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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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Date	05/22/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CUTLERY AND MORE, LLC,
Opposer,

v.

DESALLA TRADING COMPANY,
Applicant.

Opposition No. 91201666

Serial No. 85/156,141

Mark: CUTLERYANDBEYOND

OPPOSER CUTLERY AND MORE, LLC'S MOTION FOR SUMMARY JUDGMENT

Cutlery and More, LLC ("Opposer") respectfully moves for summary judgment against Desalla Trading Company ("Applicant") on the ground that there is a likelihood of confusion between Applicant's mark CUTLERYANDBEYOND, which is the subject of Applicant's pending application serial number 85/156,141, and Opposer's mark CUTLERYANDMORE.COM, which is the subject of U.S. Registration 3,954,102.

Statement of Facts

The Opposer began using the mark CUTLERYANDMORE.COM in commerce at least as early as August 2, 1999. (Exhibit 2, ¶6, Declaration of Michael Beltrami). The Opposer owns U.S. Trademark Registration 3,954,102 issued May 3, 2011 for the mark CUTLERYANDMORE.COM. (Exhibit 1,¹ Exhibit 2, ¶ 5, Declaration of Michael Beltrami). The Opposer's registration is directed to "On-line retail store services featuring cutlery, cookware, kitchen items and accessories thereof". (Exhibit 1, Exhibit 2, ¶ 9, Declaration of Michael Beltrami).

¹ TBMP §528.05(d) (citing *Bongrain International (American) Corp. v. Moquet Ltd.*, 230 USPQ 626 n.3 (TTAB 1986)).

The Applicant owns application serial number 85/156,141 filed on October 19, 2010.² The Applicant's application seeks registration of the mark CUTLERYANDBEYOND for use in connection with "Retail store and on-line retail store services featuring cutlery and kitchenware". In its application filed under 15 U.S.C. §1051(a), the Applicant represented that it had used the mark CUTLERYANDBEYOND in commerce since August 2000.³

The Opposer opposes the registration of Applicant's mark based on, *inter alia*, the likelihood of confusion between the marks CUTLERYANDBEYOND and CUTLERYANDMORE.COM.

The Applicant did not use the mark CUTLERYANDBEYOND prior to Opposer's first use date of August 2, 1999. (Exhibit 3, Applicant's response to Opposer's request for admission 7, Applicant's Responses to Opposer's Requested Admissions). Accordingly, the Opposer established its rights in the CUTLERYANDMORE.COM mark prior to Applicant's first use of the CUTLERYANDBEYOND mark. (Exhibit 3, Applicant's response to Opposer's request for admission 14, Applicant's Responses to Opposer's Requested Admissions).

When comparing the marks, the first ten characters of the respective marks – that is, "C-U-T-L-E-R-Y-A-N-D" are identical. The immediately following portions – that is, "MORE" and BEYOND", respectively – overlap in meaning. (Exhibit 3, Applicant's response to Opposer's request for admission 16, Applicant's Responses to Opposer's Requested Admissions, admitting that "the term 'BEYOND' means 'more than'"). The

² 37 CFR § 2.122(b).

³ However, the Applicant states "[t]he earliest date in which a product was sold in a commercial transaction depicting the CUTLERYANDBEYOND mark was in 2005". See Exhibit 4, Applicant's response to Opposer's interrogatory 8, Applicant's Responses to Opposer's First Set of Interrogatories).

only remaining portion of the Opposer's mark is the component ".COM", which has no source-indicating value.

Regarding services offered by each party, the Applicant and the Opposer offer services that overlap and are nearly identical. Specifically, both parties offer "online retail services" featuring "cutlery" in addition to at least "kitchen items" or "kitchenware". (Exhibit 3, Applicant's response to Opposer's request for admission 10-13, Applicant's Responses to Opposer's Requested Admissions, admitting that Applicant's and Opposer's respective services include "on-line retail store services featuring cutlery" and either "kitchen items" or "kitchenware"; Exhibit 2, ¶ 9, Declaration of Michael Beltrami.) ¶ 9, Declaration of Michael Beltrami).

Regarding trade channels, both the Applicant and the Opposer offer retail services online and order by phone services. (Exhibit 4, Applicant's response to Opposer's interrogatory 16, Applicant's Responses to Opposer's First Set of Interrogatories, stating that "Applicant provides online retail store services and customer service orders by phone"; Exhibit 2, ¶11, Declaration of Michael Beltrami).

Regarding actual confusion, the Opposer has received inquiries from actual consumers who were confused about the source of the Applicant's or the Opposer's services. (Exhibit 2, ¶12, Declaration of Michael Beltrami and Exhibit A).

Summary Judgment Standard

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(a). The Board may not resolve issues of material fact; it may only ascertain whether a genuine dispute regarding a material fact exists. See *Lloyd's Food*

Products, Inc. v. Eli's, Inc., 987 F.2d 766, 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992); *Olde Tyme Foods*, 22 USPQ2d at 1542.

Argument

The question of likelihood of confusion is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods and/or services they identify come from the same source. *In re West Point- Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). In analyzing a likelihood of confusion, courts consider the factors identified in *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Not all of the *duPont* factors are relevant or of similar weight in every case. The likelihood of confusion analysis is based on all of the *duPont* factors found relevant in light of the evidence of record. *Opryland USA, Inc.*, 970 F.2d at 852, 23 USPQ2d at 1476.

The *duPont* factors relevant in this case include similarity of the marks, similarity of the services, similarity of the trade channels, and actual consumer confusion.

The first *duPont* factor is the similarity of the marks in their entireties as to appearance, sound, and meaning. The test for appearance is not made by comparing the marks side-by-side. *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573 (CCPA 1973). The test is whether the marks are sufficiently similar in overall commercial impressions that confusion, as to the source of the goods or

services offered under the respective marks, is likely to result. *In re Majestic Distilling Co., Inc.* 315 F.3d 1311 at 1315, 65 USPQ2d 1201 at 1205 (Fed. Cir. 2003) (citing *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 01,902, 177 USPQ 76, 77 (CCPA 1973)). Marks may be confusingly similar in appearance when similar terms or phrases or similar parts of terms or phrases appear in both applicant's and registrant's mark. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and "21" CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

The marks CUTLERYANDBEYOND and CUTLERYANDMORE.COM are highly similar. The first ten characters of each mark – specifically, "C-U-T-L-E-R-Y-A-N-D" – are identical. Consumers are generally more inclined to focus on the first portion of any mark. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions). Clearly, consumers would perceive the marks

CUTLERYANDBEYOND and CUTLERYANDMORE.COM to be highly similar in appearance. (Exhibit 2, ¶ 7, Declaration of Michael Beltrami).

If consumers pronounced the marks, the marks CUTLERYANDBEYOND and CUTLERYANDMORE.COM would be highly similar in sound.

Regarding meaning, consumers are likely to perceive the identical sections of the marks – that is, “CUTLERYAND” – as having identical meaning. The subsequent portions of each mark – “MORE” and “BEYOND” – overlap in meaning. According to the Webster’s II New College Dictionary, one definition of the term “BEYOND” is “*in addition to*” and one definition of the term “MORE” is “*in addition*” (Exhibit 5).^{4,5} Also, the Applicant states that its mark CUTLERYANDBEYOND describes the business of selling cutlery and **additional** kitchen items” (Exhibit 4, Applicant’s response to Opposer’s interrogatory 5, Applicant’s Responses to Opposer’s First Set of Interrogatories) (emphasis added). Further, the Applicant admits that the term “beyond” means “more than”. (Exhibit 3, Applicant’s response to Opposer’s request for admission 16, Applicant’s Responses to Opposer’s Requested Admissions).

Other than the identical components “CUTLERYAND”, plus the identical-in-meaning components “BEYOND” and “MORE”, the only remaining portion of the Opposer’s mark is the component “.COM”, which has no source-indicating value.⁶

⁴ “BEYOND”. *Webster’s II, New College Dictionary*, Boston: Houghton Mifflin Company, 1999, page 106.

⁵ “MORE”. *Webster’s II, New College Dictionary*, Boston: Houghton Mifflin Company, 1999, page 712.

⁶ The top-level domain (TLD) “.com” merely indicates an Internet address for use by commercial, for profit organizations and, in general, adds no source identifying significance. *See, e.g., In re 1800MATTRESS.COM IP LLC*, 586 F.3d 1359, 1364, 92 USPQ2d 1682, 1685 (Fed. Cir. 2009); *In re Hotels.com, L.P.*, 573 F.3d 1300, 1301, 1304, 91 USPQ2d 1532, 1533, 1535 (Fed. Cir. 2009); *In re Oppedahl & Larsen LLP*, 373 F.3d 1171, 1175-77, 71 USPQ2d 1370, 1373-74 (Fed. Cir. 2004); *See also* TMEP §§1209.03(m), 1215.01.

When comparing the marks, the focus is on the recollection of the average purchaser who normally retains a general rather than a specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b). See also TMEP 1207.01(b)(v) citing *In re M Serman & Co. , Inc.* 223 USPQ 52 (TTAB 1984) (CITY WOMAN likely to be confused with CITY GIRL, for clothing); *Gastown, Inc. of Delaware v. Gas City, Ltd.*, 187 USPQ 760 (TTAB 1975) (GAS CITY (“GAS” disclaimed) like to be confused with GASTOWN, for gasoline); *Watercare Corp. v. Midwesco-Enterprise, Inc.*, 171 USPQ 696 (TTAB 1971) (AQUA-CARE (stylized) likely to be confused with WATERCARE (stylized) for water-conditioning products).

Clearly, in light of the many, many similarities in appearance, sound, and meaning, there is no genuine issue of material fact regarding comparison of the marks and the high level of likelihood of confusion between the marks CUTLERYANDBEYOND and CUTLERYANDMORE.COM.

Regarding the second *duPont* factor – specifically, the similarity of the services identified in the application and registration – it is not necessary that Applicant’s services and Opposer’s services are competitive to find that they are related for purposes of demonstrating a likelihood of confusion. *In re Rexel, Inc.*, 223 USPQ 830 (TTAB 1984); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). However, the services identified by each party in their respective application or registration are not only competitive, they also overlap and are *nearly identical*. (Exhibit 2, ¶ 9, Declaration of Michael Beltrami). Both Applicant’s application

and Opposer's registration recite online retail store services featuring cutlery and kitchen goods, namely "cutlery and kitchenware" and "cutlery, cookware, kitchen items and accessories thereof" respectively. While the identifications of services are not word-for-word identical, there is no meaningful distinction between "cutlery and kitchenware" in Applicant's application and "cutlery, cookware, kitchen items and accessories thereof" in Opposer's registration. Accordingly, there is no genuine issue of material fact regarding the highly similar, nearly identical services offered by each party in association with the CUTLERYANDBEYOND and CUTLERYANDMORE.COM marks, respectively.

Regarding the third *duPont* factor – the similarity of established, likely to continue trade channels – there are not trade channel limitations in the Applicant's application or the Opposer's registration. (Exhibit 2, ¶ 10, Declaration of Michael Beltrami). Accordingly, there is a presumption that the purchasers and channels of trade for such services overlap. See *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003); *Paula Payne Products Co.*, 473 F.2d at 901, 177 USPQ at 76; *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958); *In re Elbaum*, 211 USPQ 639 (TTAB 1958). Even without the presumption, it is clear that the parties' respective trade channels and purchasers overlap. Specifically, both the Applicant and the Opposer provide retail services, (1) online and (2) order by phone services, for the same types of cutlery and kitchen products. (Exhibit 4, Applicant's response to Opposer's interrogatory 10, 16, Applicant's Responses to Opposer's First Set of Interrogatories, stating that "Applicant provides online retail store services and customer service orders by phone"; Exhibit 2, ¶11, Declaration of Michael Beltrami). Clearly, there is no genuine issue of

material fact regarding the trade channels in which the parties' offer their services in association with the CUTLERYANDBEYOND and CUTLERYANDMORE.COM marks.

Another relevant *duPont* factor is whether there has been actual consumer confusion. Although actual consumer confusion is not required, evidence of actual confusion is generally very persuasive evidence of likelihood of consumer confusion. *Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 1549, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990); *Exxon Corp. v. Texas Motor Exchange, Inc.*, 628 F.2d 500, 208 USPQ 384, 389 (5th Cir. 1980) ("The best evidence of likelihood of confusion is provided by evidence of actual confusion").

The Opposer has received many, many communications from consumers who were confused about the source of services offered by the Applicant and/or Opposer. For example, the Opposer provides five instances of confusion evidenced by emails received by the Opposer regarding the Applicant. (Exhibit 2, ¶ 12, Declaration of Michael Beltrami and Exhibit A). In addition, the Opposer has received at least two telephone inquiries regarding products that consumers purchased from the Applicant. (Exhibit 2, ¶ 12, Declaration of Michael Beltrami and Exhibit A).

Conclusion

Clearly, based on the almost identical marks CUTLERYANDMORE.COM and CUTLERYANDBEYOND, essentially identical services, identical trade channels, and instances of actual confusion, it is undeniable that consumers are likely to be, and actually have been, confused by the Applicant's use of the CUTLERYANDBEYOND mark in the marketplace. There is no legitimate genuine issue of material fact regarding

the likelihood of confusion between the marks CUTLERYANDMORE.COM and CUTLERYANDBEYOND.

The Opposer respectfully solicits entry of judgment in favor of Opposer and denying registration of CUTLERYANDBEYOND.

Date: May 22, 2013

Respectfully submitted,

/Allison M. Corder/
Charles C. Valauskas
Allison M. Corder
Kathleen M. Wilt

Valauskas Corder LLC
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Attorneys for Plaintiff/Opposer

Exhibit 1

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Mark: CUTLERYANDMORE.COM

cutleryandmore.com

US Serial Number: 85109459
US Registration Number: 3954102
Filed as TEAS Plus: Yes
Register: Principal
Mark Type: Service Mark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: May 03, 2011
Publication Date: Feb. 15, 2011

Application Filing Date: Aug. 17, 2010
Registration Date: May 03, 2011
Currently TEAS Plus: Yes

Mark Information

Mark Literal Elements: CUTLERYANDMORE.COM
Standard Character Claim: No
Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)
Description of Mark: The mark consists of the stylized text "cutleryandmore.com" with a line appearing beneath the words "andmore."
Color(s) Claimed: Color is not claimed as a feature of the mark.
Design Search Code(s): 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Underlined words or letters; Overlined words or letters

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *...* identify additional (new) wording in the goods/services.

For: On-line retail store services featuring cutlery, cookware, kitchen items and accessories thereof

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Aug. 02, 1999

Use in Commerce: Aug. 02, 1999

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Cutlery And More, LLC
Owner Address: 135 Prairie Lake Road
East Dundee, ILLINOIS 60118
UNITED STATES
Legal Entity Type: LIMITED LIABILITY COMPANY
State or Country Where Organized: ILLINOIS

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent CUTLERY AND MORE, LLC

Name/Address: CUTLERY AND MORE, LLC
135 PRAIRIE LAKE RD
EAST DUNDEE, ILLINOIS 60118-9126
UNITED STATES

Phone: (847) 530-6295

Fax: (847) 586-0568

Correspondent e-mail: michael@cutleryandmore.com

Correspondent e-mail No
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 03, 2011	REGISTERED-PRINCIPAL REGISTER	
Feb. 15, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 15, 2011	PUBLISHED FOR OPPOSITION	
Jan. 07, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	68123
Jan. 06, 2011	ASSIGNED TO LIE	68123
Dec. 10, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 10, 2010	EXAMINER'S AMENDMENT ENTERED	88888
Dec. 10, 2010	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Dec. 10, 2010	EXAMINERS AMENDMENT E-MAILED	6328
Dec. 10, 2010	EXAMINERS AMENDMENT -WRITTEN	83222
Dec. 02, 2010	ASSIGNED TO EXAMINER	83222
Aug. 24, 2010	NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK MAILED	
Aug. 23, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 20, 2010	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: May 03, 2011

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Opposition

Proceeding Number: [91201666](#)

Filing Date: Sep 19, 2011

Status: Pending

Status Date: Sep 19, 2011

Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name: Desalla Trading Company

Correspondent Address: MATTHEW H SWYERS
THE TRADEMARK COMPANY
344 MAPLE AVE W , STE 151
VIENNA VA , 22180-5612
UNITED STATES

Correspondent e-mail: admin@thetrademarkcompany.com , mswyers@thetrademarkcompany.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
CUTLERYANDBEYOND	Opposition Pending	85156141	

Plaintiff(s)

Name: Cutlery and More, LLC

Correspondent Address: ALLISON M CORDER
VALAUSKAS CORDER LLC
150 SOUTH WACKER DRIVE, SUITE 620
CHICAGO IL , 60606
UNITED STATES

Correspondent e-mail: ccv@vciplaw.com , docket@vciplaw.com , wilt@vciplaw.com , corder@vciplaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
CUTLERYANDMORE.COM	Registered	85109459	3954102
CUTLERYANDMORE	Report Completed Suspension Check - Case Still Suspended	85345038	
CUTLERYAND	Report Completed Suspension Check - Case Still Suspended	85345016	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Sep 19, 2011	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Sep 19, 2011	Oct 29, 2011
3	PENDING, INSTITUTED	Sep 19, 2011	
4	ANSWER	Oct 11, 2011	
5	P'S MOTION TO COMPEL DISCOVERY	May 23, 2012	
6	SUSPENDED PENDING DISP OF OUTSTNDNG MOT	May 24, 2012	
7	TRIAL DATES RESET	Jan 30, 2013	

United States of America

United States Patent and Trademark Office

cutleryandmore.com

Reg. No. 3,954,102

Registered May 3, 2011

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

CUTLERY AND MORE, LLC (ILLINOIS LIMITED LIABILITY COMPANY)
135 PRAIRIE LAKE ROAD
EAST DUNDEE, IL 60118

FOR: ON-LINE RETAIL STORE SERVICES FEATURING CUTLERY, COOKWARE, KITCHEN ITEMS AND ACCESSORIES THEREOF, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 8-2-1999; IN COMMERCE 8-2-1999.

THE MARK CONSISTS OF THE STYLIZED TEXT "CUTLERYANDMORE.COM" WITH A LINE APPEARING BENEATH THE WORDS "ANDMORE."

SER. NO. 85-109,459, FILED 8-17-2010.

EMILY CHUO, EXAMINING ATTORNEY



David J. Kyjars

Director of the United States Patent and Trademark Office

Exhibit 2

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

CUTLERY AND MORE, LLC,

Opposer,

v.

DESALLA TRADING COMPANY,

Applicant.

Opposition No. 91201666

Serial No. 85/156,141

Mark: CUTLERYANDBEYOND

**DECLARATION OF MICHAEL BELTRAMI IN SUPPORT OF
OPPOSER'S SUMMARY JUDGMENT MOTION**

I, Michael Beltrami, declare as follows:

1. I am an owner of Cutlery and More, LLC ("Opposer") of 135 Prairie Lake Road, East Dundee, Illinois 60118. I became an owner of Cutlery and More, LLC in 2001.

2. I have been employed by Cutlery and More, LLC and its predecessor (Northwestern Cutlery Inc.) since 1997.

3. I make this declaration on behalf of Cutlery and More, LLC in support of Opposer's Motion for Summary Judgment in Opposition No. 91201666.

4. I have personal knowledge of the facts set forth in this declaration, and if called to testify, could and would testify competently thereto.

5. The Opposer owns U.S. Trademark Registration 3,954,102 for the mark CUTLERYANDMORE.COM ("Opposer's Mark").

6. The Opposer began using the CUTLERYANDMORE.COM mark in commerce at least as early as August 2, 1999.

7. I find that the Opposer's Mark is very similar in appearance to the term CUTLERYANDBEYOND, which is the subject of pending application serial number 85/156,141 ("Applicant's Mark").

8. I find that the Opposer's Mark is highly similar in meaning to the Applicant's Mark since both Marks include the characters "CUTLERYAND" and each include a term – "more" and "beyond" – that means "in addition".

9. I find that the services offered by the Opposer – specifically, "On-line retail store services featuring cutlery, cookware, kitchen items and accessories thereof" – overlap with, and are nearly identical to, the services offered by the Applicant in association with the Applicant's Mark – specifically, "retail store and on-line retail store services featuring cutlery and kitchenware".

10. The Applicant's application for registration of the mark "CUTLERYANDBEYOND" does not contain any limitation on the channels of trade in which the services would be sold. Likewise, Opposer's registration does not contain any limitation on the channels of trade.

11. The Opposer offers retail services featuring cutlery, cookware, kitchen items and accessories thereof, not only via online retail trade channels, but also via telephone orders.

12. The Opposer has received numerous communications from consumers that were confused about the source of services offered by the Applicant and/or Opposer. Exhibit A includes seven consumer communications evidencing confusion between the marks "CUTLERYANDMORE.COM" and "CUTLERYANDBEYOND", including:

- a. Email correspondence between the Opposer and Consumer John Ervolino dated October 2012. (Exhibit A1).
- b. Email correspondence between the Opposer and Consumer Michael Martin dated January 2012. (Exhibit A2).
- c. Email correspondence between the Opposer and Consumer Robert Villforth dated November 2011. (Exhibit A3).
- d. Email correspondence between the Opposer and Linda Truax dated June 2010. (Exhibit A4).
- e. Email correspondence between the Opposer and MD Equip Co dated January 2010. (Exhibit A5).
- f. The Opposer has received at least two telephone calls from consumers regarding services offered by the Applicant in association with the Applicant's Mark. (Exhibits A6, A7)¹.

13. I hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that all statements made in this Declaration are true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both under 18 U.S.C. § 1001 *et seq.*, and further may jeopardize the Opposer's position in this proceeding.


MICHAEL BELTRAMI

5/22/13
Date

¹ Audio files of the telephone calls are available upon request.

Exhibit A

Exhibit A1

REDACTED

-----Original Message-----

From: John Ervolino - Amazon Marketplace [<mailto:c5xdcx86hqxin53@marketplace.amazon.com>]

Sent: Monday, October 22, 2012 8:27 AM

To: Michael Beltrami

Subject: RE: Product details inquiry from Amazon customer John Ervolino

Maybe not. I bought it from CutleryandBeyond. I see that my email went to CutleryandMore. I'm sorry for bothering you. I will try again.

--- Original message ---

John,

I might be able to help you with locating directions for the sharpener, but what sharpener are you referring to?

Did you purchase the item from us, Cutlery and More? We always include packing slip in our packages.

Regards
Michael
Cutlery and More

--- Original message ---

I received my order just fine. This may be a stupid question but do you have directions on the correct way to use the sharpener?

Also, I found it strange that there was no packing slip in the box.

Thank you.

John.

----- End message -----

For Your Information: To help arbitrate disputes and preserve trust and safety, we retain all messages buyers and sellers send through Amazon.com for two years. This includes your response to the message above. Amazon.com uses filtering technology to protect buyers and sellers from possible fraud. Messages that fail this filtering will not be transmitted.

We want you to buy with confidence anytime you purchase products on Amazon.com. Learn more about Safe Online Shopping (<http://www.amazon.com/gp/help/customer/display.html?nodeId=10412241>) and our safe buying guarantee (<http://www.amazon.com/gp/help/customer/display.html?nodeId=537868>).

If you believe this message is suspicious, please report it to us here:

<http://www.amazon.com/gp/communication-manager/report.html?ft=InappropriateContent&msg=A3S739W6JTIRTQ&d=1350912419&mp=ATVPDKIKX0DER&v=1&t=e01ae687a676758173e17d73db6da5960b06372e>

[commMgrTok:A3S739W6JTIRTQ]

Exhibit A2

REDACTED

From: Kristen Beltrami <kbeltrami@cutleryandmore.com>
Date: Wed, 1 Feb 2012 09:10:53 -0600
To: Michael Beltrami <mbeltrami@cutleryandmore.com>
Subject: FW: Other Inquiry - cutleryandmore.com Order (1432626)

Our customer below purchased from Cutlery and Beyond thinking it was us. His order number is 1432626

Kristen

From: Vicki DeGrand
Sent: Wednesday, February 01, 2012 8:08 AM
To: Kristen Beltrami
Subject: FW: Other Inquiry - cutleryandmore.com Order (1432626)

Here is the reply from Mike (Amazon order) Let me know what I should reply.

Thanks

Vicki

From: Michael Martin [<mailto:thustra@rmi.net>]
Sent: Tuesday, January 31, 2012 9:27 PM
To: Vicki DeGrand
Subject: Re: Other Inquiry - cutleryandmore.com Order (1432626)

Hi Vicki,

Attached please find a pdf of the Amazon order. The store credit was an offer on your website for spending \$450 on Viking, attached is a link to the remainder of the order that I placed through Cutlery and More.

Thanks for your consideration,

Mike

From: Vicki DeGrand <vdegrand@cutleryandmore.com>
Date: Tue, 31 Jan 2012 12:09:37 -0600
To: Michael Martin <thustra@rmi.net>
Subject: RE: Other Inquiry - cutleryandmore.com Order (1432626)

Hi Mike

Thank you for your e-mail. We appreciate you letting us know, I would be glad to issue you the credit but first I would need to confirm the order – can you email me a copy of your order/invoice for the Viking 7Qt Stand Mixer? Also, can you please forward the in store credit as well? I look forward to your reply

Warm Regards!!

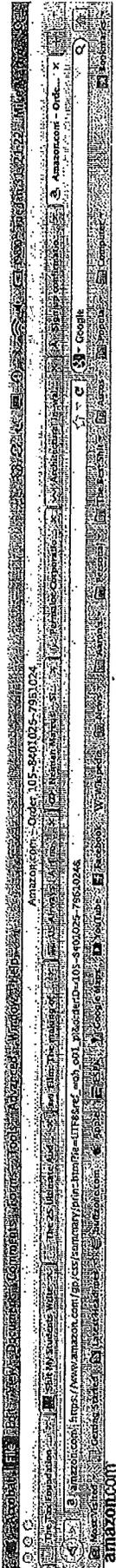
Vicki

Customer Service
Cutlery and More
vdegrand@cutleryandmore.com
1-800-650-9866

From: thustra@rmi.net [<mailto:thustra@rmi.net>]
Sent: Sunday, January 29, 2012 3:40 PM
To: Orders
Subject: Other Inquiry - cutleryandmore.com Order (1432626)

Hi, I just wanted you to know that I just ordered the Viking 7Qt Stand Mixer as well through Amazon. It shows that it will ship from you. I would have ordered directly from you, especially given the \$50 store credit for spending more than \$450 on Viking, which obviously I just did, but your price on your website was higher than your price on Amazon. Just fyi and if you would like to offer me the \$50 Cutlery and More credit, I would gratefully take it. Thank you, Mike

Mike Martin
Order/Invoice: 1432626



Final Details for Order #105-8401026-7961024
Print this page for your records.

Order Placed: January 29, 2012
Amazon.com order number: 105-8401026-7961024
Order Total: \$449.95

Shipped on January 30, 2012

Items Ordered
1 of: *Viking Professional 7 quart Speed Mixer, Bright Red*
Condition: New
Sold by: CutleryAndBeyond (seller: mobile)

Shipping Address:
Michael S Martin
11210 WINSLOW WAY
PADUCAH, KY 42001-6536
United States

Shipping Speed:
Standard

Item(s) Subtotal: \$449.95
Shipping & Handling: \$0.00
Total Before Tax: \$449.95
Sales Tax: \$0.00
Total for This Shipment: \$449.95

Payment Information

Payment Method:
American Express | Last digits: 2040

Billing Address:
Michael S. Martin
11507 Follage Ct.
Wichita, KS 67206
United States

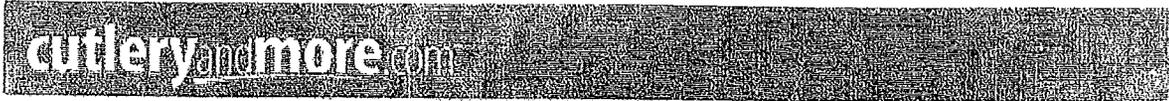
Item(s) Subtotal: \$449.95
Shipping & Handling: \$0.00
Total Before Tax: \$449.95
Estimated Tax To Be Collected: \$0.00
Grand Total: \$449.95

To view the status of your order, return to [Order Summary](#).

Please note: This is not a VAT invoice.

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- Orders
- Customers
- Invoices
- Inventory
- Products
- Purchasing
- Vendors
- Warehouse
- Verify Gift Card

- New Products

- Voicemail Log
- IT Log
- Phone Order

Order #: 1432626

(Closed) - Make Now | UPS Claim (Nashville, Tennessee)
 Open | Flag | Sunday, January 29, 2012 - 3:33:49 PM | Edit Order
 Send Confirmation | Create RS Label | New Order | Apply Gift Card

Time Clock

Billing Address

Michael Martin
 1210 Winslow Way
 Paducah, KY 42001-6536

 Phone: 573.270.4950
 thustra@rmi.net

Shipping Address (check)

Michael Martin
 1210 Winslow Way
 Paducah, KY 42001-6536

 Phone: 573.270.4950

Payment: Credit Card: 3XXX XXXXXX XX001, /20

Item #

Order or Invoice #

UPS Orders

- New UPS
- Expedited+DS
- New 4-Day Gmd
- New 3-Day Gmd
- Ground Batch

Mail Orders

- New Mail
- New Quotes
- Quoted

More Orders

- Flagged
- RS Labels
- Code N
- Declined
- Backorders
- Drop Ships (Done)
- Credits>Returns
- UPS Claims

- Return Services
- Mail Shipment

Server (1/29/2012 3:39:49 PM): thustra@rmi.net to cs_orders@cutleryandmore.com: Hi, I just wanted you to know that I just ordered the Viking 7Qt Stand Mixer as well through Amazon. It shows that it will ship from you. I would have ordered directly from you, especially given the \$50 store credit for spending more than \$450 on Viking, which obviously I just did, but your price was higher than Amazon's. Just fyi and if you would Vicki D. (2/2/2012 12:25:29 PM): I e-mailed back asking for copy of the order and the offer from us. Vicki D. (2/2/2012 12:26:22 PM): I e-mailed his reply to KB and it was bought and sold from Cutlery and Beyond. I e-mailed this info back to customer that he needed to contact them for the 50.00 gift card

Add Comment:

Submit

Qty	QS	Description	Price	Total	Inv.
1	1	Viking 9-speed Bright Red Digital Hand Mixer Item #: VHMD9BR, QOH: 206	\$59.14	\$59.14	0
1	1	Viking Stand Mixer Pouring Shield Item #: VSMPS, QOH: 80	\$24.95	\$24.95	0

UPS GROUND \$0.00

Grand Total: \$84.09

\$84.09 - 1/30/2012 3:41:03 PM (1126487PV) - (0) - Y, Y,

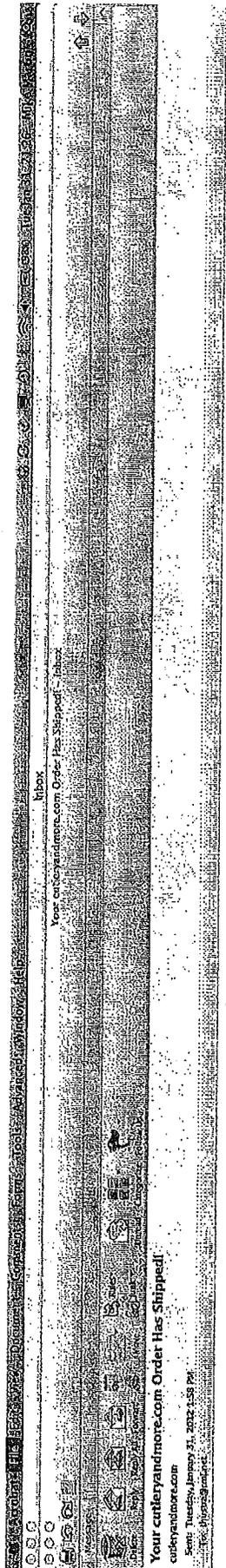
Weight: 4.8 lbs

mail | ground
 2 day | next day



UPS Ground: **2 Days**
 Est. Arrival: **02/07/2012 (TUE)**

Ship Date: 02/03/2012
 5 lbs



Your cutleryandmore.com Order Has Shipped!

cutleryandmore.com

Sent: Tuesday, January 31, 2012 1:58 PM

To: [Redacted]

cutleryandmore.com

Hi Michael,

This message is to let you know that your cutleryandmore.com order #143626 has shipped! Your package will arrive on or before Thursday, February 2. To retrieve your tracking number and check the status of your shipment, please click the link below.

<https://www.cutleryandmore.com/tracking-order?c=FC02B963-6589-4801-A11A-6776893C95CC>

If you are having trouble clicking the link, please copy and paste the above URL into your browser's address bar.

If you have any questions or are having trouble tracking our order, please call us at 1-800-650-9866 or visit our customer support center at www.cutleryandmore.com/help.

Thank you for shopping with us!

Best Regards,
Customer Support
cutleryandmore.com

Please do not reply to this message. It was sent from a notification-only address that cannot accept incoming email. Instead, please visit our customer support center at www.cutleryandmore.com/help.

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www.cutleryandmore.com

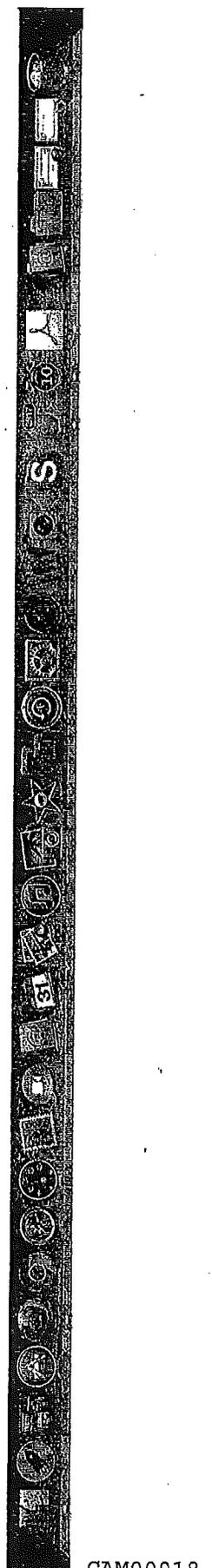


Exhibit A3

From: Michael Beltrami
Sent: Tuesday, November 15, 2011 12:18 PM
To: Vicki DeGrand
Subject: RE: bad transaction - CutleryAndBEYOND

Hi Vicki,

We are not Dasalla Trading Company. Our charges are displayed as CUTLERYANDMORE.COM on our customers statements. He is most likely confused with a competitor of ours whose website is www.cutleryandbeyond.com, as Dasalla Trading Company is the owner of that site.

Please let him know.

Thanks,
Michael

From: Vicki DeGrand
Sent: Tuesday, November 15, 2011 12:16 PM
To: Michael Beltrami
Subject: FW: bad transaction

Hi Michael

Here is the e-mail info that Robert Villforth is getting from his credit card co. There is a PENDING authorization for \$279.85. He confirmed 11/14/2011 at 12:43pm the charge was submitted to his credit card # 4640-1820-5171-1889 exp. 12/13.

Please let me know if you find anything or not so I can reply back to him.

Thank you Michael

Vicki

From: Robert Villforth [mailto:rvillforth@gmail.com]
Sent: Tuesday, November 15, 2011 12:04 PM
To: Vicki DeGrand
Subject: bad transaction

11/14/2011 Pending DASALLA TRADING CO. \$279.85

Hi Vicky,

Please see above for the copied line from my credit card statement.

-Bob

From: Vicki DeGrand
Sent: Tuesday, November 15, 2011 2:15 PM
To: Michael Beltrami
Subject: FW: bad transaction

MB

Your detective work is a success!! You rock!!

Vicki

From: Robert Villforth [mailto:rvillforth@gmail.com]
Sent: Tuesday, November 15, 2011 2:02 PM
To: Vicki DeGrand
Subject: Re: bad transaction

Hi Vicki,

Well, that is embarrassing. Thank you for figuring this out.

I have cancelled the order, and will be placing my new order with your company. I appreciate very much your considerate help.

-Bob

On Tue, Nov 15, 2011 at 2:00 PM, Vicki DeGrand <vdegrand@cutleryandmore.com> wrote:

Hello Robert

It looks like this authorization may not be from Cutlery and More. It may just be from a competitor of ours whose website is www.cutleryandbeyond.com and Dasalla Trading Company is the owner of that site. Can you check on your side about this? Let me know if you need additional assistance.

Vicki

Customer Service

Cutlery and More

vdegrand@cutleryandmore.com

[1-800-650-9866](tel:1-800-650-9866)

From: Robert Villforth [mailto:rvillforth@gmail.com]
Sent: Tuesday, November 15, 2011 12:04 PM
To: Vicki DeGrand
Subject: bad transaction

11/14/2011 Pending DASALLA TRADING CO. \$279.85

Hi Vicky,

Please see above for the copied line from my credit card statement.

-Bob

cutleryandmore.com™**Invoice #
4185023**cutleryandmore.com
135 Prairie Lake Road
East Dundee, IL 60118-9126
1-800-650-9866**November 15, 2011****Order Number:**
1354600**Customer ID:**
1312079**Shipping Method:**
UPS GROUND**Payment Terms:**
Prepaid**Billing Address:**Robert Villforth
8 City View Road
Peaks Island, ME 04108Phone: 207.749.8231
rvillforth@gmail.com**Shipping Address:**Robert Villforth
8 City View Road
Peaks Island, ME 04108

Phone: 207.749.8231

Qty	Item #	Description	Backorder	Price	Ext. Price
1	35645-001	Henckels Professional S 3-pc. Starter Knife Set		\$149.95	\$149.95
1	31020-163	Henckels Professional S 6-in. Utility Knife		\$79.95	\$79.95
1	DKH-11N	Messermeister 11-slot In-Drawer Knife Storage Tray		\$24.95	\$24.95
1	50172	FREE Hand-Held Knife Sharpener		\$0.00	\$0.00
				Sub Total	\$254.85
				Freight	\$0.00
				Grand Total	\$254.85
				Payment Received	\$254.85

Ground - 1Z37A6R50348500125 - 10.69 (7.1 lbs) (11/15/2011 4:16:30 PM)

Exhibit A4

REDACTED

From: Truax, Linda [<mailto:LTruax@zwillingus.com>]
Sent: Wednesday, June 02, 2010 5:31 PM
To: Michael Beltrami
Subject: RE: StaubUSA.com Where to Buy Link for Cutlery and More

Will do

Linda Truax
Territory Manager
ZWILLING J.A. HENCKELS, LLC
171 Saw Mill River Road • Hawthorne, NY, 10532 • USA
Tel 914.747.0300 • www.zwillingus.com

This e-mail and any attachments are confidential and may contain attorney privileged information intended for the addressee(s) only. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others, delete this message and any attachments and advise the sender by return mail. Thank you.

From: Michael Beltrami [<mailto:michael@cutleryandmore.com>]
Sent: Wednesday, June 02, 2010 4:25 PM
To: Truax, Linda
Subject: StaubUSA.com Where to Buy Link for Cutlery and More

Hi Linda,

How's it going? I noticed on StaubUSA.com that we are being confused with "cutlery and beyond" ... we are NOT cutlery and beyond and are not affiliated with them AT ALL.

<http://www.staubusa.com/stores/search.asp>

The Staub page shows their logo while it is linked to our website. Please fix ASAP.

Thanks
Michael

Exhibit A5

REDACTED

From: mdequipco@aol.com [mailto:mdequipco@aol.com]
Sent: Tuesday, January 05, 2010 12:26 PM
To: michael@cutleryandmore.com
Subject: <http://www.cutleryandbeyond.com> - this you guys?

<http://www.cutleryandbeyond.com> - this you guys?

need to get the orders in/shipped please just go ahead and charge my MC on the earlier I sent you.

From: mdequipco@aol.com
Sent: Thursday, January 07, 2010 5:40 PM
To: Michael Beltrami
Subject: Re: <http://www.cutleryandbeyond.com> - this you guys?

very similar ...deceptive. Fooled me.

In a message dated 1/7/2010 6:38:50 P.M. Eastern Standard Time, michael@cutleryandmore.com writes:
That isn't us... looks like we may need to contact our lawyers!

Exhibit A6

REDACTED

From: Kristen
Sent: Saturday, December 10, 2011 10:05 AM
To: Michael Beltrami
Subject: Cutlery and Beyond: Phone Call

Late yesterday we had another confused customer call in thinking we were Cutlery and Beyond – please see attached.

Warm Regards,

Kristen
Customer Service Manager
www.cutleryandmore.com

CAM00012 is an Audio File
produced via U.S. First Class Mail
to Matthew Swyers
on January 19, 2012.

Exhibit A7

CAM00013 is an Audio File
produced via U.S. First Class Mail
to Matthew Swyers
on January 30, 2012.

Exhibit 3

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

RESPONSE:

Applicant denies the allegations set forth in this Admission as phrased.

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

RESPONSE:

Applicant denies the allegations set forth in this Admission as phrased.

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:

Applicant Admits to the truth of the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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 denies the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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 Admits to the truth of the allegations set forth in this Admission.

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 Admits to the truth of the allegations set forth in this Admission.
The full definition of “Beyond” as listed in the dictionary.cambridge.org states:

“Beyond means outside or after a stated limit...., Beyond also means more than..., and Beyond also means at a point where something could not be.”

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 denies the allegations set forth in this Admission.

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 denies the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

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

RESPONSE:

Applicant Admits to the truth of the allegations set forth in this Admission.

Dated this 19th Day of June, 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

mswers@TheTrademarkCompany.com

Counsel for Applicant

Exhibit 4

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:

Eddie Desalla, and Fernan Desalla
828 N. Victory Blvd.
Burbank, CA 91502

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

ANSWER:

The terms CUTLERYANDBEYOND describes the nature of the applicant's business.

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

ANSWER:

The terms CUTLERY and BEYOND describe the business of selling cutlery and additional kitchen items.

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:

CUTLERYANDBEYOND appears on the boxes of outgoing merchandise to the customers.

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

ANSWER:

Eddie Desalla.
828 N. Victory Blvd.
Burbank, CA 91502

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:

The earliest date in which a product was sold in a commercial transaction depicting the CUTLERYANDBEYOND mark was in 2005.

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;

Answer: Began advertising in January of 2007.

(b) If a print media advertisement, identify the publication in which said advertisement appeared by name and date; Answer: magazine, however, the name is unknown.

(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; Answer: Applicant does not and has not advertised on Radio or Television.

(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; Answer: Approximately \$120,000 to \$150,000 per year.

(e) Identify the person ultimately responsible for approving the contact of such advertisement on behalf of Applicant. Answer: Fernan Desalla

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 sells its goods to people who purchase kitchenware and cutlery online.

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

ANSWER:

Applicant provides online retail store services and customer service orders by phone.

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:

In early 2007, Applicant began advertising and marketing plans. Applicant uses keywords as a search engine search on Google and Yahoo, places advertisement on Google and Yahoo, and uses keywords such as brand names of products sold as search engine results.

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 has prepared marketing proposals for marketing and advertising on Google and Yahoo.

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 searched for the availability of the Mark in question in an online search and for domain name availability through godaddy.com.

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 was aware of the Opposer's Marks. Applicant thought that the Opposer's Marks were different from Applicant's Mark.

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:

Eddie Desalla
828 N. Victory Blvd.
Burbank, CA 91502

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:

There are no licensees or assignments of Applicant's Mark.

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 commercially sensitive information.

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 and requests information that may violate the attorney – client privilege and/or attorney work product doctrine.

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.

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 has not been involved in any other legal action other than this action.

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:

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:

Eddie Desalla, President. Lisa Snow, Secretary. Merle Desalla, Vice President.

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Dated this 19th day of June, 2012.

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Exhibit 5

Webster's II

New College Dictionary

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moot court *n.* A mock court where hypothetical cases are tried for the training of law students.

mop (mɒp) *n.* [ME *mappe*.] 1. A cleaning implement made of absorbent material fastened to a handle and used for dusting, washing, and drying floors. 2. A loosely tangled bunch or mass <a mop of curls> — *vt.* **mopped, mopping, mops.** To wash or wipe with or as if with a mop. — **mop up.** 1. To clear (an area) of enemy troops remaining after a victory. 2. *Informal.* To finish a task or action. — **mop'per** *n.*

mope (mɒp) *vi.* **moped, moping, mopes.** [Orig. unknown.] 1. a. To be dejected or gloomy. b. To sulk or brood. 2. To move in a leisurely or aimless way : DAWDLE. — *n.* 1. One given to dejected or gloomy moods. 2. **mopes.** Low spirits. — **mop'er** *n.* — **mop'ing-ly** *adv.* — **mop'ish** *adj.* — **mop'ish-ly** *adv.*

mo-ped (mɒ'pɛd) *n.* [MO(TOR) + PED(AL).] A motor-driven two-wheeled vehicle that can also be pedaled.

mop-pet (mɒp'pɛt) *n.* [< obs. *mop*, fool, child < ME.] A young child.

mop-up (mɒp'ʊp) *n.* A finishing action.

moquette (mɒ-kɛt) *n.* [Fr., alteration of *moucade*.] 1. A heavy fabric with a thick nap, used for upholstery. 2. Carpet with a deep tufted pile.

mo-ra (mɒ'rə, mɒ'rə) *n., pl. mo-rae* (mɒ'rɛ, mɒ'rɛ) or **mo-ras**. [< Lat., pause.] The unit of metrical time in quantitative verse equal to the short syllable.

mo-raine (mɒ-rɛn) *n.* [Fr.] Debris, as boulders or stones, deposited by a glacier. — **mo-rain'al, mo-rain'ic** *adj.*

mor-al (mɒ'rəl, mɒ'rəl) *adj.* [ME < OFr. < Lat. *moralis* < *mos*, custom.] 1. Of or concerned with the principles of right and wrong in relation to human action and character. 2. Teaching or displaying good or correct character and behavior <a moral lesson> 3. In accord with standards of what is right or just in behavior : VIRTUOUS. 4. Arising from conscience or the sense of right and wrong <a moral duty> 5. Having psychological rather than physical or tangible effects <a moral success> 6. Based on strong likelihood or conviction rather than on solid evidence <a moral certainty> — *n.* 1. The lesson or principle contained in or taught by a fable, story, or event. 2. A concisely expressed precept or general truth : MAXIM. 3. **morals.** Rules or habits of conduct, esp. sexual conduct, with regard to standards of right and wrong. — **mor'al-ly** *adv.*

mo-rale (mɒ-rəl) *n.* [Fr. < fem. of *moral*, moral < OFr. — see MORAL.] A strong sense of enthusiasm and dedication to a commonly shared goal that unifies a group.

★ **SYNS:** MORALE, ESPRIT, ESPRIT DE CORPS *n.* **core meaning:** a strong sense of enthusiasm and dedication to a common goal that unites a group <The defeats never broke the team's morale.>

moral hazard *n.* A risk to an insurance company arising from doubt about the integrity of the insured.

mor-al-ism (mɒ'rəl-ɪzəm, mɒ'rəl-) *n.* 1. A conventional moral maxim or attitude. 2. The act or practice of moralizing. 3. An often excessive concern for morality.

mor-al-ist (mɒ'rəl-ɪst, mɒ'rəl-) *n.* 1. A teacher or student of morals and moral problems. 2. One who follows a system of moral principles. 3. One unduly concerned with the morals of others.

mor-al-is-tic (mɒ'rəl-ɪs'tɪk, mɒ'rəl-) *adj.* 1. Marked by or showing an interest in or concern with morality. 2. Marked by a narrow-minded morality. — **mor'al-is'ti-cal-ly** *adv.*

mor-al-i-ty (mɒ-rəl-ɪ-ti, mɒ-) *n., pl. -ties.* 1. The quality of being in accord with standards of good or right conduct. 2. A system of ideas of right and wrong conduct. 3. Virtuous conduct. 4. A rule or lesson in moral conduct.

morality play *n.* An allegorical play of the 15th and 16th cent. in which the characters personify virtues and vices.

mor-al-ize (mɒ'rəl-ɪz, mɒ'rəl-) *v.* **-ized, -iz-ing, -iz-es.** — *vt.* 1. To explain or interpret the moral meaning of. 2. To improve the morals of : REFORM. — *vi.* To think about or discuss moral or ethical issues. — **mor'al-iz-a'tion** *n.* — **mor'al-iz'er** *n.*

moral philosophy *n.* Ethics.

mo-rass (mɒ-rəs, mɒ-) *n.* [Du. *moeras* < OFr. *māresc*, prob. of Germanic orig.] 1. Low-lying, soggy ground : bog. 2. Something that hinders, engulfs, or overwhelms.

mor-a-to-ri-um (mɒ'rə-tɔr-ɪ-əm, -tɔr-, mɒ'r-) *n., pl. -to-ri-ums or -to-ri-a* (-tɔr-ɪ-ə, -tɔr-ɪ-ə) [< LLat., neuter of *moratorius*, delaying. — see MORATORY.] 1. Law. An authorization to a debtor, as a bank or nation, permitting temporary suspension of payments. 2. A suspension of action.

mor-a-to-ry (mɒ'rə-tɔr-ɪ, -tɔr-ɪ, mɒ'r-) *adj.* [Fr. *moratoire* < LLat. *moratorius*, delaying < Lat. *morari*, to delay < *mora*, delay.] Authorizing delay in payment.

Mo-ra-vi-an (mɒ-rə-vi-ən) *n.* 1. A native or inhabitant of Moravia. 2. The Czech dialects of Moravia. 3. A member of a Protestant denomination founded in Saxony in 1722 by Hussite emigrants from Moravia. — **Mo-ra'vi-an** *adj.*

mo-ray (mɒ'rə, mɒ-rə) *n.* [Port. *moreia* < Lat. *murena* < Gk. *muraina*.] Any of various often voracious marine eels of the family *Muraenidae* of chiefly tropical coastal waters.

mor-bid (mɒr'bid) *adj.* [Lat. *morbidus*, diseased < *morbus*, disease.] 1. a. Of, pertaining to, or resulting from disease. b. Psychologically unhealthy <a morbid fear of elevators> 2. Subject to or excessively

concerned with unwholesome matters. 3. Grisly : gruesome. — **mor-bid'i-ty, mor'bid-ness** *n.* — **mor'bid-ly** *adv.*

★ **SYNS:** MORBID, MACABRE, SICK, SICKLY, UNHEALTHY, UNWHOLE-SOME *adj.* **core meaning:** susceptible to or marked by preoccupation with unwholesome matters <a morbid interest in torture>

mor-da-cious (mɒr-də'sheəs) *adj.* [Lat. *mor-dax, mordac* < *mor-dere*, to bite.] 1. Prone to biting. 2. Sarcastic : caustic. — **mor-da'cious-ly** *adv.* — **mor-dac'i-ty** (-dās'ɪ-ti) *n.*

mor-dant (mɒr'dɑnt) *adj.* [Fr. < OFr. < pr.part. of *mordre*, to bite < Lat. *mordere*, to bite.] 1. a. Bitingly sarcastic. b. Trenchant and incisive. 2. Bitingly painful. 3. Suitable for fixing colors in dyeing. — *n.* 1. A reagent, as tannic acid, for fixing coloring matter in textiles, leather, or other material. 2. A corrosive substance, as an acid, used in etching. — *vt.* **-dant-ed, -dant-ing, -dants.** To treat with a mordant. — **mor'dan-cy** *n.* — **mor'dant-ly** *adv.*

mor-dent (mɒr'dɛnt, mɒr-dɛnt) *n.* [G. < Ital. *mordente* < *mordere*, to bite < Lat. *mordere*.] Mus. A melodic ornament in which a principal note is rapidly alternated with a note a half or full step below.

more (mɒr, mɔr) *adj.* [ME < OE *māra*.] 1. a. Greater in number. b. Greater in size, amount, extent, or degree. 2. Extra : additional <We need more heat.> — *n.* An additional or greater quantity, number, degree, or amount <More of them are expected.> — *pron.* 1. Something greater or better <more for your money> 2. (*pl. in number*). A greater number of persons or things <hired six workers but more will be needed> — *adv.* 1. To or in a greater extent or degree. — Used to form the comparative of many adjectives and adverbs <more eager> <more readily> 2. In addition. — **more and more.** To a growing extent or degree <I dislike them more and more.> — **more or less.** 1. About : approximately. 2. To an indefinite degree.

mo-reen (mɒ-rɛn, mɒ-) *n.* [Poss. < MOIRE.] A sturdy ribbed fabric of wool, cotton, or wool and cotton often with an embossed finish, used for upholstery and clothing.

mo-rel (mɒ-rɛl, mɒ-) *n.* [Fr. *morille* < OFr., prob. of Germanic orig.] An edible mushroom of the genus *Morchella* or related genera, marked by a brownish spongelike cap.

mo-rel-lo (mɒ-rɛl'lo) *n., pl. -los.* [Prob. < Ital. *amarello* < Med. Lat. *amarellum*, dim. of Lat. *amarus*, bitter.] A variety of the sour cherry, *Prunus cerasus austera*, bearing fruit with dark-red skin.

more-o-ver (mɒr-ə'vɔr, mɒr-, mɒr'ə'vɔr, mɒr'-) *adv.* Beyond what has already been stated : BESIDES.

mo-res (mɒr'ɛz, -ɛz, mɒr'-) *pl. n.* [Lat., pl. of *mos*, custom.] 1. The approved traditional customs and usages of a particular social group. 2. Moral attitudes. 3. Ways : manners.

Mo-res-que (mɒ-rɛsk', mɒ-) *adj.* [Fr. < Sp. *Morisco*, Morisco.] Typical of Moorish art and architecture. — *n.* An ornament or decoration in Moorish style.

Mor-gan (mɒr'gən) *n.* [After Justin Morgan (1747–1798).] A saddle and trotting horse orig. bred in America.

mor-ga-nat-ic (mɒr-gə-nət'ɪk) *adj.* [NLat. *morganaticum* < Med. Lat. *matrimonium ad morganaticam*, marriage for the morning-gift.] Of or relating to a legal marriage between one of royal or noble birth and a partner of lower rank, in which no titles or estates of the royal or noble partner may be claimed by the partner of inferior rank nor by any of the offspring of the marriage. — **mor'ga-nat'i-cal-ly** *adv.*

mor-gan-ite (mɒr'gə-nɪt) *n.* [After John Pierpont Morgan (1837–1913).] A rosy-pink silicate of beryllium and aluminum valued as a semiprecious gem.

Mor-gan le Fay (mɒr'gən lə fə) *n.* [OFr. *Morgain la fee*, Morgan the fairy.] The sorceress sister and enemy of King Arthur according to Arthurian legend.

mor-gen (mɒr'gən) *n., pl. morgen or -gens.* [Du. < MDu. *morgēn*, morning.] A Dutch and South African unit of land area equal to 2.116 acres.

morgue (mɒrg) *n.* [Fr.] 1. A place in which the bodies of persons found dead are kept until identified and claimed or burial arrangements have been made. 2. A newspaper or magazine reference file.

mor-i-bund (mɒr-ɪ'bʊnd, mɒr-ɪ-) *adj.* [Lat. *moribundus* < *mor-i*, to die.] At or near the point of death. — **mor'ri-bun'di-ty** *n.* — **mor'ri-bund-ly** *adv.*

mo-ri-on (mɒr-ɪ-ɔn, mɒr-ɪ-) *n.* [Fr. < Sp. *morion* < *morio*, round object.] A crested metal helmet with a curved peak in front and back, worn by 16th- and 17th-cent. soldiers.

mo-ri-on (mɒr-ɪ-ɔn, mɒr-ɪ-) *n.* [Alteration of Lat. *mormorion*.] An often nearly black smoky quartz.

Mo-ris-co (mɒ-rɪs'kɔ) *n., pl. -cos or -coes.* [Sp. < *Moro*, Moor < Lat. *Maurus*.] A Spanish Moor. — **Mo-ris'co** *adj.*

Mor-mon (mɒr'mən) *n.* 1. *Mormon Ch.* A prophet, warrior, and historian revealed to Joseph Smith as the author of a sacred history of the Americas which Smith translated as the Book of Mormon. 2. A member of the Church of Jesus Christ of Latter-day Saints, founded by Joseph Smith in 1830. — **Mor'mon-ism** *n.*

Mormon Church *n.* A church founded by Joseph Smith at Palmyra in western New York in 1830 and having its headquarters since 1847 in Salt Lake City, Utah.

ā pat ā pay ā care ā father ē pet ē be hw which ʷ pit
ī tie īr pier ō pot ō toe ō paw, for oi noise oo took

from town, is considered by many to be unacceptable in formal style. — *n.* 1. Something better. 2. A superior, as in position or intelligence. — *v.* **-tered, -tering, -ters.** — *vt.* 1. To improve <bettered my position in life>. 2. To surpass; to exceed. — *vi.* To become better.

better² (bĕt'ər) *n.* var. of BETTOR.
better half *n.* [*< my better half, the larger part of me, that is, a close friend.*] Informal. One's spouse.

betterment (bĕt'ər-mənt) *n.* 1. An improvement. 2. An improvement that repairs real property and adds to its value.

better-off (bĕt'ər-ɔf', -ɔf') *adj.* Being in a better or more prosperous condition.

bet-tor also **bet-ter** (bĕt'ər) *n.* One who bets.

between (bi-twĕn') *prep.* [ME *betwene* < OE *betwēonum*.] 1. a. In the interval or position separating <between the buildings> <between Thanksgiving and Christmas>. b. Intermediate to, as in quantity, amount, or degree <measures between four and five feet>. 2. Connecting spatially <a route between Dallas and Fort Worth>. 3. a. By the combined effect or effort of <Between the sun and wind, the wash dried.> b. In the combined ownership of <They had a controlling interest between them.> 4. As measured against. — Used often to express a reciprocal relationship <choose between swimming and tennis> — **between you and me.** In strictest confidence. — **in between.** In an intermediate situation. — **be-tween'** *adv.*

between-times (bi-twĕn'tīmz') *adv.* At or during pauses.

betwixt (bi-twĭkst') *adv.* *e* *prep.* [ME < OE *betwix*.] Archaic.

Beulah (byoo'la) *n.* 1. The land of Israel in the Old Testament. 2. The land of peace in Bunyan's *Pilgrim's Progress*.

beva-tron (bĕv'ə-trɔn') *n.* [B(ILLION) + E(LECTRON) + V(OLTS) + TRON.] Physics. A proton synchrotron.

bevel (bĕv'əl) *n.* [Ofr. *bevel* < *baif*, open-mouthed < *bayer*, to gape.] 1. The angle or inclination of a surface or line that meets another at any angle but 90°. 2. A rule having an adjustable arm used to draw or measure angles or to fix a surface at an angle. — *v.* **-eled, -eling, -els** or **-elled, -el-ling, -els.** — *vt.* To cut at an inclination that forms an angle other than a right angle. — *vi.* To be inclined; to slope.

bevel gear *n.* Either of a pair of gears having teeth surfaces cut so that the gear shafts are not parallel.

beverage (bĕv'ər-ij, bĕv'ər-ij) *n.* [ME *beverage* < Ofr. *bevrage* < *beivre*, to drink < Lat. *biber*.] A liquid for drinking, usu. excluding water.

bevy (bĕv'ē) *n., pl. -ies.* [ME.] 1. A group of birds or animals, esp. larks or quail; a flock. 2. A group; assemblage.

be-wail (bi-wāl') *vt.* **-wailed, -wailing, -wails.** 1. To express sorrow or regret over. 2. To cry about. — **be-wail'er** *n.*

be-ware (bi-wār') *v.* **-warded, -warding, -wares.** [ME *be ware*: *be*, imper. of *been*, to be + *ware*, on one's guard < OE *wær*.] — *vt.* To be cautious of. — *vi.* To be cautious.

be-whiskered (bi-hwĭs'kərd, -wĭs'kərd) *adj.* Having whiskers.

be-wil-der (bi-wĭl'dər) *vt.* **-dered, -der-ing, -ders.** 1. To befuddle or confuse, esp. with a variety of conflicting situations, objects, or statements. 2. To cause to lose one's bearings. — **be-wil'dered-ly** *adv.* — **be-wil'der-ment** *n.*

be-witch (bi-wĭch') *vt.* **-witched, -witching, -witch-es.** [ME *bewicchen*: *be-*, thoroughly + *wicchen*, to enchant < OE *wiccian* < *wicca*, witch and *wicca*, wizard.] To place under one's power by or as if by magic; to captivate totally. — **be-witch'er-y** *n.* — **be-witch-ing** *adj.* — **be-witch-ing-ly** *adv.*

be-witch-ing (bi-wĭch'ing) *adj.* Enchanting as if with a magic spell; FASCINATING. — **be-witch-ing-ly** *adv.*

be-witch-ment (bi-wĭch'mənt) *n.* 1. The act of bewitching or the state of being bewitched. 2. A spell that bewitches.

be-wray (bi-rā') *vt.* **-wrayed, -wraying, -wrays.** [ME *bewreien*: *be-*, thoroughly + *wreien*, to accuse < OE *wreagan*.] Archaic. To disclose, esp. unintentionally; BETRAY.

bey (bā) *n.* [Turk.] 1. A provincial governor in the Ottoman Empire. 2. A ruler of the former kingdom of Tunis. 3. A Turkish title of honor and respect.

beyond (bē-ɔnd', bi-yɔnd') *prep.* [ME < OE *begeondan*.] 1. On the far side of; PAST. 2. Later than. 3. Past the understanding, reach, or scope of <crudely beyond words>. 4. To a degree or amount greater than <rich beyond my wildest hopes>. 5. In addition to <sought nothing beyond bread and shelter>. — **be-yond'** *adv.*

bez-ant (bĕz'ənt, bə-zənt') [ME *besant* < Ofr. < Lat. *Byzantium*, of Byzantium.] 1. A gold coin issued in Byzantium; SOLIDUS. 2. A flat disk used as an architectural decoration.

bez-el (bĕz'əl) *n.* [Orig. unknown.] 1. A slanting surface or bevel on the edge of a cutting tool. 2. The upper, faceted portion of a cut gem above the girdle. 3. A groove or flange that holds a beveled edge, as of a watch crystal or a gem.

be-zique (bə-zĕk') *n.* [Fr. *bésique*.] A card game similar to pinochle that is played with a deck of 64 cards.

be-zoar (bĕ'zɔr', -zɔr') *n.* [ME *bezeor* < Ofr. *bezar* < Ar. *bāzahr* < Pers. *pād-zahr*: *pād*, protecting against + *zahr*, poison.] A hard gastric or intestinal mass found chiefly in ruminants and once regarded as a magical antidote to poison.

B-girl (bĕ'gŭrl') *n.* [B(AR) + GIRL.] A woman who works in a bar and encourages customers to spend money freely.

Bh symbol for BARIUM.

Bha-ga-vad-Gi-ta (bā'gə-vād-gĕ'tə) *n.* [Skt. *bhagavad-gītā*, song of the blessed one (Krishna).] A sacred Hindu text that is part of the *Mahabharata*, an ancient Sanskrit epic.

bhang also **bang** (bāŋg) *n.* [Hindi *bhāŋg* < Skt. *bhaṅgā*.] 1. The hemp plant. 2. Any of several narcotics made from the dried flowers and leaves of hemp.

Bhu-tan-ese (boō'tə-nĕz', -nĕs') *n., pl. Bhutanese.* 1. A native or inhabitant of Bhutan. 2. The Sino-Tibetan language of Bhutan. — *adj.* Of or characteristic of Bhutan, its people, or their culture and language.

bi- or **bin-** *pref.* [Lat. < *bis*, twice.] 1. a. Two <biform> b. Both <binaural> c. Both sides, parts, or directions <biconcave> 2. a. Occurring at intervals of two <bicentennial> b. Occurring twice during <biweekly> 3. a. Containing twice the proportion of a specified chemical element or group necessary for stability <bicarbonate> b. Containing two chemical atoms, radicals, or groups <biphenyl>

bi- *pref.* var. of BIO-

Bi symbol for BISMUTH.

bi-a-ly (bi-ā'lē) *n., pl. -lys.* [After *Bialystok*, Poland.] A round, flat baked roll with onion flakes on top.

bi-an-nu-al (bi-ā'nū-əl) *adj.* Happening twice each year; SEMI-ANNUAL. — **bi-ā'nū-āl-ly** *adv.*

bi-as (bi'əs) *n.* [Ofr. *biais*, oblique.] 1. A line cutting diagonally across the grain of fabric. 2. a. An inclination or preference, esp. one that interferes with impartial judgment; PREJUDICE. b. A specified instance of this. 3. a. An irregularity or weight in a ball that causes it to swerve, as in lawn bowling. b. The tendency of such a ball to swerve. 4. The fixed voltage applied to an electrode. — *vt.* **-ased, -asing, -as-es** or **-assed, -as-ing, -as-ses.** 1. To cause to have a prejudiced view. 2. To apply a small voltage to (a grid).

★ *syns:* BIAS, PARTIALITY, PREJUDICE, PREPOSSSESSION *n.* *core meaning:* an inclination for or against that inhibits impartial judgment <a decision influenced by personal bias>

bi-ased also **bi-assed** (bi'əst) *adj.* Marked by bias.

bi-ath-lon (bi-āth'lɔn, -lɔn') *n.* [Gr. + Gk. *athlon*, contest.] An athletic competition combining cross-country skiing and rifle shooting.

bi-ax-i-al (bi-āk'sē-əl) *adj.* Having two axes. — **bi-āk'si-āl-ly** *adv.*

bib (bib) *n.* [Prob. < ME *bibben*, to drink, perh. < Lat. *bibere*.] 1. A napkin tied under the chin and worn, esp. by young children, to protect the clothing while eating. 2. The part of an apron or overalls covering the chest. — *v.* **bibbed, bib-bing, bibs.** — *vt.* To drink; imbibe. — *vi.* To indulge in drinking; TRIPPLE.

bib and tucker *n.* Informal. Clothing.

bibb (bib) *n.* [Alteration of BIB.] 1. A bracket supporting the steeple-trees on a ship's mast. 2. A bibcock.

bib-ber (bib'ər) *n.* [*< BIB.*] A tippler.

Bibb lettuce (bib) *n.* [After Jack Bibb, 19th-cent. American vegetable grower.] A lettuce forming a small, loose head and having tender, dark-green leaves.

bib-cock (bib'kɔk') *n.* A faucet with a nozzle that bends downward.

bi-be-lot (bĕ'be-lɔ', bĕ-blɔ') *n.* [Fr. < Ofr. *beubelet*, from a redup. of *bel*, beautiful < Lat. *bellus*, handsome.] A small ornamental object; TRINKET.

Bi-ble (bi'bəl) *n.* [ME < Ofr. < Med. Lat. *biblia* < Gk. pl. of *biblion*, book < *biblos*, papyrus < *Bublos*, a Phoenician port.] 1. a. The sacred book of Christianity, including both the Old Testament and the New Testament. b. The Old Testament, the sacred book of Judaism. c. A specific copy of a Bible <their own Bible>. d. A book or collection of writings comprising the sacred text of a religion. 2. **bible.** A book held to be authoritative in its field <the bible of Japanese cooking>

Bible Belt *n.* Sections of the United States, esp. in the South and Middle West, where Protestant fundamentalism prevails.

bi-bli-cal also **Bib-li-cal** (bib'li-kəl) *adj.* [Med. Lat. *biblicus* < *biblia*, Bible.] 1. Of, relating to, or contained in the Bible. 2. Being in keeping with the nature of the Bible, esp.: a. Suggestive of the people or times depicted in the Bible. b. Suggestive of the prose or narrative style of the King James Bible. — **Bi-bli-cal-ly** *adv.*

Bi-bli-cist (bib'li-sĭst) *n.* 1. An expert on the Bible. 2. A literal interpreter of the Bible. — **Bi-bli-cism** *n.*

biblio- *pref.* [*< Gk. biblion*, book. — see BIBLE.] Book <bibliophile>

bi-bli-o-film (bib'li-ɔ-fĭlm') *n.* Microfilm used esp. to photograph book pages.

bi-bli-og-ra-pher (bib'li-ɔg'rə-fər) *n.* 1. An expert in the description and cataloging of printed matter. 2. A compiler of a bibliography or bibliographies.

bi-bli-og-ra-phy (bib'li-ɔg'rə-fē) *n., pl. -phies.* 1. a. A list of the works of a specific author or publisher. b. A list of writings on a single subject. 2. Description and identification of the editions, dates of issue, authorship, and typography of written material, as books.

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