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

Proceeding	91201666
Party	Plaintiff Cutlery and More, LLC
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Submission	Motion to Compel Discovery
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Date	05/23/2012
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Serial No. 85/156,141
Opposition No. 91201666
For the mark CUTLERYANDBEYOND

CUTLERY AND MORE, LLC,
Opposer,

v.

DASALLA TRADING COMPANY,
Applicant.

OPPOSER’S MOTION TO COMPEL DISCOVERY

Opposer Cutlery and More, LLC (“Opposer”), by and through its undersigned counsel, moves pursuant to Rule 37 of the Federal Rules of Civil Procedure and 37 CFR § 2.120(e) for entry of an order compelling Applicant, Dasalla Trading Company (“Applicant”)¹, to respond fully to Opposer’s discovery requests, and for other appropriate relief. The grounds and authorities in support of this Motion are as follows:

I. BACKGROUND

On September 19, 2011, Opposer filed this opposition to the Applicant’s application to register CUTLERYANDBEYOND in Application Serial No. 85/156,141 for use in connection with “Retail store and on-line retail store services featuring cutlery and kitchenware” in International Class 35 on the grounds that the mark was confusingly similar to Opposer’s Marks.

On March 1, 2012, Opposer served Applicant with Interrogatories, Requests for Admission, and Document Requests. (Exhibits A, B, and C, respectively).

¹ The Opposer has repeatedly requested clarification from the Applicant’s counsel with respect to the proper spelling of the Applicant – Desalla or Dasalla.

The Applicant refused to answer the Interrogatories and Request for Admissions based on frivolous objections and failed to produce any documents responsive to the Requests for Production. (Exhibits D, E, and F, respectively). The Applicant states that certain interrogatories and requests for admissions “will be supplemented at a reasonable time prior to the trial of this matter” and further states that “requested documents will be supplemented at a later date”. However, discovery is set to close in less than a week on May 26, 2012.

In a good faith attempt under Rules 2.120(e) and (h) to resolve the issues raised by the Applicant’s responses, the Opposer’s undersigned counsel sent correspondence to the Applicant dated April 12, 2012, addressing the inadequacy of the Applicant’s discovery responses. (Exhibit G). In addition, the Opposer’s undersigned counsel called the Applicant’s counsel and left a voice message on May 2, 2012 and May 16, 2012. The Applicant’s counsel has not responded to the correspondence or voice messages, and has not supplemented the Applicant’s discovery responses. Therefore, it is necessary to proceed with this Motion to compel discovery.

II. ARGUMENT

The Applicant has failed to produce sufficient responses to Opposer’s discovery requests. Under TBMP §523.01 and Trademark Rule 2.120(e), upon the failure of a party to provide required discovery which was requested by way of interrogatories or document production, a motion to compel is available. *See Johnson and Johnson and Roc Int’l S.A.R.L. v. Obschevsto s Oranitchennoy; Otvetstvenn Ostiu Wds*, 95 USPQ2d 1567 (TTAB 2010) (motion to compel applicant to supplement interrogatory responses granted). Furthermore, where a party believes objections to its discovery requests are

improper, they may file a motion to compel. *Fidelity Prescriptions, Inc. v. Med. Chest Disc. Ctrs., Inc.*, 191 USPQ 127 (TTAB 1976). In fact, a party who receives a discovery response which they believe to be inadequate, is directed to file a motion to compel in order to test the sufficiency of the response, otherwise the opportunity to supplement the responses is forfeited. *H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715, 1719 (TTAB 2008); *Time Warner Entm't Co. v. Jones*, 65 USPQ2d 1650, 1656-57 (TTAB 2002).

A. Applicant Failed to Provide Sufficient Responses to Interrogatories

Since the Applicant has not provided any substantive responses to Interrogatory Nos. 1 through 23 and 25, the Applicant's Interrogatory responses are wholly insufficient.² See TBMP §408.02 ("A party served with a request for discovery has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request").

The Applicant objects to all twenty-five (25) interrogatories as propounded by the Opposer as "overly broad and burdensome". However, no detail as to why the Applicant takes this position is provided. "[I]t is incumbent upon a party who has been served with interrogatories to respond by articulating his objections (with particularity) to those interrogatories which he believes to be objectionable, and by providing the information sought in those interrogatories which he believes to be proper." *Amazon Tech., Inc. v. Wax*, 93 USPQ2d 1702 (TTAB 2009); Fed. R. Civ. P. 33(b)(4) ("The grounds for objecting to an interrogatory must be stated with specificity.")

² In addition to the Applicant objecting to Interrogatory No. 24 as overly broad and burdensome, the Applicant answered that "Eddie Desalla, with the assistance of counsel" as persons who provided information used in the answers to the interrogatories.

With respect to Interrogatory Nos. 19, 20, 23, the Applicant further states that these interrogatories are “not reasonably calculated to lead to the discovery of admissible evidence”. However, Interrogatory Nos. 19, 20, 23 clearly relate to factors related to a likelihood of confusion.

The Applicant further objects to Interrogatory No. 22 on the basis that it “may call for a legal conclusion”. First, Interrogatory No. 22 calls for the “factual basis” for affirmative defenses, and not any legal basis. Second, an interrogatory that is otherwise proper is not necessarily objectionable merely because it requires a party to give an opinion or contention that relates to fact or the application of law to fact. TBMP §405.02; Fed. R. Civ. P. 33(b); *Johnston Pump/General Valve v. Chromalloy Am. Corp.*, 10 USPQ2d 1671, 1676 (TTAB 1988) (query whether opposer believes marks in question to be confusingly similar must be answered even though it requires opposer to draw legal conclusion); *see also Gould v. Sanyo Electric*, 179 USPQ 313 (TTAB 1973). Clearly, Applicant’s objections to Interrogatory No. 22 are not supported.

Lastly, the Applicant states that all the interrogatories (with the exception of Interrogatory No. 24) “will be supplemented at a reasonable time prior to the trial of this matter” or “will be supplemented at a later date”. With the close of discovery approaching on May 26, 2012, it is unclear as to what the Applicant considers “a reasonable time” or a “later date”.

Accordingly, the Applicant should be compelled to supplement its responses, without objection, to Interrogatory Nos. 1 through 23 and 25.

B. Applicant Failed to Produce Sufficient Responsive Documents

Applicant has yet to produce any documents in response to the Opposer's Production Document Request Nos. 1 through 20. However, the Applicant has a duty "to select and produce the items requested". See *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1556 (TTAB 2000); TBMP §408.02; see also, *M.C.I. Foods, Inc. v. Bunte*, 86 USPQ2d 1044 (TTAB 2008) (a promise to produce unspecified documents at some unspecified later time is an insufficient response).

The Applicant objects to all twenty (20) requests for production of documents as "overly broad and burdensome". However, no detail as to why the Applicant takes this position is provided.

The Applicant further objects to Production Document Request Nos. 2, 10 stating that these requests are "not reasonably calculated to lead to the discovery of admissible evidence". However, Production Document Request Nos. 2, 10 seek to identify potential parties for deposition as well as evidence of use or planned use of the mark in commerce.

The Applicant further objects to Production Document Request Nos. 3, 19 stating that the request may be in violation of the attorney-client privilege and/or attorney work product doctrine. However, under Federal Rule of Civil Procedure 26(b)(5)(A): "[w]hen a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must ... describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to access the claim." See *United States v. Philip*

Morris Inc., 347 F.3d 951, 954 (D.C. Cir. 2003); *In re Santa Fe Int'l*, 272 F.3d 705, 710 (5th Cir. 2001). A proper response requires either stating that there are responsive documents and producing them, or withholding them on a claim of privilege, or stating that Applicant has no responsive documents. *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1555-56 (TTAB 2000). Production Document Request No. 19 is directed to expert opinions, which relate to expert disclosures due April 26, 2012.

The Applicant further objects to Production Document Request Nos. 16, 18 stating that the request “may call for a legal conclusion”. It is clear that Production Document Request No. 16 is directed to evidence related to consumer confusion, which is based on facts. Furthermore, Production Document Request No. 18 requests documents that are not premised on a legal basis.

Similar to the Applicant’s responses to the interrogatories, the Applicant states that all the production document responses “will be supplemented at a later date”. However, it is unclear as to what the Applicant considers a “later date” in light of the upcoming close of discovery on May 26, 2012.

The Applicant’s document production is wholly insufficient. Accordingly, the Applicant should be compelled to supplement its document production, without objection, to Production Document Requests 1 through 20.

C. Applicant Failed to Provide Sufficient Responses to Admissions

Opposer propounded twenty (20) Requests for Admissions. If the Board, upon motion to test the sufficiency of an admission, determines that an answer does not comply with the requirements of Federal Rule of Civil Procedure 36(a), it may order that

the matter is deemed admitted. See 37 CFR § 2.120(h); FRCP 36(a); TBMP §524.01; TBMP §407.04.

In response, the Applicant has objected to eleven (11) of the requests and states that all twenty (20) admissions “will be supplemented at a reasonable time prior to the trial of this matter”. The Applicant’s responses to the requested admissions are wholly insufficient.

More specifically, the Applicant objects to Admission Request Nos. 1, 4, 5, 7, 8, 9, 14, 15, 16, 17, 18 stating that these requests are “overly broad and burdensome”. However, no detail as to why the Applicant takes this position is provided. The Applicant must “state in detail the reasons why the responding party cannot truthfully admit or deny the matter” according to TBMP §407.03(b) (“An answer must admit the matter of which an admission is requested; deny the matter; or state in detail the reasons why the responding party cannot truthfully admit or deny the matter.”).

In addition, the Applicant objects to Admission Request Nos. 1, 4, 5 as to the term “owns” stating that this term “can have different meanings to different individuals”. According to the context of Admission Request Nos. 1, 4, 5, it is clear that the term “own” can only have one meaning.

The Applicant further objects to Admission Request Nos. 16, 17, 18 stating that the request “may call for a legal conclusion”. Admission Request No. 16 is directed to the admission or denial of whether or not the definition of the term “beyond” is specified to mean “more than” according to the Cambridge Online Dictionary. This request is clearly factual, not based on a legal conclusion. Admission Request Nos. 17 and 18 are also factual in that these requests relate to consumer confusion.

Accordingly, Opposer requests that all Requested Admissions be construed as admitted.

D. Applicant's Failure to Cooperate

Clearly, the Applicant has failed to fulfill its duty to cooperate in the discovery process. "The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not. Each party and its attorney or other authorized representative has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case." TBMP §408.01; *See Medtronic v. Pacesetter Sys.*, 222 USPQ 80, 83 (TTAB 1984) (it was clear from applicant's blanket objections to opposer's discovery requests that applicant was not cooperating).

E. Opposer's Good Faith

Pursuant to 37 CFR § 2.120(e), Opposer's attorneys have made a good faith effort, by correspondence and telephone, to resolve the issues set forth in this Motion with the Applicant's attorney, but have not received any response. In light of Applicant's failure to provide proper responses to Opposer's discovery requests and the approaching deadline for close of discovery, Opposer has no choice but to bring these issues before the Board.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board grant this Motion to compel discovery by entering an order directing Applicant to respond to

Opposer's Interrogatories and Document Requests and that the Opposer's Request for Admission Nos. 1 through 20 be deemed admitted.

In addition, Opposer requests that the Board suspend the proceedings until after this Motion is resolved. Since the discovery period is set to close on May 26, 2012, the Opposer is aware that an extension to the discovery period may be required.

Dated: May 23, 2012

Respectfully submitted,

/Allison M. Corder/

Charles C. Valauskas, Reg. No. 32,009

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the foregoing MOTION TO COMPEL DISCOVERY has been served via United States first class mail, postage prepaid, on May 23, 2012 to:

Mr. Matthew H. Swyers
The Trademark Company
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com

Dated: May 23, 2012

Respectfully submitted,

/Allison M. Corder/

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Allison M. Corder, Reg. No. 50,545
Kathleen M. Wilt, Reg. No. 67,960

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Attorneys for Opposer

Exhibit A

CUTLERY AND MORE, LLC v. DASALLA
TRADING COMPANY
Opposition No. 91201666

OPPOSER'S MOTION TO COMPEL
DISCOVERY

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

CUTLERY AND MORE, LLC,
Plaintiff/Opposer,

v.
DASALLA TRADING COMPANY,
Defendant/Applicant.

Opposition No. 91201666

Serial No. 85/156,141
Mark: CUTLERYANDBEYOND

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and 37 CFR Section § 2.120, Cutlery and More, LLC. ("Opposer") propounds the following interrogatories to Dasalla Trading Company ("Applicant"), to be answered separately and fully, in writing and under oath, by an officer or agent in accordance with the provisions of and within the time period provided by the Rule after service hereof. These interrogatories shall be deemed to seek answers as of the date hereof and shall be deemed to be continuing, so that any additional information relating in any way to these interrogatories which Applicant acquires or which subsequently becomes known to Applicant shall be furnished to Opposer promptly after such information is acquired or becomes known, all in accordance with the Rules.

DEFINITIONS AND INSTRUCTIONS

A. The words "you" or "your" or "yourself" mean the party to whom these Interrogatories are addressed. Your answers to these interrogatories shall include all non-privileged information available to you directly or through your agents, representatives, or attorneys; this includes knowledge or information in the possession of your employees and any other persons or entities that are subject to your direction or control.

B. The words "person" or "entity" mean individuals, groups of individuals, unincorporated associations or societies, businesses, partnerships, corporations, estates, trusts, governmental bodies, any other organizations, and all divisions, departments, parts or agents of any of the foregoing.

C. The word “communication” means any expression of thoughts or ideas, whether oral, written, or by conduct, by which any kind of information, questions, exclamations or demands of any kind were stated.

D. The word “document” is used in the broadest sense permissible under Fed. R. Civ. P. 34 and includes originals, drafts and copies of all writings, drawings, graphs, charts, photographs, recordings, e-mails, and other data compilations from which information can be obtained, translated, if necessary, by you into reasonably usable form.

E. Facts, knowledge, information, documents or communications that “concern” or “relate to” a given subject if they constitute, contain, embody, evidence, reflect, identify, state, refer to, deal with, or are in any way pertinent to that subject.

F. To state the “facts on which you rely” or the “factual basis” relating to any allegation, fact, legal theory, contention or denial, means to furnish a full and complete statement of all your knowledge or information relating thereto, including identification and description of relevant persons, entities, communications, events and places.

G. To “describe”, “state”, or “identify” means to set forth all known facts and circumstances relating to given subjects, persons, entities, communications, or events.

1. When used with respect to an individual, state the individual's full name, home and business addresses and telephone numbers, and occupational title, position and affiliation.

2. When used with respect to any person or entity other than an individual, state its formal name, the name under which it trades or does business, the type of entity it is (e.g., corporation, partnership, etc.), its state of incorporation, organization, or registration, its officers and board of directors, and the address and telephone number of its principal place of business.

3. When used with respect to a written communication or other document, state its medium of expression (e.g., letter, e-mail, etc.) its date of preparation, execution or sending, its subject matter and content, its title, and the identities of its author(s), signator(ies), addressees and recipients.

4. When used with respect to an oral communication, state its manner of communication (e.g., by telephone or in person), the date and place made, the identity of the speaker(s) and of each person to whom the communication was made or who

witnessed the communication, and the subject matter, substance, and content of the communication.

5. When used with respect to an event or occurrence, state the substance, date, duration, and the location of such event or occurrence and identify each person attending, witnessing or participating in the event or occurrence.

H. These Interrogatories require you to furnish all non-privileged information available to you. Even if investigation or discovery relating to an answer is ongoing, furnish as much information as you have available to you relating to that answer.

I. These Interrogatories are continuing in nature so as to require you to amend or supplement your answers promptly if you obtain further information.

J. These Interrogatories require you to furnish information in addition to that demanded in requests for production of documents. Because the burden of deriving answers from your documents would be substantially greater for the party propounding these Interrogatories than for you, a mere reference to such documents is not responsive to these Interrogatories.

K. Wherever used herein, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine, and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and") and the conjunctive shall be deemed to include the disjunctive; and each of the functional words "each", "every", "any", and "all" shall be deemed to include each of the other functional words. The words "include" or "including" mean by way of illustration or example, not by way of limitation.

L. Unless otherwise stated, these Interrogatories refer to the times, persons, places, events and circumstances referred to in the pleadings in this action. The term "Opposer's Marks" means the Marks CUTLERYANDMORE.COM, CUTLERYANDMORE, and CUTLERYAND covered by Registration No. 3,954,102, Application Serial No. 85/345,038, and Application Serial No. 85/345,016, referred to in the Notice of Opposition. As used herein, the term "Applicant's Mark" or "CUTLERYANDBEYOND Mark" means the word, name, symbol, device or combination thereof for which Applicant has applied for federal trademark registration in Application Serial No. 85/156,141.

INTERROGATORIES

1. Identify Applicant, in accordance with the instructions to these interrogatories, and describe its principal type of business.

2. Identify each of Applicant's officers and directors.

3. State the name and business address of each person who participated in Applicant's design and selection of the Applicant's Mark.

4. Explain with particularity why Applicant chose to use the CUTLERYANDBEYOND Mark for its goods or services.

5. State the meaning or significance of the CUTLERYANDBEYOND Mark and each of its components, "CUTLERY" and "BEYOND".

6. Identify all forms and formats in which Applicant's Mark has been depicted on labels, cartons, product containers, packaging, adverting, promotional materials, product descriptions, price sheet, order forms and the like , including all stylized letters, logos and designs, and identify which forms or formats have been used in connection with which of Applicant's goods or services.

7. Identify each person who participated in Applicant's decision to file the Application Serial No. 85/156,141.

8. Identify and describe your first use of the CUTLERYANDBEYOND Mark, the first use of the CUTLERYANDBEYOND Mark in a commercial transaction with any person in the United States including the date, parties, nature of the transaction, type of goods or services on which the Applicant's Mark was used, and price of the goods or services.

9. For each advertisement Applicant has advertised the goods or services offered under Applicant's Mark, please provide:

- (a) state the date on which it was published, broadcast, displayed, disseminated, or distributed;
- (b) if a print media advertisement, identify the publication in which said advertisement appeared by name and date;
- (c) if a broadcast advertisement, identify the radio or television station or Internet site over which it was broadcast and the dates upon which it was broadcast;
- (d) state the total amount of money spent for each such advertisement or commercial, including but not limited to costs of space or time, production costs and agency commissions;
- (e) identify the person ultimately responsible for approving the content of such advertisement on behalf of Applicant.

10. Describe with particularity the classes of customers to whom Applicant has or intends to sell goods or services bearing the CUTLERYANDBEYOND Mark.

11. Describe each and every service offered by Applicant under Applicant's Mark.

12. Describe chronologically any and all acts undertaken by Applicant that indicate Applicant's use of or intent to use the CUTLERYANDBEYOND Mark in the United States in connection with Applicant's goods or services, including, but not limited to, the performance or commission of marketing studies relating to the goods or services, the development of marketing plans relating to the goods or services, the development of advertising and promotional materials relating to the goods or services, the making of contracts or other agreements relating to the goods or services, and the like.

13. State whether Applicant has ever prepared a marketing proposal or business plan relating to Applicant's Goods or services. If so, identify each such document.

14. Describe any agreement under which Applicant will sell or plans to sell the CUTLERYANDBEYOND Mark and the goodwill appurtenant thereto to any person or entity.

15. Describe with particularity any search or investigation of any records such as, but not limited to, the United States Patent and Trademark Office records, State trademark records, trademark or trade publications, business directories, or the records of any trademark service organization conducted by or for Applicant prior to adopting or using the CUTLERYANDBEYOND Mark in order to ascertain whether the Applicant's Mark might infringe the trademark or service mark or trade name rights of others.

16. State whether Applicant was aware of any of Opposer's Marks prior to Applicant using the CUTLERYANDBEYOND Mark, or prior to Applicant filing U.S. Application Serial No. 85/156,141.

17. Identify all persons Applicant expects to testify on its behalf as an expert witness on any matter pertaining to this Opposition proceeding, including in such identification the expert's name, address, field of specialization, the substance of facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

18. Identify all sales, assignments, or licenses permitting any person to use the Applicant's Mark in connection with any goods or services, including identification of the parties, date, and terms of agreement.

19. State the amount of income generated by Applicant to date from the sale of goods or services offered under Applicant's Mark.

20. Identify any complaints or comments Applicant has received regarding the quality of goods or services offered by Applicant under the Applicant's Mark.

21. Identify each document or tangible thing requested in Opposer's Requests for Production of Documents that Applicant does not intend to produce on the basis of privilege or other grounds, and with respect to each state:

- (a) the date of the document;
- (b) the name and employer of each addressee;
- (c) the name and employer of each author;
- (d) the name and employer of each person who received the document or a copy thereof;
- (e) a brief description of the subject matter; and
- (f) the nature of the privilege claimed and the ground for the non-production.

22. State the factual basis for any affirmative defenses you may raise.

23. If you have ever been a party in any proceeding (e.g., lawsuit or arbitration) other than this action, identify the proceeding by case name, forum, case number, date instituted, parties involved, subject matter, claims, and resolution.

24. Identify each person who provided information used in your answers to these interrogatories, and state the interrogatory or interrogatories for which each such person provided information.

25. Identify all persons with knowledge of any facts or information relating to the subject matters of any of the foregoing interrogatories, and/or the subject matters in the pleadings, and state the substance of each person's knowledge.

Dated: March 1, 2012

Respectfully submitted,

/ Allison M. Corder /

Charles C. Valauskas, Reg. No. 32,009

Allison M. Corder, Reg. No. 50,545

Kathleen M. Wilt, Reg. No. 67,960

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the foregoing Opposer's First Set of Interrogatories to Applicant has been served via United States first class mail, postage prepaid, on March 1, 2012 (with a courtesy copy emailed) to:

Mr. Matthew H. Swyers
The Trademark Company
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com

Dated: March 1, 2012

Respectfully submitted,

 / Kathleen M. Wilt /

Charles C. Valauskas, Reg. No. 32,009

Allison M. Corder, Reg. No. 50,545

Kathleen M. Wilt, Reg. No. 67,960

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Attorneys for Opposer

Exhibit B

CUTLERY AND MORE, LLC v. DASALLA
TRADING COMPANY
Opposition No. 91201666

OPPOSER'S MOTION TO COMPEL
DISCOVERY

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

CUTLERY AND MORE, LLC,
Plaintiff/Opposer,

v.
DASALLA TRADING COMPANY,
Defendant/Applicant.

Opposition No. 91201666

Serial No. 85/156,141
Mark: CUTLERYANDBEYOND

OPPOSERS'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 CFR and 37 CFR § 2.120(h), Cutlery and More, LLC ("Opposer") propounds the following request for admissions to Dasalla Trading Company ("Applicant"). All matters of which admissions are requested are deemed admitted unless Applicant or its counsel serves a written answer or objection addressed to the matter within 30 days of service hereof.

DEFINITIONS AND INSTRUCTIONS

A. Unless the terms of a particular request specifically indicate otherwise, the Definitions and Instructions set forth in Opposer's Interrogatories to Applicant are applicable to these requests and are herein incorporated by reference.

B. Unless otherwise stated, these Interrogatories refer to the times, persons, places, events and circumstances referred to in the pleadings in this action. The term "Opposer's Marks" means the Marks CUTLERYANDMORE.COM, CUTLERYANDMORE, and CUTLERYAND covered by Registration No. 3,954,102, Application Serial No. 85/345,038, and Application Serial No. 85/345,016, referred to in the Notice of Opposition. As used herein, the term "Applicant's Mark" or "CUTLERYANDBEYOND Mark" means the word, name, symbol, device or combination thereof for which Applicant has applied for federal trademark registration in Application Serial No. 85/156,141.

C. Opposer requests that Applicant admit the truth of the following.

REQUESTED ADMISSIONS

1. Opposer owns U.S. Trademark Registration No. 3,954,102 for CUTLERYANDMORE.COM.
2. Opposer registered the CUTLERYANDMORE.COM Mark with the U.S. Patent and Trademark Office before Applicant filed U.S. Application Serial No. 85/156,141 in the U.S. Patent and Trademark Office.
3. Applicant was aware of the existence of Opposer's CUTLERYANDMORE.COM Registration No. 3,954,102, before Applicant filed U.S. Application Serial No. 85/156,141 in the U.S. Patent and Trademark Office.
4. Opposer owns U.S. Trademark Application Serial No. 85/345,038 for CUTLERYANDMORE.
5. Opposer owns U.S. Trademark Application Serial No. 85/345,016 for CUTLERYAND.
6. Applicant was aware of Opposer's use of one or more of the Opposer's Marks before Applicant began using the CUTLERYANDBEYOND Mark.
7. Applicant did not use the CUTLERYANDBEYOND Mark prior to August 2, 1999.
8. Applicant did not use the CUTLERYANDBEYOND Mark prior to July 31, 2000.
9. Since July 31, 2000, Applicant has used the CUTLERYANDBEYOND Mark in connection with retail store and on-line retail store services featuring cutlery and kitchenware.

10. Opposer's services include on-line retail store services featuring cutlery.
11. Applicant's services include on-line retail store services featuring cutlery.
12. Opposer's services include on-line retail store services featuring kitchenware.
13. Applicant's services include on-line retail store services featuring kitchen items.
14. Opposer established its right to the Opposer's Mark prior to Applicant's first use of the CUTLERYANDBEYOND Mark.
15. Opposer established its right to the Opposer's Mark prior to Applicant's filing of any application to register the Applicant's Mark with the U.S. Patent and Trademark Office.
16. The Cambridge Dictionaries Online available at "dictionary.cambridge.org/dictionary/american-english/beyond_2" includes a definition of the term "beyond" as "more than".
17. Applicant is aware of at least one inquiry, comment, or other communication by or from at least one customer, supplier, or member of the public, either written or oral, evidencing confusion, suspicion, belief or doubt as to a possible relationship between Applicant and Opposer or the origin of their respective goods and/or services.
18. Applicant is aware of at least five inquiries, comments, or other communications by or from at least one customer, supplier, or member of the public, either written or oral, evidencing confusion, suspicion, belief, or doubt as to a possible

relationship between Applicant and Opposer or the origin of their respective goods and/or services.

19. Applicant is the owner of the website www.cutleryandbeyond.com.

20. All documents produced by Applicant in response to Opposer's requests for production of documents are genuine and authentic.

Dated: March 1, 2012

Respectfully submitted,

/ Allison M. Corder /

Charles C. Valauskas, Reg. No. 32,009

Allison M. Corder, Reg. No. 50,545

Kathleen M. Wilt, Reg. No. 67,960

Valauskas Corder LLC

150 South Wacker Drive, Suite 620

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(312) 673-0360

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corder@vciplaw.com, wilt@vciplaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the foregoing Opposer's First Request for Admissions to Applicant has been served via United States first class mail, postage prepaid, on March 1, 2012 (with a courtesy copy emailed) to:

Mr. Matthew H. Swyers
The Trademark Company
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com

Dated: March 1, 2012

Respectfully submitted,

/ Kathleen M. Wilt /

Charles C. Valauskas, Reg. No. 32,009

Allison M. Corder, Reg. No. 50,545

Kathleen M. Wilt, Reg. No. 67,960

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corder@vciplaw.com, wilt@vciplaw.com

Attorneys for Opposer

Exhibit C

CUTLERY AND MORE, LLC v. DASALLA
TRADING COMPANY
Opposition No. 91201666

OPPOSER'S MOTION TO COMPEL
DISCOVERY

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

CUTLERY AND MORE, LLC,
Plaintiff/Opposer,
v.
DASALLA TRADING COMPANY,
Defendant/Applicant.

Opposition No. 91201666
Serial No. 85/156,141
Mark: CUTLERYANDBEYOND

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

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and 37 CFR § 2.120, Cutlery and More, LLC ("Opposer") propounds the following request for production of documents to Dasalla Trading Company ("Applicant"), for inspection and/or copying at the offices of Valauskas Corder LLC, 150 South Wacker Drive, Suite 620, Chicago, Illinois 60606, within thirty (30) days from service hereof.

DEFINITIONS AND INSTRUCTIONS

A. Unless the terms of a particular request specifically indicate otherwise, the Definitions and Instructions set forth in Opposer's Interrogatories to Applicant are applicable to these requests and are herein incorporated by reference.

B. The words "you" or "your" or "yourself" mean the party to whom this Request is addressed. Where a document is requested, such request includes documents in your possession, custody or control, including documents in the possession of your agents, representatives or attorneys, unless privileged.

C. The word "document" is used in the broadest sense permissible under Fed. R. Civ. P. 34 and include originals, drafts and copies of all writings, drawings, graphs, charts, photographs, recordings, e-mails and other compilations from which information can be obtained, translated, if necessary, by you into reasonably usable form.

D. The words "person" or "entity" mean individuals, groups of individuals, unincorporated associations or societies, businesses, partnerships, corporations, estates, trusts, governmental bodies, any other organizations, and all divisions, departments, parts or agents of any of the foregoing.

E. The word “communication” means any expression of thoughts or ideas, whether oral, written, or by conduct, by which any kind of information, questions, exclamations or demands of any kind were stated.

F. Documents “relate” to a given subject if they constitute, contain, embody, evidence, reflect, identify, state, refer to, deal with, or are in any way pertinent to that subject.

G. Whenever used herein, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine, and the feminine shall be deemed to include the masculine; disjunctive (“or”) shall be deemed to include the conjunctive (“and”) and the conjunctive shall be deemed to include the disjunctive; and each of the functional words “each”, “every”, “any”, and “all” shall be deemed to include each of the other functional words. The word “including” means by way of illustration or example, not by way of limitation.

H. This request is continuing in character so as to require you to produce additional requested documents that come into your possession.

I. Your response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is refused, in which event the reasons for refusal shall be stated. If the refusal relates to part of an item or category, the part shall be specified. If you object or claim privilege as to any document, provide:

1. a description of the type of document (e.g., letter or memorandum);
2. its general subject matter;
3. its date of preparation; and
4. such other information as is sufficient to identify the document with reasonable particularity for *subpoena duces tecum*, including, where appropriate, the author, addressee, and any other recipient of the document.

J. The documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the Request.

K. Unless otherwise stated, these Interrogatories refer to the times, persons, places, events and circumstances referred to in the pleadings in this action. The term "Opposer's Marks" means the Marks CUTLERYANDMORE.COM, CUTLERYANDMORE, and CUTLERYAND covered by Registration No. 3,954,102, Application Serial No. 85/345,038, and Application Serial No. 85/345,016, referred to in the Notice of Opposition. As used herein, the term "Applicant's Mark" or "CUTLERYANDBEYOND Mark" means the word, name, symbol, device or combination thereof for which Applicant has applied for federal trademark registration in Application Serial No. 85/156,141.

REQUESTED DOCUMENTS

1. All documents relating to Applicant's organization and existence as an entity.
2. All documents relating to the identity of Applicant's officers and directors.
3. All documents relating to Applicant's creation, conception, design, and selection of the CUTLERYANDBEYOND Mark for use in connection with its goods or services.
4. All documents relating to the reasons Applicant chose the CUTLERYANDBEYOND Mark for use in connection with its goods or services.
5. All documents relating to the meaning or significance of the CUTLERYANDBEYOND Mark and each of its components, "CUTLERY" and "BEYOND".
6. All documents filed with the United States Patent and Trademark Office relating to Applicant's Mark.
7. Representative samples of all documents and things that refer to or describe Applicant's goods or services provided under the CUTLERYANDBEYOND

Mark, including but not limited to pages from the Internet, computer screen prints, brochures, advertisements, promotional materials, and trade show displays.

8. All documents relating to Applicant's first use of Applicant's Mark in commerce in the United States.

9. Representative samples of advertising and promotional materials Applicant has used and/or plans to use in connection with Applicant's Mark, including but not limited to online and print advertisements, press releases, scripts of television and radio commercials, scripts of speeches, direct mail, pamphlets, circulars, and price lists.

10. Documents sufficient to identify Applicant's past, current, and /or planned annual advertising and promotional expenses for Applicant's goods or services offered under Applicant's Mark.

11. All documents relating to any marketing proposals or business plans relating to Applicant's goods or services.

12. All documents relating to any changes in the Applicant's Mark from its first use in connection with Applicant's goods or services to the present.

13. All documents that describe or refer to the customers to whom Applicant's goods or services under the Applicant's Mark are provided, advertised, promoted, or distributed.

14. Representative samples of all documents bearing the CUTLERYANDBEYOND Mark.

15. All documents relating to complaints Applicant has received concerning the quality of goods or services provided under Applicant's Mark.

16. All documents and tangible things evidencing any confusion between Applicant, Applicant's Mark, or Applicant's goods and services and Opposer, Opposer's Marks, and/or Opposer's goods and services, including inquiries, comments or other communications by or from customers, suppliers, or members of the public, either written or oral, showing any confusion, suspicion, belief or doubt as to a possible relationship between Applicant and Opposer or the origin of their respective goods and/or services.

17. All documents relating to any trademark search, investigation or survey conducted by you or on your behalf before you filed the subject Application.

18. All documents relating to any objections or challenges (for example, cease and desist letters) to Applicant from Opposer or any other person or entity relating to Applicant's Mark.

19. As to each person from whom you expect to elicit expert opinions in this proceeding, produce all documents relating to or constituting:

- (a) The expert's curriculum vitae or resume;
- (b) Any written reports relating to the opinions the expert expects to render relating to this proceeding;
- (c) All documents the expert has reviewed in connection with formulating or rendering opinions in this proceeding;
- (d) A list of publications the expert deems authoritative concerning the subject matter of the opinions he expects to render;
- (e) All correspondence the expert has received or sent relating to the subject matter of this proceeding; and
- (f) The expert's fee arrangement.

20. All documents and tangible things relating to the subject matters of the interrogatories, addressed to you in this proceeding, or to your answers thereto, or which any person acting on behalf of you reviewed in the course of answering those interrogatories.

Dated: March 1, 2012

Respectfully submitted,

/ Allison M. Corder /

Charles C. Valauskas, Reg. No. 32,009

Allison M. Corder, Reg. No. 50,545

Kathleen M. Wilt, Reg. No. 67,960

Valauskas Corder LLC

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Email: ccv@vciplaw.com;

corder@vciplaw.com, wilt@vciplaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the foregoing Opposer's First Request for Production of Documents to Applicant has been served via United States first class mail, postage prepaid, on March 1, 2012 (with a courtesy copy emailed) to:

Mr. Matthew H. Swyers
The Trademark Company
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com

Dated: March 1, 2012

Respectfully submitted,

/ Kathleen M. Wilt /

Charles C. Valauskas, Reg. No. 32,009

Allison M. Corder, Reg. No. 50,545

Kathleen M. Wilt, Reg. No. 67,960

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Attorneys for Opposer

Exhibit D

CUTLERY AND MORE, LLC v. DASALLA
TRADING COMPANY
Opposition No. 91201666

OPPOSER'S MOTION TO COMPEL
DISCOVERY

INTERROGATORY NO. 3: State the name and business address of each person who participated in Applicant's design and selection of the Applicant's Mark.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 4: Explain with particularity why Applicant chose to use the CUTLERYANDBEYOND Mark for its goods or services.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 5: State the meaning and significance of the CUTLERYANDBEYOND Mark and each of its components, "CUTLERY" and "BEYOND".

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 6: Identify all forms and formats in which Applicant's Mark has been depicted on labels, cartons, product containers, packaging, advertising, promotional materials, product descriptions, price sheets, order forms and the like, including stylized letters, logos and designs, and identify which forms or formats have been used in connection with which of Applicant's goods or services.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 7: Identify each person who participated in Applicant's decision to file the Application Serial No. 85/156,141.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 8: Identify and describe your first use of the CUTLERYANDBEYOND Mark, the first use of the CUTLERYANDBEYOND Mark in a commercial transaction with any person in the United States including the date, parties, nature of the transaction, type of goods or services on which the applicant's Mark was used, and the price of the goods or services.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 9: For each advertisement Applicant has advertised the goods or services offered under Applicant's Mark, please provide:

- (a) State the date on which it was published, broadcast, displayed, disseminated, or distributed;
- (b) If a print media advertisement, identify the publication in which said advertisement appeared by name and date;
- (c) If a broadcast advertisement, identify the radio or television station or Internet website over which it was broadcast and the dates upon which it was broadcast;
- (d) State the total amount of money spent for each such advertisement or commercial, including but not limited to costs of space or time, production costs and agency commissions;
- (e) Identify the person ultimately responsible for approving the contact of such advertisement on behalf of Applicant.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 10: Describe with particularity the classes of customers to whom Applicant has or intends to sell goods or services bearing the CUTLERYANDBEYOND Mark.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 11: Describe each and every service offered by Applicant under Applicant's Mark..

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 12: Describe chronologically any and all acts undertaken by Applicant that indicate Applicant's use or intent to use the CUTLERYANDBEYOND Mark in the United States in connection with Applicant's goods or services, including but not limited to, the performance or commission of marketing studies relating to the goods or services, the development of advertising and promotional materials relating to the goods or services, the making of contracts or other agreements relating to the goods or services, and the like.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 13: State whether Applicant has ever prepared a marketing proposal or business plan relating to Applicant's goods or services. If so identify each such document.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 14: Describe any agreement under which Applicant will sell or plans to sell the CUTLERYANDBEYOND Mark and the goodwill appurtenant thereto to any person or entity.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 15: Describe with particularity any search or investigation of any records such as, but not limited to, the United States Patent and Trademark Office records, State trademark records, trademark or trade publications, business directories, or the records of any trademark service organization conducted by or for the Applicant prior to adopting or using the CUTLERYANDBEYOND Mark in order to ascertain whether the Applicant's Mark might infringe the trademark or service mark or trade name rights of others.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome, and may be in violation of the attorney work product doctrine. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 16: State whether Applicant was aware of any of Opposer's Marks prior to Applicant using the CUTLERYANDBEYOND Mark, or prior to Applicant filing U.S. Application Serial No. 85/156,141.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 17: Identify all persons applicant expects to testify on its behalf as an expert witness on any matter pertaining to this Opposition proceeding, including in such identification the expert's name, address, field of specialization, the substance of facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 18: Identify all sales, assignments, or licenses permitting any person to use the Applicant's Mark in connection with any goods or services, including identification of the parties, date, and terms of agreement.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 19: State the amount of income generated by Applicant to date from the sale of goods or services offered under Applicant's Mark.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence at the trial of this matter.

INTERROGATORY NO. 20: Identify any complaints or comments Applicant has received regarding the quality of goods or services offered by Applicant under Applicant's mark.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence at the trial of this matter.

INTERROGATORY NO. 21: Identify each document or tangible thing requested in Opposer's Requests for Production of Documents that Applicant does not intend to produce on the basis of privilege or other grounds, and with respect to each state:

- (a) The date of the document;
- (b) The name and employer of each addressee;
- (c) The name and employer of each author;
- (d) The name and employer of each person who received the document or copy thereof;
- (e) A brief description of the subject matter; and
- (f) The nature of the privilege claimed and the ground for non-production.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

INTERROGATORY NO. 22: State the factual basis for any affirmative defenses you may have.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it may call for a legal conclusion.

Notwithstanding this objection, the response to this instant interrogatory will be supplemented at a later date.

INTERROGATORY NO. 23: If you have ever been a party in any proceeding (e.g., lawsuit or arbitration) other than this action, identify the proceeding by case name, forum, case number, date instituted, parties involved, subject matter, claims, and resolution.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence at the trial of this matter.

INTERROGATORY NO. 24: Identify each person who provided information used in your answers to these interrogatories, and state the interrogatory or interrogatories for which each such person provided information.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

Eddie Desalla, with the assistance of counsel.

INTERROGATORY NO. 25: Identify all persons with knowledge of any facts or information relating to the subject matters of any of the foregoing interrogatories, and/or the subject matters in the pleadings, and state the substance of each person's knowledge.

ANSWER:

Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this question will be supplemented at a reasonable time prior to the trial of this matter.

Dated this 5th Day of April, 2012.

The Trademark Company, PLLC.

/Matthew H. Swyers/
Matthew H. Swyers, Esquire
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Tel. (800) 906-8626 x100
Fax (270) 477-4574
mswyers@TheTrademarkCompany.com
Counsel for Applicant

Exhibit E

CUTLERY AND MORE, LLC v. DASALLA
TRADING COMPANY
Opposition No. 91201666

OPPOSER'S MOTION TO COMPEL
DISCOVERY

3. Applicant was aware of the existence of Opposer's CUTLERYANDMORE.COM Registration No. 3,954,102, before applicant filed U.S. Patent and Trademark Office.

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

4. Opposer owns U.S. Trademark Application Serial No. 85/345,038 for CUTLERYANDMORE.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and the term "Owns" can have different meanings to different individuals.

Notwithstanding this objection, the response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

5. Opposer owns U.S. Trademark Application Serial No. 85/345,016 for CUTLERYAND.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and the term "Owns" can have different meanings to different individuals.

Notwithstanding this objection, the response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

6. Applicant was aware of Opposer's use of one or more of the Opposer's marks before Applicant began using the CUTLERYANDBEYOND Mark.

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

7. Applicant did not use the CUTLERYANDBEYOND Mark prior to August 2, 1999.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

8. Applicant did not use the CUTLERYANDBEYOND Mark prior to July 31, 2000.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

9. Since July 31, 2000, Applicant has used the CUTLERYANDBEYOND Mark in connection with retail store and on-line retail store services featuring cutlery and kitchenware.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

10. Opposer's services include on-line retail store services featuring cutlery.

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter

11. Applicant's services include on-line retail store services featuring cutlery.

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

12. Opposer's services include on-line retail store services featuring kitchenware.

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

13. Applicant's services include on-line retail store services featuring kitchen items.

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

14. Opposer established its rights to the Opposer's Mark prior to Applicant's first use of the CUTLERYANDBEYOND Mark.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

15. Opposer established its right to the Opposer's mark prior to Applicant's filing of any application to register the Applicant's Mark with the U.A. Patent and Trademark Office.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

16. The Cambridge Dictionaries Online available at "dictionary.cambridge.org/dictionary/American-English/beyond_2" includes a definition of the term "Beyond" as "more than".

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome and it may call for a legal conclusion. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

17. Applicant is aware of at least one inquiry, comment, or other communication by or from at least one customer, supplier, or member of the public, either written or oral, evidencing confusion, suspicion, belief or doubt as to a possible relationship between Applicant and Opposer or the origin of their respective goods and/or services.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome and it may call for a legal conclusion. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

18. Applicant is aware of at least five inquiries, comments, or other communications by or from at least one customer, supplier, or member of the public, either written or oral, evidencing confusion, suspicion, belief or doubt as to a possible relationship between Applicant and Opposer or the origin of their respective goods and/or services.

RESPONSE:

Applicant objects to the instant Admission request on the grounds that it is overly broad and burdensome and it may call for a legal conclusion. Subject to said objection Applicant states as follows:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

19. Applicant is the owner of www.cutleryandbeyond.com

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

20. All documents produced by Applicant in response to Opposer's requests for production of documents are genuine and authentic. .

RESPONSE:

The response to this Admission request will be supplemented at a reasonable time prior to the trial of this matter.

Dated this 5th Day of April, 2012.

The Trademark Company, PLLC.

/Matthew H. Swyers/

Matthew H. Swyers, Esquire

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626 x100

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mshyers@TheTrademarkCompany.com

Counsel for Applicant

Exhibit F

CUTLERY AND MORE, LLC v. DASALLA
TRADING COMPANY
Opposition No. 91201666

OPPOSER'S MOTION TO COMPEL
DISCOVERY

3. All documents relating to Applicant's creation, conception, design, and selection of the CUTLERYANDBEYOND Mark for use in connection with its goods or services.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome and requests information that may violate the attorney – client privilege and/or attorney work product doctrine. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

4. All documents relating to the reasons Applicant chose the CUTLERYANDBEYOND Mark for use in connection with its goods or services.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

5. All documents relating to the meaning or significance of the CUTLERYAND BEYOND Mark and each of its components, "CUTLERY" and "BEYOND"

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

6. All documents filed with the United States Patent and Trademark Office relating to Applicant's Mark.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

7. Representative samples of all documents and things that refer to or describe Applicant's goods or services provided under the CUTLERYANDBEYOND Mark, including but not limited to pages from the Internet, computer screen prints, brochures, advertisements, promotional materials, and trade show displays.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

8. All documents relating to Applicant's first use of Applicant's Mark in commerce in the United States.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

9. Representative samples of advertising and promotional materials Applicant has used and/or plans to use in connection with Applicant's Mark, including but not limited to online and print advertisements, press releases, scripts of television and radio commercials, scripts of speeches, direct mail, pamphlets, circulars, and price lists.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

10. Documents sufficient to identify applicant's past, current, and/or planned annual advertising and promotional expenses for Applicant's goods or services offered under Applicant's Mark.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence at the trial of this matter.

11. All documents relating to any marketing proposals or business plans relating to Applicant's goods or services.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

12. All documents relating to any changes in the Applicant's Mark from its first use in connection with Applicant's goods or services to the present.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

13. All documents that describe or refer to the customers to whom Applicant's goods or services under the Applicant's Mark are provided, advertised, promoted, or distributed.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

14. Representative samples of all documents bearing the CUTLERYANDBEYOND Mark.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

15. All Documents relating to complaints Applicant has received concerning the quality of goods or services provided under Applicant's Mark.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

16. All documents and tangible things evidencing any confusion between Applicant, Applicant's Mark, or Applicant's goods and services and Opposer, Opposer's Marks, and/or Opposer's goods and services, including inquiries, comments or other communications by or from customers, suppliers, or members of the public, either written or oral, showing any confusion, suspicion, belief or doubt as to a possible relationship between Applicant and Opposer or the origin of their respective goods and/or services.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome and it may call for a legal conclusion. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

17. All documents relating to any trademark search, investigation or survey conducted by you or on your behalf before you filed the subject Application.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents, if existing, will be supplemented at a later date.

18. All documents relating to any objections or challenges (for example, cease and desist letters) to Applicant from Opposer or any other person or entity relating to Applicant's Mark.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome and it may call for a legal conclusion. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

19. As to each person from whom you expect to elicit expert opinions in this proceeding, produce all documents relating to or constituting:

(a) The expert's curriculum vitae or resume;

(b) Any written reports relating to the opinions the expert expects to render relating to this proceeding;

(c) All documents the expert has reviewed in connection with formulating or rendering opinions in this proceeding;

(d) A list of publications the expert deems authoritative concerning the subject matter of the opinions he expects to render;

(e) All correspondence the expert has received or sent relating to the subject matter of this proceeding; and

(f) The expert's fee agreement.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome and that it may violate the attorney work product doctrine. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

20. All documents and tangible things relating to the subject matters of the interrogatories, address to you in this proceeding, or to your answers thereto, or which any person acting on behalf of you reviewed in the course of answering those interrogatories.

RESPONSE:

Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection Applicant states as follows:

The requested documents will be supplemented at a later date.

Dated this 5th Day of April, 2012.

The Trademark Company, PLLC.

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Exhibit G

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April 12, 2012

**Via Email mswyers@thetrademarkcompany.com
Confirmation copy by Federal Express**

Matthew H. Swyers
The Trademark Company
344 Maple Avenue West, Suite 151
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Re: Cutlery and More, LLC vs. Dasalla Trading Company
Our Ref.: 9700-5

Mr. Swyers:

We received your Client's responses to our Interrogatories, Requests for Production of Documents, and Request for Admissions. We note that your Client has objected to each and every discovery request.¹ It is clear that your Client's objections are not predicated upon the Trademark Rules, and appear to be presented in bad faith to avoid responding.

Interrogatories

Your Client objects to all 25 interrogatories as propounded by the Opposer. Specifically, your Client objects to all 25 interrogatories as "overly broad and burdensome". However, no detail as to why your Client takes this position is provided.

Your Client further objects to Interrogatory No. 15 stating that the interrogatory "may be in violation of the attorney work product doctrine". It is unclear how any search or investigation of records prior to adopting or using the CUTERLYANDBEYOND Mark collected or prepared in anticipation of litigation violates this doctrine unless, of course, your Client was aware of the possibility of the impending opposition.

Your Client further objects to Interrogatory Nos. 19, 20, 23 stating that these interrogatories are "not reasonably calculated to lead to the discovery of admissible

¹ The question still remains unanswered as to the proper spelling of your Client. We have not yet received an answer to our email correspondence sent to you on March 26, 2012 in which we ask you to confirm whether your client is Desalla to which you refer or Dasalla as listed on California's Secretary of State website.

evidence". However, Interrogatory Nos. 19, 20, 23 clearly relate to factors for determining a likelihood of confusion.

Your Client further objects to Interrogatory No. 22 stating that the interrogatory "may call for a legal conclusion". Interrogatory No. 22 clearly requests the "factual basis" for any affirmative defenses of your Client, not the legal basis.

Lastly, your Client states that all the interrogatories (with the exception of Interrogatory No. 24) "will be supplemented at a reasonable time prior to the trial of this matter" or "will be supplemented at a later date". With the close of discovery approaching May 26, 2012, we are unclear as to what your Client considers "a reasonable time" or a "later date".

Requests for Production of Documents

Your Client objects to all 20 requests for production of documents as propounded by the Opposer. Specifically, your Client objects to all 20 requests as "overly broad and burdensome". However, no detail as to why your Client takes this position is provided.

Your Client further objects to Production Document Request Nos. 2, 10 stating that these requests are "not reasonably calculated to lead to the discovery of admissible evidence". Production Document Request Nos. 2, 10 seek to identify potential parties for deposition as well as evidence of use or planned use of the mark in commerce.

Your Client further objects to Production Document Request Nos. 3, 19 stating that the request may be in violation of the attorney-client privilege and/or attorney work product doctrine. However, it is unclear how Applicant's creation, conception, design, and selection of the CUTERLYANDBEYOND Mark subject to Production Document Request No. 3 encompasses attorney-client privilege and/or attorney work product. Furthermore, Production Document Request No. 19 is directed to expert opinions, which relate to expert disclosures due April 26, 2012.

Your Client further objects to Production Document Request Nos. 16, 18 stating that the interrogatory "may call for a legal conclusion". It is clear that Production Document Request No. 16 is directed to evidence related to consumer confusion, which is based on facts. Furthermore, Production Document Request No. 18 requests documents related to objections or challenges relating to the CUTERLYANDBEYOND Mark, not documents premised on a legal basis.

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Lastly, your Client states that all the Production Document Requests "will be supplemented at a later date". However, we are unclear as to what your Client considers a "later date" in light of the close of discovery on May 26, 2012.

Request for Admissions

Your Client objects to Admission Request Nos. 1, 4, 5, 7, 8, 9, 14, 15, 16, 17, 18 stating that these requests are "overly broad and burdensome". However, no detail as to why your Client takes this position is provided.

Your Client further objects to Admission Request Nos. 1, 4, 5 as to the term "owns" stating that this term "can have different meanings to different individuals". According to the context of Admission Request Nos. 1, 4, 5, it is clear that the term "own" can only have one meaning.

Your Client further objects to Admission Request Nos. 16, 17, 18 stating that the request "may call for a legal conclusion". Admission Request No. 16 is directed to the admission or denial of whether or not the definition of the term "beyond" is specified to mean "more than" at the Cambridge Online Dictionary. This request is clearly factual, not based on a legal conclusion. Admission Request Nos. 17 and 18 are also factual in that these requests relate to consumer confusion.

Your Client states that all the Admission Requests "will be supplemented at a reasonable time prior to the trial of this matter". However, with the close of discovery approaching May 26, 2012, we are unclear as to what your Client considers "a reasonable time".

This letter represents our good faith effort to resolve this discovery dispute before resorting to an appropriate motion. Therefore, we demand that your Client provide responses to Opposer's discovery no later than **April 19, 2012**. We look forward to your prompt response.

Regards,



Allison M. Corder

AMC/mb/kw