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Filing date: **10/17/2013**

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

Proceeding	91195961
Party	Defendant Kelly Van Halen
Correspondence Address	KELLY VAN HALEN 2934 1/2 BEVERLY GLEN CIRCLE #502 LOS ANGELES, CA 90077 UNITED STATES karic27@aol.com
Submission	Motion to Compel Discovery
Filer's Name	Kelly Van Halen
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Signature	/Kelly Van Halen/
Date	10/17/2013
Attachments	91195961_MOTION TO COMPEL_10.11.2013.pdf(720733 bytes )

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

ELVH, Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91195961
	)	
Kelly Van Halen,	)	
	)	
Applicant.	)	
	)	
Mark: KELLYVANHALEN	)	
	)	
Serial No. 77/919644, 77/919645	)	
	)	
Filed: January 28, 2010	)	
	)	
Published: June 8, 2010	)	
	)	

APPLICANT’S MOTION FOR ORDER TO COMPEL,  
TO SUSPEND AND TO EXTEND

Pursuant to Trademark Rule 2.120(d)(1) and Rule 26 of the Federal Rules of Civil Procedure, Applicant/Petitioner Kelly Van Halen (“Applicant”) moves the Board for an order compelling ELVH, Inc. (“Opposer”) to answer Applicant’s Amended First Set of Interrogatories within 30 days of the Board’s order by mailing them to Applicant at the address of record. This motion is based on the fact that Opposer without justification failed and refused to answer any of Applicant’s Amended First Set of Interrogatories. Applicant’s Amended First Set of Interrogatories were served on Opposer on August 2, 2013. Exhibit A.

Pursuant to Trademark Rule 2.120, Applicant has made a good faith attempt to resolve the issues presented by this motion, but Opposer has refused to alter its position.

On May 18, 2012, Applicant duly served on Opposer Applicant's First Set of Interrogatories. Opposer refused to respond to Applicant's First Set of Interrogatories, instead serving on Applicant a general objection to the interrogatories on June 22, 2012.

On June 20 and June 21, 2012, counsel for Opposer and counsel for Applicant communicated via e-mail, and Opposer's counsel conveyed Opposer's position that Applicant's Interrogatory No. 37 itself comprised 111 interrogatories.

On July 25, 2012, counsel for the parties discussed by telephone their disagreement with regard to the number of interrogatories, in a good faith effort to resolve the disagreement, and Opposer refused to modify its position. As of the date of this motion, Opposer has refused to alter its position, thus making it necessary for Applicant to file a Motion for Order to Compel, which was filed on July 31, 2012.

On July 31, 2013, the Board ruled the permissible number of interrogatories had been exceeded and allowed Applicant fourteen days to file amended interrogatories.

On August 2, 2013, Applicant timely served on Opposer 36 interrogatories (53 interrogatories including sub-parts). A copy of Applicant's Amended First Set of Interrogatories, annotated to reflect the number served, is attached as Exhibit A. Rather than responding to Applicant's Amended First Set of Interrogatories, however, Opposer once again refused to answer any of the interrogatories. Opposer served on Applicant a general objection to the interrogatories on August 12, 2013. Exhibit B.

## **I. OPPOSER HAS WITHOUT JUSTIFICATION REFUSED TO ANSWER APPLICANT'S INTERROGATORIES**

Rule 2.120(d)(1) provides, in relevant part, that *The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board in its discretion,*

*may allow additional interrogatories upon motion therefore showing good cause, or upon stipulation of the parties.*

On August 2, 2013, Applicant duly served on Opposer 36 interrogatories (53 interrogatories including sub-parts). A copy of Applicant's Amended First Set of Interrogatories is attached, annotated to indicate Applicant's counting method. Exhibit A.

Opposer appears to take the position that Applicant's interrogatories exceed the presumptive limit of 75 on the grounds that certain Interrogatories contain what Opposer misidentifies as "subparts". The number of Interrogatories, including actual subparts, is fifty-three (53). Opposer disingenuously asserts, however, that there are eighty-two (82) Interrogatories.

Opposer's contention violates the Board's express rules on counting interrogatories. As TBMP 405.03(d) states:

If an interrogatory requests "all relevant facts and circumstances" concerning a single issue, event, or matter; or asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party's involved marks, it will be counted as a single interrogatory.

See also, Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989) which provides:

The [rule] has not been modified to provide for extra interrogatories in cases where more than one mark is pleaded by the plaintiff, or where the proceeding involves more than one mark registered or sought to be registered by the defendant, because in such cases the adverse party may simply request that each interrogatory be answered with respect to each

mark, and the interrogatories will be counted the same as if they pertained to only one mark.

Just as the rules clearly provide that an interrogatory referring to more than one mark will be treated as a single interrogatory, here the request for the facts supporting the answer should be so treated. For example, disputed Interrogatory No. 10 first asks Opposer a question (“If you contend...”) (one subpart), and if the answer is affirmative, then to provide all relevant facts and circumstances concerning that answer (a second subpart). The fact that the Interrogatory provides some guidance as to what should be considered relevant information does not create additional subparts. As such, even assuming each such question and request for facts relevant facts relating to the answer should be counted as two subparts, Applicant's interrogatories still remain well within the limit.

Opposer has unfairly and without any justification refused to answer any of Applicant's interrogatories, which would dramatically undermine with Applicant's ability to present all the facts pertinent to this matter. On the other hand, Applicant would be unduly prejudiced by the Board not granting this motion, as Opposer has used its unfair and unjustified objection as a basis not only to refuse to answer ANY interrogatories. As all the conditions of Rule 2.120(d)(1) are met, this motion should be granted.

## **II. MOTIONS TO SUSPEND AND TO EXTEND**

Applicant also moves to suspend this proceeding pending disposition of the Motion for Order to Compel, except for responses to any outstanding discovery requests, which consist only of Applicant's Amended First Set of Interrogatories which are the subject of this motion. Granting the Motion to Suspend will serve the interests of justice and economy by allowing Applicant to determine the information grounding the case before proceeding to the trial phase.

In the event the Board grants the Motion for Order to Compel, Applicant requests that Opposer be allowed 30 days to respond to Applicant's Amended First Set of Interrogatories. Alternatively, in the event the Board denies this motion, Applicant requests that Applicant be allowed to serve a further amended set of interrogatories, modified to adjust the total number of interrogatories to conform to the Board's ruling. Either such extension would be in the interest of justice as it should bring to light facts that will aid the Board in deciding the case.

### **III. CONCLUSION**

Thus, for the foregoing reasons, Applicant's Motion for Order to Compel and to Suspend and Extend should be granted because doing so is consistent with settled law, and because not doing so would unduly prejudice the rights of Applicant.

Dated: 10-11-2013

Respectfully submitted,

/Kelly Van Halen/

Applicant, Kelly Van Halen

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

ELVH, Inc.,	)	
	)	
Opposer,	)	
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v.	)	
	)	
Kelly Van Halen,	)	Opposition No. 91195961
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Applicant.	)	
	)	
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Mark:           KELLYVANHALEN	)	
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Serial No.     77/919644, 77/919645	)	
	)	
Filed:           January 28, 2010	)	
	)	
Published:     June 8, 2010	)	
_____	)	

**Certificate of Service**

I hereby certify that a true and complete copy of the foregoing APPLICANT’S MOTION FOR ORDER TO COMPEL, TO SUSPEND AND TO EXTEND has been served on the attorney of record for Opposer ELVH, Inc., at the correspondence address of record in the records of the USPTO, by mailing said copy on October 11, 2013, via First Class Mail, postage prepaid to:

Jeffrey R. Cohen, Esq.  
Millen White Zelano & Branigan, P.C.  
2200 Clarendon Boulevard, Suite 1400  
Arlington, VA 22201

\_\_\_\_\_  
/Kelly Van Halen/  
Applicant, Kelly Van Halen

## **EXHIBIT A**

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

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ELVH, Inc.,

Opposer,

Opposition No. 91195961

v.

Kelly Van Halen,

Applicant.

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Mark: KELLYVANHALEN

Serial No. 77/919644, 77/919645

Filed: January 28, 2010

Published: June 8, 2010

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**APPLICANT'S AMENDED FIRST SET OF INTERROGATORIES**

PROPOUNDING PARTY: Applicant, Kelly Van Halen

RESPONDING PARTY: Opposer, ELVH, Inc.

SET NO.: One

Applicant, Kelly Van Halen ("Applicant") requests, pursuant to Federal Rule of Civil Procedure 36 and 37 C.F.R. § 2.120, that opposer, ELVH, Inc. ("Opposer"), answer the following First Set of Interrogatories under oath within thirty (30) days of the date of service hereof.

I.

DEFINITIONS AND INSTRUCTIONS

1. In answering these interrogatories, the responding party is required to provide not only such information as is known to it, its agents, and its affiliates, but also information that is in the possession of its attorneys, legal assistants, investigators, and anyone else acting on its behalf, under its control, or working cooperatively with it.

2. A request that You identify or include the identity of a person calls for You to provide the identifying information, including the person's full name, last known address, and last known telephone number; and the name, address, and telephone number of the person's employer, and the person's last known position or title.

3. As used herein, the term "document(s)" refers to documents, writings, and recordings, as defined in Federal Rule of Evidence 1001, and includes the originals and all copies of handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, magnetic impulses, electronic recordings, or combinations thereof. This definition shall apply to all documents on the particular subject of which You have any knowledge or information, irrespective of who has possession, custody, or control of the documents, and irrespective of who prepared, generated, or signed the documents.

4. A request that You include an identification of a document calls for You to describe the document with sufficient particularity such that You could locate it if requested to do so. You are requested to provide the following information in your identification:

- A. The date of the document or a best estimate of the date;
- B. The name of the author(s) and the name of the addressee(s);
- C. The substance of the document; and

D. The location of the original document or, if unknown, the location of any copies.

5. A request that You state all facts calls for You to state each and every fact known or available to You, including, but not limited to all evidence, contentions, and opinions that You, your attorneys, legal assistants, investigators, and all persons acting on your behalf, under your control, or working cooperatively with You, have or hold.

6. You have a duty to supplement your responses to these interrogatories at such times and to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

7. As used herein, “You” includes your subsidiary and related companies.

8. As used herein, “Your Marks” means the marks upon which You base this opposition proceeding, including without limitation your alleged marks “Van Halen”.

## II.

### INTERROGATORIES

#### **INTERROGATORY NO. 1:**

**1 part** Describe in detail the circumstances of the adoption and use by You of each and every mark or trade name incorporating “VAN HALEN” as an element, including a detailed specification of each good and service offered with respect to each such mark or name and the time periods during which each such mark or name was used with respect to each such good and service.

#### **INTERROGATORY NO. 2:**

**1 part** Describe with particularity all goods and services that have been offered in connection with Your Marks and, separately for each of Your Marks and each good or

service, state the quantity by year (since the inception of your use) of each good or service that has been sold and the annual gross revenues earned by You from such sales.

**INTERROGATORY NO. 3:**

1 part

For each mark and each good or service, separately state the annual amounts expended for marketing, advertising, and promoting the goods and/or services sold in connection with “VAN HALEN” and any other names or marks including “VAN HALEN”.

**INTERROGATORY NO. 4:**

1 part

Describe in detail your marketing and promotional efforts in conjunction with Your Marks, including a description of the marketing and promotion channels utilized in advertising and promoting the goods sold in connection with Your Marks and a description of each and every brochure, advertisement (including but not limited to video and audio advertisement), and all other printed promotional materials used or distributed.

**INTERROGATORY NO. 5:**

1 part

Identify all persons, whether or not employed by You, who prepares or who has prepared advertisements, press releases, or other promotional materials for You, who performs or has performed public relations services for You, or who has consulted with or offered advice to You with respect to marketing, merchandising, trademarks, branding, corporate identity, trade identity, product identity, advertising, or promotional activities.

**INTERROGATORY NO. 6:**

1 part

Identify all persons, whether or not employed by You, who have been involved in selling your goods or services.

**INTERROGATORY NO. 7:**

**1 part** For each of the goods and services sold or provided in conjunction with Your Marks, identify your customers and describe the degree of care exercised by your customers in purchasing the goods and/or services sold in connection with Your Marks.

**INTERROGATORY NO. 8:**

**1 part** Identify the location of each place where You have offered goods and/or services for sale in connection with Your Marks and state the inclusive dates during which such goods and/or services were offered at each such location.

**INTERROGATORY NO. 9:**

**1 part** State the date on which and describe with particularity the circumstances pursuant to which You first became aware of any use of any mark including “VAN HALEN” by the applicant.

**INTERROGATORY NO. 10:**

**2 parts** If You contend that You would be damaged by the continued use and/or registration of “KELLY VAN HALEN”, or any trade name, trademark, or service mark incorporating “KELLY VAN HALEN”, by the applicant in this action, please state all facts, including an identification of all relevant documents and all persons with knowledge of such facts, which support your contention, including a calculation of your alleged damages.

**INTERROGATORY NO. 11:**

**2 parts** If You contend that the applicant in this action adopted any name or mark in bad faith, for an improper purpose, or otherwise acted with an improper motive, please state all

facts, including an identification of all relevant documents and all persons with knowledge of such facts, which support your contention.

**INTERROGATORY NO. 12:**

2 parts

If You contend that “Kelly Van Halen” has not been the applicant’s legal name since September 23, 1984, please state all facts, including an identification of all relevant documents and all persons with knowledge of such facts, which support your contention.

**INTERROGATORY NO. 13:**

2 parts

If You contend that the applicant in this action is not entitled to use her legal name, Kelly Van Halen, in conducting her business activities, please state all facts, including an identification of all relevant documents and all persons with knowledge of such facts, which support your contention.

**INTERROGATORY NO. 14:**

1 part

Describe in detail each inquiry You have ever received or know about as to whether the services and/or goods offered by You in connection with Your Marks are associated with, affiliated with, sponsored by, approved by, and/or connected with the applicant.

**INTERROGATORY NO. 15:**

2 parts

If You contend that there has been any actual confusion as the result of any activities by the applicant in this action or by the use of any name or mark by the applicant in this action, please state all facts, including an identification of all relevant documents and all persons with knowledge of such facts, which support your contention.

**INTERROGATORY NO. 16:**

2 parts

If You contend that any likelihood of confusion exists because of any activities by the applicant in this action or because of any use by the applicant in this action of any

name or mark, please state all facts, and include an identification of all relevant documents and all persons with knowledge of such facts, which support your contention.

**INTERROGATORY NO. 17:**

**1 part** Identify all persons whom You believe to have knowledge concerning the subject matter of this proceeding, or of each of these interrogatories, and describe the basis of each person's knowledge.

**INTERROGATORY NO. 18:**

**2 parts** If You have conducted or caused to be conducted any investigation, survey, shopping test, or consumer reaction test involving “VAN HALEN”, describe in detail each such investigation, survey, shopping test, or consumer reaction test, including the identity the persons who conducted or participated in conducting it.

**INTERROGATORY NO. 19:**

**1 part** Identify each person whom You expect to call as an expert witness, the substance of the facts and opinions to which the expert is expected to testify and grounds for each opinion, and identify all documents reviewed or prepared by such expert with respect to the subject matter of this case.

**INTERROGATORY NO. 20:**

**1 part** For each person or entity that you have become aware of that has used or incorporated “VAN HALEN” as part of a trade name, trademark, or service mark, please identify the person or entity and describe any actions you have taken with respect to such person or entity after becoming aware of such person's or entity's use of “VAN HALEN”.

**INTERROGATORY NO. 21:**

1 part Describe in detail, including date, jurisdiction, case number, conclusion and status, any litigation, interference, conflicts, opposition, cancellation proceedings, and other proceedings, involving Your Marks.

**INTERROGATORY NO. 22:**

1 part Describe with particularity all of the specific items of furniture or home furnishings which You were actively selling under any “VAN HALEN” mark as of January 25, 2010.

**INTERROGATORY NO. 23:**

1 part Describe with particularity any bathing suits, blouses, coats, coverups, dresses, hats, jackets, jeans, leggings, lounge pants, pajamas, pants, ponchos, robes, scarves, sweaters, or vests which You were actively selling under any “VAN HALEN” mark as of January 25, 2010.

**INTERROGATORY NO. 24:**

1 part Describe with particularity all of the bed blankets, blanket throws, children's blankets, or lap blankets which You were actively selling under any “VAN HALEN” mark as of January 25, 2010.

**INTERROGATORY NO. 25:**

1 part Describe with particularity all of the building construction services which You were actively selling under any “VAN HALEN” mark as of January 25, 2010.

**INTERROGATORY NO. 26:**

1 part Describe with particularity all of the interior design services which You were actively selling under any “VAN HALEN” mark as of January 25, 2010.

**INTERROGATORY NO. 27:**

**6 parts** State the target market for the goods and/or services identified in response to Interrogatory No. 2 and Interrogatories No. 22 through No. 26 above.

**INTERROGATORY NO. 28:**

**6 parts** State the price or price range (or intended price range) for the goods and/or services identified in response to Interrogatory No. 2 and Interrogatories No. 22 through No. 26 above.

**INTERROGATORY NO. 29:**

**1 part** Describe with particularity the involvement of Edward Van Halen with Opposer's use of Opposer's Marks.

**INTERROGATORY NO. 30:**

**1 part** Describe with particularity the involvement of Alex Van Halen with Opposer's use of Opposer's Marks.

**INTERROGATORY NO. 31:**

**1 part** Describe with particularity the involvement of Matt Bruck with Opposer's use of Opposer's Marks.

**INTERROGATORY NO. 32:**

**1 part** Describe with particularity the involvement of Tracy Taub with Opposer's use of Opposer's Marks.

**INTERROGATORY NO. 33:**

**1 part** Describe with particularity the involvement of Janie Van Halen with Opposer's use of Opposer's Marks.

**INTERROGATORY NO. 34:**

**1 part** State whether Janie Van Halen is entitled to use the name “Janie Van Halen” in connection with providing services to others as a publicist.

**INTERROGATORY NO. 35:**

**1 part** State whether Janie Van Halen is entitled to use the name “Janie Van Halen” in connection with providing services to others as a stunt performer.

**INTERROGATORY NO. 36:**

**1 part** State whether Janie Van Halen is entitled to use the name “Janie Van Halen” in connection with providing services to others as an actress.

Dated: August 2, 2013

Respectfully submitted,

Kelly Van Halen  
2934 1/2 Beverly Glen Circle #502  
Los Angeles, California 90077

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Kelly Van Halen – Applicant

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing APPLICANT'S AMENDED FIRST SET OF INTERROGATORIES is being sent via First Class Mail to the address of record for Opposer's attorney of record as follows:

Jeffrey R. Cohen, Esq.  
Millen, White, Zelano & Branigan, P.C.  
2200 Clarendon Blvd., Suite 1400  
Arlington, Virginia 22201

Executed this 2<sup>nd</sup> day of August, 2013, at Los Angeles, California.

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Kelly Van Halen

**EXHIBIT B**

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

\_\_\_\_\_ }  
 ELVH, INC. }  
 }  
 Opposer, }  
 }  
 v. }  
 }  
 KELLY VAN HALEN }  
 }  
 Applicant. }

Application Ser. Nos. 77919644  
and 77919645  
Marks: KELLYVANHALEN

Opposition No. 91195961

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES**

Because Applicant's Amended First Set of Interrogatories exceed the permissible limit of 75 including subparts, Opposer hereby submits this general objection in lieu of any responses or specific objections. *See* 37 CFR § 2.120(d)(1) and TBMP 405.03. Opposer's position that Interrogatories Nos. 1-36 exceeded the permissible limit was stated in its response, filed August 14, 2012, to Applicant's motion to compel and Applicant filed no arguments in reply to Opposer's position.

Date: August 12, 2013

By: 

Jeffrey R. Cohen  
Michael Culver  
Adam D. Mandell  
Millen, White, Zelano & Branigan, P.C.  
2200 Clarendon Blvd., Suite 1400  
Arlington, Virginia 22201  
Phone (703) 243-6333  
Fax (703) 243-6410  
Email [cohen@mwzb.com](mailto:cohen@mwzb.com)

Attorneys for Opposer

Certificate of Service

This is to certify that a copy of the foregoing was served this 12<sup>th</sup> day of August 2013 first-class mail, postage prepaid, on the following:

Kelly Van Halen  
2934 ½ Beverly Glen Circle #502  
Los Angeles, CA 90077

By: Michael Kuban  
Attorney for Opposer

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

wbc

Mailed: July 31, 2013

Opposition No. 91195961

ELVH, Inc.

v.

Kelly Van Halen

**Wendy Boldt Cohen, Interlocutory Attorney:**

This case now comes up for consideration of applicant's motion (filed July 31, 2012) to compel responses to its interrogatories served May 18, 2012.

Applicant alleges that opposer's general objection to its interrogatories based on the total number of interrogatories is improper. Accordingly, applicant asks that opposer be compelled to serve responses to its interrogatories and if its motion to compel is denied, applicant be granted leave to serve amended interrogatories.

Opposer alleges that applicant has served in excess of the permissible number of interrogatories and that it need not respond to the interrogatories. Accordingly, opposer asks that applicant's motion be denied.

The Board finds initially that applicant made a good faith effort, as required by Trademark Rule 2.120(e)(1), to

## Opposition No. 91195961

resolve the parties' discovery dispute prior to seeking Board intervention.

The number of interrogatories, including subparts, allowed a party pursuant to Fed. R. Civ. P. 33 in a proceeding before the Board is limited to seventy-five, except upon a showing of good cause to exceed this limit by motion for leave to do so, filed with the Board. Trademark Rule 2.120(d)(1). In counting interrogatories to determine if this limit has been exceeded the Board will count each subpart with an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated, i.e., separately numbered or lettered. See *Jan Bell Marketing Inc. v. Centennial Jewelers Inc.*, 19 USPQ2d 1636 (TTAB 1990). The propounding party is bound not only by its own numbering system, by designating subparts, which are counted separately, but also by the Board's construction of the body of the interrogatories. *Id.* at 1637. If a propounding party sets forth its interrogatories as seventy-five or fewer separately designated questions (counting both separately designated interrogatories and separately designated subparts), but the interrogatories actually contain more than seventy-five questions, the Board will not be bound by the propounding party's numbering or designating system. Rather, the Board will look to the substance of the interrogatories, and count each question as a separate interrogatory. For example, if

## Opposition No. 91195961

two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each question as a separate interrogatory. See *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636 (TTAB 1990). In determining whether a set of interrogatories exceeds the limit, "each subdivision of separate questions, whether set forth as a numbered or lettered subpart, or as a compound question or a conjunctive question, is counted as a separate interrogatory." *Kellogg Co. v. Nugget Distributors' Cooperative of America Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990); TBMP § 405.03(d) (2013).

Central to opposer's argument that applicant's interrogatories exceed seventy-five, is that applicant's interrogatories contain compound questions and multiple subparts, e.g., Interrogatory No. 37 seeks information regarding each of applicant's prior served requests for admission. Because this interrogatory seeks information which concerns a multitude of subjects it is counted as multiple interrogatories. Additionally, applicant's use of questions which require follow-up answers if answered in the affirmative increase the number of distinct interrogatories presented, e.g., interrogatory no. 10 asks "if you contend that you would be damaged" which requires opposer to first answer this

## Opposition No. 91195961

question and then further asks "please state all facts including an identification of all relevant documents. . ."

In view thereof, after reviewing applicant's May 18, 2012 interrogatories,<sup>1</sup> the Board finds that applicant has exceeded its permissible number of interrogatories for this proceeding. Accordingly, applicant's motion to compel is DENIED. Opposer need not respond to applicant's May 18, 2012 interrogatories. Notwithstanding the foregoing, applicant is allowed **fourteen days** from the date hereof to serve amended interrogatories that do not exceed the numerical limit.<sup>2</sup> If applicant properly serves a revised set of interrogatories, opposer's responses to the amended interrogatories shall be due pursuant to Trademark Rule 2.120(a)(3).

Proceedings are resumed. Dates are reset as follows:

Plaintiff's 30-day Trial Period Ends	10/30/2013
Defendant's Pretrial Disclosures	11/14/2013
Defendant's 30-day Trial Period Ends	12/29/2013
Plaintiff's Rebuttal Disclosures	1/13/2014
Plaintiff's 15-day Rebuttal Period Ends	2/12/2014

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

<sup>1</sup> We have not been asked to decide whether such interrogatories are relevant. However, the scope of discovery under Fed. R. Civ. P. 26(b)(1) is relatively broad. See also TBMP § 414.

<sup>2</sup> Should applicant serve a revised set of interrogatories in accordance with the order herein, the revised set may not seek information beyond the scope of the May 18, 2012 set. See *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Kellogg Co. v. Nugget Distributors' Cooperative of America Inc.*, *supra*; TBMP § 405.03(e).

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on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.