

ESTTA Tracking number: **ESTTA555841**

Filing date: **08/23/2013**

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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Date	08/23/2013
Attachments	Supplemental Declaration of Donald Daugherty in Support of Opposers' Motion for Summary Judgment.pdf(51930 bytes ) Exhibits A - D to Supplemental Declaration of Donald Daugherty.pdf(3707224 bytes )

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

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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**SUPPLEMENTAL DECLARATION OF DONALD A. DAUGHERTY, JR.  
IN SUPPORT OF OPPOSERS' MOTION FOR SUMMARY JUDGMENT**

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Donald A. Daugherty, Jr. makes the following declaration pursuant to 28 U.S.C. § 1746:

1. I am one of the attorneys representing Kohler Co. in the above-referenced matter.

I make this Supplemental Declaration in Support of Opposers' Motion for Summary Judgment for purposes of clarifying that materials already presented to the Board may be considered in support of their motion for summary judgment pursuant to 37 C.F.R. § 2.127(e)(2) and TBMP Section 528.05(c).

2. At the time Opposers filed their summary judgment motion on February 2, 2013, they also moved for leave under 37 C.F.R. § 2.122(f) to support their motion with relevant and material deposition testimony given by representatives of Applicant Honda Giken Kogyo Kabushiki ("Honda") in a lawsuit filed by Honda's United States subsidiary, American Honda Motor Co., Inc. v. The Pep Boys-Manny, Moe & Jack, et al., U.S.D.C., Central District of California Case No. CV05-8879 SJO and CV06-0961 SJO. The Board denied Opposers' motion for leave under Section 2.122(f) on March 6, 2013.

3. In a motion for reconsideration filed on March 8, 2013, Opposers noted that they had a procedural right under 37 C.F.R. § 2.127(e)(2) and TBMP Section 528.05(c) to submit for the Board to consider on summary judgment “an interrogatory and answer thereto with any exhibit made part of the answer [and] a request for production and the documents or things produced in response thereto.” Opposers further noted in their motion for reconsideration that by attaching the transcripts from the depositions of Honda’s experts, corporate representatives, and employees with a declaration indicating that they were true and correct copies of documents produced by Honda in this case, Opposers properly placed the materials before the Board for consideration on summary judgment. (see e.g. *MarCon Ltd. v. Avon Products, Inc.*, 4 USPQ2d 1474 fn 3 (TTAB 1987), wherein Board ruled that prior deposition testimony produced in response to discovery requests is admissible without leave of the Board.)

4. In an August 5, 2013 decision, the Board denied Opposers’ request for reconsideration. The Board stated,

If the discovery deposition is admissible on another basis, whereby leave of the Board is not required, then presumably, opposers have met the necessary requirements on summary judgment. The Board notes that in their April 17, 2013 reply to the motion to reconsider they have included the supplemental declaration of Donald A. Daugherty, Jr., and exhibit 1, their request for production of documents, pursuant to Trademark Rule 2.127(e)(2). However, this filing on reconsideration is not considered part of the papers that constitute opposers’ motion for summary judgment.

August 5, 2013 Decision, at 4, n.4.

5. Attached hereto as Exhibits A and B, respectively, are Opposers’ Requests for Production of Documents served on Honda in this proceeding, and Honda’s written responses agreeing to produce the requested documents (hereafter collectively referred to as the “Discovery Requests”).

6. The following documents which are attached as exhibits to my Declaration dated February 1, 2013 (*see* Public Redacted Version at Docket Nos. 54-56 and Sealed Unredacted Version at Docket Nos. 49-50) and submitted in support of Opposers' summary judgment motion (hereafter collectively referred to as the "Honda Deposition Transcripts") were affixed with the "AHGX" bates-stamped prefix and produced by Honda in response to Opposers' Discovery Requests in this TTAB proceeding:

a. Exhibit 1 -- relevant portions of the August 23, 2007 deposition of Kevin L. Hoag, taken in the matter of American Honda Motor Co., Inc. v. The Pep Boys-Manny, Moe & Jack, et al., U.S.D.C., Central District of California Case No. CV05-8879 SJO and CV06-0961 SJO.

b. Exhibit 4 -- relevant portions of the August 15, 2007 deposition of Motohiro Fujita, taken in the matter of American Honda Motor Co., Inc. v. The Pep Boys-Manny, Moe & Jack, et al., U.S.D.C., Central District of California Case No. CV05-8879 SJO.

c. Exhibit 15 -- relevant portions of the August 28, 2007 deposition of James Mieritz, taken in the matter of American Honda Motor Co., Inc. v. The Pep Boys-Manny, Moe & Jack, et al., U.S.D.C., Central District of California Case No. CV05-8879 SJO and CV06-0961 SJO.

d. Exhibit 16 -- relevant portions of the June 8, 2007 deposition of John Lally, taken in the matter of American Honda Motor Co., Inc. v. The Pep Boys-Manny, Moe & Jack, et al., U.S.D.C., Central District of California Case No. CV05-8879 SJO.

e. Exhibit 17 -- Exhibit 512 to the August 15, 2007 deposition of Motohiro Fujita, taken in the matter of American Honda Motor Co., Inc. v. The Pep Boys-Manny, Moe & Jack, et al., U.S.D.C., Central District of California Case No. CV05-8879 SJO.

7. Therefore, consistent with footnote 4 of the Board's August 5, 2013 decision, "opposers have met the necessary requirements on summary judgment" for the Board to consider the Honda Deposition Transcripts in deciding their motion by complying with 37 CFR § 2.127(e)(2) and TBMP Section 528.05(c).

8. In addition to the Honda Deposition Transcripts, Honda also affixed with the "AHGX" bates-stamped prefix (or "AHGXC" for documents it produced in color) and produced in response to Opposers' Discovery Requests in this TTAB proceeding the following documents, which are attached as exhibits to my February 1, 2013 Declaration:

a. Exhibit 6 -- U.S. Patent No. 4,813,385, bates-numbered AHGX0060547-AHGX0060554.

b. Exhibit 7 -- U.S. Patent No. 6,331,740, bates-numbered AHGX0097316-AHGX0097336.

c. Exhibit 8 -- U.S. Patent No. 6,525,430, bates-numbered AHGX0097378-AHGX0097393.

d. Exhibit 9 -- U.S. Patent No. 6,489,690, bates-numbered AHGX0097358-AHGX0097377.

e. Exhibit 10 -- U.S. Patent No. 6,362,533, bates-numbered AHGX0097337-AHGX0097357.

f. Exhibit 11 -- U.S. Patent No. 6,941,919 B2, bates-numbered AHGX0097394-AHGX0097399.

g. Exhibit 13 -- Japanese Patent Application No. 57-170212, bates-numbered AHGX0097400-AHGX0097404, which was produced by Honda in this proceeding. The non-bates-stamped pages in Exhibit 13 are the Japanese Patent Abstract of Japanese Patent Application No. 57-170212, which is publicly-available from the National Center for Industrial Property Information and Training, Industrial Property Digital Library, at <http://www19.ipdl.inpit.go.jp/PA1/cgi-bin/PA1INIT?1377113697783>.

h. Exhibit 14 -- Japanese Patent Application No. S63-32344, bates-numbered AHGX0061132-AHGX0061139.

i. Exhibit 18, bates-numbered AHGXC001009-AHGXC001016.

j. Exhibit 19, bates-numbered AHGXC001548.

k. Exhibit 20, bates-numbered AHGXC000402.

l. Exhibit 21, bates-numbered AHGXC000404.

m. Exhibit 22, bates-numbered AHGXC000400.

n. Exhibit 23, bates-numbered AHGXC000403.

o. Exhibit 29, bates-numbered AHGXC000435-AHGXC000442.

9. Like the Honda Deposition Transcripts, the documents listed in Paragraph 8 above also all qualify under 37 CFR § 2.127(e)(2) and TBMP Section 528.05(c), for consideration by the Board in deciding Opposers' summary judgment motion.

10. Also qualifying for consideration by the Board under 37 CFR § 2.127(e)(2) is Exhibit 5 to my February 1, 2013 Declaration, which was affixed with the "BASCO" bates-stamped prefix and produced by Briggs & Stratton Corporation ("Briggs") in response to Honda's discovery requests in this TTAB proceeding: Attached hereto as Exhibits D and C,

respectively, are Honda's Requests for Production of Documents served on Briggs in this proceeding, and Briggs' written responses agreeing to produce the requested documents.

11. I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct. Executed this 23rd day of August, 2013 in Milwaukee, Wisconsin.

/s/ Donald A. Daugherty, Jr.  
Donald A. Daugherty, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing SUPPLEMENTAL DECLARATION OF DONALD A. DAUGHERTY, JR. IN SUPPORT OF OPPOSERS' MOTION TO FOR SUMMARY JUDGMENT was served via email and first class mail this 23<sup>rd</sup> day of August, 2013 upon:

Michael J. Bevilacqua  
Silena Y. Paik  
Sarah R. Frazier  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MC 02109-1800  
Telephone: (617) 526-6448  
Facsimile: (617) 526-5000

Counsel for Applicant  
*Honda Giken Kogyo Kabushiki Kaisha*

/s/ Deborah L. Kalahela  
Deborah L. Kalahela

# **EXHIBIT A**



Pursuant to Rule 34 of the Federal Rules of Civil Procedure and TBMP Section 406 et seq., Opposer Briggs & Stratton Corporation (hereinafter "Opposer") request that Applicant Honda Giken Kogyo Kabushiki Kaisha ("Applicant.") produce the following documents for inspection thirty (30) days after service of these requests at the offices Reed Smith LLP, 101 Second Street, San Francisco, CA 94105, or such other time and place as the parties may mutually agree upon.

### **DEFINITIONS**

The following definitions shall apply to the document requests that follow:

A. The terms "YOU" and "YOUR" mean Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan, and its predecessors, successors and assigns, including any person or entity acting under its control, or on behalf, of any and all of its parents, subsidiaries, branches, entities, affiliates, departments, divisions, operating units, partners, joint ventures or related companies, and any employee, officer, director, principal, agent, sales representative or attorney who now serves, or at any relevant time served, it in such capacity.

B. The terms "Briggs" or "Opposer" refer to Opposer Briggs & Stratton Corporation and its affiliated companies.

C. The term "ENGINE CONFIGURATION" means the configuration of an engine design described as follows in U.S. Application Serial No. 78/924,545: "The mark consists of the configuration of an engine with an overall cubic design, with a slanted fan cover, the fuel tank located above the fan cover on the right, and the air cleaner located to the left of the fuel tank. The air cleaner cover features a cube shape with beveled top

outside edges, and a belt-like area on the lower portion of the cover encompassing the entire circumference and the top of the belt-like area is aligned with a rib of the fuel tank. The carburetor cover features four ribs along its outside edge and a recessed area where control levers are located. The fuel tank is roughly rectangular. The engine features a beveling that runs around its top circumference.”

D. The term “document” or “documents” shall be given the broadest meaning as contemplated by Rule 34, including but not limited to, notes, letters, correspondence, communications, e-mails, telegrams, memoranda, contracts, lease agreements, summaries or records of telephone conversations, summaries or records of personal conversations or meetings, diaries, reports, research reports and notebooks, charts, plans, drawings, diagrams, illustrations, photographs, video images, minutes or records of meetings, summaries of interviews, reports or investigations, opinions or reports of consultants, opinions of counsel, agreements, reports or summaries of negotiations, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of documents and all other material fixed in a tangible or electronic medium of whatever kind known to you or in your possession or control. A draft or nonidentical copy is a separate document within the meaning of this term.

F. “Referring,” “relating”, and “regarding” include the following: pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

G. The terms "person" and "persons" include natural persons and entities such as any individual or firm, association, organization, joint venture, trust, partnership, corporation, or other collective organization or entity.

H. The singular includes the plural number and vice versa, any use of gender includes both genders and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

I. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

### INSTRUCTIONS

The following instructions apply to the discovery requests below and should be considered as part of each subject request:

A. If any information is withheld under a claim of privilege, state the nature of the privilege claimed and provide sufficient information to permit a full determination of whether the claim is valid. For allegedly privileged documents, include: an identification of the sender and the recipients of the document; the date of the document; a description of the contents or nature of the document; the number of the discovery request to which the document is responsive; and a statement of the basis for the asserted claim of privilege.

B. If Applicant objects to any subpart or portion of a request for information or objects to providing certain information requested, state Applicant's objections and answer the unobjectionable subpart(s) of the request for information and supply the unobjectionable information requested.

C. If any of the following requests for information cannot be responded to in full after exercising reasonable diligence to secure the information, please so state, supply the information for those portions Applicant. is able to answer, and supply whatever information it has concerning the portion which cannot be answered in full. If Applicant's response is qualified in any particular respect, set forth the details of such qualification.

D. Unless otherwise stated, the geographic scope of each of the following requests is limited to the United States of America.

## **DOCUMENT REQUESTS**

### **REQUEST FOR PRODUCTION NO. 1:**

All documents that support YOUR contention that the ENGINE CONFIGURATION is a distinctive, nonfunctional configuration associated with APPLICANT by consumers.

### **REQUEST FOR PRODUCTION NO. 2:**

All documents that discuss whether the ENGINE CONFIGURATION is associated with APPLICANT by consumers.

### **REQUEST FOR PRODUCTION NO. 3:**

All documents, including all communications between the signators and APPLICANT or its attorneys, regarding the Distributor Statements filed by APPLICANT in response to the Office Action mailed December 8, 2006.

### **REQUEST FOR PRODUCTION NO. 4:**

All documents relating to any legal proceedings wherein APPLICANT attempted to enforce the ENGINE CONFIGURATION as a trademark or trade dress against third parties anywhere in the world, or where any third party challenged the validity of the ENGINE CONFIGURATION as a trademark or trade dress, including but not limited to all pleadings, depositions, expert reports, written discovery requests and responses, document productions and settlement agreements therein.

**REQUEST FOR PRODUCTION NO. 5:**

All trademark office communications and decisions from anywhere in the world discussing the alleged inherent distinctiveness or acquired distinctiveness of the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 6:**

All court opinions, decisions, orders, and judgments from anywhere in the world discussing the alleged inherent distinctiveness or acquired distinctiveness of the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 7:**

All documents regarding any consumer research, surveys or focus groups relating to whether the ENGINE CONFIGURATION is associated with APPLICANT by consumers.

**REQUEST FOR PRODUCTION NO. 8:**

All documents regarding any consumer research, surveys or focus groups relating to whether any design element of APPLICANT'S GX engines, other than the ENGINE CONFIGURATION, is associated with APPLICANT by consumers, such as any color used on the engine.

**REQUEST FOR PRODUCTION NO. 9:**

Copies of all "Look For" advertising materials YOU have used in connection with APPLICANT's GX engines.

**REQUEST FOR PRODUCTION NO. 10:**

Copies of all "Look For" advertising materials YOU have used in connection with any products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 11:**

Copies of all advertising, marketing, and promotional materials related to the sale of any product containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 12:**

Documents sufficient to show YOUR annual sales revenues for all products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 13:**

Documents sufficient to show YOUR annual marketing and advertising expenditures for all products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 14:**

Documents sufficient to describe the type and demographic of YOUR current and prospective customers for all products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 15:**

Documents sufficient to show YOUR marketing channels for all products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 16:**

All news articles, editorials, reviews, or other press referring or relating to products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 17:**

Documents sufficient to show the placement of the HONDA trademark on all products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 18:**

All documents regarding any design or utility patents sought or owned by YOU for products containing the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 19:**

Documents sufficient to show the configuration of all products offered for sale by third parties with the same or similar configuration as the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 20:**

All documents that support YOUR contention that the ENGINE CONFIGURATION is arbitrary, ornamental, and does not affect the cost or quality of the engine.

**REQUEST FOR PRODUCTION NO. 21:**

All documents that support YOUR contention that the overall design of the ENGINE CONFIGURATION has nothing to do with engine performance and is a matter of styling and appearance.

**REQUEST FOR PRODUCTION NO. 22:**

All documents regarding the design, development or advantages of the overall cubic design claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 23:**

All documents regarding the design, development or advantages of the slanted fan cover claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 24:**

All documents regarding the design, development or advantages of the air cleaner housing claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 25:**

All documents regarding the design, development or advantages of the carburetor cover claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 26:**

All documents regarding the design, development or advantages of the fuel tank claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 27:**

All documents regarding the design, development or advantages of the beveled edges claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 28:**

All documents regarding the design, development or advantages of the belt-like areas claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 29:**

All documents regarding the design, development or advantages of the rib of the fuel tank claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 30:**

All documents regarding the design, development or advantages of the four ribs claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 31:**

All documents regarding the design, development or advantages of the relative positioning and orientation of the air cleaner housing, muffler heat shield, and fuel claimed in the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 32:**

All documents regarding alternative designs YOU considered in connection with the design and development of the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 33:**

All documents that support your contention that there are alternative horizontal engine designs that provide equal or better quality or performance as horizontal engines with the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 34:**

All documents that support your contention that there are alternative horizontal engine designs that can be made at an equal or lesser cost than horizontal engines with the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 35:**

Documents sufficient to show the manufacturing cost of the ENGINE.

**REQUEST FOR PRODUCTION NO. 36:**

All documents discussing any affect the claimed ENGINE CONFIGURATION has on cost, quality or performance of the engine.

**REQUEST FOR PRODUCTION NO. 37:**

All documents discussing any stylistic or aesthetic aspects of the claimed ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 38:**

All trademark office communications and decisions from anywhere in the world discussing the functionality of the ENGINE CONFIGURATION.

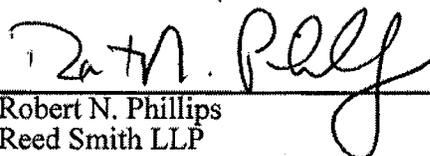
**REQUEST FOR PRODUCTION NO. 39:**

All court opinions, decisions, orders, and judgments from anywhere in the world discussing the functionality of the ENGINE CONFIGURATION.

**REQUEST FOR PRODUCTION NO. 40:**

All documents, including all communications between the signators and APPLICANT or its attorneys, regarding the two Declarations filed by APPLICANT in response to the Office Action mailed September 2, 2008.

October 25, 2011

By:   
Robert N. Phillips  
Reed Smith LLP

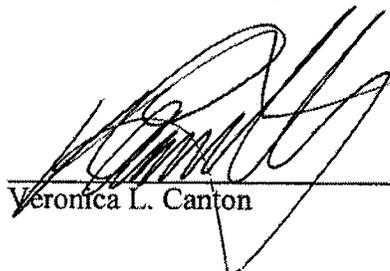
Nina Habib Borders  
Reed Smith LLP

Attorneys for Opposer  
BRIGGS & STRATTON  
CORPORATION

Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing OPPOSER BRIGGS & STRATTON CORPORATION'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 25<sup>th</sup> day of October, 2011:

Michael J. Bevilacqua, Esq.  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109-1800  
Phone: (617) 526-6448  
Fax: (617) 526-5000



Veronica L. Canton

# **EXHIBIT B**



shall not be construed as a waiver by Applicant of all, or any part, of any objection to the Request.

3. The following general objections are incorporated into each answer as though set forth in full regardless of whether Applicant also states a specific objection to an individual request. A specific answer may repeat a general objection for emphasis or for some other reason. Failure to include a general objection in any specific answer shall not be interpreted as a waiver of any general objection to that answer.

### **GENERAL OBJECTIONS**

1. Applicant objects to the Requests for Production of Documents to the extent they seek documents that contain confidential or private business information, including information pertaining to trade secrets, business decisions, and/or other competitively sensitive information.

2. Applicant objects to the Requests for Production of Documents to the extent they seek documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Opposer, its counsel, or agents, or are otherwise equally available to Opposer.

3. Applicant objects to the Requests for Production of Documents to the extent they seek documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege.

4. Applicant objects to the Requests for Production of Documents to the extent they are overly broad, unduly burdensome, oppressive, request irrelevant information, and/or are not reasonably calculated to lead to the discovery of admissible evidence.

5. Applicant objects to the Requests for Production of Documents to the extent they are unreasonably broad or burdensome by not providing a time limit as to the scope of the Request.

6. Applicant objects to the Requests for Production of Documents to the extent they are unreasonably broad or burdensome by not providing a geographic scope for the Request.

7. Applicant objects to the Requests for Production of Documents to the extent they contain words or phrases that lack an apparent meaning or have an uncertain meaning.

8. Applicant objects to the Request for Production of Documents to the extent they impose obligations beyond those set forth in the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure.

Subject to the forgoing qualifications, General Objections and the specific objections made below, Applicant answers Opposer's First Request for Production of Documents as follows:

### **DOCUMENT REQUESTS**

#### **REQUEST FOR PRODUCTION NO. 1.**

All documents that support YOUR contention that the ENGINE CONFIGURATION is a distinctive, nonfunctional configuration associated with APPLICANT by consumers.

#### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 3, 4, 5, and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that

fall under the attorney/client privilege or the attorney work product doctrine. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, as the Requests asks for "all" documents and does not limit the documents requested by providing a geographic or time scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 2.**

All documents that discuss whether the ENGINE CONFIGURATION is associated with APPLICANT by consumers.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 3, 4, 5, and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, as the Requests asks for "all" documents and does not limit the documents requested by providing a geographic or time scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 3.**

All documents, including all communications between the signators and APPLICANT or its attorneys, regarding the Distributor Statements filed by APPLICANT in response to the Office Action mailed December 8, 2006.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 3, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 4.**

All documents relating to any legal proceedings wherein APPLICANT attempted to enforce the ENGINE CONFIGURATION as a trademark or trade dress against third parties anywhere in the world, or where any third party challenged the validity of the ENGINE CONFIGURATION as a trademark or trade dress, including but not limited to all pleadings, depositions, expert reports, written discovery requests and responses, document productions and settlement agreements therein.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 2, 3, 4, 5, and 6. In particular, Applicant objects to this Document Request to the extent that it

requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Applicant also objects to this Request because it seeks documents that are a matter of public record or are otherwise equally available to Opposer. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, as the Request asks for "all" documents and for those related to "proceedings anywhere in the world" and does not limit the documents requested by providing a time scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

#### **REQUEST FOR PRODUCTION NO. 5.**

All trademark office communications and decisions from anywhere in the world discussing the alleged inherent distinctiveness or acquired distinctiveness of the ENGINE CONFIGURATION.

#### **RESPONSE TO REQUEST FOR PRODUCTION NO. 5**

Applicant incorporates all of its General Objections and specifically, General Objections 4 and 6. In particular, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and because it requests trademark office communications and decisions from "anywhere in the world." Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 6.**

All court opinions, decisions, orders, and judgments from anywhere in the world discussing the alleged inherent distinctiveness or acquired distinctiveness of the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6**

Applicant incorporates all of its General Objections and specifically, General Objections 2, 4 and 6. In particular, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and because it requests court opinions, decisions, orders, and judgments from "anywhere in the world." Applicant also objects to this Request because it seeks documents that are not within its custody or control and/or are a matter of public record or are otherwise equally available to Opposer. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 7.**

All documents regarding any consumer research, surveys or focus groups relating to whether the ENGINE CONFIGURATION is associated with APPLICANT by consumers.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 2, 4 and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant

objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and because it is not limited by geographic scope. Applicant also objects to this Request because it seeks documents that are not within its custody or control or are otherwise equally available to Opposer. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

#### **REQUEST FOR PRODUCTION NO. 8.**

All documents regarding any consumer research, surveys or focus groups relating to whether any design element of APPLICANT'S GX engines, other than the ENGINE CONFIGURATION, is associated with APPLICANT by consumers, such as any color used on the engine.

#### **RESPONSE TO REQUEST FOR PRODUCTION NO. 8**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 2, 4 and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information and because it does not limit the documents requested by providing a geographic scope. Applicant also objects to this Request because it seeks documents that are not within its custody or control or are otherwise equally available to Opposer. Applicant further objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, because it requests documents relating to whether any design

element of APPLICANT'S GX engines is associated with Applicant by consumers, and elements other than the ENGINE CONFIGURATION are irrelevant to this proceeding.

**REQUEST FOR PRODUCTION NO. 9.**

Copies of all "Look For" advertising materials YOU have used in connection with APPLICANT'S GX engines.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9**

Applicant incorporates all of its General Objections and specifically, General Objections 2, 4 and 6. Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and because it does not limit the documents requested by providing a geographic scope. Applicant also objects to this Request because it seeks documents that are not within its custody or control and/or are otherwise equally available to Opposer. Without waiving, and subject to, these objections, Applicant responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 10.**

Copies of all "Look For" advertising materials YOU have used in connection with any products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10**

Applicant incorporates all of its General Objections and specifically, General Objections 2, 4 and 6. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and does not limit the documents requested by providing a geographic scope. Applicant also objects

to this Request because it seeks documents that are not within its custody or control and/or are otherwise equally available to Opposer. Without waiving, and subject to, these objections, Applicant responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 11.**

Copies of all advertising, marketing, and promotional materials related to the sale of any product containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11**

Applicant incorporates all of its General Objections and specifically, General Objections 2, 4, 5, and 6. In particular, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, as the Requests asks for "all" documents and does not limit the documents requested by providing a geographic or time scope. Applicant also objects to this Request because it seeks documents that are not within its custody or control and/or are otherwise equally available to Opposer. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide representative, non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 12.**

Documents sufficient to show YOUR annual sales revenues for all products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 4, 5 and 6. In particular, Applicant objects to this Document Request to the extent that it

requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and does not limit the documents requested by providing a geographic or time scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 13.**

Documents sufficient to show YOUR annual marketing and advertising expenditures for all products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 4, and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, and requests documents sufficient to show marketing and advertising expenditures without providing a geographic scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 14.**

Documents sufficient to describe the type and demographic of YOUR current and prospective customers for all products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 4, and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, because the type and demographic of Applicant's customers for products containing the ENGINE CONFIGURATION is irrelevant to whether the mark should be registered. Applicant also objects to this Document Request because it is not limited by geographic scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 15.**

Documents sufficient to show YOUR marketing channels for all products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 4, and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the

discovery of admissible documents and/or information, because the marketing channels for all products containing the ENGINE CONFIGURATION is irrelevant to whether the mark should be registered. Applicant also objects to this Document Request because it is not limited by geographic scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 16.**

All news articles, editorials, reviews, or other press referring or relating to products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16**

Applicant incorporates all of its General Objections and specifically, General Objections 2, 4 and 6. In particular, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, in that it seeks "all" news articles, editorials, reviews, or other press referring or relating to products containing the ENGINE CONFIGURATION and does not limit the documents requested by providing a geographic scope. Applicant also objects to this Request because it seeks documents that are not within its custody or control and/or are a matter of public record or are otherwise equally available to Opposer. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide representative, non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 17.**

Documents sufficient to show the placement of the HONDA trademark on all products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17**

Applicant incorporates all of its General Objections and specifically, General Objections 4 and 6. In particular, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome and/or oppressive, is requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information requests irrelevant documents or is not reasonably calculated to lead to the discovery of admissible documents and/or information and does not limit the documents requested by providing a geographic scope. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 18.**

All documents regarding any design or utility patents sought or owned by YOU for products containing the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 2, 3, 4, and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, and does not limit the documents requested by providing a geographic scope. Applicant also objects to this Document Request

because it seeks documents that are not within its custody or control and/or are a matter of public record or are otherwise equally available to Opposer. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide representative, non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 19.**

Documents sufficient to show the configuration of all products offered for sale by third parties with the same or similar configuration as the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 2, 3, 4, and 6. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Applicant also objects to this Document Request because it seeks documents that are not within its custody or control and/or are a matter of public record or are otherwise equally available to Opposer. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, as the Request is not limited by providing a geographic scope or to those products of which Applicant is aware. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide documents responsive to this Request sufficient to show the configuration of products offered for sale by third parties with the same or similar configuration as the ENGINE CONFIGURATION of which Applicant is aware.

**REQUEST FOR PRODUCTION NO. 20.**

All documents that support YOUR contention that the ENGINE CONFIGURATION is arbitrary, ornamental, and does not affect the cost or quality of the engine.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 3, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 21.**

All documents that support YOUR contention that the overall design of the ENGINE CONFIGURATION has nothing to do with engine performance and is a matter of styling and appearance.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 3, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome,

oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 22.**

All documents regarding the design, development or advantages of the overall cubic design claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 23.**

All documents regarding the design, development or advantages of the slanted fan cover claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 24.**

All documents regarding the design, development or advantages of the air cleaner housing claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery

of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 25.**

All documents regarding the design, development or advantages of the carburetor cover claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 26.**

All documents regarding the design, development or advantages of the fuel tank claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests

documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 27.**

All documents regarding the design, development or advantages of the beveled edges claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 28.**

All documents regarding the design, development or advantages of the belt-like areas claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 29.**

All documents regarding the design, development or advantages of the rib of the fuel tank claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 29**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections,

Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 30.**

All documents regarding the design, development or advantages of the four ribs claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 30**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 31.**

All documents regarding the design, development or advantages of the relative positioning and orientation of the air cleaner housing, muffler heat shield, and fuel claimed in the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests

documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 32.**

All documents regarding alternative designs YOU considered in connection with the design and development of the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information.

**REQUEST FOR PRODUCTION NO. 33.**

All documents that support your contention that there are alternative horizontal engine designs that provide equal or better quality or performance as horizontal engines with the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 2, 3, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Applicant also objects to this Document Request because it seeks documents that are not within its custody or control and/or are otherwise equally available to Opposer. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 34.**

All documents that support your contention that there are alternative horizontal engine designs that can be made at an equal or lesser cost than horizontal engines with the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 2, 3, and 4. In particular, Applicant objects to this Document Request to the extent that it

requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Applicant also objects to this Document Request because it seeks documents that are not within its custody or control and/or are otherwise equally available to Opposer. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 35.**

Documents sufficient to show the manufacturing cost of the ENGINE.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 36.**

All documents discussing any affect the claimed ENGINE CONFIGURATION has on cost, quality or performance of the engine.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 36**

Applicant incorporates all of its General Objections and specifically, General Objections 1, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 37.**

All documents discussing any stylistic or aesthetic aspects of the claimed ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 37**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 4 and 7. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, in that the document requests "all"

documents discussing “any stylistic or aesthetic” aspects of the claimed ENGINE CONFIGURATION and that phrase “any stylistic or aesthetic” aspects lacks certain meaning. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

**REQUEST FOR PRODUCTION NO. 38.**

All trademark office communications and decisions from anywhere in the world discussing the functionality of the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38**

Applicant incorporates all of its General Objections and specifically, General Objections 2, 4 and 6. In particular, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and because the Request is not limited by geographic scope.

**REQUEST FOR PRODUCTION NO. 39.**

All court opinions, decisions, orders, and judgments from anywhere in the world discussing the functionality of the ENGINE CONFIGURATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39**

Applicant incorporates all of its General Objections and specifically, General Objections 2, 4, 6, and 7. In particular, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information and because the Request is not limited by geographic scope. Applicant further objects to this

Document Request because it seeks documents that are not within its custody or control and/or or are otherwise equally available to Opposer. Applicant also objects to this Document Request to the extent that it contains words or phrases that have an uncertain meaning, "discussing the functionality of the ENGINE CONFIGURATION." Without waiving, and subject to, these objections, Applicant responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 40.**

All documents, including all communications between the signators and APPLICANT or its attorneys, regarding the two Declarations filed by APPLICANT in response to the Office Action mailed September 2, 2008.

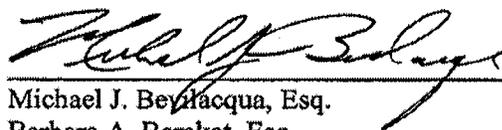
**RESPONSE TO REQUEST FOR PRODUCTION NO. 40**

Applicant incorporates all of its General Objections and specifically, General Objections 1, 3, and 4. In particular, Applicant objects to this Document Request to the extent that it requests documents that contain confidential or private business information, or documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Applicant objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Applicant responds as follows: Applicant will provide non-privileged and otherwise non-objectionable documents responsive to this Request, if any, upon entry of a suitable Protective Order.

HONDA GIKEN KOGYO KABUSHIKI KAISHA

By its attorneys,

December 29, 2011



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Attorneys for Applicant  
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KAISHA

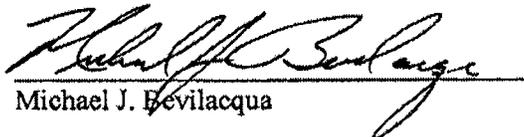
Certificate of Service

I hereby certify that the foregoing APPLICANT HONDA GIKEN KOGYO  
KABUSHIKI KAISHA'S RESPONSES TO OPPOSER BRIGGS & STRATTON  
CORPORATION'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS was  
served on the following counsel of record for Opposer, by depositing same in the U.S. mail, first  
class postage prepaid, this 29<sup>th</sup> day of December, 2011:

Robert N. Philips  
Reed Smith LLP  
101 Second Street  
San Francisco, California 94105

And

Nina Habib Borders  
Reed Smith LLP  
10 S. Wacker Drive, 40<sup>th</sup> Floor  
Chicago, Illinois 6060

  
Michael J. Bevilacqua

# **EXHIBIT C**



other engines manufactured or sold by Opposer, have a design that is "substantially similar" to "Applicant's Mark."

3. Opposer objects to the extent the Document Requests ("Requests") seek material protected from disclosure by the attorney-client privilege, attorney work-product rule, other applicable privileges (hereinafter, collectively "Privileged Information"), and/or obligations of confidentiality running to a third party.

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

5. Opposer objects to the extent the Requests seek documents that are of public record and are, therefore, equally accessible to Applicant.

6. Opposer objects to the extent the Requests seek documents that are not under the possession and control of Opposer or seek documents that are not Briggs & Stratton documents or related only to Opposer's products.

7. Opposer objects to the extent the Requests seek information that is trade secret or other confidential research, development or commercial business information.

8. Opposer objects to the Requests to the extent they are not limited to any reasonably relevant time period and to the extent that because they are unlimited, they are overbroad, impose an undue burden and are not likely to lead to the discovery of admissible information.

9. All responses given herein are made subject to each and every general objection, and to the specific objections made in response to the Requests. In providing a response, Opposer has not waived any objection on the grounds of competency, relevancy, materiality, privilege, admissibility as evidence, or any other ground in this or any other action. Nor has

Opposer waived its right to make additional objections to further discovery requests. Nor is any response to be deemed an admission or acknowledgment that the information sought is within the proper scope of discovery.

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

11. Opposer objects to each Request 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 reserves the right to modify, amend or supplement its General Objection and any additional specific objections provided below.

13. Opposer reserves the right to supplement these responses during the course of discovery as additional information is ascertained.

### **REQUESTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

All documents which Opposer was asked to identify in Applicant's First Set of Interrogatories to Opposer.

**RESPONSE:** Opposer incorporates herein by reference its responses and objections to Applicant's First Set of Interrogatories. Subject to and without waiving the foregoing objections, Opposer will produce all nonprivileged documents identified in its Responses to Applicant's First Set of Interrogatories.

**REQUEST FOR PRODUCTION NO. 2:**

To the extent that Opposer contends that Applicant's Mark is nondistinctive, all documents that support or relate to that contention.

**RESPONSE:** Opposer objects to this document request as vague and ambiguous, overbroad, burdensome and oppressive. Opposer further objects to this document request as premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the document request to the extent it seeks production of Privileged Information. Subject to and without waiving the foregoing objections, Opposer will produce all nonprivileged documents that it intends to rely upon in support of its contention that Applicant's Mark is nondistinctive.

**REQUEST FOR PRODUCTION NO. 3:**

To the extent that Opposer contends that Applicant's Mark lacks secondary meaning, all documents that support or relate to that contention.

**RESPONSE:** Opposer objects to this document request as vague and ambiguous, overbroad, burdensome and oppressive. Opposer further objects to this document request as premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the document request to the extent it seeks production of Privileged Information. Subject to and without waiving the foregoing objections, Opposer will produce all nonprivileged documents that it intends to rely upon in support of its contention that Applicant's Mark lacks secondary meaning.

**REQUEST FOR PRODUCTION NO. 4:**

To the extent that Opposer contends that Applicant's Mark is functional, all documents that support or relate to that contention.

**RESPONSE:** Opposer objects to this document request as vague and ambiguous, overbroad, burdensome and oppressive. Opposer further objects to this document request as premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the document request to the extent it seeks production of Privileged

Information. Subject to and without waiving the foregoing objections, Opposer will produce all nonprivileged documents that it intends to rely upon in support of its contention that Applicant's Mark is functional.

**REQUEST FOR PRODUCTION NO. 5:**

To the extent that Opposer contends that Applicant has not used Applicant's Mark as a trademark, all documents that support or relate to that contention.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 6:**

All documents concerning Opposer's first use of each version or type of Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 7:**

For each product identified in response to Interrogatory Number 4, all documents evidencing or relating to such product, such as documents for each year of use and documents related to the manufacturing, sale, and offering for sale for such product.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 8:**

All documents concerning any communications that Opposer, or anyone acting on behalf of Opposer, has had concerning Applicant, Applicant's Mark, any aspect of Applicant's Mark or this proceeding, including any minutes, notes, or other records of any meetings at which any of these subjects were discussed.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 9:**

All documents concerning the selection, adoption, and use of any aspect of Applicant's Mark by Opposer, including but not limited to the decision by Opposer to use, manufacture, sell, or offer for sale Opposer's Products in the United States.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 10:**

For each product identified in response to Interrogatory Number 4 of Applicant's First Set of Interrogatories to Opposer, all documents evidencing the following:

- a. the name and description of the product;
- b. the date on which Opposer first used, manufactured, sold, offered to sell, or expects to use, manufacture, sell, or offer to sell the product in the United States, and if applicable, the date on which such product ceased to be used, manufactured, sold, or offered to sell in the United States;
- c. the minimum price at which the product has been offered for sale and sold in each year since it was introduced;

- d. the use(s) for the product;
- e. in terms of units, the volume of sales of the product in each year of use since it was introduced, and the anticipated volume of sales for the next three years;
- f. in terms of dollars, the volume of sales of the product in each year of use since it was introduced, and the anticipated volume of sales for the next three years;
- g. the profits, losses, expenses and costs of the product in each year since it was introduced and the anticipated profits, losses, expenses and costs of the product for the next three years.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 11:**

For each product identified in response to Interrogatory Number 4 of Applicant's First Set of Interrogatories to Opposer, to the extent that Opposer is not the manufacturer of the product, all documents evidencing the following:

- a. the manufacturer, wholesaler, distributor or importer from whom Opposer obtained the product;
- b. the price Opposer paid for the product; and
- c. the number of units of the product that Opposer has received.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 12:**

All documents concerning any plans or proposals Opposer has, ever had or considered for the expansion or contraction of its use of Opposer's Products (including new versions of

Opposer's Products), including, but not limited to, any plans, proposals or considerations for offering new Opposer's Products or discontinuing the sale of Opposer's Products (including new versions of Opposer's Products).

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 13:**

All documents which relate or pertain in any manner to any advertisements or promotions of Opposer's Products and Opposer's business related to Opposer's Products, including but not limited to specimens of each and every advertisement or promotion used by Opposer in connection with Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 14:**

All documents that refer or relate to the use by any person, other than Applicant and Opposer, of any engine design which consists of any colorable imitation or variation of Applicant's Mark.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information. Subject to and without waiving the foregoing objections, Opposer will produce representative nonprivileged responsive documents within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 15:**

All documents relating to, embodying the results of, or referring to any survey or research activity that you conducted or had others conduct on your behalf related to Applicant's Mark, a Honda engine embodying Applicant's Mark or Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 document request as premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 16:**

All documents referring or relating to Opposer's past and present trademark registrations and/or applications (federal, state and foreign) for any engine design.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 17:**

All documents referring or relating to third party engine designs that Opposer claims are more similar in appearance to Applicant's Mark than Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 18:**

All documents relating to the selection, adoption, use, registration or defense of any aspect of the design of Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 19:**

All documents establishing the volume, dates, places of sales, advertising, distribution, and annual gross income derived from Opposer's Products in the United States.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 20:**

All documents relating to Opposer's merchandising and promotional strategy for Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 21:**

To the extent not included in previous requests, all contracts between Opposer and third parties which refer or relate to the design or manufacture of Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 22:**

All documents concerning the business plans or strategies for use of the Opposer's Products in the United States, including but not limited to any business plans or strategies concerning the use, manufacture, sale or offering for sale of the Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 23:**

All documents evidencing the principal competitors in the business in which Opposer does business in connection with Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 24:**

All documents identifying the channels of trade through which Opposer's Products reach or will reach the ultimate consumer in the United States.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 25:**

All documents concerning or embodying the results of any research that Opposer conducted or had others conduct on its behalf concerning its market position, Applicant's Mark, any Honda engine embodying Applicant's Mark, or any product identified in its response to Interrogatory No. 4.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 26:**

All documents concerning efforts by Opposer or by anyone acting on behalf of Opposer, to design, research, develop, create, manufacture, sell or offer to sell Opposer's Products in the United States.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 27:**

All documents concerning Opposer's actual or projected share of the market in the United States for small gasoline-powered engines, generators and other products incorporating small gasoline-powered engines in the United States.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 28:**

All documents concerning the purchase by Opposer or by anyone acting on behalf of Opposer, of a Honda engine embodying Applicant's Mark.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 29:**

All documents reflecting the use by customers, retailers, distributors, and end users of any Opposer's Products.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 30:**

All documents constituting or reflecting the plan or strategies of any Opposer's Products regarding competition with Applicant or its distributors, dealers, OEMs, or other retailers in the market for small gasoline-powered engines, generators and other products incorporating small gasoline-powered engines in the United States.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 31:**

All documents concerning any differences or similarities between Opposer's Products and any Honda engine embodying the Applicant's Mark.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 32:**

All documents referring to Applicant, including but not limited to documents referring or relating to Applicant's Mark.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 33:**

All documents concerning each opinion of counsel that Opposer, or anyone acting on behalf of Opposer, has received concerning the validity, enforceability or infringement of Applicant's Mark.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 34:**

To the extent that Opposer contends that the customer of Applicant's engines embodying the Applicant's Mark and Opposer's Products are sophisticated consumers, all documents that support or relate to that contention.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 35:**

All documents that relate in any way to the subject matter, fact and/or circumstances as to which each such person who Opposer presently intends to call as a witness at the trial of this matter is expected to testify.

**RESPONSE:** Opposer objects to this document request as vague and ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action and not

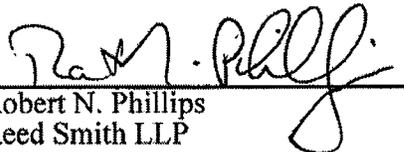
likely to lead to the discovery of admissible evidence. Opposer further objects to the document request to the extent it seeks production of Privileged Information.

**REQUEST FOR PRODUCTION NO. 36:**

2. All correspondence or other communication between Opposer and its advertising agencies referring or relating to Applicant's Mark.

**RESPONSE:** Opposer objects to this document request as 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 the document request to the extent it seeks production of Privileged Information. Subject to and without waiving the foregoing objections, Opposer will produce responsive nonprivileged communications between Opposer and its advertising agencies, if any, regarding Applicant's claim that its alleged mark has acquired distinctiveness and is not functional.

January 3, 2012

By:   
Robert N. Phillips  
Reed Smith LLP

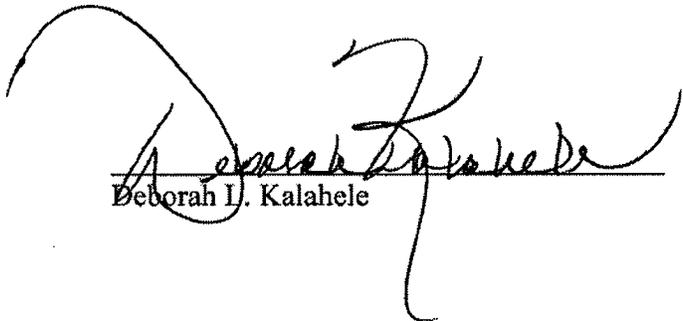
Nina Habib Borders  
Reed Smith LLP

Attorneys for Opposer  
BRIGGS & STRATTON  
CORPORATION

Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing OPPOSER BRIGGS & STRATTON CORPORATION'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 3rd day of January, 2012:

Michael J. Bevilacqua, Esq.  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109-1800  
Phone: (617) 526-6448  
Fax: (617) 526-5000



Deborah I. Kalahale

# **EXHIBIT D**

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

Briggs & Stratton Corporation,	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91/200832
	)	
Honda Giken Kogyo Kabushiki Kaisha	)	
(Honda Motor Co., Ltd.),	)	
	)	
Applicant	)	

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

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Applicant, Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), requests Opposer, Briggs & Stratton Corporation, to produce for inspection and copying the documents and things listed below at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109, within thirty (30) days of service of these discovery requests, or at such other time and place as may be mutually agreed upon by the parties.

These Requests are continuing in nature. Any documents discovered or obtained after the service and filing of the Responses should be disclosed through Supplemental Responses within a reasonable time thereafter.

**DEFINITIONS**

Registrant hereby incorporates by reference the definitions set forth in Applicant's First Set of Interrogatories to Opposer.

**EXHIBIT D**

## REQUESTS

1. All documents which Opposer was asked to identify in Applicant's First Set of Interrogatories to Opposer.
2. To the extent that Opposer contends that Applicant's Mark is nondistinctive, all documents that support or relate to that contention.
3. To the extent that Opposer contends that Applicant's Mark lacks secondary meaning, all documents that support or relate to that contention.
4. To the extent that Opposer contends that Applicant's Mark is functional, all documents that support or relate to that contention.
5. To the extent that Opposer contends that Applicant has not used Applicant's Mark as a trademark, all documents that support or relate to that contention.
6. All documents concerning Opposer's first use of each version or type of Opposer's Products.
7. For each product identified in response to Interrogatory Number 4, all documents evidencing or relating to such product, such as documents for each year of use and documents related to the manufacturing, sale, and offering for sale for such product.
8. All documents concerning any communications that Opposer, or anyone acting on behalf of Opposer, has had concerning Applicant, Applicant's Mark, any aspect of Applicant's Mark or this proceeding, including any minutes, notes, or other records of any meetings at which any of these subjects were discussed.
9. All documents concerning the selection, adoption, and use of any aspect of Applicant's Mark by Opposer, including but not limited to the decision by Opposer to use, manufacture, sell, or offer for sale Opposer's Products in the United States.
10. For each product identified in response to Interrogatory Number 4 of Applicant's First Set of Interrogatories to Opposer, all documents evidencing the following:

- a. the name and description of the product;
- b. the date on which Opposer first used, manufactured, sold, offered to sell, or expects to use, manufacture, sell, or offer to sell the product in the United States, and if applicable, the date on which such product ceased to be used, manufactured, sold, or offered to sell in the United States;
- c. the minimum price at which the product has been offered for sale and sold in each year since it was introduced;
- d. the use(s) for the product;
- e. in terms of units, the volume of sales of the product in each year of use since it was introduced, and the anticipated volume of sales for the next three years;
- f. in terms of dollars, the volume of sales of the product in each year of use since it was introduced, and the anticipated volume of sales for the next three years;
- g. the profits, losses, expenses and costs of the product in each year since it was introduced and the anticipated profits, losses, expenses and costs of the product for the next three years.

11. For each product identified in response to Interrogatory Number 4 of Applicant's First Set of Interrogatories to Opposer, to the extent that Opposer is not the manufacturer of the product, all documents evidencing the following:

- a. the manufacturer, wholesaler, distributor or importer from whom Opposer obtained the product;
- b. the price Opposer paid for the product; and
- c. the number of units of the product that Opposer has received.

12. All documents concerning any plans or proposals Opposer has, ever had or considered for the expansion or contraction of its use of Opposer's Products (including new versions of Opposer's Products), including, but not limited to, any plans, proposals or

considerations for offering new Opposer's Products or discontinuing the sale of Opposer's Products (including new versions of Opposer's Products).

13. All documents which relate or pertain in any manner to any advertisements or promotions of Opposer's Products and Opposer's business related to Opposer's Products, including but not limited to specimens of each and every advertisement or promotion used by Opposer in connection with Opposer's Products.

14. All documents that refer or relate to the use by any person, other than Applicant and Opposer, of any engine design which consists of any colorable imitation or variation of Applicant's Mark.

15. All documents relating to, embodying the results of, or referring to any survey or research activity that you conducted or had others conduct on your behalf related to Applicant's Mark, a Honda engine embodying Applicant's Mark or Opposer's Products.

16. All documents referring or relating to Opposer's past and present trademark registrations and/or applications (federal, state and foreign) for any engine design.

17. All documents referring or relating to third party engine designs that Opposer claims are more similar in appearance to Applicant's Mark than Opposer's Products.

18. All documents relating to the selection, adoption, use, registration or defense of any aspect of the design of Opposer's Products.

19. All documents establishing the volume, dates, places of sales, advertising, distribution, and annual gross income derived from Opposer's Products in the United States.

20. All documents relating to Opposer's merchandising and promotional strategy for Opposer's Products.

21. To the extent not included in previous requests, all contracts between Opposer and third parties which refer or relate to the design or manufacture of Opposer's Products.

22. All documents concerning the business plans or strategies for use of the Opposer's Products in the United States, including but not limited to any business plans or strategies concerning the use, manufacture, sale, or offering for sale of the Opposer's Products.

23. All documents evidencing the principal competitors in the business in which Opposer does business in connection with Opposer's Products.

24. All documents identifying the channels of trade through which Opposer's Products reach or will reach the ultimate consumer in the United States.

25. All documents concerning or embodying the results of any research that Opposer conducted or had others conduct on its behalf concerning its market position, Applicant's Mark, any Honda engine embodying Applicant's Mark, or any product identified in its response to Interrogatory No. 4.

26. All documents concerning efforts by Opposer or by anyone acting on behalf of Opposer, to design, research, develop, create, manufacture, sell or offer to sell Opposer's Products in the United States.

27. All documents concerning Opposer's actual or projected share of the market in the United States for small gasoline-powered engines, generators and other products incorporating small gasoline-powered engines in the United States.

28. All documents concerning the purchase by Opposer or by anyone acting on behalf of Opposer, of a Honda engine embodying Applicant's Mark.

29. All documents reflecting the use by customers, retailers, distributors, and end users of any Opposer's Products.

30. All documents constituting or reflecting the plan or strategies of any Opposer's Products regarding competition with Applicant or its distributors, dealers, OEMs, or other retailers in the market for small gasoline-powered engines, generators and other products incorporating small gasoline-powered engines in the United States.

31. All documents concerning any differences or similarities between Opposer's Products and any Honda engine embodying the Applicant's Mark.

32. All documents referring to Applicant, including but not limited to documents referring or relating to Applicant's Mark.

33. All documents concerning each opinion of counsel that Opposer, or anyone acting on behalf of Opposer, has received concerning the validity, enforceability or infringement of Applicant's Mark.

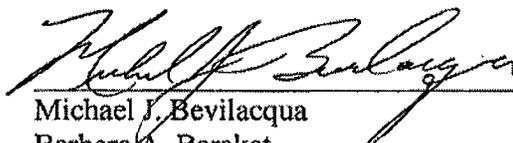
34. To the extent that Opposer contends that the customer of Applicant's engines embodying the Applicant's Mark and Opposer's Products are sophisticated consumers, all documents that support or relate to that contention.

35. All documents that relate in any way to the subject matter, fact and/or circumstances as to which each such person who Opposer presently intends to call as a witness at the trial of this matter is expected to testify.

36. All correspondence or other communication between Opposer and its advertising agencies referring or relating to Applicant's Mark.

HONDA GIKEN KOGYO KABUSHIKI KAISHA  
(HONDA MOTOR CO., LTD.)

By its attorneys,

  
Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

October 28, 2011

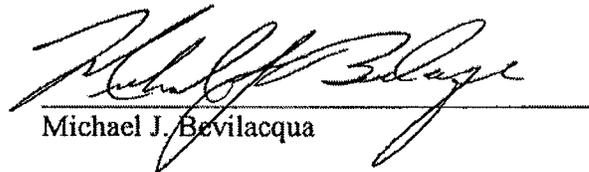
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Applicant's First Request for Production of Documents to Opposer was served by first-class mail, postage-prepaid, this 28<sup>th</sup> day of October, 2011 upon:

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