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

Proceeding	91199109
Party	Plaintiff Calpis Co., Ltd.
Correspondence Address	ROBERT BG HOROWITZ BAKER AND HOSTETLER LLP 45 ROCKEFELLER PLAZA NEW YORK, NY 10111 UNITED STATES rhorowitz@bakerlaw.com, dtobin@bakerlaw.com, ejoyce@bakerlaw.com, trademarks@bakerlaw.com, jlozada@bakerlaw.com
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Signature	/Robert B.G. Horowitz/
Date	12/17/2012
Attachments	MOTION FOR SANCTIONS.pdf (31 pages)(2723658 bytes)

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

CALPIS CO., LTD.)		
)		
Opposer,)		
)	Consolidated	
v.)	Opposition Nos.	91199109
)		91199111
)		
CALICO JACK'S L.L.C.)		
)		
Applicant.)		

Opposer, Calpis Co. Ltd., hereby moves the Trademark Trial and Appeal Board ("Board" pursuant to Trademark Rule 2.120(g)(1) for an order striking Applicant's Amended Answers to the Notices of Opposition in these consolidated proceedings and for entry of judgment for Opposer, for failure to comply with the Board's Order of October 23, 2012 granting Opposer's motion to compel ("Order"). Alternatively, Opposer seeks pursuant to Fed.R.Civ.P. 37 to compel Applicant to comply with the Order and provide complete and full responses to Opposer's Interrogatories and Requests for Production of Documents served.

A. The Board's prior compulsion Order.

On October 23, 2012, the Board granted Opposer's uncontested motion to compel "as conceded". Applicant was given twenty (20) days from the date of the Order to serve its responses to Opposer's First Set of Document Requests and First Set of Interrogatories. The Order stated "applicant must respond in full and without objection because applicant failed to either appropriately respond to or appropriately object to opposer's discovery requests". The Order further provided that if applicant failed to serve responses as directed in the Order, "opposer's remedy will lie in a motion for entry of sanctions, including a sanction in the form of entry of judgment sustaining the opposition".

On November 10, 2012, Applicant served responses to Opposer's discovery requests. Its responses to the interrogatories are confusingly titled "Opposer's first set of Interrogatories to Applicant" where Applicant typed in information in response to the Interrogatories. Similarly, Applicant's responses to Opposer's document requests are titled "Opposer's First Set of Document Requests to Applicant" where Applicant typed in information in response thereto. The documents are attached to this motion as Exhibits 1 and 2, respectively.

As discussed below, the interrogatory responses are not answers, and the responses to the document production requests are deficient in many respects.

B. Applicant's Interrogatory Responses

1. The responses are not verified and thus are not made under oath. Rule 33(b)(3) Fed.R.Civ.P. requires that each interrogatory answer be made under oath. Since the responses have not been made under oath, they are not answers under the rules.
2. Response to Interrogatory No. 1. Generally speaking, the responses given do not align to the individual parts of the Interrogatory. Further: (a) The response does not include a street address for Applicant (only a PO Box); (c) the response does not include the name of college or other institution; and, (d) no experience in connection with the goods at issue or the relevant industry is provided.
3. Response to Interrogatory No. 3. Specific information regarding the marks as applied to specific goods and the time periods such goods were sold has not been provided.
4. Response to Interrogatory No. 4. This response is completely insufficient, as no date of first use or adoption is provided.
5. Response to Interrogatory No. 5. Applicant states its goods sold in connection with the mark are sold "on line and On the street." No geographic locations are provided.

6. Response to Interrogatory No. 6. The response is completely insufficient. No actual or intended purchasers are identified.
7. Response to Interrogatory No. 7. The response is completely insufficient. No sources of goods sold in connection with the mark are provided. Response merely states "see www.thedrinkink.com (which apparently is a source for private label energy drinks). Applicant should be required to clarify whether this website is the source of its goods sold in connection with the mark, and the specific name of the entity which provides the drinks.
8. Response to Interrogatory No. 10. The response is insufficient since annual dollar and unit sales were requested. Applicant's response states "[m]aybe a couple hundred U.S. dollars".
9. Response to Interrogatory No 11. The response is insufficient as Applicant does not break down in its response the advertising expenses for each mark.
10. Response to Interrogatory No. 14. The response is insufficient to the extent Applicant's date of adoption of each mark is "in the year 2008."
11. The response to Interrogatory No. 16. This response is completely insufficient, as it does not provide the circumstances surrounding the creation and/or adoption of the Marks.
12. The response to Interrogatory No. 17. This response is completely insufficient, as it does not provide the reason or purpose of adoption of the Marks, but merely states "Mission Statement."
13. The response to Interrogatory No. 20. This response is completely insufficient as no real answer is provided.
14. Response to Interrogatory No. 21. Applicant claims he cannot understand the question, which simply asks for the actual and potential sources or vendors of the goods sold in connection with the mark.

15. Response to Interrogatory No. 23. The response is insufficient to the extent it is not clear whether it relates to present or future advertising, and is in direct conflict with response to Interrogatory No. 12.

16. Response to Interrogatory No. 25. The response is not responsive because it does not address convictions of misdemeanors.

C. Applicant's responses to Document Production Requests.

1. Response to Request No. 1. The response merely directs Opposer to "see online databases at websites for docs." It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The response is completely unresponsive.

2. Response to Request No. 2. The request directs Opposer in essence to purchase samples of goods bearing the mark. Rule 34(a)(1) Fed.R.Civ.P. requires that Applicant permit us to inspect, test or sample tangible things. The response is completely unresponsive.

3. Response to Request No. 3. The response merely states "Made in the United States of America." It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive. Moreover, even if there is no importation of goods or materials in connection with the mark the request also seeks documents relating to the purchase of goods or materials, and not just importation. This portion of the request is not even addressed.

4. Response to Request No. 4. The response merely directs Opposer to a Facebook page. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

5. Response to Request No. 5. The response merely directs Opposer to www.iras.gov. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.
6. Response to Request No. 6. The response merely directs Opposer to www.drinkink.com. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive. Moreover, www.drinkink.com is an inaccessible website.
7. Response to Request No. 7. The response merely directs Opposer to www.uspto.gov. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.
8. Response to Request No. 8. The response merely directs Opposer to “calico jack wikipedia”. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.
9. Response to Request No. 9. The response merely directs Opposer to “calico jack wikipedia”. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.
10. Response to Request No. 10. The response merely directs Opposer to a Facebook page. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.
11. Response to Request No. 11. The response merely directs Opposer to www.uspto.gov. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.
12. Response to Request No. 14. The response merely directs Opposer to www.godaddy.com. It does not state with particularity what registrations or applications exist. It also does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

13. Response to Request No. 16. The response merely directs Opposer to www.drinkink.com (an inaccessible website). It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

14. Response to Request No. 18. The response merely directs Opposer to www.drinkink.com (an inaccessible website). It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

15. Response to Request No. 19. The response merely directs Opposer to www.uspto.gov. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

16. Response to Request No. 20. The response merely directs Opposer to a Facebook page. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

17. Response to Request No. 21. The response merely directs Opposer to www.irs.gov. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. There is no way in which annual sales revenues of Applicant in connection with the marks are accessible on the general IRS website. The answer is completely unresponsive.

18. Response to Request No. 24. The request directs Opposer in essence to purchase samples of goods bearing the mark. Rule 34(a)(1) requires that Applicant permit Opposer to inspect, test or sample tangible things. The response is completely unresponsive.

19. Response to Request No. 25. The response merely directs Opposer to www.drinkink.com (an inaccessible website). It does not offer to produce specific

responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

20. Response to Request No. 26. The response merely directs Opposer to a Facebook page, www.uspto.com and www.calico-jacks.com. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

21. Response to Request No. 29. The response merely directs Opposer to www.facebook.com. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

22. Response to Request No. 30. The response merely directs Opposer to "atf.gov". It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

23. Response to Request No. 31. The response merely directs Opposer to "Google earth 3d in U.S.A.". It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. The answer is completely unresponsive.

24. Response to Request No. 32. The response merely directs Opposer to www.irs.gov. It does not offer to produce specific responsive documents nor produce them in the ordinary course of business. There is no way in which the cost of goods sold in connection with the mark and the amount charged to purchasers of goods in connection with the mark are accessible on the general IRS website. The answer is completely unresponsive.

25. Response to Request No. 33. The response merely directs Opposer to a page on the FBI website. It does not offer to produce specific responsive documents nor

produce them in the ordinary course of business. The answer is completely unresponsive.

D. Argument.

Applicant's responses to Opposer's Interrogatories are deficient pursuant to Rule 33(b)(3) Fed.R.Civ.P. as they have not been answered under oath. Further, despite the Order requiring Applicant to "serve full and complete responses, without objection, to opposer's discovery requests", Applicant's responses to the Interrogatories and Document Requests at issue here are evasive and incomplete and are the equivalent of a failure to disclose. Rules 26(g) and 37(a)(4) Fed.R.Civ.P.

"The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed. R. Civ., P. 37(b)(2), including entry of judgment", MHW, Ltd. v. Simex, ussenhandelsgesellschaft Savelsberg KV, 59 USPQ2d 1477, 1478 (TTAB 2000) citing Baron Philippe de Rothschild S.A. v. Styji-Rite Optical Mfg. Co, 55 USPQ2d 1848 (TTAB 2000); Unicut Corp. v. Unicut, Inc., 222 USPQ 341 (TTAB 1984); and TBMP Section 527.01.

The record in this case is clear. Notwithstanding the Order's clear requirement that Applicant provide "full and complete responses", Applicant has not done so.

The time has come to put an end to Applicant's disobedient conduct in these proceedings and that will be achieved by the Board granting this motion so that Applicant's answers are stricken and judgment is entered for Opposer in these consolidated oppositions.

Should the Board disagree and conclude Applicant should have an additional opportunity to comply with the Order, then Opposer requests in the absence of

compliance by Applicant that the Board (1) render a default judgment against Applicant, (2) strike Applicant's pleadings in whole or in part, (3) direct that the facts laid out in Opposer's Notices of Opposition be taken as established, or (4) prohibit Applicant from relying on or introducing any evidence relating to those Interrogatories and Document Requests for which it has to provide complete and unequivocal responses. See Baron Phillippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 U.S. P.Q.2d 1848 (T.T.A.B. 2000) and TBMP Section 527.01(a).

Last, if the Board is not inclined to strike Applicant's answers and enter judgment for Opposer, Opposer requests that the deadline for expert disclosures and all other dates presently scheduled in this proceeding be extended for a period of two months following Opposer's receipt of Applicant's amended responses.

Dated: December 17, 2012

BAKER & HOSTETLER LLP

By: 

Robert B.G. Horowitz
Donna A. Tobin
45 Rockefeller Plaza
New York, N.Y. 10111
212 589-4200
Attorneys for Opposer
Calpis Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion was served on December 17, 2012 by First Class Mail, postage prepaid, in an envelope addressed to Applicant's address of record, as follows:

CALICO JACK'S LLC
19 Autumn Lane
Carriere, MS 39246-7070



Robert B.G. Horowitz

EXHIBIT 1

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

CALPIS CO., LTD.)	
)	
Opposer,)	
)	
v.)	Consolidated
)	Opposition Nos. 91199109
)	91199111
CALICO JACK'S L.L.C.)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") answer the following interrogatories under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, within thirty (30) days of the date hereof.

DEFINITIONS

A. As used herein, the terms "Applicant" and "Calico Jack's L.L.C." include CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or have acted or who purport to act or have purported to act, on its behalf.

B. As used herein, the term "Opposer" includes Calpis Co., Ltd., its predecessors in interest, and all of its subsidiaries and affiliated companies.

C. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO and/or CALICO JACK'S alone or in combination with another mark, element or component, or any similar mark, including but not limited to

the marks set forth in Applicant's trademark applications which are the subject of these proceedings.

D. As used herein, the term "documents" includes, but is not limited to, all writings, emails, facsimiles, summaries, minutes and records of in-person or telephone conversations, meetings and conferences, notes, notations, communications, correspondence, invoices, contracts, purchase orders, statements, bills, checks, agreements, memoranda of understanding, memoranda, books, pamphlets, publications, assignments, licenses, studies, reports, labels, packaging, artwork, advertisements, tear sheets, manuals, circulars, press releases, catalogs, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process and includes all drafts, originals, masters and non-identical copies.

E. As used herein, the terms "identify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Applicant, whether or not in the possession of Applicant and whether or not alleged to be privileged, including the following information:

1. In the case of a person, his/her full name, address, job title and present employer;

2. In the case of a company, firm, corporation or association, its name, business address and identity of persons having knowledge of the matter about which the company is named.

3. In the case of a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and

4. In the case of printed material, its title, author, publication date, volume and the relevant page numbers. The term "person" shall mean and include any natural person, business organization or entity such as corporation, partnership or the like.

F. In the following interrogatories, if a privilege is alleged as to information or materials or if an interrogatory is otherwise not answered in full, state the specific grounds for not answering in full and answer said interrogatory to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege.

G. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

H. As used herein, the singular shall include the plural, and the present tense shall include the past tense.

I. The term "referring or relating to" includes responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, constituting, and forming a basis for.

J. The following interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating

in anyway to these interrogatories which Applicant acquires or which becomes known to Applicant up to and including the time of trial shall be furnished to Opposer immediately after such information is first acquired or becomes known.

D. As used herein, "CALPICO Marks" are defined as CALPICO, CALPICO WATER and CALPICO SODA, as referred to in the Notices of Opposition filed in this matter.

INTERROGATORIES

INTERROGATORY No. 1.

State Sidney Martin's (a) current address; (b) current occupation; (c) educational and business history, including any degrees earned; and, (d) his experience, if any, in connection with the goods listed in its trademark applications that are the subject of these proceedings and the industry in which such goods are sold. a) Sidney J. Martin III
b) P.O. Box 791076 New Orleans, La. c) President of Calico Jacks LLC. d) Acct / I.T. Major

INTERROGATORY NO. 2.

State whether Applicant has a written business plan for the Marks and, if so, identify the date thereof and all persons who participated in the creation and writing of the plan. No written business plan has been made or will be made.

INTERROGATORY NO. 3.

Identify all goods sold by Applicant in association with the Marks at any time, specifying each such mark as applied to such goods, and stating the time periods during which each of such goods and/or services were sold or rendered.

Calico Jack's Original Energy Drink is and has been 4 sale and sold numerous times since 2008 prior to any calico marks being issued by agents of the USPTO.

INTERROGATORY NO. 4.

For each of the goods and services identified in both of Applicant's trademark applications which are the subject of these oppositions, state when Applicant first adopted and/or used each mark in connection therewith. Adopted from Calico jack drink. Marks originated from Pirate Calico Jack in 2008. See:http://en.wikipedia.org/wiki/calico_jack

INTERROGATORY NO. 5.

Identify the types of sales outlets in which Applicant sells goods in connection with each of the Marks, including but not limited to the approximate size of such sales outlets, the nature and geographic locations of such sales outlets and whether such sales outlets will be operated under each of the Marks or other marks. Calico Jacks Drink is sold online and on the street for cash and with such bad taste does not sell much if any.

INTERROGATORY NO. 6.

Identify the actual and intended purchasers of goods sold by Applicant in connection with each of the Marks.

Bourbon st. and French Quarter . Had no official "intended purchaser" of goods.

INTERROGATORY NO. 7.

Identify the source(s) of supply of the goods identified in Applicant's trademark applications that are the subject of these opposition proceedings and all goods sold by Applicant in connection with each of the Marks. See: www.thedrinkink.com

INTERROGATORY NO. 8.

Identify the individuals and/or entities who have assisted or who will assist Applicant in selling goods in connection with each of the Marks.

Sidney J. Martin III owner and CEO of Calico Jack's LLC.

INTERROGATORY NO. 9.

Separately for each of the goods in connection with which each of the Marks has been used, state whether there has been any interruption in the use of the Marks by Applicant and state the dates of interruption and resumption of use, if any. None.

INTERROGATORY NO. 10.

State on an annualized basis the amount of Applicant's unit and dollar sales of goods sold in association with each of the Marks. Maybe a couple hundred U.S. dollars.

INTERROGATORY NO. 11.

State the amount or projected amount of Applicant's advertising and promotional expenditures in connection with each of the Marks. \$100 United States Dollars.

INTERROGATORY NO.12.

State the methods of advertising and promotion in which Applicant has engaged in connection with goods bearing each of the Marks. \$100 Dollar bill business cards.

Facebook.com and calico-jacks.com website.

INTERROGATORY NO.13.

Identify any trade shows in which Applicant has displayed, promoted or exhibited goods bearing the Marks and identify any trade shows in which Applicant intends to display, promote or exhibit goods bearing the Marks. None.

INTERROGATORY NO. 14.

Identify the individual(s) responsible for the creation and/or adoption of the Marks by or on behalf of Applicant and state the dates of such creation and/or adoption.

Sidney J. Martin III in the year 2008.

INTERROGATORY NO. 15.

Identify the individual(s) involved in the decision to adopt the Marks.

Sidney J. Martin III.

INTERROGATORY NO. 16.

Describe the circumstances surrounding the creation and/or adoption of the Marks by or on behalf of Applicant. Applicant was tired of bullies and thieves taking things from him so he retreated to Mississippi and made Calico Jack's Original Energy Drink.

INTERROGATORY NO. 17.

Identify the reason(s) and purpose for Applicant's adoption of the Marks.

Mission statement.

INTERROGATORY NO. 18.

Identify the operators of all newspapers, trade journals, magazines, radio, television and other media outlets with whom Applicant has discussed use or advertising of the Marks. None, only online at www.calico-jacks.com

INTERROGATORY NO. 19.

Identify all individuals and entities who have assisted or will assist Applicant in connection with use of the Marks. Sidney J. Martin III

INTERROGATORY NO. 20.

State any and all efforts made by Applicant to determine whether the Marks could legally be used by Applicant in connection with the goods described in its trademark applications that are the subject of these proceedings, including but not limited to the conducting of any trademark searches or seeking of legal advice.

Common sense and logical thinking.

INTERROGATORY NO. 21.

Identify the actual and potential source(s) or vendor(s) of goods sold or to be sold by Applicant in connection with the Marks. Applicant does not understand the question.

INTERROGATORY NO. 22.

Describe in detail all instances of actual confusion known to Applicant between the source of Opposer's goods and/or services and any goods sold or services rendered by Applicant in connection with the Marks. None, None what so ever.

INTERROGATORY NO. 23.

Identify and describe the channels of advertising, promotion and trade in the United States for each of the goods and services Applicant sells or renders or intends to sell or render in connection with the Marks. Television, Radio, Trade show, Internet, blimps, Planes, racecars, speedboats, spacecraft, extreme sports, rockets, etc.

INTERROGATORY NO. 24.

Identify all individuals and entities which have distributed goods in connection with the Marks, including the name and address of each individual or entity.

Sidney J. Martin, see answer to question #1. www.thedrinkink.com Las Vegas, NV.

INTERROGATORY NO. 25.

State whether Applicant's Owner, Mr. Sidney J. Martin, ever has been convicted of a crime and if so, please state the date(s) and nature of such conviction(s).

Sidney J. Martin III is not a convicted felon.

INTERROGATORY NO. 26.

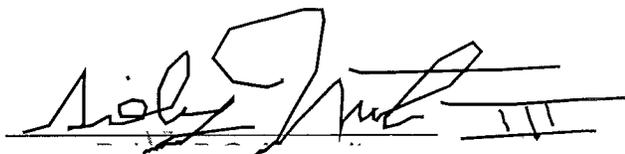
State whether the term "CALICO JACK" has any significance or meaning in the field of drinks and spirits and if so, describe such significance or meaning.

Calico Jack is a very Jolly and catchy phrased word that shows spirit and enlightenment.

Calico Jacks LLC.

Dated: November 10, 2012

By:

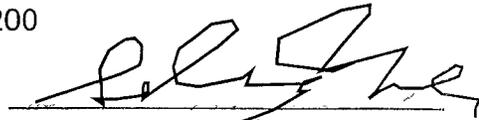
A handwritten signature in black ink, appearing to read "Sidney J. Martin III", written over a horizontal line.

Sidney j. Martin III
calico jacks LLC.
19 autumn lane
(504) 264-8394

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANTS first set documented INTERROGATORIES TO OPPOSER was served on November 10, 2012 via electronic mail.

Baker & Hostetler LLP.
Robert Horowitz
45 Rackerfeller Plaza
New York, Ny. 10111
(212) 589-4200

A handwritten signature in black ink, appearing to read "S. J. Martin III", written over a horizontal line.

sidney J. Martin III

EXHIBIT 2

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

CALPIS CO., LTD.)	
)	
Opposer,)	
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v.)	Consolidated
)	Opposition Nos. 91199109 and
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CALICO JACK'S L.L.C)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") in accordance with Rule 34, F.R.Civ.P., and 37 C.F.R. § 2.120, produce for inspection and copying the below requested documents and things. The documents and things shall be produced within thirty (30) days after service hereof at the offices of BAKER & HOSTETLER LLP, New York, New York 10111, or at such other time and place agreed upon by counsel.

DEFINITIONS

A. As used herein, the terms "Applicant" includes CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or have acted or who purport to act or have purported to act, on its behalf, including but not limited to Mr. Sidney Martin.

B. As used herein, the term "Opposer" includes CALPIS CO., LTD., its predecessors in interest, and all of its subsidiaries and affiliated companies.

C. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO alone or in combination with another mark, element or component, or any similar mark, including but not limited to the marks set forth in Applicant's trademark applications which are the subject of these proceedings.

D. As used herein, "CALPICO Marks" are defined as CALPICO, CALPICO WATER and CALPICO SODA, as referred to in the Notices of Opposition filed in this matter.

E. As used herein, the term "documents" includes, but is not limited to, all writings, emails, facsimiles, summaries, minutes and records of in-person or telephone conversations, meetings and conferences, notes, notations, communications, correspondence, invoices, contracts, purchase orders, statements, bills, checks, agreements, memoranda of understanding, memoranda, books, pamphlets, publications, assignments, licenses, studies, reports, labels, packaging, artwork, advertisements, tear sheets, manuals, circulars, press releases, catalogs, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process and includes all drafts, originals, masters and non-identical copies.

F. As used herein, the terms "identify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Applicant, whether or not in the possession of Applicant and whether or not alleged to be privileged, including the following information:

1. In the case of a person, his/her full name, address, job title and present employer;

2. In the case of a company, firm, corporation or association, its name, business address and identity of persons having knowledge of the matter about which the company is named;

3. In the case of a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and

4. In the case of printed material, its title, author, publication date, volume and the relevant page numbers. The term "person" shall mean and include any natural person, business organization or entity such as corporation, partnership or the like.

G. In the following document requests, if a privilege is alleged as to information or materials or if a document request is otherwise not answered in full, state the specific grounds for not answering in full and answer said document request to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege.

H. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

I. As used herein, the singular shall include the plural, and the present tense shall include the past tense.

J. The term "referring or relating to" includes responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, constituting, and forming a basis for.

K. The following document requests shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these document requests which Applicant acquires or which becomes known to Applicant up to and including the time of trial shall be furnished to Opposer immediately after such information is first acquired or becomes known.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1

All documents and things requested to be identified in, or used as the basis for answering, Opposer's First Set of Interrogatories to Applicant. See online databases at websites for Docs.

DOCUMENT REQUEST NO. 2

One sample of each type of goods advertised, made, distributed, offered for sale or sold by Applicant at any time in connection with each of the Marks. Samples cost money? click "buy now"

DOCUMENT REQUEST NO. 3

All documents referring to, relating to or reflecting purchase and/or importation into the United States of goods or materials used to produce the goods sold in connection with each of the Marks by or on behalf of Applicant. **Made in the United States of America**

DOCUMENT REQUEST NO. 4

All documents referring to, relating to or reflecting Applicant's first use of each of the Marks (a) anywhere; and (b) in interstate commerce. See: [facebook.com](https://www.facebook.com) / www.calico-jacks.com

DOCUMENT REQUEST NO. 5

All documents referring to, relating to or reflecting the sale and/or distribution of goods in connection with each of the Marks by or on behalf of Applicant, including but not limited to purchase orders, invoices and correspondence. See: www.irs.gov

DOCUMENT REQUEST NO. 6

All documents referring to, relating to or reflecting the production of goods sold in connection with each of the Marks by or on behalf of Applicant. See: www.drinkink.com

DOCUMENT REQUEST NO. 7

All licenses, approvals, consents or the like granted to or received by Applicant which refer or relate to each of the Marks. See: www.uspto.gov

DOCUMENT REQUEST NO. 8

All documents referring to, relating to, reflecting or comprising searches or investigations conducted by or on behalf of Applicant concerning each of the Marks. See: calico jack wikipedia

DOCUMENT REQUEST NO. 9

All documents referring to, relating to or reflecting Applicant's creation, adoption or development of each of the Marks. See: calico jack wikipedia

DOCUMENT REQUEST NO. 10

All advertising, informational and promotional materials, articles and press releases, referring or relating to each of Applicant's Marks. www.calico-jacks.com / [facebook.com](https://www.facebook.com)

DOCUMENT REQUEST NO. 11

All documents referring to, relating to, reflecting or comprising materials or sources of information used by Applicant in connection with the prosecution of the trademark applications that are the subject of these proceedings including any materials or sources of information used in connection with preparing specimens . See: www.uspto.gov

DOCUMENT REQUEST NO. 12

All opinions obtained by or on behalf of Applicant in connection with adoption, application for registration and/or use of each of the Marks. None

DOCUMENT REQUEST NO. 13

All documents and things in Applicant's possession, custody or control which refer or relate in any manner to Opposer or to Opposer's use of its CALPICO Marks. None

DOCUMENT REQUEST NO. 14

All documents referring to, relating to, reflecting or comprising registrations or applications to register each of the Marks, including as a domain name, filed by or on behalf of, or awarded to Applicant anywhere. See: www.godaddy.com

DOCUMENT REQUEST NO. 15

All documents referring to, relating to, reflecting or comprising business plans or market research created or conducted by Applicant relating to goods sold in connection with each of the Marks. None

DOCUMENT REQUEST NO. 16

All documents referring to, relating to or reflecting the sources of goods sold or to be sold by or on behalf of Applicant in connection with each of the Marks. See: www.drinkink.com

DOCUMENT REQUEST NO. 17

All documents referring to, relating to or reflecting prior litigation or legal proceedings to which Applicant has been or is a party. None

DOCUMENT REQUEST NO. 18

All documents referring to, relating to or reflecting the source or sources of ingredients, including flavorings, used in Applicant's goods sold in connection with each of the Marks. www.drinkink.com

DOCUMENT REQUEST NO. 19

All documents referring to, relating to or reflecting use of the Marks by affiliates, agents, related companies or family relations of Applicant. See: www.uspto.gov

DOCUMENT REQUEST NO. 20

All documents relating to the target customers for Applicant's goods sold or offered for sale in connection with each of the Marks. See: www.facebook.com

DOCUMENT REQUEST NO. 21

All documents referring to, relating to or reflecting Applicant's sales or annual revenue in unit and dollar volumes, in connection with each of the Marks. See: www.irs.gov

DOCUMENT REQUEST NO. 22

All documents referring to, relating to, or reflecting Applicant's advertising and promotional expenses in connection with each of the Marks. None

DOCUMENT REQUEST NO. 23

All documents referring to, relating to, reflecting or evidencing confusion between Applicant's use of each of the Marks and Opposer's use of its CALPICO mark. None

DOCUMENT REQUEST NO. 24

One sample of each type of packaging, including containers, boxes, labels and tags, used presently or in the past six years, or which Applicant intends to use in connection with goods advertised, made, distributed, offered for sale or sold by Applicant in connection with each of the Marks. See: Answer to question #2.

DOCUMENT REQUEST NO. 25

All documents referring or relating to the taste or flavor of Applicant's goods sold or distributed in connection with each of the Marks. www.drinkink.com

DOCUMENT REQUEST NO. 26

All documents referring to or relating to a drink or a flavor called or named CALICO JACK or any similar name. See: www.calico-jacks.com, facebook, uspto

DOCUMENT REQUEST NO. 27

All documents including but not limited to contracts and invoices, referring or relating to the individuals or entities who created: a) the labels shown in the specimens of use submitted to the USPTO by Applicant for the opposed trademark applications; and, b) any other labels used by Applicant in connection with the actual sale or distribution of goods. **Not available. Homemade**

DOCUMENT REQUEST NO. 28

All documents including but not limited to contracts and invoices, referring to or relating to the individuals or entities who created the packaging: a) shown in the specimens of use submitted to the USPTO by Applicant for the oppose trademark applications; and, b) used by Applicant in connection with the actual sale or distribution of goods. **Not available. Homemade**

DOCUMENT REQUEST NO. 29

All documents referring or relating to the alcohol content in Applicant's goods sold in connection with each of the Marks. See: facebook.com

DOCUMENT REQUEST NO. 30

All documents referring or relating to Applicant's obtaining approval from Bureau of Alcohol, Tobacco and Firearms to use the Marks in connection with an alcoholic beverage. See: atf.gov

DOCUMENT REQUEST NO. 31

All documents referring or relating to the geographic location(s) a) from which Applicant has shipped goods sold in packaging bearing each of the Marks; and b) of Applicant's customers to whom it has shipped goods bearing the Marks. See: google earth 3d in U.S.A.

DOCUMENT REQUEST NO. 32

All documents referring or relating to the amounts: a) Applicant has paid its source(s) for the goods sold in connection with the Marks; and, b) Applicant charges its customers for goods sold in connection with the Marks. See: www.irs.gov

DOCUMENT REQUEST NO. 33

All documents referring or relating to any criminal records of Applicant's owner, Mr. Sidney J. Martin. See: www.fas.org/irp/agency/doj/fbi/is/ncic.htm

Dated: November 9, 2012

Calico jacks, LLC.

By: 

CALICO JACKS, LLC.
Sidney j. Martin III
19 autumn lane
carriere, ms. 39426

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANTS FIRST SET OF DOCUMENT REQUESTS TO OPPOSER was served on November 9, 2012 via electronic mail.

Dated November 9, 2012:

Robert Horowitz
45 Rockefeller Plaza
New York, Ny. 10111
(212) 589-4200

A handwritten signature in black ink, appearing to read "Robert Horowitz", written over a horizontal line.