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

Proceeding	91200643
Party	Plaintiff Dille Family Trust
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Date	08/06/2012
Attachments	Affidavit in Support of MTC.pdf (4 pages)(72170 bytes)

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

In the Trademark Opposition of:)	
)	
Mark: BUCK ROGERS)	
Appl. No. 77/650082)	Opposition No.: 91200643
Filed: July 12, 2011)	
Published: June 14, 2011)	Date: August 6, 2012
)	
DILLE FAMILY TRUST,)	
Opposer,)	
)	
vs.)	
)	
NOWLAN FAMILY TRUST,)	
<u>Applicant</u>)	
)	

**OPPOSER, DILLE FAMILY TRUST’S AFFIDAVIT IN SUPPORT OF
MOTION TO COMPEL INITIAL DISCLOSURES**

I. Introduction

Opposer, Dille Family Trust (“Opposer”), hereby submits Affidavit in Support of Motion to Compel Initial Disclosures.

Opposer restates request to compel Nowlan Family Trust’s (“Applicant”) responses to Opposer’s *First Set of Interrogatories* and *First Set of Document Requests* pertaining to the legal formation of the Nowlan Family Trust.

II. Background

This is an action for trademark opposition arising from the mark BUCK ROGERS.

On or about January 18, 2012, said Opposer served First Set of Interrogatories and a First Set of Document Requests on Applicant.

To date, said Opposer has received insufficient responses to these interrogatories, as well as the request for document production. Said Opposer sent Applicant’s counsel a letter on or

about April 5, 2012, requesting compliance but since that time, no responses have been forthcoming.

Efforts to resolve this issue without judicial intervention have been unsuccessful. The time within which to respond to or object to these discovery requests have long expired. On June 13, 2012, Opposer submitted Motion to Compel said responses before this Trial and Appeal Board. Applicant submitted Response in Opposition on July 3, 2012.

III. **Argument**

A. Opposer's Motion To Compel Complied With Relevant Discovery Rules And Regulations

Opposer has complied with relevant discovery rules, specifically 37 C.F.R. 2.120(e)(1), which requires a motion to compel initial disclosures or discovery be supported by "a written statement from the moving party that such party or the attorney therefor has made a good faith effort [...] to resolve with the other party or the attorney therefor the issues raised in the motion" but the parties were unable to resolve said issues. Moreover, in Opposer's Motion to Compel, Opposer listed the specific requests where Applicant's responses were lacking.

Additionally, Applicant's claim that Opposer has failed to serve its initial disclosures is unfounded. This Trial and Appeal Board, in an order dated February 9, 2012, extended the due date for Opposer's responses to Applicant's initial discovery requests to March 6, 2012. Opposer served its initial disclosures on January 18, 2012.

B. The Documents Sought By Opposer Are Essential To This Case As They Form The Sole Ground On Which Applicant May Bring Claim

The basis of Applicant's claim and more importantly standing to bring said claim, centers on the premise Applicant is a legally formed trust. In its *First Set of Document Requests*, Opposer requested:

REQUEST NO. 6:

Any documents evidencing the legal formation of the Nowlan Family Trust.

REQUEST NO. 7:

Any documents describing the assets of the Nowlan Family Trust, and specifically those assets, if any, which relate to Applicant's Mark.

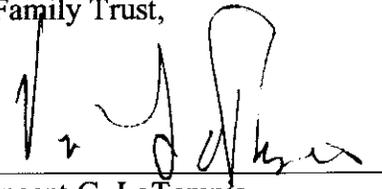
Applicant's "responses" were objections to each request. *See* Applicant's Response In Opposition, Section III (B). Additionally, Applicant has suggested the requested documents are available from the Commonwealth of Pennsylvania; however, an extensive and exhaustive online search of the Commonwealth of Pennsylvania's website and beyond, has uncovered no such documentation or evidence that the Nowlan Family Trust is a legally formed trust. Applicant's initial trademark application was an intent to use application for the subject mark of this opposition proceeding. Said intent to use application was filed by Nowlan Family Trust, not an individual. If Applicant is not a legally formed trust, said intent to use application would be invalid; and as a result, Applicant would be unable to continue in this matter, as they would lack standing. Clearly, the requested documents are wholly relevant to the current matter, and any attempt by Applicant to suggest that Opposer's requests are a "pretext for conducting a fishing expedition" is only meant to further delay and unnecessarily lengthen the discovery process in this matter.

IV. Conclusion

For all of the foregoing reasons, Opposer respectfully requests that Opposer's Motion to Compel be granted.

Respectfully Submitted,

Dille Family Trust,

By: 

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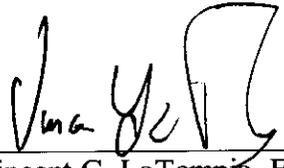
Attorney for Opposer

Date: August 6, 2012

CERTIFICATE OF SERVICE

I, Vincent G. LoTempio, do hereby certify that a true and correct copy of *Opposer's Affidavit in Support of Motion to Compel Initial Responses* was served on Applicant's Attorney of Record by electronic mail and first-class mail, postage pre-paid to the following:

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Vincent G. LoTempio, Esq.

Dated: August 6, 2012