

ESTTA Tracking number: **ESTTA472981**

Filing date: **05/17/2012**

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

Proceeding	91202227
Party	Plaintiff Under Armour, Inc.
Correspondence Address	DOUGLAS A RETTEW FINNEGAN HENDERSON FARABOW GARRETT ET AL 901 NEW YORK AVE NW WASHINGTON, DC 20001 UNITED STATES doug.rettew@finnegan.com, danny.awdeh@finnegan.com, docketing@finnegan.com, larry.white@finnegan.com
Submission	Opposition/Response to Motion
Filer's Name	Danny M. Awdeh
Filer's e-mail	danny.awdeh@finnegan.com, docketing@finnegan.com, larry.white@finnegan.com
Signature	/Danny M. Awdeh/
Date	05/17/2012
Attachments	Opposition to motion to compel interrogatory responses.pdf (76 pages) (2440810 bytes)

response, Opposer invited Applicant to inspect Opposer's documents at Applicant's convenience *any* day during regular business hours. Rather than scheduling an acceptable date, however, Applicant inexplicably filed its Motion on April 28 seeking to compel Opposer's document production and falsely claiming that Opposer had "failed to provide an opportunity to review *any* documents requested." After filing its Motion, Applicant inspected Opposer's documents on May 8 and has since confirmed that its Motion is moot as it pertains to Opposer's document production.

Finally, Applicant's motion should be denied because, contrary to Board procedure, Applicant failed to make a good-faith effort to resolve this dispute before filing its Motion. The full extent of Applicant's efforts consists of two short correspondence asking for interrogatory responses without providing any justification or support for Applicant's position. Applicant never provided its own interrogatory count, offered to revise any of its interrogatories, had a conversation with Opposer about a possible resolution, or made any other effort to reach a resolution. Had Applicant made even minimal effort to research the issue now before the Board, it would have easily found the Board's well-settled procedures (cited in Opposer's objections and subsequent correspondence) and precedent regarding the proper counting of interrogatory subparts. Rather than doing so, Applicant pursued unnecessary and unjustified motion practice, which should have been avoided.

I. BACKGROUND FACTS

On February 24, Applicant served its First Set of Interrogatories and First Requests for Production of Documents on Opposer. (See attached Exhibits A-B.) Opposer served timely objections and responses on March 28, 2012. (See attached Exhibits C-D.)

In response to Applicant's First Set of Interrogatories, Opposer served a general objection to the interrogatories on the ground that they exceed the permitted number of 75 under 37 C.F.R. § 2.120(d)(1). Following Board procedures, Opposer did not respond to each of Applicant's interrogatories individually.

On April 6, Applicant sent a letter to Opposer arguing without any support that Opposer's objection to Applicant's interrogatories is "unfounded and appears to be a blatant attempt to stall discovery." (See attached Exhibit E.) Applicant asked if Opposer would be "filing appropriate responses."

On April 17, Applicant sent a short email (again void of any legal support) asking if Opposer would "be amending its answers to interrogatories to appropriately respond." (See attached Exhibit F.) Applicant also requested dates to inspect Opposer's document production.

On April 23, Opposer further explained to Applicant the basis for its objection to Applicant's excessive number of interrogatories and stated that it would maintain its objection. Opposer also invited Applicant to inspect Opposer's document production *any* day during regular business hours. (See attached Exhibit G.)

On April 28, Applicant filed its Motion and, that same day, responded to Opposer's open offer by requesting a May 8 inspection. Opposer's documents, which had long been available for inspection and copying, were inspected by Applicant on May 8. Applicant identified certain documents that it wanted copied, which Opposer promptly copied and sent to Applicant by overnight delivery.

On May 10, Applicant confirmed that Applicant's Motion as it pertains to the production of Opposer's documents is now moot and that the only remaining issue to be decided by the

Board is whether Applicant's interrogatories exceed the permitted number. (See attached Exhibit H.)¹

II. ARGUMENT

A. Applicant's Interrogatories Total Nearly 200 Subparts

Where, as here, a party believes that the number of interrogatories served exceeds 75 and wishes to object on that basis, it may serve a general objection. "A party should not answer what it considers to be the first 75 interrogatories and object to the rest as excessive." TBMP § 405.03(e).

As stated in Opposer's Objection to Applicant's First Set of Interrogatories to Opposer, Applicant's interrogatories with subparts exceed the permitted number of 75. *See* 37 C.F.R. § 2.120(d)(1). Subparts need not be separately designated (i.e., separately numbered or lettered) to count toward this limit. TBMP § 405.03(d). "[I]f two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory." TBMP § 405.03(d). For example, as explained in TBMP § 405.03(a):

[I]f an interrogatory begins with a broad introductory clause ("Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:") followed by several subparts ("Applicant's date of first use of the mark on the goods listed in the application," "Applicant's date of first use of the mark on such goods in commerce," etc.), the Board will count the broad

¹ While Applicant makes false claims about Opposer's conduct during discovery and seeks to paint Opposer as the party who has acted in "bad faith," Applicant has failed to comply with its discovery obligations in several ways. Applicant's discovery responses were served one month late (with no explanation or request for extension) and comprised numerous baseless objections, deficient responses, and only a handful of responsive documents. Opposer has asked Applicant to supplement its responses and withdraw its waived objections several times, but has received no response. While Opposer continues to make good-faith efforts to resolve this discovery dispute without the Board's involvement, Opposer will have no option but to file a motion to compel if Applicant continues to ignore its discovery obligations.

introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.

Applicant’s interrogatories contain numerous subparts, totaling well over 75. For example, as broken down below, Applicant’s Interrogatory Nos. 3, 12-14, and 22-23 alone comprise 82 subparts:

Interrogatory No. 3: With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s current and proposed sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights.

1	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s current...sales...
2	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...proposed sales...
3	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...advertising...
4	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...sales promotion...
5	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...adoption...
6	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...use...
7	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...licensing...
8	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...assignment...
9	With respect to Opposer’s Marks, identify the person or persons most knowledgeable about Opposer’s...or other transfer of rights.

Interrogatory No. 12: Identify all inquiries, investigations, surveys, evaluations and or studies conducted by Opposer or by anyone acting for or on its behalf with respect to Opposer’s Mark, and marks owned or used by Opposer which incorporates the term “ARMOUR” as an element of the mark, including the date conducted, the name, address and title of each person who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all documents which record, refer to, or relate to such inquiry, investigation, survey, evaluation or study.

1	Identify all inquiries
2	Identify all...investigations

3	Identify all...surveys
4	Identify all...evaluations
5	Identify all...studies
6	...conducted by Opposer or by anyone acting for or on its behalf with respect to Opposer's Mark...
7	...and marks owned or used by Opposer which incorporate the term "ARMOUR" as an element of the mark, including...
8	...the date conducted...
9	...the name...
10	...the address...
11	...and title of each person who conducted it...
12	...purpose for which it was conducted...
13	...the findings or conclusions made...
14	...and identify all documents which record, refer to, or relate to such inquiry...
15	...and identify all documents which record, refer to, or relate to such...investigation....
16	...and identify all documents which record, refer to, or relate to such...survey....
17	...and identify all documents which record, refer to, or relate to such...evaluation....
18	...and identify all documents which record, refer to, or relate to such...study....

Interrogatory No. 13: Identify each different sign, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, promotional material, and the like, known to Opposer which contains or bears Opposer's Marks or any variation thereof and which is intended to be used or disseminated at any time by Opposer.

1	Identify each different sign
2	Identify each different...display
3	Identify each different...point-of-sale display
4	Identify each different...label

5	Identify each different...hangtag
6	Identify each different...wrapper
7	Identify each different...container
8	Identify each different...package
9	Identify each different...advertisement
10	Identify each different...brochure
11	Identify each different...promotional material
12	Identify each different... “and the like”
13	...known to Opposer which contains or bears Opposer’s Marks or any variation thereof...
14	...and which is intended to be used...
15	...or has been used...
16	...or has been disseminated...at any time by Opposer.

Interrogatory No. 14: Identify each person employed by Opposer, or each outside agency or agent retained by Opposer, who has been or now is responsible for the following activity with respect to any of the goods or services intended to be offered or rendered or actually offered or rendered under Opposer’s Mark:

- a. marketing;
- b. advertising and promotion; and
- c. bookkeeping and accounting.

1	Identify each person employed by Opposer...
2	...or each outside agency or agent retained by Opposer...
3	...who has been...responsible for...
4	...who...now is responsible for...
5	... the following activity with respect to any of the goods...
6	...the following activity with respect to any of the...services...
7	...intended to be offered...
8	...intended to be...rendered...

9	...actually offered...
10	...actually...rendered...
11	...under Opposer's Marks...
12	a. marketing;
13	b. advertising
14	b. promotion
15	c. bookkeeping
16	c. accounting.

Interrogatory No. 22: Has Opposer ever been a party to any litigation or administrative proceeding, other than the present opposition, involving Opposer's Marks? If so, state all circumstances surrounding same including, without limitation, the name of the parties and identification of the proceeding, Opposer's status therein, the mark or marks involved, the type of proceeding involved, the name of the court or agency in which it was filed, the date of the filing and the file number, the ultimate disposition of the proceedings, and identify each document relating to such proceeding.

1	Has Opposer ever been a party to any litigation...other than the present opposition, involving Opposer's Marks?
2	Has Opposer ever been a party to any...administrative proceeding, other than the present opposition, involving Opposer's Marks?
3	If so, state all circumstances surrounding same...
4	...including, without limitation, the name of the parties...
5	...and identification of the proceeding...
6	...the following activity with respect to any of the...services...
7	...Opposer's status therein...
8	...the mark or marks involved...
9	...the type of proceeding involved...
10	...the name of the court...in which it was filed ...
11	... the name of the...agency in which it was filed ...
12	...the date of the filing...

13	...the file number...
14	...the ultimate disposition of the proceedings...
15	...and identify each document relating to such proceeding.

Interrogatory No. 23: Identify all experts employed by Opposer for purposes of this action. For each expert, identify his or her field of specialization, whether Opposer intends to call him or her as a witness, the subject matter on which he or she is expected to testify, the bases for each opinion, and identify all documents that relate in any way to the subject matter, facts, and/or circumstances as to which the expert is expected to testify.

1	Identify all experts employed by Opposer for purposes of this action.
2	For each expert, identify his or her field of specialization...
3	For each expert, identify...whether Opposer intends to call him or her as a witness ...
4	For each expert, identify...the subject matter on which he or she is expected to testify...
5	...the bases for each opinion...
6	...and identify all documents that relate in any way to the subject matter ...as to which the expert is expected to testify.
7	...and identify all documents that relate in any way to the...facts...as to which the expert is expected to testify.
8	...and identify all documents that relate in any way to the...circumstances...as to which the expert is expected to testify.

Applicant’s other interrogatories each contain as many as 16 subparts, resulting in a total number of interrogatories of at least 180.

Accordingly, following the Board’s procedures, Opposer properly served a general objection to Applicant’s First Set of Interrogatories on the ground that they exceed the permitted number. Applicant therefore has no basis to argue that Opposer acted in “bad faith” or to compel responses to its excessive number of interrogatories.

B. Applicant Filed Its Motion without Making the Requisite Good-Faith Attempt to Resolve this Dispute

Under the Board's procedures, parties are expected to cooperate during discovery and are required to make good-faith attempts to resolve discovery disputes before filing a motion to compel. TBMP §§ 408.01 and 523.02. A party may not, as Applicant has done here, simply state that discovery has not been responded to and insist on responses to relieve itself of the good-faith-effort requirement. *MacMillan Bloedel Ltd. v. Arrow-M Corp.*, 203 USPQ 952, 954 (TTAB 1979) (a statement that discovery has not been responded to does not constitute a good-faith effort).

Here, Applicant failed to make a good-faith effort to resolve this dispute before filing its Motion. Applicant sent two short correspondence demanding interrogatory responses without providing any justification or support for its position. Applicant never provided its own interrogatory count, offered to revise any of its interrogatories, had a conversation with Opposer about a possible resolution, or made any other effort to reach a resolution. Accordingly, Applicant has not met the Board's threshold requirement for filing a motion to compel.

III. CONCLUSION

For the reasons discussed above, Opposer respectfully requests that the Board deny Applicant's Motion in its entirety.

Respectfully Submitted,

Dated: May 17, 2012

By: /Danny M. Awdeh/
Douglas A. Rettew
Danny M. Awdeh
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
Telephone: 202-408-4000

Attorneys for Opposer
Under Armour, Inc.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing OPPOSITION TO APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND TO MODIFY THE SCHEDULING ORDER was served via first-class mail, postage prepaid, on this 17th day of May 2012, upon counsel for Applicant:

Donald Walsh, Esq.
Offit Kurman
8 Park Center Court
Suite 200
Owings Mills, MD 21117



Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 9120227

Exhibit A

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

UNDER ARMOUR, INC.,

Opposer,

- against -

DOUGLAS LEFRIDGE,

Applicant.

Opposition No.: 91202227

February 24, 2012

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Applicant, Douglas Leftridge, addresses its First Set of interrogatories to Opposer, Under Armour, to be responded to and complied with fully within thirty (30) days of service hereof.

INSTRUCTIONS AND DEFINITIONS OF TERMS

A. As used herein, the term "Opposer" refers to Under Armour, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Opposer, including all of its partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Opposer.

B. The terms "Opposer's Marks" refers to any designation and/or trademark used or intended to be used by Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, including without limitation, United States Trademark Registration No. 3501771 and Application Number 77812483 for the mark "Under Armour" and cited by Opposer in its Notice of Opposition.

C. The term "Applicant" refers to Douglas Leftridge and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Applicant, including all of his or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Applicant.

D. The terms "Applicant's Mark" refers to the designation and/or trademark sought to be registered by means of Application Serial No. 85200700.

E. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Opposer and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts; and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Opposer, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks, not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

In the event Opposer wishes to assert either attorney-client privilege or work-product exclusion, or both, as to any document for which production is requested by any of the following specific document requests, then as to each document subject to such assertion, Opposer is requested to provide such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Opposer associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

F. Over and above the requirements of Rule 26(e) of the Federal Rules of Civil Procedure to supplement responses, it is requested that these discovery requests be treated as continuing. If Opposer becomes aware of any supplemental information or documents relating to these discovery requests and which were not included in the initial responses hereto, Opposer is requested to furnish said additional information or documents to the attorneys for Opposer as soon as possible.

G. Wherever in the following interrogatories Opposer is asked to identify documents, it is requested that the documents be identified by stating:

1. General type of document, i.e., letter, memorandum, report, miscellaneous, notes, etc.;
2. Date;
3. Author;
4. Organization, if any, with which author was connected;
5. Addressee or recipient;
6. Other distributees;
7. Organization, if any, with which addressee or recipient, or distributees were connected;
8. General nature of the subject matter to extent that Opposer can do so without divulging matter considered by it to be privileged;
9. Present location of such document and each copy thereof known to Opposer, including the title, index number and location, if any, of the file in which the document is kept or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

H. Wherever in the following interrogatories Opposer is asked to identify persons, it is requested that the persons be identified by stating:

1. Their full name, home and business addresses, if known;
2. Their employment, job title or description; and
3. If employed by Opposer, their dates and regular places of employment and general duties.

I. Wherever in the following interrogatories Opposer is asked to identify companies or the response to an interrogatory would require the identification of a company, it is requested that the company be identified by stating:

1. Its full corporate name;
2. A brief description of the general nature of its business;
3. Its state of incorporation;
4. The address and principal place of business; and
5. The identity of the officers or other person having knowledge of the matter with respect to which the company has been identified.

J. Wherever in the following interrogatories Opposer is asked to identify goods, products or services, or the marking used in combination with the goods or services, it is requested that the same be identified by stating the catalog, stock, model or the like number or designation, the trademark, name, type, grade, design element, or stylized appearance of the mark, and any other designation customarily used by the party concerned to designate such goods, products or services, or the like, and to distinguish it from others made by the same or a different producer.

K. Should Opposer deem to be privileged any document concerning information which is requested by any of the following interrogatories, Opposer shall list such documents and supply information as requested in Paragraph G above concerning such documents, and additionally shall indicate that they claim privilege therefore, briefly state the nature of the document, the sender, the author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Opposer associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document

L. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Opposer and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Opposer, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

M. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date hereof and these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Opposition herein which Opposer acquires or which becomes known to Opposer up to and including the close of the rebuttal testimony period shall be furnished to Opposer within a reasonable time after such information is acquired or becomes known.

INTERROGATORIES

Interrogatory No. 1:

Identify all individuals who may possess personal knowledge relevant to your Opposition, the registration of Opposer's Marks, and/or Applicant's Mark.

Interrogatory No. 2:

Describe in detail all past and existing relations, including contracts, agreements, licenses, assignments, or other relations, between Opposer and any third party, including predecessor companies, related, or affiliated companies, relating in any manner to Opposer's Marks.

Interrogatory No. 3:

With respect to Opposer's Marks, identify the person or persons most knowledgeable about Opposer's current and proposed sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights.

Interrogatory No. 4:

Identify all state and federal registrations, applications for registration, and uses by Opposer of any mark which incorporates the term "ARMOUR" in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, including without limitation, United States Trademark Registration No. 3501771 and Application Number 77812483 for the mark "Under Armour" and cited by Opposer in its Notice of Opposition, and for each such registration, application, and use, identify all documents relating thereto.

Interrogatory No. 5:

Identify all third-party state and federal registrations, applications for registration, and uses known to Opposer of any mark which incorporates the term "ARMOUR" in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, including without limitation, United States Trademark Registration No. 3501771 and Application Number 77812483 for the mark "Under Armour" and cited by Opposer in its Notice of Opposition, and for each such registration, application, and use, identify all documents relating thereto.

Interrogatory No. 6:

Identify and describe each of the goods on which Opposer intends to use or has used Opposer's Marks, or any variation thereof.

Interrogatory No. 7:

State whether any searches or investigations were conducted by Opposer, its attorneys, or any persons on its behalf to determine whether Opposer's Marks were available for use and/or registration, and, if so, identify each such search or investigation

including the date such search or investigation was performed and the marks located in such search or investigation.

Interrogatory No. 8:

Identify all manufacturers or intended manufacturers of goods bearing Opposer's Marks.

Interrogatory No. 9:

For each of the goods identified in Opposer's Registration No. 3501771 and Application No. 77812483, identify all documents supporting the date on which the mark was first used, if use has commenced.

Interrogatory No. 10:

Identify all documents and set forth with specificity all facts with respect to any instance where a person or entity has been confused, mistaken, and/or deceived as to whether any goods or services advertised or sold under Opposer's Mark are those of Applicant, or are connected or associated with Applicant, and for each such incident provide the date of such incident, the identity of the person or entity, and a detailed description of the circumstances of such confusion, mistake and/or deception.

Interrogatory No. 11:

Identify all documents and set forth with specificity the substance of each communication, oral or written, received by Opposer, which suggests, implies or infers that any of the products of Opposer sold under Opposer's Mark, or any mark that includes the term "ARMOUR", is a product of Applicant or is affiliated, connected and/or associated with Applicant, or which inquires as to whether there is or may be an affiliation, connection and/or association between Opposer and Applicant, and identify any response(s) by Opposer to each such communication.

Interrogatory No. 12:

Identify all inquiries, investigations, surveys, evaluations and or studies conducted by Opposer or by anyone acting for or on its behalf with respect to Opposer's Mark, and marks owned or used by Opposer which incorporate the term "ARMOUR" as an element of the mark, including the date conducted, the name, address and title of each person who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all documents which record, refer to, or relate to such inquiry, investigation, survey, evaluation or study.

Interrogatory No. 13:

Identify each different sign, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, promotional material, and the like, known to Opposer which contains or bears Opposer's Marks or any variation thereof and which is intended to be used or has been used or disseminated at any time by Opposer.

Interrogatory No. 14:

Identify each person employed by Opposer, or each outside agency or agent retained by Opposer, who has been or now is responsible for the following activity with respect to any of the goods or services intended to be offered or rendered or actually offered or rendered under Opposer's Marks:

- a. marketing;
- b. advertising and promotion; and
- c. bookkeeping and accounting.

Interrogatory No. 15:

Has Opposer ever licensed or permitted or had negotiations to license or permit, or otherwise granted rights to third parties to use Opposer's Marks? If so, identify the party or parties who have received or sought such license or permission or other right, state the nature and extent of any such license or permitted use or right, given or negotiated, and identify and describe all documents comprising or containing any such license, permission, or other right, or any agreement in respect to such mark.

Interrogatory No. 16:

Set forth the projected number of units and dollar amount of the annual sales of goods sold under the Opposer's Marks, the projected dollar amount of annual advertising expenditure on such goods, and the individual media through which such advertising are to take place, and the projected dollar amount of advertising through each such media; and identify documents sufficient to support your response to this interrogatory.

Interrogatory No. 17:

State in detail the channels of trade in which Opposer's Marks are to be used and/or in which goods bearing Opposer's Marks are to be sold, including the geographic area by state, territory or possession in which Opposer's Marks are used and/or sold, the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify documents sufficient to support your response to this interrogatory.

Interrogatory No. 18:

Identify each statement or opinion obtained by or for Opposer regarding any issue in this opposition proceeding including, but not limited to, whether the statement was oral or in writing, and identify all documents which relate to such statement or opinion.

Interrogatory No. 19:

Identify with specificity the marketing methods used in the advertising and/or sale of goods and/or services by or for Opposer under Opposer's Marks, including, without limitation, the names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which Opposer has advertised and intends to advertise its goods under Opposer's Marks, and identify documents sufficient to support your response to this interrogatory.

Interrogatory No. 20:

Identify the ordinary purchaser of the goods sold and intended to be sold under Opposer's Marks including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods or services sold under Opposer's Marks.

Interrogatory No. 21:

Identify all documents relating to and set forth with specificity all facts regarding any instance where Opposer has notified anyone that any trademark or service mark used by that person or entity infringed Opposer's Marks, and for each such instance provide a detailed description of any action taken thereafter.

Interrogatory No. 22:

Has Opposer ever been a party to any litigation or administrative proceeding, other than the present opposition, involving Opposer's Marks? If so, state all circumstances surrounding same including, without limitation, the name of the parties and identification of the proceeding, Opposer's status therein, the mark or marks involved, the type of proceeding involved, the name of the court or agency in which it was filed, the date of the filing and the file number, the ultimate disposition of the proceedings, and identify each document relating to such proceeding.

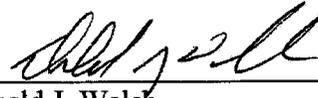
Interrogatory No. 23:

Identify all experts employed by Opposer for purposes of this action. For each expert, identify his or her field of specialization, whether Opposer intends to call him or her as a witness, the subject matter on which he or she is expected to testify, the bases for each opinion, and identify all documents that relate in any way to the subject matter, facts, and/or circumstances as to which the expert is expected to testify.

Interrogatory No. 24:

Identify each non-expert witness that Opposer expects to testify, the subject matter on which the witness is expected to testify, each fact and/or opinion to which the witness is expected to testify, the bases for each opinion and identify all documents that relate in any way to the subject matter, facts, and/or circumstances as to which the witness is expected to testify.

Dated: February 24, 2012

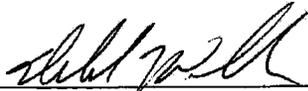


Donald J. Walsh
OFFIT KURMAN, PA
8 Park Center Court, Suite 200
Owings Mills, MD 21117
443-738-1583

Counsel for Applicant

CERTIFICATE OF MAILING

I hereby certify on this 24th day of February, 2012 a copy of the foregoing **APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** was sent via e-mail to Douglas A. Rettew, Daniel Awdeh, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Ave., NW, Washington, DC 20001.



Donald J. Walsh

Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 91202227

Exhibit B

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

UNDER ARMOUR, INC., Opposer, - against - DOUGLAS LEFRIDGE, Applicant.	Opposition No.: 91202227 February 24, 2012
---	---

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

Pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Applicant, Douglas Leftridge, addresses its First Set of Requests for Production of Documents to Opposer, Under Armour, to be responded to and complied with fully within thirty (30) days of service hereof.

INSTRUCTIONS AND DEFINITIONS OF TERMS

A. As used herein, the term "Opposer" refers to Under Armour, Inc. and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Opposer, including all of its partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Opposer.

B. The terms "Opposer's Marks" refers to any designation and/or trademark used or intended to be used by Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, including without limitation, United States Trademark Registration No. 3501771 and Application Number 77812483 for the mark "Under Armour" and cited by Opposer in its Notice of Opposition.

C. The term "Applicant" refers to Douglas Leftridge and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Applicant, including all of his or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Applicant.

D. The terms "Applicant's Mark" refers to the designation and/or trademark sought to be registered by means of Application Serial No. 85200700.

E. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Opposer and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts; and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Opposer, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks, not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

In the event Opposer wishes to assert either attorney-client privilege or work-product exclusion, or both, as to any document for which production is requested by any of the following specific document requests, then as to each document subject to such assertion, Opposer is requested to provide such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Opposer associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

F. Over and above the requirements of Rule 26(e) of the Federal Rules of Civil Procedure to supplement responses, it is requested that these discovery requests be treated as continuing. If Opposer becomes aware of any supplemental information or documents relating to these discovery requests and which were not included in the initial responses hereto, Opposer is requested to furnish said additional information or documents to the attorneys for Opposer as soon as possible.

REQUESTS FOR PRODUCTION

Request No. 1:

Produce all documents which record, refer to, or relate to the proposed organization, incorporation, structure, operation and activities of Opposer's business insofar as they relate to any products sold and/or services to be offered by and/or intended to be sold, offered or promoted by Opposer under Opposer's Mark.

Request No. 2:

Produce all documents which record, refer to, or relate to any proposed, pending or signed licenses, assignments, agreements, contracts, and/or arrangements between Opposer and any third party which relate in any manner to Opposer's Marks.

Request No. 3:

Produce all documents which record, refer to, or relate to Opposer's current or proposed use of the "Under Armour" designation, including Opposer's investigation of Applicant's Mark for its availability for adoption and registration, its licensing, use, intended use, exploitation, and/or intended exploitation.

Request No. 4:

Produce all documents which record, refer to, or relate to Opposer's current or proposed use of the term "Under Armour" in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

Request No. 5:

Produce all documents which record, refer to, or relate in any manner to the subject matter of this opposition proceeding.

Request No. 6:

Produce all documents which record, refer to, or relate to goods and/or services which are or are to be provided under Opposer's Marks.

Request No. 7:

Produce all documents which record, refer to, or relate to Opposer's advertising, intended advertising, promotion, and/or intended promotion of any goods and/or services under Opposer's Mark.

Request No. 8:

Produce all documents which record, refer to, or relate to Opposer's sales or intended sales of any goods and/or services under Opposer's Marks.

Request No. 9:

Produce all documents which record, refer to, or relate to the selection, design, adoption, proposed use of, decision to use, and first use of Opposer's Marks and/or any mark including the term "Armour" in connection with any beverages including but not

limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, including samples of any names, designations and/or other marks considered and rejected in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

Request No. 10:

Produce all documents which record, refer to, or relate to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of Opposer, or by any person acting for or on its behalf, regarding the availability and/or registrability of Applicant's Mark, or of the term "Armourade".

Request No. 11:

Produce all documents which refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state or federal, of marks incorporating the term "Armour" by Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

Request No. 12:

Produce all documents which record, refer to, or relate to Opposer's consideration or decision to select, adopt and/or use Opposer's Marks and/or any designation including the term "Armour" in each different logotype, design, hang tag, packaging, font of type or style in which said designation is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

Request No. 13:

Produce a sample of each different logotype, design, hang tag, packaging, font of type or style in which Opposer's Marks and/or any designation including the term "Armour" is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

Request No. 14:

Produce a sample of each and every different advertisement, intended advertisement, item of promotional material and/or intended item of promotional material printed and/or disseminated in which Opposer's Marks and/or any designation including the term "Armour" is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

Request No. 15:

Produce a sample of each product which is being used or is intended to be used by Opposer in which Opposer's Marks appears.

Request No. 16:

Produce copies of all television commercials, press releases, radio scripts and other media advertising not previously requested herein, prepared by or for Opposer whether or not released or aired, in which Opposer's Mark and/or any designation including the term "Armour" is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages..

Request No. 17:

Produce all documents which record, refer to, or relate to the amount of sales (actual and/or projected) by calendar quarter of goods sold by or for Opposer under Opposer's Mark in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages including, without limitation, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar value of the sales.

Request No. 18:

Produce all documents which record, refer to, or relate to any communication, oral or written, received by Opposer from any person which suggests, implies, or infers any connection or association between Opposer and Applicant, or which inquires as to whether there is or may be such a connection or association.

Request No. 19:

Produce all documents which record, refer to, or relate to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any person between Applicant's mark and any of Opposer's Marks.

Request No. 20:

Produce all documents which record, refer to, or relate to Applicant's knowledge and/or awareness of the use and/or application for registration of Opposer's Marks by Opposer.

Request No. 21:

Produce all documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or application for registration of Applicant's Marks.

Request No. 22:

Produce all documents which record, refer to, or relate to any inquiry, investigation, evaluation, analysis, or survey conducted by Opposer or any person acting for or on behalf of Opposer regarding any issues involved in this proceeding.

Request No. 23:

Produce all documents which record, refer to, or which constitute any research, reports, surveys, or studies conducted by or on behalf of Opposer of consumer or customer perception of Opposer's Marks.

Request No. 24:

Produce all documents in your possession or control that refer or relate to Applicant or Applicant's Marks.

Request No. 25:

Produce all press releases, articles and clippings relating to or commenting on goods or services marketed or sold under Opposer's Marks.

Request No. 26:

Produce documents sufficient to identify all goods and/or services in connection with which Opposer uses and/or intends to use Opposer's Marks and/or any designation that includes the term "Armour" Mark in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages including, without limitation, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar value of the sales.

Request No. 27:

Produce a copy of any statements and/or opinions of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

Request No. 28:

Produce a copy of all documents, other than those produced in response hereto, upon which Opposer intends to rely in connection with this opposition proceeding.

Request No. 29

Produce all documents identified in response to Applicant's First Set of Interrogatories to Opposer not produced in response to the above requests.

Request No. 30

Produce all documents in Opposer's possession or control which refer or relate to Applicant.

Request No. 31

All documents referring or relating to all judicial and administrative proceedings in any forum, including but not limited to the U.S. Patent and Trademark Office, federal court, state court, agency or other forum, involving or relating to Applicant's Mark(s), or any names, marks, or designations comprised of or containing the suffix "-ADE," other than this proceeding.

Request No. 32

All documents referring or relating to the circumstances under which Applicant first became aware of Opposer, Opposer's Mark, and any of Opposer's Products, including the date when and how Applicant became aware of the foregoing and the persons most knowledgeable about the foregoing.

Request No. 33

Documents sufficient to identify all outlets through which Applicant's Products have been offered or sold, are offered or sold, and/or have ever been intended to be offered or sold.

Request No. 34

All documents in Applicant's possession, custody, or control that refer or relate to any third-party use or registration of any mark comprised of or containing "ARMOUR," "ARMOR," the suffix "-ADE," or any variation.

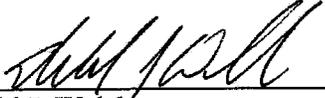
Request No. 35

To the extent not already produced in response to these requests, all documents identified and referenced in Applicant's initial disclosures.

Request No. 36

All documents referring or relating to any comparison between Applicant and Under Armour (including but not limited to similarities or differences in their marks and/or products).

Dated: February 24, 2012

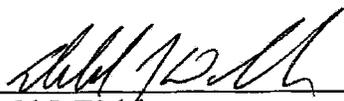


Donald J. Walsh
OFFIT KURMAN, PA
8 Park Center Court, Suite 200
Owings Mills, MD 21117
443-738-1583

Counsel for Applicant

CERTIFICATE OF MAILING

I hereby certify on this 24th day of February, 2012 a copy of the foregoing **APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO OPPOSER** was sent via e-mail to Douglas A. Rettew, Daniel Awdeh, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Ave., NW, Washington, DC 20001.



Donald J. Walsh

Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 91202227

Exhibit C

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

UNDER ARMOUR, INC., Opposer, v. DOUGLAS A. LEFTRIDGE, Applicant.	Opposition No. 91202227 Serial No. 85200700 Mark: ARMOURADE Filing Date: December 17, 2010
--	---

OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Under Armour, Inc. ("Opposer"), through its counsel, responds to Applicant Douglas A. Leftridge's First Set of Interrogatories as follows:

GENERAL OBJECTION

Without waiving Opposer's right to raise specific objections to Applicant's First Set of Interrogatories to Opposer, Opposer objects to Applicant's First Set of Interrogatories to Opposer on the ground that they exceed the permissible number allowed by 37 C.F.R. § 2.120(d)(1).

Respectfully Submitted,

Dated: March 28, 2012

By: 

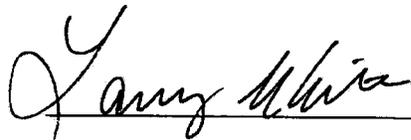
Douglas A. Rettew
Danny M. Awdeh
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
Telephone: 202-408-4000

Attorneys for Opposer
UNDER ARMOUR, INC.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER was served by email and first class mail, postage prepaid, on this 28th day of March 2012, upon counsel for Applicant:

Donald Walsh, Esq.
Offit Kurman
8 Park Center Court
Suite 200
Owings Mills, MD 21117



Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 91202227

Exhibit D

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

<p>UNDER ARMOUR, INC.,</p> <p>Opposer,</p> <p>v.</p> <p>DOUGLAS A. LEFRIDGE,</p> <p>Applicant.</p>	<p>Opposition No. 91202227</p> <p>Serial No. 85200700</p> <p>Mark: ARMOURADE</p> <p>Filing Date: December 17, 2010</p>
--	--

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

Under Armour, Inc. ("Opposer"), through its counsel, responds to Applicant Douglas A. Leftridge's ("Applicant") First Requests for Production of Documents as follows:

GENERAL OBJECTIONS

In the interest of clarity and brevity, Opposer sets forth the following general objections. These objections apply to each of Applicant's specific interrogatories and document requests ("Requests"), unless the context clearly indicates otherwise. All subsequent responses are subject to and limited by these objections.

1. Opposer objects to Applicant's Requests to the extent they seek information, documents, or things falling within the scope of the attorney-client and/or work-product privileges or information or documents containing or reflecting the mental impressions, conclusions, opinions, or legal theories of Opposer's attorneys or other representatives. Opposer further objects to the Requests to the extent that they seek information, documents, or things that are privileged or otherwise protected from disclosure. Inadvertent production or disclosure of any such information, documents, or things shall not constitute a waiver of any privilege or any

other ground for objecting to discovery with respect to such information, documents, or things; any other information, documents, or things; or the subject matter thereof. Nor shall inadvertent production or disclosure waive Opposer's right to object to the use of any such information, documents, or things during this action or in any subsequent proceeding. Opposer reserves the right to request the return of any inadvertently produced privileged documents and to challenge Applicant's use of any such documents.

2. Opposer objects to Applicant's Requests to the extent they seek the production of documents or things that are neither relevant to a claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence. Opposer reserves the right to request the return of any inadvertently produced non-relevant documents or things. Moreover, the production of any non-relevant information, documents, or things, whether or not in response to any discovery requests, is not to be construed as a waiver of a claim of irrelevancy.

3. Opposer objects to Applicant's Requests to the extent they seek to impose obligations to produce documents or things in a manner not provided by the Federal Rules of Civil Procedure and/or the Board Rules.

4. Opposer objects to Applicant's Requests to the extent they seek to impose obligations regarding the creation of a privilege log not imposed by the Federal Rules of Civil Procedure. Opposer will produce a privilege log in accordance with those rules.

5. Opposer objects to Applicant's Requests to the extent they call for the production of documents or things not within Opposer's possession, custody, or control.

6. Opposer objects to Applicant's Requests to the extent they are duplicative.

7. Opposer objects to Applicant's Requests to the extent they are not limited in time.

8. Opposer objects to Applicant's Requests to the extent they are not limited in geographic scope to the United States. All responses are limited to information, documents, and/or things pertaining to the use and registration of Opposer's ARMOUR Marks in the U.S.

9. Opposer objects to Applicant's Requests to the extent they seek (a) information, documents, or things unavailable to Opposer; (b) information, documents, or things in the public domain and equally available to Applicant or Applicant's counsel; and/or (c) information, documents, or things already within Applicant's possession, custody, or control.

10. Opposer objects to Applicant's Requests to the extent they purport to require Opposer to conduct discovery of or to investigate third persons, or to reply on behalf of persons or corporations over whom Opposer exercises no control or on whose behalf Opposer has no authority to respond.

11. Opposer objects to Applicant's Requests to the extent they are vague, ambiguous, overbroad, oppressive, and/or unduly burdensome.

12. Opposer's representation that it will produce and/or make responsive, relevant, and non-privileged documents and things available for inspection and copying does not necessarily mean that responsive, relevant, and non-privileged documents and things exist. To the extent that they do exist, they will be produced and/or made available for inspection and copying.

13. Opposer's written objections and responses are based on information presently available to and located by Opposer and its attorneys. As Opposer has not completed its investigation of all facts relating to this action, its discovery in this action, or its preparation for any hearing or trial, Opposer's written objections and responses are made without prejudice to its

right to supplement or amend its written objections and responses and to present evidence discovered hereafter, including at any hearing or trial.

14. Opposer objects to the term “Opposer” as defined on the ground that it is overly broad, unduly burdensome, and beyond the scope of discovery. For purposes of its responses, Opposer construes the term “Opposer” consistent with the definition in Opposer’s First Set of Interrogatories to Applicant.

15. Opposer objects to the term “Opposer’s Marks” as defined on the ground that it is overly broad, unduly burdensome, and beyond the scope of discovery. For purposes of its responses, Opposer construes the term “Opposer’s Marks” consistent with the definition for “Opposer’s ARMOUR Marks” in Opposer’s First Set of Interrogatories to Applicant.

16. Opposer objects to the term “record” as used in the Requests on the ground that it is vague, ambiguous, and undefined.

17. To the extent general objections are cited to specific discovery requests, those citations are provided because they are believed to be particularly applicable to the requests and are not to be construed as a waiver of any other general objection applicable to the requests.

RESPONSES

REQUEST NO. 1

Produce all documents which record, refer to, or relate to the proposed organization, incorporation, structure, operation and activities of Opposer’s business insofar as they relate to any products sold and/or services to be offered by and/or intended to be sold, offered or promoted by Opposer under Opposer’s Mark.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad and beyond the scope of discovery to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, e.g., documents recording, referring, or relating to the proposed organization, incorporation, structure, operation, and activities of Opposer's business. Opposer's response is limited to documents sufficient to identify its corporate structure as it relates to Opposer's Marks for beverage products.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) recording, referring, or relating to the proposed organization, incorporation, structure, operation, and activities of Opposer's business, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 2

Produce all documents which record, refer to, or relate to any proposed, pending or signed licenses, assignments, agreements, contracts, and/or arrangements between Opposer and any third party which relate in any manner to Opposer's Marks.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks proposed, pending, and/or signed licenses, assignments, agreements, contracts, and/or arrangements between Opposer and any third party that relate “in any manner to” (emphasis added) Opposer’s Marks, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Opposer’s response is limited to licenses, assignments, agreements, contracts, and/or arrangements concerning the use of Opposer’s Marks for beverage products, if any.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) referring or relating to proposed, pending, and/or signed licenses, assignments, agreements, contracts, and/or arrangements, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents (if any) available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 3

Produce all documents which record, refer to, or relate to Opposer’s current or proposed use of the term “Under Armour” designation, including Opposer’s investigation of Applicant’s Mark for its availability for adoption and registration, its licensing, use, intended use, exploitation, and/or intended exploitation.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks documents referring or relating to Opposer's use of "Under Armour" generally without qualification.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) referring or relating to Opposer's use of "Under Armour" generally, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this request on the ground that it is confusing and cannot be reasonably interpreted as drafted. Specifically, the request initially asks for documents relating to Opposer's use of "Under Armour." It then requests, as an example, documents related to the availability for adoption and use of "Applicant's Mark." In view of this conflict, Under Armour cannot reasonably determine what documents Applicant seeks.

REQUEST NO. 4

Produce all documents which record, refer to, or relate to Opposer's current or proposed use of the term "Under Armour" in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) referring or relating to Opposer’s current or proposed use of the term “Under Armour” in connection with any beverages, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 5

Produce all documents which record, refer to, or relate in any manner to the subject matter of this opposition proceeding.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks documents referring or relating “in any manner to” (emphasis added) the subject matter of this opposition proceeding, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) referring or relating in any manner to the subject matter of this opposition proceeding, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 6

Produce all documents which record, refer to, or relate to goods and/or services which are or are to be provided under Opposer's Marks.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it encompasses *all* goods and services offered or to be offered under Opposer's Marks without qualification.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) referring or relating to all goods and services offered or to be offered under Opposer's Marks, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 7

Produce all documents which record, refer to, or relate to Opposer's advertising, intended advertising, promotion, and/or intended promotion of any goods and/or services under Opposer's Mark.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks documents referring or relating to Opposer's advertising/promotion and intended advertising/promotion of *all* goods and services offered under Opposer's Marks without qualification.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) referring or relating to Opposer's advertising/promotion and intended advertising/promotion of any goods and services offered under Opposer's Marks, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 8

Produce all documents which record, refer to, or relate to Opposer's sales or intended sales of any goods and/or services under Opposer's Marks.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks documents referring or relating to Opposer's sales or intended sales of *any* goods and services under Opposer's Marks without qualification.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) referring or relating to Opposer's sales or intended sales under Opposer's Marks, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 9

Produce all documents which record, refer to, or relate to the selection, design, adoption, proposed use of, decision to use, and first use of Opposer's Marks and/or any mark including the term "Armour" in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages, including samples of any names, designations and/or other marks considered and rejected in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks documents referring or relating to “other” names, designations, and/or marks considered and rejected, which includes names, designations, and/or marks that do not contain “Armour” (or any variation) and are thus beyond the scope of discovery.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) referring or relating to the selection, design, adoption, proposed use of, decision to use, and first use of Opposer’s Marks, which includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 10

Produce all documents which record, refer to, or relate to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of Opposer, or by any person acting for on or its behalf, regarding the availability and/or registrability of Applicant’s Mark, or of the term “Armourade.”

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) regarding the availability and/or registrability of Applicant’s Mark or “Armourade,” which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents (if any) available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 11

Produce all documents which refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state or federal, of marks incorporating the term “Armour” by Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) referring, relating to, or “in any way concerned with” the preparation, filing, and/or prosecution of applications, which could

include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 12

Produce all documents which record, refer to, or relate to Opposer's consideration or decision to select, adopt and/or use Opposer's Marks and/or any designation including the term "Armour" in each different logotype, design, hang tag, packaging, font of type or style in which said designation is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer objects to "font of type" as used in this request on the ground that it is vague, ambiguous, and confusing.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it covers "each different logotype, design, hang tag, packaging, font of type or style." (emphasis added)

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) that “record,” refer, or relate to consideration or selection of Opposer’s Marks, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 13

Produce a sample of each different logotype, design, hang tag, packaging, font of type or style in which Opposer’s Marks and/or any designation including the term “Armour” is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

RESPONSE:

Opposer objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery to the extent it calls for a sample of “each different logotype, design, hang tag, packaging, font of type or style.” (emphasis added)

Opposer objects to “font of type” as used in this request on the ground that it is vague, ambiguous, and confusing.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett &

Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 14

Produce a sample of each and every different advertisement, intended advertisement, item of promotional materials and/or intended item of promotional material printed and/or disseminated in which Opposer's Marks and/or any designation including the term "Armour" is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

RESPONSE:

Opposer objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery to the extent it calls for a sample of "each and every different advertisement, intended advertisement, item of promotional materials and/or intended item of promotional material." (emphasis added)

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 15

Produce a sample of each product which is being used or is intended to be used by Opposer in which Opposer's Marks appears.

RESPONSE:

Opposer objects to "product which is being used or is intended to be used by Opposer" as vague, confusing, and undefined.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery.

REQUEST NO. 16

Produce copies of all television commercials, press releases, radio scripts and other media advertising not previously requested herein, prepared by or for Opposer whether or not released or aired, in which Opposer's Mark and/or any designation including the term "Armour" is being used, or is intended to be used, by or on behalf of Opposer in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages.

RESPONSE:

Opposer objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery to the extent it calls for "all television commercials, press releases, radio scripts and other media advertising not previously requested herein, prepared by or for Opposer whether or not released or aired." (emphasis added)

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 17

Produce all documents which record, refer to, or relate to the amount of sales (actual and/or projected) by calendar quarter of goods sold by or for Opposer under Opposer's Mark in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations

for making beverages including, without limitation, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar value of the sales.

RESPONSE:

Opposer objects to “the identification of the goods or services” as used in the Request as vague and confusing.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) that record, refer, or relate to Opposer’s sales, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 18:

Produce all documents which record, refer to, or relate to any communication, oral or written, received by Opposer from any person which suggests, implies, or infers any connection or association between Opposer and Applicant, or which inquires as to whether there is or may be such a connection or association.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) that record, refer, or relate

to communications received by Opposer, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 19:

Produce all documents which record, refer to, or relate to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any person between Applicant's mark and any of Opposer's Marks.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to "instance or occurrence of likelihood of confusion" as used in this Request as vague and confusing.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) that record, refer, or relate to any instance or occurrence of likelihood of confusion and/or actual confusion, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents available for

inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 20:

Produce all documents which record, refer to, or relate to Applicant's knowledge and/or awareness of the use and/or application for registration of Opposer's Marks by Opposer.

RESPONSE:

Opposer objects to this request to the extent that it seeks documents and things that are not within its possession, custody, or control, i.e., documents related to Applicant's knowledge and/or awareness.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 21:

Produce all documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or application for registration of Applicant's Marks.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) that record, refer, or relate to Opposer's knowledge/awareness, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 22:

Produce all documents which record, refer to, or relate to any inquiry, investigation, evaluation, analysis, or survey conducted by Opposer or any person acting for or on behalf of Opposer regarding any issues involved in this proceeding.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request on the ground that “any of the issues in this proceeding” (emphasis added) as used in this request is vague, ambiguous, and undefined and could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) that record, refer, or relate to any inquiry, investigation, evaluation, analysis, or survey, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents available for

inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 23:

Produce all documents which record, refer to, or which constitute any research, reports, surveys, or studies conducted by or on behalf of Opposer of consumer or customer perception of Opposer's Marks.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer also objects to this request on the ground that "consumer or customer perception" as used in this request is vague, ambiguous, and undefined.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) that record, refer, or relate to any research, reports, surveys, or studies conducted by or on behalf of Opposer, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 24:

Produce all documents in your possession or control that refer or relate to Applicant or Applicant's Marks.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks “all documents” (emphasis added) that refer or relate to Applicant or Applicant’s Marks, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 25:

Produce all press releases, articles and clippings relating to or commenting on goods or services marketed or sold under Opposer’s Marks.

RESPONSE:

Opposer objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery to the extent that it seeks “all press releases, articles and clippings relating to or commenting on goods or services marketed or sold under Opposer’s Marks.” (emphasis added)

Opposer also objects to this request to the extent that it seeks documents and things that are not within its possession, custody, or control.

Opposer further objects to this request to the extent that it seeks documents and things in the public domain and equally available to Applicant or Applicant’s counsel.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its

counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 26:

Produce documents sufficient to identify all goods and/or services in connection with which Opposer uses and/or intends to use Opposer's Marks and/or any designation that includes the term "Armour" Mark in connection with any beverages including but not limited to, beers, mineral and aerated waters and other non-alcoholic beverages, fruit beverages and fruit juices, syrups and other preparations for making beverages including, without limitation, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar value of the sales.

RESPONSE:

Opposer objects to this request as vague and confusing.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 27:

Produce a copy of any statements and/or opinions of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer objects to “any statements” as used in this request as overly broad.

Opposer also objects to this request on the ground that “any of the issues in this opposition” (emphasis added) as used in this request is vague, ambiguous, and undefined and could include information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Opposer further objects to this request as premature to the extent it requires Opposer to produce expert reports before it is required to do so under the Board’s Institution Order.

Opposer objects to this request to the extent it seeks information and documents that are not subject to discovery pursuant to the Board’s Rules, the Federal Rules of Civil Procedure, and/or the parties’ discovery stipulations.

Subject to the above general and specific objections, and to the extent this request is understood, Opposer will make responsive, relevant, and non-privileged documents (if any) available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 28:

Produce a copy of all documents, other than those produced in response hereto, upon which Opposer intends to rely in connection with this opposition proceeding.

RESPONSE:

Opposer objects to this request as premature to the extent it requires Opposer to produce documents upon which it intends to rely before the close of its testimony/trial period.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its

counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 29:

Produce all documents identified in response to Applicant's First Set of Interrogatories to Opposer not produced in response to the above requests.

RESPONSE:

Opposer incorporates by reference its objections to Applicant's First Set of Interrogatories.

REQUEST NO. 30:

Produce all documents in Opposer's possession or control which refer or relate to Applicant.

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer objects to this request to the extent it is duplicative of other requests.

Opposer also objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks documents referring or relating to Applicant generally, irrespective of the content of those documents, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) referring or relating to Applicant, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 31:

All documents referring or relating to all judicial and administrative proceedings in any forum, including but not limited to the U.S. Patent and Trademark Office, federal court, state court, agency or other forum, involving or relating to Applicant's Mark(s), or any names, marks, or designations comprised of or containing the suffix "-ADE," other than this proceeding.

RESPONSE:

Opposer objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery to the extent it covers proceedings involving names, marks, or designations comprised of or containing the suffix "-ADE" irrespective of the specific nature of those proceedings.

Opposer also objects to this request to the extent that it seeks documents that are (1) not within its possession, custody, or control, and/or (2) in the public domain and equally available to Applicant or Applicant's counsel.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

REQUEST NO. 32:

All documents referring or relating to the circumstances under which Applicant first became aware of Opposer, Opposer's Mark, and any of Opposer's Products, including the date when and how Applicant became aware of the foregoing and the persons most knowledgeable about the foregoing.

RESPONSE:

Opposer objects to this request to the extent that it seeks documents and things that are not within its possession, custody, or control.

Opposer has no documents in its possession, custody, or control referring or relating to the circumstances under which Applicant precisely first became aware of Opposer, Opposer's Mark, and any of Opposer's Products.

REQUEST NO. 33:

Documents sufficient to identify all outlets through which Applicant's Products have been offered or sold, are offered or sold, and/or have ever been intended to be offered or sold.

RESPONSE:

Opposer objects to this request to the extent that it seeks documents and things that are not within its possession, custody, or control.

Opposer has no documents in its possession, custody, or control identifying the outlets through which Applicant's Products have been offered or sold, are offered or sold, and/or have ever been intended to be offered or sold.

REQUEST NO. 34:

All documents in Applicant's possession, custody, or control that refer or relate to any third-party use or registration of any mark comprised of or containing "ARMOUR," "ARMOR," the suffix "-ADE," or any variation.

RESPONSE:

Opposer objects to this request to the extent that it seeks documents and things that are not within its possession, custody, or control.

REQUEST NO. 35:

To the extent not already produced in response to these requests, all documents identified and referenced in Applicant's initial disclosures.

RESPONSE:

Opposer objects to this request to the extent that it seeks documents and things that are not within its possession, custody, or control.

REQUEST NO. 36:

All documents referring or relating to any comparison between Applicant and Under Armour (including but not limited to similarities or differences in their marks and/or products).

RESPONSE:

Opposer objects to this request to the extent it seeks information and documents subject to attorney-client and attorney-work-product privileges.

Opposer further objects to this request as overly broad, unduly burdensome, and beyond the scope of discovery in that it seeks "all documents" (emphasis added) referring or relating to any comparison between Applicant and Under Armour, which could include documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections, Opposer will make responsive, relevant, and non-privileged documents (if any) available for inspection and copying at the offices of its counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., 901 New York Avenue, NW, Washington, D.C. 20001-4413.

Respectfully Submitted,

Dated: March 28, 2012

By: 

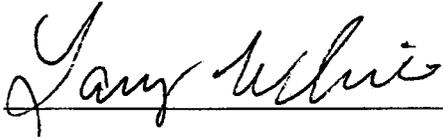
Douglas A. Rettew
Danny M. Awdeh
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
Telephone: 202-408-4000

Attorneys for Opposer
UNDER ARMOUR, INC.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO OPPOSER was served by email and first class mail, postage prepaid, on this 28th day of March 2012, upon counsel for Applicant:

Donald Walsh, Esq.
Offit Kurman
8 Park Center Court
Suite 200
Owings Mills, MD 21117



Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 91202227

Exhibit E

Offit | Kurman
Attorneys At Law

Writer's Direct Dial: (443) 738-1583
Facsimile Number: (443) 738-1535
Writer's Email: dwalsh@offitkurman.com

April 6, 2012

Danny Awdeh, Esquire
Finnegan, Henderson, Farabow, Garrett & Dunner
901 New York Avenue, NW
Washington, DC 20001-4413

RE: Under Armour, Inc. v. Douglas A. Leftridge
Opposition No. 91202227

Dear Mr. Awdeh:

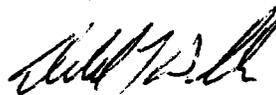
Enclosed with the mailed copy of this letter are Mr. Leftridge's discovery responses. Please let me know when I may visit your office to review the documents in your possession which are responsive to our discovery responses.

In addition, please allow this letter to serve as a good faith effort to resolve your objections to our discovery. Your contention that the Interrogatories exceed the number permitted under the Rules is unfounded and appears to be a blatant attempt to stall discovery. Please advise if you will be filing appropriate responses without the need for a Motion and Order. If cooperation is not provided, fees will be sought.

At this time, please provide dates by which you, Mr. Morris and a representative of your client are available for deposition. The client representative should be familiar with the matters noted in your Answers to Interrogatories and in your opposition.

I look forward to hearing from you.

Sincerely,



Donald J. Walsh

DJW/sla
Enclosures

Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 91202227

Exhibit F

From: Walsh, Donald [dwalsh@offitkurman.com]
Sent: Tuesday, April 17, 2012 8:27 AM
To: Awdeh, Danny
Subject: UA v. Leftridge

Danny-

Please let me know about whether UA will be amending its answers to interrogatories to appropriately respond otherwise I will file my motion to compel. I would also like to visit your office to review the documents you have on either April 20 or 23. Please let me know if this is possible. If not, please let me know what dates will be possible.

Donald J. Walsh

Offit | Kurman

Attorneys At Law

Chair, Government Contracting Group

**8 Park Center Court
Suite 200
Owings Mills, MD 21117
443-738-1583 (Direct - Baltimore)
301-575-0383 (Direct - DC/Metro)
443-738-1535 (Facsimile)**

Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 91202227

Exhibit G

April 23, 2012

Donald J. Walsh, Esq.
Offit Kurman
Attorneys At Law
8 Park Center Court
Suite 200
Owings Mills, Maryland 21117

By Email & U.S. Mail

ARMOURADE Opposition No. 91202227

Dear Don:

We write in response to your April 17 email regarding Under Armour's interrogatory responses and document production, a copy of which is enclosed.

As stated in Under Armour's Objection to Applicant's First Set of Interrogatories to Opposer, Mr. Leftridge's interrogatories with subparts exceed the permitted number of 75. *See* 37 C.F.R. § 2.120(d)(1). As explained in TBMP § 405.03(a):

[I]f an interrogatory begins with a broad introductory clause ("Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:") followed by several subparts ("Applicant's date of first use of the mark on the goods listed in the application," "Applicant's date of first use of the mark on such goods in commerce," etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.

Where, as here, a party believes that the number of interrogatories served exceeds 75 and wishes to object on that basis, it may serve a general objection. "A party should not answer what it considers to be the first 75 interrogatories and object to the rest as excessive." TBMP § 405.03(e).

Many of Mr. Leftridge's interrogatories contain numerous subparts, resulting in a total number of interrogatories well in excess of 75. Accordingly, Under Armour's objection complies with the Board's rules. If Mr. Leftridge decides to file a motion to compel, Under Armour will oppose the motion.

Donald J. Walsh, Esq.
Page 2

Regarding Under Armour's document production, documents are available for inspection and copying at our office. You are welcome to visit our office any day during regular business hours. Please let us know one day in advance of your visit.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Awdeh', written in a cursive style.

Danny Awdeh

DA
Enclosures: As stated
cc: Douglas A. Rettew, Esq.

DiCocco, Melissa

From: Walsh, Donald [dwalsh@offitkurman.com]
Sent: Tuesday, April 17, 2012 8:27 AM
To: Awdeh, Danny
Subject: UA v. Leftridge

Danny-

Please let me know about whether UA will be amending its answers to interrogatories to appropriately respond otherwise I will file my motion to compel. I would also like to visit your office to review the documents you have on either April 20 or 23. Please let me know if this is possible. If not, please let me know what dates will be possible.

Donald J. Walsh

Offit | Kurman

Attorneys At Law

Chair, Government Contracting Group

**8 Park Center Court
Suite 200
Owings Mills, MD 21117
443-738-1583 (Direct - Baltimore)
301-575-0383 (Direct - DC/Metro)
443-738-1535 (Facsimile)**

Under Armour, Inc.
v.
Douglas A. Leftridge
Opposition No. 91202227

Exhibit H

From: Walsh, Donald [dwalsh@offitkurman.com]
Sent: Thursday, May 10, 2012 1:16 PM
To: Awdeh, Danny
Cc: Rettew, Doug; White, Larry
Subject: RE: Leftridge Motion to Compel

You are correct. My Motion was based on the fact that I was not being provided a response to my original selected dates for production. Now that I have seen the documents produced, I am also preparing a listing of the documents which have not been produced but were within the scope of the document requests. I will include with that the listing of the electronic documents I reviewed which can be forwarded to me.

Donald J. Walsh

Offit | Kurman

Attorneys At Law

Chair, Government Contracting Group

**8 Park Center Court
Suite 200
Owings Mills, MD 21117
443-738-1583 (Direct - Baltimore)
301-575-0383 (Direct - DC/Metro)
443-738-1535 (Facsimile)**

From: Awdeh, Danny [<mailto:Danny.Awdeh@finnegan.com>]
Sent: Thursday, May 10, 2012 1:02 PM
To: Walsh, Donald
Cc: Rettew, Doug; White, Larry
Subject: Leftridge Motion to Compel

Don,

It was nice meeting you in person earlier this week.

We are copying the documents that you identified and will send them to you today by overnight delivery.

As you know, Leftridge argues in his motion to compel that Under Armour “failed to provide any opportunity to review *any* documents requested.” We were surprised by this argument because Under Armour’s documents have been available for inspection and copying since Under Armour’s discovery responses were due on March 28. We had also sent you the attached letter *before* Leftridge’s motion was filed inviting you to inspect and copy Under Armour’s documents any day during regular business hours.

Now that you have inspected Under Armour’s document production and we are providing copies of the specific documents that you identified, we assume that the portion of Leftridge’s motion to compel dealing with Under Armour’s production is now moot and that the only remaining issue to be decided

by the Board is whether Leftridge's interrogatories exceed the permitted number. Please let us know if you agree.

Under Armour's response to Leftridge's motion is due May 17. Accordingly, we would appreciate hearing from you as soon as possible.

Regards,

Danny

Danny M. Awdeh

Attorney at Law

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

901 New York Avenue, NW, Washington, DC 20001-4413

202.408.4353 | fax 202.408.4400 | danny.awdeh@finnegan.com | www.finnegan.com

This e-mail message is intended only for individual(s) to whom it is addressed and may contain information that is privileged, confidential, proprietary, or otherwise exempt from disclosure under applicable law. If you believe you have received this message in error, please advise the sender by return e-mail and delete it from your mailbox. Thank you.