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

Proceeding	91199529
Party	Plaintiff Hunter Boot Limited
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Attorney Docket No. 76027-797607

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

In re Application No. 76/702,199
Filed: March 23, 2010
Published: December 21, 2010 in the Official Gazette
For: **GIRL HUNTER**

HUNTER BOOT LIMITED, Opposer, vs. GEORGIA PELLEGRINI MEDIA GROUP, LLC, Applicant.	Opposition No. 91199529

BRIEF IN SUPPORT OF OPPOSER'S MOTION FOR AN ORDER TO COMPEL RESPONSES TO ITS INTERROGATORIES AND REQUESTS FOR PRODUCTION, TO COMPEL PRODUCTION OF DOCUMENTS, AND REQUEST FOR AN EXPEDITED TELEPHONIC HEARING

Pursuant to Rules 26, 33, 34, 36, and 37 of the Federal Rules of Civil Procedure, Trademark Rule of Practice 2.120(e) and TBMP §§ 411.01, 411.02, and 413, Opposer Hunter Boot Limited ("Opposer") respectfully moves the Board:

(1) For an order compelling Applicant to answer completely, promptly and without objection, Opposer's First Request for Production of Documents and to amend its answers to Opposer's First Set of Interrogatories;

(2) For an order compelling Applicant to promptly produce documents responsive to Opposer's First Request for Production of Documents; and

(3) Ruling that Opposer's time to respond to Applicant's written discovery is tolled pending Applicant's full compliance with its obligations under the discovery rules and the Board's order.

Because discovery is due to close in early June, 2012, Opposer requests a telephonic hearing pursuant to TBMP § 413.01, in order to expeditiously resolve this dispute and allow Opposer properly to prepare for trial.

I. INTRODUCTION

For over four months, Opposer has been attempting to obtain from Applicant the discovery responses to which it is entitled. Opposer has, in good faith, granted Applicant several extensions, based on the express representations of counsel for Applicant that Applicant would use that time to prepare full and complete responses to the discovery, and his explicit request that, because his client was supplementing its discovery, Opposer refrain from filing a motion to compel. Now, with less than two months prior to the close of discovery, Opposer finds itself with yet another set of materially inadequate interrogatory responses, no responses to its requests for production, and few documents. Instead of using the extensions granted to it for the purposes they were granted, Applicant has instead used that time to prepare and propound its own set of discovery on Opposer. Opposer is reluctant to burden the Board with a discovery motion, but at this time, it is left with no choice but to seek the Board's intervention so that it can obtain the clearly discoverable information it has requested and prepare for trial.

II. FACTUAL BACKGROUND

Opposer is the owner of several HUNTER marks for use in connection with a variety of goods and services, including but not limited to footwear, apparel and related items. Applicant filed its intent-to-use application to register the mark GIRL HUNTER (Serial No. 76/702,199) on

March 23, 2010, in connection with "Clothing, namely, t-shirts, sweat shirts, jackets, shirts, pants, shoes, shorts and gloves; Hunting apparel, namely, pants, shirts, jackets, hats, gloves and shoes" in Class 25.[1] After several failed attempts to resolve Opposer's concerns over Applicant's attempt to register and use the GIRL HUNTER mark, Opposer commenced this proceeding by filing a Notice of Opposition against Application Serial No. 76/702,199 on April 20, 2011. *See* Docket No. 1.[2] On December 5, 2011, Opposer served its written discovery, including document requests, requests for admission, and interrogatories, on counsel for Applicant. *See* Declaration of Tali L. Alban ("Alban Dec.") ¶ 2.

On December 13, 2011, counsel for Applicant requested an extension of the time to respond to Opposer's discovery requests due to personal reasons, citing the upcoming holidays and a need for time to prepare for litigation (in an unrelated case). *See* Alban Dec. ¶ 3. On December 15, 2011, counsel for Opposer granted Applicant a 30-day extension to respond to its written discovery. Counsel for Opposer expressly represented that the extension of time was premised on the assumption that Applicant would need the additional time in order to provide *substantive responses* and not make wholesale objections to its written discovery. *See id.* ¶ 4 & Ex. C. That same day, counsel for Applicant confirmed that the extension of time was for the purpose of providing substantive responses. *See id.* ¶ 5 & Ex. D.

On February 3, 2012, Applicant provided Opposer with its responses to Opposer's written discovery, which were indisputably materially deficient. Notwithstanding the additional time it had been granted to provide complete, substantive responses, Applicant failed to provide <u>any</u> responses to Opposer's First Set of Requests for Production (instead provided a short list of documents it had enclosed) and produced only a few documents concerning Applicant's book

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[1] Applicant's Class 35 services are not materially disputed.
[2] Opposer subsequently filed an amended Notice of Opposition on June 28, 2011. *See* Docket No. 7.

sold on Amazon.com. *See id.* ¶ 6. Only one document pertained to use of Applicant's mark on Class 25 goods. *See id.* Moreover, Applicant's responses to Opposer's First Set of Interrogatories were utterly vague and ambiguous. *See id.* & Ex. E.

On March 12, 2012, Opposer sent a detailed letter to Applicant explaining the deficiencies in its discovery responses and requesting that Applicant provide amended responses and responsive documents before March 31, 2012. *See* Alban Dec. ¶ 7 & Ex. F. On March 22, 2012, counsel for Applicant represented to Opposer that Applicant intended to amend its responses, but requested an extension of time until April 2, 2012 to do so – and asked that Opposer "hold off on filing a motion to compel". *See id.* ¶ 8 & Ex. G. Based on these representations, and on the condition that the responses and documents provided would be "full and complete", Opposer granted Applicant's request for an extension of time to provide its amended responses no later than April 2, 2012, *See id.* ¶ 9 & Ex. H. Counsel for Applicant represented to Opposer that he would provide "full and complete" amended responses on April 2, 2012. *See id.* ¶ 10 & Ex. I.

Opposer did not receive Applicant's amended responses and responsive documents on the agreed upon date of April 2, 2012. *See* Alban Dec. ¶ 11. The next day, Opposer contacted Applicant informing Applicant that its amended responses and responsive documents were past due and inquiring whether Applicant intended to provide them to Opposer. *See id.* Ex. J. On April 4, 2012, counsel for Applicant responded that he thought the amended responses and responsive documents were due that day and that he would be providing the documents by certified mail. *See id.* ¶ 12 & Ex. K. Opposer finally received Applicant's amended responses to Opposer's interrogatories on April 10, 2012. Not only were the responses received 8 days later, but, contrary to Applicant's representations and the parties' agreement, the responses lacked any

meaningful amendments. *See id.* ¶ 13 & Ex. L. For example, Applicant's amended response to Interrogatory No. 9 reads: "Applicant's goods will flow to purchasers much more sophisticated than opposer's." Ex. L. Applicant also failed to produce any responsive documents or provide any responses to Opposer's document requests. *See* Alban Dec. ¶ 13-14. Applicant instead served written discovery, largely copied from Opposer's written discovery almost verbatim, on Opposer. *See id.* ¶ 13.

Despite Opposer's good-faith efforts to resolve the present discovery dispute, it has been unable to obtain meaningful discovery from Applicant because of Applicant's purposeful delay and avoidance of its discovery obligations. *See* Alban Dec. ¶¶ 7-15. Opposer granted several extensions of time for Applicant to respond to its written discovery and Applicant represented on numerous occasions that it intended to provide "full and complete" responses and produce responsive documents. Rather than using the many extensions of time granted by Opposer to prepare meaningful responses to Opposer's discovery requests and gather responsive documents for production, Applicant acted in bad faith by using that extra time to propound discovery requests on Opposer.

Over four and a half months have passed since Opposer first served its written discovery and Opposer has still not received responsive documents for a number of critical issues in this proceeding, nor a <u>single</u> response to these requests. *See* Alban Dec. ¶ 14. Moreover, nearly all of Applicant's amended responses to Opposer's interrogatories were not in fact "amended" in any meaningful way and continue to be materially deficient. Despite Opposer's efforts and the patience and flexibility it has demonstrated, Applicant has done little more than delay and evade its discovery obligations. Opposer can no longer tolerate Applicant's repeated, flagrant disregard for the rules of discovery and, consequently, has no choice but to file this

Motion to Compel. Moreover, due to the impending close of discovery and the approach of the trial period, Opposer requests an expedited hearing concerning this matter so that it may obtain its needed and overdue discovery in time for preparing any necessary follow-up discovery and notice depositions as needed.

III. Argument and Citation of Authority

A. Applicant Should Be Compelled To Respond Without Objection To Opposer's First Request for Production Of Documents And To Amend Its Responses To Opposer's First Set Of Interrogatories

Applicant has, intentionally and in bad faith, failed to provide meaningful responses to Opposer's interrogatories and has failed to respond entirely to Opposer's document requests. Federal Rule of Civil Procedure 37(a)(1) and Trademark Rule of Practice 2.120(e) provide that a discovering party may move for an order compelling responses to discovery requests when a party refuses to respond. Therefore, the Board should compel Applicant to amend its interrogatory responses and to provide Opposer with complete, written responses to Opposer's requests for production. *See, e.g.*, TBMP § 523.01; *Miss Am. Pageant v. Petite Prods. Inc.*, 17 U.S.P.Q.2d 1067, 1070 (T.T.A.B. 1990) (granting motion to compel responses to interrogatories); *Am. Soc'y of Oral Surgeons v. Am. Coll. of Oral and Maxillofacial Surgeons*, 201 U.S.P.Q. 531, 534 (T.T.A.B. 1979) (granting motion to compel responses to discovery requests relating to third-party uses of Opposer's mark); *Miller & Fink Corp. v. Servicemaster Hosp. Corp.*, 184 U.S.P.Q. 495, 496 (T.T.A.B. 1975) (granting motion to compel responses to interrogatories regarding Opposer's claims of distinctiveness).

Furthermore, when a party fails to respond timely to a request for discovery, any objections a party may have on the merits of any discovery request are waived. *See* TBMP § 527.01(c); *MacMillan Bloedal Ltd. v. Arrow-M Corp.*, 203 U.S.P.Q. 952, 953 (T.T.A.B. 1979) ("[A] party who fails to respond to a request for discovery during the time allowed therefore is

deemed by the Board to have forfeited his right to object to the request on its merits . . . ."); *Crane Co v. Shimano Indus. Co.*, 184 U.S.P.Q. 691, 691 (T.T.A.B. 1975) ("Inasmuch as applicant failed to respond to the interrogatories on or before [the deadline], or to request an extension of its time to do so prior to the aforesaid date, applicant has waived its right to object to the interrogatories on their merits and must reply to them as put."). Because Applicant failed to respond to Opposer's document requests in a timely manner, Applicant is deemed to have waived its right to object to any request.

1. Applicant Failed to Provide Any Information on Important and Discoverable Categories

The material requested is of critical importance to Opposer's case, and Opposer is entitled to the information it requests. For example, Opposer has requested documents and information with respect to Applicant's first use of the mark,[3] actual or intended manner of distribution and channels of trade of Applicant's goods bearing the GIRL HUNTER mark (*Id.*),[4] information or documents about actual or intended use of the GIRL HUNTER mark, particularly in Class 25 (*Id.*),[5] information or documents concerning actual or potential customers (*Id.*),[6] circumstances surrounding Applicant's selection and adoption of Applicant's mark (*Id.*),[7] consumer recognition of Applicant's mark (*Id.*),[8] and representative samples of use of Applicant's Mark on Class 25 goods (*Id.*).[9] Each of these topics is relevant to Opposer's likelihood of confusion allegations and is likely to lead to the discovery of admissible evidence, and Opposer is thus entitled to discover the information. Fed. R. Civ. P. 26(b)(1); TBMP § 414. And yet, Applicant has provided no meaningful responses to the interrogatories on these

[3] Alban Dec. Ex. A at Request for Production No. 5-6 and Interrogatory No. 2.
[4] Alban Dec. Ex. A at Request for Production No. 7-9 and Interrogatory No. 9.
[5] Alban Dec. Ex. A at Request for Production No. 4 and Interrogatory No. 1.
[6] Alban Dec. Ex. A at Request for Production No. 17 and 19 and Interrogatory No. 18.
[7] Alban Dec. Ex. A at Request for Production No. 2-3 and Interrogatory No. 20-21.
[8] Alban Dec. Ex. A at Request for Production No. 13-16 and Interrogatory No. 6.
[9] Alban Dec. Ex. A at Request for Production No. 12.

subjects, no documents at all, and no reasonable explanation, or rather, no explanation at all, for its failure to produce the requested documents and information. Accordingly, the Board should order that this information be produced.

2. Specific Deficient Responses to Interrogatories

Applicant's "Amended" responses to Opposer's Interrogatories are materially deficient and Applicant should therefore be compelled to revise them to provide meaningful responses. For example, Interrogatory No. 1 sought the identity of each good or service offered, or intended to be offered, by Applicant, under Applicant's Mark. Applicant's full and only response to this request was: "May 2009 Café Press clothing sales." Alban Decl. Ex. L. This answer is obviously, unclear at best, and provides absolutely no meaningful information. Opposer can only *assume* the Applicant was attempting to point to one of the documents it had produced to Opposer, though there are no document production numbers on the documents or in the interrogatory responses, from which it can ascertain whether the assumption is correct. This response thus fails to satisfy any provision of Rule 33, including Rule 33(d) permitting the production of documents instead of written responses, of the Federal Rules of Civil Procedure.

A review of the one document to which Opposer believes Applicant was referring, attached to the Alban Declaration as Exhibit M, shows minimal clothing sales (tank tops, hat and sweatshirts) to three (3) individuals, at least one of whom is clearly related to Applicant, Georgia Pellegrini. It does not show actual or intended use of the mark with any of the other items listed in the Application. Applicant has filed an intent-to-use application for use of the mark in connection with "Clothing, namely, t-shirts, sweat shirts, jackets, shirts, pants, shoes, shorts and gloves; Hunting apparel, namely, pants, shirts, jackets, hats, gloves and shoes." Opposer is

plainly entitled to discover information pertaining to Applicant's actual intended uses for the GIRL HUNTER mark. *See generally* TBMP § 414.

Applicant's response to Interrogatory No. 2 is similarly deficient and also is inconsistent with Applicant's response to Interrogatory No. 1. Interrogatory No. 2 requested that Applicant identify the date of first use of Applicant's Mark, and any variation thereof, on each good or service offered or intended to be offered under the GIRL HUNTER mark. Applicant objected to this interrogatory on the grounds that the information is publicly available to both parties and cited Application Serial No. 76/702,199. *See* Alban Decl. Ex. L. Yet, Applicant's Application Serial No. 76/702,199 was filed as an intent-to-use application and there is no first use date listed in the application.[10] This information is not publicly available and Opposer is plainly entitled to discover this information. TBMP § 414(5) ("Information concerning a party's first use of its involved mark is discoverable.")

Interrogatory No. 8 sought the actual or intended manner of distribution for Applicant's goods offered under the GIRL HUNTER mark. Applicant's vague response, that "[t]he goods will be distributed to consumers in exchange for valuable consideration. These transactions will occur at retail and over the internet" is clearly inadequate. *See id.* Opposer is entitled to discovery as to whether the parties' respective goods will be offered by the same or similar distribution methods, to similar consumers, in similar channels of trade. *See, e.g., Miss Universe L.P., v. Community Marketing, Inc.,* 82 USPQ2d 1562 (TTAB 2007) (citing *du Pont* factors, including trade channels, classes of purchasers and conditions of purchase). Applicant's response to Interrogatory No. 9 (requesting the identity of Applicant's actual or intended

[10] This response is also inconsistent with Applicant's response to Interrogatory No. 1, which identified 2009 as the date of first use of the mark with at least *some* goods.

channels of trade), is likewise deficient, as Applicant ambiguously states only that "Applicant's goods will flow to purchasers much more sophisticated than opposer's." Alban Decl. Ex. L.

As is clear from the above examples, Applicant's responses are intentionally vague and flout the letter and the spirit of the discovery rules. The combination of the deficient responses and bad faith requests for extensions in order to run the time for discovery and prejudice Opposer violate the requirements of Federal Rule of Civil Procedure 26, and constitute sanctionable conduct under Rule 37. At a minimum, Applicant should be compelled to fully respond to the Interrogatories identified above, as well as the following similarly deficient Interrogatories:

- No. 14 (sales information) – Applicant's response that "sales information is not yet determined" is inconsistent with Applicant's representation that its mark is famous and that it has been selling its goods and services bearing the GIRL HUNTER mark since 2009;
- No. 15 (advertising budgets);
- No. 18 (categories of purchasers);
- Nos. 28, 29, 30 & 31 (basis for Applicant's claims in its Answer to the Notice of Opposition);
- No. 32 (similarity between the parties' respective goods).

In addition, pursuant to Federal Rule of Civil Procedure 33(d), if Applicant relies on documents instead of providing full and complete interrogatory responses, it must identify, by Bates number, the documents which are responsive to the interrogatories. Accordingly, Applicant must amend its responses to Interrogatory Nos. 16, 17 and 18. Alban Decl. Ex. L.

Applicant's refusal to provide Opposer with complete answers to Opposer's interrogatories or to respond at all to Opposer's document requests apparently is the result of

Applicant's purposeful avoidance of its discovery obligations. Applicant's production of a few documents concerning Applicant's book is hardly compliant with its obligation to provide complete written responses. Accordingly, the Board should compel Applicant to respond completely, and without delay or objection, to Opposer's First Request for Production of Documents and to amend its responses to Opposer's First Set of Interrogatories.

B. Applicant Should Be Compelled To Produce Responsive Documents

Federal Rule of Civil Procedure 37(a)(3)(B) and Trademark Rule of Practice 2.120(e) provide that a discovering party may move for an order compelling production of responsive documents when a party refuses to respond to discovery requests. Applicant has failed to provide responsive documents to nearly all of Opposer's document requests and has deprived Opposer of the ability to take meaningful discovery on several critical issues in this proceeding. *See* Section (II)(A).

Furthermore, the minimal documents produced by Applicant relate only to Applicant's book. Only one document appears related to use of Applicant's Mark on Class 25 goods. Opposer is unable to ascertain from this one document information that is highly relevant to this proceeding; for example, Opposer's use or intended use of Applicant's mark on Class 25 goods, representative examples of how Applicant's mark is used on Class 25 goods, and sales of Class 25 goods bearing Applicant's Mark from 2009 to present. Because Applicant has failed to produce documents responsive to Opposer's document requests, particularly those that concern use of Applicant's Mark on Class 25 goods and other critical issues in this proceeding, the Board should compel Applicant to immediately produce all responsive documents or state if the requested documents do not exist within Applicant's possession, custody or control. *See, e.g.*, TBMP § 523.01; *Miss Am. Pageant*, 17 U.S.P.Q.2d at 1070 (granting motion to compel

production of documents); *Am. Soc'y of Oral Surgeons*, 201 U.S.P.Q. at 534 (granting motion to compel production of documents relating to third-party uses of Opposer's mark); *Johnson & Johnson v. Diamond Med., Inc.*, 183 U.S.P.Q. 615, 617 (T.T.A.B. 1974) (granting motion to compel production of documents relating to search reports, advertising, and advertising expenditures).

C. Opposer Requests The Board Suspend Its Obligation To Respond To Applicant's Discovery Until After Applicant Fully Complies With The Board's Order

Applicant's flagrant disregard for its discovery obligations and improper procurement of extensions of time to propound discovery on Opposer indicate that Applicant has been acting in bad faith during this discovery process. Applicant on numerous occasions represented that the extensions of time were for the purpose of preparing meaningful, substantive responses to Opposer's written discovery. Opposer granted these extensions of time conditionally, relying on Applicant's representations that complete responses were forthcoming. However, it is now evident that Applicant misrepresented its intentions and procured these extensions in order to stall, run the time for the discovery phase, and to prepare its own set of written discovery (largely copied from Opposer's written discovery). In fact, Applicant's Amended Responses to Opposer's First Set of Interrogatories show this blatant disregard for the discovery rules and process.

These tactics were intended to, and have, prejudiced Opposer. Discovery is set to close on June 6, 2012. Opposer's pretrial disclosures are due by July 21, 2012. Opposer's ability properly to prepare for trial has thus been severely hampered by Applicant's bad faith delays. At a minimum, Applicant should be ordered to immediately and fully comply with its discovery

obligations and Opposer's time to respond to Applicant's discovery requests should be tolled, pending the Board's Order and Applicant's complete compliance.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board compel Applicant to respond immediately, completely, and without objection, to Opposer's First Request for Production of Documents, to amend its responses to Opposer's First Set of Interrogatories, and to compel Applicant to produce documents responsive to all of Opposer's document requests or to state where none exist. Furthermore, in light of Applicant's bad faith, Opposer respectfully requests that the Board order that the time for Opposer to respond to Applicant's written discovery is tolled pending Applicant's full compliance with its discovery obligations and with the Board's order.

Pursuant to TBMP § 413, Opposer respectfully requests an expedited hearing through telephone conference to resolve this Motion to Compel.

Respectfully submitted,

KILPATRICK TOWNSEND AND STOCKTON LLP

Dated: April 20, 2012

By: _____

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CERTIFICATE OF SERVICE

On April 20, 2012, I served the foregoing BRIEF IN SUPPORT OF OPPOSER'S MOTION FOR AN ORDER TO COMPEL RESPONSES TO ITS INTERROGATORIES AND REQUESTS FOR PRODUCTION, TO COMPEL PRODUCTION OF DOCUMENTS, AND TO REQUEST AN EXPEDITED HEARING THROUGH TELEPHONE CONFERENCE on the party in said action via electronic-mail and by depositing a true copy thereof with the United States Postal Service as first class mail, postage prepaid, at San Francisco, California, enclosed in a sealed envelope addressed as follows:

Robert B. Kleinman, Esq.
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Audrey Schlette

Attorney Docket No. 76027-797607

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

In re Application No. 76/702,199
Filed: March 23, 2010
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For: **GIRL HUNTER**

HUNTER BOOT LIMITED, Opposer, vs. GEORGIA PELLEGRINI MEDIA GROUP, LLC, Applicant.	Opposition No. 91199529

OPPOSER'S MOTION FOR AN ORDER TO COMPEL RESPONSES TO ITS INTERROGATORIES AND REQUESTS FOR PRODUCTION, TO COMPEL PRODUCTION OF DOCUMENTS, AND REQUEST FOR AN EXPEDITED TELEPHONIC HEARING

Pursuant to Rules 26, 33, 34, 36, and 37 of the Federal Rules of Civil Procedure, Trademark Rule of Practice 2.120(e) and TBMP §§ 411.01, 411.02, and 413, Opposer Hunter Boot Limited ("Opposer") respectfully moves the Board:

(1) For an order compelling Applicant to answer completely, promptly, and without objection, Opposer's First Request for Production of Documents and to amend its answers to Opposer's First Set of Interrogatories;

(2) For an order compelling Applicant to promptly produce documents responsive to Opposer's First Request for Production of Documents; and

(3) For an order ruling that Opposer's time to respond to Applicant's written discovery is tolled pending Applicant's full compliance with its obligations under the discovery rules and the Board's order.

On December 5, 2011, Opposer served written discovery, including document requests, requests for admission, and interrogatories on Applicant. Opposer granted several extensions of time for Applicant to respond to its written discovery and Applicant represented on numerous occasions that it intended to provide "full and complete" responses and produce responsive documents. Despite Opposer's good faith efforts to obtain responses to its First Set of Interrogatories and First Request for Production of Documents, to date Applicant has failed to respond to Opposer's First Request for Production of Documents, to provide responsive documents on a number of critical issues in this Opposition, and to provide full and complete responses to Opposer's First Set of Interrogatories.

Therefore, for the reasons set forth in its accompanying Brief, Opposer respectfully moves the Board for an order compelling Applicant to respond completely, and without objection, to its First Request for Production, to amend Applicant's responses to its First Set of Interrogatories, and to compel Applicant to produce responsive documents. Opposer respectfully requests expedited resolution of this Motion to Compel through a telephone conference with the Interlocutory Attorney, pursuant to TBMP Rule 413. Furthermore, in light of Applicant's bad faith in improperly procuring extensions of time to respond to Opposer's discovery and intentional misrepresentations to Opposer, Opposer respectfully requests that the Board suspend Opposer's obligation to respond to Applicant's written discovery, and rule that Opposer's time to respond to the discovery is tolled, until after Applicant complies with the Board's order.

Respectfully submitted,

KILPATRICK TOWNSEND AND STOCKTON LLP

Dated: April 20, 2012

By: _____

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CERTIFICATE OF SERVICE

On April 20, 2012, I served the foregoing OPPOSER'S MOTION FOR AN ORDER TO COMPEL RESPONSES TO ITS INTERROGATORIES AND REQUESTS FOR PRODUCTION, TO COMPEL PRODUCTION OF DOCUMENTS, AND TO REQUEST AN EXPEDITED HEARING THROUGH TELEPHONE CONFERENCE on the party in said action via electronic-mail and by depositing a true copy thereof with the United States Postal Service as first class mail, postage prepaid, at San Francisco, California, enclosed in a sealed envelope addressed as follows:

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