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

Proceeding	91197504
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ATTORNEY DOCKET NO. K655, K654

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 MOTION TO PRECLUDE UNJUSTIFIABLY DELAYED DISCOVERY PRODUCTION AND TO COMPEL DISCOVERY

Opposer hereby respectfully submits its Motion to Compel Discovery, seeking an Order (1) precluding Applicant's recent supplemental document production pursuant to Fed. R. Civ. P. 37(c)(1) and TBMP § 527.01(e); 2(a) stating that responsive information and documents currently in existence but not produced by Applicant in response to these Requests will not be admitted into evidence at trial; and, 2(b) in the alternative, compelling Applicant to provide supplemental responses and document production in response to its Request for Production of Documents and Things or submit a statement that no (further) responsive documents are available (as applicable).

Opposer notes its pending Motion for Reconsideration, filed June 30, 2014. Opposer's Motion is not yet fully briefed and the Board has not suspended the proceedings pending the disposition of the Motion for Reconsideration.

I. INTRODUCTION

On the eve of Opposer's testimony period - over fourteen months after Applicant's initial service of discovery responses and production, more than seven months after the conclusion of discovery and after multiple meet and confer conferences during which Applicant assured Opposer that all information and documents were provided and there were no withheld materials - Applicant provided additional discovery production that approximately doubled the documents previously produced. The prejudice caused by Applicant's delay was avoidable as these materials were available to Applicant years before. This is a clear violation of disclosure and discovery rules which are meant to prevent prejudice, undue delay and unfair surprise. As a result of Applicant's actions, Opposer seeks the preclusion of the materials produced by Applicant at this late juncture which were clearly intended to prejudice and unfairly surprise Opposer.

Within the scope of discovery, Opposer propounded various discovery requests upon Applicant. During the discovery period, Applicant produced 131 pages of documents and some responsive information. Applicant produced an additional 45 pages worth of documents a month after the close of discovery. Opposer has sought supplemental responses and production on a number of occasions or, in the alternative, a statement from Applicant that no further documents exist. Applicant has resisted calls for supplemental production and/or to provide statements that it has no further documents and thus such responses are incomplete. During meet and confer

telephone conferences, Applicant's counsel has provided assurances that it has produced all information and documents available and that it does not seek to unduly surprise or prejudice Opposer, but refused to do so in writing.

However, on July 25, 2014, Applicant produced 134 pages of supplemental production in multiple transmissions (nearly double the number of pages produced previously). The document production included declarations from three individuals reportedly associated with Alpha Tau Omega, Alpha Chi Omega and Chi Omega, as well as a declaration from Applicant's licensee, Affinity Marketing Consultants. The July 25, 2014 supplemental document production also included Internet printouts relating to Alpha Tau Omega, Alpha Chi Omega, and Chi Omega products, printouts from third party websites regarding Opposer's products and copies of third party U.S. Trademark Registrations. Applicant had access to this information and documents since well prior to July 25, 2014. Applicant's recent document production was known and available to Applicant since the outset of these oppositions. Applicant's unjustifiably late disclosure of these documents on the eve of Opposer's testimony period and so long after the close of discovery has deprived Opposer of an opportunity to examine these declarants, ascertain the provenance of documents, and/or seek any follow up discovery. Applicant obtains an unfair advantage in this proceeding as a result. Given the imminent opening of Opposer's testimony period, this prejudice to Opposer cannot be cured. Applicant's July 25, 2014 document production should be precluded as should any other responsive documents which Applicant has within its possession but refused to produce.

Opposer now seeks an Order from the Board: (1) precluding Applicant's July 25, 2014 document production as prejudicial to Opposer; (2)(a) precluding Applicant from introducing responsive information and documents currently in existence but not produced by Applicant in

response to Opposer's discovery requests, including those seeking information related to witnesses, evidence of first use and documents relevant to these proceedings; and (2)(b) in the alternative, compelling Applicant to fully respond to all document production requests by providing all responsive documents and including a statement that all documents have been produced or there are no responsive documents, as appropriate.

II. STATEMENT OF GOOD FAITH EFFORT TO RESOLVE

Pursuant to TBMP § 523.02, Opposer hereby states that it has made a good faith attempt to resolve the discovery disputes which are the subject of this motion. Opposer brought deficiencies in Applicant's discovery responses to its attention in correspondence dated June 13, 2013 and June 25, 2014 (Exhibits 2 and 5) and during telephone conferences on July 12, 2013, October 16, 2013 and July 9, 2014. Applicant has failed to provide Opposer with the requested assurances regarding its discovery responses and production. Applicant has also refused Opposer's suggestions for a stipulation which would obviate the need for this motion. As the parties were unable to resolve these issues following multiple meetings, Opposer files the instant motion seeking Board intervention.

III. FACTUAL BACKGROUND

Opposer initiated the instant oppositions against Applicant on November 22, 2010. Opposer's Notices of Opposition cited priority and likelihood of confusion under Section 2(d) of the Lanham Act and dilution under Section 43(c) of the Lanham Act. Opposition Nos. 91197504 and 91197505, D.E. 1.

On March 18, 2013, these Oppositions were consolidated into a single proceeding

following Opposer's consented motion for consolidation. Declaration of Oren Gelber (Gelber Decl.) at ¶ 4 and Opposition Nos. 91197504 and 91197505, D.E. 44. On March 27, 2013, Opposer served Opposer's First Set of Interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Request for Admissions upon Applicant. *Id.* at ¶ 5.

On May 1, 2013, Applicant served Opposer with Applicant's Responses to Opposer's First Set of Interrogatories, Applicant's Responses to Opposer's First Request for Production of Documents and Things, and Applicant's Responses to Opposer's First Request for Admissions. Gelber Decl. ¶ 6 and Exhibit 1.

Applicant served Opposer with document production bates labeled AL0001-131 on May 22, 2013. Gelber Decl. ¶ 7. On June 11, 2013, Applicant filed a Motion to Compel against Opposer, but did not alert Opposer to this filing. D.E. 45. Without knowing of the pending Motion to Compel, Opposer sent Applicant a deficiency letter alleging deficiencies in Applicant's discovery responses on June 13, 2013. Gelber Decl. ¶ 8 and Exhibit 2.

On June 17, 2013, Opposer also served Applicant with its Second Request for Production of Documents and Things and Second Request for Admissions. *Id.* at ¶ 9. On July 12, 2013, the parties held their first meet and confer. *Id.* at ¶ 12. Applicant provided its responses to Opposer's Second Request for Production of Documents and Things and Second Request for Admissions on July 22, 2013. *Id.* at ¶ 12 and Exhibit 3.

On August 9, 2013, the Board suspended these proceedings pending its determination of Applicant's Motion to Compel. *See* D.E. 48. On October 1, 2013, the Board issued an order denying Applicant's Motion to Compel and ordering the parties to meet and confer within 30 days. D.E. 49. In accordance with the Board's Order, counsel for Applicant and Opposer conferred on October 16, 2013 regarding the discovery deficiencies alleged by both parties.

Gelber Decl. at ¶ 13.

Opposer, in furtherance of its discovery obligations and its obligations to meet and confer, served Applicant with supplemental document production on December 30, 2013, and follow up inquiries about Applicant's promise to supplement on November 21, 2013 and December 4, 2013. *Id.* at ¶¶ 14 and Exhibit 4. On December 10, 2013, Applicant supplemented its document production with an additional 45 pages of documents which were not bates stamped. *Id.* at ¶ 7.

On January 10, 2014, Applicant filed its Renewed Motion to Compel. *See* D.E. 50. The Board suspended proceedings in matter pending the determination of Applicant's Renewed Motion to Compel. On May 31, 2014 the Board ruled on Applicant's Renewed Motion to Compel. *See* D.E. 55.

On June 25, 2014, Opposer sent Applicant a letter outlining various discovery issues that were still outstanding. Opposer offered to discuss these issues in the hopes of reaching a resolution and avoiding a Motion to Compel. Gelber Decl. at ¶ 15 and Exhibit 5. Opposer's letter suggested to Applicant a stipulation regarding supplemental discovery which could have avoided a Motion to Compel. *See* Exhibit 5 to Gelber Decl.

The parties held a third meet and confer on July 9, 2014 in an attempt to resolve the remaining discovery issues and also to address Opposer's Motion for Reconsideration. Gelber Decl. at ¶ 17. During the meet and confer, Opposer's counsel reiterated its proposal for a stipulation which would avoid the need for a Motion to Compel, namely an agreement between the parties that responsive documents not produced in response to specified discovery requests would not be available for use at trial. *Id.* at ¶ 18. Unfortunately, the parties could not come to an agreement with regard to the Motion for Reconsideration and Applicant failed to address

Opposer's discovery concerns to Opposer's satisfaction and also did not agree to Opposer's proposal for a stipulation. *Id.* at ¶ 19.

During each of the meet and confer discussions, Applicant's counsel has insisted that Applicant has provided responsive information and documents presently available and that it is not intentionally withholding anything. However, Applicant's counsel has resisted making written statements to the effect that it has no further responsive documents or information, although Opposer has asked for such statements repeatedly.

The reason for Applicant's evasiveness becomes quite clear when Applicant's actions of July 25, 2014 are considered. Throughout the day of July 25, 2014, Applicant's counsel sent Opposer's counsel emails containing supplemental document production, which it asserted applied to this proceeding. *Id.* at ¶ 21 and Exhibit 6. The document production included declarations from three individuals reportedly associated with Alpha Tau Omega, Alpha Chi Omega and Chi Omega, as well as a declaration from Applicant's licensee, Affinity Marketing Consultants. The July 25, 2014 supplemental document production also included Internet printouts relating to Alpha Tau Omega, Alpha Chi Omega, and Chi Omega products, printouts from third party websites regarding Omega's products and copies of third party U.S. Trademark Registrations.

These are not documents which Applicant only recently discovered or became aware of, meriting such late disclosure. These are documents and information which were known, accessible and available to Applicant and Applicant's counsel from the initiation of these Oppositions. From the outset of these proceedings, Applicant's counsel advised Opposer's counsel that he represents various Greek organization. Gelber Decl. at ¶ 23. Applicant's counsel is the U.S.P.T.O. counsel of record for Alpha Chi Omega and Chi Omega. *Id.* at ¶ 22 and Exhibit

7. Accordingly, Applicant and Applicant's counsel clearly had knowledge of this information well prior to July 25, 2014 and could have produced it as early as April 2013. *See Veal v. Geraci*, 23 F.3d 722, 725 (2d Cir. 1994)("In general, when an agent is employed to represent a principal with respect to a given matter and acquires knowledge material to that representation, for purposes of assessing the principal's rights and liabilities vis-a-vis a third person the agent's knowledge is imputed to the principal.")

On July 25, 2014, only two business days before the opening of Opposer's testimony period, Applicant has produced 134 pages of new documents--more than it has produced within the discovery period.

The identity of the declarants was not disclosed to Opposer prior to July 25, 2014 despite Applicant's obligation to supplement its Initial Disclosures and despite specific document production requests seeking such information. By submitting these declarations and documents after the close of discovery, Applicant ensured that Opposer cannot cross-examine these individuals and ascertain the basis of their statements or the origin of the documents presented along with their declarations. Applicant's overdue production also precludes Opposer from seeking any necessary follow up discovery in relation to the newly produced documents and information. It is clear that Applicant has resisted Opposer's calls for definitive statements and withheld responsive documents until this late date in order to prejudice Opposer.

Applicant has selected colorful language in its recently filed Applicant's Opposition to Opposer's Motion for Reconsideration, D.E. 57, p. 1. (Saying it is time for Opposer to "put up or shut up," a phrase which, it is said, derives from gambling). If so, it is appropriate that Applicant has rolled the dice in hoping it would withhold most of its evidence until after the close of discovery (also immunizing its witnesses from the need to testify about the documents

or their origin, or gambling that overdue production could divest Opposer of proper time to consider such evidence. This type of gamble does not pay off under this Board's precedent. *Hunter Indus. v. Toro Co.*, 2014 TTAB LEXIS 105, *10-11 (TTAB Mar. 31, 2014) (untimely supplement stricken); *Great Seats, Inc. v. Great Seats, Ltd.*, 2011 TTAB LEXIS 365 *16 (TTAB Sept. 21, 2011) (failure to identify potential witnesses in response to discovery request until after close of discovery not justified or harmless and merited estoppel sanction).

Opposer therefore submits that it has made a number of good faith efforts to resolve outstanding discovery issues with Applicant. Applicant has repeatedly failed to address these issues to Opposer's satisfaction and is now attempting to make an end run around the discovery and disclosure rules in order to prejudice Opposer in this proceeding. Opposer is compelled to seek the Board's intervention on these points.

IV. ARGUMENT

Opposer respectfully requests an order from the Board (1) precluding Applicant's July 25, 2014 document production as prejudicial to Opposer; (2)(a) precluding Applicant from introducing responsive information and documents currently in existence but not produced by Applicant in response to Opposer's discovery requests, including those seeking information related to witnesses, evidence of first use and documents relevant to these proceedings; and (2)(b) in the alternative, compelling Applicant to fully respond to Opposer's Requests for Production of Documents and Things (Exhibits 1 and 3) by providing all responsive documents and including a statement that all documents have been produced or there are no responsive documents, as appropriate .

Opposer's request for relief finds support in TBMP § 408.02, which states that "[a]

responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto . . . unless the response is supplemented in a timely fashion pursuant to Fed. R. Civ. P. 26(e)." See also *Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 USPQ2d 1789, 1791 (TTAB 2009); *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, 1720 (TTAB 1987).[1]

Opposer's request is also supported by Fed. R. Civ. P. 37(c)(1) as cited it the Board's May 31, 2014 Order. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial.

Applicant's surprise production of nearly double its prior production on July 25, 2014 indicates that Applicant has failed to make a complete search of its records, has provided incomplete responses to discovery requests and has failed to supplement in a timely fashion. As a result, Opposer is prejudiced. Opposer provides below specific examples of Applicant's inadequate discovery responses and production.

Request No. 1

Opposer's Request No. 1 seeks all documents which refer to, relate to, or evidence the first use in interstate commerce of Applicant's Marks by Applicant. Applicant's response states that it is unaware what if any documentation may be reasonably available to it, but that if able to locate any such items, representative items will be produced. To date, no responsive documents have been produced beyond Applicant's cancelled U.S. Registration No. 265052.

[1] Fed. R. Civ. P. 26 (e)(1) states that: A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (B) as ordered by the court.

Applicant's response to this request and its recent last minute supplementation of documents suggest that Applicant has not conducted a reasonable investigation into its available documents.

Opposer therefore requests that Applicant be ordered to produce all responsive documents or, in the alternative, state that there are no (further) responsive documents. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial.

Absent such an Order from the Board with regard to Applicant's discovery responses, Applicant will be free to continue to ignore its discovery obligations, withhold documents Opposer specifically requested and prevent Opposer from questioning any witnesses regarding the authenticity of such documents.

Request No. 35

Opposer's Request No. 35 seeks all documents on which Applicant intends to rely in this proceeding, including all documents that Applicant intends to offer into evidence in this proceeding. Applicant responded that "other than the documents being produced [in] response to all of these requests, documents Applicant has not yet selected any other documents upon which it intends to rely, but will timely identify and produce same."

However, Applicant has failed to timely identify and produce such documents as evidence by its production of over 130 pages worth of documents only two business days before the opening of Opposer's testimony period. The documents, including, declarations produced by Applicant on July 25, 2014 could have been produced as early as April 2013. Instead, Applicant has held these documents and the identities of potential witnesses until the eve of the opening of Opposer's testimony period in order to bar Opposer from seeking to cross-examine these

declarants or ascertain the provenance of documents produced. This late and significant production begs the question, what else has Applicant withheld from production? What else has Applicant failed to disclose?

Applicant should not be rewarded for such dilatory and harassing conduct. Applicant's July 25, 2014 document production should be excluded from this proceeding. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial. In the alternative, Opposer asks that Applicant be compelled to supplement its response and production to this request or submit a statement that no (further) documents are available, as appropriate. The mere fact that Applicant refuses to state that it has no documents or has produced all documents provides plenty of questions about what else Applicant is withholding, necessitating the instant Motion.

Request No. 36

Similarly, Opposer's Request No. 36 seeks all documents identifying, referring to or relating to any person whom Applicant intends to call as a fact or expert witness in this proceeding. Applicant responded that it "has not yet selected persons it intends to call as witnesses in this proceeding, but will timely identify its witness(es)."

Applicant has an obligation to "supplement or correct its discovery responses 'in a timely manner if [it] learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.'" *Great Seats*, 2011 TTAB LEXIS 365 at *10-11 (*citing* Fed. R. Civ. P. 26(e)(1)(A)). "Under the estoppel sanction, a party that fails to provide information may, upon motion or objection by its adversary, be precluded from using that information or witness at trial, 'unless the failure was substantially justified or is harmless.'"

Id. (*quoting* Fed. R. Civ. P. 37(c)(1)); *See also* TBMP § 527.01(e). Such an estoppel sanction was ultimately applied in the *Great Seats* case, where opposer failed to identify witnesses in response to a specific interrogatory request until after the close of discovery. 2011 TTAB LEXIS 365 *16 (TTAB Sept. 21, 2011).

Applicant has failed to timely supplement its response to this Request as evidence by its last minute production of declarations and over 100 pages worth of documents. The fraternity and sorority representatives identified in Applicant's July 25, 2014 document production and the information contained in their declarations could have been and should have been produced to Opposer along with Applicant's other document production during the discovery period. Applicant could have and was also under an obligation to supplement its Initial Disclosures and discovery responses and production throughout this proceeding but has not done so.

As noted above, Applicant's counsel is the U.S.P.T.O. counsel of record for Alpha Chi Omega and Chi Omega. Gelber Decl. ¶ 22 and Exhibit 6. Representatives of these entities now submit declarations in this proceeding. Applicant's counsel thus cannot claim that these witnesses only recently came to his attention; especially given the fact that he has represented from the outset of these Oppositions that he represents various Greek organizations. *Id.* at ¶ 22.

Applicant clearly knew of and had access to these declarants prior to July 25, 2014. Rather than disclose their identities and their declarations in a timely fashion as required by the Trademark and Federal Rules, Applicant has withheld these documents and disclosures until two business days prior to the opening of Opposer's testimony period. By submitting the declarations of these individuals nearly eight months after the close of discovery, Applicant has deprived Opposer of an opportunity to examine these declarants or ascertain the provenance of documents incorporated by reference into their declarations. Opposer is damaged by such

conduct and Applicant obtains an unfair advantage in this proceeding as a result. There is no time to now take deposition of these witnesses, given the July 30, 2014 opening of Opposer's testimony period even if Applicant has consented to the taking of their testimony outside the discovery period. Given the imminent opening of Opposer's testimony period, this prejudice to Opposer cannot be cured.

Applicant has provided no excuse for this untimely production. Applicant and Applicant's counsel had access to this information and these documents well prior to the July 25, 2014 date of production.

The July 25, 2014 declarations should be stricken from this proceeding due to Applicant's untimely production. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial. In the alternative, Opposer requests that Applicant be compelled to provide a complete response and supplement to this request or a statement that no (further) responsive documents are available, as applicable.

Request No. 42

Opposer's Request No. 42 seeks "[a]ll documents that Applicant contends are relevant to this proceeding." In response, Applicant's stands on its objections – essentially that the request is burdensome. However, Applicant has failed to articulate how this request is burdensome when Applicant only previously produced 131 documents during discover and another 45 about a month after the close of discovery. Unless Applicant is withholding significant amounts of relevant documents (which given its recent 134 page document production, it certainly may be), such a request cannot be burdensome.

The July 25, 2014 production of 134 pages of documents evidences that Applicant's

production and disclosure to date has not been anywhere near complete. The large number of documents produced, including the declarations of individuals known to Applicant but not previously supplemented in either Applicant's Initial Disclosures or Applicant's discovery responses, suggests that Applicant has withheld documents and information until the last possible moment in an effort to prejudice Opposer.

As such, Opposer requests that Applicant be ordered to produce responsive documents or, in the alternative, state that there are no further responsive documents. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial. In the alternative, Opposer requests that Applicant be compelled to provide a complete response and supplement to this request or a statement that no (further) responsive documents are available, as applicable.

Request No. 44

Opposer's Request No. 44 seeks "[a]ll documents that evidence, reflect, describe, refer to or relate to the first time Applicant used Applicant's Marks on jewelry." In response, Applicant states that "it has already produced the earliest documents that could be located relating to the earliest use of Greek letters on jewelry. . . If able to locate any further documents responsive to this request, Applicant will produce such documents." Opposer requests that Applicant be ordered to produce responsive documents or, in the alternative, state that there are no further responsive documents. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial.

Request No. 45

Opposer's Request No. 45 seeks "[a]ll documents that evidence, reflect, describe, refer to

or relate to the first time Applicant used Applicant's Marks on watches." In response, Applicant objects to this request on the basis that is it is not relevant nor reasonably calculated to lead to the discovery of any relevant information. Applicant's objections are unfounded. Applicant has produced evidence that it uses its marks on watches but has not established when such use started. Further Opposer's Marks are used on watches, among other goods, as evidenced by the Registrations of record in these proceedings. Similarity of the goods is a *DuPont* factor and therefore of the utmost relevance in the instant proceeding. See also TBMP 414(11) ("the information that a party sells the same goods or services as the propounding party, even if under a different mark, is relevant to the issue of likelihood of confusion for purposes of establishing the relationship between the goods of the parties"). Furthermore, this inquiry relates to Applicant's expansion of its product line and pursuant to TBMP 414(8) "[a] party's plans for expansion may be discoverable under protective order."

This request is clearly relevant and reasonably tailored to lead to the discovery of admissible evidence. Opposer requests that Applicant be ordered to produce responsive documents or, in the alternative, state that there are no further responsive documents. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial. To the extent Applicant has refused to provide responsive documents and later seeks to put on testimony relating to its use on watches, it should be limited to the documents it has previously produced and otherwise rely merely on statements without business records or supporting documents.

Request No. 46

Opposer's Request No. 46 seeks "[a]ll documents that evidence, reflect, describe, refer to or relate to the first time Applicant used Applicant's Marks on goods in Class 25. Applicant

states that it is unaware of what, if any responsive documentation may be available to it and further objects to this request as inconvenient, overbroad, and burdensome. Again, however, pursuant to TBMP § 414(2), Applicant can provide a representative sampling of the information sought or some reduced amount of information to meet discovery needs.

Opposer requests that Applicant be ordered to produce responsive documents or, in the alternative, state that there are no responsive documents. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial.

Request No. 47

Opposer's Request No. 47 seeks "[a]ll communications concerning the decision to place Applicant's Marks on watches." In response, Applicant objects to the request as inconvenient, overbroad, burdensome, and also objects that the requested information is neither relevant nor reasonably calculated to lead to the discovery of relevant information. Nonetheless, Applicant states that "if able to locate any documents regarding Applicant's decision to place Applicant's Mark on watches, Applicant will produce such documents." No responsive documents have been produced to date.

This Request is relevant to likelihood of confusion, as it relates to the coexistence of the marks and the potential for actual confusion, as well as the length of the parties coexistence. Absent documents supporting its contentions, how will Applicant establish use? Opposer is entitled to review such evidence before it is presented at trial. This instance illustrates the basis for the discovery rules requiring timely disclosure.

Opposer requests that Applicant be ordered to produce responsive documents or, in the alternative, state that there are no responsive documents. Opposer further seeks an order stating

that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial.

Request No. 56

Opposer's Request No. 56 seeks "[a]ll documents that evidence, reflect, describe, refer to or relate to the yearly revenue from Applicant's direct sale of products affixed with Applicant's Mark between 1925 and present." Applicant objects to this request as irrelevant and burdensome, but has provided a representative sampling of sales totals from the last five years.

First, Applicant's objection on the basis of relevance is improper. The amount of sales of Applicant's goods is relevant to likelihood of confusion, as it relates to the coexistence of the marks and the potential for actual confusion. To the extent that Applicant is content to rely upon this representative sampling produced, Opposer seeks an affirmative statement that no further documents will be produced and that Applicant will not unduly surprise Opposer with additional sales documents and records. Opposer further seeks an order stating that any responsive documents currently in existence but not produced in response to this Request will not be admitted into evidence at trial.

V. CONCLUSION

Applicant has purposefully and intentionally evaded disclosing and producing documents and information relevant to these proceedings in response to Opposer's discovery requests. This fact is evidenced by the July 25, 2014 production of 134 pages of new documents, including declarations of potentially relevant witnesses. Opposer attempted in good faith on three separate occasions to resolve discovery deficiencies with Applicant. Applicant resisted all such efforts at a resolution. Applicant's production of documents and declarations a mere two business days

prior the opening of Opposer's testimony period necessitates the filing of the instant motion.

Opposer respectfully requests preclusion of Applicant's July 25, 2014 production, due to the fact that these were documents and information were readily available, accessible and known to Applicant and Applicant's counsel and were purposefully withheld by Applicant in order to obtain an unfair advantage in these Oppositions. This eleventh hour production indicates that other responsive and relevant documents have not been produced by Applicant and that Applicant's discovery responses are incomplete. Accordingly, Opposer seeks an order stating that any responsive documents currently in existence but not produced in response to these Requests will not be admitted into evidence at trial. In the alternative, Opposer requests Applicant be ordered to produce all responsive documents or, in the alternative state that there are no further responsive documents in response.

Respectfully Submitted,

By: _____

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Date: July 29, 2014
JMC/TPG/mcm

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED THROUGH THE ELECTRONIC SYSTEM FOR TRADEMARK TRIAL AND APPEALS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

COLLEN *IP*

By: _____ Date: July 29, 2014

CERTIFICATE OF SERVICE

I, Meaghan Machcinski, hereby certifies that a copy of the foregoing **Opposer's Motion To Preclude Unjustifiably Delayed Discovery and To Compel Discovery Responses** was served by First Class U.S. Mail, postage prepaid on this 29th Day of July, 2014 upon

Jack A. Wheat
Stites & Harbison PLLC
400 W Market St Ste 1800
Louisville, KY 40202-3352

_____

ATTORNEY DOCKET NO. K655, K654

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

DECLARATION OF OREN GELBER
IN SUPPORT OF OPPOSER'S MOTION TO COMPEL

I, Oren Gelber, declare as follows:

1. I am an attorney at the firm Collen IP, attorney for Omega SA (Omega AG) (Omega Ltd.). I submit this declaration in support of Opposer's Motion to Compel. The facts set forth in this Declaration are personally known to me and I have first hand knowledge thereof. If called as a witness, I could and would competently testify to all facts within my personal knowledge, except where stated upon information and belief.

2. On November 22, 2010, Opposer initiated Opposition Nos. 91197504 and 91197505 by filing Opposer's Notices of Opposition against Applicant's U.S. Trademark Application Serial Nos. 77950436 and 77905236, respectively.

3. Opposer moved to consolidate these proceedings with Applicant's consent on February 19, 2013.

4. On March 18, 2013 the Board granted Opposer's Motion on Consent to Consolidate Related Proceedings.

5. On March 27, 2013, Opposer served Opposer's First Set of Interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Request for Admissions upon Applicant.

6. On May 1, 2013, Applicant served Opposer with Applicant's Responses to Opposer's First Set of Interrogatories, Applicant's Responses to Opposer's First Request for Production of Documents and Things, and Applicant's Responses to Opposer's First Request for Admissions. A true and correct copy of Applicant's Responses to Opposer's First Request for Production of Documents and Things is attached hereto as Exhibit 1.

7. Applicant served Opposer with document production bates labeled AL0001-131 on May 22, 2013. Applicant produced supplemental document production amounting to an additional 45 pages to Opposer on December 10, 2013 which was not bates-labeled.

8. On June 13, 2013, Opposer sent a letter to Applicant via e-mail and first class mail addressing deficiencies in Applicant's responses to Opposer's First Set of Requests for Admissions, First Set of Interrogatories, and First Set of Requests for the Production of Documents and Things. A true and correct copy of Opposer's June 13, 2013 letter to Applicant is attached hereto as Exhibit 2.

9. On June 17, 2013, Opposer served Applicant with its Second Request for Production of Documents and Things and Opposer's Second Request for Admissions.

10. Applicant's counsel never notified Opposer of Applicant's Motion to Compel in response to the emails sent by Opposer's counsel on June 13 and 17, 2013.

11. On June 17, 2013, Applicant's Motion (1) To Compel Discovery and (2) To Test Sufficiency of Responses to Requests for Admissions was received by mail in Opposer's counsel's office.

12. The parties held their first meet and confer telephone conference on July 12, 2013. On July 22, 2013, Applicant served Opposer with Applicant's Responses to Opposer's Second Request for Production of Documents and Things, and Applicant's Responses to Opposer's Second Request for Admissions. A true and correct copy of Applicant's Responses to Opposer's Second Request for Production of Documents and Things is attached hereto as Exhibit 3.

13. Pursuant to the Board's Order of October 1, 2013 (D.E. 49), counsel for Opposer and Applicant met and conferred on October 16, 2013.

14. Opposer's counsel also followed up with Applicant's counsel concerning Applicant's supplemental document production, as discussed during the October 16, 2013 meet and confer. These communications were by email on November 21, 2013 and December 4, 2013. True and correct copies of Opposer's counsel's November 21, 2013 and December 4, 2013 emails to Applicant's counsel are attached as Exhibit 4.

15. On June 25, 2014, Opposer sent Applicant a letter outlining various discovery issues that were still outstanding. A true and correct copy of Opposer's June 25, 2014 letter to Applicant is attached as Exhibit 5.

16. On June 30, 2014, Opposer served upon Applicant its supplemental Interrogatory, Admission and Document Production responses and supplemental document production and a privilege log.

17. On July 9, 2014, the parties held a third meet and confer in an attempt to resolve the remaining discovery issues. The parties also conferred regarding a possible resolution of issues raised in Opposer's Motion for Reconsideration.

18. During the July 9, 2014 meet and confer, Opposer's counsel reiterated its proposal for an agreement between the parties that responsive documents not produced in response to specified discovery requests would not be available for use at trial, as a means of avoiding a Motion to Compel.

19. The parties were unable to resolve the outstanding discovery issues raised by Opposer and Applicant did not agree to Opposer's proposed stipulation.

20. During the July 9, 2014 meet and confer, Applicant's counsel reiterated prior statements that Applicant has provided responsive information and documents presently available and that it is not intentionally withholding anything. Despite such statements, Applicant's counsel has resisted making statements in signed discovery responses that it has no further responsive documents or information.

21. On July 25, 2014, Applicant's counsel sent Opposer's counsel the emails with supplemental document production amounting to 134 pages of documents, including 4 declarations. True and correct copies of emails from Applicant's counsel to Opposer's counsel are attached as Exhibit 6.

22. Applicant's counsel is counsel of record for Alpha Chi Omega and Chi Omega before the U.S.P.T.O. True and correct copies of printouts from the U.S.P.T.O. indicating

Applicant's counsel as the counsel of record for Alpha Chi Omega and Chi Omega are attached as Exhibit 7.

23. Applicants' counsel has advised from the outset of these proceedings that he represents a number of fraternities and sororities.

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

Executed July 29, 2014 at Ossining, New York.

Oren Gelber

Oren Gelber

EXHIBIT 1

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 No. 91197505** **Serial No. 77905236**
OMEGA, S.A., **OPPOSER,** **v.** **ALPHA PHI OMEGA,** **APPLICANT.**	**Opposition No. 91197504** **Serial No. 77950436**

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Applicant, Alpha Phi Omega, by counsel, for its responses to Opposer's First Set of Requests for the Production of Documents and Things, states as follows:

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1: All documents which refer to, relate to, or evidence the first use in interstate commerce of Applicant's Marks by Applicant.

RESPONSE: Applicant's name, ALPHA PHI OMEGA, its Greek letter insignia, AΦΩ, and its coat-of-arms insignia were adopted in 1925 by the founders of the Alpha Phi Omega Fraternity and each of the founders of Alpha Phi Omega are now deceased. Applicant is unaware what, if any documentation may be reasonably available to it "which refer to, relate to, or evidence *the first use* in interstate commerce of Applicant's Marks by Applicant" (emphasis added). If able to locate any such items, representative items will be produced.

REQUEST NO. 2: Documents evidencing any corporations, companies, partnerships, joint ventures or like organizations, registered or unregistered, through which Applicant sells, advertises and/or markets Products bearing Applicant's Marks.

RESPONSE: Applicant object to the vagueness of "[d]ocuments evidencing any" of the described entities. Applicant further objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing documents identifying any organizations through which it sells "Products bearing Applicant's Marks." The requested information appears neither relevant, nor reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce an existing current listing of licensees maintained by Applicant's licensing agent.

REQUEST NO. 3: All documents relating to any application ever filed in the United States for federal or state registration of Applicant's Marks.

RESPONSE: Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents, especially to the extent this request relates to filing other than the filings in issue in these Oppositions. Applicant further objects to the production of any "related" documents containing confidential communications between Applicant and its counsel. As for the two pending applications, the filings are readily accessible to Opposer through the PTO's on-line Trademark Status and Document Retrieval system and therefore it would be an unnecessary burden and expense to require Applicant to produce same

REQUEST NO. 4: All documents that evidence, reflect, describe, refer to, or relate to the selection or creation of Applicant's Mark or any reason why you selected, adopted or applied to register this mark.

RESPONSE: Applicant's name, ALPHA PHI OMEGA, its Greek letter insignia, AΦΩ, and its coat-of-arms insignia were adopted in 1925 by the founders of the Alpha Phi Omega Fraternity and each of the founders of Alpha Phi Omega are now deceased. Applicant is unaware what, if any documentation may be reasonably available to it which "refer to, or relate to the selection or creation of Applicant's Mark or any reason why you selected, [or] adopted . . . this mark." If able to locate any such items, representative items will be produced. As for the decision to register the Marks, Applicant objects to this request because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 5: All documents evidencing, reflecting, or referring to the selection, availability, adoption, creation, design, use or proposed use of Applicant's Mark, including without limitation, any notes from any meetings or any telephone or video conferences at which such topics were discussed.

RESPONSE: See response to request number 4 above, which response is incorporated herein by this reference.

REQUEST NO. 6: Documents relating to the manufacturing or developing of Products to be used with Applicant's Marks in the United States.

RESPONSE: Applicant object to the vagueness of this request. Applicant further objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 7: All licenses, agreements, consents or other documents concerning third-party use of Applicant's Marks in the United States.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce an existing current listing of licensees maintained by Applicant's licensing agent.

REQUEST NO. 8: All documents concerning third-party use of Applicant's Marks, whether authorized or unauthorized, in the United States.

RESPONSE: Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce an existing current listing of licensees maintained by Applicant's licensing agent.

REQUEST NO. 9: All documents evidencing each Product with which Applicant's Marks are used in the United States.

RESPONSE: Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials relating to products sold under Applicant's Marks.

REQUEST NO. 10: Samples of actual Products sold in the United States under Applicant's Marks, with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by Applicant, or by others authorized by, or in conjunction with, Applicant, in the ordinary course of business.

RESPONSE: Whether applicant has made a bonafide use in commerce of the Marks is not an issue in these Oppositions. Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials relating to products sold under Applicant's Marks.

REQUEST NO. 11: A sample of the complete packaging in which each and every Product sold or distributed by Applicant in the United States under the Applicant's Marks is:

(a) shipped from Applicant to Applicant's customers;

(b) displayed at the point of sale to the ultimate users; and/or

(c) contained when sold or distributed to the ultimate users.

RESPONSE: Whether applicant has made a bonafide use in commerce of the Marks is not an issue in these Oppositions. Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials relating to products sold under Applicant's Marks.

REQUEST NO. 12: Representative invoices evidencing Applicant's yearly sales (in dollars) in the United States, of Products bearing Applicant's Marks.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Whether Applicant's Marks have obtained secondary meaning, are widely known, or famous is not an issue in these Opposition proceedings. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. The extent of use, fame of, or secondary meaning associated with the marks of the Applicant are not issues in the pending Oppositions. Accordingly, Alpha Phi Omega objects to this Interrogatory because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Further, considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 13: Representative documents identifying the number of Products bearing Applicant's Marks sold by Applicant in the United States.

RESPONSE: Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. Applicant objects to the burden of responding to this request. Alpha Phi Omega further objects because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. The '236 Mark sought to be registered is Alpha Phi Omega's Greek Alphabet letters insignia, AΦΩ. This application is for assorted clothing lines, namely, headwear, jackets, shirts, and sweat shirts. The

'436 Mark sought to be registered is Alpha Phi Omega's coat-of arms. This application is for jewelry. Applicant object to the relevance of this request. The number of hat designs, the number of jacket designs, the number of shirt designs, the number of sweat shirt designs, the number of jewelry designs is neither relevant, nor reasonably calculated to lead to the discovery of any relevant information. Further, considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials demonstrating a variety products sold under Applicant's Marks.

REQUEST NO. 14: Representative documents identifying Products bearing Applicant's Marks that are, or were, sold or advertised by Applicants in the United States.

RESPONSE: Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used its marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. Applicant objects to the burden of responding to this request. Applicant will produce a current sampling of advertising and point of purchase materials relating to products currently sold under Applicant's Marks.

REQUEST NO. 15: All documents identifying Products Applicant plans to sell, market or develop in the United States under Applicant's Marks in the future.

RESPONSE: Applicant objects to this unreasonably and unnecessarily invasive harassing discovery request. The requested information appears neither relevant, nor likely to lead to the discovery of any relevant information.

REQUEST NO. 16: Any tags or labels used by Applicants in connection with the sale of Products under the Applicant's Marks in the United States.

RESPONSE: Whether applicant has made a bonafide use in commerce of the Marks is not an issue in these Oppositions. Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating from its licensees any responsive materials, especially considering the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials relating to products sold under Applicant's Marks.

REQUEST NO. 17: Samples promotional [SIC] and advertising materials, created by or on behalf of Applicant, on which the term OMEGA or symbol "Ω" (alone or in connection with other elements) is printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

RESPONSE: Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega, including use of its name ALPHA PHI OMEGA, and its Greek letter insignia, AΦΩ in relation to advertising the fraternity in general, as well as with products sold under the Marks in issue. Thus Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials relating to products sold under Applicant's Marks.

REQUEST NO. 18: A representative sample of documents showing all Products and promotional and advertising materials used or sold by Applicant in the United States, on which

the term OMEGA or symbol "Ω" is emphasized, isolated or otherwise distinguished from the other elements of Applicant's Marks.

RESPONSE: Applicant is unaware of any documents responsive to this request

REQUEST NO. 19: All communications concerning the significance of the term OMEGA or symbol "Ω" to Applicant and/or Applicant's Marks.

RESPONSE: Applicant objects to this request. The only item responsive to this requests would be Applicant's confidential ritual used during the initiation of new members into the Alpha Phi Omega Fraternity. In addition to being confidential, Applicant's ritual is neither relevant, nor reasonably calculated to lead to the discovery of any information relevant to any of the issues in these Oppositions.

REQUEST NO. 20: A representative sample of documents relating to the advertising in the United States of any Products sold by Applicant under Applicant's Marks, including invoices for advertising services, for each year the mark has been used.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Whether Applicant's Marks have obtained secondary meaning, are widely known, or famous is not an issue in these Opposition proceedings. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. The extent of use, fame of, or secondary meaning associated with the marks of the Applicant are not issues in the pending Oppositions. Accordingly, Alpha Phi Omega objects to this Interrogatory because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Further, considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this information and

unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials relating to products sold under Applicant's Marks.

REQUEST NO. 21: A representative sample of documents relating to the promotion and marketing, including, but not limited to, point of sale and point of purchase materials, of any Products sold by Applicant in the United States under Applicant's Marks, for each year the mark has been used.

RESPONSE: Applicant objects to this unreasonably and unnecessarily invasive harassing discovery request. Whether Applicant's Marks have obtained secondary meaning, are widely known, or famous is not an issue in these Opposition proceedings. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. The extent of use, fame of, or secondary meaning associated with the marks of the Applicant are not issues in the pending Oppositions. Accordingly, Alpha Phi Omega objects to this Interrogatory because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Further, considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Notwithstanding, Applicant will produce a current sampling of advertising and point of purchase materials relating to products sold under Applicant's Marks.

REQUEST NO. 22: All documents identifying the channels of trade of the Products sold in the United States under the Applicant's Marks.

RESPONSE: The typical channel of trade for products sold under Applicant's marks are in the collegiate affinity products markets including display in the fraternity and sorority products sections of collegiate bookstores and gift shops, through mail order solicitations directed to members of Alpha Phi Omega, though the on-line store at Alpha Phi Omega's website, though the on-line stores operated by vendors offering fraternity and sorority merchandise and through displays made at Alpha Phi Omega member conferences and events. Applicant objects to the burden of producing "[a]ll documents identifying the channels of trade," but will produce a sampling of any documents it can locate reflecting the current channels of trade.

REQUEST NO. 23: All documents relating or referring to the target consumers for any Products bearing the Applicant's Marks.

RESPONSE: Applicant will produce a sampling of documents, if any, within its possession or control describing the target consumers.

REQUEST NO. 24: A listing of the Applicant's customers in the United States for Products sold under the Applicant's Marks.

RESPONSE: Target consumers for Applicant's products are all of the members of the Alpha Phi Omega Fraternity, and persons wishing to purchase Alpha Phi Omega emblazoned merchandise as gifts for members of the fraternity. Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request that would require Applicant to invade the privacy of its members by individually identifying them in this proceeding, especially considering the lack of any reasonable relevance of the requested information, nor does the requested information appears reasonably likely to lead to the discovery of any relevant information. Further, considering that Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of

Greek affinity merchandise with the approval of Alpha Phi Omega it would be unreasonably harassing and burdensome to expect Applicant to even attempt to accumulate the requested information.

REQUEST NO. 25: Samples of all marketing and promotional materials, including, without limitation, labels, tags, packaging, brochures, advertisements, pamphlets, manuals, product information sheets, and any other promotional merchandise or literature, on which Applicant's Marks have been printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

RESPONSE: This request appears generally duplicative of Requests no. 11, 16, 17, 20 and 21 above. See responses to said requests, which responses are incorporated herein by this reference.

REQUEST NO. 26: All documents that refer or relate to Opposer or to Opposer's Marks.

RESPONSE: Applicant's object to this request to the extent it would apply to any confidential communications between Applicant and its counsel relating to these Oppositions, or to the extent the request relates to any work product materials prepared or obtained by Applicant's counsel. Other than documents produced between the parties in these oppositions, Applicant is unaware of any other responsive documents.

REQUEST NO. 27: All trademark searches, surveys, polls, consumer perception studies, focus group studies, market research studies, or other investigations, searches, studies, or reports that Applicant conducted, caused to be conducted, or obtained in connection with the selection of the Applicant's Marks.

RESPONSE: Applicant's name, ALPHA PHI OMEGA, its Greek letter insignia, AΦΩ, and its coat-of-arms insignia were adopted in 1925 by the founders of the Alpha Phi Omega Fraternity and each of the founders of Alpha Phi Omega are now deceased. It is unlikely there are any existing records reflecting whether any such inquiries were conducted. If any non-objectionable responsive records are located, they will be produced.

REQUEST NO. 28: All trademark searches, surveys, polls, consumer perception studies, focus group studies, market research studies, or other investigations, searches, studies, or reports that include any reference to Opposer, Opposer's Marks, Applicant, or Applicant's Marks, and all documents that refer or relate to any such search, survey, poll, study, investigation or report.

RESPONSE: Applicant is unaware of any documents responsive to this request.

REQUEST NO. 29: All communications with any person other than Opposer concerning a dispute or potential dispute between Applicant and Opposer regarding trademark ownership rights in the United States.

RESPONSE: Applicant's object to this request to the extent it would apply to any confidential communications between Applicant and its counsel relating to these Oppositions, or to the extent the request relates to any work product materials prepared or obtained by Applicant's counsel. Applicant is unaware of any other responsive documents.

REQUEST NO. 30: All documents that constitute, evidence, reflect, describe, refer to, or relate to any investigation, trademark search, inquiry, survey, poll, consumer perception study, focus group study, market research study, or other search, survey, poll, study, or investigation that relates to any mark that includes or consists of the term OMEGA or symbol "Ω".

RESPONSE: Applicant is unaware of any documents responsive to this request.

REQUEST NO. 31: All documents that constitute, evidence, reflect, describe, refer to, or relate to any confusion expressed or experienced by any person between Applicant's Mark and Opposer's Marks, or between any Product offered for sale under Applicant's Mark and any product offered for sale under Opposer's Marks.

RESPONSE: Applicant is unaware of "any confusion expressed or experienced by any person between Applicant's Mark and Opposer's Marks, or between any Product offered for sale under Applicant's Mark and any product offered for sale under Opposer's Marks," and therefore is unaware of any documents responsive to this request.

REQUEST NO. 32: All documents identifying any domain names or websites owned or operated by Applicant that include the Applicant's Mark, or the term OMEGA, alone or in combination with other words or elements.

RESPONSE: There are no documents responsive to this request.

REQUEST NO. 33: All documents identifying domain names or websites through which Applicant sells or advertises Products bearing Applicant's Mark.

RESPONSE: Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing "[a]ll documents" relating to any "websites through which Applicant sells or advertises Products bearing Applicant's Mark." Applicant will produce responsive items from its website, and an existing current listing of licensees maintained by Applicant's licensing agent, which listing identifies various websites advertising the Products.

REQUEST NO. 34: Documents evidencing all other uses by Applicant of the term OMEGA, the symbol "Ω", and/or the symbol that constitutes Applicant's Mark, alone or in combination with other elements.

RESPONSE: Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega, including use of its name ALPHA PHI OMEGA, and its Greek letter insignia, AΦΩ in relation to advertising the fraternity in general, as well as with products other the products sold under the Marks in issue. Thus Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 35: All documents on which Applicant intends to rely in this proceeding, including all documents that Applicant intends to offer into evidence in this proceeding.

RESPONSE: Other than the documents being produced response to all of these requests, documents Applicant has not yet selected any other documents upon which it intends to rely, but will timely identify and produce same.

REQUEST NO. 36: All documents identifying, referring to or relating to any person whom Applicant intends to call as a fact or expert witness in this proceeding.

RESPONSE: Applicant has not yet selected persons it intends to call as witnesses in this proceeding, but will timely identify its witness(es).

REQUEST NO. 37: All documents Applicant has provided or shown to any person whom Applicant intends to call as a fact or expert witness in this proceeding.

RESPONSE: There are currently no documents responsive to this request. If and when there are any non-objectionable responsive documents, those documents will be timely produced.

REQUEST NO. 38: All documents relied upon, either in whole or in part, as a basis for any opinion rendered or to be rendered by an expert witness whom Applicant may call to testify in this proceeding.

RESPONSE: There are currently no documents responsive to this request. If and when there are any non-objectionable responsive documents, those documents will be timely produced.

REQUEST NO. 39: All statements, affidavits, declarations, reports and communications you have received from any person who is expected to give expert testimony as an expert witness on behalf of Applicant in this proceeding.

RESPONSE: There are currently no documents responsive to this request. If and when there are any non-objectionable responsive documents, those documents will be timely produced.

REQUEST NO. 40: All documents identified by Applicant in response to Opposer's First Set of Interrogatories served contemporaneously herewith.

RESPONSE: Any non-objectionable responsive items will be produced.

REQUEST NO. 41: All documents that Applicant was required to identify, or from which Applicant obtained information, in responding to Opposer's First Set of Interrogatories, served contemporaneously with these Requests, and which documents have not been otherwise produced in response to these Requests.

RESPONSE: Other than any responsive documents for which an objection is made, which objections are incorporated herein by this reference, any documents responsive to this request would "have . . . been otherwise produced in response to these Requests."

REQUEST NO. 42: All documents that Applicant contends are relevant to this proceeding.

RESPONSE: Applicant objects to the lack of "reasonable particularity" of this request in contravention of the rules and regulations relating to the propounding of Requests for Production. Applicant further here incorporates by reference each and every objection stated above. Additionally, Applicant objects to the this request to the extent it would burden applicant to locate and produce documents duplicative of the documents and samplings Applicant is producing. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. Accordingly because this request is unlimited in scope and time, it would be harassing and burdensome to require Applicant to fish through 90 years of records to locate any documents of limited relevance.

Jack A. Wheat
Lindsay Y. Capps
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-3400

Counsel for Alpha Phi Omega

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing has been served on counsel for Opposer by mailing said copy this1st day of May, 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

Jack A. Wheat
Attorney for Applicant

AL169:00AL1:924334:1:LOUISVILLE

EXHIBIT 2

COLLEN IP
INTELLECTUAL PROPERTY LAW
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June 13, 2013

BY EMAIL TO: JWHEAT@STITES.COM
CONFIRMATION BY MAIL
Stites & Harbison PLLC
400 W Market Street, Suite 1800
Louisville, KY 40202-3352
Attention: Jack A. Wheat, Esq.

RE: U.S. Trademark Oppositions 91197505; 91197504
Omega SA (Omega AG) (Omega Ltd.) v. Alpha Phi Omega
Adverse Applicant : Alpha Phi Omega
Adverse Marks : AΦΩ; ALPHA PHI OMEGA & design
Adverse Serial Nos.: 77/905,236; 77/950,436
Our Refs. : K654; K655

Dear Mr. Wheat:

I am writing to address deficiencies in Applicant's responses to Opposer's First Set of Requests for Admissions, First Set of Interrogatories, and First Set of Requests for the Production of Documents and Things.

With respect to Applicant's responses to Opposer's First Set of Requests for Admissions, Opposer believes that the responses to requests 1, 3, 9-18 are deficient for the reasons set forth below.

- Response to Request 1: Request 1 asks Applicant to admit that all documents produced by Applicant in response to Opposer's First Set of Requests for the Production of Documents and Things in this proceeding are genuine pursuant to the Federal Rules of Evidence. In response, Applicant objects to this requests because it does not separately identify the documents as allegedly required by the rules and regulations relating to Requests for Admissions. To Opposer's knowledge, Fed. R. Civ. P 36(a)(2) does not require that each individual document be identified. Rule 36(a)(2) does require that a copy of the document(s) be provided unless it is, or has been, otherwise furnished or made available for inspection. This requirement is met as Opposer seeks an admission that the documents *produced by Applicant* are genuine. Applicant has full knowledge of these

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produced by Applicant are genuine. Applicant has full knowledge of these documents. Further, as Applicant has now served its document production, Applicant is obligated to supplement its response to this request based upon such production.

- Request No. 3: Request 3 asks Applicant to admit that all documents produced by Applicant in response to Opposer's First Set of Requests for the Production of Documents and Things in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections on the grounds of relevance. Applicant advised that it cannot respond because it had not identified the documents it would produce. As Applicant has now served its document production, Applicant is obligated to supplement its response to this request based upon such production.
- Responses to Requests 9-12: Requests for Admissions 9-12 inquire about Applicant's knowledge of Opposer, Opposer's Marks, and Opposer's use of its Marks on watches and/or jewelry prior to the filing of Applicant's application. Applicant objects to each of these requests as being "neither relevant, nor calculated to lead to the discovery of any relevant information." Prior knowledge of a mark can be indicative of intent to cause confusion or to "piggy back" off the goodwill which has inured to the senior user's mark. Further, T.B.M.P. 414(19) states that "information concerning a defendant's actual knowledge of plaintiff's use of the plaintiff's involved mark, including whether defendant has actual knowledge thereof, and, if so, when and under what circumstances it acquired such knowledge, is discoverable."
- Response to Request 13: Applicant denies that the "goods listed in Applications for Applicant's Marks are highly similar to the goods and services Opposer offers under Opposer's Marks." This is inconsistent with other documents and responses of Applicant. Applicant must amend its response to this Request.
- Request to Admit 14: This Request ask Applicant to admit that Opposer's date of first use of Opposer's Marks pre-dates the date of first use of Applicant's Marks. Applicant responds that Opposer did not furnish evidence of its first use and thus Applicant is unable to respond. This is an incorrect statement of the facts in this case. Opposer produced numerous documents attesting to the first use of Opposer's Marks. Accordingly, Applicant's objection is without basis and Applicant's response to this Request must be amended.
- Responses to Requests 15-16: Requests 15 and 16 ask Applicant to admit that it had knowledge of Opposer's Marks prior to submitting its applications to register Applicant's Marks. Applicant objects to both of these requests as being "neither relevant, nor calculated to lead to the discovery of any relevant information." As discussed above, prior knowledge of a mark can

be indicative of intent to cause confusion or to "piggy back" off the goodwill which has inured to the senior user's mark. Further, T.B.M.P. 414(19) states that "information concerning a defendant's actual knowledge of plaintiff's use of the plaintiff's involved mark, including whether defendant has actual knowledge thereof, and, if so, when and under what circumstances it acquired such knowledge, is discoverable."

- Responses to Requests 17-18: Requests 17 and 18 ask Applicant to admit that Opposer's Marks are well-known in the United States and are famous marks. Applicant objects that such requests are irrelevant and are not reasonably calculated to lead to the discovery of relevant information. Because such requests are relevant to Opposer's claim of dilution, which requires that Opposer's mark be well-known and famous, Applicant's objection is improper, as is the territorial objection given the instructions provided by Opposer which explicitly state that "[u]nless otherwise noted, the geographic scope of these discovery requests is limited to the United States."

With respect to Applicant's responses to Opposer's First Set of Requests for the Production of Documents and Things, the responses to requests 2, 12, 13, 15, 19, 20 and 34 are deficient for the reasons set forth below.

- Response to Request 2: Request 2 generally seeks production of documents evidencing any corporations, companies, partnerships, etc. through which Applicant sells, advertises, and/or markets Products bearing Applicant's Marks. Applicant objects that the requested information is neither relevant, nor reasonably calculated to lead to the discovery of any relevant information. Such objections are unfounded as such third parties would have knowledge regarding the use of Applicant's Marks and the channels of trade through which the goods bearing Applicant's Marks are distributed, which are directly relevant to likelihood of confusion in these oppositions. Opposer requests that Applicant remove the relevance objection and that Applicant produce any documents which were withheld based upon this objection.
- Responses to Requests 12 & 13: In request 12, Opposer seeks production of representative invoices evidencing Applicant's yearly sales in the United States of Products bearing Applicant's Marks. In request 13, Opposer seeks production of representative documents identifying the number of Products bearing Applicant's Marks sold by Applicant in the United States. Applicant objects to these requests as "neither relevant, nor likely to lead to the discovery of any relevant information." Such information is also relevant and, as per T.B.M.P. 414(18), "annual sales and advertising figures, stated in round numbers, for a party's involved goods of services sold under its

involved mark are proper matters for discovery." This evidence is also relevant to determining the veracity of Applicant's claims that it has continuously used the opposed marks as well as the degree to which the parties have coexisted, as Applicant claims. Since the standard protective order is in effect, Applicant may provide any responsive, confidential materials in accordance with the order.

- Response to Request 15: In request 15, Opposer seeks production of all documents identifying Products Applicant plans to sell, market, or develop in the United States under Applicant's Marks in the future. Applicant objects to these requests as "neither relevant, nor likely to lead to the discovery of any relevant information." Applicant fails to recognize that such information is relevant and, as per T.B.M.P. 414(8), "a party's plans for expansion may be discoverable under a protective order." Since the standard protective order is in effect, Applicant is obliged to provide any responsive, confidential materials in accordance with the order.
- Response to Request 19: Request 19 seeks the production of communications concerning the significance of the term OMEGA or the symbol "Ω" to Applicant and/or Applicant's Mark. Opposer objected that the significance is disclosed during a confidential ritual. Such a response is consistent with Applicant's response to Interrogatory No. 11, in which Applicant disclosed that the symbol "Ω" is the first letter in the Greek word "Ophelia." Furthermore, to the extent that Applicant claims that the ritual used during the initiation ceremony is confidential, such objection is irrelevant in light of the standard protective order. Since the standard protective order is in effect, Applicant is obliged to provide any responsive, confidential materials in accordance with the order.
- Response to Request 20: Request 20 seeks a representative sample of documents relating to the advertising in the United States of any Products sold by Applicant under Applicant's Marks, including invoices for advertising services, for each year the mark has been used. Applicant objects that this request is "neither relevant, nor likely to lead to the discovery of any relevant information." Pursuant to T.B.M.P 414(18) however, "annual sales and advertising figures, stated in round numbers, for a party's involved goods of services sold under its involved mark are proper matters for discovery." This evidence is relevant to determining the veracity of Applicant's claims that it has continuously used the opposed marks. Since the standard protective order is in effect, Applicant is obliged to provide any responsive, confidential materials in accordance with the order.
- Response to Request 34: Request 34 seeks documents evidencing all other uses by Applicant of the term OMEGA, the symbol "Ω", and/or the symbol that constitutes Applicant's Mark, alone or in combination with other elements. Applicant objects that this request is neither relevant nor

reasonably calculated to lead to the discovery of relevant information. This request is relevant because it seeks information regarding Applicant's use of its own marks and the use of Opposer's marks. This information is relevant to a likelihood of confusion analysis. Pursuant to T.B.M.P. 414(11), information that a party sells the same goods or services as the propounding party, even if under a different mark, is relevant to the issue of likelihood of confusion for purposes of establishing the relationship between the goods or services of the parties.

With respect to Applicant's responses to Opposer's First Set of Interrogatories, the responses to requests 3, 9, 11, 14 and 16 are deficient for the reasons set forth below.

- Interrogatory No. 3: Applicant's response to interrogatory 3 is unresponsive to the question presented. Opposer seeks information regarding the earliest date susceptible to proof when Applicant made sales of the Products identified in response to interrogatory 2. Applicant responds that its marks have been in use since 1925, but does not mention the first sale of the specific Products identified in response to interrogatory 2.
- Interrogatory No. 9: Interrogatory 9 requests that Applicant identify the total amount of marketing and/or advertising expenditures for Products bearing Applicant's marks in the United States incurred by Applicant. Applicant objects that this request is neither relevant, nor likely to lead to the discovery of any relevant information. Due to the asserted lack of relevance and "unnecessarily invasive" nature of the request, Applicant did not offer a response. Pursuant to T.B.M.P 414(18) however, "annual sales and advertising figures, stated in round numbers, for a party's involved goods of services sold under its involved mark are proper matters for discovery." This evidence is relevant to determining the veracity of Applicant's claims that it has continuously used the opposed marks. Since the standard protective order is in effect, Applicant obliged to provide any responsive, confidential materials in accordance with the order.
- Interrogatory No. 11: Interrogatory 11 inquires about the significance of the term OMEGA or the symbol "Ω" to Applicant and/or Applicant's Mark. In response Applicant notes that the symbol "Ω" is the first letter in the Greek word "Ophelia," meaning to be of service. However, Applicant does not disclose how this relates to Applicant or Applicant's Mark. Please clarify.
- Interrogatories No. 14 & 16: Interrogatory 14 requests generally identification of all third party uses, through license agreements or otherwise, of Applicant's Mark of which Applicant is aware. Interrogatory 16 requests that Applicant identify any assignment, license, royalty or other permitted use agreements with respect to any Products bearing the

party's awareness of a third-party use of the same or similar marks for the same or closely related goods or services as an involved mark, is discoverable." Pursuant to T.B.M.P. 414(10), "information concerning... contractual agreements between a responding party and third parties based upon the responding party's mark is discoverable." To the extent that such information may be confidential, such information should be provided in accordance with the standard protective order.

In light of the foregoing deficiencies, Opposer demands that Applicant immediately supplement its response with full, complete and substantive answers to Opposer's discovery responses by **June 18, 2013**.

To the extent that Applicant does not have responsive documents or information relevant to a particular Request or Interrogatory, Applicant should state this fact in unequivocal terms in its amended and/or supplemental responses.

Finally, we advise our response to Applicant's deficiency letter will be forthcoming. We enclose Opposer's Supplemental Responses to Applicant's First Set of Interrogatories.

Should you wish to discuss these deficiencies, please do not hesitate to contact me.

Very truly yours,
COLLEN *IP*

Oren Gelber

Oren Gelber

JMC/OG/KAM:eg

Enclosure: Supplemental Response to Interrogatories

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ATTORNEY DOCKET NO. K655, K654

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 SUPPLEMENTAL RESPONSES 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 interrogatoriesto the extent that Applicant has exceeded the permitted number of interrogatories, including subparts, as set forth in37 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.

SUPPLEMENTAL 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 has produced a list of the names and locations

of the retail locations where its products and services sold. See OSA000029-218. 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. 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.

SUPPLEMENTAL 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 has produced responsive documents. See OSA002802; OSA002853-2859; OSA002861. Opposer reserves its right to supplement its response 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.

SUPPLEMENTAL 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 has produced documents that are responsive to this interrogatory. See OSA002803-2826; OSA002848. Opposer reserves its right to supplement its response 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.

SUPPLEMENTAL 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 has produced documents that are responsive to this interrogatory. See OSA000219-1766. Opposer reserves its right to supplement its response to this Interrogatory.

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.

SUPPLEMENTAL 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 has produced a list of the names and locations of the retail locations where its products and services sold. See OSA000029-218. 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. Opposer reserves the right to supplement its response to this Interrogatory.

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.

SUPPLEMENTAL 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 has produced documents that are responsive to this interrogatory. See OSA00219-1767; OSA002803-2826; OSA002848. Opposer reserves the right to supplement its response 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.

SUPPLEMENTAL 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, Opposer has produced documents that are responsive to this interrogatory. See OSA00219-1767; OSA002803-2826; OSA002848. Opposer reserves the right to supplement its response 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.

SUPPLEMENTAL 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, Opposer has produced documents that are responsive to this interrogatory. See OSA00219-1767; OSA002803-2826; OSA002848. Opposer reserves the right to supplement its response 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.

SUPPLEMENTAL 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 has produced documents responsive to this interrogatory. See OSA001814-1826; OSA001828-1829; OSA001867-1873; OSA001968-1978; OSA001991-1994; OSA002011-2014; OSA002086-2115; OSA2120-2123; OSA002128-2133; OSA002140-

OSA2143; OSA002148-2158; OSA002161-2166; OSA002231-2232; OSA002242; OSA002248-2249. Opposer reserves the right to supplement its response to this Interrogatory.

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).

SUPPLEMENTAL ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer incorporates by reference all of the objections it asserted in response to Applicants First Requests for Admission. Opposer objects that this request is overly broad, vague, ambiguous and unduly burdensome as Applicant has not identified any specific Request in particular. Opposer objects that this Interrogatory is not relevant to the instant proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Opposer incorporates by reference all of its objections to the denied Requests for Admissions, including that Applicant is attempting to impose upon Opposer an obligation beyond the scope of the Federal and

Trademark Rules, that Applicant is seeking information beyond Opposer's knowledge and that Applicant is attempting to obtain discovery which is irrelevant to the instant proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully Submitted
As to Objections,

By: Oren Gelber

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Date: June 13, 2013

CERTIFICATE OF SERVICE

I, Edie Garvey, hereby certify that I caused a true and correct copy of Opposer's Supplemental Responses To Applicant's First Set Of Interrogatories to be served upon the following, via first class mail, postage prepaid this 13th Day of June, 2013.

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

Edie Garvey

EXHIBIT 3

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: AΦΩ Opp. No.: 91197505 (Parent) Serial No.: 77905236
OMEGA, S.A. (OMEGA AG (OMEGA LTD), **OPPOSER,** **v.** **ALPHA PHI OMEGA,** **APPLICANT.**	Mark: ALPHA PHI OMEGA and design Opp. No.: 91197504 (Child) Serial No.: 77950436

APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Applicant, Alpha Phi Omega, by counsel, for its responses to Opposer's Second Set of Requests for the Production of Documents and Things, states as follows:

DOCUMENTS TO BE PRODUCED

REQUEST NO. 43: All documents that evidence, reflect, describe, refer to or relate to oral contracts or agreements Applicant has made with regards to Applicant's Marks.

RESPONSE: Applicant's Marks were adopted in 1925, and Applicant's Marks have been in use for nearly ninety years. Applicant objects to the inconvenience, overbreadth, burden, and expense of searching through nearly ninety years of records in hopes of discerning whether any record relates to any oral contract or agreement. The requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the

discovery of any relevant information. Applicant objects to the vagueness and ambiguity of the phrase "oral contracts or agreements."

REQUEST NO. 44: All documents that evidence, reflect, describe, refer to or relate to the first time Applicant used Applicant's Marks on jewelry.

RESPONSE: Applicant has been using Applicant's Marks on jewelry since the founders of the Alpha Phi Omega Fraternity adopted the marks in 1925. Each of the founders of Alpha Phi Omega are now deceased. Applicant is unaware what, if any documentation may be reasonably available to it which "evidence, reflect, describe, refer to or relate to the *first* time Applicant used Applicant's Marks on jewelry" (emphasis added). Applicant states that it has already produced the earliest documents that could be located relating to the earliest use of Greek letters on jewelry, which was 1925. If able to locate any further documents responsive to this request, Applicant will produce such documents.

REQUEST NO. 45: All documents that evidence, reflect, describe, refer to or relate to the first time Applicant used Applicant's Marks on watches.

RESPONSE: Applicant has been using Applicant's Marks since the founders of the Alpha Phi Omega Fraternity adopted the marks in 1925. Each of the founders of Alpha Phi Omega are now deceased. Applicant is unaware what, if any documentation may be reasonably available to it which "evidence, reflect, describe, refer to or relate to the *first* time Applicant used Applicant's Marks on watches" (emphasis added). Applicant objects to the inconvenience, overbreadth, burden, and expense of searching through nearly ninety years of records in hopes of discerning whether any record relates to the first time Applicant used Applicant's Marks on watches. Applicant further objects because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any

relevant information, since the pending applications do not relate to the use of Applicant's Marks on watches. The '236 Mark sought to be registered is Alpha Phi Omega's Greek Alphabet letters insignia, AΦΩ. This application is for assorted clothing lines, namely, headwear, jackets, shirts, and sweat shirts. The '436 Mark sought to be registered is Alpha Phi Omega's coat-of arms. This application is for jewelry.

REQUEST NO. 46: All documents that evidence, reflect, describe, refer to or relate to the first time Applicant used Applicant's Marks on goods in Class 25.

RESPONSE: Applicant has been using Applicant's Marks since the founders of the Alpha Phi Omega Fraternity adopted the marks in 1925. Applicant is unaware what, if any documentation may be reasonably available to it which "evidence, reflect, describe, refer to or relate to the *first* time Applicant used Applicant's Marks on goods in Class 25" (emphasis added). Applicant objects to the inconvenience, overbreadth, burden, and expense of searching through nearly ninety years of records in hopes of discerning whether any record relates to the first time Applicant used Applicant's Marks on goods in Class 25.

REQUEST NO. 47: All communications concerning the decision to place Applicant's Marks on watches.

RESPONSE: Applicant has been using Applicant's Marks since the founders of the Alpha Phi Omega Fraternity adopted the marks in 1925, which is nearly ninety years. Applicant objects to the inconvenience, overbreadth, burden, and expense of searching through nearly ninety years of records in hopes of discerning whether any record relates to Applicant's decision to place Applicant's Marks on watches. Applicant further objects because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information, since the pending applications do not relate to

the use of Applicant's Marks on watches. The '236 Mark sought to be registered is Alpha Phi Omega's Greek Alphabet letters insignia, AΦΩ. This application is for assorted clothing lines, namely, headwear, jackets, shirts, and sweat shirts. The '436 Mark sought to be registered is Alpha Phi Omega's coat-of arms. This application is for jewelry. If able to locate any documents regarding Applicant's decision to place Applicant's Mark on watches, Applicant will produce such documents.

REQUEST NO. 48: All documents that evidence, reflect, describe, refer to or relate to the licensees that are allowed to sell goods bearing Applicant's Marks.

RESPONSE: Applicant has been using Applicant's Marks for nearly ninety years and has numerous licensees. Applicant objects to the inconvenience, overbreadth, burden, and expense of searching through nearly ninety years of records. The requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 49: All documents that evidence, reflect, describe, refer to or relate to any time period between 1925 and present during which Applicant did not sell jewelry bearing Applicant's Marks.

RESPONSE: Applicant objects to the vagueness and ambiguity of this request. Marks of the applicant have been used on jewelry since 1925. There has never been a discontinuation of the sale of jewelry bearing Applicant's Marks so no documents exist which are responsive to this request.

REQUEST NO. 50: All documents that evidence, reflect, describe, refer to or relate to any time period between 1925 and present during which Applicant's licensees did not sell jewelry bearing Applicant's Marks.

RESPONSE: Applicant incorporates herein its response to Request No. 49 above.

REQUEST NO. 51: All communications concerning the decision by Applicant to cease selling jewelry bearing Applicant's Marks for any time period between 1925 and present.

RESPONSE: Applicant states that it never ceased selling jewelry bearing Applicant's Marks so no documents exist which are responsive to this request.

REQUEST NO. 52: All documents that evidence, reflect, describe, refer to or relate to yearly revenues that Applicant received from licensees who sell Products bearing Applicant's Mark.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Whether Applicant's Marks have obtained secondary meaning, are widely known, or famous is not an issue in these Opposition proceedings. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. The extent of use, fame of, or secondary meaning associated with the marks of the Applicant are not issues in the pending Oppositions. Accordingly, Alpha Phi Omega objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Further, considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Notwithstanding the foregoing, Applicant states that as a result of a prior meet and confer among counsel, Applicant agreed to produce sales totals for the last five years, and these sales figures have already been disclosed.

REQUEST NO. 53: All communications regarding, concerning or referencing the date Applicant's Trademark Registration No. 265,052 was cancelled.

RESPONSE: Applicant objects to the inconvenience, overbreadth, and burden of this request in that it requests "all communications." Applicant further objects to this request to the extent it seeks privileged communications. Applicant states that the information sought is public record, and Applicant is unaware of any other responsive documents within the possession of Applicant regarding the date Applicant's Trademark Registration No. 265,052 was cancelled.

REQUEST NO. 54: All documents supporting Applicant's use(s) of the mark embodied in Trademark Registration No. 265,052 prior to its cancellation.

RESPONSE: Applicant objects to the inconvenience, overbreadth, and burden of this request in that it seeks "all documents." Furthermore, the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents, especially to the extent this request seeks documents outside the scope of the issues in these proceedings.

REQUEST NO. 55: All documents that describe, refer to or relate to the reason Trademark Registration No. 265,052 was cancelled.

RESPONSE: Applicant inadvertently neglected to renew said registration. As the public record reflects, the registration was cancelled simply because an application for renewal was not filed; that information is public record, and Applicant is unaware of any other responsive

documents within the possession of Applicant regarding the reason Trademark Registration No. 265,052 was cancelled.

REQUEST NO. 56: All documents that evidence, reflect, describe, refer to or relate to the yearly revenue from Applicant's direct sale of products affixed with Applicant's Marks between 1925 and present.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Whether Applicant's Marks have obtained secondary meaning, are widely known, or famous is not an issue in these Opposition proceedings. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and has used the marks continuously since its founding, including licensed uses by vendors of Greek affinity merchandise with the approval of Alpha Phi Omega. The extent of use, fame of, or secondary meaning associated with the marks of the Applicant are not issues in the pending Oppositions. Accordingly, Alpha Phi Omega objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Further, considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Notwithstanding the foregoing, Applicant states that as a result of a prior meet and confer among counsel, Applicant agreed to produce sales totals for the last five years, and these sales figures have already been disclosed.

REQUEST NO. 57: All documents that evidence, reflect, describe, refer to or relate to the date Applicant first sold products bearing Applicant's Marks through their website.

RESPONSE: Applicant objects to this request on the ground that the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably

calculated to lead to the discovery of any relevant information, since Applicant has been selling products bearing Applicant's Marks long before it launched its website. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and there have been approved products bearing Applicant's Marks continuously since its founding, including through vendors of Greek affinity merchandise with the approval of Alpha Phi Omega.

REQUEST NO. 58: All documents that evidence, reflect, describe, refer to or relate to yearly revenues from Applicant's direct sale of products bearing Applicant's Marks through Applicant's website www.apo.org.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Whether Applicant's Marks have obtained secondary meaning, are widely known, or famous is not an issue in these Opposition proceedings. Alpha Phi Omega has been in business for nearly 90 years, since 1925, and Applicant has been selling products bearing Applicant's Marks long before it launched its website. The extent of use, fame of, or secondary meaning associated with the marks of the Applicant are not issues in the pending Oppositions. Accordingly, Alpha Phi Omega objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Further, considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 59: All documents that evidence, reflect, describe, refer to or relate to the first time Applicant sold product(s) bearing Applicants Marks at the Applicant's National Convention.

RESPONSE: Applicant objects to this unreasonably and unnecessarily invasive harassing discovery request. The requested information appears neither relevant, nor likely to lead to the discovery of any relevant information.

REQUEST NO. 60: All documents that evidence, reflect, describe, refer to or relate to the number of times between 1925 and present that Applicant has sold products bearing Applicant's Marks at Applicant's National Convention.

RESPONSE: Applicant objects to this unreasonably and unnecessarily invasive harassing discovery request. The requested information appears neither relevant, nor likely to lead to the discovery of any relevant information.

REQUEST NO. 61: All licenses, agreements, consents or other documents granting third-parties the right to use Applicant's Marks.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 62: Any licenses, agreements, consents or other documents granting third-parties the right to use Applicant's Marks on watches.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information, since the pending applications do not relate to the use of Applicant's Marks on watches. Considering the lack of pertinence of the requested information, it is unnecessarily invasive for Opposer to request this

information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 63: Any licenses, agreements, consents or other documents granting third-parties the right to use Applicant's Marks on jewelry.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Applicant has entered into hundreds of license agreements since 1925, and it is therefore unnecessarily invasive for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Notwithstanding the foregoing, Applicant states that produce representative samples of Applicant's current license agreements have been produced.

REQUEST NO. 64: All documents which refer to, relate to, or evidence Applicant's right to inspect its licensee's use of Applicant's Marks.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 65: All documents which refer to, relate to, or evidence the procedure by which Applicant monitors licensees' use(s) of Applicant's Marks.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the

requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 66: All documents which refer to, relate to, or evidence the frequency with which Applicant monitors licensees' use(s) of Applicant's Marks.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 67: All communications concerning the licensees' use(s) of the Applicant's Marks as it relates to Applicant's quality control standards.

RESPONSE: Applicant has been in business since 1925. It objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 68: All documents provided by Affinity Consultants to Applicant regarding licensees' use(s) of Applicant's Marks.

RESPONSE: Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Applicant further objects to this request to the extent the request relates to privileged documents.

REQUEST NO. 69: All agreements between Applicant and Affinity Consultants relating to or referencing Applicant's Marks.

RESPONSE: Applicant objects to the inconvenience, overbreadth, burden, and expense of accumulating and producing these documents because the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information.

REQUEST NO. 70: All quarterly reports Applicant has received from Affinity Consultants relating to or referencing Applicant's Marks.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 71: All recommendations made by Affinity Consultants to Applicant relating to Applicant's Marks.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 72: All documents relevant to Affinity Consultants' policing of Applicant's Marks.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 73: All documents relevant to Affinity Consultants' monitoring of Applicant's Marks.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 74: All documents relevant to Affinity Consultants' quality control standards with regard to products bearing Applicant's Marks.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 75: All documents which refer to, relate to, or evidence any oral agreements concerning Applicant's Marks between Applicant and any third party.

RESPONSE: Applicant objects to this request as duplicative of Request No. 43 and incorporates its response to Request No. 43 herein by reference.

REQUEST NO. 76: All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements made on behalf of Applicant with Jostens regarding use of Applicant's Marks on watches.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 77: All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements made on behalf of Applicant with Greek Life regarding use of Applicant's Marks on watches.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 78: All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements made on behalf of Applicant with any third party regarding use of Applicant's Marks on watches.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Applicant incorporates its response to Request No. 62 herein by reference.

REQUEST NO. 79: All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements between Applicant and Jostens regarding use of Applicant's Marks on watches.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Applicant incorporates its response to Request No. 76 herein by reference.

REQUEST NO. 80: All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements between Applicant and Greek Life regarding use of Applicant's Marks on watches.

RESPONSE: Applicant objects to this unreasonable and unnecessarily invasive harassing discovery request. Applicant objects to this request because the requested information appears neither relevant, nor likely to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information. Applicant incorporates its response to Request No. 77 herein by reference.

REQUEST NO. 81: All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements between Applicant and any third party regarding use of Applicant's Marks on watches.

RESPONSE: Applicant's Marks were adopted in 1925, and Applicant's Marks have been in use for nearly ninety years. Applicant objects to the inconvenience, overbreadth, burden, and expense of searching through nearly ninety years of records in hopes of discerning whether any record relates to any contract or agreement between Applicant and any third party regarding the use of Applicant's Marks on watches. The requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information, particularly since the pending applications do not relate to the use of Applicant's Marks on watches.

REQUEST NO. 82: All documents that evidence, reflect, describe, refer to or relate to the termination of any licensee authorized by Applicant to use Applicant's Marks.

RESPONSE: Applicant's Marks were adopted in 1925, and Applicant's Marks have been in use for nearly ninety years. Applicant has contracted with hundreds of licensees since 1925. Applicant objects to the inconvenience, overbreadth, burden, and expense of searching

through nearly ninety years of records in hopes of discerning whether any record relates to the termination of any licensee authorized by Applicant to use Applicant's Marks. The requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 83: All documents that evidence, reflect, describe, refer to or relate to the termination of any licensee authorized by Affinity Consultants to use Applicant's Marks.

RESPONSE: Applicant's Marks were adopted in 1925, and Applicant's Marks have been in use for nearly ninety years. Applicant has contracted with hundreds of licensees since 1925. Applicant objects to the inconvenience, overbreadth, burden, and expense of collecting the requested information, particularly since the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

REQUEST NO. 84: All documents that evidence, reflect, describe, refer to or relate to any audit reports of Applicant's licensees' use of Applicant's Marks.

RESPONSE: Applicant objects to the inconvenience, overbreadth, burden, and expense of collecting the requested information, particularly since the requested information is neither relevant to any of the issues of the Oppositions, nor otherwise reasonably calculated to lead to the

discovery of any relevant information. Considering the lack of pertinence of the requested information, it is unnecessarily invasive, burdensome and harassing for Opposer to request this information and unnecessarily burdensome for Alpha Phi Omega to accumulate the requested impertinent information.

Respectfully submitted,

Jack A. Wheat
Lindsay Y. Capps
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-3400

Counsel for Alpha Phi Omega

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing has been served on counsel for Opposer by mailing said copy this 22nd day of July, 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

Jack A. Wheat
Attorney for Applicant

EXHIBIT 4

Oren Gelber

From: Oren Gelber
Sent: Thursday, November 21, 2013 5:28 PM
To: 'Wheat, Jack'
Cc: Thomas Gulick
Subject: RE: Omega v. Alpha Phi Omega

Dear Jack,

During our meet and confer on October 16, 2013 you indicated that you would supplement Applicant's responses to document production request nos. 57, 62, 76-80.

To date we have not received any further materials from you nor have you advised that no additional materials were available. Given the upcoming close of discovery, please advise if supplemental document production is forthcoming.

Thank you,

Oren

Ms. Oren Gelber
Associate

COLLEN IP
INTELLECTUAL PROPERTY LAW, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue | Ossining-on-Hudson, Westchester County, New York 10562 | U.S.A.
Tel: +1-914-941-5668 | Fax: +1-914-941-6091 | www.collenip.com

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-----Original Message-----

Oren Gelber

From: Oren Gelber
Sent: Wednesday, December 04, 2013 12:54 PM
To: 'Wheat, Jack'
Cc: Thomas Gulick
Subject: RE: Omega v. Alpha Phi Omega

Dear Jack,

I write to follow up concerning supplemental discovery. We have not received any further materials from you nor have you advised that no additional materials are available.

Please advise if supplemental document production is forthcoming with regard to document production request nos. 57, 62, 76-80 ad discussed during our Meet and Confer on October 16, 2013. If Applicant has no further responsive documents, please provide us with a written statement to that effect.

I look forward to hearing from you at your earliest opportunity.

Thank you,

Oren

Ms. Oren Gelber
Associate

COLLEN IP
INTELLECTUAL PROPERTY LAW, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue | Ossining-on-Hudson, Westchester County, New York 10562 | U.S.A.
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EXHIBIT 5

COLLEN IP
INTELLECTUAL PROPERTY LAW
Telephone (914) 941-5668
Facsimile (914) 941-6091
www.collenIP.com
Email: ogelber@collenIP.com

June 25, 2014

BY EMAIL TO: JWHEAT@STITES.COM
CONFIRMATION BY MAIL
Stites & Harbison PLLC
400 W Market Street, Suite 1800
Louisville, KY 40202-3352
Attention: Jack A. Wheat, Esq.

RE: U.S. Trademark Oppositions 91197505; 91197504
Omega SA (Omega AG) (Omega Ltd.) v. Alpha Phi Omega
Adverse Applicant : Alpha Phi Omega
Adverse Marks : AΦΩ; ALPHA PHI OMEGA & design
Adverse Serial Nos.: 77/905,236; 77/950,436
Our Refs. : K654; K655

Dear Mr. Wheat:

Further to our discussions of July 12, 2013 and October 16, 2013, I write to address some unresolved issues with regard to Applicant's responses to Opposer's First Set of Requests for Admissions, First Set of Interrogatories, and First Set of Requests for the Production of Documents and Things ("First Set of Discovery") and Applicant's responses to Opposer's Second Set of Requests for Admissions, and Second Request for the Production of Documents and Things ("Second Set of Discovery").

First Set of Discovery

We note your emails of July 26, 2013 and July 31, 2013 which advised that Applicant would amend its responses to:

- Opposer's First Set of Requests for Admissions Nos. 1 and 3 to admit these Requests;
- Opposer's First Request for Production No. 13 to indicate that Applicant's document production includes examples of its various product lines;

PAPERCUT PROTOCOL
ENVIRONMENTALLY SOUND LEGAL PRACTICE

- Opposer's First Request for Production No. 15 to indicate that Applicant is unaware of responsive documents; and
- Opposer's First Set of Interrogatories No. 9 which directed Opposer to pages 91 and 92 of the transcript of Mr. London's deposition.

(1.) Given that these amendments were not submitted in the standard format for discovery responses (email form, unsigned and not under the caption of this proceeding), we ask that Applicant either: (A) stipulate that the emails may be deemed proper discovery responses and that Opposer may rely upon the emails in place of the standard discovery request format; or (B) please provide the responses in the generally-accepted discovery response format.

(2.) During our discussion of July 12, 2013, you advised that Applicant has not withheld any documents on the basis of its relevance objection in response to Request No. 2 of Opposer's First Set of Requests for the Production of Documents and Things. You further advised, in response to Request No. 15, that Applicant did not have any plans for expansion. These responses and statements were not included in your emails of July 26 and 31, 2013. As such, we ask that you stipulate to such statements or provide these statements in the generally-accepted discovery response format.

Document Production Requests (First and Second Set of Discovery):

During our discussion of October 16, 2013, we also discussed deficiencies in Applicant's responses to Opposer's Second Request for Production of Documents and Things and Opposer's Second Requests for Admissions. We note that issues remain outstanding with regard to the following document production requests.

- Request No. 1 (seeking documents evidencing Applicant's first use of its mark) – Applicant claims responding to this request would be unduly burdensome because its first sale occurred in 1925. Just because responding to a specific request might be burdensome does not excuse complete refusal to provide documents. Pursuant to TBMP 414(2) Applicant can provide representative sampling of the information sought or some other reduced amount of information to meet discovery needs.
- Request No. 42 (seeking documents Applicant contends are relevant to this proceeding) – Just because responding to a specific request might be burdensome does not excuse complete refusal to provide documents. Pursuant to TBMP 414(2) Applicant can provide

representative sampling of the information sought or some other reduced amount of information to meet discovery needs.

- Request No. 44 (seeking evidence of first use on jewelry) - Applicant claims 1925 as the date of its first use on jewelry but has produced no evidence in this regard. The Class 14 application which is the subject of this proceeding alleges a first use date of 1930 and cannot support a claim of use dating back to 1925. Stipulation that any responsive documents not produced will not be used later.
- Request No. 45 (seeking evidence of first use on watches) – Applicant has produced evidence that it uses its marks on watches. Further opposer's mark is used on watches. Similarity of the goods is a *DuPont* factor and this is relevant to the instant proceeding. See also TBMP 414(11), "the information that a party sells the same goods or services as the propounding party, even if under a different mark, is relevant to the issue of likelihood of confusion for purposes of establishing the relationship between the goods of the parties." Furthermore, this inquiry relates to Applicant's expansion of its product line and pursuant to TBMP 414(8) "A party's plans for expansion may be discoverable under protective order."
- Request No. 46 (seeks evidence of first use on clothing) - Applicant claims 1925 as the date of its first use on jewelry but has produced no evidence in this regard. This point is directly relevant to Applicant's defense to this opposition.
- Request No. 56 (seeks evidence of yearly revenue derived from products bearing Applicant's mark from 1925 to the present) – Applicant has objected that this response is overly burdensome but just because responding to a specific request might be burdensome does not excuse complete refusal to provide documents. Pursuant to TBMP 414(2) Applicant can provide representative sampling of the information sought or some other reduced amount of information to meet discovery needs.

(1.) As a means of avoiding a Motion to Compel over these issues, the parties can stipulate that Applicant will not attempt to submit documents which were responsive but not produced in response to Request Nos. 1, 42, 44, 45, 46 and 56 later in these proceedings. Please advise if Applicant is willing to stipulate to this point.

(2.) As the parties have met and conferred with regard to these issues, in some instances twice, we provide this letter as a courtesy to allow Applicant a final opportunity to supplement its document production and response with full, complete and substantive answers to Opposer's discovery responses by **July 7,**

2014. To the extent that Applicant does not have responsive documents or information relevant to a particular Request or Interrogatory, Applicant should state this fact in unequivocal terms in its amended and/or supplemental responses.

Should you wish to discuss these deficiencies, please do not hesitate to contact me.

Very truly yours,
COLLEN *IP*

Oren Gelber

Ms. Oren Gelber

JMC/OG:mcm

p:\K\K6\K655_Letter to Jack Wheat re Applicant's Discovery Responses_140619.docx

EXHIBIT 6

Oren Gelber

From:	Wheat, Jack <JWheat@stites.com>
Sent:	Friday, July 25, 2014 11:05 AM
To:	Oren Gelber
Subject:	Supplemental Production
Attachments:	WynnSmileyStmntWattachmnts.PDF; WamplerStmntWattachmnts.pdf
TimeMattersID:	M49D0A3919E7F392
TM Contact:	The Swatch Group LTD
TM Matter No:	K655
TM Matter Reference:	ALPHA PHI OMEGA & Design (CONSOL-USE K655) opp 91197504 91197505 Omega SA v Alpha Phi Omega

Oren, Attached you will find a supplemental production applicable to Omega v. Alpha Omega Epsilon as well as Omega v. Alpha Phi Omega including a written statement from Wynn Smiley, the Chief Executive Officer of Alpha Tau Omega with attachments Bates numbered ATO0001 through ATO018 and a written statement from Janine Wampler, the Marketing and Communications Director of Alpha Chi Omega with attachments Bates numbered AXO0001 through AXO020 .

Jack A. Wheat
Partner/Member
Direct: 502-681-0323
Mobile: 502-599-9520
Fax: 502-779-8273
jwheat@stites.com
STITES&HARBISON PLLC
400 West Market Street, Suite 1800, Louisville, KY 40202-3352
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Oren Gelber

From:	Wheat, Jack <JWheat@stites.com>
Sent:	Friday, July 25, 2014 3:53 PM
To:	Oren Gelber
Subject:	Supplemental Production
Attachments:	OmegaPricingPrintouts - Bates.pdf; BadgeJewelryRegistr.pdf; LettersJewelryReg..pdf; MiragliaDeclarationWAttachmnts.pdf; LettersReg..pdf
TimeMattersID:	M49CAA3911795600
TM Contact:	The Swatch Group LTD
TM Matter No:	K655
TM Matter Reference:	ALPHA PHI OMEGA & Design (CONSOL-USE K655) opp 91197504 91197505 Omega SA v Alpha Phi Omega

Oren, Attached you will find a supplemental production applicable to Omega v. Alpha Omega Epsilon as well as Omega v. Alpha Phi Omega including documents labeled Misc001 through Misc018, AXO021 and AXO022, a written statement from Carol Miraglia, the Chief Financial Officer of Chi Omega with attachments Bates numbered ChiO0001 through ChiO030 and a document labeled ChiO031.

Jack A. Wheat
Partner/Member
Direct: 502-681-0323
Mobile: 502-599-9520
Fax: 502-779-8273
jwheat@stites.com
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Oren Gelber

From:	Wheat, Jack <JWheat@stites.com>
Sent:	Friday, July 25, 2014 4:19 PM
To:	Oren Gelber
Subject:	Supplemental Production
Attachments:	ShaverOmegaDeclExec.pdf
TimeMattersID:	M49B5A39129E4684
TM Contact:	The Swatch Group LTD
TM Matter No:	K655
TM Matter Reference:	ALPHA PHI OMEGA & Design (CONSOL-USE K655) opp 91197504 91197505 Omega SA v Alpha Phi Omega

Oren, Attached you will find a supplemental production applicable to Omega v. Alpha Omega Epsilon as well as Omega v. Alpha Phi Omega, namely statement from Daniel Shaver, the President of Affinity Marketing Consultants, with attachments Bates numbered AMC0001 through AMC033.

Jack A. Wheat
Partner/Member
Direct: 502-681-0323
Mobile: 502-599-9520
Fax: 502-779-8273
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EXHIBIT 7

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jul 29 03:20:57 EDT 2014

ALPHA CHI OMEGA

Word Mark	**ALPHA CHI OMEGA**
Goods and Services	IC 200. US 200. G & S: Indicating membership of a(n) collegiate fraternal organization for women, namely, a sorority. FIRST USE: 18850000. FIRST USE IN COMMERCE: 18850000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78833309
Filing Date	March 9, 2006
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 26, 2006
Registration Number	3183877
International Registration Number	1185670
Registration Date	December 12, 2006
Owner	(REGISTRANT) **Alpha Chi Omega** Fraternity, Inc. CORPORATION INDIANA 5939 Castle Creek Parkway North Drive Indianapolis INDIANA 462504343
Attorney of Record	Jack A. Wheat
Prior Registrations	0264413
Type of Mark	COLLECTIVE MEMBERSHIP MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jul 29 03:20:57 EDT 2014

Typed Drawing

Word Mark	**CHI OMEGA**
Goods and Services	IC 016. US 037 038. G & S: BOOKS, PAMPHLETS, NEWSLETTERS, PENS AND PENCILS, POSTERS, PRINTED FORMS AND RECORD BOOKS FOR SORORITY CHAPTER FINANCIAL AND MEMBERSHIP RECORD-KEEPING, WRITING PAPER AND ENVELOPES, PAPER NAMETAGS, MEMBERSHIP CERTIFICATES, AND NAPKINS. FIRST USE: 18950000. FIRST USE IN COMMERCE: 18950000 IC 025. US 022 039. G & S: SCARVES, [SWEATERS,] AND SHIRTS. FIRST USE: 18950000. FIRST USE IN COMMERCE: 18950000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73524692
Filing Date	March 1, 1985
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 2, 1985
Registration Number	1359187
Registration Date	September 10, 1985
Owner	(REGISTRANT) **CHI OMEGA** FRATERNITY CORPORATION OHIO 3395 Players Club Parkway Memphis TENNESSEE 38125
Attorney of Record	JACK A. WHEAT
Type of	TRADEMARK

Mark	
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20051123.
Renewal	1ST RENEWAL 20051123
Live/Dead Indicator	LIVE