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

Proceeding	91200327
Party	Plaintiff James Murta
Correspondence Address	KURT LEYENDECKER LEYENDECKER & LEMIRE LLC 5460 S Quebec Street, SUITE 330 Greenwood Village, CO 80111 UNITED STATES kurt@coloradoiplaw.com
Submission	Motion to Compel Discovery
Filer's Name	Kurt Leyendecker
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Signature	/Kurt P Leyendecker/
Date	10/07/2013
Attachments	Motion_to_Compel_Discovery_10072013.pdf(69171 bytes) ExhibitsA-D.pdf(3050580 bytes) ExhibitsE-J.pdf(1751062 bytes) ExhibitsK-L.pdf(2065347 bytes)

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

James Murta)	
)	
Plaintiff,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
Defendant.)	
)	

PETITIONER’S MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to Fed.R.Civ.P. 37(a) and 37 CFR § 2.120(e) Plaintiff, Jim Murta, hereby moves for an Order compelling Applicant, Victor Suarez, to produce documents and information alluded to but not produced in his Initial Disclosures and requested in Opposer’s Request for Production of Documents to Applicant of June 18, 2013, Plaintiff’s Request For Production of Documents to Defendant of August 1, 2013 and Plaintiff’s Interrogatories to Defendant of August 1, 2013.

The Plaintiff has made a good faith effort to consult with the Defendant and resolve their discovery differences as is outlined in detail below. Plaintiff has, however, been unsuccessful necessitating this Motion.

AS GROUNDS FOR THIS MOTION, Petitioner states and shows the following:

1. Plaintiff filed this cancellation action on June 16, 2011. Notice and trial dates were sent to all parties and Applicant subsequently answered on August 01, 2011.

Discovery opened on August 30, 2011.

2. Plaintiff provided his initial disclosures to Defendant on December 09, 2011, and Defendant tendered his initial disclosures on December 30, 2011. Copies attached as Exhibits A & B respectively.

3. In its initial disclosures and in essentially refusing to turn over the names of individuals having discoverable information upon which it might rely in support of its defenses, Defendant wrote:

[A]pplicant is aware of individuals who may possess additional information upon which Applicant may need to rely in support of his claims and defenses. These include individual customers to whom Applicant has made product sales in the past. However, the Board expressly discourages parties from submitting materials that reflect personal identifying information such as home addresses or telephone numbers (TMBP Section 120.02). ...

Some of the other persons with knowledge may include representatives of the manufacturers or suppliers of Applicant's products sold under the DOSF Mark. The identity of these individuals and the entities they represent constitute highly confidential Trade Secret/Commercially Sensitive material and Applicant is not confident that the sensitive nature of this information will be kept confidential, notwithstanding the provisions of the Board's standard protective order.

4. On December 08, 2011, Plaintiff sent to Petitioner its (i) First Request for Production of Documents, (ii) First Set of Interrogatories and (iii) First Request for Admissions. Copies are attached as Exhibit C.

5. On January 9, 2012, Applicant provided responses to the Plaintiff's discovery requests listed in paragraph 4 above. Copies are attached as Exhibit D.

6. In response to Interrogatory No. 1, which asked Defendant to list suppliers and manufacturers associated with the production of goods prior to the filing of the subject application, Defendant in failing to provide the requested information wrote:

Applicant further objects to this Interrogatory on the ground that it seeks information concerning the identity of Applicant's retail commercial customers, and that the identity of these individuals and entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material.

7. In response to Interrogatory No. 2, which asked Defendant to list all purchasers of each good listed in the subject application prior to the application's filing date, Applicant wrote the following:

Among other commercial customers, Applicant sold shirts, hats, pants and t-shirts to Sunset Surf Shop, a now-defunct retail store located in San Francisco, California since long before the December 4, 2009 filing date. (emphasis added)

Of note, Applicant admits to the existence of other commercial customers but refuses to provide them on the basis that their identities constitute "highly confidential Trade Secret/Commercially Sensitive material".

8. Responses to the remaining Interrogatories were also non-responsive or evasive. For instance in Interrogatory No. 4, Applicant was asked to identify all marketing and advertising material displaying the Mark in use prior to December 4, 2009. The Applicant indicated that “digital graphic ads were featured in online forums including Craigslist and Sell.com” but fails to identify the specific materials comprising the ads. Further, in an associated Request For Production of Documents No. 8, which requested all documents identified Applicant’s response to Plaintiff’s First Set of Interrogatories, no “digital graphics ads” were provided. Further, Applicant did not list the “digital graphics ads” as being lost or unavailable in response to Interrogatory No. 5, which specifically requested the Applicant identify any and all documents responsive to the foregoing interrogatories which are lost or unavailable.

9. In Response To Opposer’s First Request For Production of Documents and specifically Request For Production of Documents NO. 1, Applicant provided 54 pages of documents. The request specifically requested documents relating to the Mark’s use in commerce prior to the filing date of the application for each specific recited good. Of the 54 pages, 36 pages are photographs of product associated with the Mark; however, without any indication when the associated products were manufactured. Several Receipts and Purchase orders were provided but with the names of the recipients/requesters improperly redacted leaving Plaintiff with no means to check or verify the veracity of the documents. Of

specific note, the documents indicate shipment to persons or companies in Hawaii, Illinois, New York and San Mateo, CA yet these persons and/or entities were not disclosed in Interrogatory No. 2 as discussed above in paragraph 7.

10. On December 23, 2011, Defendant filed a Motion to Dismiss and subsequently on January 18, 2012 the proceedings were stayed pending the outcome of the Motion.

11. On April 19, 2013, the Board rendered its decision on the pending Motion and issued an Order. The Motion was granted in part; however, several claims remained including the claim of non-use with respect to the goods identified in the application (Of note, the Order indicated that the non-use claim survived as to five of the six goods identified in the application; however, the application only identified five goods). The claim as to fraud also survived.

12. The dates of the Opposition were reset in light of the amended Notice, but the Applicant's prior submitted Answer of December 23, 2011 was permitted to stand. New dates were issued for initial disclosures (05/19/2013) through to trial and rebuttal.

13. The parties issued new and updated initial disclosures: Plaintiff on May 20, 2013; and Defendant on May 21, 2013. The Initial Disclosures are attached as Exhibit E.

14. The Defendant's updated disclosures contained no new documents.

Defendant's updated disclosures listed no new persons known or believed to have discoverable information. Concerning people potentially having discoverable information, Defendant wrote:

Applicant reserves the right to amend the list above to include individuals or entities whose identities are known, but are not being disclosed at this time for reasons of privacy and confidentiality. Specifically, Applicant is aware of individuals who may possess additional information upon which Applicant may need to rely in support of his claims and defenses. These include individual customers to whom Applicant has made product sales in the past. However, the Board expressly discourages parties from submitting materials that reflect personal identifying information such as home addresses or telephone numbers (TMBP Section 120.02).

Concerning persons associated with manufacturers and suppliers, Defendant wrote:

Some of the other persons with knowledge may include representatives of manufacturers or suppliers of Applicant's products sold under the DOSF Mark. The identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material and Applicant is not confident that the sensitive nature of this information will be kept confidential, notwithstanding the provisions of the Board's standard protective order.

15. Defendant's reliance on TMBP Section 120.02 is misplaced. Section 120.02 pertains only to confidential materials "filed with the Board under seal" pursuant to a protective order. This section is not intended as a means for a party to prevent an adverse party from discovering relevant information that may be confidential. Rather, under the standard protective order, which is automatically in place to govern the exchange of information (TMBP 412.01), a party has the option to mark sensitive material as **trade**

secret/commercially sensitive in which case the material would be accessible only to outside counsel.

16. Concerning Documents, **Electronically Stored Information And Tangible Things**, Defendant identified two categories of documents: “Documents relating to the adoption of, use and registration of the DOSF Mark by Applicant”; and “Documents relating to Opposer’s knowledge of the adoption and use of the DOSF Mark by Applicant”. No documents were produced by Defendant who indicated the first category of documents “are currently located in the Applicant’s office and/or the offices of his counsel, and are being or will be gathered for review and potential production in this action.”

17. On June 18, 2013, Plaintiff sent Defendant a Notice of Deficiencies in Initial Disclosures of Applicant (Attached as Exhibit F). In the letter, Plaintiff took exception to the Defendant’s admittedly purposeful withholding of the names of individuals with information concerning the Opposition. The Plaintiff challenged Defendants reliance on TMBP section 120.02 as improper for reasons given above in paragraph 15. Plaintiff further indicated that the standard protective order provides for the disclosure of trade secret/commercially sensitive material on an attorney eyes only basis. Plaintiff asked the Defendant to either identify the people it withheld or state that he does not intend to rely information pertaining to the undisclosed suppliers, manufacturers and customers in his defense.

18. Concurrent with the Notice of Deficiencies on June 18, 2013, Plaintiff sent Defendant a second Request for Production of Documents (attached as Exhibit G). The Request simply requested production of the two categories of documents identified in the Defendant's Initial Disclosures of May 21, 2013.

20. On July 23, 2013, an email response to Plaintiff's letter was received (attached as Exhibit H). In the email, Defendant's counsel states concerning Plaintiff's contention that Defendant is improperly withholding the names of relevant individuals:

Applicant merely reserved the right to amend his list of individuals with discoverable information in his Initial Disclosures if and when appropriate. However, we have not attempted to rely on *any* evidence through witnesses or documents so I do not see how we are attempting to "have our cake and eat it too." Contrary to your demand in the last line on page 2 of your "Notice of Deficiencies in Initial Disclosures of Applicant", Applicant has never stated that there are any parties and entities upon whom he "intends to rely" for whom he has not already disclosed their identities.

The foregoing is artfully worded and misleading. The Defendant as quoted above in paragraph 14 did, in fact, state that there were undisclosed individuals that he "may need to rely in support of his claims and defenses." Defendant apparently takes the view that it may withhold the names of individuals until such time as he deems they are necessary for his defense and spring them on the Plaintiff late in the process when Plaintiff does not have sufficient time remaining in the discovery period to investigate and ascertain the nature of the information the individual(s) possesses.

21. A Response to Plaintiff's June 18, 2013 Request for Production of Documents (attached as Exhibit I) was received as an attachment to the aforementioned email of July,

23, 2013. Defendant failed to turn over any materials stating that the materials turned over on January 9, 2012 represented all documents in its possession concerning the adoption, use, and registration of the Mark. Defendant further defended its redaction of identifying information concerning the parties to which goods were delivered. Further, no evidence concerning the manufacture of the alleged goods was produced. Plaintiff submits that it has the right in this proceeding to verify the veracity of the evidence being presented by the Defendant for accuracy and to ensure its proper interpretation. By withholding the names of manufacturers and purchasers, Defendant is preventing Plaintiff from uncovering additional relevant evidence that may prove essential to proving its claims.

22. In another attempt to obtain complete and full discovery disclosure from Defendant, Plaintiff sent an email to Defendant's counsel on July 26, 2013 (attached as Exhibit J) in an attempt to resolve the discovery impasse and move discovery forward. Plaintiff specifically asked Defendant's counsel to indicate times when she was available to confer and see if a solution to the impasse could be found.

23. On August 1, 2013, Plaintiff sent Defendant new discovery requests (attached as Exhibit K).

24. On August 1, 2013, Defendant acknowledged receipt of the July 26, 2013 email and the new discovery requests. Counsel indicated she would get back to Plaintiff

regarding the substance of the email “this week”. Defendant never responded to the email.

25. On September 5, 2013, responses to the Plaintiff’s July 26, 2013 discovery requests were received and are attached as Exhibit L.

26. In Applicant’s Responses To Plaintiff’s Interrogatories to Defendant Dated August 1, 2013 concerning Interrogatory No. 1, Defendant objected to the Plaintiff’s request for a list of suppliers for both before and after the filing of the application as not being relevant to any claims asserted by Opposer and not reasonably calculated to lead to the discovery of admissible evidence. However, the manufacture of the listed goods or lack thereof is relevant to demonstrating the Mark was not in use continuously and regularly in the years prior to the filing of the application. Simply, if the goods were not produced, the mark could not have been used with the goods in interstate commerce. The request for manufacturers and suppliers prior to the filing of the application goes directly to both the non-use claim and the claim that the applicant fraudulently filed an In Use application. Concerning the manufacturers and suppliers after the application was filed, Defendant claimed in prosecution to the Examiner to overcome a rejection that the goods were manufactured in San Francisco. Evidence of the manufacture and supply of the goods from outside of San Francisco would be evidence that the representation made to the Examiner was fraudulent.

27. In Applicant's Responses To Plaintiff's Interrogatories to Defendant Dated August 1, 2013 concerning Interrogatory No. 2, Defendant objected to the Plaintiff's request for a list of purchasers of the goods before and after the filing of the application as not being relevant to any claims asserted by Opposer and not reasonably calculated to lead to the discovery of admissible evidence. However, the sale of each of the goods prior to the filing of the application is relevant to both the non-use and fraud claims.

28. In Applicant's Responses To Plaintiff's Interrogatories to Defendant Dated August 1, 2013 concerning Interrogatory No. 3, Defendant objected to the Plaintiff's request for a list of all uses of the Mark in interstate commerce both before and after the date of the application as not being relevant to any claims asserted by Opposer and not reasonably calculated to lead to the discovery of admissible evidence. However, the Plaintiff has claimed both non-use and fraud in relation to the filing of a 1A in-use application. The use or non-use of the Mark in interstate commerce is directly relevant to those claims.

29. In Applicant's Responses To Plaintiff's Interrogatories to Defendant Dated August 1, 2013 concerning Interrogatory No. 5, Defendant objected to the Plaintiff's request for the defendant to explain the circumstances of his decision to use a photographed specimen in the application which included the name Capt. Spalding. The Plaintiff is claiming fraud in the filing of the application. The specimen is one of a vintage jacket that was being sold by another on ebay. The jacket is not one manufactured or sold by the Plaintiff. Understanding why the Plaintiff used as his

specimen a jacket manufactured by another under the Mark is relevant to both the fraud and non-use claims.

30. In Applicant's Responses To Plaintiff's Interrogatories to Defendant Dated August 1, 2013 concerning Interrogatory No. 7, Defendant objected to the Plaintiff's request for the defendant to identify all manufacturers used to produce the goods in San Francisco from the filing of the application through to present. Plaintiff has asserted a claim of fraud against the Defendant in part for representing to the Examiner that his goods were/are manufactured in San Francisco. Information concerning the locale in which the goods are manufactured is relevant to providing whether Defendant's representation under oath to the Trademark Office was truthful.

31. In Applicant's Responses To Plaintiff's Request For Production of Documents Dated August 1, 2013 concerning Request For Production of Documents No. 2 & 4, Defendant objected to the Plaintiff's request for documents pertaining to the use of the Mark for the four years prior to the filing of the application (in commerce for Request No. 4) as not being relevant to any claims asserted by Opposer and not reasonably calculated to lead to the discovery of admissible evidence. To the contrary, the use or non-use of the Mark in relation to each of the listed goods is central to Plaintiff's claims of both non-use and fraud in the filing of the 1A in-use application. In response to another request, Defendant indicated it had produced all documents it had in its possession on January 9, 2012. However, for reasons discussed herein above, this production was deficient. For instance, documents concerning manufacturers were

provided and many of the documents were partially redacted. Further, documents were not produced concerning the use in commerce for each good type.

32. In Applicant's Responses To Plaintiff's Request For Production of Documents Dated August 1, 2013 concerning Request For Production of Documents No. 6 & 7, Defendant objected to the Plaintiff's request for documents pertaining manufacturers and suppliers that were located in San Francisco both before and after the filing of the application as not being relevant to any claims asserted by Opposer and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has alleged Defendant committed fraud in representing to the Examiner under oath that the specified goods were manufactured in San Francisco to overcome a rejection. These documents are pertinent to this claim.

33. Given the deficient nature of the discovery responses, Plaintiff called Defendant's counsel on September 9, 2013 to discuss resolving the discovery issues. Plaintiff did not talk to Defendant but left a voicemail urging a return call. In response Defendant emailed Plaintiff indicating an unwillingness to discuss the matter over the phone and indicating a desire to communicate by email.

34. On September 16, Plaintiff emailed Defendant indicating the email was a final attempt to resolve the discovery impasse and end the logjam. In the email Plaintiff disagreed with the Defendant's characterization of its requests as overly broad, ambiguous, vague, irrelevant or objectionable. On Sept 23, 2013, Defendant's counsel indicated she would respond to the mail "by mid-week". On September 25, 2013,

Defendant's counsel indicated a response would be forthcoming "tomorrow". Plaintiff has not heard from Defendant or Defendant's counsel since.

35. Despite Plaintiff's reasonable efforts to work out discovery issues, Defendant has failed to provide the requested information and documents.

36. Pursuant to Fed. Rule 34, 37 and 37 CFR 2.120(e) a party must produce responsive documents. In the case where a party has not so produced requested documents, the aggrieved party may seek and order compelling that those documents requested be produced. Accordingly, Plaintiff requests that Defendant be ordered to comply completely with discovery requests provided herein in Exhibits G and K.

By /s/ Kurt P Leyendecker

Date 10/7/13

Kurt P. Leyendecker

Leyendecker & Lemire, LLC
5460 S Quebec Street
Greenwood Village, Colorado 80111
(303) 768-0123
Kurt@coloradoiplaw.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2013, a true and correct copy of the foregoing Motion To Compel and associated Exhibits was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Stanford Research Park
3300 Hillview Avenue,
Palo Alto, CA 94304-1203
marina.lewis@finnegan.com

/s/ Kurt P Leyendecker
Kurt P Leyendecker

Exhibit A

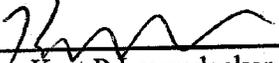
1. Copies and printouts of web pages containing information about the Defendant and his use of the Mark.

C. Computation of Damages:

Plaintiff is not claiming damages in this action.

D. Insurance Agreements:

Plaintiff's insurance agreements are not relevant to this action.

By  _____
Kurt P Leyendecker

Date 12/08/2011

Leyendecker & Lemire, LLC
9137 East Mineral Circle, Suite 280
Centennial, Colorado 80112
(303) 768-0123
kurt@coloradoiplaw.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 09, 2011, a true and correct copy of the foregoing INITIAL DISCOVERY DISCLOSURE was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com

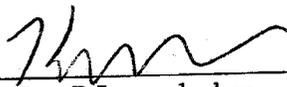

Kurt P Leyendecker

Exhibit B

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT'S INITIAL DISCLOSURES
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APPLICANT'S INITIAL DISCLOSURES

Pursuant to 37 C.F.R. Rule 2.120(a), Applicant Victor Suarez ("Applicant"), based upon the information reasonably available to Applicant, hereby provides the following Initial Disclosures. Applicant has not completed his investigation into the claims and defenses raised by the pleadings. Applicant bases these Initial Disclosures on the information currently known and available to him after an initial good faith investigation. Pursuant to 37 C.F.R. Rule 2.120 and Fed.R.Civ.P. 26(e), Applicant reserves the right to supplement his disclosures and/or to produce additional information during the course of discovery, and to rely on such information as evidence in this proceeding.

1) PERSONS KNOWN OR BELIEVED TO HAVE DISCOVERABLE INFORMATION

Applicant identifies the following individuals/entities as likely to have discoverable information that Applicant may use to support his claims and defenses, unless used solely for impeachment. Where no address is provided for an individual or entity, it is because either no

address was available to Applicant, or because any contact with the individual or entity is to be made through counsel of record for Opposer James Murta (“Opposer”).

Individual	Last Known Address	Information
Victor Suarez	Through Applicant’s counsel	Adoption and use of the DERBY OF SAN FRANCISCO (and Design) Mark (“DOSF Mark”)
Brian Kramer	Through Applicant’s counsel	Applicant’s sales of products with the DOSF Mark
James Murta	Through Opposer’s counsel	Adoption and use of the DOSF Mark by Applicant

Applicant reserves the right to amend the list above to include individuals or entities whose identities are known, but are not being disclosed at this time for reasons of privacy and confidentiality. Specifically, Applicant is aware of individuals who may possess additional information upon which Applicant may need to rely in support of his claims and defenses. These include individual customers to whom Applicant has made product sales in the past. However, the Board expressly discourages parties from submitting materials that reflect personal identifying information such as home addresses or telephone numbers (TMBP Section 120.02). Moreover, Applicant has not been authorized to disclose the names of individual customers who made good faith purchases of his products. As such, he is not in a position to release their names without their consent and appropriate regard for their privacy rights in the midst of a contentious opposition proceeding.

Some of the other persons with knowledge may include representatives of manufacturers or suppliers of Applicant’s products sold under the DOSF Mark. The identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material and Applicant is not confident that the sensitive nature of this information will be kept confidential, notwithstanding the provisions of the Board’s standard protective order. It has been Applicant’s experience that Opposer has a history of inappropriately contacting Applicant’s retail customers and threatening them with legal action based on specious claims of infringement in order to discourage these entities from doing

business with Applicant. Therefore, although Applicant is attempting to provide full disclosure as mandated by Rule 2.120(a), Applicant is also cognizant of the need to protect the highly sensitive nature of confidential business information at this stage in these proceedings.

Finally, Applicant reserves the right to amend the list above to include additional individuals or entities whose identities are unknown at the present time, but who may be found during the course of discovery to possess information related to the adoption, use, and registration of the DOSF Mark, as well as information related to the sale and marketing of products used with the DOSF Mark.

2) DOCUMENTS, ELECTRONICALLY STORED INFORMATION AND TANGIBLE THINGS

Applicant identifies the following documents, electronically stored information, and tangible things that Applicant has in his possession, custody, or control and that Applicant may use to support his claims and defenses, unless used solely for impeachment.

Category of Document	Location of Documents
Documents relating to the adoption, use, and registration of the DOSF Mark by Applicant	Through Applicant's counsel
Documents relating to Opposer's knowledge of the adoption and use of the DOSF Mark by Applicant	Through Applicant's counsel

Documents in each of these categories that are currently in Applicant's possession, custody or control are currently located in Applicant's offices and/or the offices of his counsel, and are being or will be gathered for review and potential production in this action.

Applicant believes that Opposer and/or third parties may have documents, electronically stored information, and tangible things in their possession, custody or control that relate to his claims and defenses, and reserves the right to use such documents, electronically stored information, and tangible things as they may be obtained in discovery. Applicant also reserves

the right to use documents, electronically stored information, and tangible things identified in
Opposer's Initial Disclosures.

Respectfully submitted

Dated: December 30, 2011

By:



Michael E. Dergosits
Marina A. Lewis
Attorneys for Applicant

Dergosits & Noah LLP
Three Embarcadero Center, Suite 410
San Francisco, CA 94111
Telephone: (415) 705-6377
Facsimile: (415) 705-6383

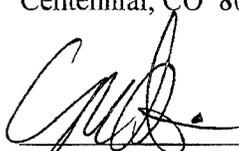
CERTIFICATE OF SERVICE

I certify that on December 30, 2011, a true copy of the foregoing

APPLICANT'S INITIAL DISCLOSURES

was sent via first class mail, postage prepaid, to:

Mr. Kurt Leyendecker
Leyendecker & Lemire LLC
9137 E. Mineral Cir., Ste. 280
Centennial, CO 80112



Marina A. Lewis

Exhibit C

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

James Murta)	
)	
Plaintiff,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
Defendant.)	
)	

INITIAL DISCOVERY DISCLOSURE OF PLAINTIFF, JAMES MURTA.

Pursuant to Fed.R.Civ.P. 26(a)(1) and 37 CFR § 2.120(a)(3) Plaintiff, James Murta provides the following initial discovery disclosure. Petitioner reserves the right to supplement these disclosures as more information becomes available.

A. The name, address, and telephone number of each individual with knowledge of discoverable information:

1. James Murta. James can be contacted through undersigned counsel. James has information pertaining to the opposition proceeding.

B. Description of category and location of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims and defenses, unless solely for impeachment:

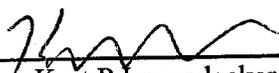
1. Copies and printouts of web pages containing information about the Defendant and his use of the Mark.

C. Computation of Damages:

Plaintiff is not claiming damages in this action.

D. Insurance Agreements:

Plaintiff's insurance agreements are not relevant to this action.

By  _____
Kurt P Leyendecker

Date 12/08/2011

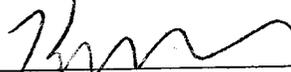
Leyendecker & Lemire, LLC
9137 East Mineral Circle, Suite 280
Centennial, Colorado 80112
(303) 768-0123
kurt@coloradoiplaw.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 09, 2011, a true and correct copy of the foregoing INITIAL DISCOVERY DISCLOSURE was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com



Kurt P Leyendecker

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

James Murta)	
)	
Plaintiff,)	
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v.)	OPPOSITION
)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
Defendant.)	
)	

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT

Pursuant to Fed.R.Civ.P. 33 and 37 CFR § 2.120(d) Plaintiff, James Murta, hereby requests the Defendant, Victor Suarez, answer the following interrogatories in writing and under oath within thirty days of the service of these requests at the offices of Leyendecker & Lemire, LLC, 9137 East Mineral Circle, Suite 280, Centennial, Colorado 80112.

INSTRUCTIONS

A. For any claim that a document and/or an undocumented communication are privileged or that information constitutes attorney work product:

1. Identify each such document and/or communication or any such information by:

- a. date(s);
- b. author(s) or speaker(s);
- c. addressee(s) or listener(s);
- d. type of document and/or communication or information (i.e., general subject matter of document and/or communication or information); and
- e. general subject matter of document and/or communication and information.

2. State the basis for the claim of privilege or attorney work-product.

B. If the requested documents are not in the possession of the Defendant, and cannot be reasonably obtained, identify the person or entity in whose custody the documents are, or in whose custody the Defendant reasonably believes the documents might be.

DEFINITIONS

1. "Document" means any writing, e-mail, drawing, graph, chart, photograph, phono-record, tape-recording, magnetic disk, computer storage device, or other data compilation from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form.

2. "Person" includes any natural person, firm, corporation, partnership, joint venture, organization, association, or other entity, unless the context clearly indicates that reference is made to only a natural person.

3. "You", "Your", "Victor", "Victor Suarez", "Mr. Saurez" or "Applicant" means Defendant Victor Suarez., any affiliated and/or predecessor corporations or

companies, and their respective officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Victor Suarez.

4. "Jim Murta", Mr. Murta" or "Plaintiff" means the Plaintiff Jim Murta. and any agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Jim Murta.

5. "Communication" means any form of communication from one person to another, whether written, electronic, or oral, unless a discovery request expressly requests either a written, electronic, or oral communication.

6. Where the context of any request makes it appropriate, each singular word shall include the plural and each plural word shall include its singular. The masculine gender shall refer to both male and female persons as the context requires.

7. "Mark" refers to the Derby of San Francisco mark for which the above referenced application was made and any similar variations thereof including but not limited to all marks including the phrase "Derby of San Francisco".

INTERROGATORIES

1. For each good listed in the subject application, list all suppliers and manufacturers associated with the production of the good prior to December 4, 2009 including addresses, contact information, and all purchase orders, contracts and/or invoices associated with each manufacturer or supplier.

2. For each good listed in the subject application, list all purchasers of the good prior to December 4, 2009 and provide for each purchaser address, contact information and all purchase orders, contracts and/or invoices associated with each purchaser.

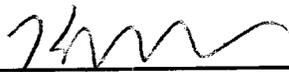
3. For each good listed in the subject application, list all suppliers and manufacturers associated with the production of the good between December 4, 2009 and March 10, 2010 including addresses, contact information, and all purchase orders, contracts and/or invoices associated with each manufacturer or supplier.

4. Identify all marketing and advertising materials displaying the Mark in use prior to December 4, 2009.

5. Identify any and all documents responsive to the foregoing interrogatories which are lost or unavailable and identify the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

16. Identify all persons who participated in any way in the preparation of the responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Defendant's lawyers or their representatives).

By



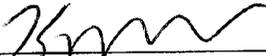
Date 12/8/11

Kurt P Leyendecker
Leyendecker & Lemire, LLC
9137 East Mineral Circle, Suite 280
Centennial, Colorado 80112
(303) 768-0123
kurt@coloradoiplaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 09, 2011, a true and correct copy of the foregoing FIRST SET OF INTERROGATORIES was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com



Kurt P Leyendecker

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

_____)	
James Murta)	
)	
Plaintiff,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
)	
Victor Suarez)	
)	
Defendant.)	
_____)	

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT**

Pursuant to Fed.R.Civ.P. 33 and 37 CFR § 2.120(d)(2) Plaintiff, James Murta, hereby submits the following Requests for Production of Documents to the Defendant, Victor Saurez. The documents requested are to be produced for inspection and copying within thirty days of the service of these discovery requests, at the offices of Leyendecker & Lemire, LLC, 9137 East Mineral Circle, Suite 280, Centennial, Colorado 80112.

INSTRUCTIONS

A. For any claim that a document and/or an undocumented communication are privileged or that information constitutes attorney work product:

1. Identify each such document and/or communication or any such information by:
 - a. date(s);
 - b. author(s) or speaker(s);
 - c. addressee(s) or listener(s);
 - d. type of document and/or communication or information (i.e., general subject matter of document and/or communication or information); and
 - e. general subject matter of document and/or communication and information.
2. State the basis for the claim of privilege or attorney work-product.

B. If the requested documents are not in the possession of the Defendant, and cannot be reasonably obtained, identify the person or entity in whose custody the documents are, or in whose custody the Defendant reasonably believes the documents might be.

DEFINITIONS

1. "Document" means any writing, e-mail, drawing, graph, chart, photograph, phono-record, tape-recording, magnetic disk, computer storage device, or other data compilation from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form.

2. "Person" includes any natural person, firm, corporation, partnership, joint venture, organization, association, or other entity, unless the context clearly indicates that reference is made to only a natural person.

3. “You”, “Your”, “Victor”, “Victor Suarez”, “Defendant”, “Mr. Saurez” or “Applicant” means Defendant Victor Suarez., any affiliated and/or predecessor corporations or companies, and their respective officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Victor Suarez.

4. “Jim Murta”, Mr. Murta” or “Plaintiff” means the Plaintiff Jim Murta. and any agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Jim Murta.

5. “Communication” means any form of communication from one person to another, whether written, electronic, or oral, unless a discovery request expressly requests either a written, electronic, or oral communication.

6. Where the context of any request makes it appropriate, each singular word shall include the plural and each plural word shall include its singular. The masculine gender shall refer to both male and female persons as the context requires.

7. “Mark” refers to the Derby of San Francisco mark for which the above referenced application was made and any similar variations thereof including but not limited to all marks including the phrase “Derby of San Francisco”.

REQUESTS FOR PRODUCTION

1. All documents, including but not limited to invoices, purchase orders, proposals, quotes, photographs, email communications, written communications, recorded verbal communications and advertising and marketing materials, relating to the use in commerce of the Mark prior to the filing date of the subject application in association with each specific good recited in the application.

2. All documents, including but not limited to invoices, purchase orders, proposals, quotes, photographs, email communications, written communications, recorded verbal communications and advertising and marketing materials relating to the manufacture of each specific good recited in the application sold under the Mark both before and after the filing date of the subject application.

3. All documents relating to the creation, development, selection, design or adoption of the Mark and the designation "Derby of San Francisco" by Defendant.

4. All documents relating to any authorization, license, franchise, assignment or grant from Defendant to another person giving the other person the right to use the Mark and to sell products and/or services under the Mark.

5. All documents relating to or describing Defendant's predecessors-in-interest, subsidiaries and affiliated companies, and officers, directors, employees, agents and representatives thereof.

6. All documents upon which you intend to rely in this matter.

8. All documents identified in relation to each of the interrogatory responses provided by Defendant in response to Plaintiff's First Set of Interrogatories.

9. All documents relating to the creation, development, selection, design or adoption of the Mark by Registrant, including but not limited to trademark searches, investigations, market research or studies, written reports, artwork, sketches, drafts, drawings or images.

10. All documents, including but not limited to non-privileged correspondence, pleadings and discovery, concerning litigation or administrative proceedings in which Defendant has been engaged or is engaged involving allegations of trademark, copyright or patent infringement, unfair competition, trademark dilution or deceptive trade practices.

11. All documents relating to allegations against Defendant of trademark, copyright or patent infringement, unfair competition, trademark dilution, or deceptive trade practices.

12. Documents concerning allegations made by Defendant against any third party of trademark, copyright or patent infringement, unfair competition, trademark dilution or deceptive trade practices.

14. Documents relating to the use by any party other than Defendant or Plaintiff of the Mark

By  _____

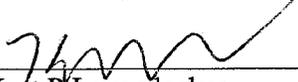
Date 12/8/11

Kurt P Leyendecker
Leyendecker & Lemire, LLC
9137 East Mineral Circle, Suite 280
Centennial, Colorado 80112
(303) 768-0123
kurt@coloradoiplaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 09, 2011, a true and correct copy of the foregoing FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com



Kurt P Leyendecker

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

_____)	
James Murta)	
)	
Plaintiff,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
Defendant.)	
_____)	

PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Pursuant to Fed.R.Civ.P. 36 and 37 CFR § 2.120(h), James Murta, hereby requests that Defendant, Victor Saurez, answer the following admissions. The answers are to be produced at the offices of Leyendecker & Lemire, LLC, 9137 East Mineral Circle, Suite 280, Centennial, Colorado 80112.

INSTRUCTIONS

A. You must serve a written response to these Requests for Admission within 30 days after service of this Request.

B. The matter in each Request for Admission is admitted unless, within 30 days after service of the Request, you serve a response.

C. If objection is made, the reason or reasons for the objection must be stated.

D. The response must specifically deny the matter contained in the Request or set forth in detail the reasons why the answer party cannot truthfully admit or deny the matter.

E. A denial must fairly meet the substance of the requested admission and when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, you must specify so much of the requested matter as is true and qualify or deny the remainder.

F. You may not give lack of information or lack of knowledge as a reason for failure to admit or deny unless you can truthfully state that you have made a reasonable inquiry and the information known or readily obtainable by you is insufficient to enable you to admit or deny.

G. You may not object on the basis that the matter of which an admission has been requested presents a genuine issue for trial. Instead, you must either admit or deny the matter in the Request or set forth the reasons why you cannot admit or deny it.

DEFINITIONS

1. "Document" means any writing, e-mail, drawing, graph, chart, photograph, phono-record, tape-recording, magnetic disk, computer storage device, or other data compilation from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form.

2. "Person" includes any natural person, firm, corporation, partnership, joint venture, organization, association, or other entity, unless the context clearly indicates that reference is made to only a natural person.

3. "You", "Your", "Victor", "Victor Suarez", "Defendant", "Mr. Saurez" or "Applicant" means Defendant Victor Suarez., any affiliated and/or predecessor corporations or companies, and their respective officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Victor Suarez.

4. "Jim Murta", "Mr. Murta" or "Plaintiff" means the Plaintiff Jim Murta. and any agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Jim Murta.

5. "Communication" means any form of communication from one person to another, whether written, electronic, or oral, unless a discovery request expressly requests either a written, electronic, or oral communication.

6. Where the context of any request makes it appropriate, each singular word shall include the plural and each plural word shall include its singular. The masculine gender shall refer to both male and female persons as the context requires.

7. "Mark" refers to the Derby of San Francisco mark for which the above referenced application was made and any similar variations thereof including but not limited to all marks including the phrase "Derby of San Francisco"

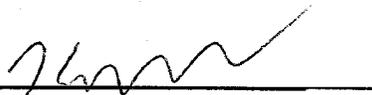
REQUEST FOR ADMISSIONS

PLEASE ADMIT:

1. That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with jackets.

2. That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with shirts.
3. That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with sweatshirts.
4. That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with pants.
5. That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with hats.
6. That the specimen produced with the application for registration of the Mark submitted to the United States Trademark Office on December 4, 2009 comprised a photograph of a jacket that was manufactured by or for someone other than the Defendant.
7. That as of March 10, 2010, one or more of the goods listed in the subject application were being made somewhere other than in San Francisco.
8. That the Defendant is currently having jackets manufactured in a local other than both San Francisco and the United States of America.

By



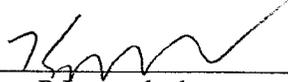
Date 12/8/11

Kurt P Leyendecker
Leyendecker & Lemire, LLC
9137 East Mineral Circle, Suite 280
Centennial, Colorado 80112
(303) 768-0123
kurt@coloradoiplaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 09, 2011, a true and correct copy of the foregoing FIRST REQUEST FOR ADMISSIONS was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com



Kurt P Leyendecker

Exhibit D

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT’S RESPONSES TO OPPOSER’S FIRST REQUEST FOR ADMISSIONS
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**APPLICANT’S RESPONSES TO OPPOSER’S
FIRST REQUEST FOR ADMISSIONS**

GENERAL STATEMENTS AND OBJECTIONS

Pursuant to Federal Rule of Civil Procedure 36, Applicant Victor Suarez (“Applicant”) hereby submits his Responses to Opposer Jim Murta’s (“Opposer”) First Request for Admissions.

Applicant’s responses are subject to, qualified by, and limited by the following general statements and objections, which apply to each specific request as if incorporated and set forth in full in response to each. The assertion of the same or additional objections in any particular response to these Requests does not waive other objections set forth herein.

Applicant has not completed his investigation of the facts and information relating to this case. Applicant's responses are therefore made to the best of Applicant's present knowledge, information, and belief. These responses are at all times subject to such additional or different information that discovery or independent investigation or analysis may disclose and, while based on the present state of Applicant's recollection, is subject to such refreshing of recollection, and such additional knowledge of information, facts and documents, as may result from Applicant's further discovery or investigation. Applicant accordingly reserves the right to change the responses herein as additional facts are ascertained, analysis is made, legal research is completed, and contentions are made.

These responses are made solely for the purpose of discovery in this action. Nothing herein is intended to waive the following objections, which are expressly reserved, including but not limited to the following objections: all objections as to competence, relevance, authenticity, propriety, materiality and admissibility of the subject matter of the discovery requests; all objections as to vagueness, ambiguity, or undue burden; all objections on any ground as to the use of any information provided in response to the Requests; all objections on any ground to any request for further responses to these or other discovery requests; and any and all other objections and grounds that would or could require or permit the exclusion of any information, document or statement therein from evidence, all of which objections and grounds are reserved and may be interposed at a hearing in this action or at the time of trial.

By agreeing to provide information responsive to a particular discovery request, Applicant does not admit the relevance or admissibility of the information provided. Nothing contained in any response herein shall be deemed an admission, concession, or waiver by

Applicant as to the relevance, materiality, or admissibility of any document provided in response to the Requests.

REQUEST FOR ADMISSION NO. 1

That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with jackets.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

Denied.

REQUEST FOR ADMISSION NO. 2

That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with shirts.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

Denied.

REQUEST FOR ADMISSION NO. 3

That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with sweatshirts.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

Denied.

REQUEST FOR ADMISSION NO. 4

That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with pants.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

Denied.

REQUEST FOR ADMISSION NO. 5

That as of December 4, 2009, Defendant had not used the Mark in interstate commerce in association with hats.

RESPONSE TO REQUEST FOR ADMISSION NO. 5

Denied.

REQUEST FOR ADMISSION NO. 6

That the specimen produced with the application for registration of the Mark submitted to the United States Trademark Office on December 4, 2009 comprised a photograph of a jacket that was manufactured by or for someone other than the Defendant.

RESPONSE TO REQUEST FOR ADMISSION NO. 6

Applicant objects to this Request for Admission on the ground that it is unduly burdensome in seeking information which is not relevant to the claims or defenses of any party to this action or to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections and

subject thereto, Applicant admits that the specimen referenced in Request for Admission No. 6 was manufactured by someone other than the Defendant.

REQUEST FOR ADMISSION NO. 7

That as of March 10, 2010, one or more of the goods listed in the subject application were being made somewhere other than in San Francisco.

RESPONSE TO REQUEST FOR ADMISSION NO. 7

Applicant objects to this Request for Admission on the ground that it is unduly burdensome in seeking information which is not relevant to the claims or defenses of any party to this action or to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections and subject thereto, Applicant admits that as of March 10, 2010, at least one of the goods listed in the subject application has been made somewhere other than in San Francisco.

REQUEST FOR ADMISSION NO. 8

That the Defendant is currently having jackets manufactured in a local other than both San Francisco and the United States of America.

RESPONSE TO REQUEST FOR ADMISSION NO. 8

Applicant objects to this Request for Admission on the ground that it is unduly burdensome in seeking information which is not relevant to the claims or defenses of any party to this action or to the subject matter involved in the pending action or reasonably calculated to

lead to the discovery of admissible evidence. Without waiving the foregoing objections and subject thereto, Applicant denies Request for Admission No. 8.

Respectfully submitted

Dated: January 9, 2012

By:



Michael E. Dergosits
Marina A. Lewis
Attorneys for Applicant

Dergosits & Noah LLP
Three Embarcadero Center, Suite 410
San Francisco, CA 94111
Telephone: (415) 705-6377
Facsimile: (415) 705-6383

CERTIFICATE OF SERVICE

I certify that on January 9, 2012, a true copy of the foregoing

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST
REQUEST FOR ADMISSIONS**

was sent via electronic mail to:

Mr. Kurt Leyendecker
Leyendecker & Lemire LLC
9137 E. Mineral Cir., Ste. 280
Centennial, CO 80112
kurt@coloradoiplaw.com



Marina A. Lewis

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
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**APPLICANT'S RESPONSE TO OPPOSER'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Fed.R.Civ.P. 34 and 37 CFR § 2.120(d), Applicant Victor Suarez ("Applicant") serves the following responses to Opposer Jim Murta's ("Opposer") first request for production of documents as follows:

GENERAL STATEMENT

Applicant responds to Opposer's First Request for Production of Documents subject to the accompanying general objections. Applicant also submits these responses subject to, without intending to waive, but expressly preserving: (a) any objections as to the competency, relevance, materiality, privilege or admissibility of any of the responses or any of the documents or files identified in any response hereto; and (b) the right to object to other discovery involving or relating to the subject matter of the documents or files identified in response to these requests.

The specific responses that follow are based on information currently available to Applicant. Applicant's response, while based on a diligent investigation by Applicant, reflects only the current state of Applicant's knowledge, understanding and belief respecting the matters at issue in this case. Applicant anticipates that as this case proceeds, further information may be discovered by Applicant and, without in any way obligating itself to do so, Applicant reserves the right to modify or supplement this response and to disclose information it may subsequently discover. Further, this response is made without prejudice to using or relying on at trial subsequently discovered information, or information omitted from or not produced in connection with this response.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

All documents, including but not limited to invoices, purchase orders, proposals, quotes, photographs, email communications, written communications, recorded verbal communications and advertising and marketing materials, relating to the use in commerce of the Mark prior to the filing date of the subject application in association with each specific good recited in the application.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Applicant objects to this Request on the grounds that this request is vague, ambiguous, and overly broad. Subject to these objections and without waiving them, Applicant is enclosing non-privileged, responsive documents currently within Applicant's possession, custody or control and that have been located after a reasonably diligent good faith search.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2

All documents, including but not limited to invoices, purchase orders, proposals, quotes, photographs, email communications, written communications, recorded verbal communications and advertising and marketing materials relating to the manufacture of each specific good recited in the application sold under the Mark both before and after the filing date of the subject application.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2

Applicant objects to this Request on the grounds that this request is vague and ambiguous, overly broad, unduly burdensome and oppressive and seeking information that is not relevant to the subject matter of the pending action or claims or defenses of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Applicant objects to the request for documents related to goods sold under Applicant's DERBY OF SAN FRANCISCO (and Design) mark ("the Mark") after the filing date of the subject application as not relevant to the subject matter of the pending action or claims or defenses of any party.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

All documents relating to the creation, development, selection, design or adoption of the Mark and the designation "Derby of San Francisco" by Defendant.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad. Subject to these objections and without waiving them, Applicant

has conducted a reasonably diligent good faith search and has been unable to locate any documents currently within Applicant's possession, custody or control responsive to this Request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4

All documents relating to any authorization, license, franchise, assignment or grant from Defendant to another person giving the other person the right to use the Mark and to sell products and/or services under the Mark.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad. Subject to these objections and without waiving them, Applicant is not aware of any documents currently within Applicant's possession, custody or control responsive to this Request.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5

All documents relating to or describing Defendant's predecessors-in interest, subsidiaries and affiliated companies, and officers, directors, employees, agents and representatives thereof.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad. Subject to these objections and without waiving them, Applicant is not aware of any documents currently within Applicant's possession, custody or control responsive to this Request. Applicant has since his first use of the mark been a sole

proprietorship. Thus, there are no predecessors-in interest, subsidiaries and affiliated companies, or officers, directors, employees, agents and representatives thereof.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

All documents upon which you intend to rely in this matter.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad.

[Opposer's Request for Production of Documents did not include a numbered Paragraph 7.]

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8

All documents identified in relation to each of the interrogatory responses provided by Defendant in response to Plaintiff's First Set of Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad. Subject to these objections and without waiving them, documents identified in Applicant's responses to Opposer's First Set of Interrogatories are included with those documents produced in response to Request for Production of Documents No. 1.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 9

All documents relating to the creation, development, selection, design or adoption of the Mark by Registrant, including but not limited to trademark searches, investigations, market research or studies, written reports, artwork, sketches, drafts, drawings or images.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 9

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad. Subject to these objections and without waiving them, Applicant has conducted a reasonably diligent good faith search and has been unable to locate any documents currently within Applicant's possession, custody or control responsive to this Request. Applicant believes that such documents did exist at one time but were not maintained when new computers were purchased for Applicant's business.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 10

All documents, including but not limited to non-privileged correspondence, pleadings and discovery, concerning litigation or administrative proceedings in which Defendant has been engaged or is engaged involving allegations of trademark, copyright or patent infringement, unfair competition, trademark dilution or deceptive trade practices.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 10

Applicant objects to this Request on the grounds that this request is vague and ambiguous, overly broad, unduly burdensome and oppressive and seeking information that is not relevant to the subject matter of the pending action or claims or defenses of any party, and not

reasonably calculated to lead to the discovery of admissible evidence. Specifically, Applicant objects to the request for any documents involving third-party claims or actions as any such proceedings would not be relevant to the subject matter of the pending action or claims or defenses of any party. Subject to these objections and without waiving them, Applicant asserts that he filed a Notice of Opposition with the U.S. Patent and Trademark Office on September 7, 2010 relating to a third-party application and that documents related to this opposition are available from public sources. Applicant has retained no other documents related to this Notice of Opposition.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 11

All documents relating to allegations against Defendant of trademark, copyright or patent infringement, unfair competition, trademark dilution, or deceptive trade practices.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 11

Applicant objects to this Request on the grounds that this request is vague and ambiguous, overly broad, unduly burdensome and oppressive and seeking information that is not relevant to the subject matter of the pending action or claims or defenses of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Applicant objects to the request for any documents involving third-party claims or actions as any such proceedings would not be relevant to the subject matter of the pending action or claims or defenses of any party.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 12

Documents concerning allegations made by Defendant against any third party of trademark, copyright or patent infringement, unfair competition, trademark dilution or deceptive trade practices.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 12

Applicant objects to this Request on the grounds that this request is vague and ambiguous, overly broad, unduly burdensome and oppressive and seeking information that is not relevant to the subject matter of the pending action or claims or defenses of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Applicant objects to the request for any documents involving third-party claims or actions as any such proceedings would not be relevant to the subject matter of the pending action or claims or defenses of any party. Subject to these objections and without waiving them, Applicant asserts that he filed a Notice of Opposition with the U.S. Patent and Trademark Office on September 7, 2010 relating to a third-party application and that documents related to this opposition are available from public sources. Applicant has retained no other documents related to this Notice of Opposition.

[Opposer's Request for Production of Documents did not include a numbered Paragraph 13.]

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 14

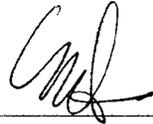
Documents relating to the use by any party other than Defendant or Plaintiff of the Mark

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 14

Applicant objects to this Request on the grounds that this request is vague and ambiguous, overly broad, unduly burdensome and oppressive and seeking information that is not relevant to the subject matter of the pending action or claims or defenses of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Applicant objects to the request for any documents involving third-party use of the DERBY OF SAN FRANCISCO (and Design) mark as irrelevant to the subject matter of the pending action or claims or defenses of any party.

Dated: January 9, 2012

By:



Michael E. Dergosits
Marina A. Lewis
Attorneys for Applicant

Dergosits & Noah LLP
Three Embarcadero Center, Suite 410
San Francisco, CA 94111
Telephone: (415) 705-6377
Facsimile: (415) 705-6383

CERTIFICATE OF SERVICE

I certify that on January 9, 2012, a true copy of the foregoing

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

was sent via electronic mail to:

Mr. Kurt Leyendecker
Leyendecker & Lemire LLC
9137 E. Mineral Cir., Ste. 280
Centennial, CO 80112

kurt@coloradoiplaw.com

A handwritten signature in black ink, appearing to read 'ML', is written over a horizontal line.

Marina A. Lewis

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT’S RESPONSES TO OPPOSER’S FIRST SET OF INTERROGATORIES
--	--

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

PROPOUNDING PARTY: Opposer James Murta

RESPONDING PARTY: Applicant Victor Suarez

SET NO. One (1)

Pursuant to Fed.R.Civ.P. 33 and 37 CFR § 2.120(d), Applicant Victor Suarez (“Applicant”) serves the following supplemental responses to Opposer Jim Murta’s (“Opposer”) First Set of Interrogatories as follows:

GENERAL STATEMENT

The following responses to Opposer’s First Set of Interrogatories are based on information and discovery available as of the date of this response and are given without

prejudice to Applicant's right to rely on subsequently discovered information, facts or documents. Further discovery, independent investigation and analysis may supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to additions, changes to, or variations from the information herein set forth. Applicant accordingly reserves the right to change, amend, or supplement any response herein as additional facts are ascertained, analysis is made, legal research is completed and contentions are made. The responses contained herein are made in a good faith effort to comply with the provisions of the Federal Rules of Civil Procedure but are in no way deemed to prejudice Applicant in relation to further discovery, research and analysis.

INTERROGATORY NO. 1

For each good listed in the subject application, list all suppliers and manufacturers associated with the production of the good prior to December 4, 2009 including addresses, contact information, and all purchase orders, contracts and/or invoices associated with each manufacturer or supplier.

RESPONSE TO INTERROGATORY NO. 1

Applicant objects to this Interrogatory on the ground that it is unduly burdensome in seeking information which is not relevant to the claims or defenses of any party to this action or to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this Interrogatory on the ground that it seeks information concerning the identity of Applicant's retail commercial customers, and that the identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material.

INTERROGATORY NO. 2

For each good listed in the subject application, list all purchasers of the good prior to December 4, 2009 and provide for each purchaser address, contact information and all purchase orders, contracts and/or invoices associated with each purchaser.

RESPONSE TO INTERROGATORY NO. 2

Applicant objects to this Interrogatory on the ground that it seeks information concerning the identity of Applicant's retail commercial customers, and that the identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material. Applicant further objects to this Interrogatory on the ground that it seeks the identity and home contact information of individual customers who have purchased products from Applicant. TMBP Section 120.02 expressly discourages parties from submitting materials that reflect personal identifying information such as home addresses or telephone numbers. Without waiving the foregoing objections and subject thereto, Applicant responds as follows:

Among other commercial customers, Applicant has sold shirts, hats, pants, and t-shirts to Sunset Surf Shop, a now-defunct retail store located in San Francisco, California since long before the December 4, 2009 filing date of his application. The address for Sunset Surf Shop is 3809 Noriega Street, San Francisco, California, 94122. Applicant does not have a current telephone number for Sunset Surf Shop as this entity is no longer in business. Applicant has in his possession two (2) purchase orders with Sunset Surf Shop dated July 12, 2008 and November 30, 2008.

INTERROGATORY NO. 3

For each good listed in the subject application, list all suppliers and manufacturers associated with the production of the good between December 4, 2009 and March 10, 2010 including addresses, contact information, and all purchase orders, contracts and/or invoices associated with each manufacturer or supplier.

RESPONSE TO INTERROGATORY NO. 3

Applicant objects to this Interrogatory on the ground that it is unduly burdensome in seeking information which is not relevant to the claims or defenses of any party to this action or to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this Interrogatory on the ground that it seeks information concerning the identity of Applicant's retail commercial customers, and that the identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material.

INTERROGATORY NO. 4

Identify all marketing and advertising materials displaying the Mark in use prior to December 4, 2009.

RESPONSE TO INTERROGATORY NO. 4

Applicant has used digital graphic ads featured on online forums including Craigslist and Sell.com since at least 2005. These ads were disseminated on Craigslist city-specific forums in San Francisco, Los Angeles, Hawaii, Chicago, Miami, Boston, and Seattle.

INTERROGATORY NO. 5

Identify any and all documents responsive to the foregoing interrogatories which are lost or unavailable and identify the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

RESPONSE TO INTERROGATORY NO. 5

Applicant objects to this Interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Applicant further objects to this Interrogatory on the grounds that it is unduly burdensome in seeking information which is not relevant to the claims or defenses of any party to this action or to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 6

Identify all persons who participated in any way in the preparation of the responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Defendant's lawyers or their representatives).

RESPONSE TO INTERROGATORY NO. 6

Applicant Victor Suarez participated in the preparation of these responses to Opposer's First Set of Interrogatories and provided information concerning his use of the DERBY OF SAN FRANCISCO (and Design) Mark.

Dated: January 9, 2012

By:



Michael E. Dergosits
Marina A. Lewis
Attorneys for Applicant

Dergosits & Noah LLP
Three Embarcadero Center, Suite 410
San Francisco, CA 94111
Telephone: (415) 705-6377
Facsimile: (415) 705-6383

CERTIFICATE OF SERVICE

I certify that on January 9, 2012, a true copy of the foregoing

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET
OF INTERROGATORIES**

was sent via electronic mail to:

Mr. Kurt Leyendecker
Leyendecker & Lemire LLC
9137 E. Mineral Cir., Ste. 280
Centennial, CO 80112

kurt@coloradoplw.com



Marina A. Lewis

Exhibit E

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

_____)	
James Murta)	
)	
Plaintiff,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
)	
Victor Suarez)	
)	
Defendant.)	
_____)	

INITIAL DISCOVERY DISCLOSURE OF PLAINTIFF, JAMES MURTA.

Pursuant to Fed.R.Civ.P. 26(a)(1) and 37 CFR § 2.120(a)(3) Plaintiff, James Murta provides the following initial discovery disclosure. Petitioner reserves the right to supplement these disclosures as more information becomes available.

A. The name, address, and telephone number of each individual with knowledge of discoverable information:

1. James Murta. James can be contacted through undersigned counsel. James has information pertaining to the opposition proceeding.

B. Description of category and location of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims and defenses, unless solely for impeachment:

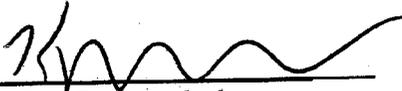
1. Copies and printouts of web pages containing information about the Defendant and his use of the Mark.
2. Copies and printouts of email correspondence relating to the Defendant and his use of the Mark.

C. Computation of Damages:

Plaintiff is not claiming damages in this action.

D. Insurance Agreements:

Plaintiff's insurance agreements are not relevant to this action.

By 
Kurt P Leyendecker

Date 05/20/2013

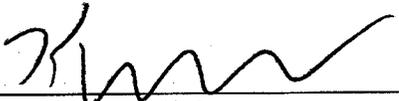
Leyendecker & Lemire, LLC
540 S Quebec Street, Suite 330
Greenwood Village, Colorado 80111
(303) 768-0123
kurt@coloradoiplaw.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2013, a true and correct copy of the foregoing INITIAL DISCOVERY DISCLOSURE was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com


Kurt P Leyendecker

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT'S INITIAL DISCLOSURES
--	--

APPLICANT'S INITIAL DISCLOSURES

Pursuant to 37 C.F.R. Rule 2.120(a), Applicant Victor Suarez (“Applicant”), based upon the information reasonably available to Applicant, hereby provides the following Initial Disclosures. Applicant has not completed his investigation into the claims and defenses raised by the pleadings. Applicant bases these Initial Disclosures on the information currently known and available to him after an initial good faith investigation. Pursuant to 37 C.F.R. Rule 2.120 and Fed.R.Civ.P. 26(e), Applicant reserves the right to supplement his disclosures and/or to produce additional information during the course of discovery, and to rely on such information as evidence in this proceeding.

1) PERSONS KNOWN OR BELIEVED TO HAVE DISCOVERABLE INFORMATION

Applicant identifies the following individuals/entities as likely to have discoverable information that Applicant may use to support his claims and defenses, unless used solely for impeachment. Where no address is provided for an individual or entity, it is because either no

address was available to Applicant, or because any contact with the individual or entity is to be made through counsel of record for Opposer James Murta (“Opposer”).

Individual	Last Known Address	Information
Victor Suarez	Through Applicant’s counsel	Adoption and use of the DERBY OF SAN FRANCISCO (and Design) Mark (“DOSF Mark”)
Brian Kramer	Through Applicant’s counsel	Applicant’s sales of products with the DOSF Mark
James Murta	Through Opposer’s counsel	Adoption and use of the DOSF Mark by Applicant

Applicant reserves the right to amend the list above to include individuals or entities whose identities are known, but are not being disclosed at this time for reasons of privacy and confidentiality. Specifically, Applicant is aware of individuals who may possess additional information upon which Applicant may need to rely in support of his claims and defenses. These include individual customers to whom Applicant has made product sales in the past. However, the Board expressly discourages parties from submitting materials that reflect personal identifying information such as home addresses or telephone numbers (TMBP Section 120.02). Moreover, Applicant has not been authorized to disclose the names of individual customers who made good faith purchases of his products. As such, he is not in a position to release their names without their consent and appropriate regard for their privacy rights in the midst of a contentious opposition proceeding.

Some of the other persons with knowledge may include representatives of manufacturers or suppliers of Applicant’s products sold under the DOSF Mark. The identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material and Applicant is not confident that the sensitive nature of this information will be kept confidential, notwithstanding the provisions of the Board’s standard protective order. It has been Applicant’s experience that Opposer has a history of inappropriately contacting Applicant’s retail customers and threatening them with legal action based on specious claims of infringement in order to discourage these entities from doing

business with Applicant. Therefore, although Applicant is attempting to provide full disclosure as mandated by Rule 2.120(a), Applicant is also cognizant of the need to protect the highly sensitive nature of confidential business information at this stage in these proceedings.

Finally, Applicant reserves the right to amend the list above to include additional individuals or entities whose identities are unknown at the present time, but who may be found during the course of discovery to possess information related to the adoption, use, and registration of the DOSF Mark, as well as information related to the sale and marketing of products used with the DOSF Mark.

2) DOCUMENTS, ELECTRONICALLY STORED INFORMATION AND TANGIBLE THINGS

Applicant identifies the following documents, electronically stored information, and tangible things that Applicant has in his possession, custody, or control and that Applicant may use to support his claims and defenses, unless used solely for impeachment.

Category of Document	Location of Documents
Documents relating to the adoption, use, and registration of the DOSF Mark by Applicant	Through Applicant's counsel
Documents relating to Opposer's knowledge of the adoption and use of the DOSF Mark by Applicant	Through Applicant's counsel

Documents in each of these categories that are currently in Applicant's possession, custody or control are currently located in Applicant's offices and/or the offices of his counsel, and are being or will be gathered for review and potential production in this action.

Applicant believes that Opposer and/or third parties may have documents, electronically stored information, and tangible things in their possession, custody or control that relate to his claims and defenses, and reserves the right to use such documents, electronically stored information, and tangible things as they may be obtained in discovery. Applicant also reserves

the right to use documents, electronically stored information, and tangible things identified in
Opposer's Initial Disclosures.

Respectfully submitted

Dated: May 20, 2013

By: Marina A. Lewis/
Marina A. Lewis
Michael E. Dergosits
Attorneys for Applicant

Dergosits & Noah LLP
Three Embarcadero Center, Suite 410
San Francisco, CA 94111
Telephone: (415) 705-6377
Facsimile: (415) 705-6383

CERTIFICATE OF SERVICE

I certify that on May 20, 2013, a true copy of the foregoing

APPLICANT'S INITIAL DISCLOSURES

was sent via e-mail and first class mail, postage prepaid, to:

Mr. Kurt Leyendecker
Leyendecker & Lemire, LLC
5460 S Quebec St., Suite 330
Greenwood Village, CO 80111

/Marina A. Lewis/
Marina A. Lewis

Exhibit F

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

James Murta)	
)	
Opposer,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
Defendant.)	
)	

Notice of Deficiencies in Initial Disclosures of Applicant

Pursuant to Fed.R.Civ.P. 26(a)(1) and 37 CFR § 2.120(a)(3) Applicant Victor Suarez provided certain initial discovery disclosures. While the Applicant reserved the right to supplement his disclosures based on his continuing examination, he nevertheless admitted in the document submitted by his attorney on May 20, 2013 that he was intentionally withholding certain information.

The Opposer respectfully submits the Applicant did not have proper legal basis for withholding certain disclosure information, and requests that Applicant supplement his Initial Disclosures immediately.

Applicant Admits to Withholding the Names of Individuals and Entities Believed to Have Discoverable Information

Specifically, Applicant wrote, "Applicant is aware of individuals who may possess additional information upon which Applicant may need to rely in support of his

claims and defenses. These include individual customers to whom Applicant has made product sales in the past. ... Some of the other persons with knowledge may include representatives of manufacturers or suppliers of Applicant's products sold under the DOSF Mark."

In refusing to turn over the names alleged purchasers of goods, the Applicant erroneously relies on TMBP section 120.02, which addresses information presented to the Board and discourages parties from submitting materials that include personally identifiable information of an individual. The information contained in initial disclosures are not, however, being submitted to the Board but rather to the Opposer. The referenced section of the TMBP has absolutely no relevance concerning Initial Disclosures.

In refusing to turn over the names of representatives of manufacturers and suppliers, the Applicant expresses a concern that the Opposer will improperly use the information to harass. While the Applicant mentions the Board's standard protective order, The Applicant apparently is unaware of its content. Specifically, the Applicant can designate information as Trade Secret/Commercially Sensitive in which case only outside counsel for the Opposer will be permitted to view the information obviating any legitimate concern that the information will be misused. Nevertheless, it is not the Applicant's prerogative to withhold information he has been directed to provide by the Board, because he does not trust the safeguards instituted by the Board.

The Applicant does hint that he may need to rely on the persons and entities whose identities are being withheld, but also seeks to prevent the Opposer from being able to investigate the circumstances surrounding any testimony these persons might provide. This is clearly a proverbial case of the Applicant wanting his cake and eating it to. The Applicant is reminded that if he is not interested in abiding by the procedures and process of the Opposition, he is free to withdraw his application to register the Derby of San Francisco mark from consideration by the Trademark Office and the Board.

The Applicant is reminded that as per 37 CFR 2.120(a)(3), he is not permitted to take further discovery until his initial disclosures are complete. Absent identification of the withheld parties and entities upon which he is currently aware and intends to rely, a

statement by his counsel that he does not intend to rely on any of his suppliers,
manufacturers and customers will suffice.

By _____
Kurt P Leyendecker

Date 06.18.2013

Leyendecker & Lemire, LLC
540 S Quebec Street, Suite 330
Greenwood Village, Colorado 80111
(303) 768-0123
kurt@coloradoiplaw.com

Counsel for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2013, a true and correct copy of the foregoing INITIAL DISCOVERY DISCLOSURE was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com

Kurt P Leyendecker

Exhibit G

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

James Murta)	
)	
OPPOSER,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
APPLICANT.)	
)	

**OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS TO
APPLICANT**

Pursuant to Fed.R.Civ.P. 33 and 37 CFR § 2.120(d)(2) Opposer, James Murta, hereby submits the following Requests for Production of Documents to the Applicant, Victor Saurez. The documents requested are to be produced for inspection and copying within thirty days of the service of these discovery requests, at the offices of Leyendecker & Lemire, LLC, 5460 S. Quebec, Suite 330, Centennial, Colorado 80111.

INSTRUCTIONS

A. For any claim that a document and/or an undocumented communication are privileged or that information constitutes attorney work product:

1. Identify each such document and/or communication or any such information

by:

a. date(s);

b. author(s) or speaker(s);

c. addressee(s) or listener(s);

d. type of document and/or communication or information (i.e., general subject matter of document and/or communication or information); and

e. general subject matter of document and/or communication and information.

2. State the basis for the claim of privilege or attorney work-product.

B. If the requested documents are not in the possession of the Defendant, and cannot be reasonably obtained, identify the person or entity in whose custody the documents are, or in whose custody the Defendant reasonably believes the documents might be.

DEFINITIONS

1. "Document" means any writing, e-mail, drawing, graph, chart, photograph, phono-record, tape-recording, magnetic disk, computer storage device, or other data compilation from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form.

2. "Person" includes any natural person, firm, corporation, partnership, joint venture, organization, association, or other entity, unless the context clearly indicates that reference is made to only a natural person.

3. “You”, “Your”, “Victor”, “Victor Suarez”, “Defendant”, “Mr. Saurez” or “Applicant” means Defendant Victor Suarez., any affiliated and/or predecessor corporations or companies, and their respective officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Victor Suarez.

4. “Jim Murta”, Mr. Murta” or “Plaintiff” means the Plaintiff Jim Murta. and any agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Jim Murta.

5. “Communication” means any form of communication from one person to another, whether written, electronic, or oral, unless a discovery request expressly requests either a written, electronic, or oral communication.

6. Where the context of any request makes it appropriate, each singular word shall include the plural and each plural word shall include its singular. The masculine gender shall refer to both male and female persons as the context requires.

7. “Mark” refers to the Derby of San Francisco mark for which the above referenced application was made and any similar variations thereof including but not limited to all marks including the phrase “Derby of San Francisco”.

REQUESTS FOR PRODUCTION

1. All documents relating to the adoption, use and registration of the DOSF Mark by Applicant as identified in the Applicant's Initial Disclosures of May, 20, 2013.

2. All documents relating to Opposer's knowledge of the adoption and use of the DOSF Mark by Applicant as identified in the Applicant's Initial Disclosures of May, 20, 2013.

By _____

Date 06.18.2013

Kurt P Leyendecker
Leyendecker & Lemire, LLC
9137 East Mineral Circle, Suite 280
Centennial, Colorado 80112
(303) 768-0123
kurt@coloradoiplaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2013, a true and correct copy of the foregoing
REQUEST FOR PRODUCTION OF DOCUMENTS was served on Marina A. Lewis by
electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
DERGOSITS & NOAH LLP
THREE EMBARCADERO CTR, STE 410
SAN FRANCISCO, CA 94111
UNITED STATES
tmdocketing@dergnoah.com

Kurt P Leyendecker

Exhibit H

Kurt Leyendecker

From: Lewis, Marina [Marina.Lewis@finnegan.com]
Sent: Tuesday, July 23, 2013 8:19 PM
To: kurt@coloradoiplaw.com
Cc: Lopez, Sylvia
Subject: FW: Murta v. Suarez Opposition No. 91/200327
Attachments: Change of Correspondence Address.pdf; Applicant's Response to Opposer's Request for Production of Documents to Applicant.pdf

Importance: High

Dear Kurt:

This is further to my earlier e-mail from May 22, 2013.

First, I wanted to inform you that I left my previous firm to join Finnegan Henderson last month. My new contact information appears below. I have filed a change of correspondence address with the TTAB and I am attaching a courtesy copy for your records.

Also attached is a courtesy copy of our response to Opposer's most recent request for production of documents. Frankly, I am a bit puzzled by your recent request for document production because Applicant filed the identical disclosures over a year and a half ago and this is the first that we are hearing that Opposer is raising any objections to these disclosures.

Nevertheless, as we stated in our response to your recent production request, Applicant merely reserved the right to amend his list of individuals with discoverable information in his Initial Disclosures if and when appropriate. However, we have not attempted to rely on *any* evidence through witnesses or documents so I do not see how we are attempting to "have our cake and eat it too." Contrary to your demand in the last line on page 2 of your "Notice of Deficiencies in Initial Disclosures of Applicant", Applicant has never stated that there are any parties and entities upon whom he "intends to rely" for whom he has not already disclosed their identities. Applicant merely reserved his rights to avoid being precluded from identifying additional witnesses at a later date, if appropriate.

Finally, you never responded to my earlier inquiry concerning potential settlement of this matter. In view of Mr. Suarez's substantial common-law rights in and to the DOSF mark, it is still not clear what injury Mr. Murta seeks to remedy by persisting in this opposition. Moreover, even if Mr. Murta were to prevail in this proceeding - and we do not believe he will - his own application would be subject to opposition by Mr. Suarez based on his established common-law rights. Therefore, it remains unclear what is motivating Mr. Murta in persisting in this opposition when he simply has no superior rights, either by virtue of his application or through common-law use. If you can enlighten us as to what your client hopes to gain at this point, then perhaps we can meaningfully discuss a possible settlement proposal. Until then, we will proceed with this matter.

Very truly yours,
Marina

Marina A. Lewis
Attorney at Law / Domain Name Specialist
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Stanford Research Park
3300 Hillview Avenue, Palo Alto, CA 94304-1203
650.849.6766 | fax: 650.849.6666 | marina.lewis@finnegan.com | www.finnegan.com

Exhibit I

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez, Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT’S RESPONSE TO OPPOSER’S REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT
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**APPLICANT’S RESPONSE TO OPPOSER’S REQUEST FOR
PRODUCTION OF DOCUMENTS TO APPLICANT**

Pursuant to Fed.R.Civ.P. 34 and 37 CFR § 2.120(d), Applicant Victor Suarez (“Applicant”) serves the following responses to Opposer Jim Murta’s (“Opposer”) June 18, 2013 request for production of documents as follows:

GENERAL STATEMENT

Applicant responds to Opposer’s Request for Production of Documents to Applicant, subject to the accompanying general objections. Applicant also submits these responses subject to, without intending to waive, but expressly preserving: (a) any objections as to the competency, relevance, materiality, privilege or admissibility of any of the responses or any of the documents or files identified in any response hereto; and (b) the right to object to other

discovery involving or relating to the subject matter of the documents or files identified in response to these requests.

The specific responses that follow are based on information currently available to Applicant. Applicant's response, while based on a diligent investigation by Applicant, reflects only the current state of Applicant's knowledge, understanding and belief respecting the matters at issue in this case. Applicant anticipates that as this case proceeds, further information may be discovered by Applicant and, without in any way obligating itself to do so, Applicant reserves the right to modify or supplement this response and to disclose information it may subsequently discover. Further, this response is made without prejudice to using or relying on at trial subsequently discovered information, or information omitted from or not produced in connection with this response.

REQUEST FOR PRODUCTION NO. 1

All documents relating to the adoption, use and registration of the DOSF Mark by Applicant as identified in the Applicant's Initial Disclosures of May 20, 2013.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Applicant objects to this Request to the extent it is vague, ambiguous, and overly broad because Applicant did not identify any documents in his Initial Disclosures relating to Applicant's adoption, use and registration of the DOSF Mark. That said, on January 9, 2012, Applicant produced all documents in his possession, custody, or control relating to the adoption, use, and registration of the DOSF Mark in response to Opposer's First Request for Production of Documents, and Applicant has no further documents to produce. Applicant notes that Opposer has objected to a small number of the produced documents because Applicant properly redacted

private, identifying consumer data (such as names and home addresses) that is not relevant to the issues in this proceeding and in the interest of protecting the privacy of third parties. However, information that *is* relevant in those documents - including the dates of sales, and the cities and states of such interstate commerce sales - was left intact.

Applicant further notes that Opposer has recently asserted, incorrectly and without any basis, that Applicant is allegedly withholding the identities of witnesses in his Notice of Deficiencies in Initial Disclosures of Applicant. Opposer's "objection" and assertion is erroneous and meritless. Applicant's Initial Disclosures included a reservation of his right to later amend his disclosures if and when appropriate, which is common practice to protect Applicant's rights and not an attempt to withhold information from Opposer. If and when circumstances warrant, Applicant will promptly amend his Initial Disclosures, but Applicant presently has no further information to disclose.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2

All documents relating to Opposer's knowledge of the adoption and use of the DOSF Mark by Applicant as identified in the Applicant's Initial Disclosures of May 20, 2013.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2

Applicant objects to this Request to the extent it is vague, ambiguous, and overly broad because Applicant did not identify any documents in his Initial Disclosures relating to Applicant's adoption, use and registration of the DOSF Mark. That said, on January 9, 2012, Applicant produced all documents in his possession, custody, or control relating to the adoption, use, and registration of the DOSF Mark in response to Opposer's First Request for Production of Documents, and Applicant has no further documents to produce. Applicant notes that Opposer

has objected to a small number of the produced documents because Applicant properly redacted private, identifying consumer data (such as names and home addresses) that is not relevant to the issues in this proceeding and in the interest of protecting the privacy of third parties. However, information that *is* relevant in those documents - including the dates of sales, and the cities and states of such interstate commerce sales - was left intact.

Applicant further notes that Opposer has recently asserted, incorrectly and without any basis, that Applicant is allegedly withholding the identities of witnesses in his Notice of Deficiencies in Initial Disclosures of Applicant. Opposer's "objection" and assertion is erroneous and meritless. Applicant's Initial Disclosures included a reservation of his right to later amend his disclosures if and when appropriate, which is common practice to protect Applicant's rights and not an attempt to withhold information from Opposer. If and when circumstances warrant, Applicant will promptly amend his Initial Disclosures, but Applicant presently has no further information to disclose.

Dated: July 23, 2013

By: Marina A. Lewis/
Marina A. Lewis
Attorney for Applicant

Finnegan, Henderson, Farabow, Garrett
& Dunner, LLP
Stanford Research Park
3300 Hillview Avenue
Palo Alto, CA 94304-1203
Telephone: 650.849.6766
Facsimile: 650.849.6666

CERTIFICATE OF SERVICE

I certify that on July 23, 2013, a true copy of the foregoing

**APPLICANT'S RESPONSE TO OPPOSER'S REQUEST
FOR PRODUCTION OF DOCUMENTS TO APPLICANT**

was sent via First Class Mail and electronic mail to:

Mr. Kurt Leyendecker
Leyendecker & Lemire LLC
9137 E. Mineral Cir., Ste. 280
Centennial, CO 80112

kurt@coloradoiplaw.com

/Marina A. Lewis/
Marina A. Lewis

Exhibit J

Kurt Leyendecker

From: Kurt Leyendecker [kurt@coloradoiplaw.com]
Sent: Friday, July 26, 2013 2:17 PM
To: 'Lewis, Marina'
Subject: RE: Murta v. Suarez Opposition No. 91/200327

Marina:

Thanks for your email. But I must admit it is extremely confusing and befuddling.

As an initial matter since the proceeding was "reset", I am essentially resetting my discovery requests as well. For sake of completeness and clarity, some of the interrogatories and document requests that shall be forthcoming may seem familiar to those provided before the reset. As you deem appropriate, please feel free to affirm the responses previously provided as applicable to the particular inquiry. In so much as the specific inquiry differs from those in the previous requests, please provide a complete answer.

As to the substance of your email below:

In your Initial disclosures applicant states,

Applicant reserves the right to amend the list above to include individuals or entities whose identities are known, but are not being disclosed at this time for reasons of privacy and confidentiality. Specifically, applicant is aware of individuals who may possess additional information upon which Applicant may need to rely in support of his claims and defenses.

Applicant specifically acknowledges the existence of parties that he **may need to rely upon** while stating that he will not disclose them.

The Applicant also refuses to identify the names of individuals and entities concerning the manufacture of the subject goods claiming Trade Secret and ignoring the very specific provisions of the standard protective order that address his very concerns.

Given the foregoing, it is abundantly clear that Applicant knows of individuals and entities with information relevant to his defense in the action but has chosen for several reasons to withhold this information from the Opposer. The Opposer has noted that the Applicants concerns are unfounded given the standard protective order which permits the Applicant to appropriately designate the sensitive information as Attorneys Eyes Only (AEO). While the Opposer is permitted to reserve his right to supplement his disclosures with newly discovered information, he is not permitted under the rules to withhold known information that he admits he may require in his defense.

Consider the foregoing an attempt to resolve a discovery dispute in good faith. I am close to concluding that Applicant is unwilling to turn over relevant and known materials and information that is pertinent to the action. **Please let me know a time or times when you are available to talk next week to confer and see if a solution to this impasse can be reached.**

As for possible settlement, I contacted you initially soliciting your thoughts as to how we might settle this matter to our client's mutual satisfaction and benefit. I indicated that I didn't have any ideas. Your email of May 22, 2013 was your response to my email and did not offer any possible solutions. You instead inquired as to my client's intentions. His intentions I believe are obvious: he wants to obtain trademark rights in the DOSF mark and manufacture and sell such product under the DOSF name. I disagree with your assertion of your client's common law rights: based on the sketchy discovery provided to date, it is unclear to me that Mr. Suarez had any continuous common law use prior to the filing of

Exhibit K

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

James Murta)	
)	
Plaintiff,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
Defendant.)	
)	

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT**

Pursuant to Fed.R.Civ.P. 33 and 37 CFR § 2.120(d)(2) Plaintiff, James Murta, hereby submits the following Requests for Production of Documents to the Defendant, Victor Saurez. The documents requested are to be produced for inspection and copying within thirty days of the service of these discovery requests, at the offices of Leyendecker & Lemire, LLC, 5460 South Quebec St, Suite 330, Greenwood Village, Colorado 80111.

INSTRUCTIONS

A. For any claim that a document and/or an undocumented communication are privileged or that information constitutes attorney work product:

1. Identify each such document and/or communication or any such information by:

- a. date(s);
- b. author(s) or speaker(s);
- c. addressee(s) or listener(s);
- d. type of document and/or communication or information (i.e., general subject matter of document and/or communication or information); and
- e. general subject matter of document and/or communication and information.

2. State the basis for the claim of privilege or attorney work-product.

B. If the requested documents are not in the possession of the Defendant, and cannot be reasonably obtained, identify the person or entity in whose custody the documents are, or in whose custody the Defendant reasonably believes the documents might be.

DEFINITIONS

1. "Document" means any writing, e-mail, drawing, graph, chart, photograph, phono-record, tape-recording, magnetic disk, computer storage device, or other data compilation from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form.

2. "Person" includes any natural person, firm, corporation, partnership, joint venture, organization, association, or other entity, unless the context clearly indicates that reference is made to only a natural person.

3. "You", "Your", "Victor", "Victor Suarez", "Mr. Saurez" or "Applicant" means Defendant Victor Suarez., any affiliated and/or predecessor corporations or

companies, and their respective officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Victor Suarez.

4. “Jim Murta”, Mr. Murta” or “Plaintiff” means the Plaintiff Jim Murta. and any agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Jim Murta.

5. “Communication” means any form of communication from one person to another, whether written, electronic, or oral, unless a discovery request expressly requests either a written, electronic, or oral communication.

6. Where the context of any request makes it appropriate, each singular word shall include the plural and each plural word shall include its singular. The masculine gender shall refer to both male and female persons as the context requires.

7. “Mark” refers to the Derby of San Francisco mark for which the above referenced application was made and any similar variations thereof including but not limited to all marks including the phrase “Derby of San Francisco”.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents identified in any if the Defendant’s answers to the Interrogatories dated 08.01.2013 and served concurrently herewith.

2. Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the use in commerce of the Mark for the four years prior to the filing date of the subject application in association with each specific good recited in the application.

3. Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the continued use in commerce of the Mark since the filing date of the subject application in association with each specific good recited in the application.

4. Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the use of the Mark in interstate commerce for the four years prior to the filing date in association with each specific good recited in the application.

5. Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the use of the Mark in interstate commerce since the filing date of the subject application in association with each specific good recited in the application.

6. Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the supplier(s) and manufacture(s) Defendant used dating from four years before the filing date until the filing date, that are located in San Francisco, for each specific good recited in the application sold under the Mark.

7. Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written

communications, recorded verbal communications and advertising and marketing materials, relating to the supplier(s) and manufacture(s) Defendant has been using since the filing date, which are located in San Francisco, for each specific good recited in the application sold under the Mark.

By _____

Date 08/01/13

Kurt P Leyendecker
Leyendecker & Lemire, LLC
5460 South Quebec St, Suite 330
Greenwood Village, Colorado 80111
(303) 768-0123
kurt@coloradoiplaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2013, a true and correct copy of the foregoing
REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT was served on
Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Stanford Research Park
3300 Hillview Avenue,
Palo Alto, CA 94304-1203
marina.lewis@finnegan.com

Kurt P Leyendecker

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

In the Matter of Trademark Application No. 77886135

For the Mark: DERBY OF SAN FRANCISCO

James Murta)	
)	
Plaintiff,)	
)	
v.	)	OPPOSITION
	)	PROCEEDING No. <u>91200327</u>
Victor Suarez)	
)	
Defendant.)	
)	

PLAINTIFF'S INTERROGATORIES TO DEFENDANT

Pursuant to Fed.R.Civ.P. 33 and 37 CFR § 2.120(d) Plaintiff, James Murta, hereby requests the Defendant, Victor Suarez, answer the following interrogatories in writing and under oath within thirty days of the service of these requests at the offices of Leyendecker & Lemire, LLC, 5460 South Quebec St, Greenwood Village, Colorado 80111.

INSTRUCTIONS

A. For any claim that a document and/or an undocumented communication are privileged or that information constitutes attorney work product:

1. Identify each such document and/or communication or any such information by:

- a. date(s);
- b. author(s) or speaker(s);
- c. addressee(s) or listener(s);
- d. type of document and/or communication or information (i.e., general subject matter of document and/or communication or information); and
- e. general subject matter of document and/or communication and information.

2. State the basis for the claim of privilege or attorney work-product.

B. If the requested documents are not in the possession of the Defendant, and cannot be reasonably obtained, identify the person or entity in whose custody the documents are, or in whose custody the Defendant reasonably believes the documents might be.

DEFINITIONS

1. "Document" means any writing, e-mail, drawing, graph, chart, photograph, phono-record, tape-recording, magnetic disk, computer storage device, or other data compilation from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form.

2. "Person" includes any natural person, firm, corporation, partnership, joint venture, organization, association, or other entity, unless the context clearly indicates that reference is made to only a natural person.

3. "You", "Your", "Victor", "Victor Suarez", "Mr. Saurez" or "Applicant" means Defendant Victor Suarez., any affiliated and/or predecessor corporations or

companies, and their respective officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Victor Suarez.

4. "Jim Murta", Mr. Murta" or "Plaintiff" means the Plaintiff Jim Murta. and any agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Jim Murta.

5. "Communication" means any form of communication from one person to another, whether written, electronic, or oral, unless a discovery request expressly requests either a written, electronic, or oral communication.

6. Where the context of any request makes it appropriate, each singular word shall include the plural and each plural word shall include its singular. The masculine gender shall refer to both male and female persons as the context requires.

7. "Mark" refers to the Derby of San Francisco mark for which the above referenced application was made and any similar variations thereof including but not limited to all marks including the phrase "Derby of San Francisco".

INTERROGATORIES

1. For each good listed in the subject application, list all suppliers and manufacturers associated with the production of the good from December 4, 2005 to December 4, 2009 and from December 4, 2009 to present including addresses, contact information, and all purchase orders, contracts and/or invoices associated with each manufacturer or supplier.

2. For each good listed in the subject application, list all purchasers of the good from December 4, 2005 to December 4, 2009 and from December 4, 2009 to

present and provide for each purchaser address, contact information and all purchase orders, contracts and/or invoices associated with each purchaser.

3. For each good listed in the subject application, list all uses of the mark in interstate commerce from December 4, 2005 to December 4, 2009 and from December 4, 2009 to present including each of the goods first use in commerce date and the first use in interstate commerce date, applicable addresses, contact information, and all purchase orders, contracts and/or invoices associated with each use.

4. For all documents involving to correspondence relating to the creation, development, selection, design or adoption of the Mark by Registrant, including but not limiting to trademark searches, investigations, market research or studies, written reports, artwork, sketches, drafts, drawings or images.

5. Explain the circumstances of the decision by the Applicant and Applicant's attorney to use the photographed specimen which included the name CAPT. SPALDING as the specimen to be presented to the USPTO Board.

6. Identify all marketing and advertising materials displaying the Mark in use from December 4, 2005 to present.

7. Identify the manufacture(s) used to produce goods in the San Francisco from December 4, 2005 to present.

8. Identify any and all documents responsive to the foregoing interrogatories which are lost or unavailable and identify the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

9. Identify all persons who participated in any way in the preparation of the responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Defendant's lawyers or their representatives).

10. Identify any and all documents used in relation to responding to this Interrogatory.

By _____

Date 08/01/13

Kurt P Leyendecker
Leyendecker & Lemire, LLC
5460 South Quebec St, Suite 330
Greenwood Village, Colorado 80111
(303) 768-0123
kurt@coloradoiplaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2013, a true and correct copy of the foregoing INTERROGATORIES TO DEFENDANT was served on Marina A. Lewis by electronic mail and by mailing said copy via U.S. Mail to:

MARINA A LEWIS

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Stanford Research Park
3300 Hillview Avenue,
Palo Alto, CA 94304-1203
marina.lewis@finnegan.com

Kurt P Leyendecker

Exhibit L

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT'S RESPONSES TO PLAINTIFF'S INTERROGATORIES TO DEFENDANT DATED AUGUST 1, 2013
--	---

**APPLICANT'S RESPONSES TO PLAINTIFF'S
INTERROGATORIES TO DEFENDANT DATED AUGUST 1, 2013**

PROPOUNDING PARTY: Opposer James Murta

RESPONDING PARTY: Applicant Victor Suarez

SET DATED: August 1, 2013

Pursuant to Fed.R.Civ.P. 33 and 37 CFR § 2.120(d), Applicant Victor Suarez (“Applicant”) serves the following responses to Opposer Jim Murta’s (“Opposer”) August 1, 2013 Interrogatories as follows:

GENERAL STATEMENT

The following responses to Opposer’s August 1, 2013 Interrogatories are based on information and discovery available as of the date of this response and are given without

prejudice to Applicant's right to rely on subsequently discovered information, facts or documents. Further discovery, independent investigation and analysis may supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to additions, changes to, or variations from the information herein set forth. Applicant accordingly reserves the right to change, amend, or supplement any response herein as additional facts are ascertained, analysis is made, legal research is completed and contentions are made. The responses contained herein are made in a good faith effort to comply with the provisions of the Federal Rules of Civil Procedure but are in no way deemed to prejudice Applicant in relation to further discovery, research and analysis.

INTERROGATORY NO. 1

For each good listed in the subject application, list all suppliers and manufacturers associated with the production of the good from December 4, 2005 to December 4, 2009 and from December 4, 2009 to present including addresses, contact information, and all purchase orders, contracts and/or invoices associated with each manufacturer or supplier.

RESPONSE TO INTERROGATORY NO. 1

Applicant objects to this interrogatory to the extent that it is vague, ambiguous, and overly broad, and to the extent that it seeks information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for information identifying any suppliers and manufacturers used by Applicant for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer. To the extent the interrogatory relates to a request for information identifying

any suppliers and manufacturers used by Applicant since the filing date of the subject application, Applicant objects to such request because Opposer has not raised any claims for which informing related to Applicant's post-filing manufacturing of the goods in the application would be relevant (e.g., geographic descriptiveness under Section 2(e)(3)).

INTERROGATORY NO. 2

For each good listed in the subject application, list all purchasers of the good from December 4, 2005 to December 4, 2009 and from December 4, 2009 to present and provide for each purchaser address, contact information and all purchase orders, contracts and/or invoices associated with each purchaser.

RESPONSE TO INTERROGATORY NO. 2

Applicant objects to this interrogatory to the extent that it is vague, ambiguous, and overly broad, and to the extent that it seeks information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for information identifying purchasers of goods listed in the subject application from Applicant for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer. To the extent the interrogatory relates to a request for information identifying any purchasers of goods in the subject application since the filing date of the subject application, Applicant objects to such request because Opposer has not raised any claims for which informing related to Applicant's post-filing sales of the goods in the application would be relevant (e.g., abandonment).

Finally, Applicant objects to this Interrogatory on the ground that it seeks information concerning the identity of Applicant's retail commercial customers, and that the identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material. Applicant further objects to this Interrogatory on the ground that it seeks the identity and home contact information of individual customers who have purchased products from Applicant. TMBP Section 120.02 expressly discourages parties from submitting materials that reflect personal identifying information such as home addresses or telephone numbers.

That said, on January 9, 2012, Applicant provided information to Opposer concerning sales made to Sunset Surf Shop, a now-defunct retail store located in San Francisco, California. Applicant has no further information to provide at this time.

INTERROGATORY NO. 3

For each good listed in the subject application, list all uses of the mark in interstate commerce from December 4, 2005 to December 4, 2009 and from December 4, 2009 to present including each of the goods first use in commerce date and the first use in interstate commerce date, applicable addresses, contact information, and all purchase orders, contracts and/or invoices associated with each use.

RESPONSE TO INTERROGATORY NO. 3

Applicant objects to this interrogatory to the extent that it is vague, ambiguous, and overly broad, and to the extent that it seeks information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects

to the request for information related to use of DERBY OF SAN FRANCISCO (and Design) mark (the "DOSF Mark") by Applicant for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer. To the extent the interrogatory relates to a request for information identifying use of the DOSF Mark by Applicant since the filing date of the subject application, Applicant objects to such request because Opposer has not raised any claims for which information related to Applicant's post-filing use of the DOSF Mark would be relevant (e.g., abandonment).

Finally, Applicant objects to this Interrogatory on the ground that it seeks information concerning the identity of Applicant's retail commercial customers, and that the identity of these individuals and the entities they represent constitutes highly confidential Trade Secret/Commercially Sensitive material. Applicant further objects to this Interrogatory on the ground that it seeks the identity and home contact information of individual customers who have purchased products from Applicant. TMBP Section 120.02 expressly discourages parties from submitting materials that reflect personal identifying information such as home addresses or telephone numbers.

INTERROGATORY NO. 4

For all documents involving to correspondence relating to the creation, development, selection, design or adoption of the Mark by Registrant, including but not limiting to trademark searches, investigations, market research or studies, written reports, artwork, sketches, drafts, drawings or images.

RESPONSE TO INTERROGATORY NO. 4

Applicant objects to this Interrogatory to the extent that it is vague, ambiguous, and unintelligible. Applicant further objects to this Interrogatory to the extent that it is unduly burdensome in seeking information which is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer.

INTERROGATORY NO. 5

Explain the circumstances of the decision by the Applicant and Applicant's attorney to use the photographed specimen which included the name CAPT. SPALDING as the specimen to be presented to the USPTO Board.

RESPONSE TO INTERROGATORY NO. 5

Applicant objects to this interrogatory to the extent that it is vague, ambiguous, and overly broad, and to the extent that it seeks confidential information that is subject to attorney-client privilege. Applicant also objects to this interrogatory to the extent that it is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer.

INTERROGATORY NO. 6

Identify all marketing and advertising materials displaying the Mark in use from December 4, 2005 to present.

RESPONSE TO INTERROGATORY NO. 6

Applicant objects to this interrogatory to the extent that it is vague, ambiguous, and overly broad, and to the extent that it seeks information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for information identifying marketing and advertising materials displaying the Mark for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer. To the extent the interrogatory relates to a request for information identifying marketing and advertising materials displaying the Mark since the filing date of the subject application, Applicant objects to such request because Opposer has not raised any claims for which informing related to Applicant's post-filing marketing and advertising efforts would be relevant (e.g., abandonment).

That said, and without waiving any of the aforementioned objections, on January 9, 2012, Applicant provided information to Opposer concerning his marketing and advertising efforts reflecting the DOSF Mark. Applicant has used digital graphic ads featured on online forums including Craigslist and Sell.com since at least 2005. These ads were disseminated on Craigslist city-specific forums in San Francisco, Los Angeles, Hawaii, Chicago, Miami, Boston, and Seattle.

INTERROGATORY NO. 7

Identify the manufacture(s) used to produce goods in the San Francisco from December 4, 2005 to present.

RESPONSE TO INTERROGATORY NO. 7

Applicant objects to this Interrogatory to the extent that it is vague, ambiguous, and unintelligible. Specifically, Opposer requests information related to “goods” but does not specify which “goods.” Moreover, Opposer requests information concerning production of goods in “the San Francisco.” However, Applicant is not certain whether Opposer is referring to the San Francisco metropolitan region, San Francisco proper, etc.

In addition, Applicant objects to this interrogatory to the extent that it seeks information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for information identifying manufacturers of goods for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer. To the extent the interrogatory relates to a request for information identifying any manufacturers used by Applicant since the filing date of the subject application, Applicant objects to such request because Opposer has not raised any claims for which information related to Applicant’s post-filing manufacturing of the goods in the application would be relevant (e.g., geographic descriptiveness under Section 2(e)(3)).

INTERROGATORY NO. 8

Identify any and all documents responsive to the foregoing interrogatories which are lost or unavailable and identify the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

RESPONSE TO INTERROGATORY NO. 8

Applicant objects to this Interrogatory to the extent that it is vague, ambiguous, and unintelligible. Applicant further objects to this Interrogatory to the extent that it is unduly burdensome in seeking information which is not relevant not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer.

INTERROGATORY NO. 9

Identify all persons who participated in any way in the preparation of the responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Defendant's lawyers or their representatives).

RESPONSE TO INTERROGATORY NO. 9

Applicant Victor Suarez participated in the preparation of these responses to Opposer's Interrogatories and provided information concerning his use of the DOSF Mark.

INTERROGATORY NO. 10

Identify any and all documents used in relation to responding to this Interrogatory.

RESPONSE TO INTERROGATORY NO. 10

Applicant objects to this Interrogatory to the extent that it is vague, ambiguous, and unintelligible. Specifically, Opposer does not identify the interrogatory to which this request for information relates.

Dated: September 5, 2013

By: / Marina A. Lewis /
Marina A. Lewis
Attorney for Applicant

Finnegan, Henderson, Farabow, Garrett
& Dunner, LLP
Stanford Research Park
3300 Hillview Avenue
Palo Alto, CA 94304-1203
Telephone: 650.849.6766
Facsimile: 650.849.6666

CERTIFICATE OF SERVICE

I certify that on September 5, 2013, a true copy of the foregoing

**APPLICANT'S RESPONSES TO OPPOSER'S
INTERROGATORIES DATED AUGUST 1, 2013**

was sent via first-class mail and electronic mail to:

Mr. Kurt Leyendecker
Leyendecker & Lemire LLC
5460 South Quebec Street, Suite 330

kurt@coloradoiplaw.com

/ Marina A. Lewis /
Marina A. Lewis

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

In the Matter of Application Serial No. 77/886,135
For the mark: DERBY OF SAN FRANCISCO (and Design)
Published in the *Official Gazette* on: March 15, 2011

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT’S RESPONSE TO PLAINTIFF’S REQUEST FOR PRODUCTION OF DOCUMENTS DATED AUGUST 1, 2013
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**APPLICANT’S RESPONSE TO PLAINTIFF’S REQUEST FOR
PRODUCTION OF DOCUMENTS DATED AUGUST 1, 2013**

Pursuant to Fed.R.Civ.P. 34 and 37 CFR § 2.120(d), Applicant Victor Suarez (“Applicant”) serves the following responses to Opposer Jim Murta’s (“Opposer”) August 1, 2013 request for production of documents as follows:

GENERAL STATEMENT

Applicant responds to Opposer’s Request for Production of Documents subject to the accompanying general objections. Applicant also submits these responses subject to, without intending to waive, but expressly preserving: (a) any objections as to the competency, relevance, materiality, privilege or admissibility of any of the responses or any of the documents or files

identified in any response hereto; and (b) the right to object to other discovery involving or relating to the subject matter of the documents or files identified in response to these requests.

The specific responses that follow are based on information currently available to Applicant. Applicant's response, while based on a diligent investigation by Applicant, reflects only the current state of Applicant's knowledge, understanding and belief respecting the matters at issue in this case. Applicant anticipates that as this case proceeds, further information may be discovered by Applicant and, without in any way obligating itself to do so, Applicant reserves the right to modify or supplement this response and to disclose information it may subsequently discover. Further, this response is made without prejudice to using or relying on at trial subsequently discovered information, or information omitted from or not produced in connection with this response.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Please produce all documents identified in any if [sic] the Defendant's answers to the Interrogatories dated 08.01.2013 and served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Applicant did not identify any documents in his response to Opposer's Interrogatories dated August 1, 2013 and has no further documents to produce at this time.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2

Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal

communications and advertising and marketing materials, relating to the use in commerce of the Mark for the four years prior to the filing date of the subject application in association with each specific good recited in the application.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2

Applicant objects to this Request to the extent that this request is seeking information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for documents related to Applicant's use of the DERBY OF SAN FRANCISCO (and Design) mark ("the DOSF Mark") for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the continued use in commerce of the Mark since the filing date of the subject application in association with each specific good recited in the application.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

Applicant objects to this Request to the extent that this request is seeking information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for documents related to Applicant's

continued use of the DOSF Mark since the filing date of the subject application because Opposer has not raised any claims for which documents evidencing Applicant's post-filing use of the DOSF Mark would be relevant (e.g., abandonment). That said, and without waiving any of the aforementioned objections, on January 9, 2012, Applicant produced all documents in his possession, custody, or control relating to use of the DOSF Mark by Applicant at the time of filing the subject application, and Applicant has no further documents to produce at this time.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4

Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the use of the Mark in interstate commerce for the four years prior to the filing date in association with each specific good recited in the application.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4

Applicant objects to this Request to the extent that this request is seeking information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for documents related to Applicant's use in interstate commerce of the DERBY OF SAN FRANCISCO (and Design) mark ("the DOSF Mark") for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5

Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the use of the Mark in interstate commerce since the filing date of the subject application in association with each specific good recited in the application.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5

Applicant objects to this Request to the extent that this request is seeking information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for documents related to Applicant's continued use of the DOSF Mark since the filing date of the subject application because Opposer has not raised any claims for which documents evidencing Applicant's post-filing use of the DOSF Mark in interstate commerce would be relevant (e.g., abandonment). That said, on January 9, 2012, Applicant produced all documents in his possession, custody, or control relating to use of the DOSF Mark in interstate commerce by Applicant at the time of filing the subject application, and Applicant has no further documents to produce at this time.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the supplier(s) and

manufacture(s) Defendant used dating from four years before the filing date until the filing date, that are located in San Francisco, for each specific good recited in the application sold under the Mark.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad, and to the extent that this request is seeking information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for documents related to any suppliers and manufacturers used by Applicant for the four years prior to the filing date of the subject application as not relevant to any claims raised by Opposer.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7

Please produce all documents including but not limited to invoices, purchase orders, proposals, quotes, photographs, email conversations, written communications, recorded verbal communications and advertising and marketing materials, relating to the supplier(s) and manufacture(s) Defendant has been using since the filing date, which are located in San Francisco, for each specific good recited in the application sold under the Mark.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7

Applicant objects to this Request on the grounds that this request is vague and ambiguous, and overly broad, and to the extent that this request is seeking information that is not relevant to any claims asserted by Opposer in the pending action, and not reasonably calculated

to lead to the discovery of admissible evidence in support of any claims raised by Opposer. Specifically, Applicant objects to the request for documents related to any suppliers and manufacturers used by Applicant since the filing date of the subject application because Opposer has not raised any claims for which documents evidencing Applicant's post-filing manufacturing of the goods in the application would be relevant (e.g., geographic descriptiveness under Section 2(e)(3)). That said, on January 9, 2012, Applicant produced all documents in his possession, custody, or control relating to the manufacture of goods in the subject application, and Applicant has no further documents to produce at this time.

Dated: September 5, 2013

By: / Marina A. Lewis /
Marina A. Lewis
Attorney for Applicant

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CERTIFICATE OF SERVICE

I certify that on September 5, 2013, a true copy of the foregoing

**APPLICANT'S RESPONSE TO OPPOSER'S
REQUEST FOR PRODUCTION OF DOCUMENTS
DATED AUGUST 1, 2013**

was sent via first-class mail and electronic mail to:

Mr. Kurt Leyendecker
Leyendecker & Lemire LLC
5460 South Quebec Street, Suite 330

kurt@coloradoiplaw.com

/ Marina A. Lewis /
Marina A. Lewis