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

Proceeding	91197754
Party	Defendant Lavatec, Inc.
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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 REPLY IN SUPPORT OF ITS FOURTH MOTION TO COMPEL**

Applicant replies below to Opposer’s defenses of his responses to Interrogatory 10 as applied to Applicant’s Admission Request 20, and Admission Requests 21, and 22.

**Interrogatory 10 as applied to Admission 20**

In response to Applicant’s Fourth Motion to Compel, Opposer asserts that Applicant has not been patient and has not given Opposer sufficient time to respond to Applicant’s discovery requests. Opposer purports to take the opportunity to respond now. (Response, Pars. 2, 3). However, the Response yields no evidence supporting a denial of Admission Request 20.

It is appropriate view the timeline leading up to Applicant’s Fourth Motion To Compel:

September 28, 2011 – Admission Requests 20, 21 and Interrog. 10 issued

October 28, 2011 - Interrogatory Response 10(20) – “in the process of retrieving” (Exhibit 1)

November 28, 2011 - Applicant’s reminder (Exhibit 4)

December 23, 2011 - Opposer requests clarification of reminder (Exhibit 4)

January 13, 2012 - Applicant explains response remains incomplete (Exhibit 4)

April 2, 2012 - Applicant’s further reminder (Exhibit 5)

April 3, 2012 - Opposer states a belief with no substantive evidence (Exhibit 6)

April 4, 2012 - Applicant demands a substantive response (Exhibit 6)

In summary, Opposer has had over six months to answer the Interrogatory 10(20) or admit Request 20, but claims, after a series of reminders, that Applicant has not been patient. Opposer then proclaims that it is answering Interrogatory 10(20) as part of his Response to the Motion to Compel. One wonders when, or if, Opposer would have responded if a motion to compel had not been filed.

However, the purported response is not a substantive response at all. Opposer simply produces eight identically worded affidavits, none of which confirms the delivery of commercial laundry equipment prior to Applicant’s incorporation as stated in Request 20.

Opposer’s time has run out. The discovery period has closed. Opposer has obviously not found any evidence that would support a denial of Request 20. Accordingly, the Request 20 should be deemed admitted.

### **Admission Requests 21 and 22**

Applicants Admission Request 21 (Exhibit 2) and Request 22 (Exhibit 3) seek confirmation that Opposer has no documents prohibiting Applicant from using or registering the LAVATEC trademark.

Opposer has not provided any substantive responses, and instead in his responses to the Admission Requests he asserts a series of meritless objections, each of which has been challenged by Applicant in its memorandum-in-chief. In his Response to this Motion to Compel, Opposer has not attempted to validate any of the

objections other than the one asserting that the documentation is more readily available from other sources. Obviously Opposer confuses the Admission Requests with document requests. Certainly Opposer, not a third party, has the knowledge and is the principal source of information concerning documents in Opposer's possession, custody, or control.

Opposer launches a new attack on the Admission Requests claiming they are "misleading", "maliciously phrased", constitute "loaded questions", and should be re-phrased. (Response, pages 3-4). Applicant denies the claims and notes that if Opposer's claims constitute new objections, they are untimely since the time for raising objections closed in October 2011. Opposer's speculations and extrapolations regarding Applicant's intended use of the Admissions are unwarranted and not relevant to Applicant's right to substantive responses instead of objections.

Opposer's Response tacitly admits that he has no documents prohibiting Applicant from using or registering the LAVATEC trademark. The Admission Requests 21 and 22 should accordingly be deemed admitted, and Opposer should be denied the right to submit such documents in these proceedings in the future.

### **CONCLUSION**

Opposer has had ample time and opportunity to investigate and uncover evidence that would support denials of Admission Requests 20, 21, and 22. With no contrary evidence available, the Admission Requests should be deemed admitted, and Opposer should be prevented from offering contrary evidence in the future.

Respectfully requested  
LAVATEC, INC., Applicant

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CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

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was sent by electronic mail this 1st day of May 2012, to the following counsel of record:

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