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

| | |
|------------------------|--|
| Proceeding | 91195442 |
| Party | Plaintiff Watermill Express, LLC |
| Correspondence Address | MARC C LEVY FAEGRE & BENSON LLP 1700 LINCOLN STREET, 3200 WELLS FARGO CENTER DENVER, CO 80203-4532 UNITED STATES trademarkdnvr@faegre.com, mlevy@faegre.com, jcollins@faegre.com |
| Submission | Motion to Compel Discovery |
| Filer's Name | Marc C. Levy |
| Filer's e-mail | trademarkdnvr@faegre.com, mlevy@faegre.com |
| Signature | /Marc C. Levy/ |
| Date | 04/06/2011 |
| Attachments | WATERMILL EXPRESS MOTION TO COMPEL.pdf (8 pages)(21688 bytes) Exhibit A.pdf (6 pages)(215029 bytes) Exhibit B.pdf (2 pages)(35362 bytes) Exhibit C.pdf (17 pages)(548784 bytes) Exhibit D.pdf (12 pages)(305472 bytes) Exhibit E.pdf (4 pages)(121854 bytes) Exhibit F.pdf (2 pages)(30552 bytes) Exhibit G.pdf (4 pages)(133614 bytes) Exhibit H.pdf (5 pages)(186827 bytes) |

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

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| WATERMILL EXPRESS, LLC, | : | |
| | : | |
| Opposer/ Petitioner, | : | Opposition No. 91195442 |
| | : | Cancellation No. 92052985 |
| v. | : | |
| | : | WATERMILL EXPRESS’ MOTION TO COMPEL |
| GWYNNE 5 BEVERAGE, LLC, | : | |
| | : | <i>Expedited Consideration by Telephone Conference Requested</i> |
| Applicant/ Registrant. | : | |

Relief Requested

Pursuant to Trademark Rule 2.120(e)(1), Opposer/Petitioner Watermill Express LLC (“Watermill Express”) moves to compel answers to its First Set of Interrogatories and documents in response to its First Set of Requests for Production of Documents (together, the “Discovery”). Applicant/Registrant Gwynne 5 Beverage LLC (“Gwynne 5”) opted to answer many of the interrogatories by stating that it would produce documents from which the answer could be ascertained. Yet, Gwynne 5 has failed to produce such documents. Gwynne 5 also stated it would produce documents in response to a number of document requests, but no such documents have been produced.

For more than two months, the undersigned counsel has diligently attempted to resolve these matters with Gwynne 5’s counsel through numerous telephone conferences and correspondence. Supplemental responses to the Discovery was finally delivered on March 9,

2011 and March 29, 2011. Yet, no additional documents were produced and the deficiencies remain. Gwynne 5 has failed to provide its commitment to promptly cure these deficiencies, thus necessitating this motion.

Watermill Express requests that the Board consider this motion on an expedited basis by telephone conference, as provided under Trademark Rule 2.120(i). Watermill Express has noticed the deposition of the principal of Gwynne 5, Mr. David Windmiller, for April 14, 2011 in New York City. The discovery cutoff in these actions is May 16, 2011. To avoid prejudice to Watermill Express and to avoid having to continue this deposition for a second day, Watermill Express requests that the Board grant this motion to compel and order Gwynne 5 to correct all discovery deficiencies not later than April 13, 2011. Specifically, Watermill Express moves that the Board compel Gwynne 5 to provide complete verified answers to Interrogatories Nos. 7, 8, 9, 10, 11 & 12 and produce all documents in response to Request for Production Nos. 3, 8, 10, 11, 12, 13, 14, 15 & 21.

Factual Background

Watermill Express served its First Set of Interrogatories and First Set of Requests for Production of Documents on October 1, 2010. After Watermill Express granted several requests from Gwynne 5's counsel for an extension of time to respond, Watermill Express finally received Gwynne 5's responses to both sets of requests on December 21, 2010.

There were numerous deficiencies in Gwynne 5's responses to the Discovery. Watermill Express' counsel identified these deficiencies in detail in a January 21, 2011 letter to Gwynne 5's counsel, Ms. Arlana Cohen, requesting a Rule 37 conference. A copy of this letter is attached as **Exhibit A**. The parties then participated in a Rule 37 conference by telephone on January 28,

2011. Counsel for Gwynne 5 agreed to supplement the Discovery. This is detailed in an email to Ms. Cohen dated January 28, 2011, attached as **Exhibit B**.

Gwynne 5 did not timely supplement its responses. Finally, after numerous requests, Gwynne 5 served its Supplement Response to the document requests on March 9, 2011. A copy of its Supplemental Response to the document requests is attached as **Exhibit C**. Gwynne 5's Supplemental Response to the interrogatories was not delivered until March 29, 2011. A copy of this Supplemental Response is attached as **Exhibit D**. Regrettably, these amended responses to the Discovery remained substantially deficient. In short, Gwynne 5 chose to answer a number of interrogatories by opting to produce documents from which the response could be obtained. Yet, Gwynne 5 failed to produce such documents. Further, in response to the documents requests, Gwynne 5 stated that it would be producing responsive documents to a number of requests. Yet, no such documents have been produced.

The undersigned promptly notified Ms. Cohen of these deficiencies in two letters sent on March 29, 2011. Copies of these letters are attached as **Exhibit E**. Because of Mr. Windmiller's deposition, which had been noticed for April 14, 2011, counsel for Watermill Express requested that Ms. Cohen confirm that the deficiencies would be corrected not later than April 5, 2011. See **Exhibit E**. No response to these emails was received.

On Monday, April 4, 2011, the undersigned telephoned Ms. Cohen in a final effort to resolve the matter and avoid the need for this motion. Ms. Cohen stated that she had not yet even reviewed the specific alleged deficiencies. In light of this, the parties scheduled a call for 5 p.m. (Eastern) on Tuesday, April 5, 2011, by which time Watermill Express expected a commitment to cure the deficiencies before Mr. Windmiller's deposition. An email from counsel for Watermill Express dated April 4, 2011 to Ms. Cohen summarizing the April 4th call

is attached as **Exhibit F**. Later that day, Ms. Cohen informed the undersigned that her associated, Ms. MacGregor, was not available at the time we had scheduled. She then suggested that the conference be postponed until the following morning. Given the urgency of the matter, the undersigned requested that Ms. Cohen confirm in writing by the close of business on Tuesday, April 5th that she would correct the identified deficiencies before her client's deposition. A copy of this email is attached as **Exhibit G**. Ms. Cohen failed to provide this commitment. Rather, Ms. Cohen asserted in an email later that day that her responses were adequate, with only one exception. This email is attached as **Exhibit H**.

On the basis of the foregoing, the undersigned certifies that it has attempted in good faith to resolve the issues presented in this motion, but has been unable to reach an agreement.

To assist the Board in resolving this matter, the specific deficiencies are identified below:

Interrogatories

In response to each of the following interrogatories, Gwynne 5 has answered by stating that "will produce documents . . . sufficient to respond to this interrogatory"

Interrogatory No. 7: Identify each and every good or service on which, or in connection therewith, You are using, have used, have authorized the use of, or plan to use the WATERMILLER marks. For each such good or service:

- (a) State the period of time during which the WATERMILLER marks have been or were used on or in connection with the good or service;
- (b) State the total unit and dollar sales for each good or service on a monthly and annual basis;
- (c) Identify each state in which You have sold each such good or service; and
- (d) Identify each state in which You have shipped each such good or service.

Interrogatory No. 8: Identify the location of each and every WATERMILLER brand commercial or residential fill station that has been installed. For each one, state the name of the purchaser, the name of the

company (if applicable), the address, and the date on which it was installed (month/day/year).

Interrogatory No. 9: Identify each and every distributor, reseller, agent or any other person who has sold or offered for sale any product under any of the WATERMILLER marks.

Interrogatory No. 10: State by month and year the advertising and marketing expenses for products under the WATERMILLER marks.

Interrogatory No. 11: Identify and describe the nature and types of all marketing and promotional efforts undertaken by You for WATERMILLER brand goods or services.

Interrogatory No. 12 Identify all advertisements for any goods or services under the WATERMILLER marks, including the source of the advertisement (e.g. direct mail, brochure, internet website, newspaper, magazine, television, radio), the date or dates of the advertisement, and the geographic area covered by the advertisement.

Yet, Gwynne provided no documents along with its supplemental answers to its interrogatories. In fact, Gwynne 5's entire production consists of a grand total of 90 pages of documents. These documents are as follows:

1. A freight invoice from A. Duie Pyle, Inc. (G0001)
2. Advertising for a 2009 Gala of Hope benefit (G0002-7)
3. Advertising for a benefit for the DeVecchios (G0008-10)
4. A copy of U.S. Patent No. 7,708,035 (Windmill) (G0012-81); and
5. Copies of photos of packaging for a Watermill bottle and the bottle (G0082-0089)
6. Invoice to U.S. Light Resources for WATERMILLER FILL STATION (G0090)

These documents do not answer the above-referenced interrogatories. None of the documents provide any information to answer interrogatories nos. 7, 8, 9 or 10. The handful of advertisements may partially answer interrogatories nos. 11 and 12, but they do not fully answer these interrogatories. Therefore, Gwynne 5 should be ordered to answer all of the above interrogatories fully.

Requests for Production

Gwynne 5's supplemental response to the requests for production was similarly inadequate. In its supplemental responses to requests for production nos. 3, 8, 10, 11, 12, 13, 14, 15 & 21, Gwynne 5 responded as follows: "Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed." (emphasis added).

As a threshold matter, Applicant's limitation of these requests to "representative samples" is improper; all responsive documents should be produced in response to these requests. Yet Gwynne 5 failed to produce any documents in response to these various requests. Watermill Express certainly expected such documents because when Gwynne 5 claimed it did not have any responsive documents to produce, Gwynne 5 said so in its responses. See **Exhibit C** (Request No. 7: ". . . Applicant is not aware of any non-privileged documents responsive to this request as reasonably construed) or Request No. 22: "None"). Therefore, Gwynne 5 should be ordered to produce all documents in response to the above-referenced request for production of documents.

Conclusion

Gwynne 5's supplemental responses to Watermill Express' Discovery are deficient. Gwynne 5 has failed to respond to numerous interrogatories and it has failed to produce documents it states it will produce. Watermill Express therefore moves that the Board compel Gwynne 5 to provide complete verified answers to Interrogatories Nos. 7, 8, 9, 10, 11 & 12 and

produce all documents in response to Request for Production Nos. 3, 8, 10, 11, 12, 13, 14, 15 & 21.

Dated this 6th day of April 2011.

By: /Marc C. Levy/

Marc C. Levy
Jennifer Daniel Collins
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, Colorado 80203-4532
(303) 607-3500

Attorneys for Opposer/Petitioner
Watermill Express, LLC

CERTIFICATE OF SERVICE

I, Joshua Smith do hereby certify that on the 6th day of April , 2011 a true and correct copy of this **WATERMILL EXPRESS' MOTION TO COMPEL** was sent via e-mail to asc@cll.com and has been forwarded by United States mail, first class, postage prepaid to:

Arlana S. Cohen
Cowan, Liebowitz & Latman
1133 Avenue of the Americas, 35th Floor
New York, New York 10036-6799

/Joshua A. Smith/

Joshua A. Smith

Exhibit A



UNITED STATES | ENGLAND | CHINA

MARC C. LEVY
MLevy@faegre.com
(303) 607-3618

January 21, 2011

VIA ELECTRONIC MAIL(asc@cll.com)

Arlana S. Cohen
Cown, Liebowtiz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036-6799

Re: *Watermillier Express LLC v. Gwynne 5 Beverage LLC* (Opposition No. 91195442): Rule 37 Conference

Dear Arlana:

On Friday, January 14, 2011, I informed you that we needed to have a Rule 37 conference to discuss your responses to our discovery requests that we received on December 21, 2010. In my January 14th email, I proposed that we have that conference by telephone on Monday, January 24th at 4 p.m. (Eastern) to accommodate your schedule. In that email, I requested that you let me know if my proposed scheduled time did not work for you. Since I have heard nothing from you in response to my email, I assume that time is fine and we will go forward with the conference as proposed.

In anticipation of the conference, I am writing to identify the deficiencies in your responses that I wish to address with you. It is my hope that with this list we can efficiently discuss these issues so we can determine whether you are willing to address them or a motion to compel with be necessary.

1. Failure to Produce Documents

Of course, the most significant deficiency is that thus far you have failed to produce any of the documents that you stated that you would produce. I have asked you on numerous occasions to provide me with a date by which the documents will be produced, but you have failed to provide one. There should be no need to have to bring this matter before the Board, but thus far you are not giving me much choice. After I granted you two separate extensions of time, the documents were due on December 15th and we still don't have them. Please produce your client's documents now. If I do not have them in my possession by January 31, 2011, you will leave me no choice but to file a motion to compel.

2. Failure to Specify and Produce Business Records to Answer Interrogatories

In a number of cases in response to our interrogatories, you indicate that you would answer by producing documents. These responses are inadequate. You are required to specify the records that must be reviewed in sufficient detail to enable us to locate and identify them as readily as you could and then produce them. See Fed. R. Civ. P. 33(d). We expect that you will amend these responses and produce the relevant documents so we can determine the adequacy of your responses.

3. Specific Deficiencies with Answers to Interrogatories

Interrogatory No. 1. You failed to include Mr. Windmiller's address and a description of his knowledge, as requested.

Interrogatory No. 2. You failed to include Mr. Windmiller's address and a description of the nature of his involvement in the creation, selection and/or adoption of the WATERMILLER marks.

Interrogatory No. 5. Your response is insufficient. You simply refer to documents you are producing in response to the document requests. But in response to the parallel Request for Production No. 1, you say that "all of the relevant documents in [Applicant's] possession are being produced in response to the other requests herein." This is incorrect. The other requests for production do not seek all documents that refer or relate to Watermill Express LLC, any person associated with Watermill Express LLC or the WATERMILL EXPRESS mark. Therefore, your response indicates that you are withholding documents that are within the scope of discovery.

Interrogatory No. 9. The identity of Applicant's distributors and resellers is relevant to the issue of channels of trade which is a DuPont factor. Further, because distributors and resellers of Applicant's products are themselves sources of discoverable information, their identity is discoverable.

Interrogatory No. 15. Applicant's expansion plans concerning its WATERMILLER products are relevant to the issue of the market interface between Applicant and Watermill Express, which is another DuPont factor.

4. Specific Deficiencies with Responses to Requests for Production

Request No. 1. See Interrogatory No. 5 above.

Request No. 2. Your response that you will produce documents that are “reasonably responsive” to the request is vague. There is no basis for you to withhold responsive documents to this request which seeks all documents that your refer or relate to your applications to register the subject marks, not merely documents that were filed with the PTO.

Request No. 3. Your response that you will produce only “representative samples” of documents that refer or relate to the design and/or development of the WATERMILLER marks is inadequate. All responsive documents to this request are properly discoverable.

Request No. 4. This request only seeks representative samples of labels, packaging, advertising and the like. Given this, your response that you will produce “representative examples” of what is requested is confusing. We assume that you will produce a representative sample of each different item within the scope of the request.

Request No. 7. Your response that you will produce only “representative examples” of documents that refer or relate to or constitute any investigation, search, survey or the like regarding the WATERMILLER marks is inadequate. All responsive documents to this request are properly discoverable.

Request No. 8. Your response that you will produce only “representative examples” of documents that refer or relate to the creation, selection or decision to adopt the WATERMILLER marks is inadequate. All responsive documents to this request are properly discoverable.

Request No. 9. The nature of the customers for Applicant’s product is relevant to the question of likelihood of confusion. As you know, the “buyers to whom sales are made” is a DuPont factor. This request seeks relevant evidence.

Request No. 12. This request seeks only documents sufficient to show total unit and dollar sales (monthly and annually) of each WATERMILLER brand good or service. Given this, your response that Applicant will produce “representative examples” of what is requested is confusing. We assume that you will produce documents sufficient to show the information requested.

Request No. 13. I assume that you intend to produce a sample of each different price list for the relevant goods or services. I expect you will confirm this tomorrow.

Request No. 14. Your response that you will produce only “representative examples” of documents that refer or relate to communications with persons involved in advertising or promoting the WATERMILLER marks is inadequate. All responsive documents to this request are properly discoverable.

Request No. 15. This request seeks only documents sufficient to show Applicant's advertising and promotional expenses in connection with the WATERMILLER marks or the goods or services on which they are used. Given this, your response that Applicant will produce "representative examples" of what is requested is confusing. We assume that you will produce documents sufficient to show the information requested.

Request No. 16. Your response that you will produce only "representative examples" of documents that refer or relate to Applicant's marketing or advertising of the WATERMILLER marks is inadequate. All responsive documents to this request are properly discoverable.

Request No. 17. Your response that you will produce only "representative examples" of documents that refer or relate to or constitute Applicant's business or marketing plans for goods or services bearing the WATERMILLER marks is inadequate. All responsive documents to this request are properly discoverable.

Request No. 18. Documents concerning your customers for the relevant products or services offered under the WATERMILLER marks is relevant to the issue of likelihood of confusion. As you know, the "buyers to whom sales are made" is a DuPont factor. This request seeks relevant evidence.

Requests Nos. 19 & 20. Your client's opposition to Freedom Water Company's similar WATERMILL mark for similar services is relevant to the issue of the confusing similarity between the marks and the relevant goods or services at issue in this case. This information also bears on your client's credibility and the issue of judicial or equitable estoppel.

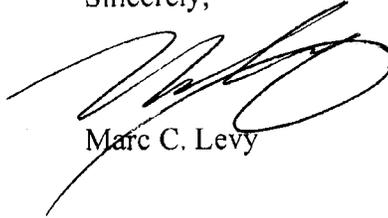
Request No. 21. This request seeks only documents sufficient to identify each of Applicant's distributors or resellers. Given this, your response that you produce "representative examples" of what is requested is confusing. We assume that you will produce documents sufficient to show the information requested.

Request No. 23. This request seeks documents that contain direct responses from the consumers of Applicant's WATERMILLER products concerning their views of the product. Because consumer confusion is obviously relevant to the likelihood of confusion analysis, and because such responses could reflect such confusion, this request is reasonably calculated to lead to the discovery of admissible evidence. The request is also reasonably calculated to lead to the discovery of admissible evidence concerning the nature of the consumers of the product, the conditions under which sales are made and consumer perception of the product.

Arlana Cohen
January 21, 2011
Page 5

I look forward to speaking with you on Monday.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. C. Levy', written in a cursive style.

Marc C. Levy

cc: Lani Dolifka
fb.us.6289608.01

Exhibit B

Levy, Marc C.

From: Levy, Marc C.
Sent: Friday, January 28, 2011 5:00 PM
To: 'mrm@cfl.com'; 'Cohen, Arlana S.'
Subject: Watermill Express v. Gwynne 5 - Rule 37 Conference

This will confirm the results of our Rule 37 telephone conference today.

I understand that you are sending me documents responsive to our requests for production via Federal Express for Monday delivery. I understand that you attempted to send the documents to me today via email. However, I have not received any email from you containing the documents.

As a result of our discussion today, I understand that you will be substantially amending your responses to both the interrogatories and the requests for production. Based on our conversation, I expect that these amended responses will at least narrow any issues remaining. I would appreciate receiving these amended responses by the end of next week.

Regarding RFP #s 19 & 20, you said that you will provide me some authority that you claim supports your objection to discovery of material relating to your client's opposition to the WATERMILL mark in Canada. I look forward to reviewing this authority and continuing our discussion concerning your objections to these requests.

Regards,

Marc C. Levy
Partner

Phone: +1 303 607 3618
Email: mlevy@faegre.com

faegre.com | [download vCard](#)

FAEGRE & BENSON LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, Colorado 80203-4532, USA

Exhibit C

MAR 14 2011

RECEIVED

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

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| ----- | X | |
| WATERMILL EXPRESS, LLC | : | |
| | : | Opposition No. 91195442 |
| Opposer, | : | |
| v. | : | APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS |
| | : | |
| GWYNNE 5 BEVERAGE, LLC | : | |
| | : | |
| Applicant. | : | |
| ----- | X | |

Applicant, Gwynne 5 Beverage, LLC ("Applicant"), by and through its attorneys, pursuant to Rule 2.120 of the Trademark Rules and Practice and Rules 26 and 33 of the Fed. R. Civ. P., hereby provides the following Supplemental Response to Opposer's Requests for Production of Documents and Things (the "Requests") as follows:

GENERAL OBJECTIONS

1. Applicant objects generally to the Requests and to the instructions, definitions and requests set forth in the Requests to the extent set forth below. All the responses that follow are made subject to these objections. These responses and objections are based on present knowledge and, accordingly, are subject to additional or different information that discovery or further investigation may disclose.

2. In providing responses to the Requests, Applicant does not in any way waive or intend to waive, but rather intends to preserve and does preserve:

- (a) All objections as to relevancy, materiality, competency, privilege, confidentiality, authenticity and admissibility;
- (b) All objections as to overbreadth, oppressiveness and undue burden;

- (c) All rights to object on any ground to the use of any of the information produced in response to the Requests in any proceeding, including the trial of this or any other action;
- (d) All objections as to vagueness and ambiguity;
- (e) All rights to object on any ground to any further Requests involving or relating to any of the paragraphs in the Requests; and
- (f) All rights at any time to revise, correct, supplement or clarify the responses and objections propounded herein.

3. Applicant objects to the Requests and the definitions, instructions and requests set forth therein to the extent that they are inconsistent with or purport to impose obligations broader in scope than those imposed by Federal Law and the Rules of the Trademark Trial and Appeal Board, and Applicant expressly disclaims any obligation to provide any response beyond that required by such rules.

4. Applicant objects to the Requests to the extent that they call for the production of information or documents that are protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity from discovery. The inclusion of any information in any response shall not constitute a waiver of such privilege or immunity.

5. Applicant objects to the Requests to the extent that they seek identification and/or production of documents that are not within its possession, custody or control.

6. Applicant objects to the Requests to the extent that they call for the production of information that constitutes, in whole or in part, confidential information. Such information will be provided only upon the execution of an appropriate confidentiality stipulation.

7. Applicant objects to each and every request, definition and instruction contained in the Requests to the extent that any such request, definition or instruction

contains inaccurate, incomplete or misleading descriptions of the facts, events and pleadings underlying this action. The production of any information shall not constitute Applicant's agreement with or acquiescence to any such description.

8. In making production, Applicant reserves the right to recall any document which has been inadvertently produced and which is protected by the attorney-client privilege, the work product doctrine, or any other privilege or immunity from discovery. Moreover, production of any privileged or protected document or of any document otherwise properly subject to objection on any ground does not, and shall not be deemed to, constitute a waiver of any privilege, protection, or other objection which may apply to the production of such document or any class or category of document from which it has been drawn.

9. Each of the responses to individual requests below incorporates without further reference each of the above general objections, and documents subject to these objections will not be produced. Applicant's failure to object to an individual request or its agreement to produce documents does not constitute a representation that such documents exist, or that the documents produced are all of the documents responsive to the requests in Applicant's possession, custody and control, but only that Applicant has made, and will continue to make, a good-faith effort to search for and retrieve such documents, and, subject to any and all general and specific objections, to produce such documents when and if they are located.

RESPONSES TO REQUESTS

Request No. 1

All documents that refer or relate to Watermill Express, LLC or any person associated with Watermill Express, LLC, or the WATERMILL EXPRESS mark.

Response to Request No. 1

Applicant repeats and reasserts its General Objections in response to this request. Applicant also objects to this request upon the ground that it improperly seeks attorney-work product information and does not adequately identify the documents sought. Applicant further objects to this request on the ground that it is overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in that it conceivably calls for the identification of every document in this proceeding as well as the prior proceedings involving the parties. Applicant further objects because such documents are already in Opposer's possession. Without waiving such objections, Applicant states that other than documents involved in the present and prior proceedings between the parties which it objects to producing, it is not able to locate any documents in response to this request.

Request No. 2

All documents that refer or relate to Your applications to register the WATERMILLER marks, including but not limited to all documents concerning Your applications for registrations, together with a copy of all materials submitted with Your applications, and all correspondence to and from the United States Patent and Trademark Office concerning the applications.

Response to Request No. 2

Applicant repeats and reasserts its General Objections in response to this request. Applicant objects to this request on the ground that it is burdensome and harassing to the extent that it requests documents that are publicly available.

Request No. 3

All documents that refer or relate to the design and/or development of any wording, style, font, design, logo, or other indicia used in connection with the WATERMILLER marks by Applicant.

Response to Request No. 3

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 4

Representative samples of each different label, packaging material, container, sign, advertisement or sales, marketing or other promotional materials ever used or intended to be used in connection with the WATERMILLER marks including but not limited to press releases, internet advertising, print advertising, trade show advertising, cut sheets, catalogs, product lists, media kits, brochures, coupons, menus, magazine inserts, business cards, magazine articles, or publications.

Response to Request No. 4

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 5

Specimens of each product on which you have used any of the WATERMILLER marks in commerce.

Response to Request No. 5

Applicant will produce such products for inspection at the offices of its counsel.

Request No. 6

All photographs and/or graphic depictions of each and every product on which you have used or plan to use any of the WATERMILLER marks in commerce.

Response to Request No. 6

Applicant repeats and reasserts its General Objections in response to this request. Applicant also objects to this request as not reasonably calculated to lead to admissible evidence. Subject to and without waiving the foregoing, documents responsive to this request will be produced.

Request No. 7

All documents that refer or relate to or constitute any investigation, search, survey, or study ever conducted by, for, or on behalf of Applicant relating to the availability, selection, approval, adoption and/or use of the WATERMILLER marks.

Response to Request No. 7

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant is not aware of any non-privileged documents responsive to this request as reasonably construed.

Request No. 8

All documents that refer or relate to the creation, selection, or decision to adopt the WATERMILLER marks.

Response to Request No. 8

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 9

Documents sufficient to show the billing addresses and shipping addresses of each and every customer of goods and/or services bearing any of the WATERMILLER marks.

Response to Request No. 9

Applicant repeats and reasserts its General Objections in response to this request. Applicant also objects to this request as not reasonably calculated to lead to admissible evidence. Subject to and without waiving this objection, Applicant will produce non-privileged documents in its possession, custody and control that are responsive to this request as reasonably construed.

Request No. 10

All documents that refer or relate to the nature and features of the goods and/or services advertised or offered for sale under the WATERMILLER marks by You.

Response to Request No. 10

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 11

Documents sufficient to identify the technical details and specifications of each different good and/or service advertised or offered for sale under the WATERMILLER marks.

Response to Request No. 11

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 12

Documents sufficient to show the total unit and dollar sales (monthly and annually) of each good and/or service on which or in connection with which the WATERMILLER marks have been used.

Response to Request No. 12

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 13

All price lists for each good and/or service ever sold or offered for sale under the WATERMILLER marks.

Response to Request No. 13

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 14

All documents that refer or relate to any communications between You and any agencies or other third parties responsible, in whole or in part, for advertising and

promoting the WATERMILLER marks for use in connection with Your goods and/or services.

Response to Request No. 14

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 15

Documents sufficient to show the moneys expended to advertise or promote the WATERMILLER marks or the goods and/or services on or in connection with which the WATERMILLER marks will be or have been used.

Response to Request No. 15

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 16

All documents that refer or relate to your marketing and/or advertising of the WATERMILLER marks or the goods and/or services in connection with which the WATERMILLER marks will be or have been used.

Response to Request No. 16

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 17

All documents that refer or relate to or constitute Your business and/or marketing plans for goods and/or services bearing the WATERMILLER marks, including without limitation, any plans You have to expand the scope of the goods and/or services offered and any plans You have to expand the geographic scope of sales.

Response to Request No. 17

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous with respect to the term “plans” and “expansion,” overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 18

All documents and things concerning Your customers for goods and/or services under the WATERMILLER marks, including without limitation, customer lists.

Response to Request No. 18

Applicant repeats and reasserts its General Objections in response to this request. Applicant also objects to this request as not reasonably calculated to lead to admissible evidence. Subject to and without waiving this objection, Applicant will produce representative samples of non-privileged documents, if any, in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 19

All documents that refer or relate to Your opposition to Application No. 1,366,104 of Freedom Water Company Ltd. to register the WATERMILL mark in Canada.

Response to Request No. 19

Applicant repeats and reasserts its General Objections in response to this request. Applicant also objects to this request as not reasonably calculated to lead to admissible evidence. *See, e.g., Boston Chicken Inc. v. Boston Pizza Int'l Inc.*, 53 U.S.P.Q. 1053 (T.T.A.B. 1999); *Miles Labs, Inc. v. Int'l Diagnostic Tech., Inc.*, 220 U.S.P.Q. 438 (T.T.A.B. 1983).

Request No. 20

All documents that refer or relate to or constitute Your communications with anyone affiliated with Freedom Water Company Ltd.

Response to Request No. 20

Applicant repeats and reasserts its General Objections in response to this request. Applicant also objects to this request as not reasonably calculated to lead to admissible evidence. *See, e.g., Boston Chicken Inc. v. Boston Pizza Int'l Inc.*, 53 U.S.P.Q. 1053

(T.T.A.B. 1999); Miles Labs, Inc. v. Int'l Diagnostic Tech., Inc., 220 U.S.P.Q. 438

(T.T.A.B. 1983).

Request No. 21

Documents sufficient to identify each and every distributor, reseller, or any other person who has sold or offered to sell any products under any of the WATERMILLER marks.

Response to Request No. 21

Applicant repeats and reasserts its General Objections. Applicant also objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, and subject to the entry of an appropriate protective order agreed to by the parties, Applicant will produce representative samples of non-privileged documents in its possession, custody or control that are responsive to this request as reasonably construed.

Request No. 22

All documents evidencing any instances of confusion, mistake, or deception with respect to: (i) the origin, sponsorship, or ownership of the WATERMILLER marks or Your goods and/or services, or (ii) any connection between the WATERMILLER marks or Your goods and/or services and Opposer, including but not limited to Opposer's trademarks, service marks, goods, and/or services, or (iii) any relationship between You and Opposer.

Response to Request No. 22

None.

Request No. 23

All documents that refer or relate to the Watermiller Testing Experience survey linked to the Watermiller.com website including without limitation, the results from the survey and all completed questionnaires.

Response to Request No. 23

Applicant repeats and reasserts its General Objections in response to this request. Applicant also objects to this request as not reasonably calculated to lead to admissible evidence. Subject to and without waiving this objection, Applicant states that it is not able to locate any documents responsive to this request.

Request No. 24

All documents, writings, and/or things which Applicant expects to introduce as evidence in these proceedings.

Response to Request No. 24

Applicant objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this request on the ground that it is improper under the Board's rules and precedents. *See, e.g.*, TBMP § 414(7); British Seagull Ltd. v. Brunswick Corp., 28 U.S.P.Q.2d 1197, 1201 (T.T.A.B. 1993); Charrette Corp. v. Bowater Comm.f Papers, Inc., 13 U.S.P.Q.2d 2040, 2041 (T.T.A.B. 1989); Polaroid Corp. v. Opto Speed, Ltd., 181 U.S.P.Q. 542 (T.T.A.B. 1974). Subject to and without waiving such objections, Applicant states that it has not made any determination as of this time as to what exhibits Applicant will rely upon at trial or for any hearing in this matter. Applicant will provide further disclosures regarding the general nature of

evidence upon which it may rely at trial in accordance with the Board's rules regarding expert and pretrial disclosures.

Dated: New York, New York
March 9, 2011

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By: 

Arlana S. Cohen

Meichelle R. MacGregor

1133 Avenue of the Americas
New York, New York 10036-6799
(212)790-9237
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Applicant's Supplemental Response to Opposer's Request for Production of Documents and Things was served by United States Mail, First Class, by depositing it, postage prepaid, in a depository under the exclusive custody and control of the United States Postal Service, on March 9, 2011, addressed to:

Marc C. Levy, Esq.
Jennifer D. Collins, Esq.
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532

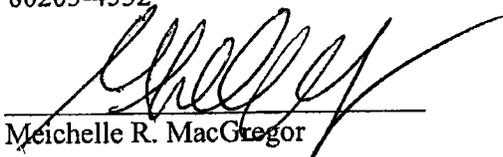

Michelle R. MacGregor

Exhibit D

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

| | | |
|------------------------|---|---|
| ----- | x | |
| WATERMILL EXPRESS, LLC | : | |
| | : | |
| Opposer, | : | Opposition No. 91195442 |
| | : | |
| v. | : | APPLICANT'S SUPPLEMENTAL RESPONSE TO |
| | : | OPPOSER'S FIRST SET OF |
| GWYNNE 5 BEVERAGE, LLC | : | INTERROGATORIES |
| | : | |
| Applicant. | : | |
| ----- | x | |

Applicant, Gwynne 5 Beverage, LLC ("Applicant"), by and through its attorneys, pursuant to Rule 2.120 of the Trademark Rules and Practice and Rules 26 and 33 of the Fed. R Civ. P., hereby provides the following supplemental responses to Opposer's First Set of Interrogatories (the "Interrogatories") as follows:

GENERAL OBJECTIONS

1. Applicant objects generally to the Interrogatories and to the instructions, definitions and interrogatories set forth in the Interrogatories to the extent set forth below. All the responses that follow are made subject to these objections. These responses and objections are based on present knowledge and, accordingly, are subject to additional or different information that discovery or further investigation may disclose.

2. In providing responses to the Interrogatories, Applicant does not in any way waive or intend to waive, but rather intends to preserve and does preserve:
 - (a) All objections as to relevancy, materiality, competency, privilege, confidentiality, authenticity and admissibility;
 - (b) All objections as to overbreadth, oppressiveness and undue burden;

- (c) All rights to object on any ground to the use of any of the information produced in response to the Interrogatories in any proceeding, including the trial of this or any other action;
- (d) All objections as to vagueness and ambiguity;
- (e) All rights to object on any ground to any further interrogatories involving or relating to any of the paragraphs in the Interrogatories; and
- (f) All rights at any time to revise, correct, supplement or clarify the responses and objections propounded herein.

3. Applicant objects to the Interrogatories and the definitions, instructions and interrogatories set forth therein to the extent that they are inconsistent with or purport to impose obligations broader in scope than those imposed by Federal Law and the Rules of the Trademark Trial and Appeal Board, and Applicant expressly disclaims any obligation to provide any response beyond that required by such rules.

4. Applicant objects to the Interrogatories to the extent that they call for the disclosure of information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity from discovery. The inclusion of any information in any response shall not constitute a waiver of such privilege or immunity.

5. Applicant objects to the Interrogatories to the extent that they seek identification of documents and information that are not within its possession, custody or control.

6. Applicant objects to the Interrogatories to the extent that they call for the production of information that constitutes, in whole or in part, confidential information. Such information will be provided only upon the execution of an appropriate confidentiality stipulation.

7. Applicant objects to each and every interrogatory, definition and instruction contained in the Interrogatories to the extent that any such interrogatory, definition or instruction contains inaccurate, incomplete or misleading descriptions of the facts, events and pleadings underlying this action. The disclosure of any information shall not constitute Applicant's agreement with or acquiescence to any such description.

8. Applicant states that it has made a good faith effort to respond fully to the Interrogatories but reserves the right to provide any additional responsive information that might be identified at any future time.

9. Each of the responses to individual Interrogatories below incorporates without further reference each of the above general objections.

ANSWERS TO INTERROGATORIES

Interrogatory No. 1

Identify each person with knowledge concerning the sale and/or marketing of goods and/or services offered for sale under the WATERMILLER marks. For each such person, describe the nature of that person's knowledge.

Response to Interrogatory No. 1

David Windmiller. Knowledge concerning the sale and/or marketing of goods offered for sale under the WATERMILLER marks.

Interrogatory No. 2

Identify the person(s) primarily responsible for the creation, selection, and/or adoption of the WATERMILLER marks, stating in detail for each person involved the nature of his or her involvement.

Response to Interrogatory No. 2

David Windmiller. Primarily responsible for the creation, selection, and adoption of the WATERMILLER marks.

Interrogatory No. 3

Describe in detail the process by which the WATERMILLER marks were chosen by You for use in connection with goods and/or services relating to the use, consumption, containment, and/or distribution of water.

Response to Interrogatory No. 3

Applicant objects to this interrogatory on the grounds that it is overly broad, vague and not likely to lead to the discovery of admissible evidence due to the description of goods and/or services relating to “the use, consumption, containment, and/or distribution of water.” Applicant also objects to this interrogatory to the extent it calls for the disclosure of attorney-client privileged or work-product information. Without waiving the foregoing, Applicant states that Applicant selected the Watermillier marks because they are suggestive of water and also because the term “Watermillier” was a play on the surname of Applicant’s CEO, David Windmillier.

Interrogatory No. 4

Identify each and every trademark search report obtained by You in connection with the adoption of the WATERMILLER marks.

Response to Interrogatory No. 4

Applicant objects to this interrogatory to the extent that it calls for the disclosure of attorney-client privileged or work-product information. Without waiving the foregoing, Applicant is not aware of any trademark search reports responsive to this request.

Interrogatory No. 5

Identify each and every document that refers to Opposer or its registered trademark WATERMILL EXPRESS.

Response to Interrogatory No. 5

Applicant objects to this interrogatory on the grounds that it is overly broad and vague in that it conceivably calls for the identification of every document in this proceeding as well as the prior proceedings involving the parties. Applicant further objects to this interrogatory on the ground that Opposer already has such documents in its possession. Without waiving the foregoing, Applicant states that other than documents pertaining to the prior proceedings between the parties which it objects to producing, it is not able to locate any documents pertaining to this request.

Interrogatory No. 6

Describe in detail the nature of Your awareness or knowledge of Opposer's registered trade and service marks for WATERMILL EXPRESS at the time You commenced use in commerce of the WATERMILLER marks.

Response to Interrogatory No. 6

Applicant objects to this interrogatory on the grounds that it is vague and overly burdensome. Applicant also objects to this interrogatory to the extent it calls for the disclosure of attorney-client privileged or work-product information. Without waiving the foregoing, Applicant states that it was not aware of Opposer or Opposer's Marks prior to adopting or commencing use of Applicant's Watermill Marks.

Interrogatory No. 7

Identify each and every good or service on which, or in connection therewith, You are using, have used, have authorized the use of, or plan to use the WATERMILLER marks. For each such good or service:

- (a) State the period of time during which the WATERMILLER marks have been or were used or in connection with the good or service;
- (b) State the total unit and dollar sales for each good or service on a monthly and annual basis;
- (c) Identify each state in which You have sold each such good or service; and

- (d) Identify each state in which You have shipped each such good or service.

Response to Interrogatory No. 7

Applicant objects to this interrogatory on the grounds that it is burdensome and harassing. Without waiving the foregoing, Applicant will produce documents, pursuant to a protective order, sufficient to respond to this interrogatory.

Interrogatory No. 8

Identify the location of each and every WATERMILLER brand commercial or residential fill station that has been installed. For each one, state the name of the purchaser, the name of the company (if applicable), the address, and the date on which it was installed (month/day/year).

Response to Interrogatory No. 8

Applicant objects to this interrogatory on the grounds that it is burdensome and harassing. Without waiving the foregoing, Applicant will produce documents, pursuant to a protective order, sufficient to respond to this interrogatory.

Interrogatory No. 9

Identify each and every distributor, reseller, agent or any other person who has sold or offered for sale any product under any of the WATERMILLER marks.

Response to Interrogatory No. 9

Applicant objects to this interrogatory on the grounds that it is burdensome, harassing and not likely to lead to the discovery of admissible evidence. Without waiving the foregoing, Applicant will produce documents, pursuant to a protective order, sufficient to respond to this interrogatory.

Interrogatory No. 10

State by month and year the advertising and marketing expenses for products under the WATERMILLER marks.

Response to Interrogatory No. 10

Applicant objects to this interrogatory on the grounds that it is burdensome, harassing and calls for the production of confidential business information. Without waiving the foregoing, Applicant will produce documents, pursuant to a protective order, sufficient to respond to this interrogatory.

Interrogatory No. 11

Identify and describe the nature and types of all marketing and promotional efforts undertaken by You for WATERMILLER brand goods or services.

Response to Interrogatory No. 11

Applicant objects to this interrogatory on the grounds that it is burdensome, harassing and calls for the production of confidential business information. Without waiving the foregoing, Applicant will produce documents, pursuant to a protective order, sufficient to respond to this interrogatory.

Interrogatory No. 12

Identify all advertisements for any goods or services under the WATERMILLER marks, including the source of the advertisement (e.g. direct mail, brochure, internet website, newspaper, magazine, television, radio), the date or dates of the advertisement, and the geographic area covered by the advertisement.

Response to Interrogatory No. 12

Applicant objects to this interrogatory on the grounds that it is burdensome and harassing. Without waiving the foregoing, Applicant will produce documents, pursuant to a protective order, sufficient to respond to this interrogatory.

Interrogatory No. 13

Identify the person(s) primarily responsible for the creation, selection, and/or adoption of the WATERMILLER marks, stating in detail for each person involved the nature and the dates of his or her involvement.

Response to Interrogatory No. 13

Applicant objects to this interrogatory on the grounds that it is burdensome and harassing in that it is duplicative of Interrogatory No. 2. Without waiving the foregoing, Applicant identifies David Windmiller in response to this interrogatory.

Interrogatory No. 14

Identify and describe in detail all instances of confusion, mistake, or deception that You are aware of with respect to: (i) the origin, sponsorship, or ownership of the WATERMILLER marks or Your goods and/or services, or (ii) any connection between the WATERMILLER marks or Your goods and/or services and Opposer, including but not limited to Opposer's trademarks, service marks, goods, and/or services, or (iii) any relationship between You and Opposer. For each such instance, identify the persons involved and the date of the occurrence.

Response to Interrogatory No. 14

None.

Interrogatory No. 15

Identify and describe any plans You have to expand Your existing markets for goods and/or services bearing the WATERMILLER marks, setting forth the markets being considered for expansion, the likelihood of such expansion, and the identity of the person or persons most knowledgeable about such plans.

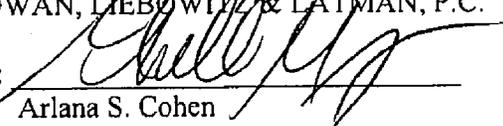
Response to Interrogatory No. 15

Applicant objects to this interrogatory on the ground that it is overbroad, vague and ambiguous with respect to the term "plans" and "expansion." Applicant further objects on the ground that this interrogatory is unduly burdensome, seeks documents which are of a confidential business nature and/or are protected by the attorney-client privilege and that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Dated: New York, New York
March 29, 2011

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By: 

Arlana S. Cohen

1133 Avenue of the Americas
New York, New York 10036-6799
(212)790-9237
Attorneys for Applicant

CERTIFICATION

I, David Windmiller, declare:

I am the Chief Executive Officer of Gwynne 5 Beverage, LLC and am authorized to make this Certification on its behalf.

I have read the foregoing Applicant's Response To Opposer's First Set of Interrogatories and the facts stated therein are true to the best of my knowledge and belief.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
March 29, 2011



David Windmiller

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Applicant's Supplemental Response to Opposer's First Set of Interrogatories was served by United States Mail, First Class, by depositing it, postage prepaid, in a depository under the exclusive custody and control of the United States Postal Service, on March 29, 2011, addressed to:

Marc C. Levy, Esq.
Jennifer D. Collins, Esq.
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532

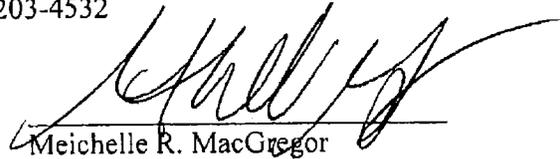

Meichelle R. MacGregor

Exhibit E



MARC C. LEVY
MLevy@faegre.com
(303) 607-3618

Marc L 29
January 21, 2011

VIA ELECTRONIC MAIL(asc@cll.com)

Arlana S. Cohen
Cown, Liebowtiz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036-6799

Re: *Watermillier Express LLC v. Gwynne 5 Beverage LLC* (Opposition No. 91195442
& Cancellation No. 92052985): Rule 37 Conference

Dear Arlana:

After our Rule 37 conference more than two months ago, you agreed to amend your answers to our interrogatories and to supplement your document production. We have received your supplemental responses to our requests for production and a grand total of 9 pages of additional documents. Your document production remains woefully inadequate. Indeed, for many of your supplemental responses, you have stated that you will produce responsive documents, but we have none. In particular, you have stated that you "will produce representative samples of non-privileged documents" in response to requests nos. 3, 8, 10, 11, 12, 13, 14, 15 & 21. We have received no documents responsive to any of these requests. The only documents you have produced thus far include the following:

1. A freight invoice from A. Duie Pyle, Inc. (G0001)
2. Advertising for a 2009 Gala of Hope benefit (G0002-7)
3. Advertising for a benefit for the DelVecchios (G0008-10)
4. Advertising for a 2008 Gala of Hope benefit (G010-11)
5. Patent No. 7,708,035 (Windmillier) (G012-0081)
6. Photos of packaging for bottle and bottle (G082-89)

In addition, as you know, we still have yet to receive your amended answers to our interrogatories.

I request your written confirmation that all of these deficiencies will be cured not later than one week from today, April 5, 2011. **Please provide me with your confirmation not later than 2:00 p.m. (Eastern) tomorrow.** If I do not receive your timely written

3200 Wells Fargo Center | 1700 Lincoln Street | Denver, Colorado 80203-4532

Telephone +1 303 607 3500 Facsimile +1 303 607 3600 faegre.com

USA | UK | China

Arlana Cohen
March 29, 2011
Page 2

confirmation, I will contact the interlocutory attorney to schedule a conference call to address this discovery issue.

In addition, as you know, we have confirmed your client's deposition for April 14, 2011. If the deficiencies are timely cured as requested, we expect we will be able to complete Mr. Windmiller's deposition in one day. Otherwise, we reserve the right to continue Mr. Windmiller's deposition for a second day after the deficiencies have been cured.

Finally, you indicated that specimens of the Watermiller products would be available for inspection at your offices. It appears that the only current product is the water bottle. For our mutual convenience, please bring a specimen of the water bottle along with its packaging to the deposition. If there are any other product specimens, please bring them as well.

Very truly yours,



Marc C. Levy

cc: Lani Dolifka
fb.us.6559846.01



MARC C. LEVY
MLEvy@faegre.com
(303) 607-3618

March 29, 2011

VIA ELECTRONIC MAIL(asc@cll.com)

Arlana S. Cohen
Cown, Liebowtiz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036-6799

Re: *Watermill Express LLC v. Gwynne 5 Beverage LLC* (Opposition No. 91195442
& Cancellation No. 92052985): Rule 37 Conference

Dear Arlana:

I have received your supplemental answers to our interrogatories. Although I have not completed my review, I am disappointed to see that they are deficient on their face because they purport to answer numerous interrogatories by referring to documents that have not been produced. In particular, you purport to answer interrogatory nos. 7, 8, 9, 10, 11 and 12 by referring to documents that you "will produce." Please produce these documents immediately. At the very least, please confirm that I will have all documents you say you "will produce" not later than April 5, 2011.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marc C. Levy".

Marc C. Levy

cc: Lani Dolifka
fb.us.6561618.01

3200 Wells Fargo Center | 1700 Lincoln Street | Denver, Colorado 80203-4532

Telephone +1 303 607 3500 Facsimile +1 303 607 3600 faegre.com

USA | UK | China

Exhibit F

Levy, Marc C.

From: Levy, Marc C.
Sent: Monday, April 04, 2011 3:53 PM
To: 'Cohen, Arlana S.'
Cc: MacGregor, Meichelle
Subject: Watermill Express v. Gwynne 5: Rule 37
Attachments: letter from Marc Levy; Watermill Express LLC v. Gwynne 5 Beverage LLC

Arlana:

Having received no response from you concerning my two March 29th letters (attached), I just called you in one last effort to avoid having to file a motion to compel. You said you would specifically review the deficiencies identified in my letters and advise me tomorrow whether you were willing to correct them. We scheduled a call for 5 p.m. Eastern tomorrow for this purpose. As you know, because Mr. Windmiller's deposition is set for April 14th, time is of the essence. Therefore, if I do not receive your commitment tomorrow to have all deficiencies cured before the deposition, I will file a motion to compel and seek expedited consideration by telephone conference.

Regards,
Marc

Marc C. Levy
Partner

Phone: +1 303 607 3618
Email: mlevy@faegre.com

faegre.com | [download vCard](#)

FAEGRE & BENSON LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, Colorado 80203-4532, USA

Exhibit G

Levy, Marc C.

From: Levy, Marc C.
Sent: Tuesday, April 05, 2011 11:42 AM
To: 'Cohen, Arlana S.'
Cc: MacGregor, Meichelle
Subject: RE: Watermill Express v. Gwynne 5: Rule 37

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Marc C. Levy
Partner

Phone: +1 303 607 3618
Email: mlevy@faegre.com

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FAEGRE & BENSON LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, Colorado 80203-4532, USA

From: Cohen, Arlana S. [<mailto:ASC@cll.com>]
Sent: Tuesday, April 05, 2011 10:28 AM
To: Levy, Marc C.
Cc: MacGregor, Meichelle
Subject: RE: Watermill Express v. Gwynne 5: Rule 37

She has to leave at 430. Can we just do this tomorrow

Arlana S. Cohen, Esq.
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Legal Assistant: LaToya Middleton
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lrn@cll.com



From: Levy, Marc C. [<mailto:MLevy@faegre.com>]
Sent: Tuesday, April 05, 2011 11:58 AM

To: Cohen, Arlana S.
Cc: MacGregor, Meichelle
Subject: RE: Watermill Express v. Gwynne 5: Rule 37

Probably not. I have a client meeting starting at 3 p.m. (your time) out of the office. I will probably be back by 4:30. Does that work for you?

From: Cohen, Arlana S. [mailto:ASC@cll.com]
Sent: Tuesday, April 05, 2011 9:18 AM
To: Levy, Marc C.
Cc: MacGregor, Meichelle
Subject: RE: Watermill Express v. Gwynne 5: Rule 37

Mark – Meichelle is not available at 5. Can you do 4?

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lrm@cll.com



From: Levy, Marc C. [mailto:MLevy@faegre.com]
Sent: Monday, April 04, 2011 5:53 PM
To: Cohen, Arlana S.
Cc: MacGregor, Meichelle
Subject: Watermill Express v. Gwynne 5: Rule 37

Arlana:
Having received no response from you concerning my two March 29th letters (attached), I just called you in one last effort to avoid having to file a motion to compel. You said you would specifically review the deficiencies identified in my letters and advise me tomorrow whether you were willing to correct them. We scheduled a call for 5 p.m. Eastern tomorrow for this purpose. As you know, because Mr. Windmiller's deposition is set for April 14th, time is of the essence. Therefore, if I do not receive your commitment tomorrow to have all deficiencies cured before the deposition, I will file a motion to compel and seek expedited consideration by telephone conference.

Regards,
Marc

Marc C. Levy
Partner

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Exhibit H

Levy, Marc C.

From: Cohen, Arlana S. [ASC@cll.com]
Sent: Tuesday, April 05, 2011 1:07 PM
To: Levy, Marc C.
Cc: MacGregor, Meichelle
Subject: FW: Watermill Express v. Gwynne 5: Rule 37

Marc,

We disagree that there are deficiencies in our production. In fact, our client has produced to you all of the that documents you have requested that it has in its possession. Moreover, with one exception, our client has responded to all of your interrogatories in a proper manner and/or has produced documents from which the responses to your interrogatories can be ascertained. We recognize, however, that we have not provided you with the a proper response to Interrogatory No. 10, which request the advertising and marketing expenses for products under the WATERMILLER marks. Our client has advised us that its expenses were \$127,000. Do we really need to speak too?

Arlana S. Cohen, Esq.

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From: Levy, Marc C. [mailto:MLevy@faegre.com]
Sent: Tuesday, April 05, 2011 1:42 PM
To: Cohen, Arlana S.
Cc: MacGregor, Meichelle
Subject: RE: Watermill Express v. Gwynne 5: Rule 37

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Marc C. Levy

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Sent: Tuesday, April 05, 2011 11:58 AM
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Subject: RE: Watermill Express v. Gwynne 5: Rule 37

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