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

Proceeding	91195327
Party	Plaintiff Hard Candy Cases, LLC
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Submission	Motion to Compel Discovery
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Date	06/25/2013
Attachments	MotionToResumeAndCompel.pdf(96936 bytes) MemoOfPointsAndAuthorities.pdf(235263 bytes) Declaration-StuartWest.pdf(141493 bytes) Declaration-ShaunSluman.pdf(253817 bytes) Exhibit A - 2nd RFP.pdf(288253 bytes) Exhibit B - Response to 2nd RFP.pdf(128810 bytes) Exhibit C - 4th RFP.pdf(505274 bytes) Exhibit D - 1st RFA.pdf(670213 bytes) Exhibit E - Response to 4th RFP.pdf(120057 bytes) Exhibit F - Response to 1st RFA.pdf(1576896 bytes) Exhibit G - Dropbox Email.pdf(146207 bytes) Exhibit H - Shaun Email.pdf(289608 bytes) CertificateOfService.pdf(54481 bytes)

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5 UNITED STATES PATENT AND TRADEMARK OFFICE
6 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 HardCandy Cases, LLC,) Opposition No.: 91195327 (Parent)
8) Opposition No.: 91195328
Opposer,)
9 v.) OPPOSER'S MOTION TO RESUME
10 Hard Candy, LLC,) PROCEEDINGS, AND
11) OPPOSER'S MOTION FOR AN ORDER TO
Applicant.) COMPEL DISCOVERY
12)
13) For the Mark: Hard Candy
14)
15) Filed: 27 March 2009
16)
17) Published in the Trademark
18) Official Gazette: 16 February,
19) 2010

20 **OPPOSER'S MOTION TO RESUME PROCEEDINGS**

21 Pursuant to Trademark Trial and Appeal Board Manual of Procedure
22 § 510.03(b), Opposer Hard Candy Cases, LLC ("Opposer"), by and through
23 their undersigned counsel, hereby respectfully moves this Board to
24 resume the proceedings in this matter, which were previously suspended
25 for purposes of settlement negotiations.

26 For the reasons set for in the Memorandum of Points and
27 Authorities filed simultaneously herewith, Opposer submits that
28 settlement negotiations have broken down between the parties and
further delay of this matter for settlement purposes is unnecessary.

However, significant disputes regarding discovery still exist
between the parties, and Opposer asks that the below Motion for an

Opposer's Motion to Resume Proceedings and Opposer's Motion For An

1 Order to Compel Discovery be considered upon the requested resumption
2 of the proceedings prior to the beginning of Opposer's trial period.

3
4 **OPPOSER'S MOTION FOR AN ORDER TO COMPEL DISCOVERY**

5 Pursuant to Rule 37 of the Federal Rules of Civil Procedure and
6 37 CFR § 2.120(e), Opposer, by and through their undersigned counsel,
7 hereby respectfully moves this Board to compel the production of
8 documents by Applicant Hard Candy, LLC ("Applicant") responsive to
9 Opposer's Second Request for Production of Documents and Opposer's
10 Fourth Request for Production of Documents.

11 For the reasons set for in the Memorandum of Points and
12 Authorities filed simultaneously herewith, Opposer submits that the
13 discovery requests at issue are relevant to these proceedings and that
14 Applicant has no basis for withholding their production.

15
16 Dated this 25th day of June, 2013,

17
18 /s/ Stuart J. West
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5 UNITED STATES PATENT AND TRADEMARK OFFICE
6 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 HardCandy Cases, LLC,) Opposition No.: 91195327 (Parent)
8) Opposition No.: 91195328
Opposer,)
9 v.) OPPOSER'S MEMORANDUM OF POINTS AND
10 Hard Candy, LLC,) AUTHORITIES IN SUPPORT OF ITS
11 Applicant.) MOTION TO RESUME PROCEEDINGS AND
12) MOTION FOR AN ORDER TO COMPEL
13) DISCOVERY
14) In Re Application Serial
15) Nos.:77700557 & 77700559
16)
17) For the Mark: Hard Candy
18)
19) Filed: 27 March 2009
20)
21) Published in the Trademark
22) Official Gazette: 16 February,
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17
18 **OPPOSER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS**
19 **MOTION FOR AN ORDER TO COMPEL DISCOVERY**
20

21 Opposer Hard Candy Cases, LLC ("Opposer") respectfully submits
22 this Memorandum of Points and Authorities in support of its Motion to
23 Resume Proceedings and Motion for an Order to Compel Discovery.
24

25 **INTRODUCTION**

26 Based on an agreement with Applicant Hard Candy, LLC
27 ("Applicant"), Opposer filed a Motion for Suspension for Settlement
28

Opposer's Memorandum of Points and Authorities in Support of Its
Motion to Resume Proceedings and Motion For An Order to Compel

1 with Consent on June 4, 2013.¹ At that time, the parties wished to
2 suspend these proceedings in order to negotiate a potential
3 settlement. Unfortunately, since that time settlement negotiations
4 between the parties have broken down, and Opposer believes that no
5 further time in suspension is necessary for settlement discussions.
6 Pursuant to Trademark Trial and Appeal Board Manual of Procedure §
7 510.03(b) and the statement in the Board's June 20, 2013 notice
8 granting the suspension that proceedings were suspended "subject to
9 the right of either party to request resumption at any time," Opposer
10 has filed the present Motion to Resume Proceedings to end the
11 suspension and resume the proceedings.

12 However, there are still significant discovery disputes that need
13 to be addressed when the proceedings are resumed, which will be
14 discussed below. In addition to the Motion to Resume Proceedings,
15 Opposer has simultaneously filed a Motion for an Order to Compel
16 Discovery, because Opposer's trial period will presumably begin almost
17 immediately upon resumption of the case and the discovery issues must
18 be resolved before Opposer's trial period begins. Regrettably,
19 Opposer's motion may result in further delays, however the motion
20
21

22 ¹ Based on the Board's June 20, 2013 notice granting the suspension, the Board
23 apparently interpreted the consent motion to be a motion to suspend and also
24 a motion to reopen Opposer's due date to submit pretrial disclosures, which
25 had closed on May 21, 2013. Opposer notes that the resetting of the due date
26 for pretrial disclosures as June 20, 2013 was done automatically by the ESTTA
27 system, and was not intended by the parties. Opposer properly submitted its
28 pretrial disclosures to Applicant on May 21, 2013, the original due date.

1 pertains to discovery issues that may have a significant impact on
2 Opposer's ability to present its case if not resolved prior to trial,
3 and therefore must be dealt with now.

4 Opposer is sensitive to these potential delays, and notes that
5 the Board's June 20, 2013 notice indicated that "there have been
6 numerous extensions granted in this proceeding" and that "to continue
7 to seek further extensions after this period expires, the parties will
8 be expected to make a showing of good cause for any further
9 extensions." Opposer will demonstrate such good cause below, however
10 Opposer would also like to point out that the June 4, 2013 Motion for
11 Suspension was the first suspension it had explicitly requested in
12 this case. Other delays, extensions, and suspensions in this case
13 have been procedurally mandated by other motions or requests. For
14 instance, trial dates were reset in May 31, 2011 after a Motion to
15 Consolidate. The case was suspended for over a year following
16 Opposer's December 28, 2011 Motion for an Order to Compel Discovery.
17 However, Opposer did not expect, and had no way of knowing, that the
18 Board would not rule on that motion until December 31, 2012, over a
19 year after the motion was first filed. Finally, Opposer contested
20 Applicant's Motion to Extend Discovery Period filed February 13, 2013,
21 but the Board granted that motion and reset the trial dates. Despite
22 Applicant's success in gaining an extra 30 days for discovery, Opposer
23 notes that Applicant did not make use of that time and never presented
24 Opposer with any additional discovery requests after the extension was
25 granted.

26 Good cause exists for seeking the present Motion for an Order to
27 Compel Discovery. As will be explained below, Opposer properly
28 presented Applicant with discovery requests pertaining to the goods

Opposer's Memorandum of Points and Authorities in Support of Its
Motion to Resume Proceedings and Motion For An Order to Compel

1 and services listed in Application Numbers 77700557 and 77700559,
2 however Applicant has not provided documents to Opposer that were
3 responsive to these requests. Applicant's failure to produce these
4 requested documents will severely inhibit Opposer's ability to present
5 its case during its trial period. The parties have continued to
6 discuss the discovery issues during the present suspension of the
7 case, but have been unable to resolve them. Because Opposer's trial
8 period will begin almost immediately upon resumption of these
9 proceedings, there is no further time to address these issues absent a
10 Motion for an Order to Compel Discovery.

11
12 **BACKGROUND**

13 In March 2013 Applicant provided 184 pages of documents² in
14 response to some of Opposer's discovery requests, including many of
15 those contained in Opposer's Second Request for Production. (Appended
16 hereto as Exhibit A). These were produced in accordance with
17 Applicant's Response to Opposer's Second Request for Production.
18 (Appended hereto as Exhibit B). All but a few of the documents
19 produced by Applicant were dated after the March 27, 2009 filing date
20 of Application Numbers 77700557 and 77700559. None of the produced
21 documents showed that Applicant, as of the March 27, 2009 filing date,
22 had a bona fide intent to use the "Hard Candy" mark with any of the
23 specific goods and services listed in Application Numbers 77700557 and
24 77700559.

25 ² Due to their potentially sensitive or confidential nature, copies of the
26 documents produced by Applicant in response to Opposer's Second Request for
27 Production have not been attached. However, if necessary they can be
28 provided under seal to the Examining Attorney.

Opposer's Memorandum of Points and Authorities in Support of Its
Motion to Resume Proceedings and Motion For An Order to Compel

1 Accordingly, on April 5, 2013, Opposer served Applicant with
2 Opposer's Fourth Request for Production and Opposer's First Set of
3 Requests for Admissions by First Class mail and electronic mail.
4 (Appended hereto as Exhibits C and D, respectively). These discovery
5 requests contained individual requests specific to each and every type
6 of good listed in Applicant's trademark applications, such as requests
7 for documents showing a bona fide intent to use the "Hard Candy" mark
8 in connection with each particular type of good listed in the
9 trademark applications.

10 On May 9, 2013, Applicant served Opposer with its Response to
11 Opposer's Fourth Request for Production and Applicant's Response and
12 Objections to Opposer's First Request for Admissions. (Appended
13 hereto as Exhibits E and F, respectively). In its responses,
14 Applicant stated that responsive documents would be produced "to the
15 extent such documents have not already been produced." (See Responses
16 1-24, Exhibit E). Applicant also denied that documents did not exist
17 that were sufficient to evidence a bona fide intent to use the mark
18 "Hard Candy" in connection with each of the specific types of goods.
19 (See Responses 6-55, Exhibit F).

20 As of May 30, 2013, Opposer had not received any further
21 documents from Applicant, despite numerous attempts at contacting
22 Applicant's counsel to see if and when additional documents would be
23 produced. Applicant had previously indicated that additional
24 documents would be produced. (West Decl. ¶2; Exhibit G). Opposer
25 made a good faith effort to resolve with Applicant the issues
26 presented in the current Motion for an Order to Compel Discovery,
27 however the parties were not able to resolve their differences.
28 (Sluman Decl. ¶3; Exhibit H). During a telephone conversation with

Opposer's Memorandum of Points and Authorities in Support of Its
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1 Opposer's counsel on May 30, 2013, Applicant's counsel stated that
2 Applicant had already produced all documents responsive to Opposer's
3 Fourth Request for Production to the extent that they exist. *Id.*
4 However, Opposer has not found these documents in Applicant's earlier
5 production, and has not received any such documents in response to
6 Opposer's Fourth Request for Production. (Sluman Decl. ¶4; Exhibit
7 H). Opposer has informed Applicant's counsel that no such documents
8 were found in Applicant's produced documents, *Id.*, but Applicant's
9 counsel has refused to identify the bates numbers of any specific
10 produced documents that show Applicant's bona fide intent to use the
11 marks with specific goods listed in the trademark applications (Sluman
12 Decl. ¶4; ¶7).

13 In addition, Applicant's counsel stated during the May 30, 2013
14 telephone call that certain other responsive documents existed but had
15 not yet been produced by Applicant. (Sluman Decl. ¶6; Exhibit H).
16 For instance, Applicant's counsel indicated that documents related to
17 the prosecution of the trademarks at issue, presumably responsive to
18 Request Numbers 9 and 10 contained in Opposer's Second Request for
19 Production (See Exhibit A), existed and would be produced. (Sluman
20 Decl. ¶6; Exhibit H). However, Applicant's counsel stated that these
21 documents were with a separate transactional attorney and Applicant's
22 counsel did not yet have access to them. *Id.* Applicant's counsel
23 stated that he could not provide an estimated date for when they would
24 be produced, despite a reminder that Opposer's trial period was about
25 to begin. *Id.*

1 **MANY RESPONSIVE DOCUMENTS ALLEGED TO EXIST HAVE NOT YET BEEN PRODUCED**

2 Applicant has not explained why it contends that documents exist
3 sufficient to show that Applicant had a bona fide intent to use the
4 "Hard Candy" mark with each of the individual goods specified in
5 Trademark Application Numbers 77700557 & 77700559 as of the March 27,
6 2009 filing date, and that it has produced such documents to the
7 extent that they exist, but that the documents do not appear in the
8 documents Applicant has provided to Opposer.

9 As one example out of many, Request No. 2 of Opposer's Fourth
10 Request for Production requested "[a]ny and all documents, including
11 internal communications, sufficient to demonstrate a bona fide intent
12 to use the mark 'HARD CANDY' in connection with audio cassette
13 players." This request was specific to "audio cassette players," a
14 single one of the listed goods in Application No. 77700559.

15 Applicant's response contained some objections, but also stated
16 that "[n]otwithstanding, and without waiver of the above-stated
17 objections, all non-privileged, responsive documents, if any, will be
18 produced at a mutually agreeable time and place, to the extent such
19 documents have not already been produced." Applicant's counsel stated
20 during a telephone conversation on May 30, 2013 that despite
21 Applicant's objections, all responsive documents had already been
22 produced to the extent that they exist. However, Applicant's March
23 2013 production, the only batch of production so far received by
24 Opposer, contained no documents relevant to "audio cassette players."

25 Applicant has refused to confirm that documents related to its
26 bona fide intent to use the mark in connection with the stated goods
27 either: (1) do not exist, or (2) have not yet been produced. Opposer's
28 Requests No. 8 and 9 contained in its First Request for Admissions

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1 asked Applicant to "[a]dmit that no documents exist sufficient to
2 evidence your bona fide intent to use the mark 'Hard Candy' in
3 connection with consumer electronics, namely audio cassette players"
4 and to "[a]dmit that no documents existed on or before March 27, 2009,
5 to evidence your bona fide intent to use the mark 'Hard Candy' in
6 connection with consumer electronics, namely audio cassette players."
7 Applicant's responses to these requests raised some objections, but
8 also stated that "[n]otwithstanding, and without waiver of the above-
9 stated objections, denied."

10 Applicant thereby denies that there are no documents that would
11 show Applicant's bona fide intention to use the "Hard Candy" mark in
12 connection with audio cassette players. However, Applicant has also
13 stated that all responsive documents have been produced to the extent
14 that they exist. Applicant's statements are inconsistent, because its
15 produced documents contain absolutely nothing regarding audio cassette
16 players.

17 Either the requested documents regarding audio cassette players
18 exist or they do not. Applicant is attempting to have it both ways by
19 denying that they do not exist and also claiming that they have been
20 produced to the extent that they exist, and yet Opposer has received
21 exactly zero documents from Applicant that have any relation to audio
22 cassette players.

23 The lack of produced documents related to audio cassette players
24 is far from the only example of Applicant's failure to properly
25 respond to Opposer's discovery requests. Opposer individually asked
26 Applicant for documents and admissions regarding documents evidencing
27 Applicant's bona fide intent to use the mark in connection with each
28 and every specific category of goods contained in Application Numbers

1 77700557 and 7770059. (See Requests for Production 1-24, Exhibit C;
2 Requests for Admission 6-55, Exhibit D). In each case, Applicant
3 denied that such documents did not exist, and also claimed that the
4 documents would be produced and/or have already been produced to the
5 extent that they exist. (See Responses 1-24, Exhibit E; Responses 6-
6 55, Exhibit F). However, in each case Opposer has not received any
7 documents from Applicant that show Applicant's bona fide intent to use
8 the marks in connection with the specific goods at issue as of the
9 filing date.

10 In summary, Applicant's March 2013 production contained:

- 11 - no documents from any timeframe that were related to "an
12 apparatus for recording, transmission, or reproduction of
13 sound and images," as listed in Application No. 7770059;
- 14 - no documents from any timeframe that were related to
15 "audio cassette players," as listed in Application No.
16 7770059;
- 17 - no documents from any timeframe that were related to "CD
18 players," as listed in Application No. 7770059;
- 19 - no documents from any timeframe that were related to
20 "speakers," as listed in Application No. 7770059;
- 21 - no documents from any timeframe that were related to
22 "audio headphones," as listed in Application No. 7770059;
- 23 - no documents from any timeframe that were related to
24 "audio recorders," as listed in Application No. 7770059;
- 25 - no documents from any timeframe that were related to
26 "audio speakers," as listed in Application No. 7770059;

- 1 - no documents from any timeframe that were related to
- 2 "audio tape recorders," as listed in Application No.
- 3 7770059;
- 4 - no documents from any timeframe that were related to
- 5 "calculators," as listed in Application No. 7770059;
- 6 - no documents from any timeframe that were related to
- 7 "cameras," as listed in Application No. 7770059;
- 8 - no documents from any timeframe that were related to
- 9 "cell phones," as listed in Application No. 7770059;
- 10 - no documents from any timeframe that were related to
- 11 "compact disc players," as listed in Application No.
- 12 7770059;
- 13 - no documents showing a bona fide intent, as of the March
- 14 27, 2009 filing date, to use the "Hard Candy" mark in
- 15 relation to "electric hair curling irons," as listed in
- 16 Application No. 7770059;
- 17 - no documents showing a bona fide intent, as of the March
- 18 27, 2009 filing date, to use the "Hard Candy" mark in
- 19 relation to "electric hair straightening irons," as
- 20 listed in Application No. 7770059;
- 21 - no documents showing a bona fide intent, as of the March
- 22 27, 2009 filing date, to use the "Hard Candy" mark in
- 23 relation to "electric irons," as listed in Application
- 24 No. 7770059;
- 25 - no documents from any timeframe that were related to "MP3
- 26 players," as listed in Application No. 7770059;
- 27 - no documents from any timeframe that were related to
- 28 "radios," as listed in Application No. 7770059;

- 1 - no documents from any timeframe that were related to
- 2 "portable handheld digital electronic devices for
- 3 recording," as listed in Application No. 7770059;
- 4 - no documents from any timeframe that were related to
- 5 "backpacks," as listed in Application No. 7770057;
- 6 - no documents showing a bona fide intent, as of the March
- 7 27, 2009 filing date, to use the "Hard Candy" mark in
- 8 relation to "leather bags," as listed in Application No.
- 9 7770057;
- 10 - no documents from any timeframe that were related to
- 11 "suitcases," as listed in Application No. 7770057;
- 12 - no documents from any timeframe that were related to
- 13 "wallets," as listed in Application No. 7770057;
- 14 - no documents showing a bona fide intent, as of the March
- 15 27, 2009 filing date, to use the "Hard Candy" mark in
- 16 relation to "leather cases," as listed in Application No.
- 17 7770057;
- 18 - no documents showing a bona fide intent, as of the March
- 19 27, 2009 filing date, to use the "Hard Candy" mark in
- 20 relation to "leather handbags," as listed in Application
- 21 No. 7770057;
- 22 - no documents from any timeframe that were related to
- 23 "leather key chains," as listed in Application No.
- 24 7770057;
- 25 - no documents showing a bona fide intent, as of the March
- 26 27, 2009 filing date, to use the "Hard Candy" mark in
- 27 relation to "leather pouches," as listed in Application
- 28 No. 7770057;

- 1 - no documents from any timeframe that were related to
2 "traveling bags," as listed in Application No. 7770057;
3 and
4 - no documents showing a bona fide intent, as of the March
5 27, 2009 filing date, to use the "Hard Candy" mark in
6 relation to "purses," as listed in Application No.
7 7770057.

8 Applicant's failure to produce these documents has negatively
9 impacted Opposer's ability to prepare for its trial period. Opposer
10 asks that Applicant be compelled to produce documentary evidence
11 responsive to Opposer's discovery requests that demonstrate
12 Applicant's bona fide intent as of the March 27, 2009 filing date to
13 use the marks in connection with each individual category of goods
14 contained in trademark Application Numbers 7770057 and 7770059, or, if
15 such documents do not exist, to admit that they do not exist.

16 In addition, Opposer has not yet received documents responsive to
17 Request Numbers 9 and 10 contained in Opposer's Second Request for
18 Production (See Exhibit A), although Applicant's counsel has indicated
19 that they exist. Applicant's counsel stated in a telephone
20 conversation with Opposer's counsel on May 30, 2013 that he has not
21 yet received them from a separate transactional attorney, and could
22 not give a timeframe for when they would be produced. (Sluman Decl.
23 ¶6). The lack of these documents has hindered Opposer's ability to
24 prepare for trial, and there is no guarantee that, absent this Motion
25 to Compel, Applicant will provide them before the end of Opposer's
26 trial period.

1 **OPPOSER'S DISCOVERY REQUESTS ARE RELEVANT AND LIKELY TO LEAD TO**
2 **ADMISSIBLE EVIDENCE**

3 Applicant filed trademark application numbers 77700557 and
4 77700559 for the mark "Hard Candy" under Section 1(b) of the Trademark
5 Act, which requires a "bona fide intention to use the mark in commerce
6 on or in connection with the goods or services listed in the
7 application." Opposer's requests for documentary evidence sufficient
8 to show Applicant's bona fide intent to use the marks with specific
9 goods listed in its applications are highly relevant to the question
10 of whether Applicant actually did have a bona fide intent to use the
11 marks as of the date it filed the applications.

12 Documentary evidence is required to show that a trademark
13 applicant has a "bona fide intention" to use the applied-for mark in
14 connection with the claimed goods and services. See *Commodore*
15 *Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1507 (TTAB
16 1993); *L.C. Licensing Inc. v. Berman*, 86 USPQ2d 1883 (TTAB 2008);
17 *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581 (TTAB
18 2008); *Honda Motor Co. v. Winkelmann*, 90 USPQ2d 1660 (TTAB 2009);
19 *SmithKline Beecham Corp. v. Omnisource DDS, LLC*, 97 USPQ2d 1300 (TTAB
20 2010); and *Spirits Int'l B.V. v. S.S. Taris Zeytin Ve Zeytinyagi Tarim*
21 *Satis Kooperatifleri Birliđi*, 99 USPQ2d 1545 (TTAB 2011). If
22 documents sufficient to demonstrate a bona fide intent to use the
23 marks in connection with the listed goods and services do not exist,
24 the lack of such evidence in response to discovery requests, such as
25 Opposer's Fourth Request for Production, can be admissible evidence.
26 *Id.* Opposer's discovery requests regarding Applicant's intent to use
27 the marks are therefore relevant and are reasonably calculated to lead
28 to admissible evidence.

1 Additionally, the trademark prosecution documents not yet
2 produced by Applicant may have a bearing on the case, as they may
3 contain statements relevant to Applicant's use of the marks, intention
4 to use the marks, or other issues. Opposer's discovery requests are
5 therefore relevant and are reasonably calculated to lead to admissible
6 evidence.

7
8 **OPPOSER HAS MADE A GOOD FAITH EFFORT TO RESOLVE DISCOVERY ISSUES**

9 Pursuant to 37 CFR § 2.120(e), Opposer has made a good faith
10 effort to resolve the issues presented in Opposer's Motion for an
11 Order to Compel Discovery with Applicant, but the parties have been
12 unable to resolve their differences.

13 Applicant's responses to the Opposer's Fourth Request for
14 Production and Opposer's First Requests for Admission contained
15 objections, such as alleging that the term "in connection with" was
16 vague, because there was no time reference for the documents
17 requested, or because they were duplicative of various previous
18 requests. During a phone conversation on May 30, 2013, Opposer's
19 counsel offered to try to find a resolution to these objections, such
20 as more precisely defining "in connection with," but Applicant's
21 counsel indicated that even if the objections were cleared up, no
22 additional documents would be produced because all documents had
23 already been produced to the extent that they exist. (Sluman Decl.
24 ¶3). Applicant's counsel offered no explanation of why Applicant has
25 denied that the requested documents do not exist, but that Opposer has
26 not received them, only stating that all responsive documents have
27 been produced to the extent that they exist. (Sluman Decl. ¶3; ¶4).
28 Opposer continued to ask Applicant for the production of these

Opposer's Memorandum of Points and Authorities in Support of Its
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1 documents after the Motion for Suspension for Settlement with Consent
2 filed on June 4, 2013, but Applicant has still not produced them as of
3 the filing of the present motions. (Sluman Decl. ¶7).

4 Applicant also admitted during the May 30, 2013 phone
5 conversation that although there were no objections to providing the
6 requested trademark prosecution documents, Applicant has not yet
7 produced them. (Sluman Decl. ¶6). Opposer asked for an estimated date
8 of production, but Applicant could not or would not provide one
9 despite the fact that Opposer's trial period was set to begin on June
10 5, 2013. *Id.* The beginning of the trial period was delayed for 30
11 days due to the parties' Motion for Suspension for Settlement with
12 Consent filed on June 4, 2013, which gave Applicant additional time to
13 procure the requested trademark prosecution documents, and yet
14 Applicant has not provided them as of the filing of the present
15 motions.

16 The issues caused by Applicant's failure to provide responsive
17 documents or admit that they do not exist in response to Opposer's
18 discovery requests has harmed Opposer's ability to prepare for its
19 trial period. The parties have not been able to resolve these
20 discovery issues, which must be resolved before Opposer's trial period
21 begins. The inability to resolve these discovery issues has prompted
22 Opposer's Motion for an Order to Compel Discovery.

23
24 **SUMMARY**

25 Opposer respectfully requests that these proceedings resume
26 because the parties' settlement negotiations have broken down and
27 appear unlikely to be revived. Although Opposer requests that
28 proceedings resume, Opposer also asks that its Motion for an Order to

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v.) DECLARATION OF STUART WEST IN
10 Hard Candy, LLC,) SUPPORT OF OPPOSER'S MOTION FOR AN
11 Applicant.) ORDER TO COMPEL DISCOVERY
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21 I, Stuart West, declare as follows:

22 1. My name is Stuart West. I am counsel for Opposer Hard Candy
23 Cases, LLC in this case. I have personal knowledge of the
24 facts stated herein and, if called as a witness, could and
25 would testify competently thereto.

26 2. Attached as Exhibit G is a copy of an email sent to me on
27 March 22, 2013 from Gabriel Groisman, counsel for Applicant
28 Hard Candy, LLC via Dropbox. The March 22, 2013 email
contained a link to 184 pages of discovery documents produced
by Applicant. The email included the statement: "From Gabrel:
'Stuart: Attached is a link to Hard Candy, LLC's production.
More documents will be forthcoming.'"

Declaration of Stuart West in Support of Opposer's Motion for an Order
to Compel Discovery - 1

1 3. No further documents have been received from Applicant as of
2 today's date, despite Mr. Groisman's statement on March 22,
3 2013 that "[m]ore documents will be forthcoming."
4

5 I declare under penalty of perjury under the laws of the United States
6 of America that the foregoing is true and correct.
7

8 Executed on June 25, 2013 at Walnut Creek, CA:
9

10 By: _____
11

12 Stuart West
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1 STUART J. WEST SBN 202041
WEST & ASSOCIATES, A PC
2 2815 Mitchell Drive
Suite 209
3 Walnut Creek, CA 94598
Tel: 925.262.2220
4 E-mail: swest@westpatentlaw.com

5 UNITED STATES PATENT AND TRADEMARK OFFICE
6 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 HardCandy Cases, LLC,) Opposition No.: 91195327 (Parent)
8 Opposer,) Opposition No.: 91195328
9 v.) DECLARATION OF SHAUN SLUMAN IN
10 Hard Candy, LLC,) SUPPORT OF OPPOSER'S MOTION FOR AN
11 Applicant.) ORDER TO COMPEL DISCOVERY
12) In Re Application Serial
13) Nos.: 77700557 & 77700559
14) For the Mark: Hard Candy
15) Filed: 27 March 2009
16) Published in the Trademark
Official Gazette: 16 February,
2010

17 I, Shaun Sluman, declare as follows:

18 1. My name is Shaun Sluman. I am counsel for Opposer Hard Candy
19 Cases, LLC in this case. I have personal knowledge of the
20 facts stated herein and, if called as a witness, could and
21 would testify competently thereto.

22 2. I held a telephone conversation with Gabriel Groisman, counsel
23 for Applicant Hard Candy, LLC, on May 30, 2013 regarding
24 outstanding discovery issues in this case.

25 3. During the May 30, 2013 telephone call, I offered to resolve
26 the objections contained in Applicant's Reponse to Opposer's
27 Fourth Request for Production and Applicant's Response and
28 Objections to Opposer's First Request for Admissions, such as

Declaration of Shaun Sluman in Support of Opposer's Motion for an

1 more fully defining the term "in connection with." Despite my
2 offer to clarify our discovery requests, Mr. Groisman stated
3 that even if the objections were resolved, all responsive
4 documents had already been produced "to the extent that they
5 exist."

6 4. During the May 30, 2013 telephone call, I informed Mr.
7 Groisman that we had found no documents within the documents
8 previously produced by Applicant that showed Applicant's bona
9 fide intent to use the applied-for mark with the specific
10 goods listed in Applicant's trademark applications numbers
11 77700557 and 77700559, as of the filing date of the
12 applications. Specifically, I asked Mr. Groisman which
13 produced documents contained anything related to "an apparatus
14 for recording transmission or reproduction of sound and
15 images" and "audio cassette players," which are specific goods
16 listed in Application No. 77700559. Mr. Groisman repeated the
17 phrase "all documents have been produced to the extent that
18 they exist."

19 5. Attached as Exhibit H is a true and correct copy, redacted to
20 remove confidential settlement discussions, of an email I sent
21 to Mr. Groisman following our May 30, 2013 telephone call to
22 summarize our conversation.

23 6. During the May 30, 2013 telephone call, Mr. Groisman also
24 stated that there were responsive documents yet to be produced
25 regarding the prosecution history of the trademark
26 applications, but that these documents were with a
27 transactional attorney. Mr. Groisman stated that they would
28 be produced when available, but would not provide a date for

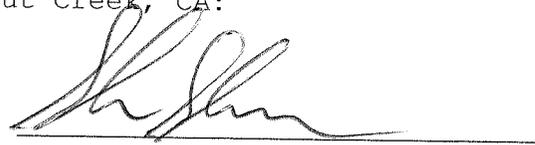
Declaration of Shaun Sluman in Support of Opposer's Motion for an

1 when they would be produced, despite my statements reminding
2 him that Opposer's trial period was about to begin.

3 7. The parties entered into settlement negotiations, and filed
4 for a 30 day suspension of the case on May 31, 2013. During
5 the suspension, the party's settlement negotiations broke down
6 and attention returned to the outstanding discovery issues. On
7 June 14, 2013, I again asked Mr. Groisman to produce the
8 requested documents or point us to the bates numbers of
9 already produced documents that showed any relation to the
10 goods listed in the trademark applications at issue. However,
11 Mr. Groisman refused to identify the documents.

12
13 I declare under penalty of perjury under the laws of the United States
14 of America that the foregoing is true and correct.

15
16 Executed on June 25, 2013 at Walnut Creek, CA:

17
18 By: 

19 Shaun Sluman
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EXHIBIT A:

OPPOSER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

1 STUART J. WEST SBN 202041
WEST & ASSOCIATES, A PC
2 2815 Mitchell Drive
Suite 209
3 Walnut Creek, CA 94598
Tel: 925.262.2220
4 E-mail: swest@westpatentlaw.com

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

6
7 HardCandy Cases, LLC,) Opposition No.: 91195327
8)
Opposer,) OPPOSER'S SECOND REQUEST FOR PRODUCTION OF
9) DOCUMENTS
v.)
10 Hard Candy, LLC,) In Re Application Serial No.:77700557
11 Applicant.) For the Mark: Hard Candy
12) Filed: 27 March 2009
13) Published in the Trademark Official
14) Gazette: 16 February, 2010
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16 **OPPOSER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

17 Pursuant to the Federal Rules of Civil Procedure and the Local Rules of this
18 Court, Opposer, by and through their undersigned counsel, hereby request Applicant
19 Hard Candy, LLC to produce the following documents and things for inspection and
20 copying by Opposer within the time and manner required by law, in particular, that
21 such documents and things be organized and/or labeled to correspond to the request to
22 which the document or thing is responsive.

23 Opposer requests that the documents and things be produced within thirty (30)
24 days from the date of service of these requests for production, pursuant to Rules 26
25 and 34 of the Federal Rules of Civil Procedure, at the offices of West & Associates, A
26 PC, 2815 Mitchell Drive, Walnut Creek, California 94598, or some other mutually
27 convenient time and location.
28

1 These requests are deemed continuing in nature, requiring prompt supplemental answers
2 should Applicant or anyone representing Applicant's interests become aware of any
3 additional information relating to the matter to which these requests inquire between
4 the time Applicant's responses are served and the time of trial.

5 **DEFINITIONS**

- 6 1. The terms "you," "your," and "Applicant" includes (a) any organizational or
7 operations units of Applicant; (b) all predecessor or successor companies or
8 corporations of Applicant; (c) all companies, corporations, partnerships,
9 associations, or other business entities which are or have been under the
10 common ownership or control, in any manner, with Applicant; and (d) each of the
11 present and former officers, directors, employees, agents, attorneys, or other
12 representatives of any such entities.
- 13 2. "Person" or "party" means natural persons, corporations, partnerships,
14 governments (or agencies thereof), quasi-public entities, proprietorships,
15 joint ventures, trusts, estates, and all other forms of legal entities.
- 16 3. The term "document" is used in the broadest sense possible and includes
17 anything subject to production under the Federal Rules of Civil Procedure or
18 the Local Rules of the United States District Court for the Northern District
19 of California, including, without limitation, the original (or a copy when the
20 original is not available) and each non-identical copy (including those which
21 are non-identical by reason of notations or markings), or any and all written,
22 printed, typed, punched, taped, filmed or graphic matter, or recorded or
23 tangible thing, or whatever description, however produced or reproduced
24 (including computer-stored or generated data, together with instructions or
25 programs necessary to search and retrieve such data), and shall include all
26 attachments to and enclosures with any requested item, to which they are
27 attached or with which they are enclosed, and each draft thereof. The term
28 "document" includes writings, notes, calendars, day timers, memoranda, letters,

1 correspondence, notes of telephone calls and conferences, interoffice and
2 intra-office communications of all types; drawings (including engineering,
3 assembly, and detail drawings), graphs, blueprints, engineering notebooks, flow
4 sheets, sketches, charts, reports, compilations, notebooks, laboratory
5 notebooks, work papers, diaries, data operating or maintenance manuals,
6 operating and product specifications, and fabrication sheets, pamphlets,
7 brochures, circulars, instructions; computer printouts, facsimiles, telexes,
8 cables, cablegrams, mailgrams, telegrams, photographs, photo negatives,
9 videotapes, magnetic tape, movies, recordings, phonorecords, and compact discs;
10 books, catalogs, published material of any kind, and all other writings;
11 assignments, licenses, contracts, agreements, and all other official papers and
12 legal instruments; annual reports, reports to shareholders, and minutes or
13 reports of meetings of directors, officers, or executive boards or committees;
14 advertising or promotional literature and press releases; ledgers, bills,
15 invoices, orders, books, records and files; and microfilms of documents that
16 may have been destroyed. The term "document" includes any information stored
17 in machine readable form, and any data compilation from which information can
18 be obtained or translated, if necessary, by anyone through the use of any
19 computer or other device into reasonably usable form. The term "document"
20 includes information stored on hard disks, on floppy disks, on magnetic tape,
21 in random access memory, and in read-only memory. The term "document" shall
22 specifically include all recorded electronic communications such as electronic
23 mail (e-mail) and the like.

- 24 4. The terms "refer," "reflect," "relate," or "relating" mean, in addition to
25 their customary and usual meaning, concerning, pertaining to, referring to,
26 mentioning, commenting on, connected with, discussing, describing, reflecting,
27 dealing with, consisting of, constituting, comprising or recording the subject,
28 in whole or in part, and either directly or indirectly.

1 5. "Representative" means employees, agents, attorneys, and all other persons
2 acting on behalf of the designated person.

3 6. The terms "business entity" or "entity" shall mean firms, corporations,
4 partnerships, joint ventures, unincorporated associations, companies,
5 businesses, partnerships, proprietorships, or fictitious or trade names.

6 7. The term "date" shall mean the precise month, day, and year, if known, or as
7 precise a statement of the month, day, and year as is permitted by your
8 knowledge and the documents and information available to you.

9 8. The term "any" shall be deemed to include and encompass the words "each" and
10 "all." The use of the word "or" shall mean "and" as well as "or."

11 9. The term "Lawsuit" shall mean the above-captioned lawsuit.

12 10. The term "facts" shall mean all facts, details, or information of any type
13 acquired by Applicant, by any means.

14 11. The term "communications" shall mean any and all written communications between
15 two or more persons contained in any documents, or oral communications
16 including, but not limited to, telephone communications, personal conferences,
17 or meetings between two or more persons.

18 12. The term "knowledge" shall mean information derived from any source, including
19 hearsay knowledge.

20 13. The terms "identify" or "identified" or "identity," when used in reference to:

21 a. An individual, shall mean to state the individual's full name, present or
22 last known (designating which) address and telephone number, and present
23 or last known (designating which) business affiliation, job title, and
24 employment address;

25 b. A business entity, shall mean to state the entity's full name, present or
26 last known (designating which) address and telephone number, a brief
27 description of the general nature of its business, the address of its
28 principal place of business, the state or country of incorporation (if

1 any), and the identity of the officer or other person having knowledge of
2 the matter with respect to which the business entity has been identified;
3 c. Documents, shall mean to state the bates number or other identifying
4 number (if any), the title (if any), the date, author, sender, preparer,
5 recipient, the identity of the persons signing it, the type of document
6 (i.e., a letter, memorandum, book, telegraph, facsimile, chart, etc.) or
7 some better means of identifying it, a summary of its contents, and its
8 present location or custodian; and communications, shall mean to state
9 the parties to the communication, the date the communication was made and
10 whether the communication was written or oral.

11 14. The singular form of a word shall refer to the plural as well, and words used
12 in the masculine gender also include the feminine.

13 **INSTRUCTIONS**

- 14 1. Your obligation to respond to these requests for production shall be
15 continuing to the full extent permitted under the applicable rules.
- 16 2. These document requests relate not only to documents in Applicant's
17 possession and/or custody, but also relate to documents over which Applicant
18 has legitimate control by agreement, prior conduct, in fact or otherwise.
- 19 3. If Applicant objects to any portion of any request herein, Applicant
20 nevertheless is required to produce the documents and things relating to
21 that request, to which Applicant has no objection, and to identify which
22 documents and things are being withheld and the reason for such refusal to
23 produce. See Fed. R. Civ. P. 26(b)(5).
- 24 4. In accordance with Federal Rule of Civil Procedure 34(b), Applicant should
25 organize and label the documents and things produced to correspond to the
26 request to which such documents and things are responsive.
- 27 5. If a documents or thing requested was, but is no longer in the possession,
28 custody, or control of the Applicant, state whether the document or thing:

- 1 a. Is missing or lost;
- 2 b. Has been destroyed;
- 3 c. Has been transferred, voluntarily or involuntarily, to others, or;
- 4 d. Has been otherwise disposed.

5 For each such instance, explain the circumstances surrounding such disposition,
6 the date or approximate date of such disposition, and the names and last name
7 and residence, and business address of those persons with knowledge of such
8 circumstances.

9 6. Any document bearing on any sheet or side thereof, any marks such as
10 initials, stamped indicia, comment, or notation, or any character and not a
11 part of the original document or photographic reproduction thereof, and
12 every copy of such writing or record with the original as not in the party's
13 possession, custody, or control, and every copy of every such writing or
14 records where such copy is not an identical copy of an original or where
15 such copy contains any commentary or notation whatsoever which does not
16 appear in the original is to be considered and identified as a separate
17 document.

18 7. If you withhold any information by claiming that it is privileged or not
19 subject to production as trial preparation material, you are hereby
20 requested and required to describe the nature of the information, documents,
21 communications, or things not produced or disclosed in a manner that will
22 enable Opposer to assess the applicability of the asserted privilege. More
23 specifically, if any document or thing is withheld under a claim of
24 privilege, please furnish a list signed by the person supervising the
25 response identifying each such document for which the privilege is claimed
26 together with the following information:

- 27 a. The date of such document;
- 28 b. The author of such document;

- c. The recipient of such document
- d. The subject matter and nature of the document;
- e. The basis on which the privilege is claimed; and
- f. Whether any non-privileged matter is contained in the document.

8. Except for reference to defined or designated terms, each request shall be construed independently and not by reference to any other request herein for purposes of limitation.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO.1:

Any and all documents, including internal communications, showing any relation between Hard Candy, LLC and Urban Decay Cosmetics, LLC.

REQUEST FOR PRODUCTION NO.2:

Any and all documents, including internal communications, showing any relation between Hard Candy, LLC and Hard Candy, Inc.

REQUEST FOR PRODUCTION NO.3:

Any and all documents, including internal communications, showing any relation between Hard Candy, LLC and Innovative Liquors, LLC.

REQUEST FOR PRODUCTION NO. 4:

Documents sufficient to verify your response to Interrogatory 1.

REQUEST FOR PRODUCTION NO. 5:

Documents sufficient to verify your response to Interrogatory 2.

REQUEST FOR PRODUCTION NO. 6:

An exemplary showing every use of Hard Candy by you on each of "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound

1 and images, audio cassette and CD players, speakers, audio headphones, audio
2 recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones,
3 compact disc players, electric hair curling irons, electric hair straightening irons,
4 electric irons, MP3 players, radios, portable handheld digital electronic devices for
5 recording.”

6 **REQUEST FOR PRODUCTION NO. 7:**

7 An exemplary showing every use of Hard Candy by you on each of “leather goods,
8 namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags,
9 leather key chains, leather pouches, traveling bags; purses.”

10
11 **REQUEST FOR PRODUCTION NO. 8:**

12 Documents sufficient to demonstrate your legal corporate status and
13 authorization to function in both your home state and in any state in which you
14 conduct business.

15
16 **REQUEST FOR PRODUCTION NO. 9:**

17 Any and all communications with the U.S. Patent and Trademark Office Relating
18 to your applications for the mark “Hard Candy” for “Consumer electronics, namely,
19 apparatus for recording, transmission or reproduction of sound and images, audio
20 cassette and CD players, speakers, audio headphones, audio recorders, audio speakers,
21 audio tape recorders, calculators, cameras, cell phones, compact disc players,
22 electric hair curling irons, electric hair straightening irons, electric irons, MP3
23 players, radios, portable handheld digital electronic devices for recording.”

24 **REQUEST FOR PRODUCTION NO. 10:**

25 Any and all communications with the U.S. Patent and Trademark Office Relating to
26 your applications for the mark “Hard Candy” for “leather goods, namely, backpacks,
27 leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains,
28 leather pouches, traveling bags; purses.”

1 **REQUEST FOR PRODUCTION NO. 11:**

2 All documents relating to the development, creating and adoption of "Hard
3 Candy" for "Consumer electronics, namely, apparatus for recording, transmission or
4 reproduction of sound and images, audio cassette and CD players, speakers, audio
5 headphones, audio recorders, audio speakers, audio tape recorders, calculators,
6 cameras, cell phones, compact disc players, electric hair curling irons, electric hair
7 straightening irons, electric irons, MP3 players, radios, portable handheld digital
8 electronic devices for recording."

9 **REQUEST FOR PRODUCTION NO. 12:**

10 All documents relating to the development, creating and adoption of "Hard Candy"
11 for "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather
12 cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

13 **REQUEST FOR PRODUCTION NO. 13:**

14 All documents relating to any marketing or promotional efforts for "Consumer
15 electronics, namely, apparatus for recording, transmission or reproduction of sound
16 and images, audio cassette and CD players, speakers, audio headphones, audio
17 recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones,
18 compact disc players, electric hair curling irons, electric hair straightening irons,
19 electric irons, MP3 players, radios, portable handheld digital electronic devices for
20 recording" offered under "Hard Candy."

21 **REQUEST FOR PRODUCTION NO. 14:**

22 All documents relating to any marketing or promotional efforts for ""leather
23 goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather
24 handbags, leather key chains, leather pouches, traveling bags; purses" offered under
25 "Hard Candy."

26
27 **REQUEST FOR PRODUCTION NO. 15:**
28

1 All documents relating to any attempt by you to enforce any trademark rights
2 you claim in "Hard Candy."

3 **REQUEST FOR PRODUCTION NO. 16:**

4 All documents relating to any discussion or meeting related to use of the mark
5 "Hard Candy" in connection with "Consumer electronics, namely, apparatus for
6 recording, transmission or reproduction of sound and images, audio cassette and CD
7 players, speakers, audio headphones, audio recorders, audio speakers, audio tape
8 recorders, calculators, cameras, cell phones, compact disc players, electric hair
9 curling irons, electric hair straightening irons, electric irons, MP3 players, radios,
10 portable handheld digital electronic devices for recording."

11 **REQUEST FOR PRODUCTION NO. 17:**

12 All documents relating to any discussion or meeting related to use of the mark
13 "Hard Candy" in connection with "leather goods, namely, backpacks, leather bags,
14 suitcases, wallets, leather cases, leather handbags, leather key chains, leather
15 pouches, traveling bags; purses."

16 **REQUEST FOR PRODUCTION NO. 18:**

17 All documents relating to any searches performed in connection with "Hard
18 Candy."

19 **REQUEST FOR PRODUCTION NO. 19:**

20 All documents relating to the development of any "consumer electronics, namely,
21 apparatus for recording, transmission or reproduction of sound and images, audio
22 cassette and CD players, speakers, audio headphones, audio recorders, audio speakers,
23 audio tape recorders, calculators, cameras, cell phones, compact disc players,
24 electric hair curling irons, electric hair straightening irons, electric irons, MP3
25 players, radios, portable handheld digital electronic devices for recording."
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27 **REQUEST FOR PRODUCTION NO. 20:**
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1 All documents relating to the development of any "leather goods, namely,
2 backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather
3 key chains, leather pouches, traveling bags; purses."

4 **REQUEST FOR PRODUCTION NO. 21:**

5 All documents relating to any revenue and/or expenses associated with any
6 "consumer electronics, namely, apparatus for recording, transmission or reproduction
7 of sound and images, audio cassette and CD players, speakers, audio headphones, audio
8 recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones,
9 compact disc players, electric hair curling irons, electric hair straightening irons,
10 electric irons, MP3 players, radios, portable handheld digital electronic devices for
11 recording."

12 **REQUEST FOR PRODUCTION NO. 22:**

13 All documents relating to any revenue and/or expenses associated with any
14 "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases,
15 leather handbags, leather key chains, leather pouches, traveling bags; purses."

16 **REQUEST FOR PRODUCTION NO. 23:**

17 All documents relating to "hard candy" in connection with any "consumer
18 electronics, namely, apparatus for recording, transmission or reproduction of sound
19 and images, audio cassette and CD players, speakers, audio headphones, audio
20 recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones,
21 compact disc players, electric hair curling irons, electric hair straightening irons,
22 electric irons, MP3 players, radios, portable handheld digital electronic devices for
23 recording."

24 **REQUEST FOR PRODUCTION NO. 24:**

25 All documents relating to "hard candy" in connection with any "leather goods,
26 namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags,
27 leather key chains, leather pouches, traveling bags; purses."
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REQUEST FOR PRODUCTION NO. 25:

All documents demonstrating Applicant's ability to produce "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

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REQUEST FOR PRODUCTION NO. 26:

All documents demonstrating Applicant's ability to produce "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

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REQUEST FOR PRODUCTION NO. 27:

Any and all documents, including internal communications, relating to use of the mark "HARD CANDY" in connection with "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording" as described in the trademark application bearing serial number 77700559.

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REQUEST FOR PRODUCTION NO. 28:

Any and all documents, including internal communications, relating to your intent to use the mark "HARD CANDY" in connection with "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers,

1 audio tape recorders, calculators, cameras, cell phones, compact disc players,
2 electric hair curling irons, electric hair straightening irons, electric irons, MP3
3 players, radios, portable handheld digital electronic devices for recording" as
4 described in the trademark application bearing serial number 77700559.

5
6 **REQUEST FOR PRODUCTION NO. 29:**

7 Any and all documents, including internal communications, related to the
8 manufacture of "consumer electronics, namely, apparatus for recording, transmission or
9 reproduction of sound and images, audio cassette and CD players, speakers, audio
10 headphones, audio recorders, audio speakers, audio tape recorders, calculators,
11 cameras, cell phones, compact disc players, electric hair curling irons, electric hair
12 straightening irons, electric irons, MP3 players, radios, portable handheld digital
13 electronic devices for recording" bearing the mark "HARD CANDY" as described in the
14 trademark application bearing serial number 77700559.

15 **REQUEST FOR PRODUCTION NO. 30:**

16 Any and all documents, including internal communications, relating to use of
17 the mark "HARD CANDY" in connection with "leather goods, namely, backpacks, leather
18 bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather
19 pouches, traveling bags; purses" as described in the trademark application bearing
20 serial number 77700557.

21
22 **REQUEST FOR PRODUCTION NO. 31:**

23 Any and all documents, including internal communications, relating to your
24 intent to use the mark "HARD CANDY" in connection with "leather goods, namely,
25 backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather
26 key chains, leather pouches, traveling bags; purses" as described in the trademark
27 application bearing serial number 77700557.

1 **REQUEST FOR PRODUCTION NO. 32:**

2 Any and all documents, including internal communications, related to the
3 manufacture of "leather goods, namely, backpacks, leather bags, suitcases, wallets,
4 leather cases, leather handbags, leather key chains, leather pouches, traveling bags;
5 purses" bearing the mark "HARD CANDY" as described in the trademark application
6 bearing serial number 77700557.

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14 Dated this 13th day of February, 2013,
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16
17 Stuart J. West SBN 202041
18 Attorney for Opposer
19 West & Associates, A PC
20 2815 Mitchell Drive #209
21 Walnut Creek, CA 94598
22
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that true and correct copies of:

OPPOSER'S SECOND REQUEST FOR PRODUCTION

were served on this 13th day of February, 2013, by First Class Mail
to:

Coffey Burlington
c/o Gabriel Groisman
2699 South Bayshore Drive
Penthouse
Miami, FL 33133

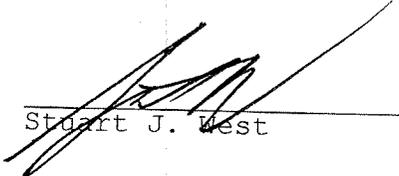

Stuart J. West

EXHIBIT B:

APPLICANT'S RESPONSE TO OPPOSER'S SECOND REQUEST FOR PRODUCTION

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

HardCandy Cases, LLC,

In Re: TM application Serial No. 77700557
For the Mark: Hard Candy
Published in the Official Gazette: 02/16/09

Opposer,

v.

Opposition No. 91195327 (Parent)
Opposition No. 91195328

Hard Candy, LLC,

Applicant.

RESPONSE TO OPPOSER'S SECOND REQUEST FOR PRODUCTION

Pursuant to Federal Rule of Civil Procedure 24, Hard Candy, LLC (“Hard Candy” or “Applicant”), hereby submits its second amended responses to the Second Set of Request for Production of Documents (“Request”) from Opposer HardCandy Cases, LLC.

I. General Objections

The following general objections are hereby made and incorporated in each response to each of the Requests, whether or not expressly incorporated in each individual response.

1. Applicant objects to the Requests to the extent it seeks to impose obligations beyond those set forth in the Federal Rules of Civil Procedure.

2. Applicant objects to the Requests to the extent it seeks privileged documents, including, but not limited to, documents protected by the attorney/client privilege, the work product doctrine, the self-evaluation or the self-critical analysis privilege, or any other applicable privilege, rule of privacy or confidentiality, immunity, protection, or restriction that makes such information otherwise non-discoverable. The production, inadvertently or otherwise, of any

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document subject to such privilege, protection or doctrine will not constitute or be deemed to constitute a waiver of any privilege or other immunity from production.

3. Applicant objects to the Requests as they are overbroad because they are not limited in time. It is unreasonably, overbroad and unduly burdensome for Applicant to be required to provide responsive documents from the beginning of time through the present.

4. Applicant objects to the Requests as they are overbroad, as they are not limited to the two trademark applications in question in this Opposition. Information regarding Applicant's other applications and other business is not likely to lead to the discovery of admissible evidence, is confidential, highly-sensitive, proprietary business information and is simply an unsubstantiated and impermissible fishing expedition.

5. Applicant responds to the Requests based on information available as of the date hereof and reserve the right to supplement their objections or responses to any of the Requests pursuant to all appropriate rules, laws, statutes and regulations.

6. The foregoing general objections shall be considered as made to the extent applicable in response to each of the Requests as if the general objections were fully set forth in each such response, including those responses which also set forth specific objections.

7. Applicant's responses to the Requests are made without in any way waiving or intending to waive, but rather, to the contrary, preserving and intending to preserve, the right to raise all questions as to competence, relevance, materiality, privilege and admissibility as evidence for any purpose.

8. Applicant offered to be produced herein will be made available for inspection at a

reasonable place and time and counsel for Opposer should contact undersigned to arrange for such inspection.

II. Specific Objections

REQUEST FOR PRODUCTION NO. 1:

Any and all documents, including internal communications, showing any relation between Hard Candy, LLC and Urban Decay Cosmetics, LLC.

RESPONSE: Applicant objects to this Request as it seeks documents which are irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO.2:

Any and all documents, including internal communications, showing any relation between Hard Candy, LLC and Hard Candy, Inc.

RESPONSE: Applicant objects to this Request as it seeks documents which are irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO.3:

Any and all documents, including internal communications, showing any relation between Hard Candy, LLC and Innovative Liquors, LLC.

RESPONSE: Applicant objects to this Request as it seeks documents which are irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO.4:

Documents sufficient to verify your response to Interrogatory 1.

RESPONSE: Applicant objected to Interrogatory no. 1 in detail and did not provide a response to the interrogatory. Therefore this request is a nullity.

REQUEST FOR PRODUCTION NO.5:

Documents sufficient to verify your response to Interrogatory 2.

RESPONSE: Applicant objected to Interrogatory no. 2 in detail and did not provide a response to the interrogatory. Therefore this request is a nullity.

REQUEST FOR PRODUCTION NO.6:

An exemplary showing every use of Hard Candy by you on each of "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

RESPONSE: Subject to the general objections stated above, all responsive, non-privileged documents in Applicant's custody and control will be produced at a mutually agreeable time and place.

REQUEST FOR PRODUCTION NO.7:

An exemplary showing every use of Hard Candy by you on each of "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

RESPONSE: Subject to the general objections stated above, all responsive, non-privileged documents in Applicant's custody and control will be produced at a mutually agreeable time and place.

REQUEST FOR PRODUCTION NO.8:

Documents sufficient to demonstrate your legal corporate status and authorization to function in both your home state and in any state in which you conduct business.

RESPONSE: Applicant objects to this Request as it seeks documents which are irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition. Neither Applicant's "legal corporate status" nor its "authorization to function" are at issue in this action.

REQUEST FOR PRODUCTION NO.9:

Any and all communications with the U.S. Patent and Trademark Office Relating to your applications for the mark "Hard Candy" for "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

RESPONSE: Subject to the general objections stated above, all responsive, non-privileged documents in Applicant's custody and control, if any, will be produced at a mutually agreeable time and place.

REQUEST FOR PRODUCTION NO. 10:

Any and all communications with the U.S. Patent and Trademark Office Relating to your applications for the mark "Hard Candy" for "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

RESPONSE: Subject to the general objections stated above, all responsive, non-privileged documents in Applicant's custody and control, if any, will be produced at a mutually agreeable time and place.

REQUEST FOR PRODUCTION NO. 11:

All documents relating to the development, creating and adoption of "Hard Candy" for "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

RESPONSE: Applicant objects to this Request to the extent that it is ambiguous and vague, as "adoption" is undefined and its definition in context is unclear. Subject to the general objections and the aforementioned objection, all responsive, non-privileged documents in Applicant's custody and control, if any, will be produced at a mutually agreeable time and place.

REQUEST FOR PRODUCTION NO. 12:

All documents relating to the development, creating and adoption of "Hard Candy" for "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

RESPONSE: Applicant objects to this Request to the extent that it is ambiguous and vague, as "adoption" is undefined and its definition in context is unclear. Subject to the general objections and the aforementioned objection, all responsive, non-privileged documents in Applicant's custody and control, if any, will be produced at a mutually agreeable time and place.

REQUEST FOR PRODUCTION NO. 13:

All documents relating to any marketing or promotional efforts for "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording" offered under "Hard Candy."

RESPONSE: Subject to and without waiver of the general objections, all responsive non-privileged documents, if any, will be produced at a mutually agreeable time and place subject to the Board's standard protective order.

REQUEST FOR PRODUCTION NO. 14:

All documents relating to any marketing or promotional efforts for "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses" offered under "Hard Candy."

RESPONSE: Applicant objects to this Request to the extent that it seeks documents which are protected by the attorney-client privilege and/or work product privileges and are otherwise confidential. Subject to and without waiver of this objection, responsive non-privileged documents, if any, will be produced at a mutually agreeable time and place subject to the Board's standard protective order.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to any attempt by you to enforce any trademark rights you claim in "Hard Candy."

RESPONSE: Applicant objects to this Request as it is overbroad and as it seeks information which is irrelevant, unrelated to any of the issues raised in this Opposition, and therefore not likely to lead to the discovery of any admissible evidence. Additionally, this Request seeks

confidential commercial information about Applicant's entire business, and is not even limited to the applications at issue. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO. 16:

All documents relating to any discussion or meeting related to use of the mark "Hard Candy" in connection with "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

RESPONSE: Applicant objects to this Request to the extent that it seeks documents which are protected by the attorney-client privilege and/or work product privileges. Applicant further objects to this Request to the extent that it is overbroad. "All documents relating to any discussion or meeting..." is by definition overbroad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 17:

All documents relating to any discussion or meeting related to use of the mark "Hard Candy" in connection with "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

RESPONSE: Applicant objects to this Request to the extent that it seeks documents which are protected by the attorney-client privilege and/or work product privileges. Applicant further objects to this Request to the extent that it is overbroad. "All documents relating to any discussion or meeting..." is by definition overbroad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 18:

All documents relating to any searches performed in connection with "Hard Candy."

RESPONSE: Applicant objects to this Request as it seeks information which is irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. Applicant also objects to this Request to the extent that it is so broad and unlimited to time and scope that it would be unduly burdensome to comply. Moreover, Applicant objects to this Request as it is vague and ambiguous, since "searches performed" is not defined. Applicant cannot reasonably ascertain which documents Opposer is requesting herein. Further, as the Board clearly stated in its December 31, 2012 Order, requests for production which seek documents related to applications or uses other than those at issue in this Opposition, such as this request, are outside the scope of discovery and are irrelevant ("For instance, these proceedings involve the following goods, which are identified in the opposed applications, Serial Nos. 77700557 and 77700559, respectively...Therefore, Opposer's discovery requests related to other goods of

applicant are irrelevant to the claims in these proceedings.” December 31, 2012 Order at 4).

REQUEST FOR PRODUCTION NO. 19:

All documents relating to the development of any "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

RESPONSE: Applicant objects to this Request to the extent that it is vague, as the term “development” is undefined and the meaning is not readily unascertainable. Applicant also objects to this Request as it seeks information which is irrelevant, not limited to the applications at issue in this Opposition, and not likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 20:

All documents relating to the development of any "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses.”

RESPONSE: Applicant objects to this Request to the extent that it is vague, as the term “development” is undefined and the meaning is not readily unascertainable. Applicant also objects to this Request as it seeks information which is irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO. 21:

All documents relating to any revenue and/or expenses associated with any "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording.”

RESPONSE: Applicant objects to this Request as it is overbroad, unrelated to the issues raised in this Opposition, seeks confidential proprietary information and is unlikely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 22:

All documents relating to any revenue and/or expenses associated with any "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

RESPONSE: Applicant objects to this Request as it is overbroad, unrelated to the issues raised in this Opposition, seeks confidential proprietary information and is unlikely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 23:

All documents relating to "hard candy" in connection with any "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

RESPONSE: Applicant objects to this Request to the extent that it is duplicative, and because it is overbroad.

REQUEST FOR PRODUCTION NO. 24:

All documents relating to "hard candy" in connection with any "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

RESPONSE: Applicant objects to this Request to the extent that it is duplicative, and because it is overbroad.

REQUEST FOR PRODUCTION NO. 25:

All documents demonstrating Applicant's ability to produce "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

RESPONSE: Applicant objects to this Request to the extent that it is vague, as "ability to produce" is undefined and its meaning is not readily ascertainable. Applicant also objects to this Request as it seeks information which is irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant,

to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO. 26:

All documents demonstrating Applicant's ability to produce "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses."

RESPONSE: Applicant objects to this Request to the extent that it is vague, as "ability to produce" is undefined and its meaning is not readily ascertainable. Applicant also objects to this Request as it seeks information which is irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO. 27:

Any and all documents, including internal communications, relating to use of the mark "HARD CANDY" in connection with "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording" as described in the trademark application bearing serial number 77700559.

RESPONSE: Applicant objects to this Request to the extent that it is overbroad. Applicant further objects to this Request to the extent that it seeks documents which are protected by the attorney-client privilege and/or work product privileges. Subject to and without waiver of these objections, responsive and non-privileged documents, if any and to the extent not already produced, will be produced at a mutually agreeable time and place subject to the Board's standard protective order.

REQUEST FOR PRODUCTION NO. 28:

Any and all documents, including internal communications, relating to your intent to use the mark "HARD CANDY" in connection with "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording" as described in the trademark application bearing serial number 77700559.

RESPONSE: Applicant objects to this Request to the extent that it is overbroad. Applicant further objects to this Request to the extent that it seeks documents which are protected by the attorney-client privilege and/or work product privileges. Subject to and without waiver of these

objections, responsive and non-privileged documents, if any and to the extent not already produced, will be produced at a mutually agreeable time and place subject to the Board's standard protective order.

REQUEST FOR PRODUCTION NO. 29:

Any and all documents, including internal communications, related to the manufacture of "consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording" bearing the mark "HARD CANDY" as described in the trademark application bearing serial number 77700559.

RESPONSE: Applicant objects to this Request to the extent that it is vague, as the term "manufacture" is undefined and its meaning is not readily ascertainable. Applicant also objects to this Request as it seeks information which is irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

REQUEST FOR PRODUCTION NO. 30:

Any and all documents, including internal communications, relating to use of the mark "HARD CANDY" in connection with "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses" as described in the trademark application bearing serial number 77700557.

RESPONSE: Applicant objects to this Request to the extent that it is overbroad. Applicant further objects to this Request to the extent that it seeks documents which are protected by the attorney-client privilege and/or work product privileges. Subject to and without waiver of these objections, responsive and non-privileged documents, if any, will be produced at a mutually agreeable time and place subject to the Board's standard protective order.

REQUEST FOR PRODUCTION NO. 31:

Any and all documents, including internal communications, relating to your intent to use the mark "HARD CANDY" in connection with "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses" as described in the trademark application bearing serial number 77700557.

RESPONSE: Applicant objects to this Request to the extent that it is overbroad. Applicant further objects to this Request to the extent that it seeks documents which are protected by the attorney-client privilege and/or work product privileges. Subject to and without waiver of these

objections, responsive and non-privileged documents, if any, will be produced at a mutually agreeable time and place subject to the Board's standard protective order.

REQUEST FOR PRODUCTION NO. 32:

Any and all documents, including internal communications, related to the manufacture of "leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses" bearing the mark "HARD CANDY" as described in the trademark application bearing serial number 77700557.

RESPONSE: Applicant objects to this Request to the extent that it is vague, as the term "manufacture" is undefined and its meaning is not readily ascertainable. Applicant also objects to this Request as it seeks information which is irrelevant, unrelated to this Opposition, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing expedition.

Respectfully submitted,
COFFEY BURLINGTON
Counsel for Hard Candy, LLC
2699 South Bayshore Drive, Penthouse
Miami, Florida 33133
Tel. No. 305-858-2900
Fax No. 305-858-5261

By: /s/ Gabriel Groisman
Gabriel Groisman
Florida Bar No. 25644
ggroisman@coffeyburlington.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was served on this 18th day of March, 2013, via electronic and U.S. Mail upon:

12

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Stuart J. West, Esq.
West & Associates, PC
2815 Mitchell Drive
Suite 209
Walnut Creek CA 94598
swest@westpatentlaw.com

/s/ Gabriel Groisman

EXHIBIT C:

OPPOSER'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS

1 STUART J. WEST SBN 202041
WEST & ASSOCIATES, A PC
2815 Mitchell Drive
2 Suite 209
Walnut Creek, CA 94598
3 Tel: 925.262.2220
E-mail: swest@westpatentlaw.com
4

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

6
7 HardCandy Cases, LLC,) Opposition No.: 91195327
8 Opposer,)
9 v.) OPPOSER'S FOURTH REQUEST FOR PRODUCTION OF
10 Hard Candy, LLC,) DOCUMENTS
11 Applicant.) In Re Application Serial No.:77700557
12) For the Mark: Hard Candy
13) Filed: 27 March 2009
14) Published in the Trademark Official
Gazette: 16 February, 2010
)

15
16 OPPOSER'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS

17 Pursuant to the Federal Rules of Civil Procedure and the Local Rules of this
18 Court, Opposer, by and through their undersigned counsel, hereby request Applicant
19 Hard Candy, LLC to produce the following documents and things for inspection and
20 copying by Opposer within the time and manner required by law, in particular, that
21 such documents and things be organized and/or labeled to correspond to the request to
22 which the document or thing is responsive.

23 Opposer requests that the documents and things be produced within thirty (30)
24 days from the date of service of these requests for production, pursuant to Rules 26
25 and 34 of the Federal Rules of Civil Procedure, at the offices of West & Associates, A
26 PC, 2815 Mitchell Drive, Walnut Creek, California 94598, or some other mutually
27 convenient time and location.
28

1 These requests are deemed continuing in nature, requiring prompt supplemental answers
2 should Applicant or anyone representing Applicant's interests become aware of any
3 additional information relating to the matter to which these requests inquire between
4 the time Applicant's responses are served and the time of trial.

5 DEFINITIONS

- 6 1. The terms "you," "your," and "Applicant" includes (a) any organizational or
7 operations units of Applicant; (b) all predecessor or successor companies or
8 corporations of Applicant; (c) all companies, corporations, partnerships,
9 associations, or other business entities which are or have been under the
10 common ownership or control, in any manner, with Applicant; and (d) each of the
11 present and former officers, directors, employees, agents, attorneys, or other
12 representatives of any such entities.
- 13 2. "Person" or "party" means natural persons, corporations, partnerships,
14 governments (or agencies thereof), quasi-public entities, proprietorships,
15 joint ventures, trusts, estates, and all other forms of legal entities.
- 16 3. The term "document" is used in the broadest sense possible and includes
17 anything subject to production under the Federal Rules of Civil Procedure or
18 the Local Rules of the United States District Court for the Northern District
19 of California, including, without limitation, the original (or a copy when the
20 original is not available) and each non-identical copy (including those which
21 are non-identical by reason of notations or markings), or any and all written,
22 printed, typed, punched, taped, filmed or graphic matter, or recorded or
23 tangible thing, or whatever description, however produced or reproduced
24 (including computer-stored or generated data, together with instructions or
25 programs necessary to search and retrieve such data), and shall include all
26 attachments to and enclosures with any requested item, to which they are
27 attached or with which they are enclosed, and each draft thereof. The term
28 "document" includes writings, notes, calendars, day timers, memoranda, letters,

1 correspondence, notes of telephone calls and conferences, interoffice and
2 intra-office communications of all types; drawings (including engineering,
3 assembly, and detail drawings), graphs, blueprints, engineering notebooks, flow
4 sheets, sketches, charts, reports, compilations, notebooks, laboratory
5 notebooks, work papers, diaries, data operating or maintenance manuals,
6 operating and product specifications, and fabrication sheets, pamphlets,
7 brochures, circulars, instructions; computer printouts, facsimiles, telexes,
8 cables, cablegrams, mailgrams, telegrams, photographs, photo negatives,
9 videotapes, magnetic tape, movies, recordings, phonorecords, and compact discs;
10 books, catalogs, published material of any kind, and all other writings;
11 assignments, licenses, contracts, agreements, and all other official papers and
12 legal instruments; annual reports, reports to shareholders, and minutes or
13 reports of meetings of directors, officers, or executive boards or committees;
14 advertising or promotional literature and press releases; ledgers, bills,
15 invoices, orders, books, records and files; and microfilms of documents that
16 may have been destroyed. The term "document" includes any information stored
17 in machine readable form, and any data compilation from which information can
18 be obtained or translated, if necessary, by anyone through the use of any
19 computer or other device into reasonably usable form. The term "document"
20 includes information stored on hard disks, on floppy disks, on magnetic tape,
21 in random access memory, and in read-only memory. The term "document" shall
22 specifically include all recorded electronic communications such as electronic
23 mail (e-mail) and the like.

- 24 4. The terms "refer," "reflect," "relate," or "relating" mean, in addition to
25 their customary and usual meaning, concerning, pertaining to, referring to,
26 mentioning, commenting on, connected with, discussing, describing, reflecting,
27 dealing with, consisting of, constituting, comprising or recording the subject,
28 in whole or in part, and either directly or indirectly.

- 1 5. "Representative" means employees, agents, attorneys, and all other persons
2 acting on behalf of the designated person.
- 3 6. The terms "business entity" or "entity" shall mean firms, corporations,
4 partnerships, joint ventures, unincorporated associations, companies,
5 businesses, partnerships, proprietorships, or fictitious or trade names.
- 6 7. The term "date" shall mean the precise month, day, and year, if known, or as
7 precise a statement of the month, day, and year as is permitted by your
8 knowledge and the documents and information available to you.
- 9 8. The term "any" shall be deemed to include and encompass the words "each" and
10 "all." The use of the word "or" shall mean "and" as well as "or."
- 11 9. The term "Lawsuit" shall mean the above-captioned lawsuit.
- 12 10. The term "facts" shall mean all facts, details, or information of any type
13 acquired by Applicant, by any means.
- 14 11. The term "communications" shall mean any and all written communications between
15 two or more persons contained in any documents, or oral communications
16 including, but not limited to, telephone communications, personal conferences,
17 or meetings between two or more persons.
- 18 12. The term "knowledge" shall mean information derived from any source, including
19 hearsay knowledge.
- 20 13. The terms "identify" or "identified" or "identity," when used in reference to:
21 a. An individual, shall mean to state the individual's full name, present or
22 last known (designating which) address and telephone number, and present
23 or last known (designating which) business affiliation, job title, and
24 employment address;
- 25 b. A business entity, shall mean to state the entity's full name, present or
26 last known (designating which) address and telephone number, a brief
27 description of the general nature of its business, the address of its
28 principal place of business, the state or country of incorporation (if

1 any), and the identity of the officer or other person having knowledge of
2 the matter with respect to which the business entity has been identified;
3 c. Documents, shall mean to state the bates number or other identifying
4 number (if any), the title (if any), the date, author, sender, preparer,
5 recipient, the identity of the persons signing it, the type of document
6 (i.e., a letter, memorandum, book, telegraph, facsimile, chart, etc.) or
7 some better means of identifying it, a summary of its contents, and its
8 present location or custodian; and communications, shall mean to state
9 the parties to the communication, the date the communication was made and
10 whether the communication was written or oral.

11 14. The singular form of a word shall refer to the plural as well, and words used
12 in the masculine gender also include the feminine.

13 INSTRUCTIONS

- 14 1. Your obligation to respond to these requests for production shall be
15 continuing to the full extent permitted under the applicable rules.
- 16 2. These document requests relate not only to documents in Applicant's
17 possession and/or custody, but also relate to documents over which Applicant
18 has legitimate control by agreement, prior conduct, in fact or otherwise.
- 19 3. If Applicant objects to any portion of any request herein, Applicant
20 nevertheless is required to produce the documents and things relating to
21 that request, to which Applicant has no objection, and to identify which
22 documents and things are being withheld and the reason for such refusal to
23 produce. See Fed. R. Civ. P. 26(b)(5).
- 24 4. In accordance with Federal Rule of Civil Procedure 34(b), Applicant should
25 organize and label the documents and things produced to correspond to the
26 request to which such documents and things are responsive.
- 27 5. If a documents or thing requested was, but is no longer in the possession,
28 custody, or control of the Applicant, state whether the document or thing:

- 1 a. Is missing or lost;
- 2 b. Has been destroyed;
- 3 c. Has been transferred, voluntarily or involuntarily, to others, or;
- 4 d. Has been otherwise disposed.

5 For each such instance, explain the circumstances surrounding such disposition,
6 the date or approximate date of such disposition, and the names and last name
7 and residence, and business address of those persons with knowledge of such
8 circumstances.

9 6. Any document bearing on any sheet or side thereof, any marks such as
10 initials, stamped indicia, comment, or notation, or any character and not a
11 part of the original document or photographic reproduction thereof, and
12 every copy of such writing or record with the original as not in the party's
13 possession, custody, or control, and every copy of every such writing or
14 records where such copy is not an identical copy of an original or where
15 such copy contains any commentary or notation whatsoever which does not
16 appear in the original is to be considered and identified as a separate
17 document.

18 7. If you withhold any information by claiming that it is privileged or not
19 subject to production as trial preparation material, you are hereby
20 requested and required to describe the nature of the information, documents,
21 communications, or things not produced or disclosed in a manner that will
22 enable Opposer to assess the applicability of the asserted privilege. More
23 specifically, if any document or thing is withheld under a claim of
24 privilege, please furnish a list signed by the person supervising the
25 response identifying each such document for which the privilege is claimed
26 together with the following information:

- 27 a. The date of such document;
- 28 b. The author of such document;

- c. The recipient of such document
- d. The subject matter and nature of the document;
- e. The basis on which the privilege is claimed; and
- f. Whether any non-privileged matter is contained in the document.

8. Except for reference to defined or designated terms, each request shall be construed independently and not by reference to any other request herein for purposes of limitation.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with consumer electronics, namely, an apparatus for recording transmission or reproduction of sound and images.

REQUEST FOR PRODUCTION NO. 2:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio cassette players.

REQUEST FOR PRODUCTION NO. 3:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with speakers.

REQUEST FOR PRODUCTION NO. 4:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio headphones.

1 REQUEST FOR PRODUCTION NO. 5:

2 Any and all documents, including internal communications, sufficient to
3 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio
4 recorders.

5
6 REQUEST FOR PRODUCTION NO. 6:

7 Any and all documents, including internal communications, sufficient to
8 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio
9 speakers.

10
11 REQUEST FOR PRODUCTION NO. 7:

12 Any and all documents, including internal communications, sufficient to
13 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio
14 tape recorders.

15
16 REQUEST FOR PRODUCTION NO. 8:

17 Any and all documents, including internal communications, sufficient to
18 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with
19 calculators.

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21 REQUEST FOR PRODUCTION NO. 9:

22 Any and all documents, including internal communications, sufficient to
23 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with
24 cameras.

1 REQUEST FOR PRODUCTION NO. 10:

2 Any and all documents, including internal communications, sufficient to
3 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with cell
4 phones.

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6 REQUEST FOR PRODUCTION NO. 11:

7 Any and all documents, including internal communications, sufficient to
8 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with compact
9 disc players.

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11 REQUEST FOR PRODUCTION NO. 12:

12 Any and all documents, including internal communications, sufficient to
13 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with MP3
14 players.

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16 REQUEST FOR PRODUCTION NO. 13:

17 Any and all documents, including internal communications, sufficient to
18 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with radios.

19
20 REQUEST FOR PRODUCTION NO. 14:

21 Any and all documents, including internal communications, sufficient to
22 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with
23 portable handheld digital electronic devices for recording.

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25 REQUEST FOR PRODUCTION NO. 15:

26 Any and all documents, including internal communications, sufficient to
27 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather
28 goods, namely, backpacks.

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REQUEST FOR PRODUCTION NO. 16:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather bags.

REQUEST FOR PRODUCTION NO. 17:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with suitcases.

REQUEST FOR PRODUCTION NO. 18:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with wallets.

REQUEST FOR PRODUCTION NO. 19:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather cases.

REQUEST FOR PRODUCTION NO. 20:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather handbags.

1 REQUEST FOR PRODUCTION NO. 21:

2 Any and all documents, including internal communications, sufficient to
3 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather
4 key chains.

5
6 REQUEST FOR PRODUCTION NO. 22:

7 Any and all documents, including internal communications, sufficient to
8 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather
9 pouches.

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11 REQUEST FOR PRODUCTION NO. 23:

12 Any and all documents, including internal communications, sufficient to
13 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with
14 traveling bags.

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16 REQUEST FOR PRODUCTION NO. 24:

17 Any and all documents, including internal communications, sufficient to
18 demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with purses.

19
20 REQUEST FOR PRODUCTION NO. 25:

21 Any and all communications with Wal-Mart regarding Hard Candy Cases, LLC or
22 their products.

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24 REQUEST FOR PRODUCTION NO. 26:

25 Any and all documents regarding a business plan for the sale of mobile
26 electronic device cases associated with the mark "HARD CANDY."

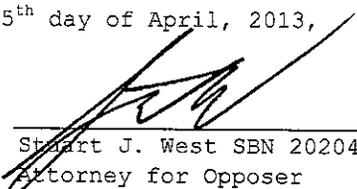
1 REUEST FOR PRODUCTION NO. 27:

2 Any and all documents regarding a business plan for the sale of iPad cases
3 associated with the mark "HARD CANDY."
4

5 REQUEST FOR PRODUCTION NO. 28:

6 Any and all documents relating to any agreements with Wal-Mart to sell the
7 products bearing the mark "HARD CANDY" listed in the goods associated with United
8 States Trademark application serial numbers 77700557 and 77700559.
9

10
11
12 Dated this 5th day of April, 2013,

13
14 
15 _____
16 Stuart J. West SBN 202041
17 Attorney for Opposer
18 West & Associates, A PC
19 2815 Mitchell Drive #209
20 Walnut Creek, CA 94598
21
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28

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of:

OPPOSER'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS
OPPOSER'S FIRST REQUEST FOR ADMISSIONS

were served on this 5th day of April, 2013, by First Class Mail and e-mail to:

ggroisman@coffeyburlington.com
Coffey Burlington
c/o Gabriel Groisman
2699 South Bayshore Drive
Penthouse
Miami, FL 33133


Dawn Callender
Dawn Callender

EXHIBIT D:

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

1 STUART J. WEST SBN 202041
WEST & ASSOCIATES, A PC
2 2815 Mitchell Drive
Suite 209
3 Walnut Creek, CA 94598
Tel: 925.262.2220
4 E-mail: swest@westpatentlaw.com

5 UNITED STATES PATENT AND TRADEMARK OFFICE
6 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 HardCandy Cases, LLC,) Opposition No.: 91195327
8)
9 Opposer,) OPPOSER'S FIRST SET OF REQUESTS FOR
10) ADMISSIONS
11 v.)
12) In Re Application Serial No.:77700557
13 Hard Candy, LLC,)
14) For the Mark: Hard Candy
15 Applicant.)
16) Filed: 27 March 2009
17)
18) Published in the Trademark Official
19) Gazette: 16 February, 2010
20)
21)
22)
23)

24 OPPOSERS' FIRST SET OF REQUESTS FOR ADMISSIONS

25 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, HardCandy Cases,
26 LLC ("Opposer"), by and through their undersigned attorneys, submit the following
27 requests for admissions to Applicant Hard Candy LLC ("Applicant"). These requests are
28 to be answered fully with a separate response provided for each request, in writing
and under oath, and served upon the undersigned within thirty (30) days, or as agreed
in writing by the Parties or as ordered by the Court.

29 DEFINITIONS

30 1. The terms "you," "your," and "Applicant" includes (a) any organizational or
31 operations units of Applicant; (b) all predecessor or successor companies or
32 corporations of Applicant; (c) all companies, corporations, partnerships,
33 associations, or other business entities which are or have been under the
34 common ownership or control, in any manner, with Applicant; and (d) each of the

1 present and former officers, directors, employees, agents, attorneys, or other
2 representatives of any such entities.

3 2. "Person" or "party" means natural persons, corporations, partnerships,
4 governments (or agencies thereof), quasi-public entities, proprietorships,
5 joint ventures, trusts, estates, and all other forms of legal entities.

6 3. The term "document" is used in the broadest sense possible and includes
7 anything subject to production under the Federal Rules of Civil Procedure or
8 the Local Rules of the United States District Court for the Northern District
9 of California, including, without limitation, the original (or a copy when the
10 original is not available) and each non-identical copy (including those which
11 are non-identical by reason of notations or markings), or any and all written,
12 printed, typed, punched, taped, filmed or graphic matter, or recorded or
13 tangible thing, or whatever description, however produced or reproduced
14 (including computer-stored or generated data, together with instructions or
15 programs necessary to search and retrieve such data), and shall include all
16 attachments to and enclosures with any requested item, to which they are
17 attached or with which they are enclosed, and each draft thereof. The term
18 "document" includes writings, notes, calendars, day timers, memoranda, letters,
19 correspondence, notes of telephone calls and conferences, interoffice and
20 intra-office communications of all types; drawings (including engineering,
21 assembly, and detail drawings), graphs, blueprints, engineering notebooks, flow
22 sheets, sketches, charts, reports, compilations, notebooks, laboratory
23 notebooks, work papers, diaries, data operating or maintenance manuals,
24 operating and product specifications, and fabrication sheets, pamphlets,
25 brochures, circulars, instructions; computer printouts, facsimiles, telexes,
26 cables, cablegrams, mailgrams, telegrams, photographs, photo negatives,
27 videotapes, magnetic tape, movies, recordings, phonorecords, and compact discs;
28 books, catalogs, published material of any kind, and all other writings;
assignments, licenses, contracts, agreements, and all other official papers and

1 legal instruments; annual reports, reports to shareholders, and minutes or
2 reports of meetings of directors, officers, or executive boards or committees;
3 advertising or promotional literature and press releases; ledgers, bills,
4 invoices, orders, books, records and files; and microfilms of documents that
5 may have been destroyed. The term "document" includes any information stored
6 in machine readable form, and any data compilation from which information can
7 be obtained or translated, if necessary, by anyone through the use of any
8 computer or other device into reasonably usable form. The term "document"
9 includes information stored on hard disks, on floppy disks, on magnetic tape,
10 in random access memory, and in read-only memory. The term "document" shall
11 specifically include all recorded electronic communications such as electronic
12 mail (e-mail) and the like.

13 4. The terms "refer," "reflect," "relate," or "relating" mean, in addition to
14 their customary and usual meaning, concerning, pertaining to, referring to,
15 mentioning, commenting on, connected with, discussing, describing, reflecting,
16 dealing with, consisting of, constituting, comprising or recording the subject,
17 in whole or in part, and either directly or indirectly.

18 5. "Representative" means employees, agents, attorneys, and all other persons
19 acting on behalf of the designated person.

20 6. The terms "business entity" or "entity" shall mean firms, corporations,
21 partnerships, joint ventures, unincorporated associations, companies,
22 businesses, partnerships, proprietorships, or fictitious or trade names.

23 7. The term "date" shall mean the precise month, day, and year, if known, or as
24 precise a statement of the month, day, and year as is permitted by your
25 knowledge and the documents and information available to you.

26 8. The term "any" shall be deemed to include and encompass the words "each" and
27 "all." The use of the word "or" shall mean "and" as well as "or."

28 9. The term "Lawsuit" shall mean the above-captioned lawsuit.

1 10. The term "facts" shall mean all facts, details, or information of any type
2 acquired by Applicant, by any means.

3 11. The term "communications" shall mean any and all written communications between
4 two or more persons contained in any documents, or oral communications
5 including, but not limited to, telephone communications, personal conferences,
6 or meetings between two or more persons.

7 12. The term "knowledge" shall mean information derived from any source, including
8 hearsay knowledge.

9 13. The terms "identify" or "identified" or "identity," when used in reference to:

10 a. An individual, shall mean to state the individual's full name, present or
11 last known (designating which) address and telephone number, and present
12 or last known (designating which) business affiliation, job title, and
13 employment address;

14 b. A business entity, shall mean to state the entity's full name, present or
15 last known (designating which) address and telephone number, a brief
16 description of the general nature of its business, the address of its
17 principal place of business, the state or country of incorporation (if
18 any), and the identity of the officer or other person having knowledge of
19 the matter with respect to which the business entity has been identified;

20 c. Documents, shall mean to state the bates number or other identifying
21 number (if any), the title (if any), the date, author, sender, preparer,
22 recipient, the identity of the persons signing it, the type of document
23 (i.e., a letter, memorandum, book, telegraph, facsimile, chart, etc.) or
24 some better means of identifying it, a summary of its contents, and its
25 present location or custodian; and communications, shall mean to state
26 the parties to the communication, the date the communication was made and
27 whether the communication was written or oral.

28 The singular form of a word shall refer to the plural as well, and words used in the
masculine gender also include the feminine.

REQUESTS FOR ADMISSIONS

REQUEST NO. 1

Admit that cosmetic bags are in international class 18.

REQUEST NO. 2

Admit that your development of cases for ipads or portable electronic devices did not start until 2011.

REQUEST NO. 3

Admit that you had no bona fide intention to make cases for ipads or portable electronic devices at the time of filing the application bearing Serial # 77700559 in 2009.

REQUEST NO. 4

Admit that Wal-Mart continued to sell Opposer's products marked "Hard Candy Cases" after Wal-Mart was made aware of said products by Applicant.

REQUEST NO. 5

Admit that skins and cases for electronic devices such as cell phones are in international class 009.

REQUEST NO. 6

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images."

REQUEST NO. 7

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images."

REQUEST NO. 8

1 Admit that no documents exist sufficient to evidence your bona fide intent to use
2 the mark "Hard Candy" in connection with consumer electronics, namely audio cassette
3 players.

4
5 REQUEST NO. 9

6 Admit that no documents existed on or before March 27, 2009, to evidence your bona
7 fide intent to use the mark "Hard Candy" in connection with consumer electronics,
8 namely audio cassette players.

9 REQUEST NO. 10

10 Admit that no documents exist sufficient to evidence your bona fide intent to use
11 the mark "Hard Candy" in connection with "Consumer electronics, namely...speakers."

12
13 REQUEST NO. 11

14 Admit that no documents existed on or before March 27, 2009, to evidence your bona
15 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
16 namely...speakers."

17 REQUEST NO. 12

18 Admit that no documents exist sufficient to evidence your bona fide intent to use
19 the mark "Hard Candy" in connection with "Consumer electronics, namely...audio
20 headphones."

21
22 REQUEST NO. 13

23 Admit that no documents existed on or before March 27, 2009, to evidence your bona
24 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
25 namely...audio headphones."

26 REQUEST NO. 14

27 Admit that no documents exist sufficient to evidence your bona fide intent to use
28 the mark "Hard Candy" in connection with "Consumer electronics, namely...audio
recorders."

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REQUEST NO. 15

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio recorders."

REQUEST NO. 16

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio speakers."

REQUEST NO. 17

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio speakers."

REQUEST NO. 18

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio tape recorders."

REQUEST NO. 19

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio tape recorders."

REQUEST NO. 20

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...calculators."

REQUEST NO. 21

1 Admit that no documents existed on or before March 27, 2009, to evidence your bona
2 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
3 namely...calculators."

4
5 REQUEST NO. 22

6 Admit that no documents exist sufficient to evidence your bona fide intent to use
7 the mark "Hard Candy" in connection with "Consumer electronics, namely...cameras."

8 REQUEST NO. 23

9 Admit that no documents existed on or before March 27, 2009, to evidence your bona
10 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
11 namely...cameras."

12 REQUEST NO. 24

13 Admit that no documents exist sufficient to evidence your bona fide intent to use
14 the mark "Hard Candy" in connection with "Consumer electronics, namely...cell phones."

15 REQUEST NO. 25

16 Admit that no documents existed on or before March 27, 2009, to evidence your bona
17 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
18 namely...cell phones."

19 REQUEST NO. 26

20 Admit that no documents exist sufficient to evidence your bona fide intent to use
21 the mark "Hard Candy" in connection with "Consumer electronics, namely...compact disc
22 players."

23 REQUEST NO. 27

24 Admit that no documents existed on or before March 27, 2009, to evidence your bona
25 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
26 namely...compact disc players."

1 REQUEST NO. 28

2 Admit that no documents exist sufficient to evidence your bona fide intent to use
3 the mark "Hard Candy" in connection with "Consumer electronics, namely...electric hair
4 curling irons."

5
6 REQUEST NO. 29

7 Admit that no documents existed on or before March 27, 2009, to evidence your bona
8 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
9 namely...electric hair curling irons."

10 REQUEST NO. 30

11 Admit that no documents exist sufficient to evidence your bona fide intent to use
12 the mark "Hard Candy" in connection with "Consumer electronics, namely...MP3 players."

13
14 REQUEST NO. 31

15 Admit that no documents existed on or before March 27, 2009, to evidence your bona
16 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
17 namely...MP3 players."

18 REQUEST NO. 32

19 Admit that no documents exist sufficient to evidence your bona fide intent to use
20 the mark "Hard Candy" in connection with "Consumer electronics, namely...radios."

21
22 REQUEST NO. 33

23 Admit that no documents existed on or before March 27, 2009, to evidence your bona
24 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
25 namely...radios."

26 REQUEST NO. 34

27 Admit that no documents exist sufficient to evidence your bona fide intent to use
28 the mark "Hard Candy" in connection with "Consumer electronics, namely...portable
handheld digital electronic devices for recording."

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2 REQUEST NO. 35

3 Admit that no documents existed on or before March 27, 2009, to evidence your bona
4 fide intent to use the mark "Hard Candy" in connection with "Consumer electronics,
5 namely...digital handheld electronic devices for recording."

6 REQUEST NO. 36

7 Admit that no documents exist sufficient to evidence your bona fide intent to use
8 the mark "Hard Candy" in connection with "leather goods, namely, backpacks."

9
10 REQUEST NO. 37

11 Admit that no documents existed on or before March 27, 2009, to evidence your bona
12 fide intent to use the mark "Hard Candy" in connection with "leather goods, namely,
13 backpacks."

14 REQUEST NO. 38

15 Admit that no documents exist sufficient to evidence your bona fide intent to use
16 the mark "Hard Candy" in connection with "leather goods, namely...leather bags."

17
18 REQUEST NO. 39

19 Admit that no documents existed on or before March 27, 2009, to evidence your bona
20 fide intent to use the mark "Hard Candy" in connection with "leather goods,
21 namely...leather bags."

22 REQUEST NO. 40

23 Admit that no documents exist sufficient to evidence your bona fide intent to use
24 the mark "Hard Candy" in connection with "leather goods, namely...suitcases."

25
26 REQUEST NO. 41

27 Admit that no documents existed on or before March 27, 2009, to evidence your bona
28 fide intent to use the mark "Hard Candy" in connection with "leather goods,
namely...suitcases."

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REQUEST NO. 42

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...wallets."

REQUEST NO. 43

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...wallets."

REQUEST NO. 44

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather cases."

REQUEST NO. 45

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather cases."

REQUEST NO. 46

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather handbags."

REQUEST NO. 47

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather handbags."

REQUEST NO. 48

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather key chains."

1 REQUEST NO. 49

2 Admit that no documents existed on or before March 27, 2009, to evidence your bona
3 fide intent to use the mark "Hard Candy" in connection with "leather goods,
4 namely...leather key chains."

5 REQUEST NO. 50

6 Admit that no documents exist sufficient to evidence your bona fide intent to use
7 the mark "Hard Candy" in connection with "leather goods, namely...leather pouches."

8 REQUEST NO. 51

9 Admit that no documents existed on or before March 27, 2009, to evidence your bona
10 fide intent to use the mark "Hard Candy" in connection with "leather goods,
11 namely...leather pouches."

12 REQUEST NO. 52

13 Admit that no documents exist sufficient to evidence your bona fide intent to use
14 the mark "Hard Candy" in connection with "leather goods, namely...traveling bags."

15 REQUEST NO. 53

16 Admit that no documents existed on or before March 27, 2009, to evidence your bona
17 fide intent to use the mark "Hard Candy" in connection with "leather goods,
18 namely...traveling bags."

19 REQUEST NO. 54

20 Admit that no documents exist sufficient to evidence your bona fide intent to use
21 the mark "Hard Candy" in connection with "leather goods, namely...purses."

22 REQUEST NO. 55

23 Admit that no documents existed on or before March 27, 2009, to evidence your bona
24 fide intent to use the mark "Hard Candy" in connection with "leather goods,
25 namely...purses."

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Dated this 5th day of April, 2013



Stuart J. West
Attorney for Opposer
2815 Mitchell Drive
Suite 209
Walnut Creek, CA 94598

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of:

OPPOSER'S FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS
OPPOSER'S FIRST REQUEST FOR ADMISSIONS

were served on this 5th day of April, 2013, by First Class Mail and e-mail to:

ggroisman@coffeyburlington.com
Coffey Burlington
c/o Gabriel Groisman
2699 South Bayshore Drive
Penthouse
Miami, FL 33133


Dawn Callender
Dawn Callender

EXHIBIT E:

APPLICANT'S RESPONSE TO OPPOSER'S FOURTH REQUEST FOR PRODUCTION

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

HardCandy Cases, LLC,

Opposer,

v.

Hard Candy, LLC,

Applicant.

In Re: TM application Serial No. 77700557
For the Mark: Hard Candy
Published in the Official Gazette: 02/16/09

Opposition No. 91195327 (Parent)
Opposition No. 91195328

RESPONSE TO OPPOSER'S FOURTH REQUEST FOR PRODUCTION

Pursuant to Federal Rule of Civil Procedure 24, Hard Candy, LLC ("Hard Candy" or "Applicant"), hereby submits its responses to the Fourth Set of Request for Production of Documents ("Request") from Opposer HardCandy Cases, LLC.

I. General Objections

The following general objections are hereby made and incorporated in each response to each of the Requests, whether or not expressly incorporated in each individual response.

1. Applicant objects to the Requests to the extent it seeks to impose obligations beyond those set forth in the Federal Rules of Civil Procedure.

2. Applicant objects to the Requests to the extent it seeks privileged documents, including, but not limited to, documents protected by the attorney/client privilege, the work product doctrine, the self-evaluation or the self-critical analysis privilege, or any other applicable privilege, rule of privacy or confidentiality, immunity, protection, or restriction that makes such information otherwise non-discoverable. The production, inadvertently or otherwise, of any document subject to such privilege, protection or doctrine will not constitute or be deemed to

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constitute a waiver of any privilege or other immunity from production.

3. Applicant objects to the Requests as they are overbroad because they are not limited in time. It is unreasonably, overbroad and unduly burdensome for Applicant to be required to provide responsive documents from the beginning of time through the present.

4. Applicant objects to the Requests as they are overbroad, as they are not limited to the two trademark applications in question in this Opposition. Information regarding Applicant's other applications and other business is not likely to lead to the discovery of admissible evidence, is confidential, highly-sensitive, proprietary business information and is simply an unsubstantiated and impermissible fishing expedition.

5. Applicant responds to the Requests based on information available as of the date hereof and reserve the right to supplement their objections or responses to any of the Requests pursuant to all appropriate rules, laws, statutes and regulations.

6. The foregoing general objections shall be considered as made to the extent applicable in response to each of the Requests as if the general objections were fully set forth in each such response, including those responses which also set forth specific objections.

7. Applicant's responses to the Requests are made without in any way waiving or intending to waive, but rather, to the contrary, preserving and intending to preserve, the right to raise all questions as to competence, relevance, materiality, privilege and admissibility as evidence for any purpose.

8. Applicant offered to be produced herein will be made available for inspection at a reasonable place and time and counsel for Opposer should contact undersigned to arrange for such inspection.

II. Specific Objections

REQUEST FOR PRODUCTION NO. 1:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with consumer electronics, namely, an apparatus for recording transmission or reproduction of sound and images.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term "in connection with" is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 2:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio cassette players.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term "in connection with" is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 3:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with speakers.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term "in connection with" is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 4:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio headphones.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 5:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio recorders.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 6:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio speakers.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 7:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with audio tape recorders.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 8:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with calculators.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 9:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with cameras.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 10:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with cell phones.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 11:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with compact disc players.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 12:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with MP3 players.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 13:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with radios.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 14:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with portable handheld digital electronic devices for recording.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 15:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather goods, namely, backpacks.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 16:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather bags.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 17:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with suitcases.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 18:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with wallets.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 19:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather cases.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 20:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather handbags.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 21:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather key chains.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 22:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with leather pouches.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 23:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with travelling bags.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 24:

Any and all documents, including internal communications, sufficient to demonstrate a bona fide intent to use the mark "HARD CANDY" in connection with purses.

RESPONSE: Applicant objects to this Request to the extent it is vague, since the term “in connection with” is undefined and because there is no time reference for the documents requested. Applicant further objects as this Request is duplicative of various previous requests. Notwithstanding, and without waiver of the above-stated objections, all non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 25:

Any and all communications with Wal-Mart regarding Hard Candy Cases, LLC or their products.

RESPONSE: Applicant objects to this Request as it seeks documents which are irrelevant, and not likely to lead to the discovery of admissible evidence. The purpose of this Request is to harass Applicant, to seek information about a competitor, and is simply an impermissible fishing

expedition.

REQUEST FOR PRODUCTION NO. 26:

Any and all documents regarding a business plan for the sale of mobile electronic device cases associated with the mark “Hard Candy.”

RESPONSE: Applicant objects to this request as it is duplicative of many previous requests. Applicant objects to this request as it is vague. It is unclear what “documents regarding a business plan” means. Notwithstanding, and without waiver of the above stated objections, all non-privileged, business plans for the sale of mobile electronic device cases associated with the mark “Hard Candy” in the custody or control of Applicant, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 27:

Any and all documents regarding a business plan for the sale of iPad cases associated with the mark “Hard Candy.”

RESPONSE: Applicant objects to this request as it is duplicative of many previous requests. Applicant objects to this request as it is vague. It is unclear what “documents regarding a business plan” means. Notwithstanding, and without waiver of the above stated objections, all non-privileged, business plans for the sale of iPad cases associated with the mark “Hard Candy” in the custody or control of Applicant, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

REQUEST FOR PRODUCTION NO. 28:

Any and all documents relating to any agreements with Wal-mart to sell the products bearing the mark “HARD CANDY” listed in the goods associated with US Trademark application serial nos. 7770557 and 77700559.

RESPONSE: All non-privileged, responsive documents, if any, will be produced at a mutually agreeable time and place, to the extent such documents have not already been produced.

Respectfully submitted,

COFFEY BURLINGTON
Counsel for Hard Candy, LLC
2699 South Bayshore Drive, Penthouse
Miami, Florida 33133
Tel. No. 305-858-2900
Fax No. 305-858-5261

By: /s/ Gabriel Groisman
Gabriel Groisman
Florida Bar No. 25644
ggroisman@coffeyburlington.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was served on
this 9th day of May, 2013, via electronic and U.S. Mail upon:

Stuart J. West, Esq.
West & Associates, A PC
2815 Mitchell Drive
Suite 209
Walnut Creek CA 94598
swest@westpatentlaw.com

/s/ Gabriel Groisman

EXHIBIT F:

**APPLICANT'S RESPONSE AND OBJECTIONS TO OPPOSER'S FIRST REQUEST FOR
ADMISSIONS**

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

HardCandy Cases, LLC,

In Re: TM application Serial No. 77700557
For the Mark: Hard Candy
Published in the Official Gazette: 02/16/09

Opposer,

v.

Opposition No. 91195327 (Parent)
Opposition No. 91195328

Hard Candy, LLC,

Applicant.

APPLICANT'S RESPONSE AND OBJECTIONS
TO OPPOSER'S FIRST REQUEST FOR ADMISSIONS

Applicant Hard Candy, LLC ("Hard Candy" or "Applicant"), hereby submits its responses and objections to the First Set of Request for Admissions of Documents ("Request") from Opposer HardCandy Cases, LLC.

I. General Objections

The following general objections are hereby made and incorporated in each response to each of the Requests, whether or not expressly incorporated in each individual response.

1. Applicant objects to the definition of "you", "your" and "Applicant" as it includes entities other than Applicant Hard Candy, LLC. The objections and responses below are solely on behalf of Hard Candy, LLC.

2. Applicant objects to the Requests to the extent it seeks to impose obligations beyond those set forth in the Federal Rules of Civil Procedure.

3. Applicant objects to the Requests as they are overbroad, as they are not limited to the two trademark applications in question in this Opposition. Information regarding Applicant's

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other applications and other business is not likely to lead to the discovery of admissible evidence, is confidential, highly-sensitive, proprietary business information and is simply an unsubstantiated and impermissible fishing expedition.

4. Applicant responds to the Requests based on information available as of the date hereof and reserve the right to supplement their objections or responses to any of the Requests pursuant to all appropriate rules, laws, statutes and regulations.

5. The foregoing general objections shall be considered as made to the extent applicable in response to each of the Requests as if the general objections were fully set forth in each such response, including those responses which also set forth specific objections.

6. Applicant's responses to the Requests are made without in any way waiving or intending to waive, but rather, to the contrary, preserving and intending to preserve, the right to raise all questions as to competence, relevance, materiality, privilege and admissibility as evidence for any purpose.

II. Specific Responses and Objections

REQUEST NO. 1

Admit that cosmetic bags are in international class 18.

RESPONSE: Applicant objects to this Request as it improperly asks Applicant to reach a legal conclusion..

REQUEST NO. 2

Admit that your development of cases for ipads or portable electronic devices did not start until 2011.

RESPONSE: Applicant objects to this Request as it is ambiguous, since the term “development” is not defined.

REQUEST NO. 3

Admit that you had no bona fide intention to make cases for ipads or portable electronic devices at the time of filing the application bearing Serial # 77700559 in 2009.

RESPONSE: Denied.

REQUEST NO. 4

Admit that Wal-Mart continued to sell Opposer’s products marked “Hard Candy Cases” after Wal-Mart was made aware of said products by Applicant.

RESPONSE: Applicant objects to this Request as it asks Applicant to improperly speculate as to the actions of a third-party.

REQUEST NO. 5

Admit that skins and cases for electronic devices such as cell phones are in international class 009.

RESPONSE: Applicant objects to this Request as it improperly asks Applicant to reach a legal conclusion.

REQUEST NO. 6

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images."

RESPONSE: Applicant objects to this Request as the documents produced speak for themselves. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 7

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 8:

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with consumer electronics, namely audio cassette players.

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 9

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with consumer electronics, namely audio cassette players.

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 10

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...speakers."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 11

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...speakers."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 12

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio headphones."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 13

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio headphones."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 14

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio recorders."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 15

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio recorders."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 16

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio speakers."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 17

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...audio speakers."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 18

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely..audio tape recorders."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 19

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely..audio tape recorders."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 20

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely..calculators."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 21

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...calculators."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 22

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...cameras."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 23

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...cameras."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 24

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...cell phones."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 25

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...cell phones."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 26

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...compact disc players."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 27

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...compact disc players."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 28

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...electric hair curling irons."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 29

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...electric hair curling irons."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 30

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...MP3 players."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 31

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...MP3 players."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 32

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...radios."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 33

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely...radios."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 34

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely..portable handheld digital electronic devices for recording."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 35

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "Consumer electronics, namely..digital handheld electronic devices for recording."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 36

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely, backpacks."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 37

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark “Hard Candy” in connection with “leather goods, namely, backpacks.”

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 38

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark “Hard Candy” in connection with “leather goods, namely...leather bags.”

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 39

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark “Hard Candy” in connection with “leather goods, namely...leather bags.”

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 40

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...suitcases."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 41

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...suitcases."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 42

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...wallets."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 43

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...wallets."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 44

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather cases."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 45

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather cases."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 46

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather handbags."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 47

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark “Hard Candy” in connection with “leather goods, namely...leather handbags.”

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 48

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark “Hard Candy” in connection with “leather goods, namely...leather key chains.”

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 49

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark “Hard Candy” in connection with “leather goods, namely...leather key chains.”

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, “in connection with”, is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 50

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather pouches."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 51

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...leather pouches."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 52

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...traveling bags."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 53

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...traveling bags."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 54

Admit that no documents exist sufficient to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...purses."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined, and because it is overbroad and ambiguous since the Request does not specify the period of time to which it is referring. Notwithstanding, and without waiver of the above-stated objections, denied.

REQUEST NO. 55

Admit that no documents existed on or before March 27, 2009, to evidence your bona fide intent to use the mark "Hard Candy" in connection with "leather goods, namely...purses."

RESPONSE: Applicant objects to this Request as it is ambiguous, since the key term, "in connection with", is undefined. Notwithstanding, and without waiver of the above-stated objections, denied.

Respectfully submitted,

COFFEY BURLINGTON
Counsel for Hard Candy, LLC
2699 South Bayshore Drive, Penthouse
Miami, Florida 33133
Tel. No. 305-858-2900
Fax No. 305-858-5261

By: /s/ Gabriel Groisman
Gabriel Groisman
Florida Bar No. 25644
ggroisman@coffeyburlington.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was served on
this 9th day of May, 2013, via electronic and U.S. Mail upon:

Stuart J. West, Esq.
West & Associates, A PC
2815 Mitchell Drive
Suite 209
Walnut Creek CA 94598
swest@westpatentlaw.com

/s/Gabriel Groisman

EXHIBIT G:

EMAIL FROM GABRIEL GROISMAN TO STUART WEST VIA DROPBOX

Stuart J. West

From: Dropbox [no-reply@dropbox.com]
Sent: Friday, March 22, 2013 6:23 AM
To: Stuart J. West
Subject: Gabriel Groisman shared "Public" with you



From Gabriel:

"Stuart: Attached is a link to Hard Candy, LLC's production. More documents will be forthcoming."

[Click here to view Public](#)

(Gabriel shared these files using Dropbox. Enjoy!)

© 2013 Dropbox

EXHIBIT H:

EMAIL FROM SHAUN SLUMAN SENT TO GABRIEL GROISMAN ON MAY 30, 2013

Shaun Sluman

From: Shaun Sluman
Sent: Thursday, May 30, 2013 2:06 PM
To: 'Gabriel Groisman'
Cc: Stuart J. West; Dawn Callender
Subject: Hard Candy Cases, LLC v. Hard Candy, LLC

Mr. Groisman,

To summarize our telephone conversation this afternoon:

- You indicated that some documents exist that are responsive to our discovery requests regarding the prosecution history of the trademarks, but you do not have access to them because they are with a transactional attorney. These documents have not yet been produced to us, and you could not give an estimated timeframe for when we would receive them, despite our trial period being less than a week away.
- I offered to try to resolve your objections to discovery requests, for instance those in Opposer's Fourth Request for Production, such as more fully defining the term "in connection with." However, you maintained that, despite your objections, all documents responsive to those requests have been produced to the extent that they exist. I noted that we believed the previously produced documents did not contain anything related to the specific goods and services listed in the discovery requests, such as those regarding "an apparatus for recording transmission or reproduction of sound and images" and "audio cassette players."
- You reiterated your previously stated objection to our Pretrial Disclosures, and indicated that you would be filing a Motion to Strike them. As we discussed, we maintain our position that the Pretrial Disclosures comply with 37 CFR 2.121(e) and TMBP 702.01 because it contains "a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness," as required by the rule.

Once again, although you've stated that all documents (besides the prosecution history documents held by the transactional attorney) have been produced to the extent they exist, we have not yet received documents that would indicate that your client had a bona fide intent to use the marks with any of the specific goods listed in the trademark applications. Your response to our Request for Admissions contained denials that such documents do not exist, but yet we have not received them. We may be forced to file a Motion to Compel to obtain these documents.



Thank you,

Shaun N. Sluman
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WE KNOW THE CREATIVE MIND!®

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of:

OPPOSER'S MOTION TO RESUME PROCEEDINGS, AND OPPOSER'S MOTION FOR AN ORDER TO COMPEL DISCOVERY

OPPOSER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO RESUME PROCEEDINGS AND MOTION FOR AN ORDER TO COMPEL DISCOVERY

DECLARATION OF STUART WEST IN SUPPORT OF OPPOSER'S MOTION FOR AN ORDER TO COMPEL DISCOVERY

DECLARATION OF SHAUN SLUMAN IN SUPPORT OF OPPOSER'S MOTION FOR AN ORDER TO COMPEL DISCOVERY

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

EXHIBIT F

EXHIBIT G

EXHIBIT H

were served on this 25th day of June, 2013, by First Class Mail and e-mail to:

ggroisman@coffeyburlington.com
Coffey Burlington
c/o Gabriel Groisman
2699 South Bayshore Drive
Penthouse
Miami, FL 33133



Shaun Sluman