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

Proceeding	91200223
Party	Defendant Laguna Candles
Correspondence Address	KEVIN MATTHEW WELCH THE LAW OFFICE OF KEVIN M WELCH PO BOX 494 HERMOSA BEACH, CA 90254 0494 UNITED STATES Kevin@kmwlawoffice.com
Submission	Other Motions/Papers
Filer's Name	Kevin M. Welch
Filer's e-mail	kevin@kmwlawoffice.com
Signature	/Kevin M. Welch/
Date	06/12/2012
Attachments	12.06.12 Motion ot Withdraw and Amend Response to RFAs.pdf (5 pages)(393981 bytes) 12.06.12 Declaration of Welch in Supp with Exhibits.pdf (19 pages)(948053 bytes) 12.06.12 POS.pdf (1 page)(122368 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

FLAME & WAX, INC.,	)	**Opposition No.: 91200223**
	)	**Serial No.:85/137,006**
Opposer,	)	**Regarding the Mark: LAGUNA CANDLES**
v.	)	
	)	**NOTICE OF MOTION AND MOTION TO WITHDRAW ADMISSIONS AND SUBMIT AMENDED RESPONSES**
LAGUNA CANDLES,	)	
	)	
Applicant.	)	
	)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that pursuant to Federal Rule of Civil Procedure 36(b) and Trademark Trial and Appeal Board ("TTAB") §525, Applicant, LAGUNA CANDLES, by and through counsel, hereby moves to withdraw the statutorily entered affirmative responses to Opposer FLAME & WAX, INC.'s ("F&W") Request for Admissions and submit amended true responses attached as Exhibit C to the Declaration of Kevin M. Welch. The grounds for this motion are set forth in the accompanying memorandum in support thereof.

Respectfully Submitted,

Kevin M. Welch
The Law Office of Kevin M. Welch
P.O. Box 494
Hermosa Beach, CA 90254
Tel: (310) 929-0553
Email: kevin@kmwlawoffice.com
Attorney for Applicant

MEMORANDUM IN SUPPORT

In the interest of presentation of merits of this action, LAGUNA CANDLES respectfully requests that the Board allow it to withdraw its statutorily entered affirmative responses to F&W's Requests for Admissions and submit amended true responses. Applicant served Responses to Opposer F&W's Request for Admission beyond the time to allotted respond pursuant Fed.R.Civ.P. 36(a)(3). The effect of which is that statutory affirmative responses have been entered. Applicant respectfully request that the Board allow Applicant to withdraw such statutory affirmative responses and submit Applicant's true responses. Opposer F&W would not be prejudiced because Opposer has been in possession of a copy of LAGUNA CANDLES' true responses since April 23, 2012 (a mere 4 days after it was due) and Opposer's Pretrial Disclosures have been continued by 30 days to August 2, 2012.

FACTS

- Opposer F&W served Applicant LAGUNA CANDLES with Requests for Admission by first class mail on March 14, 2012. (Exhibit A to Welch Decl.)
- LAGUNA CANDLES served Responses by first class mail with a courtesy copy by email on April 23, 2012. With the five extra days allowed by §113.05 LAGUNA CANDLES Responses were due on April 19, 2012. (Exhibit B to Welch Decl.)
- LAGUNA CANDLES Responses were returned by the post office due to an addressing error. (¶ 4 of Welch Decl.)
- LAGUNA CANDLES served Responses again on May 31, 2012. The Responses served on May 31, 2012 contained a few differences from the Responses Served on April 23, 2012 due to continuing discovery efforts. (Exhibit C to Welch Decl.)
- Opposer F&W and Applicant LAGUNA CANDLES stipulated to extend all dates by 30 days making Plaintiff's Pretrial Disclosures due August 2, 2012. (¶ 7 of Welch Decl.)

LAW AND ARGUMENT

Under Federal Rule of Civil Procedure 36(b), the board may permit withdrawal or amendment of admissions where "the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits." The notes of the Advisory Committee state that Rule 36(b) emphasizes the importance of having the action resolved on the merits, while at the same time assuring each party that justified reliance on the admission in preparation for trial will not operate to his prejudice. Consistent with the language contained in the rule, "withdrawal is at the discretion of the court." *In re Fisherman's Wharf Fillet, Inc.*, 83 F. Supp.2d 651 (E.D.Va. 1999). "[T]he decision to allow a party to withdraw its admission is quintessentially an equitable one, balancing the rights to a full trial on the merits, including the presentation of all relevant evidence, with the necessity of justified reliance by parties of pretrial procedures and finality as to issues deemed no longer in dispute." *McClanahan v. Aetna Life Ins. Co.*, 144 F.R.D. 316, 320 (W.D.Va. 1992) (citing *Branch Banking & Trust Co. v. Deutz-Allis Corp.*, 120 F.R.D. 655, 658 (E.D.N.C. 1988)).

Thus, the test for withdrawal or amendment of admissions is based on two prongs. The first prong of the test is satisfied "when upholding the admissions would practically eliminate any presentation of the merits of the case." *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995). In other words, the proposed withdrawal or amendments must "facilitate the development of the case in reaching the truth." *Farr Man & Co., Inc. v. M/V Rozita*, 903 F.2d 871, 876 (1st Cir. 1990). See *Banos v. City of Chicago*, 398 F.3d 889 (7th Cir. 2005 (holding that a court may permit a party to rescind admission when doing so better serves the presentation of the case); *Atakpa v. Perimeter OB-GYN Associates, P.C.*, 912 F.Supp. 1566 (N.D.GA. 1994) (finding that prohibiting the proposed amendments would impede the trier of fact from reaching the truth).

Under the second prong, the court must examine "whether withdrawal [or amendment] will prejudice the party that has obtained the admissions." *McClanahan*, 144 F.R.D. at 320. As contemplated under Rule 36(b), "'prejudice' is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth, but rather, related to the special difficulties a party may face caused by the sudden need to obtain evidence upon withdrawal or amendment of admission." *Kerry Steel, Inc. v. Paragon Industries, Inc.*, 106 F.3d

147 (6th Cir. 1997). See also *David v. Noufal*, 142 F.R.D. 258 (D.D.C. 1992) (holding that the burden of addressing the merits does not establish "prejudice"). The "special difficulties" include the "unavailability of key witnesses in light of the delay." *Sonoda v. Cabrrera*, 255 F.3d 1035 (9th Cir. 2001). "Mere inconvenience" does not constitute "prejudice." *Hadley v. U.S.*, 45 F.3d 1345 (9th Cir. 1995). The test is whether that party is now less able to obtain the evidence required to prove the matter which was admitted than it would have been at the time the admission was made. *Rabil v. Swafford*, 128 F.R.D. 1,2 (D.D.C. 1989).

Here, regarding the first prong, Opposer F&W requested that LAGUNA CANDLES make several admissions regarding ultimate facts legal conclusions. LAGUNA CANDLES' failure to serve Responses timely have resulted in the entry of affirmative responses to these Requests. If LAGUNA CANDLES is not allowed to withdraw the statutory affirmative Responses it would effectively be denied the opportunity to present its case and this matter would be adjudicated on a procedure error rather than on a determination of the merits. Allowing LAGUNA CANDLES to withdraw the statutory affirmative Responses and submit its true Responses would directly facilitate the development of the case in reaching the truth. In the present situation, the policies of prong one of the two prong equitable determination set forth in the case law cited above support allowing LAGUNA CANDLES to withdraw the statutory affirmative responses and submit its true responses.

Regarding the second prong, Opposer F&W would not be prejudiced by allowing LAGUNA CANDLES to withdraw the statutory affirmative responses and submit true responses because Opposer F&W first received a courtesy copy of LAGUNA CANDLES true responses by email on April 23, 2012 (only 4 days late). Further, LAGUNA CANDLES offered stipulate to extend all dates by 30 or 60 days to allow Opposer F&W's adequate preparation time and mitigate any inconvenience caused by LAGUNA CANDLES's untimeliness. Opposer F&W choose to extend sates by only 30 days making Pretrial Disclosures Due August 2, 2012. Opposer F&W will not be prejudiced allowing LAGUNA CANDLES to withdraw the statutory affirmative responses and submit its true responses.

CONCLUSION

Allowing LAGUNA CANDLES to withdraw the statutorily entered affirmative responses to Opposer F&W's Request for Admissions and substitute true responses will allow this matter to be adjudicated on the merits without prejudicing Opposer F&W. For this reason, LAGUNA CANDLES respectfully request that the Board exercise its equitable discretion and grant LAGUNA CANDLES motion.

Respectfully Submitted,

Kevin M. Welch
The Law Office of Kevin M. Welch
P.O. Box 494
Hermosa Beach, CA 90254
Tel: (310) 929-0553
Email: kevin@kmwlawoffice.com
Attorney for Applicant

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

FLAME & WAX, INC.,	)	**Opposition No.: 91200223**
	)	**Serial No.:85/137,006**
Opposer,	)	**Regarding the Mark: LAGUNA CANDLES**
v.	)	
	)	**DECLARATION OF KEVIN M.**
LAGUNA CANDLES,	)	**WELCH IN SUPPORT OF APPLICANT'S**
	)	**MOTION TO WITHDRAW ADMISSIONS**
Applicant.	)	**AND SUBMIT AMENDED RESPONSES**
	)	

I, Kevin M. Welch, declare as follows:

1. Attached as Exhibit A is a true and correct copy of the Certificate of Service reflecting that Opposer Flame & Wax, Inc. (F&W) served Applicant LAGUNA CANDLES with Request for Admission by First Class U.S. Mail on March 14, 2012;

2. Attached as Exhibit B is a true and correct copy of the Certificate of Service reflecting that Applicant LAGUNA CANDLES attempted service of its Responses to Opposer F&W's Request for Admissions on Opposer F&W by First Class U.S. Mail on April 23, 2012;

3. On April 23, 2012 Applicant LAGUNA CANDLES also sent a copy of its Responses to Opposer F&W's Request for Admissions to Opposer F&W's counsel by electronic mail;

4. Applicant LAGUNA CANDLES' Response to Opposer F&W's Request for Admissions was returned by the U.S. Postal Service due to an addressing error;

5. Attached as Exhibit C is a true and correct copy of the slightly amended version of LAGUNA CANDLES true Responses to Opposer F&W's Request for Admissions that LAGUNA CANDLES would like to submit in this proceeding;

6. LAGUNA CANDLES' Responses to Opposer F&W's Request for Admissions shown in Exhibit C were served on Opposer F&W by First Class U.S. Mail on May 31, 2012;

7. Opposer F&W and Applicant LAGUNA CANDLES stipulated to extend all dates by 30 days making Plaintiff's Pretrial Disclosures due August 2, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct pursuant to 28 U.S.C. 1746.

Date: 6/12/2012

Kevin M. Welch

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the attached document entitled **OPPOSER FLAME & WAX, INC.'S FIRST REQUESTS FOR ADMISSIONS OF DOCUMENTS TO APPLICANT LAGUNA CANDLES** was served on Applicant by mailing said copy on March 14, 2012, via First Class Mail, postage prepaid to the Applicant's correspondence address listed in the TARR system on this date, as follows:

Kevin Matthew Welch
The Law Office of Kevin M. Welch
P.O. Box 494
Hermosa Beach, California 90254

By: _____
David A. Berstein
Attorneys for Opposer

Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing **APPLICANT LAGUNA CANDLES' RESPONSE TO OPPOSER FLAME & WAX, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS** has been served upon Opposer FLAME & WAX, INC., U.S. First Class Mail, postage prepaid, on April 23, 2012 at the following address:

Goodman, Mooney Bernstein, LLP
Att: David Bernstein
8001 Main Street, Suite 1300
Irvine, CA 92614

Dated: April 23, 2012

By: _____
Kevin M. Welch

THE LAW OFFCIE OF KEVIN M. W ELCH
P.O. Box 494,
Hermosa Beach, CA 90254
Tel.: (310) 929-0553
Fax (310) 698-1626

Attorney for Applicant
LAGUNA CANDLES

Exhibit B

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

FLAME & WAX, INC. Opposer, v. LAGUNA CANDLES, Applicant.	Opposition No.91200223 Serial No.: 85/137,006 **APPLICANT LAGUNA CANDLES' RESPONSE TO OPPOSER FLAME & WAX, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS**

PROPOUNDING PARTY: Opposer Flame & Wax, Inc. ("Opposer")

RESPONDING PARTY: Applicant Laguna Candles ("Applicant")

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule § 2.120 of the Trademark Rules of Practice, Applicant Laguna Candles hereby responds to Opposer Flame & Wax, Inc.'s First Set of Requests for Admission ("Request").

GENERAL OBJECTIONS

The following general objections apply to each of the particular Requests propounded by Flame & Wax, Inc., and are hereby incorporated within each response set forth below. No specific objection is intended to constitute, and should not be construed as constituting, a waiver of any general objection.

1. Applicant objects to each and every Request for Admission to the extent that any request requires admission of information and/or documents which were prepared, generated, or received in anticipation of or after the commencement of this litigation, or are protected from discovery under the attorney-client privilege and/or attorney work product doctrine. Without limitation, Applicant will not admit or deny any information reflecting, in any

Exhibit C

manner, the mental impressions, conclusions, opinions, legal theories or other work product of his counsel.

2. Applicant objects to each and every Request for Admission to the extent that it calls for admission or denial regarding subject matter which is irrelevant to the subject matter involved in the pending action and/or not reasonably calculated to lead to discovery of relevant evidence.

3. Applicant, in responding, or objecting to each and every Request for Admission, does not concede the relevancy and/or materiality of any of those items. Any response or objection by Applicant is expressly subject to and does not waive:

(a) All objections concerning the competency, relevancy, materiality, confidentiality and/or admissibility as evidence for any purpose, of any of the responses given or documents provided, in any subsequent proceeding including the trial of this action or any other action;

(b) The right to object to any discovery proceeding involving or relating to the subject matter of the requests for admission; and

(c) The right, at any time, to amend, alter, revise, clarify, delete, withdraw, and/or supplement any of the responses, answers, and/or objections set forth herein.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1.

Admit that YOU do not have any written COMMUNICATIONS by and between YOU and VOLUSPA.

RESPONSE TO REQUEST FOR ADMISSION NO. 1.

Applicant Admits that it cannot currently locate any documents responsive to this Request at the present time; however, Applicant's efforts to locate responsive documents are on-going.

REQUEST FOR ADMISSION NO. 2.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document COMMUNICATIONS by and between YOU and VOLUSPA.

RESPONSE TO REQUEST FOR ADMISSION NO. 2.

Applicant Admits that it cannot currently locate any documents responsive to this Request at the present time; however, Applicant's efforts to locate responsive documents are on-going.

REQUEST FOR ADMISSION NO. 3.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to California Style in Laguna Niguel, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 3.

Applicant Admits that it cannot currently locate any documents responsive to this Request at the present time; however, Applicant's efforts to locate responsive documents are on-going.

REQUEST FOR ADMISSION NO. 4.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to Coast Hardware in Laguna Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 4.

Deny.

REQUEST FOR ADMISSION NO. 5.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to Complexions Day Spa in Seal Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 5.

Deny.

REQUEST FOR ADMISSION NO. 6.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to Laguna Cliffs Marriott Resort & Spa in Dana Point, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 6.

Deny.

REQUEST FOR ADMISSION NO. 7.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to Laguna Drug in Laguna Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 7.

Deny.

REQUEST FOR ADMISSION NO. 8.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to Marriott Renaissance Clubsport Aliso Viejo Hotel in Aliso Viejo, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 8.

Deny.

REQUEST FOR ADMISSION NO. 9.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to Montage in Laguna Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 9.

Deny.

REQUEST FOR ADMISSION NO. 10.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to Spa Gregorie's Day Spa in Newport Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 10.

Deny.

REQUEST FOR ADMISSION NO. 11.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to The Grand Del Mar in San Diego, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 11.

Deny.

REQUEST FOR ADMISSION NO. 12.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark through www.amazon.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 12.

Deny

REQUEST FOR ADMISSION NO. 13.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark through www.eBay.com.

RESPONSE TO REQUEST FOR ADMISSION NO.13.

Deny.

REQUEST FOR ADMISSION NO. 14.

Admit that YOU have not made sales of goods bearing YOUR LAGUNA CANDLES trademark to retailers outside of California.

RESPONSE TO REQUEST FOR ADMISSION NO.14.

Deny.

REQUEST FOR ADMISSION NO. 15.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to retailers outside of California.

RESPONSE TO REQUEST FOR ADMISSION NO.15.

Deny.

REQUEST FOR ADMISSION NO. 16.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA CANDLES trademark to consumers located in Orange County, California.

RESPONSE TO REQUEST FOR ADMISSION NO.16.

Deny.

REQUEST FOR ADMISSION NO. 17.

Admit that YOU have not made sales of goods bearing YOUR LAGUNA CANDLES trademark to consumers located outside of Orange County, California.

RESPONSE TO REQUEST FOR ADMISSION NO.17.

Deny.

REQUEST FOR ADMISSION NO. 18.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document sales made by YOU of goods bearing YOUR LAGUNA

CANDLES trademark to consumers located outside of Orange County, California.

RESPONSE TO REQUEST FOR ADMISSION NO.18.

Deny.

REQUEST FOR ADMISSION NO. 19.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document the development of YOUR "first logo developed in 2001" which was identified in the deposition of Clarence Hendricks II at Page 29, line 13.

RESPONSE TO REQUEST FOR ADMISSION NO. 19.

Deny.

REQUEST FOR ADMISSION NO. 20.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document the development of YOUR "second generation [logo] .'. . developed in 2005" which was identified in the deposition of Clarence Hendricks II at Page 29, line 22.

RESPONSE TO REQUEST FOR ADMISSION NO. 20.

Deny.

REQUEST FOR ADMISSION NO. 21.

Admit that YOU do not have a copy of YOUR "ledger" which was identified in the deposition of Clarence Hendricks II at Page 31, line 23.

RESPONSE TO REQUEST FOR ADMISSION NO. 21.

Deny.

REQUEST FOR ADMISSION NO. 22.

Admit that YOU do not have a copy of YOUR "Ledgers and invoices" which were identified in the deposition of Clarence Hendricks II at Page 32, line 9.

RESPONSE TO REQUEST FOR ADMISSION NO. 22.

Deny.

APPLICANT LAGUNA CANDLES' RESPONSE TO OPPOSER FLAME & WAX, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 23.

Admit that YOU do not have a, copy of the "screen captures from the Wayback portion of the web" which were identified in the deposition of Clarence Hendricks II at Page 40, line 7-9 and Page 56, lines 14-16.

RESPONSE TO REQUEST FOR ADMISSION NO. 23.

Deny.

REQUEST FOR ADMISSION NO. 24.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document print advertising of goods bearing YOUR LAGUNA CANDLES trademark including advertisements and/or articles in Coast Magazine, Bask Magazine by Surterre Properties, Ujamma Deals, and the Orange County Register.

RESPONSE TO REQUEST FOR ADMISSION NO. 24.

Deny.

REQUEST FOR ADMISSION NO. 25.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document YOUR efforts to expand sales of goods bearing YOUR LAGUNA CANDLES trademark to retailers outside Orange County, California.

RESPONSE TO REQUEST FOR ADMISSION NO.25.

Deny.

REQUEST FOR ADMISSION NO. 26.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document YOUR efforts to expand sales of goods bearing YOUR LAGUNA CANDLES trademark to consumers outside Orange County, California.

RESPONSE TO REQUEST FOR ADMISSION NO.26.

Deny.

REQUEST FOR ADMISSION NO. 27.

Admit that YOU do not have any DOCUMENTS which will support YOUR response to Interrogatory No. 3 that YOUR sales of goods bearing YOUR LAGUNA CANDLES trademark from claimed first use until the present is "approximately $384,000."

RESPONSE TO REQUEST FOR ADMISSION NO. 27.

Deny. Applicant Admits that many documents responsive to this request have been shredded.

REQUEST FOR ADMISSION NO. 28.

Admit that YOU do not have any DOCUMENTS which will support YOUR response to Interrogatory No. 4 and that the number of units of YOUR goods bearing YOUR LAGUNA CANDLES trademark that have been sold in the United States from claimed first use until the present is "approximately 15,000."

RESPONSE TO REQUEST FOR ADMISSION NO. 28.

Deny. Applicant Admits that many documents responsive to this request have been shredded.

REQUEST FOR ADMISSION NO. 29.

Admit that DOCUMENTS which evidence of sales by YOU of goods bearing YOUR LAGUNA CANDLES trademark were shredded in spring of 2011.

RESPONSE TO REQUEST FOR ADMISSION NO.29.

Admit.

REQUEST FOR ADMISSION NO. 30.

Admit DOCUMENTS which evidence, advertising expenses incurred by YOU in conjunction with goods bearing YOUR LAGUNA CANDLES trademark were shredded in spring 2011.

RESPONSE TO REQUEST FOR ADMISSION NO.30.

Admit.

REQUEST FOR ADMISSION NO. 31.

Admit that YOU do not have any DOCUMENTS which will support YOUR response to Interrogatory No. 7 that YOUR advertising expenses for goods bearing YOUR LAGUNA CANDLES trademark from claimed first use until the present is "$85,600."

RESPONSE TO REQUEST FOR ADMISSION NO. 31.

Applicant denies that it does not have any documents responsive to this Request.

REQUEST FOR ADMISSION NO. 32.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document COMMUNICATIONS between YOU and Steven Young Showroom at The LA Mart.

RESPONSE TO REQUEST FOR ADMISSION NO. 32.

Applicant Admits that it cannot currently locate any documents responsive to this Request at the present time; however, Applicant's efforts to locate responsive documents are on-going.

REQUEST FOR ADMISSION NO. 33.

Admit that YOU do not have any DOCUMENTS which will support the deposition testimony of Clarence Hendricks II at Page 68, lines 16-18 that LAGUNA CANDLES has "lost over $200,000, 200- to $250,000 in business."

RESPONSE TO REQUEST FOR ADMISSION NO. 33.

Deny.

REQUEST FOR ADMISSION NO. 34.

Admit that YOU do not have any DOCUMENTS which will support the deposition testimony of Clarence Hendricks II at Page 69, lines 1-3 that "it's evident that we continually run into a roadblock because of the presence of your client [FLAME & W AX!VOLUSP A] being there, you know, utilizing that name."

RESPONSE TO REQUEST FOR ADMISSION NO. 34.

Deny.

REQUEST FOR ADMISSION NO. 35.

Admit that YOU do not have any DOCUMENTS which will support the deposition testimony of Clarence Hendricks II at Page 69, lines 16-1 7 that FLAME & WAX/V0LUSPA is "piggybacking on our efforts to market and promote our line of candles."

RESPONSE TO REQUEST FOR ADMISSION NO. 35.

Deny.

REQUEST FOR ADMISSION NO. 36.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document an instance when a consumer purchased a FLAME & WAX/VOLUSPA product mistakenly believing that they were purchasing YOUR product.

RESPONSE TO REQUEST FOR ADMISSION NO. 36.

Applicant Admits that it cannot locate any documents responsive to this Request at the present time; however, Applicant's efforts to locate responsive documents are on-going.

REQUEST FOR ADMISSION NO. 37.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document all lost sales suffered by YOU as a result of the presence of FLAME & WAX VOLUSPA's "Laguna" line of products in the marketplace.

RESPONSE TO REQUEST FOR ADMISSION NO. 37.

Applicant Admits that it cannot locate any documents responsive to this Request at the present time; however, Applicant's efforts to locate responsive documents are on-going.

REQUEST FOR ADMISSION NO. 38.

Admit that YOU do not have any DOCUMENTS which evidence, reference, mention, reflect, record, and/or document all lost profits suffered by YOU as a result of the presence of FLAME & WAX/ VOLUSPA's "Laguna" line of products in the marketplace.

RESPONSE TO REQUEST FOR ADMISSION NO. 38.

Applicant Admits that it cannot currently locate any documents responsive to this Request at the present time; however, Applicant's efforts to locate responsive documents are on-going.

APPLICANT LAGUNA CANDLES' RESPONSE TO OPPOSER FLAME & WAX, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 39.

Admit that YOU conduct business operations from Laguna Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO.39.

Applicant Admits that it Laguna Beach, California is one of three locations from where it conducts business operations.

REQUEST FOR ADMISSION NO. 40.

Admit that YOU sell candles from YOUR business location in Laguna Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 40.

Applicant Admits that it Laguna Beach, California is one of three locations from where it sells candles.

REQUEST FOR ADMISSION NO. 41.

Admit that YOU fulfill consumer orders for YOUR candles from YOUR business location in Laguna Beach, California.

RESPONSE TO REQUEST FOR ADMISSION NO. 41.

Applicant Admits that it Laguna Beach, California is one of three locations from where it fulfills customer orders.

REQUEST FOR ADMISSION NO. 42.

Admit that any and all candles currently sold by YOU bear YOUR LAGUNA CANDLES trademark.

RESPONSE TO REQUEST FOR ADMISSION NO. 42.

Admit.

REQUEST FOR ADMISSION NO. 43.

Admit that YOUR LAGUNA CANDLES trademark has not acquired distinctiveness as applied to the YOUR goods in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 43.

Deny.

REQUEST FOR ADMISSION NO. 44.

Admit that VOLUSPA's use of LAGUNA for a line of candles and home fragrances does not confuse consumers as to the source of its products.

RESPONSE TO REQUEST FOR ADMISSION NO.44.

Deny.

REQUEST FOR ADMISSION NO. 45.

Admit that VOLUSPA's packaging on its line LAGUNA candles and home fragrances identifies VOLUSPA as the source of such products.

RESPONSE TO REQUEST FOR ADMISSION NO.45.

Applicant is not in possession of information to admit or deny the subject matter of this Request; therefore, Applicant denies this Request.

REQUEST FOR ADMISSION NO. 46.

Admit that VOLUSPA's packaging on its line LAGUNA candles and home fragrances does not identify YOU as the source of such products.

RESPONSE TO REQUEST FOR ADMISSION NO.46.

Applicant is not in possession of information to admit or deny the subject matter of this Request; therefore, Applicant denies this Request.

REQUEST FOR ADMISSION NO.47.

Admit that YOUR packaging on YOUR line of candles identifies YOU as the source of such products.

RESPONSE TO REQUEST FOR ADMISSION NO. 47.

Applicant Admits that its use of its mark LAGUNA CANDLES on its packaging identifies it as as the source of such products.

REQUEST FOR ADMISSION NO. 48.

Admit that YOUR LAGUNA CANDLES trademark when applied to YOUR candle products is geographically descriptive.

RESPONSE TO REQUEST FOR ADMISSION NO. 48.

Deny.

Respectfully submitted,

Dated: May 31, 2012 By:_____

Kevin M. Welch

THE LAW OFFICE OF KEVIN M. WELCH
P.O. Box 494
Hermosa Beach, CA 90254
Tel.: (310) 929-0553
Fax (310) 698-1626

Attorney for Applicant
LAGUNA CANDLES

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing **APPLICANT LAGUNA CANDLES' RESPONSE TO OPPOSER FLAME & WAX, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS** has been served upon Opposer FLAME & WAX, INC., U.S. First Class Mail, postage prepaid, on May 31, 2012 at the following address:

Goodman, Mooney Bernstein, LLP
8001 Main Street, Suite 1170
Irvine, CA 92614

Dated: May 31, 2012

By: _____
Kevin M. Welch

THE LAW OFFICE OF KEVIN M. W ELCH
P.O. Box 494,
Hermosa Beach, CA 90254
Tel.: (310) 929-0553
Fax (310) 698-1626

Attorney for Applicant
LAGUNA CANDLES

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the following documents:

NOTICE OF MOTION AND MOTION TO WITHDRAW ADMISSIONS AND SUBMIT AMENDED RESPONSES;
MEMORANDUM IN SUPPORT;
DECLARATION OF KEVIN M. WELCH IN SUPPORT OF APPLICANT'S MOTION TO WITHDRAW ADMISSIONS AND SUBMIT AMENDED RESPONSES;

have been served upon Opposer FLAME & WAS, INC., by U.S. First Class Mail, postage prepaid, on June 12, 2012 at the following address:

Goodman, Mooney & Bernstein, LLP
Att: David Berstein
8001 Irvine Center Drive, Suite 1170
Irvine, CA 92618

Dated: June 12, 2012

By:_____
Kevin M. Welch

THE LAW OFFICE OF KEVIN M. W ELCH
P.O. Box 494,
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Attorney for Applicant
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