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

Proceeding	91197504
Party	Defendant Alpha Phi Omega
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Attachments	MotionToCompelOmega.pdf(129362 bytes) Exhibit A (Resp to Interrogs).pdf(496003 bytes) Exhibit B (Resp to Req for Production).pdf(541575 bytes) Exhibit C (Response to Req for Admissions).pdf(928881 bytes) Exhibit D (Meet and Confer).pdf(197888 bytes)

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

OMEGA, S.A.,

OPPOSER,

v.

ALPHA PHI OMEGA,

APPLICANT.

**Opposition Nos.
91197504 (Parent) &
91197505 (Child)**

**Serial Nos.
77950436 & 77905236**

**APPLICANT’S MOTION (1) TO COMPEL DISCOVERY AND
(2) TO TEST SUFFICIENCY OF RESPONSES TO REQUESTS FOR ADMISSION**

Comes the Applicant, Alpha Phi Omega, a National Service Fraternity, and by counsel it brings this joint motion to (1) compel the Opposer, Omega Watch to properly respond to Interrogatories and Requests for Production; and (2) to test the sufficiency of Omega Watches Responses to Requests for Admissions.

A copy of Omega Watches deficient responses to the Interrogatories is submitted herewith as Exhibit A; the deficient responses to the Request for Production, Exhibit B; and the insufficient responses to the Requests for Admissions, Exhibit C. ¹

STATEMENT OF GOOD FAITH EFFORT TO RESOLVE

Pursuant to TBMP § 523.02, the Movant, by counsel, certifies that a good faith attempt was made resolve these disputes. Specifically, by letter dated May 24, 2013 provided to Opposer’s counsel by email, and First Class Mail, the deficiencies in Opposer’s responses were described in detail, counsel for Opposer was reminded of the approaching close of discovery, and a prompt response was requested of Opposer’s counsel. A copy of that letter is submitted herewith as Exhibit D. Apparently Opposer has elected to ignore the letter describing the

¹ Because the responses set forth verbatim the actual discovery requests, to avoid needlessly overburdening the Record, the requests themselves are not separately being filed as exhibits.

deficiencies; no response has been received by Movant or its counsel, thus forcing the bringing of this Motion.

BACKGROUND INFORMATION

Collegiate Greek Letter fraternities and sororities, societies that historically adopt a two or three Greek Alphabet letter combination for their name have existed in the United States since the founding of Phi Beta Kappa in 1776. Applicant, Alpha Phi Omega, is a collegiate service fraternity, founded in 1925. Continuously thereafter it has used marks such as its name, ALPHA PHI OMEGA, the corresponding Greek Alphabet letters, ΑΦΩ, and a coat-of-arms design mark which across the bottom contains a graphic representation of a ribbon bearing the words, ALPHA PHI OMEGA. Applicant owns various registrations of these three marks including registrations of the word mark (Reg. Nos. 2,315,321; 3,840,594; and 3,828,181), a registration of the Greek letter mark (Reg. No. 3,834,436), and registrations of the coat-of-arms design mark (Reg. No. 2,320,138 and 3,835,075).

Notwithstanding 88 years of coexistence, and no known instances of confusion, Opposer, the owner of the marks associated with Omega Watches, has opposed the pending applications which consist of an application for an *additional registration* of Applicant's coat-of arms design, and an application for an *additional registration* of Applicant's Greek letters mark, ΑΦΩ.

Notwithstanding 88 years of coexistence, and no known instances of confusion, Opposer contends the additional registrations of these marks should be refused under 2(d) and refused on the alleged grounds the 88 year old marks dilute Omega's marks.

Indeed, indications are the Omega Watch Company has decided to bully any collegiate fraternity or sorority with the Greek letter Ω, or corresponding word, Omega, in its name; it has similar proceedings pending in the TTAB against the Lambda Tau Omega Sorority (Proceeding No. 91208652) and the Omega Psi Phi Fraternity (Proceeding No. 91197082), unsuccessfully

sought an extension to oppose a filing of the Psi Sigma Omega Service Fraternity (Serial No. 78739642) and successfully bullied the International Brotherhood of Omega Delta Phi into abandoning the application to register its fraternity name (Proceeding No. 91186613).

DEFICIENT RESPONSES TO INTERROGATORIES AND REQUEST FOR PRODUCTION

Considering that Omega now claims likelihood of confusion and is here opposing applications for additional registrations of marks of the Alpha Phi Omega Service Fraternity, marks that have been in continuous use since 1925, and also claims that these 88 year old marks dilute the Omega Watch marks, Applicant propounded fundamental discovery requests (1) relating to the bases of Omega claim there is a likelihood of confusion and (2) discovery requests clearly calculated to discover whether the Omega marks were famous in the United States prior to the adoption and commencement of use of the Alpha Phi Omega marks in 1925. *See* 15 U.S.C. § 1125(c) (requisite element of dilution claim is that the mark be “famous” prior commencement of “use of a mark or trade name” alleged to cause dilution).

Omega offers unfounded objections to numerous of the discovery requests pertinent to these two lines of discovery requests, including, as discussed later, totally deficient responses to numerous tightly focused specific Requests for Admissions.

Well above and beyond, the unfounded objections to some of the requests, rather than provide narrative answers to Interrogatories, Omega response to the majority of the Interrogatories misrepresents that “Opposer will make documents available that are responsive to this interrogatory.” *See e.g.* Exhibit A, Responses to Interrogatories No. 3, 4, 5, 9, 10, 11, 12 and 13. Presumably these responses were a superficial attempt to invoke the provisions of FED.R.CIV.P. 33(d) which permits a responding party to produce business records from which the requested information may be compiled, so long as the responding party provides “sufficient

detail to enable the interrogating party to locate and identify” the records containing the requested information.

Notwithstanding the representation they would produce these records, that is not what Omega did here. Instead, they dumped approximately 2900 documents on us none of which appear to provide the information requested in the Interrogatories. Accordingly, this deficiency was brought to Omega’s counsel’s attention in the “meet and confer” letter, Exhibit D, along with a request to identify to us the documents providing the requested information as to each interrogatory. Omega ignored this request for the specific detail from which we could obtain the information requested through the interrogatories.

Just as egregious are Omega’s responses to the Request for Production. In response to the majority of these requests, Omega misrepresents that “Opposer will make responsive documents” or “a representative sampling of responsive documents available.” *See e.g.* Exhibit B, Responses to Request for Production Nos. 2, 4, 11, 12, 13, 14, 15, 20 and 21. Although representing it would produce documents responsive to these requests, Omega never followed up and did so. Instead, they dumped approximately 2900 documents on us none of which appear to provide any documents responsive to these requests. Accordingly, we brought to Omega’s counsel’s attention in the “meet and confer” letter, Exhibit D, along with a request they identify to us which documents were responsive to these requests. This too, Omega ignored.

More specifically, the deficient responses to the interrogatories and Request for Production include the following:

Omega Watch Fame in U.S. Prior to 1925: The Alpha Phi Omega marks have been used continuously since the founding of the fraternity in 1925. In the Oppositions, Omega Watch claims the Alpha Phi Omega marks dilute the Omega Watch marks . As a consequence, the

burden is in Omega to prove its marks were famous in the U.S. prior to 1925. Many of the discovery requests directly relate to this issue, Interrogatory Number 3 and Request for Production Number 12 relating to Omega sales in the U.S. prior to 1925, Interrogatory Number 4 and Request for Production Number 13 relating to Omega advertising in the U.S. prior to 1925, Interrogatory Number 5 and Request for Production Number 14 relating to Omega media attention in the U.S. prior to 1925, Interrogatory Number 10 and Request for Production Number 15 relating to any other evidence of Omega fame in the U.S. prior to 1925, Interrogatory Number 11 relating to any evidence of dilution or likely dilution, Request for Production Number 4 relating to market studies or plans dating prior to 1925, and Request for Production Number 11 relating to any documents supporting the contention the Omega marks were “the subject of substantial, widespread public recognition in the United States prior to 1925.”

In response to these Interrogatories, rather than provide the requested information in narrative form, Omega misrepresented that documents containing the requested information would be produced. Although nearly 2900 documents were dumped on us purportedly in response to our discovery requests, there was *nothing responsive* to any of these fundamentally pertinent Interrogatories, nor was anything pertinent produced in response to the parallel Requests for Production.

Likelihood of Confusion Issue: Interrogatory Number 6 inquired of the factual basis for any contention use of the Alpha Phi Omega marks “will cause confusion, mistake and deception.” Similarly, Interrogatory Number 12 inquired of the basis for Omega’s contention Alpha Phi Omega’s coat-of-arms mark “is likely to be recognized as an identification or association with Opposer or its products.” In response to both of these Interrogatories, Omega responded that documents would be produced providing the requested information. Parallel with

these Interrogatories, Request for Production Number 9 requested any documents evidencing confusion or deception, and in response, we were informed the requested documents would be produced.

As with Omega's deficient responses to the discovery requests relating to the dilution claim, of the nearly 2900 documents dumped on us purportedly in response to our discovery requests, there was *nothing responsive* to any of these fundamentally pertinent likelihood of confusion Interrogatories, nor was anything pertinent produced in response to the parallel Requests for Production.

INSUFFICIENT RESPONSES TO REQUESTS FOR ADMISSIONS

The Requests for Admission were straight-forward, simple, and specific. In a fundamentally basic use of this discovery tool, virtually all of the requests were merely that Omega admit it has no basis to dispute some extremely simple basic facts, many relating to facts so well-known and incontrovertible that the TTAB could likely take judicial notice thereof. Notwithstanding, Omega expressly denied 46 of the 48 requests. It would only admit that the Greek Alphabet letter, Ω is pronounced "Omega" and that Opposer does not "advertise or market" its products in the "Greek Affinity Products Market." *See* Exhibit C, Responses to Request for Admission Nos. 2 and 13.

The lack of integrity associated with Omega's denial of 46 straight forward simple factual statement is manifestly displayed by their response to Request for Admission No. 1 which simply requested that Opposer "Admit that the word 'Omega' is used as part of the name of various Greek letter social, professional, or honorary fraternities or sororities." Opposer itself has actually made filings with the TTAB adverse to *various* fraternities and sororities seeking to register marks containing "Omega" in their name, including proceedings pending in the TTAB against the Lambda Tau Omega Sorority (Proceeding No. 91208652) and the Omega Psi Phi

Fraternity (Proceeding No. 91197082), the filing of requests for extensions to oppose a filing of the Psi Sigma Omega Service Fraternity (Serial No. 78739642) and the successful bullying of the International Brotherhood of Omega Delta Phi into abandoning an application to register its fraternity name (Proceeding No. 91186613). Notwithstanding, in response to this request, Omega feigned a lack of knowledge, misusing that excuse claiming “it lacks knowledge sufficient to admit or deny the truth of this Request to Admit and therefore denies same. *See* Exhibit C, response to Request for Admission No. 1. Regardless of the incredulity of this denial in light of Omega’s TTAB proceeding history, it is nonetheless clearly an improper use, a misuse of the “lack of knowledge” excuse to deny a request for admission. The “lack of knowledge” excuse is only acceptable when the responding party has conducted a reasonable inquiry relating to the requested fact, remains unable to ascertain the truth of the request and states that the party lacks knowledge following such a reasonable inquiry. Here Omega did not so state, indeed, it could not credibly so state. Had Omega even conducted a simple Internet search of “Omega” AND “fraternity” OR “sorority,” it would have instantly confirmed that multiple Greek letter fraternities and sororities have “Omega” in their name, including numerous in addition to the ones Omega has already dealt with at the TTAB, e.g. (1) Alpha Tau **Omega**, (2) Alpha Chi **Omega**, (3) Chi **Omega**, (4) Alpha Gamma **Omega**, (5) **Omega** Chi, (6) Sigma Phi **Omega**, (7) Kappa **Omega** Tau, (8) Gamma Epsilon **Omega**, (9) Beta **Omega** Phi, (10) Sigma Phi **Omega**, (11) Alpha **Omega** Epsilon, (12) **Omega** Delta Phi, (13) Alpha Nu **Omega**, (14) Lambda Tau **Omega**, (15) **Omega** Chi, (16) **Omega** Phi Beta, (17) Gamma Phi **Omega**, (18) Sigma **Omega** Epsilon, (19) Alpha Pi **Omega**, (20) **Omega** Phi Gamma, (21) Sigma **Omega** Nu, (22) Alpha Sigma **Omega**, (23) Delta Phi **Omega**, (24) Delta Pi **Omega**, (25) **Omega** Chi Psi, (26) Sigma Kappa **Omega**, (27) Sigma **Omega** Phi, and (28) Alpha **Omega** Sigma.

Of each of the 46 requests Omega denied, its responses are wholly insufficient, thus the requests should be deemed admitted. As mentioned above, virtually all of the requests were simply, hardly disputable facts in which the request was simply that Omega admit it *has no evidentiary basis* to dispute the statement. For instance, Request for Admission No. 3 inquired as follows:

Admit that Opposer *has no evidentiary basis to dispute* that the word “Omega” has been continuously used in the United States as part of the name of various Greek letter social, professional, or honorary fraternities or sororities since prior to the introduction into the United States by or on behalf of Opposer or Opposer’s predecessor(s) in interest of any product bearing any of the marks upon which the Opposition is based.

(emphasis added). Following boiler plate objections, Omega nonetheless expressly denied this request claiming, “it lacks knowledge sufficient to admit or deny the truth of the Request to Admit and therefore denies same.” *See* Exhibit C, Response to Request for Admission No. 3.

In addition, Requests for Admissions Nos. 1 and 3, Omega also misused the “insufficient knowledge” excuse in response to Request 4, 8, and 14. Not only are these responses facially deficient, the effect of the response is actually a tacit admission Omega “*has no evidentiary basis to dispute*” these requests. For example, with Request No. 3 quoted just above, we did not request that Omega *admit that the word Omega has been so used* by various fraternities since prior to Omega’s entrée into the States, rather, we asked them to merely to admit they have *no evidentiary basis to dispute* this occurred. By claiming they have no knowledge one way or the other on the subject is thus a tacit admission Omega *has no evidentiary basis to dispute* the facts recited in these requests.

Accordingly, because omega misused the “lack of knowledge” excuse in its responses to Requests for Admission 1, 3, 4, 8, and 14, the requests should be ordered “deemed admitted” pursuant to TBMP § 524.01.

Omega's deficient denials were not limited to these five requests. All in all, Omega falsely denied 46 of the 48 Requests for Admissions. In addition to these five, Requests Nos. 1,3,4,8, and 14, Omega also wrongly denied Request Nos. 5 through 7, 9 through 12, and 15 through 48. The falsity of these denials is made apparent when the denials are considered in conjunction with Omega's deficient responses to the Interrogatories and Request for Production. Specifically, Interrogatory No. 15 inquired as follows;

Itemize, identify, and describe in detail any testimonial or other evidentiary basis supporting Opposer's denial of any of the Requests for Admissions propounded with these Interrogatories and in relation to each, identify by name, address, occupation and telephone number any person's with personal knowledge of same.

Parallel with that Interrogatory, Request for Production No. 21 directed Omega to produce the following:

Any and all documents and things forming the basis for Opposer's denial, in whole or in part, of any of the Requests for Admissions propounded with these Requests.

The deficiencies of the 46 denials is especially apparent when considered with the deficiencies in Omega's responses to the Interrogatories and Request for Production. As for the vast majority of the denied Requests for Admission, all that was requested was that Omega admit *it has no evidence to dispute* various specific facts. Omega uniformly denied these Requests. Is it thus asserting that *it does* have evidence to support its dispute of the various specified factual statements. If the "denials" are accurate, then where is the evidence upon which the denials are based? For example, see Request Number 7 which read as follows:

Admit that Opposer has no evidentiary basis to dispute that products bearing the opposed mark are primarily and predominantly marketed only to members of the Alpha Phi Omega National Service Fraternity, or to persons wishing to acquire the products as gifts for members of the Alpha Phi Omega National Service Fraternity.

Omega denied this Request. *See* Exhibit C, Response to Request No. 7. As a consequence, Omega is representing to us and to the TTAB that *it does have an evidentiary basis* to dispute whether products bearing the opposed marks are primarily and predominantly marketed only to members of the Alpha Phi Omega National Service Fraternity, or to persons wishing to acquire the products as gifts for members of the Alpha Phi Omega National Service Fraternity.” Well then, where is the production of those evidentiary materials or other evidentiary information?

In response to the Request for Production directing Omega to produce any documents supporting its denials of any of the Requests for Admissions, Omega misrepresented that “Opposer will make responsive documents available.” *See* Exhibit B, Response to Request for Production No. 21. Although representing it would be producing the documents “forming the basis for” the 46 denials of the 48 Requests for Admissions, Omega never followed up and did so. Instead, they dumped approximately 2900 documents on us, none of which appeared to provide *any* documents supporting *any* of the 46 denials. We brought this to Omega’s counsel’s attention in the “meet and confer” letter, Exhibit D, along with a request they identify to us which documents were responsive. Omega ignored this “meet and confer” concern.

As for the Interrogatory which directed Omega to “[i]temize, identify, and describe in detail” the basis for the denials of the Requests for Admissions, Omega responded with an improper objection. Omega wrongly objected to this interrogatory misstating that the Interrogatory exceeded the 75 Interrogatory limit set by the TTAB rules. This limit is inapplicable. There were only 15 Interrogatories, and even counting and Interrogatory requesting explanations of the basis for each of the 46 denied Requests for admission as 46 separate sub-parts, the Interrogatory count would only be 60, less than the allowable 75. Regardless,

If a party on which interrogatories have been served, in a proceeding before the Board, believes that the number of

interrogatories exceeds the limit specified in 37 CFR § 2.120(d)(1), and wishes to object to the interrogatories on this basis, the party must, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.

TBMP §405.03(e). Not only is Omega's "excessive number" objection the result of erroneous math, Omega nonetheless waived this objection and thus must provide the requested information.

CONCLUSION

Omega misrepresented in its responses to Alpha Phi Omega's Interrogatories No. 3, 4, 5, 9, 10, 11, 12 and 13. that "that "Opposer will make documents available that are responsive." Then, rather than do so, Omega dumped approximately 2900 documents, none of which provided the information requested in these Interrogatories. Omega should be compelled to provide complete narrative answers to these interrogatories.

Omega misrepresented in its responses to Alpha Phi Omega's Request for Production Nos. 2, 4, 11, 12, 13, 14, 15, 20 and 21 that that "Opposer will make responsive documents" or "a representative sampling of responsive documents available." Then, rather than do so, Omega dumped approximately 2900 documents, none of which provided the information requested in these Requests for Production. Omega should be compelled to fully produce the requested items.

FURTHER, to avoid burying any responsive items in yet another document dump, Omega should be required to segregate those items providing a separate collection of documents responsive to each request appropriately labeled so as to identify which collection of documents are responsive to each request, or in the alternative, to provide an index with the production identifying which documents are responsive to which requests.

As for the Responses to Request for Admissions Nos. 1, 3, 4, 8, and 14, those responsive are insufficient on their face, thus these requests should be ordered as “deemed admitted” pursuant to TBMP § 524.01.

As for Omega’s insufficient responses to Request for Admissions Nos. 5 through 7, 9 through 12, and 15 through 48, those inadequate requests too should be ordered as “deemed admitted,” or in the alternative at least, Omega should be compelled to comprehensively answer Interrogatory No. 15 to explain in detail the basis for any continuing denials and compelled to fully respond to Request for Production No. 21 to produce any and all documents and things supporting any such continuing denials.

/jackawheat/

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Counsel for Alpha Phi Omega

CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true copy of this MOTION TO (1) TO COMPEL DISCOVERY AND (2) TO TEST SUFFICIENCY OF RESPONSES TO REQUESTS FOR ADMISSION is being filed electronically with the U.S. Patent and Trademark Office using the ESTTA service, and a copy has been served on counsel for Opposer by mailing said copy this 11th day of June, 2013, via First Class Mail, postage prepaid, to:

Jess M. Collen
Thomas P. Gulick
Oren Gelber
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Ave.
Ossining, New York 10562

/jackawheat/
Jack A. Wheat

AL169:00AL1:932566:1:LOUISVILLE

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

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: ALPHA PHI OMEGA and design
Opp. No.: 91197504 (Parent)
Serial No.: 77950436

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: AΦΩ
Opp. No.: 91197505 (Child)
Serial No.: 77905236

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

Opposer Omega SA (Omega AG) (Omega Ltd.) (hereafter, "Opposer"), hereby serves its responses and objections to Applicant's First Set of Interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure.

PREAMBLE:

Opposer, with Applicant's consent, moved to consolidate Opposition Nos. 91197504 and 91197505 on February 19, 2013. One February 28, 2013, while the Motion to Consolidate Related Proceedings was pending, Applicant served Opposer with two sets of discovery requests,



one under the caption for Opposition No. 91197504 and the other under the caption for Opposition No. 91197505. On March 18, 2013, the Trademark Trial and Appeal Board consolidated Opposition Nos. 91197504 and 91197505.

In light of the fact that the majority of Applicant's discovery requests in Opposition No. 91197504 are identical to Applicant's discovery requests in Opposition No. 91197505, and in accordance with email correspondence between Opposer's counsel and Applicant's counsel on March 27, 2013, Applicant has agreed to accept one set of responses to both sets of Applicant's discovery requests. Where the wording of the discovery requests vary slightly given the reference to one specific mark of the two marks being opposed, Opposer has reproduced both sets of requests but has provided only one response addressing both requests.

GENERAL OBJECTIONS

1. Opposer objects to each and every interrogatory in their entirety on the ground that Opposer is responding on the basis of its current knowledge and information. Opposer reserves the right to supplement each response to these interrogatories.
2. Opposer objects to each and every interrogatory insofar as and to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Any inadvertent disclosure of such information shall not be a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.
3. Opposer objects to each and every interrogatory insofar as and to the extent it seeks divulgence of trade secrets, confidential or proprietary information of any third-party, such information will not be disclosed. To the extent each and every request seeks divulgence of such information of Opposer, such information will be disclosed subject to an appropriate protective

order, signed by the parties and their counsel, and ordered by the Trademark Trial & Appeal Board.

4. Opposer objects to each and every interrogatory to the extent it seeks disclosure of information relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. The slight relevance, if any, of such highly confidential trade secret information is vastly outweighed by the severe prejudice that would result to Opposer were it to be disclosed or available to competitors of Opposer. Opposer will not provide such information.

5. Opposer objects to each and every interrogatory to the extent it calls for information neither relevant to the subject matter of this Action nor reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to Applicant's definitions in their entirety to the extent same seeks to impose obligations on Opposer beyond those permitted by the Federal Rules of Civil Procedure or the Local Rules applicable to this matter.

7. Opposer objects to each and every interrogatory to the extent it calls for information that exceeds a reasonable durational scope.

8. Opposer objects to each and every interrogatory to the extent it calls for information not yet available as these responses are made during the discovery process. Opposer reserves the right to supplement responses when the information becomes available.

9. Opposer objects to each and every interrogatory to the extent it is overly broad, vague and ambiguous, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to each and every interrogatory to the extent it is duplicative.

11. Opposer objects to each and every interrogatory to the extent that it is not limited in geographic scope to the United States.

12. Opposer objects to the extent it is not required to respond to these interrogatories to the extent that Applicant has exceeded the permitted number of interrogatories, including subparts, as set forth in 37 C.F.R. § 2.120(d)(1), and TBMP §§ 405.03(a) and 405.03(e).

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1

State the address of each location in the United States at which applicant maintains a place of business for the promotion, sale, or distribution of products promoted and/or sold under any of the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Specifically, Opposer objects to this interrogatory to the extent that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this interrogatory to the extent that it seeks information that is publicly available and equally accessible to Applicant at its own cost. Notwithstanding and without waiving any of the foregoing objections, Opposer responds:

- The Swatch Group (U.S.) Inc. is Opposer's exclusive U.S. licensee, located at 1200 Harbor Boulevard, 7th Floor, Weehawken, NJ 07086
- Opposer states that its products are sold through retail stores. Information regarding the retail locations where Opposer's products are sold can be found at Opposer's Web site at <http://www.omegawatches.com>. Opposer will make available a list of the names and

locations of the retail locations where its products and services sold. Opposer also identifies OMEGA boutiques are located at the following addresses: 909 North Michigan Avenue, Chicago, IL 60611, 390 Hackensack Avenue, Hackensack, NJ 07601, 4663 River City Drive, Jacksonville, FL 32246, 8500 Beverly Boulevard, Los Angeles, CA 90048, 2126 Abbott Martin Road, Nashville, TN 37215, 711 Fifth Avenue, New York, NY 10022, 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, 7014 East Camelback Road, Scottsdale, AZ 85251, 411 University Street, Seattle, WA 98101, 125 Westchester Avenue, White Plains, NY 10601. In addition, Opposer also sells sports timing apparatus, instruments and installations through a third party.

INTERROGATORY NO. 2

Identify by name, title, and address each person responsible for accumulating the factual information requested in these discovery requests, and if than one person is identified, specify which of the respective discovery requests, or portion thereof for which each such person is responsible.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects to this Interrogatory to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Notwithstanding those objections, and without waiving them, Opposer states the undersigned counsel prepared these responses with information provided by Opposer's legal department. Opposer further identifies that Ms. Petra Hlavacek and Mr. Raynald Aeschlimann participated with respect to all of the above responses.

INTERROGATORY NO. 3

Itemize on an annual basis the unit and dollar volume of all sales in the United States prior to 1925 of any product sold under the marks upon which this Opposition is based.

ANSWER

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer specifically objects that this interrogatory is not reasonably tailored to lead to the discovery of admissible evidence. Opposer further objects that this Interrogatory is not relevant to the instant proceedings. Opposer objects that this Interrogatory is overly broad and unduly burdensome to the extent it seeks information that is not reasonably limited in durational scope. Notwithstanding and without waiving the foregoing objections, and limiting its response to a reasonable durational scope, Opposer will make documents available that are responsive to this interrogatory.

INTERROGATORY NO. 4

Describe in detail and itemize on an annual basis the extent of any advertising or other marketing efforts in the United States prior to 1925 of any product being advertised or marketed under the marks upon which this Opposition is based.

ANSWER

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer specifically objects that this interrogatory is not reasonably tailored to lead to the discovery of admissible evidence. Opposer further objects that this Interrogatory is not relevant to the instant proceedings. Opposer objects that this Interrogatory is overly broad and unduly

burdensome to the extent it seeks information that is not reasonably limited in durational scope..
Notwithstanding and without waiving the foregoing objections, and limiting its response to a reasonable durational scope, Opposer will make documents available that are responsive to this interrogatory.

INTERROGATORY NO. 5

Identify by date, and describe in detail the source and nature of any media attention received in the United States prior to 1925 relating to any product marketed in the United States under the marks upon which the Opposition is based.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer specifically objects that this interrogatory is not reasonably tailored to lead to the discovery of admissible evidence. Opposer further objects that this Interrogatory is not relevant to the instant proceedings. Opposer objects that this Interrogatory is overly broad and unduly burdensome to the extent it seeks information that is not reasonably limited in durational scope. Notwithstanding and without waiving the foregoing objections, and limiting its responses to a reasonable durational scope, Opposer will make documents available that are responsive to this interrogatory.

INTERROGATORY NO. 6

Identify by name, address, occupation, and telephone number any witness and itemize, identify, and describe in detail any testimonial or other evidentiary basis in support of the allegations of paragraph 9 of the Notice of opposition that upon information and belief product

bearing the mark sought to be registered will cause confusion, mistake and deception by virtue of Opposer's prior use of the marks upon which the Opposition is based.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Omega S.A. further objects that this Interrogatory is premature. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures.

INTERROGATORY NO. 7

Describe in detail the channels of distribution in the United States for product bearing the marks upon which the Opposition is based.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer further objects to the extent that this interrogatory seeks production of confidential and/or commercially sensitive information in the absence of a signed protective order filed with the Board. Opposer objects to this interrogatory as being overbroad, vague and ambiguous, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects that this interrogatory is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this interrogatory is not limited in geographic scope to the extent that it seeks

information related to activities occurring outside the United States and which have no bearing on this proceeding. Opposer objects to this interrogatory as duplicative of Interrogatory No. 1. Opposer also objects to this interrogatory to the extent it seeks public information that is equally available to Applicant through its own efforts and at its own cost.

Subject to, and without waiving the foregoing objections, and limiting its responses to the United States and to a reasonable durational scope, Opposer responds that its products are sold through retail stores. Information regarding the retail locations where Opposer's products are sold can be found at Opposer's Web site at <http://www.omegawatches.com>. Opposer will make available a list of the names and locations of the retail locations where its products and services sold. Opposer also identifies OMEGA boutiques are located at the following addresses: 909 North Michigan Avenue, Chicago, IL 60611, 390 Hackensack Avenue, Hackensack, NJ 07601, 4663 River City Drive, Jacksonville, FL 32246, 8500 Beverly Boulevard, Los Angeles, CA 90048, 2126 Abbott Martin Road, Nashville, TN 37215, 711 Fifth Avenue, New York, NY 10022, 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, 7014 East Camelback Road, Scottsdale, AZ 85251, 411 University Street, Seattle, WA 98101, 125 Westchester Avenue, White Plains, NY 10601. In addition, Opposer also sells sports timing apparatus, instruments and installations through a third party.

INTERROGATORY NO. 8

Identify by name, address, occupation and telephone number any witness and itemize, identify, and describe in detail any testimonial or other evidentiary basis in support of the allegations of paragraph 10 of the Notice of Opposition that upon information and belief the mark sought to be registered is applied to goods sold to the same or similar channels of

distribution as are products bearing the marks upon which the Opposition is based.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Omega S.A. further objects that this Interrogatory is premature. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, Opposer responds that Applicant did not limit its channels of trade in Application Serial Nos. 77905236 and 77950436. Accordingly, Applicant's goods are presumed to travel through all the normal channels of trade for such goods in Class 14 and 25 and therefore overlap with Opposer's channels of trade for its Class 14 and 25 goods. Where the descriptions of goods in trademark applications are not limited to specific channels of trade or classes of customers, there is a presumption that the parties share the same trade channels.

INTERROGATORY NO. 9

Identify by name, address, occupation and telephone number any witness and itemize, identify, and describe in detail any testimonial or other evidentiary basis which supports the allegations of paragraph 13 of the Notice of Opposition that the Omega is a famous mark.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Omega S.A. further objects that this Interrogatory is premature. Notwithstanding those

objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, Opposer will make documents available that are responsive to this interrogatory.

INTERROGATORY NO. 10

Identify by name, address, occupation and telephone number any witness and itemize, identify, and describe in detail any testimonial or other evidentiary basis which supports any contention OMEGA was a famous mark in the United States as early as 1925.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer specifically objects that this interrogatory is not reasonably tailored to lead to the discovery of admissible evidence. Opposer further objects that this Interrogatory is not relevant to the instant proceedings. Opposer objects that this Interrogatory is overly broad and unduly burdensome to the extent it seeks information that is not reasonably limited in durational scope. Opposer further objects that this Interrogatory is premature. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside

the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, and limiting its response to a reasonable durational scope, Opposer will make documents available responsive to this interrogatory.

INTERROGATORY NO. 11

Identify by name, address, occupation and telephone number any witness and itemize, identify, and describe in detail any testimonial or other evidentiary basis in support of the allegations of paragraph 14 of the Notice of Opposition that the mark sought to be registered dilutes or is likely to dilute the distinctive character of the marks upon which the Opposition is based.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects that this interrogatory is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this interrogatory is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding. Opposer objects that this Interrogatory is duplicative of Interrogatory Nos. 9 and 10. Omega S.A. further objects that this Interrogatory is premature. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without

waiving the foregoing objections, and limiting its response to the U.S. and to a reasonable durational scope, Opposer will make documents available responsive to this interrogatory.

INTERROGATORY NO. 12

Identify by name, address, occupation and telephone number any witness and itemize, identify, and describe in detail any testimonial or other evidentiary basis in support of any contention the commercial impression generated by the use of Applicant's Crest on products in the market in which those products pass is likely to be recognized as an identification or association with Opposer or its products.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects that this interrogatory is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this interrogatory is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding. Omega S.A. further objects that this Interrogatory is premature. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, and limiting its response to the U.S. and to a reasonable durational scope, Opposer will make documents

available responsive to this interrogatory.

INTERROGATORY NO. 13

Identify by name, address, occupation and telephone number any witness and itemize, identify, and describe in detail any testimonial or other evidentiary basis in support of any other contention of Opposer in this Opposition

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects that this interrogatory is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this interrogatory is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding. Opposer objects that this Interrogatory is overly broad. Omega objects to this Interrogatory to the extent that it is duplicative of Interrogatory Nos. 8-12. Omega S.A. further objects that this Interrogatory is premature. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings. Notwithstanding and without waiving the foregoing objections, and limiting its response to the U.S. and to a reasonable durational scope, Opposer will make documents available responsive to this interrogatory.

INTERROGATORY NO. 14

Describe in detail the types of customers with whom Applicant does or intends to do business in connection with Applicant's Mark, and the types of target end consumers for products bearing the marks upon which the Opposition is based.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects to this Interrogatory as it seeks information outside its firsthand knowledge. Opposer further objects to this interrogatory to the extent that it seeks information that is within Applicant's knowledge, possession and/or control and therefore accessible to Applicant at its own cost. Opposer objects that this interrogatory is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this interrogatory is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding. Opposer objects on the grounds of relevance, as where goods are similar and lack restrictions on identifications relating to trade channels and purchasers, the class of purchasers and channels of trade are presumed to be the same.

INTERROGATORY NO. 15

Itemize, identify, and describe in detail any testimonial or other evidentiary basis supporting Opposer's denial of any of the Requests for Admissions propounded with these Interrogatories and in relation to each, identify by name, address, occupation and telephone number any person's with personal knowledge of same.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein.

Opposer specifically objects that by seeking to incorporate its Requests for Admission into these Interrogatories, Applicant therefore exceeds the 75 Interrogatory limit and is not in compliance with 37 C.F.R. § 2.120(d)(1), and TBMP §§ 405.03(a) and 405.03(e).

Respectfully Submitted
As to Objections,

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Counsel for Opposer Omega SA (Omega AG)
(Omega Ltd.)

Date: April 4, 2013

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

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: ALPHA PHI OMEGA and design
Opp. No.: 91197504 (Parent)
Serial No.: 77950436

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

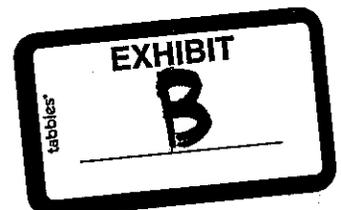
Mark: ΑΦΩ
Opp. No.: 91197505 (Child)
Serial No.: 77905236

**OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Opposer Omega SA (Omega AG) (Omega Ltd.) (hereafter, "Opposer"), hereby serves its responses and objections to Applicant's Request for Production of Documents and Things pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure.

PREAMBLE:

Opposer, with Applicant's consent, moved to consolidate Opposition Nos. 91197504 and 91197505 on February 19, 2013. On February 28, 2013, while the Motion to Consolidate



Related Proceedings was pending, Applicant served Opposer with two sets of discovery requests, one under the caption for Opposition No. 91197504 and the other under the caption for Opposition No. 91197505. On March 18, 2013, the Trademark Trial and Appeal Board consolidated Opposition Nos. 91197504 and 91197505.

In light of the fact that the majority of Applicant's discovery requests in Opposition No. 91197504 are identical to Applicant's discovery requests in Opposition No. 91197505, and in accordance with email correspondence between Opposer's counsel and Applicant's counsel on March 27, 2013. Applicant has agreed to accept one set of responses to both sets of Applicant's discovery requests. Where the wording of the discovery requests vary slightly given the reference to one specific mark of the two marks being opposed, Opposer has reproduced both sets of requests but has provided only one response addressing both requests.

GENERAL OBJECTIONS

1. Opposer objects to each and every document request in their entirety on the ground that Opposer is responding on the basis of its current knowledge and information. Opposer reserves the right to supplement each response to these interrogatories.
2. Opposer objects to each and every document request insofar as and to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Any inadvertent disclosure of such information shall not be a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

3. Opposer objects to each and every document request insofar as and to the extent it seeks divulgence of trade secrets, confidential or proprietary information of any third-party, such information will not be disclosed. To the extent each and every request seeks divulgence of such information of Opposer, such information will be disclosed subject to an appropriate protective order, signed by the parties and their counsel, and ordered by the Trademark Trial & Appeal Board.

4. Opposer objects to each and every document request to the extent it seeks disclosure of information relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. The slight relevance, if any, of such highly confidential trade secret information is vastly outweighed by the severe prejudice that would result to Opposer were it to be disclosed or available to competitors of Opposer. Opposer will not provide such information.

5. Opposer objects to each and every document request to the extent it calls for information neither relevant to the subject matter of this Action nor reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to Applicant's definitions in their entirety to the extent same seeks to impose obligations on Opposer beyond those permitted by the Federal Rules of Civil Procedure or the Local Rules applicable to this matter.

7. Opposer objects to each and every document request to the extent it calls for information that exceeds a reasonable durational scope.

8. Opposer objects to each and every document request to the extent it calls for information not yet available as these responses are made during the discovery process. Opposer reserves the right to supplement responses when the information becomes available.

9. Opposer objects to each and every document request to the extent it is overly broad, vague and ambiguous, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.
10. Opposer objects to each and every document request to the extent it is duplicative.
11. Opposer objects to each and every document request to the extent that it is not limited in geographic scope to the United States.

**OPPOSER'S RESPONSE TO APPLICANT'S REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

DOCUMENT REQUEST NO. 1: Representative specimens of product marketed in the United States under the marks upon which the Opposition is based and representative samples of the current and proposed advertising and promotional documents relating to said products.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Document Request as compound. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request to the extent that it is not reasonably limited in durational scope. Opposer objects to this Document Request to the extent it seeks disclosure of information relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. Notwithstanding and without waiving the foregoing objections, and

limiting its response to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 2: Any and all documents and things identifying the nature of target customers in the United States for products bearing the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request to the extent it seeks production of documents relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. Opposer objects to this Document Request to the extent that it is not reasonably limited in durational scope. Notwithstanding and without waiving the foregoing objections, and limiting its response to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 3: Any and all surveys, market research tests, demographic or consumer profile studies, and focus group inquiries conducted by or on behalf of Opposer, or any related company or predecessor dating prior to 1925 regarding the ultimate purchasers or potential ultimate purchasers of Applicant's Products actually or intended to be sold, offered for sale, advertised or promoted in the United States in connection with the marks upon which the Opposition is based including the results thereof.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Document Request to the extent that it is not reasonably limited in durational scope. Opposer objects to this Document Request to the extent it seeks production of documents relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. Opposer objects to this Document Request to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such documents.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer responds that it has no such documents presently within its custody or control.

DOCUMENT REQUEST NO. 4: Any and all other market studies or plans prepared by or on behalf of oppose, or any related company or predecessor dating prior to 1925 relating to any market within the United States.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Document Request to the extent that it is not reasonably limited in durational scope. Opposer objects to this Document Request to the extent it seeks

production of documents relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. Opposer objects to this Document Request to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such documents.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 5: Any and all surveys, market research tests, demographic or consumer profile studies, and focus group inquiries conducted by or on behalf of Opposer, or any related company or predecessor since 2005 regarding the ultimate purchasers or potential ultimate purchasers of Applicant's Products actually or intended to be sold, offered for sale, advertised or promoted in the United States in connection with the marks upon which the Opposition is based including the results thereof.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Document Request to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such documents.

Notwithstanding and without waiving the foregoing objections, Opposer responds that it is not presently aware of any responsive documents within its possession, custody or control.

DOCUMENT REQUEST NO. 6: Any and all other market studies or plans prepared by or on behalf of Opposer since 2005 relating to any market within the United States.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Document Request to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such documents.

Notwithstanding and without waiving the foregoing objections, Opposer responds that it is not presently aware of any responsive documents within its possession, custody or control.

DOCUMENT REQUEST NO. 7: Representative documents and things reflecting the channels of trade in the United States for products bearing the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request to the extent that it is not reasonably limited in durational scope.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 8: Any and all documents and things which support any contention that products bearing any insignia of Applicant are distributed in any of the same distribution channels in which Opposer's products are distributed.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects to this Document Request as it seeks information outside its firsthand knowledge. Opposer further objects to this Document Request to the extent that it seeks the production of documents and things within Applicant's knowledge, possession and/or control and therefore accessible to Applicant at its own cost. Opposer objects that this Document Request is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this Document Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding.

Opposer also objects as to relevance, as where goods are similar and lack restrictions on identifications relating to trade channels and purchasers, the class of purchasers and channels of trade are presumed to be the same.

DOCUMENT REQUEST NO. 9: Any and all documents and things which support any contention any relevant consumer has been confused, mistaken, or deceived into suspecting that

any product bearing Applicant's Crest, or any marketing thereof, was merchandise produced or marketed by or on behalf of Opposer, or otherwise sponsored or approved by Opposer.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects to this Document Request as overly broad and unduly burdensome. Opposer objects that this Document Request is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this Document Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding.

Notwithstanding and without waiving the foregoing objections, Opposer responds that it is not presently aware of any responsive documents within its possession, custody or control.

DOCUMENT REQUEST NO. 10: Any and all documents and things which support any contention target consumers for Opposer's products associate product bearing Applicant's Crest with Opposer.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects to this Document Request as overly broad and unduly burdensome. Opposer also objects to this Document Request as duplicative of Document Request No. 10. Opposer objects that this Document Request is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects

that this Document Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding.

Notwithstanding and without waiving the foregoing objections, Opposer responds that it is not presently aware of any responsive documents within its possession, custody or control.

DOCUMENT REQUEST NO. 11: Any and all documents and things supporting any contention the marks upon which the Opposition is based were the subject of substantial, widespread public recognition in the United States prior to 1925.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to that this Document Request seeks production of documents not relevant to any outstanding issues in these consolidated Opposition proceedings. Opposer objects to that this Document Request to the extent that it is not reasonably limited in durational scope.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 12: Representative documents reflecting the extent of sales in the United States prior to 1925 of product under the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to that this Document Request seeks production of documents not relevant to any outstanding issues in these consolidated Opposition proceedings. Opposer objects to that this Document Request to the extent that it is not reasonably limited in durational scope. Opposer objects to this Document Request to the extent that it is duplicative of Document Request No. 11.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 13: Representative documents reflecting the extent of any advertising or marketing in the United States prior to 1925 of product under the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to that this Document Request seeks production of documents not relevant to any outstanding issues in these consolidated Opposition proceedings. Opposer objects to that this Document Request to the extent that it is not reasonably limited in durational

scope. Opposer objects to this Document Request to the extent that it is duplicative of Document Request No. 11.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 14: Any and all documents or things reflecting any media attention received in the United States prior to 1925 relating to any product marketed under the marks upon which this Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to that this Document Request seeks production of documents not relevant to any outstanding issues in these consolidated Opposition proceedings. Opposer objects to that this Document Request to the extent that it is not reasonably limited in durational scope. Opposer objects to this Document Request to the extent that it is duplicative of Document Request No. 11.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 15: Any and all documents and things which otherwise support any contention the marks upon which this Opposition is based were famous in the United States prior to 1925.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to that this Document Request seeks production of documents not relevant to any outstanding issues in these consolidated Opposition proceedings. Opposer objects to that this Document Request to the extent that it is not reasonably limited in durational scope. Opposer objects to this Document Request as duplicative of Document Request No. 11.

Notwithstanding and without waiving the foregoing objections, and limiting this Document Request to a reasonable durational scope, Opposer will make a representative sampling of responsive documents available.

DOCUMENT REQUEST NO. 16: Any and all documents and things regarding any investigation conducted by or on behalf of Opposer relating to this Opposition.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Document Request to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other

applicable privilege or immunity, and will not produce such documents. Opposer objects that this Document Request is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this Document Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding.

Notwithstanding and without waiving the foregoing objections, Opposer responds that it is not presently aware of any responsive documents within its possession, custody or control.

DOCUMENT REQUEST NO. 17: Any witness statements obtained by or on behalf of Opposer relating to this opposition and any and all other documents and things relating to said statements.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer further objects that this Document Request is premature. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings and will supplement its document production with responsive documents accordingly.

DOCUMENT REQUEST NO. 18: Any and all other documents and things within Opposer's possession or control relating to Applicant.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Document Request as overly broad and unduly burdensome. Opposer objects to

this Document Request as not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Document Request to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such documents. Opposer objects that this Document Request is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this Document Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding.

DOCUMENT REQUEST NO. 19: For each expert Opposer intends to call to provide testimony in this proceeding, produce:

- a) any written report provided by said expert relating to the subject matter of this proceeding;
- b) a complete written statement of all opinions to be expressed by the expert in this proceeding, and basis and reason therefor;
- c) all documents reflecting the data or other information considered by the expert in forming his/her opinions;
- d) all exhibits to be used by the expert as a summary of or support for his/her opinions;
- e) those documents stating the qualifications of the expert, such as would be reflected in a resume, curriculum vitae, biography, summary or otherwise;
- f) a written list of all publications authored by the witness within the last ten years;

- g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and
- h) a written list of any other cases in which the witness has testified as an expert at trial, in an administrative proceeding or by deposition within the past four years.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer further objects that this Document Request is premature. Notwithstanding those objections, and without waiving them, Opposer states that it has not yet determined who it will examine as a factual witness during the prosecution of this Opposition proceeding. Opposer will identify its fact witnesses in accordance with the deadlines and procedures which govern these proceedings and will supplement its document production with responsive documents accordingly.

DOCUMENT REQUEST NO. 20: Any and all documents and things referred to by Opposer in responding to the Interrogatories served with these requests, as well as any and all documents and things, the identification of which is requested in the Interrogatories.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Notwithstanding and without waiving the foregoing objections, Opposer will make responsive documents available.

DOCUMENT REQUEST NO. 21: Any and all documents and things forming the basis for Opposer's denial, in whole or in part, of any of the Requests for Admissions propounded with these Requests.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer further incorporates Opposer's specific objections to each and every Request for Admission as asserted in Opposer's Responses to Applicant's First Request for Admissions as if fully stated herein.

Notwithstanding and without waiving the foregoing objections, Opposer responds that it will make responsive documents available.

Respectfully Submitted,

By: 

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Counsel for Opposer Omega SA (Omega AG)
(Omega Ltd.)

Date: April 4, 2013

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

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: ALPHA PHI OMEGA and design

Opp. No.: 91197504 (Parent)

Serial No.: 77950436

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),

Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: AΦΩ

Opp. No.: 91197505 (Child)

Serial No.: 77905236

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

Opposer Omega SA (Omega AG) (Omega Ltd.) (hereafter, "Opposer"), hereby serves its responses and objections to Applicant's Request for Admissions pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure.



PREAMBLE:

Opposer, with Applicant's consent, moved to consolidate Opposition Nos. 91197504 and 91197505 on February 19, 2013. On February 28, 2013, while the Motion to Consolidate Related Proceedings was pending with the Trademark Trial and Appeal Board, Applicant served Opposer with two sets of discovery requests, one under the caption for Opposition No. 91197504 and the other under the caption for Opposition No. 91197505. On March 18, 2013, the Trademark Trial and Appeal Board consolidated Opposition Nos. 91197504 and 91197505.

In light of the fact that the majority of Applicant's discovery requests in Opposition No. 91197504 are identical to Applicant's discovery requests in Opposition No. 91197505, and in accordance with email correspondence between Opposer's counsel and Applicant's counsel on March 27, 2013, Applicant has agreed to accept one set of responses to both sets of Applicant's discovery requests. Where the wording of the discovery requests vary slightly given the reference to one specific mark of the two marks being opposed, Opposer has reproduced both sets of requests but has provided only one response addressing both requests.

GENERAL OBJECTIONS

1. Opposer objects to each and every request in their entirety on the ground that Opposer is responding on the basis of its current knowledge and information. Opposer reserves the right to supplement each response to these interrogatories.
2. Opposer objects to each and every request insofar as and to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Any inadvertent

disclosure of such information shall not be a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

3. Opposer objects to each and every request insofar as and to the extent it seeks divulgence of trade secrets, confidential or proprietary information of any third-party, such information will not be disclosed. To the extent each and every request seeks divulgence of such information of Opposer, such information will be disclosed subject to an appropriate protective order, signed by the parties and their counsel, and ordered by the Trademark Trial & Appeal Board.

4. Opposer objects to each and every request to the extent it seeks disclosure of information relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. The slight relevance, if any, of such highly confidential trade secret information is vastly outweighed by the severe prejudice that would result to Opposer were it to be disclosed or available to competitors of Opposer. Opposer will not provide such information.

5. Opposer objects to each and every request to the extent it calls for information neither relevant to the subject matter of this Action nor reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to Applicant's definitions in their entirety to the extent same seeks to impose obligations on Opposer beyond those permitted by the Federal Rules of Civil Procedure or the Local Rules applicable to this matter.

7. Opposer objects to each and every request to the extent it calls for information that exceeds a reasonable durational scope.

8. Opposer objects to each and every request to the extent it calls for information not yet available as these responses are made during the discovery process. Opposer reserves the right to supplement responses when the information becomes available.

9. Opposer objects to each and every request to the extent it is overly broad, vague and ambiguous, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to each and every request to the extent it is duplicative.

11. Opposer objects to each and every request to the extent that it is not limited in geographic scope to the United States.

OPPOSER'S SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1: Admit that the word "Omega" is used as part of the name of various Greek letter social, professional, or honorary fraternities or sororities.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Notwithstanding and without waiving the foregoing objections, Opposer asserts that it lacks knowledge sufficient to admit or deny the truth of this this Request to Admit and therefore denies same.

REQUEST NO. 2: Admit that the symbol, Ω , is the Greek Alphabet letter referred to as “Omega.”

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Notwithstanding and without waiving the foregoing objections, Opposer admits that when spoken, the Greek Symbol, Ω , is pronounced “omega”.

REQUEST NO. 3: Admit that Opposer has no evidentiary basis to dispute that the word “Omega” has been continuously used in the United States as part of the name of various Greek letter social, professional, or honorary fraternities or sororities since prior to the introduction into the United State by or on behalf of Opposer or Opposers predecessor(s) in interest of any product bearing any of the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings, overly broad and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, Opposer asserts that it lacks knowledge sufficient to admit or deny the truth of this this Request to Admit and therefore denies same.

REQUEST NO. 4: Admit that Opposer has no evidentiary basis to dispute that the Greek Alphabet letter, Ω, has been continuously used in the United States as part of the Greek letter designation of Greek letter social, professional, or honorary fraternities or sororities since prior to the introduction into the United States by or on behalf of Opposer or Opposer's predecessor(s) in interest of any product bearing any of the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings, overly broad and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, Opposer asserts that it lacks knowledge sufficient to admit or deny the truth of this this Request to Admit and therefore denies same.

REQUEST NO. 5: Admit that Opposer's products are marketed to the public in general and are not directed specifically to the Greek Affinity Products Market.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings, overly broad and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects that this

Request is not limited to a reasonable durational or geographic scope. Notwithstanding and without waiving the foregoing objections, and limiting this Request to a reasonable durational and geographic scope, Opposer denies.

REQUEST NO. 6: Admit that Opposer has no evidentiary basis to support any contention that products bearing any insignia of Applicant are distributed in any of the same distribution channels in which Opposer's products are distributed.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects to this Request as it requires Opposer to make an admission based upon information that is within Applicant's knowledge, possession and/or control. Opposer also objects that this Request is not limited to a reasonable durational or geographic scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Opposer therefore denies same.

REQUEST NO. 7: Admit that Opposer has no evidentiary basis to dispute that products bearing the opposed mark are primarily and predominantly marketed only to members of the Alpha Phi Omega National Service Fraternity, or to persons wishing to acquire the products as gifts for members of the Alpha Phi Omega National Service Fraternity.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects to this Request as it requires Opposer to make an admission based upon information that is within Applicant's knowledge, possession and/or control. Opposer has not yet received Applicant's discovery responses, and therefore cannot provide a complete response to this Request. Opposer also objects that this Request is not limited to a reasonable durational or geographic scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Opposer therefore denies same.

REQUEST NO. 8: Admit that Opposer has no evidentiary basis to dispute that the commercial impression generated by the use of Applicant's Greek letter indicia, ΛΦΩ, in relation to clothing or related products in the market in which those products pass is recognition of the mark by the target consumers as a reference to the Alpha Phi Omega National Service Fraternity.

Admit that Opposer has no evidentiary basis to dispute that the commercial impression generated by the use of Applicant's Crest on products in the market in which those products pass is recognition of the mark by the target consumers as a reference to the Alpha Phi Omega National Service Fraternity.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects to this Request as it requires

Opposer to make an admission based upon information that is within Applicant's knowledge, possession and/or control. Opposer has not yet received Applicant's discovery responses, and therefore cannot provide a complete response to this Request. Opposer also objects that this Request is not limited to a reasonable durational or geographic scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, and limiting its response to a reasonable durational and geographic scope, Opposer asserts that it lacks knowledge sufficient to admit or deny the truth of this this Request to Admit and therefore denies same.

REQUEST NO. 9: Admit that Opposer has no evidentiary basis to support any contention any relevant consumer has been confused, mistaken, or deceived into suspecting that any clothing or related products marketed under Applicant's Greek indicia, ΛΦΩ, was merchandise produced or marketed by or on behalf of Opposer, or otherwise sponsored or approved by Opposer.

Admit that Opposer has no evidentiary basis to support any contention any relevant consumer has been confused, mistaken, or deceived into suspecting that any product bearing Applicant's Crest, or any marketing thereof, was merchandise produced or marketed by or on behalf of Opposer, or otherwise sponsored or approved by Opposer.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to the phrase "relevant consumer" as irrelevant, vague and ambiguous. Opposer objects that this Request is

not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, Opposer denies.

REQUEST NO. 10: Admit that Opposer has no evidentiary basis to support any contention any appreciable amount of relevant consumers have been confused, mistaken, or deceived into suspecting that any clothing or related products marketed under Applicant's Greek letter indicia, $\Lambda\Phi\Omega$, was merchandise produced or marketed by or on behalf of Opposer, or otherwise sponsored or approved by Opposer.

Admit that Opposer has no evidentiary basis to support any contention any appreciable amount of relevant consumers have been confused, mistaken, or deceived into suspecting that any product bearing Applicant's Crest, or any marketing thereof, was merchandise produced or marketed by or on behalf of Opposer, or otherwise sponsored or approved by Opposer.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to the phrase "appreciable amount of relevant consumers" as vague and ambiguous. Opposer further objects that this Request is duplicative of Request No. 9. Opposer objects that this Request is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at

least as early as 1894. Opposer further objects that this Document Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, Opposer denies.

REQUEST NO. 11: Admit that Opposer has no evidentiary basis to support any contention that target consumers for clothing or related products marketed under Applicant's Greek Letter indicia, ΛΦΩ, associate those products with Opposer.

Admit that Opposer has no evidentiary basis to support any contention that target consumers for Opposer's products associate any product bearing Applicant's Crest with Opposer.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects that this Request is not limited to a reasonable durational scope, especially as Opposer has been using its Omega Marks since at least as early as 1894. Opposer further objects that this Request is not limited in geographic scope to the extent that it seeks information related to activities occurring outside the United States and which have no bearing on this proceeding. Opposer also objects to this Request as it requires Opposer to make an admission based upon information that is within Applicant's knowledge, possession and/or control. Opposer objects that this Request seeks to

impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, Opposer denies.

REQUEST NO. 12: Admit that Opposer has no evidentiary basis to dispute that various Greek letter social, professional, or honorary fraternities or sororities with the word “Omega” in their name regularly market and/or approve others to market on their behalf affinity products, including jewelry and watches, bearing insignia containing the word “Omega” or the Greek Alphabet letter Ω in the Greek Affinity Products Market.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational or geographic scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, and limiting this Request to a reasonable durational and geographic scope, Opposer denies.

REQUEST NO. 13: Admit that Opposer does not advertise or market products bearing the marks upon which this Opposition is based in the Greek Affinity Products Market.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer objects to this Request as overly broad, ambiguous and vague. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects that this Request is not limited to a reasonable geographic or durational scope. Notwithstanding and without waiving the foregoing objections, and limiting this Request to a reasonable durational and geographic scope, and reading the phrase “the marks upon which this Opposition” to refer to Opposer’s Marks as defined in the Notices of Opposition, Opposer responds that it does not specifically advertise or market its Class 14 and 25 goods to members of fraternities or sororities or their family members.

REQUEST NO. 14: Admit that Opposer has no evidentiary basis to dispute that that various Greek letter social, professional, or honorary fraternities or sororities with the word “Omega” in their name have continuously marketed and/or approved others to market on their behalf products bearing insignia containing the word “Omega” or the Greek Alphabet letter, Ω, dating back prior to the introduction into the United States by or on behalf of Opposer or Opposer’s predecessor(s) in interest of any product bearing any of the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings, and not reasonably calculated to lead to the

discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, and limiting this Request to a reasonable durational scope, Opposer asserts that it lacks knowledge sufficient to admit or deny the truth of this Request to Admit and therefore denies same.

REQUEST NO. 15: Admit that Opposer has no evidentiary basis to dispute that the Applicant has utilized the Greek letter indicia, $\Lambda\Phi\Omega$, in the United States on jewelry continuously since at least 1925.

Admit that Opposer has no evidentiary basis to dispute that the Applicant has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1925.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer further objects to this Request as vague, overly broad and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects to this Request as it requires Opposer to make an admission based upon information that is within Applicant's knowledge, possession and/or control. Opposer also objects that this Request is not limited to a reasonable durational scope. Notwithstanding and without waiving the foregoing objections, and limiting its Response to a reasonable durational scope, Opposer denies.

REQUEST NO. 16: Admit that Opposer has no evidentiary basis to dispute that the Alpha Tau Omega Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1865.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 17: Admit that Opposer has no evidentiary basis to dispute that the Alpha Chi Omega Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1885.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational

scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 18: Admit that Opposer has no evidentiary basis to dispute that the Chi Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1895.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 19: Admit that Opposer has no evidentiary basis to dispute that the Omega Psi Phi Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1911.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly

broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 20: Admit that Opposer has no evidentiary basis to dispute that the Alpha Gamma Omega Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1927.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 21: Admit that Opposer has no evidentiary basis to dispute that the Omega Chi Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1934.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks

information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 22: Admit that Opposer has no evidentiary basis to dispute that the Sigma Phi Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1949.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 23: Admit that Opposer has no evidentiary basis to dispute that the Kappa Omega Tau Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1960.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 24: Admit that Opposer has no evidentiary basis to dispute that the Gamma Epsilon Omega Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1963.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 25: Admit that Opposer has no evidentiary basis to dispute that the Beta Omega Phi Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1965.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 26: Admit that Opposer has no evidentiary basis to dispute that the Sigma Phi Omega Society has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1980.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational

scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 27: Admit that Opposer has no evidentiary basis to dispute that the Alpha Omega Epsilon Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1983.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies..

REQUEST NO. 28: Admit that Opposer has no evidentiary basis to dispute that the Omega Delta Phi Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1987.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks

information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 29: Admit that Opposer has no evidentiary basis to dispute that the Alpha Nu Omega Fraternity and Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1988.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 30: Admit that Opposer has no evidentiary basis to dispute that the Lambda Tau Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1988.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 31: Admit that Opposer has no evidentiary basis to dispute that the Omega Chi Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1988.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 32: Admit that Opposer has no evidentiary basis to dispute that the Gamma Omega Delta Fraternity has utilized insignia containing the word Omega or the Greek Alphabet

symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1989.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 33: Admit that Opposer has no evidentiary basis to dispute that the Omega Phi Beta Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the Greek letter Omega, namely Ω , in the United States on jewelry continuously since at least 1989.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 34: Admit that Opposer has no evidentiary basis to dispute that the Gamma Phi Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω, in the United States on jewelry continuously since at least 1991.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 35: Admit that Opposer has no evidentiary basis to dispute that the Gamma Phi Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω, in the United States on jewelry continuously since at least 1991.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer specifically objects that this Request is duplicative of Request No. 34. Opposer incorporates its general and specific objections and its response to Request No. 34 as if fully restated herein.

REQUEST NO. 36: Admit that Opposer has no evidentiary basis to dispute that the Sigma Omega Epsilon Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1988.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 37: Admit that Opposer has no evidentiary basis to dispute that the Alpha Pi Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1994.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational

scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 38: Admit that Opposer has no evidentiary basis to dispute that the Omega Phi Gamma Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1995.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 39: Admit that Opposer has no evidentiary basis to dispute that the Sigma Omega Nu Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1996.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks

information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 40: Admit that Opposer has no evidentiary basis to dispute that the Alpha Sigma Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1997.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 41: Admit that Opposer has no evidentiary basis to dispute that the Delta Phi Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 1998.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer also objects that this Request is not limited to a reasonable durational scope. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 42: Admit that Opposer has no evidentiary basis to dispute that the Delta Pi Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 2004.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 43: Admit that Opposer has no evidentiary basis to dispute that the Omega Chi Psi Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 2005.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies.

REQUEST NO. 44: Admit that Opposer has no evidentiary basis to dispute that the Sigma Kappa Omega Sorority has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 2006.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies

REQUEST NO. 45: Admit that Opposer has no evidentiary basis to dispute that the Sigma Omega Phi Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 2008.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies

REQUEST NO. 46: Admit that Opposer has no evidentiary basis to dispute that the Alpha Omega Sigma Fraternity has utilized insignia containing the word Omega or the Greek Alphabet symbol for the letter Omega, namely Ω , in the United States on jewelry continuously since at least 2010.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Request as overly broad and vague. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Therefore, Opposer denies

REQUEST NO. 47: Admit that Opposer has no evidentiary basis to support any contention the marks upon which the Opposition is based were the subject of substantial, widespread, public recognition in the United States prior to 1925.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Opposer objects to this Request as overly broad, ambiguous and vague. Opposer further objects to this Request as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects that this Request is not limited to a reasonable geographic or durational scope. Opposer objects to this Request as overly broad and vague. Opposer objects that this Request seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Notwithstanding and without waiving the foregoing objections, and limiting this Request to a reasonable durational and geographic scope, and reading the phrase “the marks upon which this Opposition” to refer to Opposer’s Marks as defined in the notice of opposition, Opposer denies this Request.

REQUEST NO. 48: Admit that Opposer has no evidentiary basis to support any contention Applicant is attempting to trade on Opposer’s reputation or is otherwise attempting to create any consumer association between products bearing any insignia of the Applicant and products marketed under the marks upon which the Opposition is based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Request as compound. Opposer objects to this Request as overly broad, ambiguous and vague. Opposer further objects to this Request is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer also objects that this Request is not limited to a reasonable geographic or durational scope. Opposer objects to this Request as overly broad and vague. Opposer objects that this Request seeks to impose an

obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures.

Therefore, Opposer denies.

Respectfully Submitted,

By: 

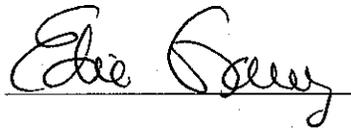
Jess M. Collen
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Ossining, NY 10562
(914) 941-5668 Tel.
(914) 941-6091 Fax
Counsel for Opposer Omega SA (Omega AG)
(Omega Ltd.)

Date: April 4, 2013

CERTIFICATE OF SERVICE

I, Edith Garvey, hereby certify that I caused a true and correct copy of Opposer's Responses to Applicant's Request for Admissions, Interrogatories and Requests for Production of Documents and Things to be served upon the following, via first class mail, postage prepaid this 4th Day of April, 2013.

Stites & Harbison PLLC
400 W Market Street, Suite 1800
Louisville, KY 40202-3352
Attn: Jack A. Wheat



May 24, 2013

VIA E-MAIL TGULICK@COLLENIP.COM
AND FIRST CLASS MAIL

Thomas P. Gulick
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining-On-Hudson, New York 10562

Jack A. Wheat
(502) 681-0323
(502) 779-8273 FAX
jwheat@stites.com

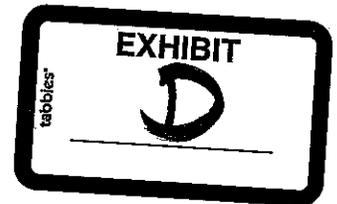
RE: Omega S.A. v. Alpha Phi Omega

Dear Mr. Gulick:

We have concerns about the deficiencies in Omega's responses to our discovery requests. The overriding foci of our discovery requests were (1) to put Omega to the test to prove whether it's OMEGA marks were adequately famous in the United States for dilution purposes prior to the founding of Alpha Phi Omega in 1925 and (2) to test whether Omega has *any* evidence to support any likelihood of confusion assertions. Omega's responses to the Interrogatories stated that *documents would be produced* providing the requested information, and the response to our Request for Production likewise informed us the requested documents would be produced. We have perused the nearly 2900 documents dumped on us and could locate nothing pertinent to the issue relating to whether the Omega marks were famous in the United States prior to 1925, nor anything supporting any likelihood of confusion assertions. Although we expected there would be no evidence supporting these claims, we remain concerned that the written responses said such evidence would be produced.

Likewise, we are quite concerned that Omega denied 46 of our 48 our Requests for Admission. It is disconcerting that Opposer would admit only that the Greek alphabet letter, Ω is pronounced "Omega" and that Omega Watches are not advertised in the fraternity and sorority affinity products market.

The 46 denials are pretty disturbing. Indeed you even denied Request Number 1 requesting an admission the word "Omega" is part of the name of various fraternities and sororities. We are quite surprised you would deny this Request in light of the various Oppositions you actually are currently handling against at least three fraternities and sororities with "Omega" in their name. Indeed, in our last conversation you even suggested the reason Omega would not accept and was not yet responding to our settlement proposal was because it



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wants to fashion a standard agreement to use with all the fraternities and sororities with "Omega" in their name.

As for the vast majority of the denied Requests for Admission, all that was requested was that Omega admit *it has no evidence to dispute* various specific facts. Omega uniformly denied these Requests, thus claiming *it does* have evidence to support its dispute of the various specified factual statements. If the "denials" are accurate, then where is the evidence upon which the denials are based? For example, see Request Number 7 which read as follows:

Admit that Opposer has no evidentiary basis to dispute that products bearing the opposed mark are primarily and predominantly marketed only to members of the Alpha Phi Omega National Service Fraternity, or to persons wishing to acquire the products as gifts for members of the Alpha Phi Omega National Service Fraternity.

Omega denied this Request. As a consequence, Omega is representing to us and to the TTAB that *it does have an "evidentiary basis* to dispute that products bearing the opposed mark are primarily and predominantly marketed only to members of the Alpha Phi Omega National Service Fraternity, or to persons wishing to acquire the products as gifts for members of the Alpha Phi Omega National Service Fraternity." Well then, where is the production of those evidentiary materials or other evidentiary information?

The same concern relates to Omega's denials to Requests Number 3, Number 4, and Number 6 through Number 48. For each of these 45 for Requests, all we Requested was that Omega admit it has "no evidentiary basis to dispute" the asserted facts. We did not ask Omega to admit that the asserted facts are true. It does not suffice to respond that Omega has "insufficient knowledge to admit or to deny" and for that reason to deny the Requests. See TBMP § 407.03(b). Indeed, to so respond actually could be interpreted as *an admission of the Request*. Uniformly denying these Requests are not sufficient responses; if Omega indeed has an "evidentiary basis" to dispute the facts, Omega must identify the evidentiary basis it claims to have to dispute those facts. To that point, Interrogatory Number 15 Requested as follows:

Itemize, identify, and describe in detail any testimonial or other evidentiary basis supporting Opposer's denial of any of the Requests for Admissions propounded with these Interrogatories and in relation to each, identify by name, address, occupation and telephone number any person's with personal knowledge of same.

Omega wrongly objected to this Request misstating that the Interrogatory exceeded the 75 Interrogatory limit set by the TTAB rules. This limit is inapplicable. There were only 15

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Interrogatories, and even counting and Interrogatory requesting explanations of the basis for each of the 46 denied Requests for admission as 46 separate sub-parts, the Interrogatory count would only be 60, less than the allowable 75. Regardless, Omega waived this objection and thus, must provide the requested information. *See* TBMP §405.03(e).

Further notwithstanding that waived objection, it was also incumbent upon Omega in response to Request for Production Number 21 to produce any documents supporting its denials of any of the Requests for Admissions. Your response stated those documents would be produced, yet *no responsive documents were produced*. If indeed the pertinent documents were actually produced and we are mistaken and missed them, please provide us a listing or chart identifying which of the documents are the specific bases of support for your denial of the respective Requests for Admission.

In relation to all our other discovery requests, it was also represented that documents would be produced from which we could obtain the requested discovery. We have perused the nearly 2900 documents dumped on us and note that virtually *nothing responsive* was produced relating to nearly all of the fundamental discovery requests. We have multiple concerns, including the following:

Omega Watch Fame in U.S. Prior to 1925: The Alpha Phi Omega marks have been used continuously since the founding of the fraternity in 1925. Omega Watch now, 88 years later, claims the Alpha Phi Omega marks dilute the Omega Watch marks. As a consequence, the burden is in Opposer to prove its Omega marks were famous in the U.S. prior to 1925 and many of our Requests directly relate to that issue, Interrogatory Number 3 and Request for Production Number 12 relating to Omega sales in the U.S. prior to 1925, Interrogatory Number 4 and Request for Production Number 13 relating to Omega advertising in the U.S. prior to 1925, Interrogatory Number 5 and Request for Production Number 14 relating to Omega media attention in the U.S. prior to 1925, Interrogatory Number 10 and Request for Production Number 15 relating to any other evidence of Omega fame in the U.S. prior to 1925, Interrogatory Number 11 relating to any evidence of dilution or likely dilution, Request for Production Number 4 relating to market studies or plans dating prior to 1925, and Request for Production Number 11 relating to any documents supporting the contention the Omega marks were "the subject of substantial, widespread public recognition in the United States prior to 1925."

Rather than provide the Requested information in narrative form, in response to each of these Interrogatories, we were informed that documents containing the requested information would be produced. We have perused the nearly 2900 documents dumped on us purportedly in response to our discovery requests and could find *nothing responsive* to any of these fundamentally pertinent Interrogatories, nor was anything pertinent produced in response to these Requests for Production. If indeed the documents were actually produced providing the requested information, they must be buried in the production. If we missed the requested

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information, please provide us a listing or chart identifying which of the documents provide the specific information requested in each of these Interrogatories and each of the Request for Production.

Likelihood of Confusion Issue: Interrogatory Number 6 inquired of the factual basis for any contention use of the Alpha Phi Omega marks “will cause confusion, mistake and deception.” Although you objected to identifying “witnesses,” the Interrogatory was not so limited. Similarly, Interrogatory Number 12 inquired of the basis for Omega’s contention Alpha Phi Omega’s crest mark “is likely to be recognized as an identification or association with Opposer or its products.” Although Omega objected to identifying witnesses with that knowledge, it responded that the requested documents would be produced. Parallel with these Interrogatories, Request for Production Number 9 requested any documents evidencing confusion or deception, in in response, we were informed the requested documents would be produced.

We have perused the nearly 2900 documents dumped on us purportedly in response to our discovery requests and could find *nothing responsive* to either these Interrogatories or the related Request for Production. If indeed the documents were actually produced providing the requested information, they must be buried in the production. If we missed the requested information, please provide us a listing or chart identifying which of the documents are responsive to these requests.

* * * * *

In summary, it appears that Omega has wrongly and insufficiently responded to 46 of our 48 Requests for Admissions.

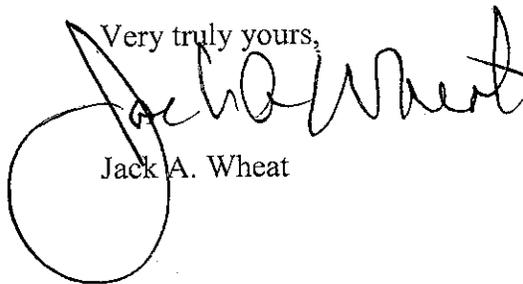
As for our Interrogatories and Requests for Production, Omega basically invariably responded with no narrative responses providing the requested information, rather, stated that it would be producing documents providing the requested information. Similarly, in response to virtually all of the Requests for Production, Omega responded that it would be producing the requested documents. Wading through the nearly 2900 dumped on us, we could locate virtually nothing providing the requested information, nor any of the promised responsive documents.

If indeed the responsive items were provided, they were buried in the nearly 2900 documents. If so, we will need a list or chart identifying which documents purportedly provide the requested information requested by each of the respective Interrogatories or Requests for Production.

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Unfortunately discovery is about to close. Accordingly, we must ask that Omega cure these deficiencies by mid-week next week. Your attention to the deficiencies will be greatly appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack A. Wheat". The signature is written in a cursive style. Below the signature, the name "Jack A. Wheat" is printed in a standard font. A large, thin black circle is drawn around the signature and the printed name.

Jack A. Wheat

JAW:at

cc: Oren Gelber (via email)