Applicant and Opposer held a pleasant conference call and Applicant and Opposer agreed to supplement specific interrogatories within two weeks.

7. Applicant filed its Supplemental Answers to Opposer's Interrogatories on April 27, 2010.

8. Opposer e-mailed Applicant on April 27, 2010, acknowledging its delinquency in providing its supplemental responses.

9. As of May 5, 2010 no supplemental responses have been received.

### **III. INTERROGATORIES REQUESTED TO BE FURTHER ANSWERED AND RATIONAL FOR REQUEST**

10. Applicant requests supplement answers to interrogatories 2-7, 14 and 21.

11. With regards to interrogatory Nos. 2-7, Applicant is requesting Opposer to identify the approximate last date of sale of each of the goods listed in each of Opposer's registration or to state which specific goods are not for sale. Opposer objects to the interrogatory as "overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence ...". In addition Opposer stated that he will produce documents that are responsive to this Interrogatory. Opposer has provided some minor order sales sheets for some of the goods but has not provided a comprehensive answer. It is a basic trademark tenant that a party must prove that it is selling the goods that it alleges it is selling in the market place. Who else is in a better positioned to verify this than the actual seller of the goods. In today's age of computerization this information is readily available and is not burdensome.

12. With regards to interrogatory number 14, Applicant is requesting Opposer to identify the approximate unit and dollars, of its annual sales for each product bearing the mark. Opposer objects to the interrogatory as "overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence ...". In addition Opposer stated that he will produce documents that are responsive to this Interrogatory. Opposer has provided some minor sales sheets for some of the goods but the sales sheets are wholly lacking and a minor dribble of information. Once again, it is a basic trademark tenant that a party alleging that it is selling the goods to

give proof of the sales. Who else is in a better positioned to verify this than the actual seller of the goods. In today's age of computerization this information is readily available and is not burdensome.

13. With regards to interrogatory No. 21, Applicant requests Opposer to identify which of its goods are presently not used in commerce. Opposer objects to the interrogatory as "overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence ...". It is believed that this is a simple and critical question of trademark law. Who else is in a better position to know which of its goods are for sale than the seller.

#### **IV. APPLICANT COMPLIED WITH TRADEMARK RULE 2.120(E)**

A good faith effort has been made by Applicant to resolve the discovery disputes presented herein as required by 37 C.F.R. §2.120(e) and TBMP 408.01, to no avail. Applicant first sent Opposer a letter dated March 23, 2010 stating his objections. On March 25, 2010 a conference call was held between Opposer and Applicant's representatives and both parties agreed to supplement their answers. Applicant has provided Opposer with its supplemental responses. Now, Applicant seeks an order from the Board compelling Opposer to comply with its duties and obligations under the rules of discovery.

#### **V. MOTION TO COMPEL DISCOVERY**

Pursuant to the Rules 33(b)(3) and 34(b) of the Federal Rules of Civil Procedure and Trademark Rule 2.120(a), 37 C.F.R. §2.120(a), the party upon whom interrogatories have been served shall serve a copy of its response within 30 days after service of the discovery requests. Failure to comply with these rules is actionable and compliance may be ordered by the Board. See 37 C.F.R. §120(e). Furthermore, Opposer has a duty to cooperate in the discovery process, and to make a good faith effort to satisfy the discovery needs of Applicant. TBMP 408.01. More than eleven

weeks have passed since Applicant has served its interrogatories and seven weeks since Opposer agreed to supplement its answers.

Through its failure to respond to Applicant's interrogatories, Opposer has delayed this proceeding from moving forward and Applicant from scheduling depositions to obtain the information its needs to support its position. Furthermore, Applicant is also restricted from serving follow up discovery and is concerned that further discovery responses from Opposer will similarly be vague and ambiguous, and incomplete. Applicant will be prejudiced by such non-disclosure in its efforts to prepare for Briefs unless Opposer is compelled by the Board to serve Applicant with the information available to it.

### **CONCLUSION**

In the foregoing, Applicant moves the Board to:

1. Review and determine the sufficiency of Opposer's objections to Interrogatory Nos. 1-7, 14 and 21.

Applicant requests the Board to compel Opposer to make the foregoing supplemental responses within twenty (20) days followings the Boards Order.

Respectfully Submitted

Dated: May 5, 2010

By: \_\_\_/Ralph E. Locher/\_\_\_

Ralph E. Locher  
Lerner Greenberg Stemer LLC  
2445 Hollywood Boulevard  
Hollywood, FL 33020  
Telephone: (954) 925-1100  
Facsimile: (954) 925-1101  
Attorney for Applicant





with the Federal Rules and Trademark Rules of Practice so that any additional information relating in any way to the subject matter of any of these interrogatories and requests which Opposer acquires or which become known to Opposer up to and including the time of trial shall be furnished to Applicant immediately after such information is acquired or becomes known.

The singular form or masculine gender, when used herein, shall include respectively, the plural and feminine or neuter as appropriate. The conjunctive form "and" and the disjunctive form "or" shall be mutually interchangeable and shall not be construed to limit any request.

#### **DEFINITIONS**

The following words and terms, when used in these Interrogatories, shall have the following meanings:

- A. "Opposer" shall each mean Jose A. Copin, Jr., and all other persons acting or purporting to act on behalf of it.
- B. "Applicant" shall mean TROIKA domovari GmbH.
- C. "You" or "your" means Opposer as defined above.
- D. The term "document" shall have the broadest and most comprehensive meaning permitted by Rule 34 of the Federal Rules of Civil Procedure.
- E. The term "identify," to give the "identity" of, or to "describe" mean, in general, to give the fullest description

known or ascertainable by Opposer, whether or not in the possession of Opposer and whether or not alleged to be privileged.

F. "Person" and "persons" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; partnership; firm; association; or other form of business entity; charitable, educational, governmental, or other non-profit institution, foundation body, or other organization; and shall include the entity itself, its officers, directors, employees, staff members, agents, representatives of all kinds (including, but not limited to legal representatives), and consultants.

G. "Applicant's Marks" means the marks: TROIKA depicted in Serial No. 77/450,585 and HEROIKA depicted in Serial No. 77/569,857.

H. "License" refers to any grant, acknowledgment, or permission, oral or written, of the right to use a mark.

I. "State" when used with a reference to a particular subject matter means to declare and describe all facts that are known to you which refer or relate to that subject matter.

J. "Refers," "referring," "relates," or "relating" means embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, or having any logical or factual connection whatsoever with the subject matter in question.

K. "Communications" means any transmission of information from one or more persons and/or between two or more persons by any

means including but not limited to, telephone conversations, letters, telegrams, teletypes, telexes, telecopies, faxes, computer linkups, written memoranda, and face-to-face conversations.

L. "Opposer's Marks" means the marks: TROIKA and design depicted in Registration No. 2,256,787; TROIKA and design depicted in Registration No. 2,256,788; TROIKA and design depicted in Registration No. 2,256,789; TROIKA and design depicted in Registration No. 2,266,575; TROIKA and design depicted in Registration No. 2,268,514; TROIKA and design depicted in Registration No. 2,268,515.

M. "Opposer's Goods" means the goods identified in each of Opposer's respective registrations itemized in paragraph L above.

N. "Opposer's Services" means the services identified in each of Opposer's respective registrations itemized in paragraph L above

O. The term "identify" in relation to: (a) a person requests the name, address, telephone number and last known employer; (b) an entity requests the name, address, telephone number and contact person; and (c) a document requests the author, all recipients, the date, current custodian and a brief description of the subject matter of the document.

## INTERROGATORIES

1. For each person who provided information disclosed in the answers to interrogatories served by Applicant, please identify the interrogatories for which the person provided information, the information provided and identify that person.

RESPONSE:

2. ***Under Opposer's*** mark TROIKA, U.S. Registration No. 2,256,787, the following goods are listed: shaving brushes, compact sold empty, atomizers sold empty, flasks, champagne buckets, napkin rings not of precious metal, cork screws, bottle openers, pepper mills and shoe horns; ***for each, individually and separately, of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.***

RESPONSE:

3. ***Under Opposer's*** mark TROIKA, U.S. Registration No. 2,256,788, the following goods are listed: memo pads, letter

openers, bookmarks, pens, and paperweights; **for each,**  
**individually and separately,** of the above-listed goods please  
state the last date the mark was used in commerce which the  
United States Congress may regulate or if never used please  
state so accordingly.

Response:

4. **Under Opposer's** mark TROIKA, U.S. Registration No.  
2,256,789, the following goods are listed: money clips, metal  
locks, metal locks and keys therefor, key fobs, key rings,  
jewelry boxes, and money boxes; all made of metal; **for each,**  
**individually and separately,** of the above-listed goods please  
state the last date the mark was used in commerce which the  
United States Congress may regulate or if never used please  
state so accordingly.

Response:

5. **Under Opposer's** mark TROIKA, U.S. Registration No. 2,266,575,  
the following goods are listed: money clips, metal locks, metal  
locks and keys therefor, key fobs, key rings, jewelry boxes, and

money boxes; all made of metal; **for each, individually and separately, of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.**

Response:

**6. Under Opposer's** mark TROIKA, U.S. Registration No. 2,268,514, the following goods are listed: pocket knives, nut crackers not of precious metal, manicure sets, non-electric razors, cases, and razor blades; **for each, individually and separately, of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.**

Response:

**7. Under Opposer's** mark TROIKA, U.S. Registration No. 2,268,515, the following goods are listed: thermometers not for medical use, monoculars, telescopes, eyeglass cases, magnifying glasses and portable traffic beacon lights; **for each, individually and separately, of the above-listed goods please state the last date**

***the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.***

Response:

8. For each person who will be providing evidence or testimony on behalf of Opposer, please identify the person and state in detail the subject matter of his or her testimony.

RESPONSE:

9. For each person that Opposer may call, rely on, or use as an expert witness, please identify that person, all opinions to be expressed and the basis therefor, the qualifications of that person as an expert witness and the data information considered by the person in forming the opinions.

RESPONSE:

10. For each actual intended advertisement or promotion by or on behalf of Opposer using or containing Opposer's Mark(s), please identify each publication in which it was or will be published, the location at which it will be displayed or distributed, and the approximate dollar expenditure.

RESPONSE:

11. Identify the geographic marketing area in which each product or service is sold or provided using Opposer's Marks.

RESPONSE:

12. Identify the channels of trade in which the products and/or services are offered or will be offered under Opposer's Mark.

RESPONSE:

13. Identify the person(s) responsible for supervising the quality of the products and/or services offered for sale under Opposer's Marks;

RESPONSE:

14. For each of the products sold under Opposer's Marks, state, both in units and in dollars, your annual sales of each product bearing the mark for each year in which you have sold such product.

RESPONSE:

15. Identify all efforts you have made to enforce any claimed rights in Opposer's Marks including, but not limited to oppositions proceedings, cancellation proceedings and lawsuits.

RESPONSE:

16. Identify all communications directed to you that have challenged or questioned your right to use Opposer's Marks.

RESPONSE:

17. For each instance in which Opposer has ever been involved in any contested matter with a third party relating to Opposer's Marks, please identify the marks in controversy; the parties involved in the contested matter; and the outcome.

RESPONSE:

18. State whether Opposer has ever learned of, witnessed or obtained any knowledge or information regarding actual confusion on the part of any person as to the source, sponsorship,

affiliation or approval between Applicant's and Opposer's marks and related goods and services arising out of the use of Applicant's Mark, and describe each such instance (including the date, location, and all pertinent witnesses and documents).

RESPONSE:

19. State when Opposer first learned of the existence of Applicant's mark and describe the circumstances under which it became aware of Applicant's mark.

RESPONSE:

20. Identify all trademark disputes, past or present, between Opposer and any third parties.

RESPONSE:

21. Identify which of the goods listed in the identification of goods of the registrations for Opposer's Marks which are not presently used in commerce by Opposer.

RESPONSE:

22. Identify which of the goods listed in the identification of goods of the registrations for Opposer's Marks which have never been used on commerce by Opposer.

RESPONSE:

Respectfully Submitted,  
Lerner Greenberg Stemer, LLP

By:         /Ralph E. Locher/          
Ralph E. Locher  
Attorney for Applicant  
2445 Hollywood Boulevard  
Hollywood, FL 33020  
PHONE: 954-925-1100  
FAX: 954-925-1101

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

José A. Copín, Jr.	)	
	)	
OPPOSER,	)	
	)	
v.	)	
	)	Opposition No. 91192318
TROIKA domovari GmbH	)	
	)	
APPLICANT.	)	
	)	
	)	

**JOSE A. COPIN, JR.'S RESPONSES TO APPLICANT'S FIRST SET OF  
INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Trademark Rules of Practice §§ 2.116 and 2.120, Opposer Jose A. Copin, Jr. ("Opposer"), by and through is undersigned counsel, responds and objects to Applicant TROIKA domovari GmbH's ("Applicant") First Set of Interrogatories. Opposer's Responses reflect his present knowledge, information, and belief based on the information available to Opposer after a reasonable search of his files. Because discovery is ongoing, Opposer reserves the right to assert additional objections and to modify and supplement his Responses, in whole or in part, without prejudice.

**GENERAL OBJECTIONS**

The following General Objections shall be deemed incorporated into the objections and Responses to each and every specific Interrogatory:

1. Opposer objects to Applicant's Interrogatories to the extent that these Interrogatories seek information beyond what is available to Opposer at the present time from a reasonable search of his files.

2. Opposer objects to Applicant's Interrogatories to the extent the Interrogatories seek information that is within the attorney-client privilege or work product immunity, or any other applicable privilege. Opposer hereby claims such privileges and protections to the extent they are implicated by each request and excludes privileged and protected information from its responses to the Interrogatories. Any disclosure of such privileged or protected information is inadvertent and is not intended to waive those privileges or protections.

3. Opposer objects to Applicant's Interrogatories to the extent that they seek to impose obligations on Opposer beyond his obligations under the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

4. Opposer objects to Applicant's Interrogatories to the extent that it seeks information beyond the possession, custody, and control of Opposer.

5. Opposer objects to Applicant's Interrogatories to the extent they seek irrelevant information or information that is not reasonably calculated to lead to the discovery of admissible evidence. By responding to an Interrogatory, Opposer is not conceding that the Interrogatory is relevant to the subject matter of this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Opposer expressly reserves the right to object to further discovery into the subject matter of these Interrogatories and to the introduction of the Responses into evidence. Opposer also expressly reserves the right to challenge the authenticity, relevance, materiality, privilege, or admissibility of the information provided in the documents identified and/or produced in response to these Interrogatory at any subsequent proceeding or trial.

6. Opposer objects to Applicant's Interrogatories to the extent the Interrogatories seek information that is publicly available and/or equally accessible to Applicant.

7. Opposer objects to Applicant's Interrogatories to the extent they seek information that is premature. Opposer again emphasizes that discovery is ongoing and that responsive documents and information may not be presently located, known, or identified. Therefore, Opposer reserves the right to assert additional objections and to modify and/or supplement responses without prejudice.

## **RESPONSES**

**INTERROGATORY NO.1:** For each person who provided information disclosed in the answers to interrogatories served by Applicant, please identify the interrogatories for which the person provided information, the information provided and identify that person.

**RESPONSE:** Subject the foregoing General Objections, Opposer states that he, Jose A. Copin, Jr., provided all information disclosed and/or used in responding to these Interrogatories.

**INTERROGATORY NO.2:** Under Opposer's mark TROIKA, U.S. Registration No. 2,256,787, the following goods are listed: shaving brushes, compact sold empty, atomizers sold empty, flasks, champagne buckets, napkin rings not of precious metal, cork screws, bottle openers, pepper mills and shoe horns; for each, individually and separately, of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.

**RESPONSE:** See general objections. Opposer objects to this Interrogatory as overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, to the extent that it seeks information unrelated to any party's claim or defense and insofar as Opposer's TROIKA Marks are federally registered. Opposer further objects to the extent that this Interrogatory seeks information equally or readily available to Applicant.

Subject to the foregoing General and Specific Objections, Opposer directs Applicant to <http://www.troika-usa.com/>. Opposer further states, pursuant to Fed. R. Civ. P. 33( d), that Opposer will produce documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO.3:** Under Opposer's mark TROIKA, U.S. Registration No. 2,256,788, the following goods are listed: memo pads, letter openers, bookmarks, pens, and paperweights; for each, individually and separately, of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.

**RESPONSE:** See general objections. Opposer objects to this Interrogatory as overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, to the extent that it seeks information unrelated to any party's claim or defense and insofar as Opposer's TROIKA Marks are federally registered. Opposer further objects to the extent that this Interrogatory seeks information equally or readily available to Applicant.

Subject to the foregoing General and Specific Objections, Opposer directs Applicant to <http://www.troika-usa.com/>. Opposer further states, pursuant to Fed. R. Civ. P. 33( d), that Opposer will produce documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO.4:** Under Opposer's mark TROIKA, U.S. Registration No. 2,256,789, the following goods are listed: money clips, metal locks, metal locks and keys therefor, key fobs, key rings, jewelry boxes, and money boxes; all made of metal; for each, individually and separately, of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.

**RESPONSE:** See general objections. Opposer objects to this Interrogatory as overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, to the extent that it seeks information unrelated to any party's claim or defense and insofar as Opposer's TROIKA Marks are federally registered. Opposer further objects to the extent that this Interrogatory seeks information equally or readily available to Applicant.

Subject to the foregoing General and Specific Objections, Opposer directs Applicant to <http://www.troika-usa.com/>. Opposer further states, pursuant to Fed. R. Civ. P. 33( d), that Opposer will produce documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO.5:** Under Opposer's mark TROIKA, U.S. Registration No. 2,266,575, the following goods are listed: money clips, metal locks, metal locks and keys therefor, key fobs, key rings, jewelry boxes, and money boxes; all made of metal; for each. individually and separately. of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.

**RESPONSE:** See general objections. Opposer objects to this Interrogatory as overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, to the extent that it seeks information unrelated to any party's claim or defense and insofar as Opposer's TROIKA Marks are federally registered. Opposer further objects to the extent that this Interrogatory seeks information equally or readily available to Applicant.

Subject to the foregoing General and Specific Objections, Opposer directs Applicant to <http://www.troika-usa.com/>. Opposer further states, pursuant to Fed. R. Civ. P. 33( d), that Opposer will produce documents that are responsive to this Interrogatory,

and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO.6:** Under Opposer's mark TROIKA, U.S. Registration No. 2,268,514, the following goods are listed: pocket knives, nut crackers not of precious metal, manicure sets, non-electric razors, cases, and razor blades;for each. individuallv and separatelv. of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.

**RESPONSE:** See general objections. Opposer objects to this Interrogatory as overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, to the extent that it seeks information unrelated to any party's claim or defense and insofar as Opposer's TROIKA Marks are federally registered. Opposer further objects to the extent that this Interrogatory seeks information equally or readily available to Applicant.

Subject to the foregoing General and Specific Objections, Opposer directs Applicant to <http://www.troika-usa.com/>. Opposer further states, pursuant to Fed. R. Civ. P. 33( d), that Opposer will produce documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO.7:** Under Opposer's mark TROIKA, U.S. Registration No. 2,268,515, the following goods are listed: thermometers not for medical use, monoculars, telescopes, eyeglass cases, magnifying glasses and portable traffic beacon lights;for each, individuallv and separatelv, of the above-listed goods please state the last date the mark was used in commerce which the United States Congress may regulate or if never used please state so accordingly.

**RESPONSE:** See general objections. Opposer objects to this Interrogatory as

overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, to the extent that it seeks information unrelated to any party's claim or defense and insofar as Opposer's TROIKA Marks are federally registered. Opposer further objects to the extent that this Interrogatory seeks information equally or readily available to Applicant.

Subject to the foregoing General and Specific Objections, Opposer directs Applicant to <http://www.troika-usa.com/>. Opposer further states, pursuant to Fed. R. Civ. P. 33( d), that Opposer will produce documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO.8:** For each person who will be providing evidence or testimony on behalf of Opposer, please identify the person and state in detail the subject matter of his or her testimony.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as premature and to the extent it imposes obligations on Opposer beyond those imposed by the Trademark Rules of Practice and the schedule in this proceeding.

Subject to the foregoing General and Specific Objections, Opposer will provide the requested information at the appropriate time, pursuant to the schedule in this proceeding. Opposer further directs Applicant to the parties' initial disclosures.

**INTERROGATORY NO.9:** For each person that Opposer may call, rely on, or use as an expert witness, please identify that person, all opinions to be expressed and the basis therefor, the qualifications of that person as an expert witness and the data information considered by the person in forming the opinions.

RESPONSE: See General Objections. Opposer objects to this Interrogatory as premature and to the extent it imposes obligations on Opposer beyond those imposed by the Trademark Rules of Practice and the schedule in this proceeding.

Subject to the foregoing General and Specific Objections, Opposer will provide the requested information at the appropriate time, pursuant to the schedule in this proceeding.

**INTERROGATORY NO. 10:** For each actual intended advertisement or promotion by or on behalf of Opposer using or containing Opposer's Mark(s), please identify each publication in which it was or will be published, the location at which it will be displayed or distributed, and the approximate dollar expenditure.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as this Interrogatory seeks information unrelated to any party's claim or defense.

Opposer states, pursuant to Fed. R. Civ. P. 33(d), that Opposer will produce nonprivileged documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO. 11:** Identify the geographic marketing area in which each product or service is sold or provided using Opposer's Marks.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as Opposer's TROIKA Marks are federally registered.

Subject to the foregoing General and Specific Objections, Opposer states, pursuant to Fed. R. Civ. P. 33(d), that Opposer will produce non-privileged documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO. 12:** Identify the channels of trade in which the products and/or services are offered or will be offered under Opposer's Mark.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory to the extent it seeks information equally or readily available to Applicant.

Subject to the foregoing General and Specific Objections, Opposer states that his products bearing his TROIKA Marks are offered to various retailers and distributors in the promotional products industry, as well as directly to end consumers, via various means, including, but not limited to, in person, postal, and/or internet offerings. Opposer further states, pursuant to Fed. R. Civ. P. 33(d), that Opposer will produce non-privileged documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO. 13:** Identify the person(s) responsible for supervising the quality of the products and/or services offered for sale under Opposer's Marks;

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as this Interrogatory seeks information unrelated to any party's claim or defense.

Subject to the foregoing General and Specific Objections, Opposer states that he, Jose A. Copin, Jr., is responsible for the appropriate use of his TROIKA Marks.

**INTERROGATORY NO. 14:** For each of the products sold under Opposer's Marks, state, both in units and in dollars, your annual sales of each product bearing the mark for each year in which you have sold such product.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as this Interrogatory is not limited to a reasonable time period and seeks information unrelated to any party's claim or defense.

Subject to the foregoing General and Specific Objections, Opposer will produce non-privileged responsive documents sufficient to show summary sales information for a reasonable and relevant time period in response to Applicant's document Requests.

**INTERROGATORY NO. 15:** Identify all efforts you have made to enforce any claimed rights in Opposer's Marks including, but not limited to opposition proceedings, cancellation proceedings and lawsuits.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as it seeks information unrelated to any party's claim or defense.

Subject to the foregoing General and Specific Objections, Opposer states that other than the present proceeding against Applicant, Opposer sent a cease and desist letter to one of Applicant's distributors, International Merchandise Concepts ("IMC"), on February 5, 2010. Opposer further states that he also sent cease and desist letters to Overstock.com and its supplier of the infringing product. Opposer will produce those cease and desist letters.

**INTERROGATORY NO. 16:** Identify all communications directed to you that have challenged or questioned your right to use Opposer's Marks.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as it seeks information unrelated to any party's claim or defense.

Subject to the foregoing General and Specific Objections, Opposer states that to his knowledge no third party has ever challenged or questioned his right to use his TROIKA Marks.

**INTERROGATORY NO. 17:** For each instance in which Opposer has ever been involved in any contested matter with a third party relating to Opposer's Marks, please identify the marks in controversy; the parties involved in the contested matter; and the outcome.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as it seeks information unrelated to any party's claim or defense and to the extent it is duplicative of Interrogatory No. 16.

Subject to the foregoing General and Specific Objections, Opposer incorporates herein his response to Interrogatory 16 and further states that he has never been involved in any contested matter with a third party relating to his TROIKA marks.

**INTERROGATORY NO. 18:** State whether Opposer has ever learned of, witnessed or obtained any knowledge or information regarding actual confusion on the part of any person as to the source, sponsorship, affiliation or approval between Applicant's and Opposer's marks and related goods and services arising out of the use

of Applicant's Mark, and describe each such instance (including the date, location, and all pertinent witnesses and documents ).

**RESPONSE:** Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, and premature.

Subject to the foregoing General and Specific Objections, Opposer states that that several current and long-time customers have notified Opposer and inquired whether in fact Applicant's products bearing its HEROIKA Mark were one in the same, or at least related to, Opposer's TROIKA brand. Additionally and specifically, one of Opposer's customers, Mike Bechold of Suntime Linkswalker, contacted one of Applicant's distributors, IMC, on or about August 26, 2009, after seeing a sailboat paperweight bearing the HEROIKA mark on IMC's website and inquired the following:

I am very confused because Troika and Heroika seem to be the same. Question are they the same?

Opposer further states that, pursuant to Fed. R. Civ. P. 33(d), Opposer will produce non-privileged documents that are responsive to this Interrogatory, and that the burden for identifying the requested information in the documents produced will be substantially the same for Applicant as it is for Opposer.

**INTERROGATORY NO. 19:** State when Opposer first learned of the existence of Applicant's mark and describe the circumstances under which it became aware of Applicant's mark.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as it seeks information unrelated to any party's claim or defense. Opposer further objections to this Interrogatory to extent it seeks information protected by the attorney-client privilege, work product doctrine, or other applicable protection from discovery.

Subject to the foregoing Specific and General Objections, Opposer states that he first learned of the existence of Applicant's HEROIKA mark in January 2009 at a Promotional Products Association International (PPAI) trade show in Las Vegas, Nevada, USA. Opposer attended the trade show and saw and observed the HEROIKA mark being used on various products identical to and/or closely related to products bearing Opposer's TROIKA Marks. Opposer further states that around the same time, colleagues in the promotional products industry and general gift industry also notified Opposer of the existence and use of the HEROIKA mark. Opposer states that he first became aware of Applicant's TROIKA trademark application after investigating Applicant's use of the confusingly similar HEROIKA mark.

**INTERROGATORY NO. 20:** Identify all trademark disputes, past or present, between Opposer and any third parties.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as it seeks information unrelated to any party's claim or defense and to the extent it is duplicative of Interrogatory Nos. 16 and 17.

Subject to the foregoing General and Specific Objections, Opposer incorporates herein his responses to Interrogatory Nos. 16 and 17 and states that he has not been involved in any other trademark disputes other than the present action with any third party.

**INTERROGATORY NO. 21:** Identify which of the goods listed in the identification of goods of the registrations for Opposer's Marks which are not presently used in commerce by Opposer.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, irrelevant, and not reasonably

calculated to lead to the discovery of admissible evidence, at least, insofar as Opposer's TROIKA Marks are federally registered, and to the extent it seeks information unrelated to any party's claim or defense. Opposer further objects to this Interrogatory to the extent it is duplicative of Interrogatories 2-7.

Subject to the foregoing General and Specific Objections, Opposer incorporates herein his responses to Interrogatories 2-7.

**INTERROGATORY NO. 22:** Identify which of the goods listed in the identification of goods of the registrations for Opposer's Marks which have never been used on commerce by Opposer.

**RESPONSE:** See General Objections. Opposer objects to this Interrogatory as vague, ambiguous, overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, at least, insofar as Opposer's TROIKA Marks are federally registered, and to the extent it seeks information unrelated to any party's claim or defense.

Subject to the foregoing General and Specific Objections, Opposer states that to his knowledge every good listed in the registrations of his TROIKA Marks has been used in commerce.

Respectfully submitted,  
SHOOK, HARDY & BACON L.L.P.

Dated: March 15, 2010

/s/ Claire M. Terrebonne  
Amy C. Kelly, KS Bar # 15232; MO Bar # 61344  
Claire M. Terrebonne, MO Bar # 60766  
SHOOK HARDY & BACON, LLP  
2555 Grand Boulevard  
Kansas City, MO 64108  
Tel: (816) 474-6550 / Fax: (816) 421-5547  
akelly@shb.com  
cterrebonne@shb.com  
ATTORNEYS FOR OPPOSER