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

Proceeding	91200153
Party	Plaintiff Universal International Music B.V.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85/069,828  
Mark: MANGO'S TROPICAL CAFE & Design

UNIVERSAL INTERNATIONAL MUSIC B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91200153
	)	
MANGO'S TROPICAL CAFE, INC.	)	
	)	
Applicant.	)	
	)	

**DECLARATION OF BRENT S. LABARGE**

I, BRENT S. LABARGE, of lawful age, declare as follows:

1. I am employed as in-house trademark counsel at Universal Music Group. In my capacity as such, I represent Universal International Music B.V., the opposer herein ("Opposer"). I submit this declaration for the Board's consideration in support of Opposer's Rule 56(d) Motion, which was filed by Opposer in lieu of a response on the merits to Applicant Mango's Tropical Cafe Inc.'s ("Applicant") Motion for Summary Judgment (the "Motion" or "Applicant's Motion").

Unless otherwise stated herein, I have personal knowledge of the facts set forth below, and, if called as a witness, could and would competently testify thereto.

2. As set forth more fully below, Opposer has not yet had the opportunity to conduct any discovery in this matter. Although Opposer served discovery before Applicant filed its Motion, this proceeding was suspended before Applicant's responses were due. Thus, Opposer is not in possession of previously-sought documents and other information that Opposer believes would enable it to respond to Applicant's outstanding Motion.

**A. Procedural History**

3. On June 6, 2011, Opposer initiated Opposition No. 91200153 against U.S. Application Serial No. 85/069,828 (the “Contested Application”) for the mark MANGO’S TROPICAL CAFE & Design (“Applicant’s Mark”) on the grounds of likelihood of confusion with Opposer’s prior rights in its MANGO Marks for goods identical to those covered by the Contested Application.

4. On September 19, 2011, the undersigned participated in a discovery teleconference with Applicant’s counsel, Mr. David Friedland, pursuant to the Board’s order of July 20, 2011. During that conference, the parties discussed the possibility of settlement. To permit the parties sufficient time to seek an amicable resolution of this matter, the parties agreed to a moratorium on discovery through October 15, 2011.

5. On October 10, 2011, after discussing potential avenues of settlement with the relevant business units, Opposer communicated a settlement offer to Mr. Friedland.

6. On October 18, 2011, the parties exchanged Initial Disclosures via email. In the email forwarding Opposer’s Initial Disclosures, the undersigned stated: “I look forward to receiving your client’s response to our settlement proposal . . . .”

7. Notwithstanding the end of the discovery moratorium, Opposer elected not to serve discovery requests until it received a response to the outstanding settlement offer. At the time, Opposer believed that a substantive, good-faith response would be forthcoming from Applicant.

8. At 12:46 p.m. Los Angeles local time on Tuesday, November 1, 2011, Opposer received an email from Mr. Friedland giving Opposer less than 48 hours to agree to withdraw its opposition, with prejudice. Absent compliance with these demands, Applicant’s counsel was going to proceed with a motion for summary judgment.

9. Clear that settlement negotiations had broken down and that Applicant had no intention of negotiating in good faith (as evidenced by the short turn-around time), Opposer elected to move

forward with discovery, serving first sets of: (A) interrogatories (“Interrog.”); (B) document requests (“Doc. Req.”); and (C) requests for admission (“RFA”) on November 3, 2011. True and correct copies of these discovery requests (as amended to reflect the restricted scope of Rule 56(d)(2) discovery discussed in ¶ 21, *infra*) are appended hereto as Exhibits A, B, and C, respectively.

10. Applicant filed its Motion on November 4, 2011, thereby halting the proceedings without any factual development of the record whatsoever.

11. On November 8, 2011, the Board suspended the proceedings pending disposition of Applicant’s Motion. Opposer first learned of the Motion when it received the Board’s Suspension Notice.

12. On December 8, 2011—*a day before Opposer’s response deadline and over a month after Applicant filed its Motion*—Opposer received the service copy of Applicant’s Motion. A true and correct copy of the exterior of the envelope that enclosed the service copy of the Motion is attached hereto as Exhibit D. This envelope bears the return address of the law firm representing Applicant, as well as a postmark of Monday, December 5, 2011, from Miami, Florida. Applicant did not send a copy of its Motion to Opposer through any other means.

**B. Summary Judgment Should Be Denied Pursuant to Rule 56(d)(1).**

13. The undersigned believes that the interests of judicial economy and the parties’ own time and resources would be better served by denying Applicant’s Motion outright.

14. Applicant’s Motion will not resolve this matter. Applicant has sought to cancel Opposer’s pleaded MANGO registrations but has refrained from addressing these claims in its motion (and has expressly reserved the right to assert these claims notwithstanding the outcome of Applicant’s Motion). There is no set of circumstances in which Opposer would voluntarily abandon either of its pleaded registrations.

15. Even if Applicant stipulates to withdraw its counterclaim in the event that it wins its Motion, such withdrawal would not end this dispute, since it would not resolve all of the claims that Opposer intends to assert against Applicant.

16. At this time, Opposer believes that Applicant lacks a bona fide intent to use Applicant's Mark in connection with DVDs in commerce. This belief is premised on the following facts, among others:

17. First, Opposer believes that Applicant currently lacks and has no plans to develop the infrastructure necessary to render DVDs in commerce. To Opposer's knowledge formed after a review of Applicant's website, in its twenty years of existence Applicant's establishment has operated out of a single location in South Florida. Given the at best local renown of Applicant's establishment, it is not apparent to Opposer how or why Applicant's DVDs would cross the state or international boundaries necessary to support the use in commerce required to obtain a federal trademark registration. Moreover, Applicant's static business model belies any expressed intent to render DVDs in commerce.

18. Second, the prosecution of Applicant's application to register its mark for use in association with music CDs (U.S. Application Serial No. 76/157,782, hereinafter the "CD Application") is highly probative of Applicant's intent to use its mark in connection with music DVDs given the near identity of CDs and DVDs featuring musical entertainment. Applicant's intent-to-use CD Application has been pending now for *over 10 years*. For nearly four of those years, Applicant permitted an erroneously-issued registration to subsist without notifying the U.S. Patent and Trademark Office ("USPTO"). Applicant recently sought its fourth extension of time in which to submit a Statement of Use. Failing to launch a product after ten years speaks volumes as to what Applicant means when it avers that it has a bona fide intent to use a mark in commerce.

19. Third, the prosecution records for all of Applicant's Marks raise questions about Applicant's respect for the trademark application process in general. Applicant has exhibited a pattern of re-filing applications for identical marks for use in connection with identical goods. For example, now-abandoned U.S. Application Serial Nos. 74/157,489 and 74/358,979 covered clothing, as does U.S. Registration No. 3,700,648. Moreover, the prosecution records for Applicant's Marks are rife with inconsistencies. For the foregoing clothing marks alone, the dates of first use anywhere and first use in commerce are different in each application. These facts raise questions about whether Applicant improperly views its trademark applications as tools to reserve rights in a mark without any intent to undertake use of its marks within the time allotted by law.

20. Based on these facts alone, Opposer has a basis for amending its pleading to include the aforementioned claim. That said, Opposer typically prefers to conduct discovery first before adding claims that, although factually warranted at the outset, might prove less viable as Opposer learns new information during the course of discovery.

21. Opposer has already served discovery seeking to elicit information that would be relevant to such a new claim. *See, e.g.*, Ex. A, Interrog. Nos. 1, 2-8, 12, 16-20, 26; Ex. B, Doc. Req. Nos. 10, 11, 16-18, 26, 34, 36-39; and Ex. C, RFA Nos. 50-59.<sup>1</sup> It is Opposer's understanding that the limitations of Rule 56(d)(2) discovery would not permit Opposer to fully develop the record with respect to such a new claim. With this in mind, Applicant has expressly excluded any such requests that are not germane to Applicant's Motion from the scope of its Rule 56(d)(2) discovery requests. *See, e.g.*, Ex. A, Interrog. Nos. 16, 18, 20; Ex. B, Doc. Req. Nos. 36, 38; and Ex. C, RFA Nos. 50-53. Rule 56(d)(2) discovery would similarly prevent Opposer from serving follow-up discovery requests that pertain solely to this potential new claim.

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<sup>1</sup> Many discovery requests seek information relevant to more than one topic. Unless expressly noted otherwise, reference to a given discovery request in relation to a particular topic is not meant to imply that such request is only relevant to the referenced topic.

**C. Alternatively, the Board Should Permit Opposer to Conduct Reasonable Discovery.**

22. In the alternative, Opposer requires discovery from Applicant to obtain material facts within Applicant's possession that Opposer believes are crucial to supporting its arguments in opposition to Applicant's Motion. The discovery sought herein corresponds to discovery requests served before Applicant filed its Motion. For the convenience of the Board, the previously-served discovery requests to which Opposer is not seeking a response in connection with its Rule 56(d)(2) discovery request are indicated in strikethrough in the attached Exhibits A-C. As set forth below, the undersigned has reason to believe that Applicant is in possession of information that would be responsive to all of these requests. Such belief is premised either on information appearing in Applicant's Brief, on Applicant's Website, in USPTO records, or from general expectations of documents that would be kept in the ordinary course of business.

23. Opposer needs discovery relating to the appearance, sound, connotation, and commercial impression of Applicant's Mark before it can respond to Applicant's arguments with respect to this first *Du Pont* factor.

24. The undersigned expects Applicant to have within its exclusive possession numerous examples of how it has used (or plans to use) its mark which, in turn, should provide critical information relevant to each of these considerations. The materials sought include past, present, and future advertising and promotional materials, as well as actual specimens (or photographs or mock-ups of such specimens) showing how Applicant's Mark has been or will be affixed to its goods.

25. Applicant's website alone—a very small subset of the relevant material sought—reflects the importance and relevance of the information sought by Opposer. For example, Applicant sometimes omits the wording “tropical cafe” from its mark altogether. See Ex. C, RFA Nos. 25, 26. At other times, Applicant obscures and diminishes the significance of “tropical cafe” by pairing it

with other wording. See Ex. C, RFA Nos. 24, 27- 29. Applicant also superimposes the letters of “tropical cafe” on backgrounds that render this wording all but impossible to see. See Ex. C, RFA Nos. 24, 28, 29. Finally, the scale of Applicant’s Mark is sometimes so small that the wording “tropical cafe” is invisible to the naked eye. Representative screenshots of Applicant’s website taken by the undersigned throughout the course of this proceeding that reflect the foregoing uses are attached collectively hereto as Exhibit E.<sup>2</sup>

26. Opposer also seeks to discover information relevant to how consumers perceive Applicant’s Mark. Such information would include not only formal marketing assessments, but also indirect evidence such as consumer comments made through social networking media, on Applicant’s websites, or in commendations or complaints submitted to Applicant. Opposer expects such information to reflect the significance (or lack thereof) of the wording “tropical cafe.” By way of example, all of the consumer comments reviewed by the undersigned on Applicant’s websites refer to Applicant simply as “Mango’s.”

27. Similarly, Opposer seeks discovery to learn how Applicant refers to itself, as these self-referential statements may have a bearing on how consumers, in turn, perceive Applicant’s Mark. For example, Applicant refers to itself almost exclusively as “Mango’s” throughout its official Twitter feed (MangosMiami on Twitter, <http://twitter.com/mangosmiami>). Similarly, at least two of the domain names for Applicant’s websites omit any reference to “tropical cafe” (mangosclub.com and mymangos.com) reinforcing the significance of “Mango’s.”

28. To capture the information sought in Paragraphs 26 and 27 above, it is necessary to amend Opposer’s definition of “Applicant’s Mark” and “Mark” (Ex. A at 4, 5 (¶¶ 8, 11)) contained in its prior discovery requests so that these now read as follows:

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<sup>2</sup> For present purposes, all examples identified herein are illustrative only and are meant to reflect the types of information that Opposer expects to receive during discovery.

The term “Applicant’s Mark”<sup>3</sup> shall refer to any Mark that Applicant has used, is using, or plans to use that consists of the word “Mango” or “Mango’s” (alone or paired with other words, phrases, or designs) regardless of the goods or services in connection with which such Mark is used.

The term “Mark”<sup>4</sup> includes trademark, service mark, collective mark, certification mark, logo and trade name as these terms are defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127, as well as company name, business designation, domain name, use analogous to trademark use, or any other name or designation, including any references to any of the foregoing.

Opposer had narrowly defined these terms with the intention of later broadening these definitions if warranted by Applicant’s responses to discovery. Without the benefit of such responses, Opposer needs to broaden these definitions.

29. Additionally, Opposer requires discovery relating to Applicant’s selection and adoption of its mark—particularly the *intended* connotation and commercial impression of this mark. These materials might include initial test marketing analyses, or statements made about the connotation and commercial impressions formed by Applicant’s mark in an assessment of whether and to what extent Applicant’s Mark conflicts with the rights of third parties.

30. The following previously-served discovery requests seek the information described in Paragraphs 23-29 above: **Interrog. Nos. 1, 4, 9, 14, 26; Doc. Req. Nos. 1-8, 11-13, 15, 20, 26, 40-42; and RFA Nos. 5-31; 35-37; 48-49.**

31. The nature of the DVDs covered by the Contested Application also underscores the need for discovery regarding all of the foregoing. The “radius” from the edge of the center hole to the outer edge of a standard 120 mm diameter (4.7”) DVD is approximately two inches. These space

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<sup>3</sup> “Applicant’s Mark” was initially defined as referring to: “to the logo mark reflected in the Applications as well as to any variations thereof that create essentially the same commercial impression, regardless of the goods or services in connection with which such mark is used. For the avoidance of doubt, variations that create essentially the same commercial impression include those set forth in UIM’s First Set of Requests for Admission, Request Nos. 24-29, served concurrently herewith.”

<sup>4</sup> “Mark” was initially defined to include: “trademark, service mark, collective mark, certification mark, logo and trade name as these terms are defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127.”

constraints alone place considerable restrictions on the dimensions of Applicant's mark.

Additionally, the name of an artist and the songs on a music DVD are frequently the most important information to consumers, and one would expect greater prominence to be given to this information, further reducing the size of Applicant's mark. By way of comparison, Opposer's MANGO Marks as used in connection with its music CDs range anywhere from 1/3" to 3/4" in size. A true and correct copy of a photocopier scan of a CD bearing representative to-scale examples of Opposer's MANGO Marks as they are currently being used by Opposer is attached hereto as Exhibit F.

32. Applicant's Mark is not scalable, and, at smaller sizes, the undersigned believes that "Mango's" would be the only perceptible text. Opposer expects that discovery from Applicant will demonstrate how Applicant's Mark appears at these smaller sizes based on Applicant's use in connection with similarly-sized goods such as key chains, cigar cutters, lighters, and sandals, or as used in smaller formats on hang tags, labels, or in advertisements. Opposer also expects to receive specimens or photographs reflecting how Applicant has actually affixed its mark to music CDs in the past. This expectation is based on statements made by Applicant to the USPTO at the time it filed its CD Application that its marks were being used in connection with such goods since at least as early as January 1996. Opposer expects that variations of Applicant's Mark—even those affixed to larger goods such as t-shirts, shorts, bathing suits, and calendars—will be probative of how Applicant's Mark would appear at smaller sizes, especially to the extent that the wording "tropical cafe" is imperceptible even at these larger sizes. The discovery requests in Paragraph 30 equally apply to the information sought in Paragraphs 31-32.

33. Opposer also seeks discovery relating to Applicant's awareness of Opposer's MANGO Marks as well as its intent in deciding to market CDs and DVDs under Applicant's Mark. Applicant has been aware of Opposer's MANGO Marks since at least as early as April 4, 2001, when these were cited against Applicant's CD Application in an Office Action. A true and correct

copy of the relevant portions of this Office Action retrieved from the USPTO's TDR database is appended hereto as Exhibit G. Opposer's MANGO Marks likely would have been identified in the trademark clearance process (if any) as well. The reasoning behind Applicant's decision to proceed with plans to use its mark in association with music CDs and DVDs, despite actual knowledge of Opposer's rights, is highly relevant and essential to Opposer's response to the Motion.

34. Independently, Opposer is entitled to test the credibility of the statements made in the Wallack Declaration with respect to Mr. Wallack's awareness of Opposer's MANGO Marks. Although Mr. Wallack flatly denies any prior knowledge of Opposer's MANGO Marks (Wallack Decl. ¶ 4), the information outlined in Paragraph 33 above calls into question this statement. The veracity of the statements in Mr. Wallack's declaration and his diligence in compiling the same are essential to Opposer's ability to place into context the evidence submitted by Applicant.

35. The following previously-served discovery requests seek the information described in Paragraphs 33-34 above: **Interrog. Nos. 1, 13, 14, 26; Doc. Req. Nos. 4, 6-9, 27-29, 41; and RFA Nos. 1-4, 45.**

36. Next, Opposer seeks discovery to assess the significance of the purported absence of confusion between the parties' goods and services marketed under their respective MANGO-formative marks. In addition to assessing the credibility and diligence of Mr. Wallack discussed above, Opposer also needs to evaluate why any statement by Mr. Wallack is relevant in the first instance. It is not at all apparent what Mr. Wallack's duties as CEO entail or what steps he took before making the broad conclusory statements in his declaration. From the information on Applicant's website, there appear to be other employees who would be expected to possess more relevant, first-hand information. For example, as of the date of this submission, Mr. Felix Vega is the *sole* point of contact identified in the "contact" section of Applicant's website. Opposer has previously sought, and now needs, Applicant to identify each current and former employee who

might be expected to have information relevant to the topics discussed herein, and the subject of each employee's knowledge. For this reason, Opposer requires responses to the general informational discovery requests that Opposer expects would identify additional relevant sources of information, namely: **Interrog. Nos. 1, 26 and Doc. Req. Nos. 1-2, 41-42.**

37. Opposer also needs to evaluate the conditions under which the parties have allegedly coexisted without any instance of confusion. Such information includes: (a) identification of all of the products and services sold in connection with Applicant's Mark; (b) the time period, geographic location, and volume of sales associated with the goods and services marketed under Applicant's Mark; (c) advertising activities in connection with the goods and services rendered under Applicant's Mark, including advertising expenditures, advertising volume, the media used for advertising, and related documentation showing actual advertisements; (d) the channels of trade for Applicant's goods and services; (e) the classes of consumers to whom Applicant's goods and services have been sold; and (f) the circumstances under which persons purchase Applicant's goods and services.

38. The following previously-served discovery requests seek the information described in Paragraphs 36-37 above: **Interrog. Nos. 1-8, 10-12, 14, 17, 19, 22-26; Doc. Req. Nos. 1-2, 10, 14, 16-19, 21-22, 30-34, 37, 39, 41-42; and RFA Nos. 38-44, 47-49, 54-59.**

39. Opposer expects that the deposition of Mr. Wallack (or potentially other employees) may be essential to supporting the arguments that it will assert in its opposition to Applicant's Motion. That said, Opposer will make that determination after it has had an opportunity to review Applicant's responses to Opposer's discovery requests.

40. Finally, Opposer needs discovery regarding inconsistent statements and positions taken by Applicant (in disputes or in other contexts). Before the TTAB alone, Applicant has asserted that the WILD MANGO RESTAURANT & BAR, JOHNNY MANGO'S, and MANGO GRILLE AND

LIMBO BAR word marks conflict with its rights. *See* Opposition No. 91165693 and Cancellation Nos. 92032775 and 92032488, respectively. Obviously, these prior assertions are difficult to reconcile with Applicant's current belief that Opposer's MANGO Marks do not present a conflict with Applicant's Mark when used on legally identical goods.

41. The following previously-served discovery requests seek the information described in Paragraph 40 above: **Interrog. Nos. 1, 13, 21, 26; Doc. Req. Nos. 1-2, 21-25, 41-42; and RFA Nos. 32-34.**

42. Opposer believes that it will need 75 days from the Board's resolution of Opposer's Rule 56(d) Motion to conduct discovery and respond to Applicant's Motion. This time period includes: (a) the 30 days that Applicant will have to respond to Opposer's discovery requests appended hereto; (b) another 30 days in which to conduct any follow up discovery (including depositions) regarding the topics outlined above; and (c) another 15-day period during which Opposer would expect to receive responses to any follow-up discovery requests and draft a response on the merits to Applicant's Motion.

43. To the extent necessary, the undersigned hereby incorporates by reference any statement made in the brief submitted concurrently herewith that is not otherwise explicitly supported by any statement herein.

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

Executed on December 9, 2011

*s/Brent S. LaBarge/*  
Brent S. LaBarge

# **EXHIBIT A**

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

In the matter of Application Serial No. 85/069,828  
Mark: MANGO’S TROPICAL CAFE & Design

UNIVERSAL INTERNATIONAL MUSIC B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91200153
	)	
MANGO’S TROPICAL CAFE, INC.	)	
	)	
Applicant.	)	
	)	

**OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT**

Opposer Universal International Music B.V. (“UIM”), pursuant to Federal Rule of Civil Procedure 33 and 37 C.F.R. § 2.120, hereby requests that Applicant, Mango’s Tropical Cafe, Inc. (“Applicant”), answer the following Interrogatories in writing under oath, subject to the penalties of perjury within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

The Interrogatories shall be answered in accordance with the Instructions and Definitions set forth below. The full text of the Instructions and Definitions shall be deemed incorporated by reference into each Interrogatory.

**INSTRUCTIONS**

1. These Interrogatories are continuing in nature and any information obtained, discovered, or formulated by You subsequent to Your answers hereto, which would have been responsive if known, discovered, or formulated by You at the time Your answers hereto were given, shall be furnished in writing to UIM as soon as such information becomes available.

2. You are to furnish all information available to You as of the date of Your answers to this First Set of Interrogatories, including that obtained by or in the possession of Your attorneys. If You are unable to answer any of the interrogatories fully and completely, after exercising due diligence to secure the information necessary to answer such interrogatory to the fullest extent possible, specify the extent of Your knowledge and Your inability to answer the remainder, setting forth the efforts You made to obtain the requested information.

3. If the identity of any individual or entity other than a named party in this proceeding is sought or given, supply the full name, business address (or, if unknown, the home address) and telephone numbers of each, including said information for any of Your employees, agents, attorneys, servants and representatives, not parties hereto, who are mentioned herein. For any individual or entity so identified, give his, her, or its relationship, if any, to You.

4. With respect to any conversations or discussions with anyone whom You mention in the answers hereto, give the name(s) of the individual(s) with whom such conversations or discussions took place, and the date and location, by state and city, of said conversation or discussions.

5. The information requested herein is intended to include all knowledge and information of You, Your agents, Your legal representatives, Your predecessor(s), if any, as well as their divisions, affiliates, parent and subsidiary entities, both controlled and wholly-owned, all related companies (as defined by 15 U.S.C. § 1127), and the past and present officers, directors, shareholders, employees, representatives, attorneys, and other personnel thereof.

6. If You object to any interrogatory or interrogatory subpart, or otherwise withhold responsive information because of the claim of privilege, work product, or on other grounds:

(a) identify the interrogatory question and subpart to which objection or claim of privilege is made;

(b) state whether the information is found in a document, oral communication, or in some other form;

(c) identify all grounds for objection or assertion of privilege, and set forth the factual basis for assertion of the objection or claim of privilege;

(d) identify the information withheld by description of the topic or subject matter, the date of the communication, and the participants; and

(e) identify all Persons having knowledge of any facts relating to Your claim of privilege.

7. If You object to any portion of an interrogatory, explain Your objection and answer the remainder.

8. If You cannot supply precise information, state Your best estimate or approximation (including Your best approximation of date by reference to other events, when necessary), and designate the response as an estimate or approximation.

### **DEFINITIONS**

As used herein, the following terms have the following definitions:

1. The term “UIM” shall refer to Universal International Music B.V., its officers, directors, employees, partners, agents, representatives, predecessors, subsidiaries, affiliates, and all other Persons acting on its behalf.

2. The terms “UIM’s Marks” or “UIM Marks” shall refer to all marks consisting in whole or in part of the word “Mango” that are registered in the United States by UIM, namely, Registration Nos. 1,200,278 and 1,749,894, as well as to UIM’s common law marks, UIM’s trade names, and any use analogous to trademark use by UIM of MANGO or MANGO-

formatives that are identical or substantially identical to these registrations including, but not limited to, MANGO RECORDS.

3. The terms “Applicant,” “You,” or “Your” shall refer to Mango’s Tropical Cafe, Inc., its officers, directors, employees, partners, agents, representatives, predecessors, subsidiaries, affiliates, successors, all related companies as defined by 15 U.S.C. § 1127, and all other Persons acting on its behalf.

4. The term “Applicant’s DVD Application” shall refer to Applicant’s intent to use application for Applicant’s Mark filed with the U.S. Patent and Trademark Office as shown in Application Serial No. 85/069,828 for the products set forth therein.

5. The term “Applicant’s CD Application” shall refer to Applicant’s intent to use application currently pending with the U.S. Patent and Trademark Office as shown in Application Serial No. 76/157,782 for the products set forth therein, as well as to all children or parent applications thereof that covered International Class 9 goods at some point during the prosecution of any such applications, including, but not limited to, Application Serial Nos. 76/975,197 and 75/981,783.

6. The term “Applications” shall refer collectively and individually to Applicant’s DVD Application and Applicant’s CD Application.

7. The term “Applicant’s Goods” shall refer to the goods set forth in the Applications that Applicant markets or plans to market in connection with Applicant’s Mark.

8. The term “Applicant’s Mark” shall refer to the logo mark reflected in the Applications as well as to any variations thereof that create essentially the same commercial impression, regardless of the goods or services in connection with which such mark is used. For the avoidance of doubt, variations that create essentially the same commercial impression

include those set forth in UIM's First Set of Requests for Admission, Request Nos. 24-29, served concurrently herewith.

9. The term "Opposition" shall refer to Opposition No. 91200153 instituted by UIM against Applicant's DVD Application and to the counterclaim for cancellation asserted by Applicant against UIM's Marks therein.

10. The term "Agreement" means any written or oral contract, license, assignment, transfer of rights, understanding, agreement or agreement in principle, all schedules, exhibits or other documents ancillary thereto or referred to therein, and all drafts of and amendments to the foregoing.

11. The term "Mark" includes trademark, service mark, collective mark, certification mark, logo and trade name as these terms are defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127.

12. "Market Research" includes all surveys, polls, focus groups, trademark and/or any other searches, Market Research studies and other investigations, whether or not such investigations were completed, discontinued or fully carried out, and whether or not they were preformed in connection with this consolidated proceeding.

13. "Person" or "Persons" shall mean natural Persons, firms, partnerships, joint ventures, government entities, social or political organizations, associations, corporations, divisions, or any other entities in any other department or other unit thereof, whether *de facto* or *de jure*, incorporated or unincorporated.

14. "Document" is used in the broadest sense possible consistent with the Federal Rules of Civil Procedure as adopted by the Trademark Rules of Practice and includes, without limitation, non-identical copies (whether different from the original because of underlining,

editing marks, notes made on or attached to such copy, or otherwise), and drafts, whether printed or recorded (through a sound, video or other electronic, magnetic or digital recording system) or reproduced by hand, including but not limited to writings, recordings, photographs, letters, correspondence, purchase orders, invoices, facsimiles, telegrams, telexes, memoranda, records, summaries, minutes, records or notes of personal conversations, interviews, meetings and/or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic or other notes, opinions or reports of consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, checks (front and back), contracts, agreements, appraisals, analyses, confirmations, publications, articles, books, pamphlets, circulars, microfilms, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, tape recordings, videotapes, disks, diskettes, compact discs (CDs), data tapes or readable computer-produced interpretations or transcriptions thereof, electronically-transmitted messages (email), voicemail messages, inter-office communications, advertising, packaging and promotional materials, and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to all information contained in any computer or electronic data processing system, or on any tape, whether or not already printed out or transcribed.

15. “Identify” with respect to Persons means to state the Person’s full name, present or last known address, and, when referring to a natural Person, additionally, the present or last known place of employment. If the business and home telephone numbers are known to You, and if the Person is not employed by You, said telephone numbers shall be provided.

16. “Identify” with respect to any corporation means to give, to the extent known: (a) its full name; (b) its place and date of incorporation; (c) its present or last known address and

principal place of business; and (d) the identity of officers or other Persons having knowledge of the matter with respect to which such corporation is named.

17. “Identify” with respect to any other legal entity means to give, to the extent known: (a) its full name and type of entity, *e.g.*, partnership or sole proprietorship; (b) its present or last known address and principal place of business; and (c) the identity of officers or other Persons having knowledge of the matter with respect to which such Person is named.

18. “Identify” with respect to each document means to give, to the extent known: (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the author(s), addressee(s) and recipient(s); (e) the date and manner of its distribution; and (f) the location of each copy of the document and the identity of those Persons who have possession, custody or control of each such copy.

19. “Identify” with respect to oral communications means to give, to the extent known: (a) the communication medium, *i.e.*, in person or telephonic; (b) the date of each such communication; (c) the full name and current business and residence address of those who participated in each communication; and (d) the substance and nature of each such communication.

20. The word “communication” or “communications” shall mean all meetings, conversations, conferences, discussions, correspondence, electronic mail messages, telegrams, facsimile transmissions, mailgrams, emails, voicemails, recordings and all oral and written expressions or other occurrences whereby thoughts, opinions or data are transmitted between two or more Persons.

21. “Oral communication” shall mean any oral communication or other statement from one Person to another, including but not limited to, any interview, conference, meeting, voicemail, recording or telephone conversation.

22. The word “describe” shall mean to state with specificity all facts, including but not limited to time, comprising or pertaining to such facts, thing, condition, action or event, and to identify all Persons involved in such fact, thing, action or event.

23. The terms “concerning” and “concern” shall mean memorializing, mentioning, to be connected with, comprising, consisting, indicating, describing, referring, relating to, evidencing, showing, discussing or involving in any way whatsoever the subject matter of the discovery request.

24. The terms “refer,” “referring to,” “relate,” or “relating to,” shall mean constituting, discussing, mentioning, containing, analyzing, embodying, reflecting, identifying, incorporating, describing, commenting on, considering, recommending, dealing with or pertaining to in whole or in part.

25. The term “including” shall mean including without limitation.

26. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.

27. Words of gender (*i.e.* masculine, feminine, and neuter) shall be construed as including all genders, without limitation.

28. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

29. The use of the singular form of any word includes the plural and vice versa.

30. The terms “United States” or “nationwide” shall include the United States of America, its possessions, and territories.

31. The terms “Use in Commerce” or “Used in Commerce” shall mean “use in commerce” as that phrase is defined in 15 U.S.C. § 1127.

32. Each term or phrase that indicates past, present, or future conduct or events shall be construed as encompassing past, present, or future conduct or events, regardless of the verb tense used.

33. In connection with this First Set of Interrogatories, all references to any individual, corporation, partnership or limited partnership shall be deemed to include not only the individual, corporation, partnership or limited partnership named, but also his, her, its or their employees, officers, directors, partners, principals, shareholders, attorneys, agents and representatives under the control of the entity or individual identified in the interrogatory.

### **INTERROGATORIES**

**Interrogatory No. 1:** Identify all Persons who are likely to have personal knowledge of any fact alleged in the Opposition and state the subject matter of the personal knowledge possessed by each such Person.

**Interrogatory No. 2:** Describe in detail the nature of the business currently conducted by Applicant.

**Interrogatory No. 3:** Describe in detail the nature of the business currently conducted by Applicant in connection with Applicant’s Mark.

**Interrogatory No. 4:** Identify all Persons known to Applicant who have knowledge of Applicant’s use or planned use of Applicant’s Mark in connection with Applicant’s Goods.

**Interrogatory No. 5:** Describe in detail all plans made by Applicant to begin using Applicant's Mark in association with Applicant's Goods including how, where, and when such goods will be advertised, marketed and/or promoted in the United States as well as the dates that any such plans were made.

**Interrogatory No. 6:** Describe in detail the measures taken by Applicant to implement the plans identified in Interrogatory Number 5.

**Interrogatory No. 7:** Describe in detail the circumstances surrounding Applicant's actual use, if any, of Applicant's Mark in connection with Applicant's Goods, including, but not limited to: (a) the date of first use for each such good and whether such use has been continuous to date, and if not, the date of discontinuance and the reasons for discontinuance; (b) all uses that Applicant has made to date in the United States of Applicant's Mark in connection with such goods, including any advertising, marketing, promotions, sales, presentations, pitch meetings, meetings with potential investors, meetings with potential licensees, meetings with potential manufacturers, meetings with potential packagers, and meetings with potential advertising agencies; (c) the volume of sales of each such good, in dollars and units, on a yearly basis since the date of first use; and (d) the wholesale and retail price of each such good.

**Interrogatory No. 8:** Identify all third parties (including but not limited to advertising agencies, public relations agencies or Market Research agencies) that Applicant has communicated with concerning the production, sale, advertising, marketing, promotion, or publicizing of Applicant's Goods under Applicant's Mark.

**Interrogatory No. 9:** Describe in detail Applicant's reasons and process for selecting Applicant's Mark, including the derivation thereof and the meaning or impression that this Mark

is intended to convey; and identify all Persons who were involved in the creation, selection, and development of Applicant's Mark.

**Interrogatory No. 10:** Describe in detail any expenditures associated in any way with Applicant's selection, use, or planned use of Applicant's Mark in connection with Applicant's Goods.

**Interrogatory No. 11:** Identify all Persons that Applicant has contacted or that have contacted applicant regarding any Agreement or prospective Agreement concerning Applicant's Mark, regardless of whether any such Agreement is currently in force and regardless of whether the rights at issue in any such agreement have matured or yet been acquired.

**Interrogatory No. 12:** Identify all goods or services ever sold, offered for sale, distributed, marketed, or advertised by or on behalf of Applicant under Applicant's Mark and identify all Persons with knowledge thereof.

**Interrogatory No. 13:** Identify every third party of which Applicant is aware that has used or has purportedly used a Mark consisting in whole or in part of the word "Mango." The identification should include:

- A. a description of the Mark used;
- B. the products or services or business with which the Mark is used;
- C. when the Mark was first used, if known, and whether such use has been continuous to date, and if not, the date of discontinuance and the reasons for discontinuance, if known.

**Interrogatory No. 14:** Describe in detail all Market Research, including the results thereof, conducted or caused to be conducted by or on behalf of Applicant, whether conducted for marketing purposes, litigation purposes or other purposes, that concern: (a) UIM and UIM's Marks; (b) Applicant's Mark; (c) the use of Applicant's Mark on Applicant's Goods; or (d) consumer interest in obtaining Applicant's Goods.

~~**Interrogatory No. 15:** State all facts that support or refute Applicant's contention in Paragraph 2 of its Counterclaim for Cancellation filed in the Opposition that UIM has "abandoned its rights to the MANGO Marks."~~

~~**Interrogatory No. 16:** Describe in detail the steps taken by Applicant to ensure compliance with all federal and state statutes and regulations in preparation for providing Applicant's Goods (e.g., obtaining the requisite licenses or other governmental authorizations or permissions).~~

**Interrogatory No. 17:** Identify all Persons that Applicant has featured or plans to feature on Applicant's Goods.

~~**Interrogatory No. 18:** Describe in detail the steps taken by Applicant to secure the permission of copyright, trademark, and any other intellectual property rights holders for the content that Applicant has featured or plans to feature on Applicant's Goods.~~

**Interrogatory No. 19:** For all active or lapsed U.S. federal registrations or use-based applications for Applicant's Mark, set forth facts and evidence sufficient to support Your contention that each good identified in each such registration or application is or was being Used in Commerce.

~~**Interrogatory No. 20:** Describe in detail why U.S. Trademark Application Serial Nos. 74/157,489; 74/358,979; and 76/153,457 for Applicant's Mark are no longer pending.~~

**Interrogatory No. 21:** Describe in detail all disputes with third parties concerning any Mark consisting in whole or in part of the word "Mango," including a description of how each such dispute was resolved.

**Interrogatory No. 22:** To the extent Applicant contends that the demographics of its consumers for Applicant's Goods differ from the demographics of UIM's consumers for these same types of goods offered under UIM's Mark, set forth all facts and evidence to support such contention.

**Interrogatory No. 23:** To the extent Applicant contends that the channels of trade for Applicant's Goods differ from the channels of trade for these same types of goods offered under UIM's Mark, set forth all facts and evidence to support such contention.

**Interrogatory No. 24:** To the extent Applicant contends that the advertising channels for Applicant's Goods differ from the advertising channels for these same types of goods offered under UIM's Mark, set forth all facts and evidence to support such contention.

**Interrogatory No. 25:** Describe each instance of which Applicant is aware in which there has been actual confusion as to the source, sponsorship, affiliation, or approval of Applicant's goods or services arising out of the use of Applicant's Mark.

**Interrogatory No. 26:** Identify the Person(s) with the most knowledge about the preparation of responses to Opposer's First Set of Interrogatories.



## CERTIFICATE OF SERVICE

I hereby certify that, on November 3, 2011, a true and complete copy of the foregoing Opposer's First Set of Interrogatories to Applicant has been served on Applicant by electronically transmitting said copy (with the consent of Applicant) to:

David K. Friedland  
Friedland Vining PA  
7301 SW 57 Court, Suite 515  
South Miami, Florida 33143  
david.friedland@friedlandvining.com,  
jaime.vining@friedlandvining.com

/s/Brent S. LaBarge/

Brent S. LaBarge

# **EXHIBIT B**

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

In the matter of Application Serial No. 85/069,828  
Mark: MANGO’S TROPICAL CAFE & Design

UNIVERSAL INTERNATIONAL MUSIC B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91200153
	)	
MANGO’S TROPICAL CAFE, INC.	)	
	)	
Applicant.	)	
	)	

**OPPOSER’S FIRST SET OF REQUESTS FOR THE PRODUCTION  
OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, Opposer Universal International Music B.V. (“UIM”) requests that Applicant Mango’s Tropical Cafe, Inc. (“Applicant”) respond to the following requests for the production of documents and things by providing written responses thereto within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure and by producing the documents and things specified herein for inspection and copying at Universal Music Group’s offices, 2220 Colorado Avenue, Santa Monica, California 90404, Attn.: Brent S. LaBarge, simultaneously with the written responses or at another mutually agreed upon time and place.

**DEFINITIONS**

A. The definitions contained in Opposer’s First Set of Interrogatories to Applicant, dated November 3, 2011 are incorporated by reference as if fully set forth herein.

B. A request “concerning” any subject calls for all Documents that reflect, relate to, comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the request, including but not limited to all Documents that reflect, record, memorialize, discuss, evaluate, consider, review or report on the subject matter of the request.

### **INSTRUCTIONS**

1. Applicant is required to produce any and all Documents in its possession, custody or control that are known or available to it, regardless of whether those Documents are possessed by it or by any agent, representative, attorney or other third party. Applicant must make a diligent search of its records (including but not limited to paper records, computerized records, electronic mail records and voicemail records) and of other papers and materials in its possession, custody or control, including but not limited to those Documents available to it or its agents, representatives, attorneys or other third parties.

2. All Documents produced for inspection must be organized and labeled to correspond with the categories in the request or as the Documents are kept in the ordinary course. Electronically stored information should be produced in text searchable .pdf format on CD-ROM. Fed. R. Civ. P. 34(b)(E).

3. Where any copy of any Document is not identical to any other copy thereof by reason of any alteration, notes in the margin, comments or other material contained there or attached thereto, or otherwise, Applicant should produce all such non-identical copies separately.

4. If there are no Documents responsive to any particular request or part thereof, Applicant should so state in writing.

5. If any Document is known by Applicant to have been in existence, but is no longer either in existence or in its possession, custody or control, Applicant should state:

- (a) whether the Document is missing or lost, and if so, the name and current address and phone number of the Persons who have knowledge of it;
- (b) whether the Document has been destroyed, and if so, the circumstances under which it was destroyed and the name and current address and phone number of the Persons who destroyed it or who have knowledge of its destruction;
- (c) whether the Document has been transferred voluntarily or involuntarily, and in each instance explain the circumstances surrounding the date of its disposition; and
- (d) the identity of the Person who has possession, custody, or control of the Document.

6. In the event any Document is withheld on a claim of attorney/client privilege or work product immunity, Applicant shall provide contemporaneously with its written responses asserting the privilege a privilege log that identifies as to each such Document:

- (a) the name of the author of the Document;
- (b) the name of the sender of the Document;
- (c) the names of all Persons to whom copies were sent or to whom the information contained therein was disclosed;
- (d) the job title of every Person named in (a), (b), and (c) above;
- (e) the date of the Document;
- (f) the date on which the Document was received;
- (g) a brief description of the nature and subject matter of the Document; and

(h) the statute, rule, or decision which is claimed to give rise to the privilege.

7. These requests are continuing in character so as to require prompt supplemental production if Applicant obtains or discovers further responsive Documents after preparing and serving its initial responses pursuant to these requests, as required by the Federal Rules of Civil Procedure. In no event should Applicant serve any supplemental response later than the day before the trial period opens.

### **REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

#### **Request No. 1**

Past and present organizational charts sufficient to disclose Your organizational structure and to describe or reflect the names, positions, titles, duties, and reporting relationships of officers, employees, and other Persons who have or have had responsibility for, or duties relating in any manner to Applicant's Mark, or, if no such charts exist, documents sufficient to describe and reflect the same information.

#### **Request No. 2**

Documents and things sufficient to identify any of Your affiliates, including parent companies, subsidiaries, acquisitions, partnerships, joint ventures, and divisions.

#### **Request No. 3**

All Documents (including, without limitation, any final or non-final office action or other correspondence from or to the U.S. Patent and Trademark Office) concerning any application by Applicant to register Applicant's Mark or the maintenance of any registrations resulting therefrom in any jurisdiction in the United States (including the U.S. Patent and Trademark Office).

Request No. 4

All documents, file histories, search reports, memoranda, correspondence or other written materials that Applicant created or reviewed, or that were created or reviewed by third parties, in connection with Applicant's decision to file the Applications.

Request No. 5

All Documents concerning Applicant's reasons and process for selecting Applicant's Mark, including the derivation thereof and the meaning or impression that this Mark is intended to convey.

Request No. 6

All Documents concerning the clearance of Applicant's Mark, including any legal opinions on which Applicant is relying.

Request No. 7

Copies of all search reports or investigations obtained for or reviewed by or on behalf of Applicant in connection with adopting or clearing Applicant's Mark in the United States that were conducted (a) at or prior to the filing dates of the Applications, or (b) subsequent to the filing date of the Applications.

Request No. 8

All documents concerning any study, research, survey, analysis, consideration, opinion, advice, or evaluation of whether or not the Applications or Applicant's Goods infringe UIM's rights in UIM's Marks, or otherwise violates any federal or state statutes or rights existing under the common law.

Request No. 9

Documents sufficient to identify any other marks considered by Applicant for use in connection with CDs or DVDs.

Request No. 10

All Documents concerning the actual or planned advertising and marketing strategies for Applicant's Goods in the United States.

Request No. 11

Samples of each unique specimen, label, tag, packaging, or advertising and promotional material for Applicant's Goods, whether or not actually used and whether or not in draft or final form.

Request No. 12

Representative samples of advertisements (regardless of media or the advertised goods or services), signage, point of sale displays, catalogues, brochures, promotional materials and other marketing materials showing each unique manner in which Applicant has used Applicant's Mark in the United States or samples of drafts or proposed advertisements (regardless of media), signage, point of sale displays, catalogues, brochures, promotional materials and other marketing materials showing the manner in which Applicant uses or plans to use Applicant's Mark in the United States.

Request No. 13

Documents sufficient to show the services or goods, if any, on which Applicant has used Applicant's Mark in the United States.

Request No. 14

Documents sufficient to show the dates of first use of Applicant's Mark in the United States in connection with Applicant's Goods (or any other goods or services that Applicant contends would suffice to establish Applicant's priority date with respect to Applicant's Goods) that are currently being provided or that have been provided in the past.

Request No. 15

For each good or service that is being provided, or has been provided in the past, under Applicant's Mark, provide a specimen of all promotional materials, including promotional items, advertisements, brochures, or press kits used in connection with each such good or service.

Request No. 16

All Documents concerning Applicant's business plans for marketing goods and services under Applicant's Mark, including where these goods and services are sold or intended to be sold.

Request No. 17

Documents sufficient to identify with specificity where Applicant markets or intends to market Applicant's Goods.

Request No. 18

Copies of all presentations referring to Applicant's Mark made or intended to be made by Applicant to potential investors, customers, manufacturers, advertisers, distributors, packagers, marketers, or any other third party, regardless of whether such presentations were actually given.

Request No. 19

Documents sufficient to show the prices that Applicant charges or intends to charge for Applicant's Goods.

Request No. 20

Press releases, press kits, or news clippings concerning Applicant's Goods.

Request No. 21

All documents concerning any license, assignment, transfer of rights, or other authorization that Applicant has granted, or is considering granting, to any Person to use Applicant's Mark in connection with any good or service, including all drafts of any such documents and any correspondence or other documents evidencing communications with any licensee, assignee, transferee or proposed licensee, assignee, or transferee.

Request No. 22

All Documents concerning Agreements or prospective Agreements relating to Applicant's Mark or Applicant's Goods, including any drafts, regardless of whether any such Agreement or prospective Agreement is currently in force and regardless of whether the rights at issue therein have matured or yet been acquired.

Request No. 23

All documents concerning correspondence, communications, or formal filings sent to or received from third parties referring or relating in any way to the use or registration of, or application to register, any Mark consisting in whole or in part of the word "Mango."

Request No. 24

All documents concerning any settlement or final disposition of any disputes involving any Mark consisting in whole or in part of the word "Mango."

Request No. 25

All documents concerning Applicant's awareness of the use or registration or purported use or attempted registration by any third party of any Mark consisting in whole or in part of the word "Mango."

Request No. 26

All Documents concerning Market Research whether conducted for marketing purposes, litigation purposes, or other purposes, which relate or refer to (a) Applicant's Mark, (b) UIM's Marks or UIM, or (c) any of the issues in this Opposition.

Request No. 27

All Documents concerning investigations into UIM or the nature of UIM's use of UIM's Marks in the United States.

Request No. 28

All Documents concerning UIM's Marks or the goods or services sold thereunder other than the pleadings in the Opposition or communications and correspondence between counsel for the parties in relation to the present dispute.

Request No. 29

All Documents in Applicant's possession regarding UIM, including documents relating to Applicant's first awareness of UIM or UIM's Marks.

Request No. 30

All Documents concerning any instances of actual confusion between Applicant and its goods or services and UIM or its goods or services that have occurred as a result of Applicant's use of Applicant's Mark, and all documents concerning any misdirected communications or Applicant's receipt of communications or materials intended for UIM.

Request No. 31

Documents sufficient to show Applicant's total expenditures to advertise, market or promote goods and services offered under Applicant's Mark.

Request No. 32

Documents sufficient to show Applicant's total sales of goods or services, in dollars and units, under Applicant's Mark.

Request No. 33

Price lists for goods and services offered or intended to be offered under Applicant's Mark or, if no such lists exist, Documents sufficient to show the wholesale and retail prices of the goods and services offered or intended to be offered under Applicant's Mark.

Request No. 34

All Documents evidencing financial projections, budgets, marketing or advertising forecasts or projections related to Applicant's use or planned use of Applicant's Mark in the United States.

~~Request No. 35~~

~~All Documents that support or contravene Applicant's contention in Paragraph 2 of its Counterclaim for Cancellation filed in the Opposition that UIM has "abandoned its rights to the MANGO Marks."~~

~~Request No. 36~~

~~All documents concerning steps taken by Applicant to ensure compliance with all federal and state statutes and regulations in preparation for providing Applicant's Goods.~~

Request No. 37

Documents sufficient to show all Persons that Applicant has featured or plans to feature on Applicant's Goods.

~~Request No. 38~~

~~All documents concerning steps taken by Applicant to secure the permission of copyright, trademark, and any other intellectual property rights holders for the content that Applicant has featured or plans to feature on Applicant's Goods.~~

Request No. 39

Documents sufficient to show Applicant's Use in Commerce of all goods identified in all active or lapsed U.S. federal registrations or use-based applications for Applicant's Mark.

Request No. 40

For all goods identified in all active or lapsed U.S. federal registrations or use-based applications for Applicant's Mark, two samples of each such good or other documents sufficient to show Applicant's affixation of Applicant's Mark to such goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, as contemplated by 15 U.S.C. §1127.

Request No. 41

All documents and things concerning or relating to any of Your pleadings, answers, amended pleadings, amended answers, or affidavits filed in support thereof in this proceeding, including all documents and things identified, used, or relied upon in the preparation of any such pleading or amended pleading.



## CERTIFICATE OF SERVICE

I hereby certify that, on November 3, 2011, a true and complete copy of the foregoing Opposer's First Set of Requests For the Production of Documents and Things to Applicant has been served on Applicant by electronically transmitting said copy (with the consent of Applicant) to:

David K. Friedland  
Friedland Vining PA  
7301 SW 57 Court, Suite 515  
South Miami, Florida 33143  
david.friedland@friedlandvining.com,  
jaime.vining@friedlandvining.com

/s/Brent S. LaBarge/

Brent S. LaBarge

# **EXHIBIT C**

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

In the matter of Application Serial No. 85/069,828  
Mark: MANGO’S TROPICAL CAFE & Design

UNIVERSAL INTERNATIONAL MUSIC B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91200153
	)	
MANGO’S TROPICAL CAFE, INC.	)	
	)	
Applicant.	)	
	)	

**OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT**

Pursuant to Rule 2.120(h) of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, Opposer Universal International Music B.V. (“UIM”) requests that Applicant Mango’s Tropical Cafe, Inc. (“Applicant”) admit the truth of the following matters by serving written responses thereto within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

**DEFINITIONS**

The definitions set forth in Opposer’s First Set of Interrogatories to Applicant dated November 3, 2011 are incorporated by reference as if fully set forth herein.

**INSTRUCTIONS**

1. If Applicant fails specifically to admit or deny any of the Requests for Admission (“Requests,” and each, a “Request”), or to set forth with particularity the reasons why it cannot admit or deny the given Request, the Request will be deemed admitted.
  
2. These Requests seek responses from Applicant that are complete and fully

responsive as of the date the responses are executed, and which reflect or embody all relevant information and documentation within the custody or control of Applicant as of that date. Should Applicant later learn that any response was incomplete or incorrect when made, or although correct when made is no longer accurate, Applicant should timely supplement the response as required by Rule 26 of the Federal Rules of Civil Procedure.

3. No part of a Request shall be left unanswered merely because an objection is interposed as to any part thereof. Where Applicant makes an objection to any Request, Applicant should make the objection in writing and state all grounds with specificity.

4. For the convenience of the Board and the parties, Applicant should quote each Request in full immediately preceding the response.

### **REQUESTS FOR ADMISSION**

Request 1 Admit that UIM's Marks were cited by an Examining Attorney against Applicant's CD Application in an Office Action dated April 4, 2001.

Request 2 Admit that Applicant was aware of UIM's Marks before using Applicant's Mark in connection with any goods or services in the United States.

Request 3 Admit that Applicant was aware of UIM's Marks before applying to register Applicant's Mark in connection with any goods or services in the U.S.

Request 4 Admit that Applicant was aware of UIM's Marks before filing Applicant's DVD Application.

Request 5 Admit that Applicant uses the phrase MANGO'S IS THE PARTY on its [www.mangotropicalcafe.com](http://www.mangotropicalcafe.com) website.

Request 6 Admit that Applicant uses the phrase MANGO'S HAPPY HOUR on its [www.mangotropicalcafe.com](http://www.mangotropicalcafe.com) website.

Request 7 Admit that Applicant uses the phrase MANGO'S SPECIALITY DRINKS on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website.

Request 8 Admit that Applicant uses the phrase MANGO'S MEANS "ENTERTAINMENT"! on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website.

Request 9 Admit that Applicant uses the phrase MANGO'S TV on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website.

Request 10 Admit that Applicant uses the phrase MANGO'S STARS on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website.

Request 11 Admit that Applicant uses the phrase ABOUT MANGO'S on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website.

Request 12 Admit that Applicant uses the phrase MANGO'S ONLINE SHOPPING BOUTIQUE on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website.

Request 13 Admit that Applicant refers to itself as MANGO'S.

Request 14 Admit that, more often than not, Applicant refers to itself as MANGO'S instead of MANGO'S TROPICAL CAFE throughout its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website.

Request 15 Admit that Applicant frequently refers to itself as MANGO'S.

Request 16 Admit that Applicant almost exclusively refers to itself as MANGO'S.

Request 17 Admit that consumers refer to Applicant's establishment as MANGO'S.

Request 18 Admit that consumers frequently refer to Applicant's establishment as MANGO'S.

Request 19 Admit that consumers almost exclusively refer to Applicant's establishment as MANGO'S.

Request 20 Admit that the phrase “tropical cafe” is disclaimed in Applicant’s CD Application.

Request 21 Admit that the phrase “tropical cafe” is descriptive when used in association with Applicant’s Goods.

Request 22 Admit that the phrase “tropical cafe” is the least prominent literal element of Applicant’s Mark.

Request 23 Admit that the phrase “tropical cafe” is the least distinctive literal element of Applicant’s Mark.

Request 24 Admit that Applicant uses Applicant’s Mark in the form shown below on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website:



Request 25 Admit that Applicant uses Applicant’s Mark in the form shown below on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website:



Request 26 Admit that Applicant uses Applicant’s Mark in the form shown below on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website:



Request 27 Admit that Applicant uses Applicant's Mark in the form shown below on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website:



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Request 29 Admit that Applicant uses Applicant's Mark in the form shown below on its [www.mangostropicalcafe.com](http://www.mangostropicalcafe.com) website:



Request 30 Admit that the Macaw design element in Applicant's Mark is merely ornamental.

Request 31 Admit that MANGO'S is the dominant portion of Applicant's Mark.

Request 32 Admit that Applicant has previously opposed registration of the WILD MANGO RESTAURANT & BAR word mark (U.S. Serial No. 78/315,028), alleging, *inter alia*, that the WILD MANGO RESTAURANT & BAR word Mark was so similar to Applicant's MANGO'S TROPICAL CAFE & Design Mark as to result in confusion between the parties' services offered under their respective marks.

Request 33 Admit that Applicant has previously sought to cancel the registration for the JOHNNY MANGO'S word mark (U.S. Registration No. 2,352,012), alleging, *inter alia*, that the JOHNNY MANGO'S word Mark was so similar to Applicant's MANGO'S TROPICAL CAFE & Design Mark as to result in confusion between the parties' services offered under their respective marks.

Request 34 Admit that Applicant has previously sought to cancel the registration for the MANGO GRILLE AND LIMBO BAR word mark (U.S. Registration No. 2,303,909), alleging, *inter alia*, that the MANGO GRILLE AND LIMBO BAR word Mark was so similar to Applicant's MANGO'S TROPICAL CAFE & Design Mark as to result in confusion between the parties' services offered under their respective marks.

Request 35 Admit that Applicant's Mark and UIM's Marks are highly similar in appearance.

Request 36 Admit that Applicant's Mark and UIM's Marks sound highly similar.

Request 37 Admit that Applicant's Mark and UIM's Marks have highly similar commercial impressions.

Request 38 Admit that the consumers of Applicant's Goods overlap (or will overlap) with consumers of UIM's goods and services sold under UIM's Marks.

Request 39 Admit that the consumers for DVDs offered or intended to be offered under Applicant's Mark likely will overlap with consumers of UIM's goods and services sold under UIM's Marks.

Request 40 Admit that Applicant has no evidence that the consumers for the DVDs offered or intended to be offered under Applicant's Mark will not overlap with consumers of UIM's goods and services sold under UIM's Marks.

Request 41 Admit that Applicant's DVD Application places no restrictions on the class of consumers to whom Applicant intends to market DVDs offered under Applicant's Mark.

Request 42 Admit that Applicant's DVDs offered or intended to be offered under Applicant's Mark are or will be sold through the same channels of trade as UIM's goods and services offered under UIM's Marks.

Request 43 Admit that Applicant's DVD Application places no restrictions on the channels of trade through which goods offered under Applicant's Mark will be marketed.

Request 44 Admit that Applicant does not intend to restrict the channels of trade through which DVDs offered or intended to be offered under Applicant's Mark will be marketed.

Request 45 Admit that UIM did not consent to the application to register Applicant's DVD Application.

~~Request 46 Admit that UIM has standing to bring the Opposition.~~

Request 47 Admit that Applicant has no evidence that consumers of the parties' goods and services are sophisticated purchasers.

Request 48 Admit that in light of UIM's prior rights in UIM's Marks, Applicant's use of Applicant's Mark in connection with DVDs is likely to cause confusion as to the source, sponsorship, or affiliation of Applicant's DVDs.

Request 49 Admit that in light of UIM's prior rights in UIM's Marks, a registration for Applicant's Mark for DVDs is likely to cause confusion as to the source, sponsorship, or affiliation of Applicant's DVDs.

~~Request 50 Admit that Applicant's CD Application was filed over a decade ago.~~

~~Request 51 Admit that Applicant's CD Application is currently an intent to use application under 15 U.S.C. § 1051(b).~~



## CERTIFICATE OF SERVICE

I hereby certify that, on November 3, 2011, a true and complete copy of the foregoing Opposer's First Set of Requests for Admission to Applicant has been served on Applicant by electronically transmitting said copy (with the consent of Applicant) to:

David K. Friedland  
Friedland Vining PA  
7301 SW 57 Court, Suite 515  
South Miami, Florida 33143  
david.friedland@friedlandvining.com,  
jaime.vining@friedlandvining.com

/s/Brent S. LaBarge/

Brent S. LaBarge

# **EXHIBIT D**

FRIEDLAND VINIK  
7301 SW 57 COURT  
SUITE 515  
SOUTH MIAMI, FL 33152



Brent S. Labarge, Esq.  
Universal Music Grp.  
2220 Colorado Avenue  
Santa Monica, CA. 90404

MIAMI PD DC 33152  
MON 05 DEC 2011 PM



RECEIVED  
DEC 08 2011

# **EXHIBIT E**



Welcome to Mango's TV!  
Featuring our Best Videos ...



Videos

Categories

Search...

Featured Videos



BEACH CHANNEL



Mango's Flying Bird



"Divil" New Michael



NIVE 2011



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SOUTH BEACH

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Mango's Tropical Cafe - 900 Ocean Dr - Miami Beach, FL 33139 - Phone: (305) 673 - 4422

#### Mango's Tropical Cafe

Located at the exact center of South's Beach world famous Ocean Drive, Mango's Tropical Cafe is Miami's hottest dance club.

#### Mailing Address:

Mango's Tropical Cafe  
900 Ocean Drive  
Miami Beach, FL 33139

#### Contact Numbers:

Felix Vega:  
Sales, Marketing and General Information  
Ph: 305.673.4422  
Fax: 305.674.0311

#### E-Mail :

Please use our [General Inquiries](#) Contact Form.

Check out our [Frequently Asked Questions](#), where you may find the information you are interested in.  
If you're interested in applying for a job, [please click here](#).

#### More information about:

[Corporate Events](#)  
[Bachelorette Party](#)  
[Birthday Party](#)

#### General Inquiries

Name :

Email address :

Comments :

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[Parties & Events](#)

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Women  
Men  
2012 Mango's PIN-UP Calendar  
Accessories  
CDs & DVDs

### New Products

\$25 Mango's Tropical Cafe  
Gift Certificate  
**\$25.00**  
[Add To Cart](#)

\$100 Mango's Tropical Cafe  
Gift Certificate  
**\$100.00**  
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\$50 Mango's Tropical Cafe  
Gift Certificate  
**\$50.00**  
[Add To Cart](#)

Ladies Dolphin Short  
**\$17.95**  
[Choose Options](#)

Mango's EST 1991  
**\$19.95**  
[Choose Options](#)

### Our Newsletter

Your First Name:

Your Email Address:

[SUBSCRIBE ME](#)

## Mango's Logo T-Shirt



[SHARE](#) [f](#) [t](#) [e](#) ...

Price: **\$17.95**  
Shipping: **Calculated at checkout**  
Color:   
Size:   
Quantity:  [ADD TO CART](#)

### Product Description

Find Similar Products by Category

> [Men](#)

### Product Reviews

**This product hasn't received any reviews yet. Be the first to review this product!**

[WRITE A REVIEW](#)

Click the button below to add the Mango's Logo T-Shirt to your wish list.

[ADD TO WISH LIST](#)

### Related Products

Mango's Logo V-Neck  
**\$29.95**

Mango's Logo Tank  
**\$29.95**

Mango's Logo Tee  
**\$19.95**

Polo Shirt  
**\$29.00**

### You Recently Viewed...

Mango's Logo T-Shirt  
**\$17.95**  
[Choose Options](#)

Mango's Flip-Flops  
**\$11.95**  
[Choose Options](#)

[COMPARE SELECTED](#)



All prices are in USD. Copyright 2011 Mango's Tropical Cafe. [Sitemap](#) |



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The Best Shows in Miami !



01 02 03 04 05 06 07 08

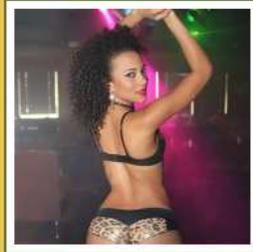
Mango's Tropical Cafe features one of the longest running "Cabaret" shows in the country. The cast is filled with beautiful and talented dancers and singers.

### Wednesday

TODAY AT MANGOS TROPICAL CAFE | BANDS, DANCERS, SHOWS AND MORE !

- 
**Innasense**  
 Reggae, Soca and Rock !  
**From:** 6:00 pm to 10:00 pm
- 
**Latin Connection Band**  
 Salsa, Merengue, Bachata, Timba and Reggaeton  
**From:** 10:30 pm to 4:10 am
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**Salsa Show**  
 Salsa, Bachata and more... Gino & Johelin  
**From:** 5:00 pm to 10:00 pm
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 Tribute to the King of Pop  
**Shows:** 9:30 pm - 11:00 pm - 1:00am
- 
**Yanira & Livan**  
 Salsa, Bachata, Timbalero Show !  
**Shows:** 10:30 pm to 2:00 am
- 
**Celia Cruz Show**  
 The Queen of Salsa  
**Shows:** 10:45 pm 12:45 am
- 
**Gloria Estefan Tribute**  
 The Best of Miami Sound Machine  
**Shows:** 11:30 pm
- 
**Samba Show**  
 Brazilian Carnival Explosion  
**Shows:** 12:30 am

Albums



The Girls



The Guys



Entertainment



Events



Archives

Albums 1-5 of 5

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Our VIP Rooms are now open every night!  
Featuring our inhouse DJs  
HipHop|R&B|Latin|House and more

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## MANGO'S AMAZING LEMONADE MOJITOS

### CLASSIC LEMONADE MOJITO \$11.50

THE MOST DELICIOUS MOJITO IN THE WORLD!

Fresh squeezed Lemonade, fresh Mint, Sugar, Bacardi Limon Rum & a splash of Soda

### PASSION FRUIT LEMONADE MOJITO \$11.50

FALL PASSIONATELY IN LOVE!

Fresh squeezed Lemonade, fresh Mint, Sugar, Malibu Passion Fruit Rum, Island Oasis Wild Berry & a splash of Soda

### PEACH LEMONADE MOJITO \$11.50

Fresh squeezed Lemonade, fresh Mint, Sugar, Bacardi Peach Red Rum, Peach Schnapps, topped with Island Oasis Peach & a splash of Soda

### COCONUT LEMONADE MOJITO \$11.50

SMOOTH AND REFRESHING!

Fresh squeezed Lemonade, fresh Mint, Sugar, Bacardi Coco Rum, Coconut Milk & a splash of Soda

### SOBE LEMONADE MOJITO \$11.50

MADE WITH SPLENDA!

Fresh squeezed Lemonade, fresh Mint, Splenda, Bacardi Limon Rum & a splash of Soda

### KEY LIME LEMONADE MOJITO \$11.50

THE BEST OF KEY WEST!

Fresh squeezed Lemonade, fresh Mint, Sugar, Captain Morgan Parrot Bay Key Lime Rum & a splash of Soda

### MANGO LEMONADE MOJITO \$11.50

Fresh squeezed Lemonade, fresh Mint, Sugar, Malibu Mango Rum, Mango Liqueur, Island Oasis Mango & a splash of Soda

### PINEAPPLE LEMONADE MOJITO \$11.50

Fresh squeezed Lemonade, fresh Mint, Sugar, Malibu Pineapple Rum, Pineapple Juice & a splash of Soda

### CHERRY LEMONADE MOJITO \$11.50

CHERRY LEMONADE HEAVEN!

Fresh squeezed Lemonade, fresh Mint, Sugar, Bacardi Torched Cherry Rum, Cherry Liqueur & a splash of Soda

### ROCKIN' RASPBERRY LEMONADE MOJITO \$11.50

A SWEET TWIST OF THE ORIGINAL!

Fresh squeezed Lemonade, fresh Mint, Sugar, Bacardi Razz Rum, Raspberry Liqueur & a splash of Soda

## CLASSIC MOJITOS

### CUBAN MOJITO \$11.50

HEMINGWAY'S FAVORITE!

Made with Bacardi Superior Rum, a mash of Mint Leaves, Sugar, fresh Lime juice & a splash of Soda

### PASSION FRUIT MOJITO \$11.50

AN AMAZING CREATION!

Malibu Passion Fruit Rum, Mint Leaves, Sugar, fresh Lime juice & a splash of Soda

### PINEAPPLE MOJITO \$11.50

An amazing infusion of Malibu Pineapple Rum, Mint Leaves, Sugar, fresh Lime juice, topped with Pineapple juice & a splash of Soda

### MANGO MOJITO \$11.50

OUR NEW CREATION!

Malibu Mango, Mint Leaves, Sugar, fresh Lime juice & a splash of Soda, topped with Island Oasis Mango

### ORANGE MOJITO \$11.50

AN IMPROVISED ADANCE DRINK!

### KEY LIME MOJITO \$11.50

Captain Morgan Parrot Bay Key Lime Rum, Mint Leaves, Sugar, fresh Lime juice & a splash of Soda

### COCONUT MOJITO \$11.50

GO COCO LOCO WITH THIS MOJITO!  
Bacardi Coco Rum, Coconut Milk, Mint Leaves, Sugar, fresh Lime juice & a splash of Soda

### HPNOTIQ MOJITO \$11.50

Bacardi Superior Rum, Hpnotiq, Mint Leaves, Sugar, fresh Lime juice & a splash of Soda

### NUVO MOJITO \$11.50



**AN INCREDIBLE GRAND KUSH!**  
Bacardi O Rum, Mint Leaves, Sugar, fresh Lime juice,  
Orange juice & a splash of Soda



Bacardi Superior Rum, Nuvo Sparkling Liqueur, Mint Leaves,  
Sugar, fresh Lime juice & a splash of Soda



**Enjoy your favorite Drink in a 15 oz. Mango's Souvenir Hurricane Glass for an additional \$3.50 on your first drink. Each refill is regular price. Always remember your Mango's experience with this beautiful glass.**

**A 17% Voluntary Gratuity, 10% surcharge for MSMC and tax is added to your check. It is always your option to tip for good service and entertainment. An additional 3% voluntary gratuity is added to your check for parties of 10 people or more - Photo I.D. is required for all credit card purchases. Gift cards not accepted.**

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The Best Shows in Miami !



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Mango's Tropical Cafe features one of the longest running "Cabaret" shows in the country. The cast is filled with beautiful and talented women and men from all over the world, who perform their artistry with heightened energy, each day and night on South Beach, for over 1,000,000 visitors a year. Come, Fall in love at Mango's !

### Wednesday

TODAY AT MANGOS TROPICAL CAFE | BANDS, DANCERS, SHOWS AND MORE !

-  **Innasense**  
Reggae, Soca and Rock ! **From:** 6:00 pm to 10:00 pm
-  **Latin Connection Band**  
Salsa, Merengue, Bachata, Timba and Reggaeton **From:** 10:30 pm to 4:10 am
-  **Salsa Show**  
Salsa, Bachata and more... Gino & Johelin **From:** 5:00 pm to 10:00 pm
-  **Belly Dancer** **Shows:** 9:45 pm
-  **Michael Jackson Show**  
Tribute to the King of Pop **Shows:** 9:30 pm - 11:00 pm - 1:00am
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Salsa, Bachata, Timbalero Show ! **Shows:** 10:30 pm to 2:00 am
-  **Celia Cruz Show**  
The Queen of Salsa **Shows:** 10:45 pm 12:45 am
-  **Gloria Estefan Tribute**  
The Best of Miami Sound Machine **Shows:** 11:30 pm
-  **Samba Show**  
Brazilian Carnival Explosion **Shows:** 12:30 am
-  **Conga Show**  
World Famous Mango's Cuban Conga Show **Shows:** 1:30 am
-  **Street Dance Electric Hip-Hop Show** **Shows:** 2:15 am

DJ Tony from 3:00 pm to 7:30 pm

DJ Ariel from 7:30 pm to 4:30 am

THE FAMOUS MANGO'S DANCERS and their Top-of-the-Bar choreographies all day and night !

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- Mango's Calendar
- CDs & DVDs

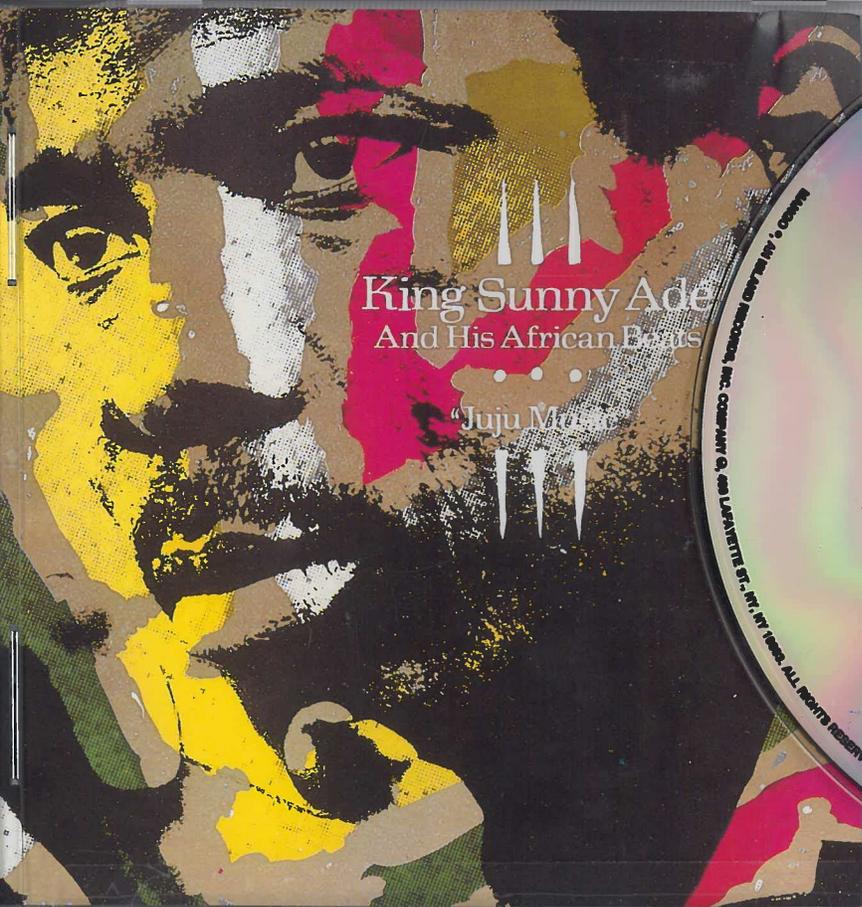
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SHARE

# **EXHIBIT F**



compact disc  
DIGITAL AUDIO



0 162-539712-2 6

162-539 712-2

**KING SUNNY ADÉ**  
AND HIS AFRICAN BEATS  
JUJU MUSIC

1. JA FUNMI
2. EJE NLO GBA ARA MI
3. MO BERU AGBA
4. SUNNY TI DE ARIYA
5. MA JAIYE ONI
6. 365 IS MY NUMBER/  
THE MESSAGE
7. SAMBA/E FALABA LEWE

PRODUCED BY MARTIN MEISSONNIER

MANGO © AN ISLAND RECORDS, INC. COMPANY © 400 LAFAYETTE ST., NY, NY 10003. DISTRIBUTED BY I.L.S. © 1982 ISLAND RECORDS LTD./AFRISON LTD/MCPS © 1982 ISLAND RECORDS LTD. ALL RIGHTS RESERVED. PRINTED IN THE U.S.A. WARNING: UNAUTHORIZED REPRODUCTION OF THIS RECORDING IS PROHIBITED BY FEDERAL LAW AND SUBJECT TO CRIMINAL PROSECUTION.

0501

# **EXHIBIT G**



#### A. Similarities Between the Marks

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977). The parties' marks share the common wording MANGO which creates a similar commercial impression between the marks.

#### B. Similarities Between the Services and Goods

The goods and services of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods and services come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). The parties' clothing, fashion, music and restaurant related goods and services may be encountered together in the same channels of trade.

The marks and goods and services are so similar as to create a likelihood of confusion for consumers. The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

#### PRIOR PENDING APPLICATIONS

The examining attorney encloses information regarding pending Application Serial Nos. 78021147, 76088751, 75883786, 75516289, 75554050, and 78009665. 37 C.F.R. Section 2.83. There may be a likelihood of confusion between the applicant's mark and the marks in the above noted applications under Section 2(d) of the Act. The filing dates of the referenced applications precede the applicant's filing date. If one or more of these earlier-filed applications matures into a registration, the examining attorney may refuse registration under Section 2(d).

If the applicant believes that there is no potential conflict between this application and the earlier-filed applications, the applicant may present arguments relevant to the issue. The election to file or not to file such arguments at this time in no way limits the applicant's right to address this issue at a later point.

Action on this application will be suspended pending the disposition of the aforesaid earlier-filed applications, upon receipt of the applicant's response resolving the following informalities.

Drawing

The applicant has submitted a drawing which is unacceptable, because it contains gray. The applicant's drawing also will not reproduce satisfactorily. The applicant must submit a substitute drawing which conforms with the requirements set forth below.

The requirements for a special-form drawing are as follows.

- (1) The drawing must appear in black and white; no color is permitted.
- (2) Every line and letter must be black and clear.
- (3) **The use of gray to indicate shading is unacceptable.** The applicant may submit a drawing which deletes the shaded area, or if the applicant wishes to indicate shading, the applicant may submit a drawing which contains stippling (small black dots). If the applicant uses stippling in its drawing, the applicant must submit a statement that the stippling in the drawing indicates shading. 37 C.F.R. Section 2.37; TMEP section 807.06(d).
- (4) The lining must not be too fine or too close together.
- (5) The preferred size of the area in which the mark is displayed is 2 1/2 inches (6.1 cm.) high and 2 1/2 inches (6.1 cm.) wide. In no case may it be larger than 4 inches (10.3 cm.) high or 4 inches (10.3 cm.) wide.
- (6) If the reduction of the mark to the required size renders any details illegible, the applicant may insert a statement in the application to describe the mark and these details.

37 C.F.R. Sections 2.51 and 2.52; TMEP section 807.05. The Office will enforce these drawing requirements strictly. TMEP section 807.

The Office prefers that the drawing be typed on a separate sheet of smooth, nonshiny, white paper 8 to 8 1/2 inches (20.3 to 21.6 cm.) wide and 11 inches (27.9 cm.) long, and that the sheet contain a heading listing, on separate lines, the applicant's complete name; the applicant's address; the goods or services recited in the application; and, if the application is filed under Section 1(a) of the Act, the dates of first use of the mark and of first use of the mark in commerce; or, if the application is filed under Section 44(d), the priority filing date of the foreign application.

Identification and Classification of Goods

The wording "key chains," "bibs," "lighters and cigar boxes" in the identification of goods is too broad because it could include items classified in other classes. TMEP sections 804 and 804.03. The applicant must clarify the material content of the goods which will determine the classification thereof. The applicant must also clarify the indefinite wording "bottled water." In the identification, the applicant must use the common commercial names for the goods, be as complete and specific as possible and avoid the use of indefinite words and phrases. If the applicant chooses to use indefinite terms, such as "accessories," "components," "devices," "equipment," "materials,"

"parts," "systems" and "products," then those words must be followed by the word "namely" and the goods listed by their common commercial names. TMEP sections 804 and 804.08(c).

The applicant may adopt the following, if applicable:

- Class 6: metal key chains
- Class 9: pre-recorded audiocassettes, cd-roms and videotapes featuring music and live entertainment
- Class 14: cigarette lighters of precious metal; cigar boxes of precious metal
- Class 16: postcards, greeting cards, calendars and pens; paper bibs
- Class 20: non-metal key chains; plastic bibs
- Class 24: towels
- Class 25: clothing, namely onesies, cloth bibs, t-shirts, sweatshirts, pants, sweatpants, shorts, tank-tops, halter tops, hats, jackets, shirts, bathing suits, sleepwear, lingerie and dresses
- Class 32: bottled (specify drinking, seltzer, soda, spring, mineral, or quinine) water
- Class 34: smoker's articles, namely cigars, cigar cutters, cigarette lighters not of precious metal, and cigar boxes of non-precious metal
- Class 42: restaurant and bar services

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(b); TMEP section 804.09. Therefore, the applicant may not amend to include any goods or services that are not within the scope of the goods and services recited in the present identification.

The applicant may wish to consult the on-line identification manual on the PTO homepage for a searchable database of acceptable identifications for goods and services. The manual is available at: <http://www.uspto.gov/web/offices/tac/doc/gsmmanual>.

If the applicant adopts the suggested amendment to the identification of goods and services, the applicant must amend the classification to International Classes 6, 9, 14, 16, 20, 24, 25, 32, 34 and 42. 37 C.F.R. Sections 2.32(a)(7) and 2.85; TMEP sections 805 and 1401.

If the applicant prosecutes this application as a combined, or multiple-class, application, the applicant must comply with each of the following:

- (1) The applicant must specifically identify the goods and services in each class and list the goods and services by international class with the classes listed in ascending numerical order. TMEP section 1113.01.

(2) The applicant must submit a filing fee for each international class of goods and services not covered by the fee already paid. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01. The fee for filing a trademark application is \$325 for each class.

(3) The applicant must submit:

(a) dates of first use and first use in commerce and one specimen for each class that includes goods or services based on use in commerce under Trademark Act Section 1(a). The dates of use must be at least as early as the filing date of this application. 37 C.F.R. Sections 2.34(a)(1) and 2.86(a), and the specimen(s) must have been in use in commerce at least as early as the filing date of the application, and/or

(b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class that includes goods or services based on a bona fide intention to use the mark in commerce under Trademark Act Section 1(b).

(4) The applicant must submit an affidavit or a declaration under 37 C.F.R. Section 2.20 signed by the applicant to verify (3) above. 37 C.F.R. Sections 2.59(a) and 2.71(c).

#### Disclaimer

The applicant must disclaim the descriptive wording "TROPICAL CAFE" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP sections 1213 and 1213.02(a). See attached representative stories from the LEXIS-NEXIS® computerized database which demonstrate the descriptive nature of the wording as applied to the applicant's services.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP section 1213.09(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use TROPICAL CAFE apart from the mark as shown.

*See In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

#### Specimens

It appears as though the applicant submitted a specimen of use for Classes 9, 16 and 42 that exceeded the size requirements for specimens. *See* 37 C.F.R. Section 2.56(d)(1). Therefore, the Office created a facsimile of each specimen that meets the size requirement. *See* 37 C.F.R. Section 2.56(d)(2). However, the facsimiles were either illegible or did not show the mark depicted on the drawing page in connection with the goods. Specimens must be made of flat material and must not be more than 8½ inches (21.6 cm.) wide and 11 inches (27.9 cm.) long. 37 C.F.R. Section 2.56(d). The applicant must submit a facsimile for Classes 9, 16 and 42 of each specimen originally filed, such as clear photographs or other reproductions which do not exceed the size limitations and

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which show the mark and its placement on the goods. The examining attorney regrets any inconvenience to the applicant.

Status Query

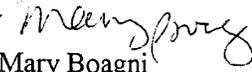
Current status and status date information is available, via push button telephone, for all federal trademark registration and application records maintained in the automated Trademark Reporting and Monitoring (TRAM) system. The information may be accessed by calling (703) 305-8747 from 6:30 a.m. until midnight, Eastern Time, Monday through Friday, and entering a seven-digit registration number or eight-digit application number, followed by the "#" symbol, after the welcoming message and tone. Callers may request information for up to five registration number or application number records per call. Information is also now available on-line through the Trademark Applications & Registration Retrieval (TARR) database. The Web site address is <http://tarr.uspto.gov>.

Response

In all correspondence to the Patent and Trademark Office, the applicant should list the name and law office of the examining attorney, the serial number of this application, the mailing date of this Office action, and the applicant's telephone number.

The following authorities govern the processing of trademark and service mark applications: The Trademark Act, 15 U.S.C. Section 1051 *et seq.*, the Trademark Rules of Practice, 37 C.F.R. Part 2, and the *Trademark Manual of Examining Procedure* (TMPEP).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

  
Mary Boagni  
Examining Attorney  
Law Office 114  
(703) 308-9114 ext. 207

[Typed Drawing]

Mark

MANGO

Goods and Services

IC 009. US 036. G & S: Phonograph Records and Prerecorded Audio Tapes.  
 FIRST USE: 19800801. FIRST USE IN COMMERCE: 19800801

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

73299112

Filing Date

February 27, 1981

Publication for Opposition Date

April 13, 1982

Registration Number

1200278

Registration Date

July 6, 1982

Owner Name and Address

(REGISTRANT) Antilles Communications Limited COMPANY BR.VIRGIN ISLANDS  
 Main St. Road Town, Tortola BR.VIRGIN ISLANDS

(LAST LISTED OWNER) ISLAND ENTERTAINMENT GROUP, INC. CORPORATION  
 ASSIGNEE OF NEW YORK 14 EAST FOURTH ST. NEW YORK NEW YORK 10012

Assignment Recorded

ASSIGNMENT RECORDED

Prior Registration(s)

0985983

Type of Mark

TRADEMARK

Register

PRINCIPAL

Affidavit Text

SECT 8 (6-YR).

Live Dead Indicator

LIVE

Attorney of Record

Michael I. Davis