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

Proceeding	91197754
Party	Defendant Laundry Acquisition Inc. (by change of name from Lavatec, Inc.)
Correspondence Address	JOHN C LINDERMAN MCCORMICK PAULDING HUBER LLP 185 ASYLUM STREET, CITY PLACE II HARTFORD, CT 06103 UNITED STATES lind@ip-lawyers.com
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Filer's Name	John C. Linderman
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Signature	/John C. Linderman/
Date	08/17/2011
Attachments	91197754opptomotion.pdf (51 pages)(1822324 bytes)

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

In the matter of Trademark Application No. 76701998

for the mark: LAVATEC

Published on November 2, 2010

Wolf-Peter Graeser,)	
)	
)	
Opposer)	
)	Opposition No. 91197754
v.)	
)	
Lavatec, Inc. (fka Laundry Acquisition Inc.))	
)	
Applicant)	

**APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL AND REQUEST
FOR A PROTECTIVE ORDER**

I. Introduction

After initially requesting and receiving consent from Applicant to a 60-day extension of the entire scheduling order, Opposer has now produced a motion for a protective order purportedly backed up by a motion to compel more specific initial disclosures from Applicant as a technique to further avoid discovery and the revelation of documents that defeat Opposer's claim to the LAVATEC trademark. Between the service of Applicant's Initial Disclosures in the middle of May 2011 and the end of July when Opposer sought and was denied a full 30-day extension of time to respond to Applicant's discovery responses, Opposer never once mentioned any deficiency in Applicant's Initial Disclosures. In fact, Applicant's Initial Disclosures comply with F.R.Civ.P. 26(a) as applied to trademark oppositions. Opposer's Motions should be denied, and Opposer should be ordered to respond without objection to Applicant's

interrogatories and document requests. Applicant's Requests for Admission should also be deemed admitted pursuant to F.R.Civ.P. 36(a)(3).

II. Applicant's Initial Disclosure Complies With F.R.Civ.P. 26(a)(1)

As applied to oppositions before the TTAB, F.R.Civ.P. 26(a)(1) in principal requires a party to provide the names of individuals likely to have discoverable information and the subjects of that information that a party may use in support of its claims and defenses. F.R.Civ.P. 26(a)(1)(A)(i).

F.R.Civ.P. 26(a)(1) also requires a party to provide a copy – or description by category and location – of documents, electronically stored information, and things that a party may use in support of its claims or defenses. F.R.Civ.P. 26(a)(1)(A)(ii).

As shown in Paragraph (1) of Applicant's Initial Disclosure in this Opposition (attached as Exhibit 13), Applicant provided the names and locations of three individuals and the various subjects that the individuals have knowledge of for use in support of Applicant's claim to the LAVATEC trademark. The three individuals are identified as employees of the original Applicant, Lavatec, Inc.¹

Opposer has never indicated what, if anything, is deficient with the names or the descriptions of the information attributed to the individuals.

As shown in Paragraph (2) of Applicant's Initial Disclosure, Applicant has identified eight specific categories of documents and things that it may use in support of its claims to the LAVATEC mark. The documents and things are quite specific, and, being voluminous, are identified by category as permitted by F.R.Civ.P. 26(a)(A)(ii). As an example, the first category of documents, "Sales records", covers sales since Lavatec, Inc. was formulated in 1987. Fourteen years of sales records do not need to be explicitly enumerated under F.R.Civ.P. 26(a)(A)(ii) in order to inform Opposer of what

¹ The assets of the original Applicant, Lavatec, Inc., including the LAVATEC trademark and the opposed Trademark Application 76/701,998, were purchased by a company on July 25, 2011 which has adopted the name Lavatec, Inc. The transfer of ownership of the mark and application has been recorded in the Assignment Records at Reel/Frame 1592/329.

is in the documents in the way of discoverable information supporting Applicant's claim to the mark.

Several of the other categories of documents and things, engineering design drawings, brochures, equipment, are likewise voluminous. Enumerating the documents and things in the specific categories would not be of any further aid to Opposer in defeating Applicant's claim to the mark. Hence Opposer has not been prejudiced by the categorization of the documents and things.

Applicant in the last paragraph of its Initial Disclosure did intend to indicate that the documents and things identified in Paragraph 2 were located at the stated 300 Great Hill Road address, but inadvertently referred to the individuals identified in Paragraph 1 instead.

Like the individuals identified in Paragraph 1, Opposer has never indicated what, if anything, is deficient with the list of documents and things in Paragraph 2.

Applicant's Initial Disclosures must be contrasted with the disclosures in the unreported case *In-N-Out Burger, Inc. v. BB&R Spirits Limited*, Cancellation No. 92048909 (TTAB 2008) (attached hereto as Exhibit 14) cited by Opposer. In the cited case the Board recognized that Rule 26(a) does not require a great deal of specificity. But the documents described in the Initial Disclosures could not be associated with the claims or defenses, and with few exceptions did not even reference the mark in issue.

By way of contrast in Applicant's Initial Disclosure, each category of documents, other than the bankruptcy proceedings and sales summaries, refers to Lavatec, Inc., the company that is applying for the LAVATEC trademark registration. It does not take a significant degree of intellect to understand the correlation between the documents and Applicant's claim to the mark. Even without reference to the company name, the relationship of the Applicant's claim and the sales summaries of the company whose name is synonymous with the mark is obvious. Hence Applicant's Initial Disclosure does not suffer the ambiguity found in the cited *In-N-Out Burger* case.

III. Opposer Never Objected To Applicant's Initial Disclosure Until After Applicant Denied a 30-day Extension Request

Opposer's belated claim that Applicant's Initial Disclosure is deficient was never raised until over two months after the Initial Disclosures were served. The claim was only raised in connection with Applicant's refusal to consent to a full 30-day extension of time to respond to Applicant's discovery requests. The lateness and timing of Opposer's Motion To Compel themselves cast doubt on the credibility of the Motion, and suggest the motion is a further attempt to delay the production of documents that rebut Opposer's claim to the LAVATEC mark.

IV. Opposer Has Never Indicated What Is Specifically Deficient In Applicant's Initial Disclosure

Since Opposer is relying upon Applicant's Initial Disclosure as an excuse for not responding to Applicant's discovery requests, Opposer has two duties: (1) articulate his objections to the Disclosure (with particularity), and (2) meet and confer regarding the objections. *Amazon Technologies Inc. v. Wax*, 93 USPQ2d 1702, 1704-05 (TTAB 2009). Opposer has not complied with either duty.

It is improper for Opposer to make obtuse references to deficiencies in Applicant's adherence to the rules, and then use the deficiencies as an excuse for not responding to Applicant's discovery requests. *Amazon*, 93 USPQ2d at 1704. In the present case Opposer asserts Applicant has not complied with the initial disclosure requirements of F.R.Civ.P. 26(a), but has not stated with any degree of particularity what is deficient in Applicant's Initial Disclosure. Opposer has simply claimed the Disclosure is "insufficient" and "lacking the required specificity" (Opposer's Exhibit 6), and "fail[s] to comply with Fed. R. Civ. P. 26(a)" (Opposer's Exhibit 7). No further elaboration was given in writing or orally.

Such boilerplate allegations given by Opposer shed no light on Opposer's dissatisfaction with the disclosures, and lend doubt to the real reason for Opposer's Motion To Compel. Prior to filing the Motion, Opposer's allegations of deficiency did not inform Applicant as to whether Applicant's designation of witnesses or designation of documents and things was the source of Opposer's dissatisfaction. Even with the allegations in Par. 6 of Opposer's Motion, Applicant still has no inkling of what Opposer

considers to be deficient in Applicant's document disclosures. Opposer has undoubtedly failed to comply with its first duty to articulate its objections.

By the same token, Opposer has failed to comply with its second duty to meet and confer. 37 CFR §2.120(e)(1). Opposer should have presented its position with candor and specificity so that the meet and confer process would be "meaningful and serve its intended purpose." *Amazon*, 93 USPQ2d at 1705. Opposer did not even conduct a meet and confer process. After citing its Exhibits 6 and 7 in Par. 3 of its Motion, Opposer claims that it "made a good faith attempt to resolve" the Initial Disclosure issue. However, Exhibits 6 and 7 merely contain threats with no substantive discussion of the Initial Disclosure, or any parts thereof. Threats do not satisfy Opposer's duty to confer, or even constitute a conference. No other evidence of a conference has been presented, and Applicant is surprised by the assertion that such an attempt was made.

V. Opposer's Motion For A Protective Order Is Untimely and Unwarranted

Opposer's responses to Applicant's discovery requests in the form of interrogatories, document requests and admissions were due on July 22, 2011. Opposer sought an extension of time on July 14, and was informed on the same day that the extension would be consented to on condition that Opposer would cease certain unfair trade practices he had been engaged in during earlier extensions of time. Clarification was requested and given, but Opposer denied any wrong doing on July 18, 2011, and in essence refused to abide by any conditions. See Applicant's Exhibits 5-8 attached hereto and also forming part of Applicant's pending Motion To Compel.

Hence, on July 18, 2011, Opposer was without any extension by consent. Then Opposer failed to file a motion for protective order, and allowed the July 22 response date to pass without responding to or objecting to Applicant's discovery requests.

On July 25, 2011 Applicant wrote Opposer and advised that the discovery response date had passed with no responses or confirmation that the unfair trade practises would cease. Applicant also gratuitously gave Opposer until July 29, 2011 to

respond. Exhibit 9. The gratuitous extension was immediately rejected by Opposer with no protective order sought or in place. Exhibit 15.

Opposer did not file its Motion for a Protective Order until August 2, 2011, more than a week after discovery responses were due and after the gratuitous extension offered by Applicant.

Although F.R.Civ.P. 26(c) does not provide an explicit time limit for filing a motion for a protective order, there are implicit limitations providing that a motion must be timely. Motions for a protective order must be made before or on the date the discovery is due. *Ayers v. Continental Casualty Company*, 240 F.R.D. 216, 221 (N.D. W.Va. 2007) (motion denied).

While courts can excuse tardiness, Opposer had ample time to file the motion for a protective order before the due date of July 22, 2011, or even the gratuitously offered date of July 29, 2011. Opposer knew on July 18, 2011 that it did not intend to comply with Applicant's conditions and that the due date of July 22 was approaching. Nevertheless, Opposer let the response date go by without seeking a protective order, and prepared and served its own set of discovery requests (interrogatories, document requests, and admissions) on Applicant on July 29, 2011 instead. See Exhibit 16.

Opposer's Motion for a Protective Order filed on August 2, 2011 long after the due date for responses to Applicant's discovery requests were due was obviously untimely. The tardiness of the Motion should not be excused because Opposer rejected the extra time gratuitously offered by Applicant and used the time instead to prepare and serve discovery requests for its own benefit. Further, the Motion is unwarranted because Applicant's Initial Disclosures are compliant with F.R.Civ.P. 26(a), and Opposer's underlying purpose for the Motion was to further delay its discovery responses.

Opposer's Motion To Compel Initial Disclosure And For Protective Order should

...be denied, and Applicant's copending Motion To Compel should be granted.

Respectfully requested
LAVATEC, INC., Applicant

By s/ John C. Linderman
John C. Linderman
Richard J. Twilley
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Attorneys for Applicant

CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

**APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL AND REQUEST
FOR A PROTECTIVE ORDER**

was sent by email and served by First Class U.S. Mail, postage prepaid this 17th day of August 2011, to the following counsel of record:

Andrea Fiocchi
Sarah E. Tallent
44 Wall Street, 10th Fl
New York, NY 10005

By s/John C. Linderman
John C. Linderman

John C. Linderman

Thursday, July 14, 2011 3:53 PM

Subject: LAVATEC Opposition

Date: Thursday, July 14, 2011 3:53 PM

From: John C. Linderman <lind@ip-lawyers.com>

To: Sarah Tallent stallent@reinhardt-law.com

Sarah:

I left a voice message on your phone a half hour ago that we would agree to an extension of time to August 19, 2011 for you to respond to our discovery requests, provided that Mr. Graeser stops broadcasting that he is the owner of the LAVATEC mark in the US and that Lavatec Inc. will disappear from the marketplace for laundry equipment.

The extensions that we have agreed to in the past have been used by Mr. Graeser to disparage and undermine Lavatec, Inc. while the opposition is effectively stalled. If you want extensions, then stop disparaging Lavatec's position.

Please let me have a confirmation.

John C. Linderman

+=====+

Intellectual Property Law
Patents, Trademarks, Copyrights,
Computer Law, Trade Secrets,
Technology Transfer

+=====+

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+=====+

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+=====+

John C. Linderman

Tuesday, August 2, 2011 11:00 AM

Subject: RE: LAVATEC Opposition

Date: Thursday, July 14, 2011 6:19 PM

From: Sarah Tallent <stallent@reinhardt-law.com>

To: John C. Linderman lind@ip-lawyers.com

Cc: Andrea Fiocchi afiocchi@reinhardt-law.com

John:

I got your message. Can you kindly clarify what exactly you had in mind? I'll run this past our client and get back to you.

Regards,

Sarah

Sarah E. Tallent

Attorney at Law

Reinhardt LLP

44 Wall Street - 10th Fl.

New York, NY 10005

Ph: (212) 710-0970

Fax: (212) 710-0971

Email: stallent@reinhardt-law.com

New York ◆ Denver ◆ Stuttgart

John C. Linderman

Monday, July 18, 2011 1:15 PM

Subject: Re: LAVATEC Opposition

Date: Monday, July 18, 2011 1:15 PM

From: John C. Linderman <lind@ip-lawyers.com>

To: Sarah Tallent stallent@reinhardt-law.com

Cc: Andrea Fiocchi afiocchi@reinhardt-law.com

Sarah:

Here are several examples of disparaging and false remarks from Mr. Graeser that we want stopped.

Recently at the trade show CLEAN SHOW 2011, Mr. Graeser was telling customers that they should not be doing business with Lavatec, Inc. because Lavatec, Inc. would be out of business in 6 weeks. The 6-week reference was obviously based on the scheduled bankruptcy sale which he knows will result in the continuation of the Lavatec business in the US market under new ownership with whom he seeks a business relationship. So while on the one hand he curries favor with the new owners, on the other hand he is attempting to scuttle the business rollover.

I also attach a letter dated 20th April 2011 in which Graeser falsely asserts to customers that Lavatec Laundry Technology Inc. is the legitimate successor to Lavatec GmbH when in fact he acquired no assets of the US subsidiary, Lavatec, Inc., and he knew that Lavatec, Inc. is an active US company.

The letter goes on to state that Lavatec, Inc. "has no access to original spare parts for Lavatec machinery", when in fact Lavatec, Inc. has a huge inventory of original spare parts, has access to still more parts, and still manufactures its own folders and washer extractors.

The letter is also attempts to pass Lavatec Laundry Technology off as the "traditional Lavatec" that has been in business "since 1986" when in fact it is a Lavatec, Inc. that is the original Lavatec and has served US customers since 1986. This statement is a deliberate attempt to trade upon the goodwill and reputation of Lavatec, Inc. and create confusion among customers in the industry.

I also attach a recent advertisement by Lavatec Laundry Technology that appeared prior to the CLEAN SHOW 2011 in American Laundry News, a North American trade publication. In the ad this time Lavatec Laundry Technology falsely claims to be "the legitimate successor to the previous Lavatec GmbH worldwide", when Graeser acquired no interest in the active US subsidiary Lavatec, Inc. LLT also makes the false and misleading claim to be "the original", again attempting to pass itself off as Lavatec, Inc. Then again LLT falsely states that it "offers full service and maintenance for all Lavatec products since 1986 (founding of the company)"

and is "the only company offering the complete line of spare parts", when Lavatec, Inc. also has spare parts and LLT has no access to folders or spare parts for the folders.

These are a few examples of Mr. Graeser's false and misleading statements and advertising that must stop. I look forward to hearing from you after you have touched base with your client.

John C. Linderman

+=====+

Intellectual Property Law
Patents, Trademarks, Copyrights,
Computer Law, Trade Secrets,
Technology Transfer

+=====+

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From: Sarah Tallent <stallent@reinhardt-law.com>
Date: Mon, 18 Jul 2011 12:11:51 -0400
To: "John C. Linderman" <lind@ip-lawyers.com>
Cc: Andrea Fiocchi <afiocchi@reinhardt-law.com>
Subject: RE: LAVATEC Opposition

Dear John:

We spoke with our client who denies your client's allegations below.

His position is that he is the registered owner of the Mark in Europe and that current opposition proceeding will not be concluded until some time next year. I cannot see how this position can be objectionable.

Regards,

Sarah

Sarah E. Tallent

Attorney at Law

Reinhardt LLP

44 Wall Street - 10th Fl.

New York, NY 10005

Ph: (212) 710-0970

Fax: (212) 710-0971

Email: stallent@reinhardt-law.com

New York ♦ Denver ♦ Stuttgart

John C. Linderman

Monday, August 1, 2011 3:34 PM

Subject: LAVATEC Opposition

Date: Monday, July 25, 2011 4:00 PM

From: John C. Linderman <lind@ip-lawyers.com>

To: Sarah Tallent stallent@reinhardt-law.com

Dear Sarah:

Your discovery response date has passed and we received nothing as either responses or confirmation that Mr. Graeser's misrepresentations and falsehoods have stopped. In fact he just recently sent a baseless and harrassing demand letter to a Lavatec, Inc. employee.

Unless I hear from you by July 29, 2011 we will seek a motion to compel.

John C. Linderman

+=====+

Intellectual Property Law
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+=====+

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+=====+

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

In the matter of Trademark Application No. 76/701,998
for the mark: LAVATEC
Published on November 2, 2010

_____)	
Wolf-Peter Graeser,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91/197,754
)	
Lavatec, Inc.,)	
)	
Applicant.)	
_____)	

APPLICANT'S INITIAL DISCLOSURE

Pursuant to Rule 26(a) of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant Lavatec, Inc., sets forth below its Initial Disclosure, as follows:

1. Individuals Likely to Have Discoverable Information.
 - a. Herman Bernstein – organization and general history of Lavatec, Inc., its founding, operations, sales, and bankruptcy;
 - b. Peter Thompson – general history of Lavatec, Inc., its founding, sales, and operations; and
 - c. Bruce Berman – general knowledge of Lavatec, Inc., its sales and customers.

Each of the individuals is located at and is an employee of Lavatec, Inc., 300 Great Hill Road, Naugatuck, CT 06770.

2. Documents and Things.
 - a. Sales records of Lavatec, Inc.;
 - b. Engineering design drawings of Lavatec, Inc.;

- c. Lavatec Name plates;
- d. Brochures of Lavatec, Inc.;
- e. Equipment of Lavatec, Inc.;
- f. Bankruptcy documents; and
- g. Sales summaries.

Each of the individuals is located at and is an employee of Lavatec, Inc., 300 Great Hill Road, Naugatuck, CT 06770.

LAVATEC, INC.

/s/ Richard J. Twilley
John C. Linderman
Richard J. Twilley
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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing

APPLICANT'S INITIAL DISCLOSURE

was sent by electronic mail and served by First Class United States Mail, postage pre-paid, this seventeenth day of May, 2011, to the following counsel of record:

Andrea Fiocchi, Esq.
Sarah E. Tallent, Esq.
Reinhardt LLP
44 Wall Street, 10th Floor
New York, NY 10005

/s/ Richard J. Twilley
Richard J. Twilley

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MBA

Mailed: July 21, 2008

Cancellation No. 92048909

In-N-Out Burger, Inc.

v.

BB&R Spirits Limited

Michael B. Adlin, Interlocutory Attorney:

On June 25, 2008, at the parties' request, the Board held a telephone conference to hear petitioner's oral motion to compel respondent to provide more complete initial disclosures. Robert J. Lauson appeared on behalf of petitioner and William C. Wright appeared on behalf of respondent and contested the motion. The question presented by petitioner's motion is whether respondent's initial document disclosures are sufficiently specific under Fed. R. Civ. P. 26(a)(1)(A)(ii) (the "Rule").

By way of background, respondent owns Registration No. 3376222, filed November 7, 2006 under Section 66(a), for the mark DOUBLE DOUBLE in connection with "Whisky; whisky based liqueurs." Petitioner seeks to cancel the registration, alleging that respondent's mark is confusingly similar to

Cancellation No. 92048909

and likely to dilute petitioner's mark DOUBLE DOUBLE, which is used and registered¹ for sandwiches; that use of respondent's mark may create a false suggestion of association between petitioner and respondent; and that respondent did not have a bona fide intention to use the mark as of the filing date of the application. Respondent denies the salient allegations in the petition for cancellation, and asserts, as affirmative defenses that: (1) petitioner has failed to state a claim upon which relief may be granted; (2) there is no likelihood of confusion between the parties' marks; (3) the marks "differ in meaning and commercial impression;" and (4) the "respective goods, purchasers, channels of trade, marketing and distribution of the goods at issue are vastly different." It should be noted that the final three "defenses" are not technically affirmative defenses, but instead merely elaborate respondent's reasons for denying petitioner's allegations.

Respondent served its original initial disclosures on June 4, 2008, in which it identified only two categories of relevant documents: "[t]rademark application papers" and "[d]ocuments located at BB&R corporate office or the offices of its undersigned counsel." After petitioner rightly objected to the initial document disclosures as

¹ Registration Nos. 1002370 and 1165723, both of which are over five years old.

insufficiently detailed, respondent supplemented them, identifying the following categories of documents:

- (1) documents showing there is no likelihood of confusion between the marks at issue;
- (2) documents pertaining to Registrant's business;
- (3) documents pertaining to the history of Registrant's business;
- (4) documents pertaining to the goods sold by Registrant and channels of trade;
- (5) documents pertaining to sales;
- (6) documents pertaining to advertising;
- (7) copy of Registrant's website; and
- (8) all documents which may be relevant in supporting our client's defenses.

Petitioner contends that the document disclosures as amended are still insufficient, and respondent contends that it has complied with the Rule.

Petitioner argues that respondent's document disclosures are "very general" and not useful to petitioner as it plans for discovery. Petitioner also asserts that there is no indication that respondent's counsel even conferred with respondent before drafting the disclosures. Petitioner contrasts respondent's disclosures with its own, which, according to petitioner, identify "real" categories of documents. For example, in its initial document disclosures, petitioner identified "documents showing Petitioner's uses of the DOUBLE DOUBLE mark," "documents

Cancellation No. 92048909

showing Petitioner's advertising and promotional expenses for the DOUBLE DOUBLE mark and for its business" and "documents showing sales of DOUBLE DOUBLE non-food merchandise including outside the Southwestern U.S."

In opposing the motion, respondent claims that it did, in fact, confer with its counsel in preparing at least the amended initial disclosures. Furthermore, respondent argues that its amended initial document disclosures are in compliance with the Rule, which does not require much specificity, and that petitioner will have ample opportunity, during discovery, to seek and obtain specific documents.

Respondent is correct that the Rule does not require a great deal of specificity. As the Office has explained in recent amendments to rules governing Board proceedings, "[u]nder Federal Rule 26(a)(1), a party is not obligated to disclose the name of every witness, document or thing that may have or contain discoverable information about its claim or defense" *Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 72 Fed. Reg. 42242, 42247 (Aug. 1, 2007). Nonetheless, a party must provide a copy "or a description by category and location" of documents, electronically stored information and tangible things it "may use to support its claims or defenses, unless the use

Cancellation No. 92048909

would be solely for impeachment." Fed. R. Civ. P.

26(a)(1)(A)(ii).

In this case, the Rule requires more specificity than the exceedingly general categories of documents respondent disclosed, as the Rule specifically requires that parties disclose documents relating to their respective claims or defenses. Even respondent's amended initial document disclosures are insufficiently related to its defenses², and do not "serve as a substitute for a certain amount of traditional discovery and ... provide a more efficient means for exchange of information that otherwise would require the parties to serve traditional discovery requests and responses thereto." Id. at 42244.³ Thus, by contending that petitioner may identify and obtain documents during discovery, respondent has missed the point of the initial disclosure requirement.

Indeed, of the 10 categories of documents disclosed by respondent, none mention or specifically relate to the meaning or commercial impression of respondent's mark, the

² As already noted, respondent has not pleaded true affirmative defenses. Nonetheless, respondent clearly has shown by what it has pleaded as defenses that it plans to defend the action by showing or attempting to show certain things, i.e., differences in the meaning of the marks, goods, channels of trade, purchasers, etc. And its initial disclosures must reflect its evident plans for defending the action at trial.

³ The most efficient means of making initial disclosures of documents, and the option the Board encourages parties to use, is to actually exchange copies of disclosed documents, rather than merely identifying their location.

Cancellation No. 92048909

goods sold or intended to be sold under respondent's mark, or respondent's use of or intent to use its mark in the U.S. The only disclosures which even reference a trademark are "trademark application papers" and "documents showing there is no likelihood of confusion between the marks at issue." Furthermore, with one exception, respondent's disclosures do not specifically relate to the factors which will be used to evaluate petitioner's claims of likelihood of confusion, dilution and false suggestion of association.⁴ Accordingly, petitioner's motion to compel is granted to the extent that within **THIRTY DAYS** of the mailing date of this order, respondent must further supplement its initial document disclosures by relating the categories of documents disclosed to respondent's mark and defenses in this proceeding. In addition, if the documents disclosed are located anywhere other than respondent's "corporate office or the offices of its counsel," respondent must so indicate, and respondent must provide the address(es) of any locations where the documents are maintained. Discovery, trial and other dates are reset as follows:

Expert Disclosures Due

October 28, 2008

Discovery Closes

November 27, 2008

⁴ Respondent admitted during the telephone conference that it "could have" identified more specific categories of documents, such as documents related to respondent's lack of any intention to expand its use of DOUBLE DOUBLE beyond the goods identified in its registration.

Cancellation No. 92048909

Plaintiff's Pretrial Disclosures	January 11, 2009
Plaintiff's 30-day Trial Period Ends	February 25, 2009
Defendant's Pretrial Disclosures	March 12, 2009
Defendant's 30-day Trial Period Ends	April 26, 2009
Plaintiff's Rebuttal Disclosures	May 11, 2009
Plaintiff's 15-day Rebuttal Period Ends	June 10, 2009

News from the TTAB

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

Subject: RE: LAVATEC Opposition

Date: Monday, July 25, 2011 5:31 PM

From: Andrea Fiocchi <afiocchi@reinhardt-law.com>

To: John C. Linderman lind@ip-lawyers.com, Sarah Tallent stalent@reinhardt-law.com

Mr. Linderman:

Your client's allegations are preposterous (our client has a long list of similar allegations against your client) and your "condition" is mere lawyer's bickering. Your extension to July 29th is hereby rejected as unreasonable under the circumstances, including, without limitation, the lack of specificity of your original requests.

Feel free to file motions. We will respond in kind.

AF

Andrea Fiocchi

Attorney at Law

Reinhardt LLP

44 Wall Street - 10th Fl.

New York, NY 10005

Ph: (212) 710-0970

Fax: (212) 710-0971

Email: afiocchi@reinhardt-law.com

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New York ♦ Denver ♦ Stuttgart

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

In the matter of trademark application Serial No.: 76701998

For the mark: LAVATEC

Published in the Official Gazette on November 2, 2010

Mr. Wolf-Peter Graeser,)
)
 the "Opposer",)
)
 v.) Opposition No.: 91197754
)
 Lavatec, Inc.)
)
 the "Applicant")

OPPOSER'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to F.R.Civ.P. 33 and 37 C.F.R. §2.120(d), Opposer, Wolf-Peter Graeser, sets forth below its First Set of Interrogatories, and requests that Applicant, Lavatec, Inc., answer the following interrogatories separately and fully, in writing, under oath.

Instructions

1. With respect to the answer to each interrogatory or subpart thereof, identify the source of the information given therein, including, without limitation, the nature, designation, and location of any files that contain such information and the custodian of the files, and identify each document which supports in whole or in part the answer to each interrogatory.
2. Where an identified document is in a language other than English, in whole or in part, and an English translation(s) exists in whole or in part, supply the original and the English translation of the document. If such a translation exists but

is not in control of the Applicant, supply the name and address of the person or entity who has possession of the translation.

3. If a request is made for production of documents which are no longer in the possession, custody and/or control of the Applicant, state when such documents were most recently in the possession, custody and/or control of the Applicant and what dispositions were made of them, when, why, and by whom, and include the identity of the person believed to be presently in possession, custody and/or control of the documents. If a document has been destroyed, state when such document was destroyed, identify the person who destroyed the document, and the person(s) who directed that the document be destroyed and the reasons the document was destroyed.

4. If you elect to avail yourself of the procedure for answering interrogatories authorized by Rule 33(d) of the Federal Rules of Civil Procedure, for each interrogatory and subpart thereof, specify the particular documents responsive to that specific interrogatory and subpart thereof and, for each document, specify the location or source of the document, the author, recipients, and the date of preparation if not apparent from the face of the document.

5. As to each record or document from which you obtained information used in answering these Interrogatories, please state:

- a. A description sufficient for a subpoena duces tecum; and
- b. The name and most recent available address and telephone number of each person and entity having custody of the original and any copy thereof.

6. Any Interrogatory propounded in the disjunctive shall be construed to include the conjunctive and vice versa.

7. Any Interrogatory propounded in the masculine shall be construed to include the feminine and neuter.

8. The use of the singular form of any word shall be construed to include the plural and vice versa.

9. Each Interrogatory which seeks information relating in any way to communications to, from, or within a business and/or corporate entity concerning particular subject matter should be construed to include all communications by and between representatives, employees, agents and/or servants of the business or corporate entity concerning that subject matter.

10. A draft or non-identical copy of a "document" constitutes a separate document and should be separately identified in a response to an Interrogatory or Request inquiring into documents.

11. "To identify" (with respect to persons) means to give, to the extent known, (a) the person's full name; (b) present or last known address; and (c) when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

12. "To identify" (with respect to documents) means to give, to the extent known, (a) the type of document; (b) general subject matter; (c) date of the document; (d) author(s), addressee(s), recipient(s) of the document; and (e) English translations thereof if the document is a non-English document.

13. "To identify" (with respect to acts) means to state how, when, and where the acts took place, and to identify the person(s) involved and all documents relating to and confirming the acts.

14. Responses to Interrogatories seeking the identity of documents should include the custodian of the documents.

15. When an Interrogatory calls upon a party to "state the basis" of or for a particular claim, assertion, allegation, contention, or other response, the party shall

a. identify with particularity each and every document (and, where pertinent, the section, article, or paragraph thereof), which forms any part of the source of the party's information regarding the alleged facts or legal conclusion referred to by the Interrogatory;

b. identify with particularity each and every communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the Interrogatory;

c. state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the person(s) involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the Interrogatory; and

d. state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the Interrogatory.

16. All Interrogatories propounded shall be deemed continuing and as such require supplementary answers if further or different information is learned after the filing of answers.

17. For each claim of privilege in connection with the withholding of a document, please identify each document by date, authors, recipients, the type of document (letter, memo, drawing, chart or e-mail), the general subject matter in sufficient detail to ascertain whether the document qualifies for withholding as privileged, and the custodian of the document.

Definitions

As used herein, the term(s):

1. "Document" or "record" is used in its broadest sense to mean every writing or recording of every type described in Rule 34 of the Federal Rules of Civil Procedure, and any written, typed, printed, recorded or graphic matter, however produced or reproduced, of any kind and description, whether sent, received, or neither, and all copies which differ in any way from the original (whether by interlineations, stamped received, notation, indication of copy sent or received, or otherwise) regardless of whether designated confidential, privileged or otherwise, and whether an original, master, duplicate or copy, including, but not limited to, papers, notes, account statements or summaries, ledgers, pamphlets, periodicals, books, advertisements, objects, letters, memoranda, notes or notations of conversations, contracts, agreements, drawings, telegraphs, tape recordings, communications, including interoffice and intra-office memoranda, delivery tickets,

bills of lading, invoices, quotations, claims documents, reports, records, studies, work sheets, working papers, corporate records, minutes of meetings, circulars, bulletins, notebooks, bank deposit slips, bank checks, canceled checks, check stubs, diaries, diary entries, appointment books, desk calendars, data processing cards, discs, CDs, and/or tapes, e-mails, facsimiles, computer readable database information, photographs, videotapes, transcriptions or sound recordings of any type of personal or telephone conversations, interviews, negotiations, meetings or conferences, or any other records similar to any of the foregoing.

2. "Things" shall have the meaning prescribed by Rule 34 of the Federal Rules of Civil Procedure.

3. "Person" refers to any natural person or any business, legal or government entity, or association.

4. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

5. "Communication" means any words heard, spoken, written or read, regardless of whether designated confidential, privileged or otherwise, and including, without limitation words spoken or heard at any meeting, discussion, interview, encounter, conference, speech, conversation or other similar occurrence, and words written or read from any document(s) as described above.

6. "Date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof (including dating by relationship to other events).

7. "Explaining," "describing," "defining," "concerning," "reflecting" or "relating to" when used separately or in conjunction with one another mean directly

or indirectly mentioning, pertaining to, involving, being connected with or embodying in any way or to any degree the stated subject matter.

8. "Exhibit" means, unless otherwise indicated, all documentary, tangible or other similar things as defined above of any kind or character, within or outside the plaintiff's possession, custody or control which will be used at trial to prove any claims.

9. "And" and "or" as used in this set of Interrogatories are not intended as words of limitation. Any verb in the present tense shall also be taken in the past, imperfect and future tenses, and vice-versa.

10. "Opposer" means Wolf-Peter Graeser, unless otherwise indicated.

11. "Applicant" means Lavatec, Inc., including all present or former directors, partners, officers, employees, and any attorney or third party acting on Applicant's behalf.

12. "Lavatec GmbH" refers to a German company and its predecessor Lavatec AG.

13. The "'998 Application" refers to Applicant's Trademark Application Serial No. 76/701,998 filed March 11, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

14. The "'139 Application" refers to Opposer's Trademark Application No.85/138,139 filed September 24, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

15. All other words, terms and phrases are to be given their normal meaning.

INTERROGATORIES

1. Please identify all persons who were consulted and/or provided information to answer these interrogatories, identifying by number the interrogatory or interrogatories for which he or she was consulted and provided information and identifying with specificity all documents obtained from such person.

2. Please identify all persons with knowledge of any of the allegations in Applicant's 998 Application.

3. Please describe in detail the history of the mark LAVATEC, including how Applicant designed the mark LAVATEC, how Applicant decided to adopt and use the mark LAVATEC, and all subsequent changes to the way the mark LAVATEC was depicted on Applicant's products and marketing and advertising materials, and identify each and every person with knowledge of such history.

4. Please explain in detail when and how Applicant first designed, manufactured and sold each of the following items: dry-cleaning machines; washing machines for clothing; folders, namely, electric clothes folding machines for commercial dry cleaning and laundry purposes; electric clothing pressing machines for commercial dry cleaning and laundry purposes including shirt press, collar and cuff press, utility press, legger press, drapery press, pants topper, mushroom topper, puff iron and clothes dryers, and identify each and every person with knowledge of such facts.

5. Please explain in detail how Applicant was using the mark LAVATEC on February 15, 1987, including where and by whom the materials and/or products bearing the mark LAVATEC were designed and produced.

6. Please identify all individuals affiliated with Applicant who had contact with Lavatec GmbH prior to February 15, 1987.

7. Please identify all individuals who contributed to the design of the LAVATEC mark and/or logo.

8. Please explain in detail where each of the products sold by Applicant under the mark LAVATEC was manufactured and/or purchased. From February 15, 1987 to date

9. Please explain how Applicant made it possible for the mark LAVATEC to acquire substantial customer recognition throughout the United States from February 15, 1987 to date.

10. Please explain how Applicant affixed the mark LAVATEC to the products sold from February 15, 1987 to date, including who designed and manufactured the product tags attached to the amendment to Application 998 submitted on August 25, 2010.

11. Please explain who designed the product brochure attached to the original Application 998, including: (i) where the machines photographed on pages 1,2,5,7 through 12 were designed, manufactured and located, (ii) why there is an image of Euro currency bills on the brochure, (iii) why all measurements are in metric units, rather than U.S. units and (iv) why Lavatec GmbH's brochures are identical to Applicants (bar the contact information).

12. Please explain the basis for Peter Thompson's declaration under penalty of perjury that nobody other than Applicant has a claim to ownership of the mark LAVATEC.

13. Please describe in detail the history of the relationship between Applicant and Lavatec GmbH from February 15, 1987 to date and identify each and every person with knowledge of such history.

14. Please explain how Applicant was authorized by Lavatec GmbH to make use of the Mark from February 15, February 15, 1897 to date.

15. Please explain what Applicant considers to be the source of the products sold under the LAVATEC mark.

16. Please explain who has controlled the nature and quality of each of the products sold under the LAVATEC mark since February 15, 1987.

17. Please describe in detail how and by whom sales literature, marketing material, trade show stands/booths, trade dress, packaging, labels, product designs, instruction manuals, catalogs, brochures, flyers, logos and all other sales, promotional and product information was designed and produced from 1987 to date.

18. Please explain how Applicant provided technical, start up and after sales product support to its customers from February 15, 1987 to date, including its use of technicians from Lavatec GmbH.

19. Please explain how and by whom Applicant's staff were trained regarding the characteristics of the products sold by the Applicant and how and by whom Applicant's service technicians were trained to start-up, service, diagnose and repair the products sold by Applicant.

20. Please explain how Applicant provided quotes for customers requesting custom designs or modifications to its products from February 15, 1987 to date, including whether communications were exchanged with Lavatec GmbH when preparing quotes.

21. Please explain why Applicant did not seek to register the LAVATEC mark prior to March 2010, if it believed it was the owner of the LAVATEC mark since February 15, 1987.

22. Please explain who authorized the filing of the 998 Application and what was the basis of Applicant's belief that it was authorized to register the LAVATEC mark without the consent of Lavatec GmbH.

Respectfully submitted,

Wolf-Peter Graeser

Dated July 29, 2011

By: s/ Andrea Fiocchi

Andrea Fiocchi, Esq.
Sarah E. Tallent, Esq.
44 Wall Street, 10th Fl
New York, NY 10005
(212) 710-0970

afiocchi@reinhardt-law.com
stallent@reinhardt-law.com

Attorneys for Opposer,
Wolf-Peter Graeser

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On July 29, 2011

By: /s/ Andrea Fiocchi

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

In the matter of trademark application Serial No.: 76701998

For the mark: LAVATEC

Published in the Official Gazette on November 2, 2010

Mr. Wolf-Peter Graeser,)
)
 the "Opposer",)
)
 v.) Opposition No.: 91197754
)
 Lavatec, Inc.)
)
 the "Applicant")

OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

Pursuant to F.R.Civ.P. 34 and 37 C.F.R. §2.120(d), Opposer, Wolf-Peter Graeser., sets forth below its First Set of Document Requests, and requests that Applicant, Lavatec, Inc. answer the following interrogatories separately and fully, in writing, under oath.

Instructions

1. Where an identified document is in a language other than English, in whole or in part, and an English translation(s) exists in whole or in part, supply the original and the English translation of the document. If such a translation exists but is not in control of the Applicant, supply the name and address of the person or entity who has possession of the translation.

2. If a request is made for production of documents which are no longer in the possession, custody and/or control of the Applicant, state when such documents were most recently in the possession, custody and/or control of the

Applicant and what dispositions were made of them, when, why, and by whom, and include the identity of the person believed to be presently in possession, custody and/or control of the documents. If a document has been destroyed, state when such document was destroyed, identify the person who destroyed the document, and the person(s) who directed that the document be destroyed and the reasons the document was destroyed.

3. If you elect to avail yourself of the procedure for answering interrogatories authorized by Rule 33(d) of the Federal Rules of Civil Procedure, for each interrogatory and subpart thereof, specify the particular documents responsive to that specific interrogatory and subpart thereof and, for each document, specify the location or source of the document, the author, recipients, and the date of preparation if not apparent from the face of the document.

4. Any Request propounded in the disjunctive shall be construed to include the conjunctive and vice versa.

5. Any Request propounded in the masculine shall be construed to include the feminine and neuter.

6. The use of the singular form of any word shall be construed to include the plural and vice versa.

7. Each Request which seeks information relating in any way to communications to, from, or within a business and/or corporate entity concerning particular subject matter should be construed to include all communications by and between representatives, employees, agents and/or servants of the business or corporate entity concerning that subject matter.

8. A draft or non-identical copy of a "document" constitutes a separate document and should be separately identified in a response to a Request inquiring into documents.

9. "To identify" (with respect to persons) means to give, to the extent known, (a) the person's full name; (b) present or last known address; and (c) when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

10. "To identify" (with respect to documents) means to give, to the extent known, (a) the type of document; (b) general subject matter; (c) date of the document; (d) author(s), addressee(s), recipient(s) of the document; and (e) English translations thereof if the document is a non-English document.

11. "To identify" (with respect to acts) means to state how, when, and where the acts took place, and to identify the person(s) involved and all documents relating to and confirming the acts.

12. All Requests propounded shall be deemed continuing and as such require supplementary answers if further or different information is learned after the filing of answers.

13. For each claim of privilege in connection with the withholding of a document, please identify each document by date, authors, recipients, the type of document (letter, memo, drawing, chart or e-mail), the general subject matter in sufficient detail to ascertain whether the document qualifies for withholding as privileged, and the custodian of the document.

Definitions

As used herein, the term(s):

1. "Document" or "record" is used in its broadest sense to mean every writing or recording of every type described in Rule 34 of the Federal Rules of Civil Procedure, and any written, typed, printed, recorded or graphic matter, however produced or reproduced, of any kind and description, whether sent, received, or neither, and all copies which differ in any way from the original (whether by interlineations, stamped received, notation, indication of copy sent or received, or otherwise) regardless of whether designated confidential, privileged or otherwise, and whether an original, master, duplicate or copy, including, but not limited to, papers, notes, account statements or summaries, ledgers, pamphlets, periodicals, books, advertisements, objects, letters, memoranda, notes or notations of conversations, contracts, agreements, drawings, telegraphs, tape recordings, communications, including interoffice and intra-office memoranda, delivery tickets, bills of lading, invoices, quotations, claims documents, reports, records, studies, work sheets, working papers, corporate records, minutes of meetings, circulars, bulletins, notebooks, bank deposit slips, bank checks, canceled checks, check stubs, diaries, diary entries, appointment books, desk calendars, data processing cards, discs, CDs, and/or tapes, e-mails, facsimiles, computer readable database information, photographs, videotapes, transcriptions or sound recordings of any type of personal or telephone conversations, interviews, negotiations, meetings or conferences, or any other records similar to any of the foregoing.

2. "Things" shall have the meaning prescribed by Rule 34 of the Federal Rules of Civil Procedure.

3. "Person" refers to any natural person or any business, legal or government entity, or association.

4. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

5. "Communication" means any words heard, spoken, written or read, regardless of whether designated confidential, privileged or otherwise, and including, without limitation words spoken or heard at any meeting, discussion, interview, encounter, conference, speech, conversation or other similar occurrence, and words written or read from any document(s) as described above.

6. "Date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof (including dating by relationship to other events).

7. "Explaining," "describing," "defining," "concerning," "reflecting" or "relating to" when used separately or in conjunction with one another mean directly or indirectly mentioning, pertaining to, involving, being connected with or embodying in any way or to any degree the stated subject matter.

8. "Exhibit" means, unless otherwise indicated, all documentary, tangible or other similar things as defined above of any kind or character, within or outside the plaintiff's possession, custody or control which will be used at trial to prove any claims.

9. "And" and "or" as used in this set of Interrogatories are not intended as words of limitation. Any verb in the present tense shall also be taken in the past,

imperfect and future tenses, and vice-versa.

10. "Opposer" means Wolf-Peter Graeser, unless otherwise indicated.

11. "Applicant" or "You" means Lavatec, Inc., including all present or former directors, partners, officers, employees, and any attorney or third party acting on Applicant's behalf.

12. "Lavatec GmbH" refers to a German company and its predecessor Lavatec AG.

13. The "998 Application" refers to Applicant's Trademark Application Serial No. 76/701,998 filed March 11, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

14. The "139 Application" refers to Opposer's Trademark Application No.85/138,139 filed September 24, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

15. All other words, terms and phrases are to be given their normal meaning.

DOCUMENT REQUESTS

1. All documents referenced in or relating to the allegations contained in the 998 Application.

2. All documents referenced in or relating to the allegations contained in Applicant's Answer.

3. All documents supporting Applicant's allegations in the 998 Application that Applicant used the LAVATEC mark in commerce since February 15, 1987.

4. All documents supporting Applicant's allegations that it was the first to use the LAVATEC mark in the United States.

5. All documents, including communications, between Applicant and any third party (including Lavatec GmbH and the bankruptcy trustee of Lavatec GmbH) regarding ownership and/or registration of the LAVATEC mark.

6. All documents supporting Applicant's allegations that it uses the LAVATEC mark in connection with each of the products and services listed in the 998 Application.

7. All documents showing that Applicant designed the brochure attached to the 998 Application and who designed such brochure for Applicant.

8. All documents showing that Applicant designed the tags/labels attached to the amendment to the 998 Application and who designed such tags/labels for Applicant.

9. All documents indicating that Applicant has and had control over the nature and quality and appearance of all products and services sold by Applicant under the LAVATEC mark since 1987.

10. All documents indicating how Applicant used the LAVATEC mark in 1987.

11. All documents indicating from whom the products sold by Applicant under the mark LAVATEC were supplied.

12. All documents indicating how the mark LAVATEC and the LAVATEC logo were invented, developed, designed and/or adopted by Applicant.

11. All documents used by Applicant to market, publicize and/or promote products sold by Applicant under the LAVATEC mark that were produced without the direct or indirect input, contribution and/or approval of LAVATEC GmbH.

12. All documents, including communications, showing service calls to Applicant's customers which were carried out by staff, independent contractors and/or representatives of LAVATEC GmbH.

13. All documents, including communications, relating to the quoting, order and purchase of products and services sold under the LAVATEC mark by Applicant from LAVATEC GmbH and third parties.

14. All documents, including communications, relating to the shipment of goods sold by Applicant under the LAVATEC mark to Applicant's customers.

15. All documents showing Applicant's initial customer list in the United States and all documents showing how such list was devised.

16. All documents showing Applicant's design of its product labels and logos.

17. All documents supporting Applicant's claim of ownership of the LAVATEC mark.

18. All documents granting and/or indicating that Applicant has the exclusive right to use the LAVATEC mark in the United States.

19. All documents showing that Lavatec GmbH used the mark LAVATEC in the United States prior to February 15, 1987.

Respectfully submitted,

Wolf-Peter Graeser

Dated July 29, 2011

By: s/ Andrea Fiocchi

Andrea Fiocchi, Esq.
Sarah E. Tallent, Esq.
44 Wall Street, 10th Fl
New York, NY 10005
(212) 710-0970

afiocchi@reinhardt-law.com
stallent@reinhardt-law.com

Attorneys for Opposer,
Wolf-Peter Graeser

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On July 29, 2011

By: /s/ Andrea Fiocchi

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

In the matter of trademark application Serial No.: 76701998

For the mark: LAVATEC

Published in the Official Gazette on November 2, 2010

Mr. Wolf-Peter Graeser,)
)
 the "Opposer",)
)
 v.) Opposition No.: 91197754
)
 Lavatec, Inc.)
)
 the "Applicant")

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Pursuant to F.R.Civ.P. 36 and 37 C.F.R. §2.120, Opposer, Wolf-Peter Graeser., submits the following Requests for Admissions to be responded to by Applicant, Lavatec, Inc.

INSTRUCTIONS AND DEFINITIONS

The Instructions and Definitions in Opposer's First Set of Interrogatories to Applicant also apply to Applicant's First Set of Requests for Admission, and are incorporated herein by reference.

ADMISSION REQUESTS

1. Applicant never designed or manufactured any of the following: dry-cleaning machines; electric clothing pressing machines for commercial dry cleaning and laundry purposes including shirt press, collar and cuff press, utility press, legger press, drapery press, pants topper, mushroom topper, puff iron and clothes dryers.

2. Applicant never sold any dry-cleaning machines; electric clothing pressing machines for commercial dry cleaning and laundry purposes including shirt press, collar and cuff press, utility press, legger press, drapery press, pants topper, mushroom topper, puff iron and clothes dryers under the mark LAVATEC.

3. Applicant never manufactured or sold folders prior to 1991.

4. Applicant never manufactured any washer extractors prior to 1997.

5. Applicant manufactured no more than 8 washer extractors.

6. The washer extractors manufactured by Applicant were designed by Lavatec GmbH and not by Applicant.

7. Applicant made no further washer extractors after 1997.

8. Applicant never manufactured any other types of washing machines.

9. Prior to 1991 Applicant purchased all products sold bearing the mark LAVATEC from Lavatec GmbH.

10. Prior to January 1, 1997 and after December 31, 1997 Applicant purchased all products sold bearing the mark LAVATEC other than folding machines from Lavatec GmbH.

11. Applicant did not invent the tradename LAVATEC.

12. Applicant commenced using the tradename LAVATEC because that was the name of its sole shareholder.
13. Applicant did not design or modify any logo containing the mark LAVATEC.
14. Applicant was a distributor of products for Lavatec GmbH (and its predecessor).
15. Applicant followed instructions on business decisions from Lavatec GmbH.
16. Applicant's management reported to Lavatec GmbH.
17. Prior to 2009, Applicant's senior management was controlled by the same individual(s) as Lavatec GmbH.
18. Prior to 2009, Applicant never took any major business decisions without the authorization of the management of Lavatec GmbH.
19. Most products sold by Applicant to U.S. customers were shipped directly to the customers from Lavatec GmbH.
20. Applicant was dependent upon Lavatec GmbH for the design, manufacture and sale of products.
21. If Applicant's customers requested a custom product, Applicant contacted Lavatec GmbH to determine whether the customer's needs could be accommodated.
22. Staff from Lavatec GmbH were sent to service the needs of Applicant's customers in the United States.
23. Staff from Lavatec GmbH were sent to service the needs of customers in the United States prior to February 15, 1987.
24. Applicant is not the successor in interest of Lavatec GmbH.
25. Applicant never purchased the mark LAVATEC from Lavatec GmbH.
26. Applicant never discussed registration of the LAVATEC mark in the United States with Lavatec GmbH or the bankruptcy trustee of Lavatec GmbH.

27. Applicant never requested authorization to register the LAVATEC mark from Lavatec GmbH.

28. Applicant never received authorization to register the LAVATEC mark.

29. Lavatec GmbH never assigned the mark LAVATEC to Applicant.

30. Applicant never made independent use of the mark LAVATEC.

Respectfully submitted,

Wolf-Peter Graeser

Dated July 29, 2011

By: s/ Andrea Fiocchi

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On July 29, 2011

By: /s/ Andrea Fiocchi