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Filing date: **04/18/2014**

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

Proceeding	91200484
Party	Plaintiff Athletics Investment Group LLC dba The Oakland Athletics Baseball Company
Correspondence Address	DON M OBERT COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES mlk@cll.com, dmo@cll.com, trademark@cll.com, jmn@cll.com
Submission	Motion to Compel Discovery
Filer's Name	Don M. Obert
Filer's e-mail	mlk@cll.com, dmo@cll.com, trademark@cll.com, jmn@cll.com
Signature	/Don M. Obert/
Date	04/18/2014
Attachments	APPLES & A'S Opp No 91200484 Mot Compel 04182014.pdf(2296796 bytes)

suspended and that the pretrial disclosure, trial and other periods be reset once the Board decides this motion.

MEMORANDUM IN SUPPORT OF MOTIONS

STATEMENT OF FACTS

The facts on which this motion is based are set forth fully in the accompanying declaration of Don M. Obert (“Obert Decl.”) and are summarized briefly here for the Board’s convenience.

Opposer initiated this proceeding by filing a Notice of Opposition on July 1, 2011, against Application Serial No. 77/926,242 filed by Gartner Studios, Inc. (“Applicant”) seeking to register the standard character word mark APPLES & A’S (“Applicant’s Mark”) for “Clipboards, stationery, envelopes, address labels, file folders, letter trays, thank you message cards, note pads, hanging file boxes for personal and business papers, document storage boxes for personal and business papers, hanging file folders for personal and business papers, binder clips, predesigned adhesive stickers and blank journals” in International Class 16. Obert Decl. ¶ 2. The Notice of Opposition alleged that registration of Applicant’s Mark was likely to result in confusion. Obert Decl. ¶ 3.

On December 16, 2013, Opposer served Applicant with Opposer’s First Set of Interrogatories and Request for Production of Documents and Things (“Opposer’s Discovery Requests”)¹ by First Class Mail. Obert Decl. ¶ 4 and Exhibit A. Applicant’s responses were due on January 21, 2014. Obert Decl. ¶ 5.

¹ This Motion does not address Opposer’s simultaneously-served First Set of Requests for Admission because Applicant also failed to respond to those requests and they are thus deemed admitted.

On January 2, 2014, Opposer's counsel conferred by telephone with Applicant's counsel advising the latter that Opposer would be amenable to extending the trial deadlines set forth by the Board by ninety days, as well as Applicant's deadline to respond to Opposer's Discovery Requests by sixty days, making Applicant's new deadline March 21, 2014. Obert Decl. ¶ 6. During that telephone conference, Applicant's counsel consented to the extensions of the deadlines on behalf of Applicant. Obert Decl. ¶ 7. On January 3, 2014, Opposer's counsel filed a motion on behalf of the parties requesting a ninety day extension of the trial deadlines set forth by the Board, and a sixty day extension of Applicant's deadline to respond to Opposer's Discovery Requests. Obert Decl. ¶ 8. On January 29, 2014, the Board granted the motion. Obert Decl. ¶ 9.

On March 28, 2014, having not yet received Applicant's responses to Opposer's Discovery Requests, Opposer's counsel attempted to contact Applicant's counsel by telephone, leaving a voice message for Applicant's counsel advising him that Applicant's discovery responses had not been received and asking if Applicant's discovery responses had been served, and requesting that Applicant's counsel inform Opposer's counsel when Opposer should expect to receive Applicant's responses to Opposer's Discovery Requests, the date such discovery responses were sent, and the method by which they were sent. Obert Decl. ¶ 10. That same day, Opposer's counsel sent a follow-up e-mail to Applicant's counsel reiterating the statements made and questions posed during the earlier telephone message from Opposer's counsel to Applicant's counsel, and further requesting that Applicant's counsel provide a response by March 31, 2014. Obert Decl. ¶ 11 and Ex. B. Opposer's counsel did not receive a response from Applicant's counsel. Obert Decl. ¶ 12. On April 16, 2014, having not received any response from Applicant's counsel, Opposer's counsel sent a second follow-up e-mail to Applicant's counsel

reiterating the statements made and questions posed as part of as part of his March 28, 2013 telephone message and email to Applicant's counsel, and further stating that if Opposer's counsel had not heard back from Applicant's counsel by close of business on April 17, 2014, Opposer would be forced to make this motion to compel Applicant's responses to Opposer's Discovery Requests. Obert Decl. ¶ 13 and Ex. C.

To date, Applicant has not provided responses to Opposer's Discovery Requests, nor has Applicant otherwise informed Opposer's counsel as to a date by which Opposer should expect to receive Applicant's responses to Opposer's Discovery Requests, leaving Opposer with no choice but to make this motion to compel given Opposer's upcoming pre-trial disclosure deadline. Obert Decl. ¶ 14.

ARGUMENT

OPPOSER'S MOTION TO COMPEL SHOULD BE GRANTED

A motion to compel should be granted where, as here, after a movant has made a good faith effort to resolve the matter, a party refuses to provide timely discovery responses, including interrogatory responses and documents and things. 37 C.F.R. §2.120(e); TBMP 523; Envirotech Corp. v. Compagnie Des Lampes, 219 U.S.P.Q. 448 (T.T.A.B. 1979); General Sealer Corp. v. H.H. Robertson Co., 193 U.S.P.Q. 384 (T.T.A.B. 1976). An order compelling Applicant to respond to discovery is plainly warranted here. As mentioned above and set forth more fully below, Applicant has not served any responses to Opposer's Discovery Requests.

Opposer is entitled to responses to its discovery requests in order to pursue this opposition and submit appropriate evidence in support of its claims. As set forth above and in the attached Declaration of Don M. Obert, before filing this motion, Opposer, by its attorneys, made a good faith effort to resolve these issues. Nevertheless, Applicant has failed to produce

responses to Opposer's Discovery Requests, or to respond to Opposer's attempts to communicate with Applicant's counsel, leaving Opposer no choice but to seek the Board's assistance in compelling Applicant's response.

For the foregoing reasons, Opposer respectfully requests that the Board issue an order compelling Applicant to respond to Opposer's Discovery Requests. Opposer further requests that this matter be suspended and that the pretrial disclosure, trial and other periods be reset once the Board decides this motion.

Dated: New York, New York
April 18, 2014

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Don M. Obert/
Mary L. Kevlin
Richard S. Mandel
Don M. Obert

1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 18, 2014, I caused a true and correct copy of the foregoing Opposer's Motions to Compel and to Suspend and supporting Declaration of Don M. Obert to be sent via First Class Mail, postage prepaid, to Applicant's Attorney and Correspondent of Record, John M. Weyrauch, Esq., Dicke Billig & Czaja PLLC, 100 South 5th Street, Suite 2250, Minneapolis, Minnesota 55402-1235.

/Don M. Obert/
Don M. Obert

cards, note pads, hanging file boxes for personal and business papers, document storage boxes for personal and business papers, hanging file folders for personal and business papers, binder clips, predesigned adhesive stickers and blank journals” in International Class 16.

3. The Notice of Opposition alleged that Applicant’s Mark was likely to result in confusion.

4. On December 16, 2013, Opposer served Applicant with Opposer’s First Set of Interrogatories and Request for Production of Documents and Things (“Opposer’s Discovery Requests”)¹ by First Class Mail. A true and complete copy of Opposer’s Discovery Requests are attached hereto as Exhibit A.

5. Applicant’s responses were due on January 21, 2014.

6. On January 2, 2014, Opposer’s counsel conferred by telephone with Applicant’s counsel advising that Opposer would be amenable to extending the trial deadlines set forth by the Board by ninety days, and Applicant’s deadline to respond to Opposer’s Discovery Requests by sixty days, making Applicant’s new response deadline March 21, 2014.

7. During that telephone conference Applicant’s counsel consented to the extensions of the deadlines on behalf of Applicant.

8. On January 3, 2014, Opposer’s counsel filed a motion on behalf of the parties requesting a ninety day extension of the trial deadlines set forth by the Board, as well as a sixty day extension of Applicant’s deadline to respond to Opposer’s Discovery Requests.

¹ This Motion does not address Opposer’s simultaneously-served First Set of Requests for Admission because Applicant also failed to respond to those requests and they are thus deemed admitted.

9. On January 29, 2014, the Board granted the motion.

10. On March 28, 2014, having not yet received Applicant's responses to Opposer's Discovery Requests, Opposer's counsel attempted to contact Applicant's counsel by telephone, leaving a voice message for Applicant's counsel advising him that Applicant's discovery responses had not been received, and requesting that Applicant's counsel inform Opposer's counsel when Opposer should expect to receive Applicant's responses to Opposer's Discovery Requests, the date such discovery responses were sent and the method by which they were sent.

11. On March 28, 2014, Opposer's counsel sent a follow-up e-mail to Applicant's counsel reiterating the statements made and questions posed during the earlier telephone message to Applicant's counsel, and further requesting that Applicant's counsel provide a response by March 31, 2014. A true and complete copy of Opposer's Discovery Requests are attached hereto as Exhibit B.

12. Opposer's counsel did not receive a response from Applicant's counsel.

13. On April 16, 2014, having not received any response from Applicant's counsel, Opposer's counsel sent a second follow-up e-mail to Applicant's counsel reiterating the statements made and questions posed as part of his March 28, 2014 telephone message and email to Applicant's counsel, and further stating that if Opposer's counsel did not hear from Applicant's counsel by close of business on April 17, 2014, Opposer would be forced to make this motion to compel Applicant's responses to Opposer's Discovery Requests. A true and complete copy of that email is attached hereto as Exhibit C.

14. To date, Applicant has not provided responses to Opposer's Discovery Requests, nor has Applicant otherwise informed Counsel herein of a date as to which Opposer could expect to receive Applicant's responses to Opposer's Discovery Requests.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, EXECUTED ON APRIL 18, 2014 AT NEW YORK, NEW YORK.



DON M. OBERT

Exhibit A

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

In re Application Serial No. 77/926,242
Filed: February 2, 2010
For Mark: APPLES & A'S
Published in the Official Gazette: January 4, 2011



-----X	
OAKLAND INVESTMENT GROUP	:
LLC D/B/A/ THE OAKLAND	:
ATHLETICS BASEBALL COMPANY,	:
	:
Opposer,	:
	:
v.	:
	:
GARTNER STUDIOS, INC.,	:
	:
Applicant.	:
-----X	

Opposition No. 91200484

**OPPOSER'S FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120, Opposer Athletics Investment Group LLC D/B/A The Oakland Athletics Baseball Company ("Opposer") requests that Applicant Gartner Studios, Inc. ("Applicant") answer under oath the following interrogatories and produce the following documents and things for inspection and copying at the offices of Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036, within 30 days after service hereof. These requests are deemed to be continuing, so as to require prompt production of additional documents and supplemental interrogatory answers should Applicant obtain additional responsive information or documents between the time the answers are served and the time of the final hearing of this opposition proceeding.

DEFINITIONS AND INSTRUCTIONS

1. The term “Applicant” means Applicant Gartner Studios, Inc. and its parent, subsidiary, affiliated or related entities, predecessor and/or successor entities, officers, directors, employees, partners, agents and/or representatives thereof.

2. The term “Opposer” shall mean Opposer Athletics Investment Group LLC D/B/A The Oakland Athletics Baseball Company and its parent, subsidiary, affiliated or related entities, predecessor and/or successor entities, officers, directors, employees, partners, agents and/or representatives thereof, including, without limitation, its OAKLAND ATHLETICS MAJOR LEAGUE BASEBALL club.

3. The term “Major League Baseball” means Major League Baseball Properties, Inc., the Office of the Commissioner of Baseball, the thirty individual baseball clubs and their respective affiliated and related entities, and each of their respective parent, subsidiary, affiliated and/or related entities, predecessor and/or successor entities, officers, directors, employees, partners, agents and/or representatives thereof.

4. The term “Opposer’s A’S Marks” shall refer to marks used, registered and/or applied to be registered by Opposer comprising or containing the term “A’S,” alone or with other word, letter and/or design elements, including, but not limited to the registered marks set forth in Paragraphs 2 and 3 of the Notice of Opposition relating to this Opposition.

5. The term “Applicant’s Marks” shall refer to marks comprising or containing the term A’S, alone or with other word, letter or design elements, including without limitation, the mark APPLES & A’S, as represented in Application Serial No. 77/926,242 (separately referred to as “Applicant’s Applied-For Mark”).

6. The term “commerce” means commerce subject to regulation by Congress, as

defined in 15 U.S.C. §1127.

7. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

8. The term “document” shall be given the broadest possible scope under Fed. R. Civ. P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, flyers, advertisements, web pages, publications, stickers, posters, catalogs, labels, displays, photographs, CDs, DVDs, cover art for CDs and DVDs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

9. The term “identify” when used in connection with a natural person or persons requires Applicant to state the person’s full name and last known business and residential addresses, telephone number and e-mail address.

10. The term “identify” when used in connection with a document requires Applicant to:

- (i) Furnish the name or title, date and general description (e.g., letter,

memorandum, etc.) of the document, the name and address of the person from whom the document originated, the name and address of the persons to whom the document was addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Applicant is in possession of the original of the document or a copy thereof and, if Applicant is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy; and

(iii) Furnish a general description of the subject matter to which the document(s) pertains.

11. The term “identify” when used in connection with a company, organization or other business entity requires Applicant to state the name, address, and phone number of the company, organization or other business entity.

12. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

13. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

14. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

15. If any information or document called for in any interrogatory or request is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim

of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if Applicant contends that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the State Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory or request to which the information or document is responsive.

16. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

17. Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.

INTERROGATORIES

Interrogatory No. 1

State the date when Applicant first selected Applicant's Marks for use or intended use in connection with any goods or services in the United States or in commerce.

Interrogatory No. 2

Identify all persons who or entities which participated in or were consulted in the design,

selection and/or adoption of Applicant's Marks in connection with any products or services to be offered, sold or distributed or intended to be offered, sold or distributed in the United States or in commerce, including a description of the nature of their participation or consultation.

Interrogatory No. 3

Describe in detail the reason(s) for the design, selection and/or adoption of Applicant's Marks for use in the United States or in commerce.

Interrogatory No. 4

Identify any trademark searches or other searches, opinions, investigations, analyses or studies related to the design, selection and/or adoption of Applicant's Marks in the United States or in commerce, including, without limitation, the persons involved, the date(s), and the data or results of those searches, opinions, investigations, analyses or studies.

Interrogatory No. 5

State whether Applicant (or any person or entity authorized by Applicant) has made any use of any marks comprising or containing Applicant's Marks in the United States or in commerce as of the present date, and if so, identify each product or service on or in connection with which Applicant (or any person or entity authorized by Applicant) has made such use (hereinafter "Applicant's Products/Services").

Interrogatory No. 6

For each of Applicant's Products/Services identified in response to Interrogatory No. 5 above, identify:

- (a) The date of first use for each of Applicant's Products/Services;
- (b) The period of time during which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (c) The geographic area(s) in which each of Applicant's Products/Services was or is

being distributed, offered for sale, sold or rendered;

- (d) The annual volume of sales for each year to the present, both by dollar amount and unit amount, for each of Applicant's Products/Services;
- (e) Any other revenues, including, but not limited to, any licensing or sponsorship revenues that Applicant has received in connection with each of Applicant's Products/Services;
- (f) The retail and wholesale price for each of Applicant's Products/Services for each year to the present;
- (g) The channels of trade (e.g., types of establishments, types of retail stores, catalogs, mail order, on-line, promotional sales, private sales, etc.) through which each of Applicant's Products/Services was or is being distributed or sold to the ultimate purchaser, consumer or user; and
- (h) The type of customers to whom each of Applicant's Products/Services is or was marketed, distributed, offered for sale, sold or rendered.

Interrogatory No. 7

Describe Applicant's use or intended use of Applicant's Marks in connection with Applicant's Products/Services.

Interrogatory No. 8

State whether Applicant's Marks have been used or are intended to be used in the United States or in commerce in connection with any indicia, designs, stylizations (including, without limitation, font styles), terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with: (a) sports or sports teams (including, without limitation, baseball stadiums, baseball teams, players, managers or coaches, baseball uniforms or apparel, or equipment used to play baseball); (b) Oakland, California or Arizona; and/or (c) Opposer, its OAKLAND ATHLETICS baseball team or its affiliated Minor League Baseball teams, including, without limitation, the AZL ATHLETICS club, or any other Major League Baseball teams or affiliated Minor League Baseball teams, or their respective trademarks, logos, designs

or stylizations, including without limitation, any of Opposer's A'S Marks, or trademarks, logos, designs, stylizations, or components thereof or similar thereto and, if so, describe the details of each such use or intended use.

Interrogatory No. 9

Identify any persons or entities that have ever, either orally or in writing, authorized, licensed, assigned, granted, conveyed or otherwise transferred to Applicant the right to use Applicant's Marks in the United States or in commerce, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant or conveyance or other transfer was made, including, but not limited to, the details of the grant of rights to use Applicant's Marks and financial terms governing such transaction.

Interrogatory No. 10

Identify any persons or entities Applicant has authorized, licensed, assigned, granted, conveyed or otherwise transferred the right to use Applicant's Marks in the United States or in commerce, or to sell or distribute Applicant's Products/Services, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant, conveyance or other transfer of right to use was made, including, without limitation, the details of the grant of rights to use Applicant's Marks and financial terms governing such transaction.

Interrogatory No. 11

Identify each website, web auction, web hosting, web listing, web posting, web page or social media page, whether owned or controlled by Applicant or by third parties, including its Internet address, on or through which Applicant's Marks and/or Applicant's Products/Services have been, are currently being or are intended to be promoted, advertised, displayed, offered for

sale, sold or otherwise distributed.

Interrogatory No. 12

Identify each kind of advertising, marketing and other promotional materials, including, without limitation, point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item that has been used or is intended to be used in the United States or in commerce in connection with any of Applicant's Products/Services and/or Applicant's Marks.

Interrogatory No. 13

(a) Describe each instance where any person has by word or deed or otherwise -- including, but not limited to, by misdirected mail, e-mail, telephone calls, orders or inquiries -- suggested or reflected a belief that Applicant is licensed, endorsed or sponsored by or is a sponsor of, or is associated or related in any way with or to Opposer, or that the products or services sold, offered for sale, or otherwise distributed or intended to be sold, offered for sale, or otherwise distributed by Applicant in connection with Applicant's Marks in the United States or in commerce are licensed, endorsed or sponsored by or associated or related in any way with or to Opposer, its OAKLAND ATHLETICS baseball team and/or Opposer's A'S Marks; and

(b) Identify all persons knowledgeable about any such instances referred to in subparagraph 13(a) above and describe the nature of their knowledge.

Interrogatory No. 14

State whether Applicant has marketed or intends to market Applicant's Products/Services to sports fans in the United States, fans of Opposer, its OAKLAND ATHLETICS baseball team, or its affiliated Minor League Baseball teams, or any other Major League Baseball teams or

affiliated Minor League Baseball teams, or consumers located in Oakland, California or Arizona, and, if so, describe the means by which Applicant has marketed or intends to market Applicant's Products/Services to sports fans, fans of Opposer, its OAKLAND ATHLETICS baseball team or its affiliated Minor League Baseball teams, including, without limitation, AZL ATHLETICS, or any other Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Oakland, California or Arizona.

Interrogatory No. 15

State whether Applicant was aware of Opposer's A'S Marks, Opposer's OAKLAND ATHLETICS Major League Baseball team or its affiliated Minor League Baseball teams, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's A'S Marks prior to:

- (a) February 2, 2010, when Applicant filed Application Serial No. 77/926,242.
- (b) Any use by Applicant of Applicant's Marks in the United States or in commerce in connection with any goods or services.

Interrogatory No. 16

State whether Applicant has ever sought a license or other right to use any marks, logos, designs, stylizations, slogans or player names, including without limitation, Opposer's A'S Marks, from Opposer or Major League Baseball.

Interrogatory No. 17

State whether Applicant has any documentation, including, without limitation, business plans, marketing plans, memos, correspondence or draft proposals of any kind, reflecting Applicant's bona fide intention, prior to or as of February 2, 2010, to use Applicant's Applied-

For Mark in the United States or in commerce in connection with the goods covered in Application Serial No. 77/926,242.

Interrogatory No. 18

With respect to each response to Opposer's First Set of Requests for Admission that is anything other than an unqualified admission, state the basis for the response, including, without limitation, all facts and documents upon which the response is based.

DOCUMENT REQUESTS

Request No. 1

Specimens of each of Applicant's Products/Services bearing or displaying Applicant's Marks, including, without limitation, each different color combination and each different design or stylization in which Applicant's Marks have been used or are intended to be used by Applicant and/or its licensees, sponsors or related or affiliated entities in the U.S. or in commerce.

Request No. 2

Specimens of each label, hangtag, tag, product package, package insert, sticker, hologram, package material or other device that bear Applicant's Marks, and which have been used or are intended to be used by Applicant and/or its licensees, sponsors or related or affiliated entities in connection with Applicant's Products/Services in the United States or in commerce.

Request No. 3

Specimens of each point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item that bear

Applicant's Marks and which have been used or are intended to be used by Applicant and/or its licensees, sponsors or related or affiliated entities in connection with Applicant's Products/Services in the U.S. or in commerce.

Request No. 4

All documents concerning Applicant's design, selection and/or adoption of Applicant's Marks for use in the United States or in commerce.

Request No. 5

All documents concerning any trademark searches or other searches, opinions, investigations, analyses or studies conducted or reviewed by or on behalf of Applicant concerning adoption and/or use of Applicant's Marks in the United States or in commerce.

Request No. 6

Documents sufficient to identify: (a) the date of first use of Applicant's Marks in the United States or in commerce; (b) the date of first use of Applicant's Applied-For Mark in commerce for the goods identified in Application Serial No. 77/926,242; (c) the geographic area(s) of use of Applicant's Marks in the United States or in commerce; (d) Applicant's Products/Services bearing, offered for sale, sold or otherwise distributed under Applicant's Marks; (e) any and all customers, distributors or other persons or entities to which Applicant's Products/Services have been sold or distributed; (f) all retail, wholesale, commercial, or charitable entities through which Applicant's Products/Services have been offered for sale, sold or otherwise distributed; (g) the channels of trade through which Applicant's Products/Services were or are being distributed or sold to the ultimate purchaser, consumer or user; (h) the annual volume of sales (in dollars and units) made for Applicant's Products/Services for each year from the date of first use to the present; and (i) the annual amount of revenue, including, without

limitation, any licensing or sponsorship revenues, that Applicant has received in connection with Applicant's Products/Services for each year from the date of first use to the present.

Request No. 7

All documents concerning the advertising, marketing or promotion of Applicant's Products/Services offered for sale or otherwise distributed or intended to be offered for sale or otherwise distributed, including, without limitation, any media plans, public relations materials, press kits and correspondence with advertising agencies, public relations firms, media planners, graphic designers, website designers or any other such entities in the advertising and promotional field.

Request No. 8

Documents sufficient to identify the amount of money expended by Applicant in advertising and promoting Applicant's Products/Services.

Request No. 9

All documents concerning each trade show, convention, exposition or conference at which Applicant's Products/Services bearing Applicant's Marks have been displayed, advertised, promoted, offered for sale or sold.

Request No. 10

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer (or proposed authorization, license, assignment, grant, conveyance or other transfer) relating to Applicant's Marks in the U.S. or in commerce from any third party to Applicant.

Request No. 11

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer of the right to use (or proposed authorization, license, assignment, grant, conveyance or other transfer of the right to use) any of Opposer's A'S Marks from Opposer to Applicant.

Request No. 12

All documents concerning Applicant's authorization, license, assignment, grant, conveyance or other transfer (or proposed authorization, license, assignment, grant, conveyance or other transfer) relating to Applicant's Marks in the United States or in commerce from or on behalf of Applicant to any third party, including, without limitation, all license agreements.

Request No. 13

Documents sufficient to identify each website, web auction, web hosting, web listing, web posting, web page or social media page (whether owned or controlled by Applicant or third parties), including its Internet address, on or through which Applicant's Marks have been displayed and/or Applicant's Products/Services have been, are currently being or are intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Request No. 14

All documents concerning the use or intended use of Applicant's Marks in connection with any indicia, designs, stylizations (including, without limitation, font styles), terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with: (a) sports or sports teams (including, without limitation, baseball stadiums, baseball teams, players, managers or coaches, baseball uniforms or apparel or equipment used to play baseball); (b) Oakland, California or Arizona; and/or (c) Opposer, its OAKLAND ATHLETICS baseball team or its affiliated Minor League Baseball teams, including, without limitation, AZL ATHLETICS,

or any other Major League Baseball teams or affiliated Minor League Baseball teams, or their respective trademarks, logos, designs or stylizations, including without limitation, any of Opposer's A'S Marks, or trademarks, logos, designs, stylizations, or components thereof or similar thereto.

Request No. 15

Apart from the current opposition, all documents concerning any objections, claims, demands or actions lodged or filed in the United States against the use, proposed use or registration of Applicant's Marks in the United States, including, without limitation, cease and desist letters, complaints and/or Notices of Opposition.

Request No. 16

All documents concerning Opposer, Opposer's A'S Marks, or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer under Opposer's A'S Marks that are within Applicant's possession, custody or control.

Request No. 17

All documents concerning Applicant's awareness of Opposer's A'S Marks and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's A'S Marks prior to:

- (a) February 2, 2010, when Applicant filed Application Serial No. 77/926,242.
- (b) Any use by Applicant of Applicant's Marks in the United States or in commerce in connection with any goods or services.

Request No. 18

All documents concerning any market research, focus groups, surveys or other investigations made or commissioned by or on behalf of Applicant concerning Applicant's Marks, Applicant's Products/Services, Opposer's A'S Marks or any goods or services advertised,

promoted, offered for sale, sold, licensed or rendered by Opposer in connection with Opposer's A'S Marks.

Request No. 19

All documents reflecting or indicating any confusion on the part of any member of the public between Opposer and Applicant and/or their respective marks and/or goods or services, including, without limitation, documents referring to or evidencing misdirected mail, e-mails, telephone calls, orders or inquiries suggesting or reflecting a belief by any person that Applicant is licensed, endorsed or sponsored by, or is a sponsor of, or is associated or related in any way with or to Opposer, or that the products or services sold, offered for sale or otherwise distributed, or intended to be sold, offered for sale or otherwise distributed, by Applicant in connection with Applicant's Marks are licensed, endorsed or sponsored by or associated or related in any way with or to Opposer.

Request No. 20

All documents concerning the actual or intended channels of trade for Applicant's Products/Services sold or rendered or intended to be sold or rendered in the United States or in commerce.

Request No. 21

All documents concerning any designs, logos, renditions, stylizations (including, without limitation, font styles) or formats of or for Applicant's Marks, including, without limitation, any drafts or proposed versions of same for use or intended use in the United States or in commerce.

Request No. 22

All documents concerning the actual or intended marketing of any of Applicant's Products/Services to fans of Opposer, its OAKLAND ATHLETICS baseball team, or any other

Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Oakland, California or Arizona.

Request No. 23

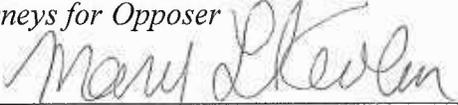
All documents concerning or reflecting Applicant's bona fide intention, prior to or as of February 2, 2010, to use Applicant's Applied-For Mark in the United States or in commerce in connection with the goods covered by Application Serial No. 77/926,242, including, without limitation, any business plans, marketing plans, memos, correspondence or draft proposals of any kind.

Request No. 24

All documents identified or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories above and Opposer's First Set of Requests for Admission.

Dated: New York, New York
December 16, 2013

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: 

Mary L. Kevlin
Richard S. Mandel
Don M. Obert

1133 Avenue of the Americas
New York, New York 10036
212-790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2013, I caused a true and correct copy of the foregoing *Opposer's First Set of Interrogatories and Requests for Production of Documents and Things to Applicant* to be mailed first class, postage prepaid, to Applicant's Attorney and Correspondent of Record, John M. Weyrauch, Dicke Billig & Czaja PLLC, Suite 2250, Minneapolis, Minnesota 55402-1235.

Dated: New York, New York
December 16, 2013

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

Don M. Obert

Exhibit B

Obert, Don M.

From: Obert, Don M.
Sent: Friday, March 28, 2014 3:28 PM
To: 'jmweyrauch@dbclaw.com'
Cc: Kevlin, Mary; Natale, Kristine M.
Subject: APPLES & A'S; Opp. No. 91200484

John:

I am writing to follow up to my telephone message this morning regarding the captioned matter. As mentioned, we have not received Applicant's discovery responses, which were due March 21, 2014. Please advise if such responses were sent, the date they were sent and the method by which they were sent. If the responses were not sent by March 21st, they are overdue. Please get back to us by Monday, March 31st.

We look forward to hearing from you.

Sincerely,

Don M. Obert, Esq.
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036-6799
t: (212) 790-9245 | f: (212) 575-0671
www.cll.com | dmo@cll.com | [My Profile](#)



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Exhibit C

Obert, Don M.

From: Obert, Don M.
Sent: Wednesday, April 16, 2014 12:48 PM
To: 'jmweyrauch@dbclaw.com'
Cc: Kevlin, Mary; Natale, Kristine M.
Subject: FW: APPLES & A'S; Opp. No. 91200484

Follow Up Flag: Follow up
Flag Status: Flagged

John:

I am writing to follow up on my March 28th telephone message and email regarding the captioned matter. As noted at the time, we did not receive Applicant's discovery responses, which were due March 21, 2014. We also requested that you advise us by March 31st as to whether such responses were sent, the date they were sent and the method by which they were sent, noting that if the responses were not sent by March 21st, they are overdue. We have still not received Applicant's discovery responses or received any response to our inquiry. Accordingly, if we do not hear from you by 5 p.m. on Thursday, April 17th, we will be forced to file a motion to compel with the Board. We look forward to receiving your response.

Don M. Obert, Esq.
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Cc: Kevlin, Mary; Natale, Kristine M.
Subject: APPLES & A'S; Opp. No. 91200484

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We look forward to hearing from you.

Sincerely,

Don M. Obert, Esq.

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