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

Proceeding	91200832
Party	Plaintiff Briggs & Stratton Corporation
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Attachments	Exh B to Herring Declaration.pdf ( 10 pages )(335998 bytes )

# **EXHIBIT B**

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

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BRIGGS & STRATTON CORPORATION  
and KOHLER CO.,

Opposers,

Opposition No. 91200832 (parent)

v.

Opposition No. 91200146

HONDA GIKEN KOGYO KABUSHIKI  
KAISHA,

Application Serial No. 78924545

Applicant.

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**OPPOSER'S SUPPLEMENTAL RESPONSE TO APPLICANT'S  
FIRST SET OF INTERROGATORIES**

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Opposer Kohler Co. ("Opposer") hereby supplements its responses to the First Set of Interrogatories of Applicant Honda Giken Kogyo Kabushiki ("Applicant") as follows:

**GENERAL OBJECTIONS**

1. Opposer objects to Applicant's definition of "Applicant's Mark" as vague and ambiguous to the extent it includes the phrase "any other mark used by Applicant that is a colorable imitation of the mark."

2. Opposer objects to the Applicant's definition of "Opposer's Products" as argumentative and inaccurate to the extent it infers that any of the Opposer's engines referred to in these responses, or any other engines manufactured or sold by Opposer, as having a design that is "substantially similar" to "Applicant's Mark."

3. Opposer objects to the extent these interrogatories seek documents or information protected by the attorney-client privilege, that is protected by the work product doctrine, or which constitutes or discloses the mental impressions, conclusions, opinions, or legal theories of

any attorney or the representative of Opposer concerning this opposition (hereinafter "Privileged Information"). Such information shall not be provided in response hereto, and inadvertent disclosure of them shall not be deemed a waiver of any privilege or of protection of attorney work product.

4. Opposer objects to the Interrogatories to the extent they seek to impose obligations beyond those provided in the Federal Rules of Civil Procedure.

5. Consistent with Fed. R. Civ. P. 33(d), Opposer objects to providing responses to Interrogatories where the information can be derived from documents which are being produced in response to related document requests propounded by Applicant.

6. Opposer generally objects to the interrogatories to the extent they seek information that is wholly unrelated to the issues in this opposition and not reasonably calculated to lead to the discovery of admissible evidence.

7. Opposer generally objects to the interrogatories to the extent they seek information for an unreasonable period of time.

8. Opposer generally objects to the interrogatories to the extent they are vague and ambiguous, and thus not susceptible to a reasoned interpretation or response.

9. Opposer generally objects to the interrogatories to the extent they are overly broad, unnecessarily burdensome, or oppressive.

10. Opposer objects to all introductory instructions and definitions to Applicant's First Set of Interrogatories to the extent the instructions or definitions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific Interrogatory on the ground that such enlargement, expansion, or alteration renders said Interrogatory vague, ambiguous, unintelligible, unduly broad, and/or uncertain.

11. Opposer objects to each Interrogatory to the extent it purports to require Opposer to obtain information outside of its possession, custody, and control from other persons or entities.

12. Opposer objects to each Interrogatory to the extent it calls for information that is publicly-available and/or seeks information already within Applicant's knowledge, possession, custody or control.

13. Opposer objects to each Interrogatory to the extent it seeks confidential, proprietary information.

14. Opposer objects to each Interrogatory to the extent that it improperly contains multiple subparts. Accordingly, Opposer reserves the right to treat each Interrogatory as multiple interrogatories for purposes of the applicable interrogatory limits.

15. The answers provided below are based upon information currently available to Opposer through due inquiry and Opposer reserves the right to supplement these responses during the course of discovery as additional information is ascertained.

16. Opposer reserves the right to modify, amend or supplement its General Objections, any additional specific objections, and the answers provided below.

17. Opposer's answers are made without waiver of, and with preservation of, all objections as to competency, relevancy, materiality, privilege and admissibility of the answers and the subject matter thereof as evidence for any purposes in any further proceeding in this action and any other action or proceeding.

18. Each and every one of these General Objections is incorporated by this reference into each and every one of the Responses set forth below.

## INTERROGATORIES

**INTERROGATORY NO. 4:** Please specify each and every different version of Opposer's Products ever sold or offered by you, and for each, please indicate if the product is currently being sold or offered.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:** Opposer objects to Interrogatory No. 4 as being vague, ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections, those set forth in its response to Interrogatory No. 4, and its General Objections, Opposer states that it has offered for sale the following engines with horizontal shaft designs that share certain aspects with the design set forth in Applicant's Mark: CH11, 12.5, 13, 14, 15, 16; CH260, 270, 395, 440; CH 410, 430, 450; CH 5, 6; CS 4, 6, 8.5, 10, 12; SH 265. Opposer currently sells the CH260, CH270, CH395, CH440 and SH265.

**INTERROGATORY NO. 5:** For each product identified in response to Interrogatory Number 4, please state:

- (a) the prices at which the product is being sold, and the prices at which it was sold over the past five years for which data is available;
- (b) whether the product is sold or offered to wholesale or retail customers, and whether such customers use the product for business or personal purposes;
- (c) the price of an average sale; and
- (d) if applicable, the dollar amount of sales for that product in each of the last five years for which data is available.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:** Opposer objects to Interrogatory No. 5 as being vague, ambiguous, compound, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks

Privileged Information. Opposer further objects to the interrogatory to the extent it seeks confidential or proprietary information. Subject to and without waiving the foregoing objections and General Objections, the total annual U.S. sales of the products identified in response to Interrogatory No. 4 are set forth in the documents produced herewith.

**INTERROGATORY NO. 8:** Please identify all market research that you have had conducted relating to Applicant's Mark and/or Opposer's Products.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:** Opposer objects to Interrogatory No. 8 as being vague and ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to this interrogatory as overbroad and premature to the extent it seeks information that will be the subject of expert testimony. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer engages in the following market research relating to its competitors, including Applicant: reviewing trade magazines; reviewing market size information; discussing placements with OEM customers that use competitive engines; doing brand research; attending trade shows to view equipment powered by competitive engines and competitors' booths for new products; and performing competitive engine testing.

**INTERROGATORY NO. 9:** Identify all of Opposer's past and present trademark registrations or applications (federal, state and foreign) for any engine design.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:** Opposer objects to Interrogatory No. 9 as being overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the Interrogatory to the extent it calls for information that is publicly available and would be directly accessible by Applicant. Subject to such objections, Kohler states that there are none.

**INTERROGATORY NO. 10:** Please:

- (a) identify the principal competitors in the business in which Opposer provides Opposer's Products;
- (b) describe the market position, including customer identity and product type, to which Opposer targets or intends to target its business in which Opposer provides Opposer's Products; and
- (c) describe any plans Opposer currently has for expansion or contraction of its business in which Opposer provides Opposer's Products.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:** Opposer objects to Interrogatory No. 10 as being vague, ambiguous, compound, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that its principal competitors in the horizontal shaft engine market are Briggs & Stratton, Honda, Subaru, Kawasaki, Yamaha, Zongshen, Generac, Raton, Loncin and LTC.

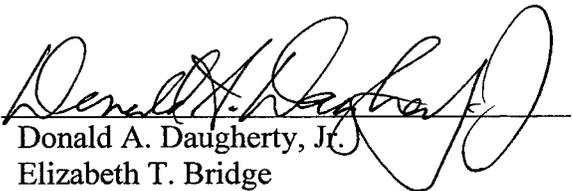
**INTERROGATORY NO. 16:** Please describe in detail the basis for any contention that "the Applicant's Mark, at least in part, consists of features of engine configuration that have been the subject of utility patents."

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:** Opposer objects to Interrogatory No. 16 as overbroad and premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that there are Honda utility patents submitted to the U.S. Patent and Trademark Office in connection with the prosecution of the Application relevant to the Engine Design. Similarly, Honda engine features claimed in U.S. Patent 4,813,385 were at issue in the trade dress litigation initiated by Honda, including in the case in the United States District Court

for the Central District of California against The Pep Boys, et al. Opposer states that its investigation continues. Discovery in this case is ongoing and Opposer reserves the right to supplement this response.

Dated this 4<sup>th</sup> day of May, 2012.

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**VERIFICATION**

I, Cameron Litt, am Marketing Manager for Kohler Engines, and am authorized to make this Verification on its behalf. I have read the foregoing OPPOSER'S SUPPLEMENTAL RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES, and know its contents. I am informed and believe that the matters stated therein are true.

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

Executed at Kohler, Wisconsin on this 3 day of May, 2012.

  
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Cameron Litt

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BRIGGS & STRATTON CORPORATION  
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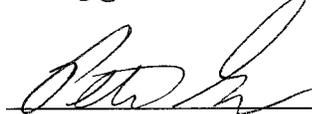
**CERTIFICATE OF SERVICE**

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I hereby certify that a copy of Opposer's Supplemental Response to Applicant's First Set of Interrogatories was served upon the following via e-mail and by placing a copy in the U.S. mail, first-class, postage prepaid, this 4th day of May, 2012.

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