ESTTA Tracking number: **ESTTA550453**
Filing date: **07/25/2013**

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

Proceeding	91202562
Party	Plaintiff Boston Athletic Association
Correspondence Address	BARBARA A BARAKAT WILMER CUTLER PICKERING HALE AND DORR LLP 60 STATE STREET BOSTON, MA 02109 UNITED STATES barbara.barakat@wilmerhale.com, angela.dyer@wilmerhale.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Barbara A. Barakat
Filer's e-mail	barbara.barakat@wilmerhale.com, angela.dyer@wilmerhale.com
Signature	/barbara a. barakat/
Date	07/25/2013
Attachments	BAA 2nd NOReliance.PDF(3904419 bytes)

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

Boston Athletic Association, Opposer v. Velocity, LLC, Applicant	)	Opposition No. 91/202562

OPPOSER'S SECOND NOTICE OF RELIANCE

Pursuant to 37 C.F.R. §2.120(j), Opposer Boston Athletic Association submits, and gives notice of its reliance on, certain of Applicant's responses to Opposer's written discovery requests.

Attached hereto are the discovery responses indicated below at the Exhibit Number specified. The following table indicates the identity of the applicable discovery response document, the specific response number and the corresponding Trial Exhibit Number:

Identity of Discovery Response Document	Specific Response Number	Trial Exh.No.
Applicant Velocity, LLC's Responses to Opposer's First Set of Interrogatories	5, 7, 8, 9, 13, 20	28
Applicant Velocity, LLC's Responses to Opposer's First Request for Production of Documents and Things	2, 3, 26	29
Applicant Velocity, LLC's Responses to Opposer's First Request for Admissions To Applicant	1, 2, 6, 8, 11, 15	30

BOSTON ATHLETIC ASSOCIATION
By its attorneys,

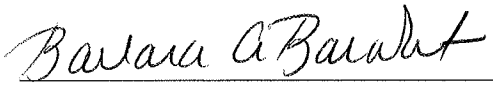
Michael J. Bevilacqua
Barbara A. Barakat
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6000

Date: July 25, 2013

CERTIFICATE OF SERVICE

I hereby certify that the a copy of the foregoing Opposer's Second Notice of Reliance was served by first-class mail, postage-prepaid, this 25th day of July, 2013 upon:

Andrea J. Mealey
Mark A. Bross
Hinckley Allen & Snyder LLP
28 State Street
Boston, MA 02109-1775



Barbara A. Barakat

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

Boston Athletic Association, Opposer v. Velocity, LLC, Applicant	)	Opposition No. 91/202562

OPPOSER'S NOTICE OF RELIANCE

TRIAL EXHIBIT #28

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

Boston Athletic Association, Opposer, v. Velocity, LLC Applicant.	)	Opposition No.: 91202562 Application No.: 85/224698 Mark: MARATHON MONDAY Class: 25

APPLICANT VELOCITY, LLC'S RESPONSES
TO PETITIONER'S FIRST SET OF INTERROGATORIES

In accordance with Federal Rule of Civil Procedure 33, Applicant Velocity, LLC objects and responds to Petitioner Boston Athletic Association's First Set of Interrogatories.

GENERAL OBJECTIONS

Each of Applicant's responses, in addition to any specifically stated objections, is subject to and incorporates the following General Objections. The assertion of the same, similar, or additional objections, or a partial response to an individual Interrogatory does not waive any of Applicant's General Objections.

1. Applicant objects to the Interrogatories to the extent they seek information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity. The inadvertent supplying of information protected from disclosure by any privilege or immunity shall not constitute a waiver by Applicant of such privileges or protections.

2. Applicant objects to the Interrogatories to the extent that they are premature and/or dependent on depositions and documents that have not been taken or produced.

3. Applicant objects to the Interrogatories to the extent that they are overbroad, unduly burdensome, or purports to impose upon Applicant any duty or obligation that is inconsistent with or in excess of those imposed by the Federal Rules of Civil Procedure.

4. Applicant objects to the Interrogatories to the extent they seek information that is not relevant to the claims or defenses of the parties or not reasonably calculated to lead to the discovery of admissible evidence.

5. Applicant objects to any instruction or Interrogatory to the extent that it would impose a duty on Applicant to undertake a search for or an evaluation of information, documents, or things for which Petitioner is equally able to search for and evaluate or that are uniquely in Petitioner's possession, custody, and control.

6. Applicant objects to each Interrogatory that is not limited to any reasonable time period as vague, ambiguous, overbroad, and unduly burdensome. Applicant will provide information concerning the time period relevant to the claims and defenses of the parties.

7. Nothing contained herein is an admission relative to the existence of any information sought, to the relevance or admissibility of any response, or to the truth or accuracy of any statement or characterization contained in any particular Interrogatory.

8. Applicant objects to the Interrogatories to the extent that they seek disclosure of confidential and proprietary business information and incorporates herein by reference the terms of the applicable Protective Order.

9. Applicant's responses to the Interrogatories are made without waiver and with preservation of: all questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof for any purpose and in any further proceeding in this lawsuit (including trial) and in any other action or matter; the right to object to the use of any such responses or the subject matter thereof on any ground in any further proceeding in this lawsuit

(including trial) and in any other action or matter; the right to object on any ground at any time to a demand or interrogatory for further response; and the right at any time to review, correct, add to, supplement, or clarify any of the responses contained herein.

10. All responses to the following Interrogatories are based on information presently known to Applicant after reasonable investigation. Applicant's objections as set forth herein are made without prejudice to Applicant's right to assert any additional or supplemental objections. Applicant reserves the right to supplement or amend its responses as discovery progresses.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1

Identify the individual(s) who participated in the conception, selection and adoption of Applicant's Mark, describing in detail the role or participation of each such individual in such activity.

RESPONSE NO. 1

Charles B. Tuite, President
Velocity, LLC
120 Tremont St.
Everett, MA 02149

Mr. Tuite has information regarding the conception, selection and adoption of Applicant's Mark.

INTERROGATORY NO. 2

Describe in detail all other marks considered by Applicant during the conception, selection and adoption of Applicant's Mark, stating for each mark considered why it was or was not adopted by Applicant.

RESPONSE NO. 2

Applicant objects on the grounds that this interrogatory is overbroad, unduly burdensome, vague, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence to the extent it seeks information about marks or goods and services other than those that are the subject of this Opposition. Without waiving its objections, the Applicant states that it has also adopted the mark WORK'S OVERRATED.

INTERROGATORY NO. 3

If Applicant has registered or recorded, or attempted to register or record, any trademark, service mark or trade name including the words MARATHON MONDAY in any state in the United States, or in any foreign country, identify each such trademark, service mark or trade name, describing with specificity the current status for each such registration, recordation, or pending registration or recordation.

RESPONSE NO. 3

Applicant objects on the grounds that this interrogatory is unduly burdensome because it calls for information that is publicly available and as easily accessed by the Petitioner as by the Applicant. Without waiving its objections, Applicant states that it has filed the application that is the subject of this Opposition.

INTERROGATORY NO. 4

Identify each search or other investigation conducted by or for Applicant relating to the adoption, use, intended use or registration of Applicant's Mark.

RESPONSE NO. 4

Applicant objects on the grounds of attorney-client privilege. Subject to and without waiving these objections, Applicant states that it conducted a search of the federal trademark register.

INTERROGATORY NO. 5

Identify all goods and/or services that Applicant provides or intends to provide under Applicant's Mark, including the dates of first use in commerce and in interstate commerce of Applicant's Marks for each type of good or service.

RESPONSE NO. 5

Applicant objects on the grounds that this interrogatory is unduly burdensome because it calls for information that is publicly available and as easily accessed by the Petitioner as by the Applicant. Without waiving its objections, Applicant states that its Application covers clothing, namely, tops, bottoms, headwear, sweatshirts, sweat pants, jackets, pullovers, caps, hats, socks. Applicant further states that it has commenced use of the mark in relation to t-shirts and hats. In relation to t-shirts, it began use of the mark on April 7, 2011 and use in commerce on April 7, 2011. In relation to caps, it began use of the mark on April 15, 2011 and use in commerce on April 15, 2011.

INTERROGATORY NO. 6

Identify all persons who, with or without Applicant's permission, have ever used Applicant's Mark, explaining each such person's relationship to Applicant.

RESPONSE NO. 6

Applicant objects on the grounds that this interrogatory is overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, Applicant states that the term MARATHON MONDAY is used by many persons for many reasons, but not to Applicant's knowledge as a clothing brand.

INTERROGATORY NO. 7

For each of the goods and/or services listed in response to Interrogatory No. 5, state

(a) the prices at which the product or service is being sold or offered, or is intended to be sold or offered, and, if applicable, at which it was sold or offered from the date of first use;

(b) if applicable, the number of units sold in each of the years from the date of first use to the present, and the price of, and/or income generated from, an average sale; and

(c) if applicable, the dollar amount of sales for that product or service in each year from the date of first use to the present.

RESPONSE NO. 7

Applicant objects on the grounds that this interrogatory is overbroad, unduly burdensome, vague, and not relevant to the claims or defenses of the parties. Subject to and without waiving these objections, Applicant states as follows to the subparts of this Interrogatory:
(a) Applicant states that the average retail price for: a t-shirt is $20.00 and a cap is $25.
(b) Applicant states that in 2011 it sold 750 t-shirts and 93 caps.
(c) Applicant states that Petitioner can compute this amount using the information provided in (a) and (b) hereinabove.

INTERROGATORY NO. 8

Identify the classes or types of customers to whom Applicant sells or otherwise provides, or intends to sell or otherwise provide, each of the goods or services specified in response to Interrogatory No. 5, describing the purpose for which such customer typically uses said goods or services.

RESPONSE NO. 8

Applicant objects on the grounds that this interrogatory is overbroad, unduly burdensome, vague, and not relevant to the claims or defenses of the parties. Subject to and without waiving these objections, Applicant states that it sells its t-shirts and caps wholesale to retailers in the premium sports, destination, lifestyle and resort categories.

INTERROGATORY NO. 9

Describe in detail the channels of trade through which each of the products or services bearing Applicant's Mark will reach the ultimate consumer.

RESPONSE NO. 9

Applicant objects on the grounds that this interrogatory is overbroad, unduly burdensome, vague, and not relevant to the claims or defenses of the parties. Subject to and without waiving these objections, Applicant states that its t-shirts and caps are sold through on-line retailers and traditional stores offering similar products.

INTERROGATORY NO. 10

Please describe the circumstances under which you first learned of use of the phrase "MARATHON MONDAY" by any party other than Applicant, and for each instance, please identify all documents relating to such use and describe the circumstance of such use, including the identity of the party.

RESPONSE NO. 10

Applicant objects on the grounds that this interrogatory is overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these objections, Applicant states that when adopting the mark, it reviewed use on the television show Blue Applicant objects on the grounds that this interrogatory is overbroad, unduly burdensome, vague, and not relevant to the claims or defenses of the parties. Subject to and without waiving these objections, Applicant states that when it searched for the mark for use in relation to apparel, it found use of the term by New York Road Runners; Disney Parks; the television series Blue Mountain State; Steve Jobs of Apple, Inc.; Charlottesville (VA) Marathon; the Chicago Marathon; Arizona State Marathon, none of whom used the term in as an apparel brand.

INTERROGATORY NO. 11

Please state whether Applicant is aware of any third party use of the phrase "MARATHON MONDAY" to describe the day that the Boston Marathon is run, and if so, please identify all

documents relating to that use and describe the circumstances of such use, including the identity of the third party.

RESPONSE NO. 11

Petitioner objects on the grounds that this interrogatory is overly broad, unduly burdensome, and vague and not designed to produce information relevant to the claims or defenses of the parties. Subject to and without waiving its objections, Applicant states that third parties use this term to identify many marathons including those run in Boston, New York, Chicago, Orlando and Charlottesville.

INTERROGATORY NO. 12

Describe each instance you know of wherein any person has been confused, mistaken or deceived as to the source of products or services bearing Applicant's Mark, the identity of the parties herein or their respective products or services, or wherein any person believed or indicated a belief that our or your respective products, services or organizations were related in some way to each other or some other entity.

RESPONSE NO. 12

Subject to and without waiving its general objections, Applicant states that it is unaware of any confusion between Applicant and Opposer, or their respective goods and services.

INTERROGATORY NO. 13

Identify each medium in which you have promoted or will promote the aspects of Applicant's business with which Applicant's Mark are associated.

RESPONSE NO. 13

Subject to and without waiving its general objections, Applicant states that it has promoted its goods through the Internet, through its sales representatives, through trade shows, and through direct mail.

INTERROGATORY NO. 14

Please state the approximate annual dollar volume of advertising for Applicant for products or services under Applicant's Mark in the United States from the date of first use in the United States to the present, providing a breakdown of such advertising by various advertising media.

RESPONSE NO. 14

Applicant objects on the grounds that this interrogatory is overly broad and unduly burdensome and seeks information that is not relevant to the claims and defenses of the parties. Subject to and without waiving these objections, Applicant states that it has not yet spent funds on advertising of the goods offered under Applicant's Mark.

INTERROGATORY NO. 15

Please describe all written challenges directed to or by Applicant concerning the Applicant's Mark.

RESPONSE NO. 15

Subject to and without waiving its general objections, Applicant states that this Opposition is the only challenge to Applicant's use of Applicant's Mark.

INTERROGATORY NO. 16

Please state whether the phrase "MARATHON MONDAY" has any meaning in the marathon racing field, and if so, please describe that meaning.

RESPONSE NO. 16

Applicant objects on the grounds that this interrogatory is vague and states that Applicant is not an expert that can speak to whether the term MARATHON MONDAY or any other term has any meaning in the "marathon racing field."

INTERROGATORY NO. 17

Identify the persons in Applicant's organization having primary knowledge of the actual and prospective purchasers of the Applicant's products on which Applicant's Mark is affixed or will be affixed, or with which Applicant's services are or will be associated.

RESPONSE NO. 17

Charles B. Tuite, President
Velocity, LLC
120 Tremont St.
Everett, MA 02149

INTERROGATORY NO. 18

Please:

(a) identify the principal competitors in the business in which Applicant uses Applicant's Mark;

(b) describe the market position, including customer identity and product type, to which Applicant targets its business in which Applicant uses Applicant's Mark;

(c) identify any market research of which Applicant is aware relating to market position of the Applicant's business in which Applicant intends to use and/or uses the Applicant's Mark; and

(d) describe any plans Applicant currently has for expansion or contraction of its business conducted under Applicant's Mark; and

(e) identify each entity that you have approached to manufacture or distribute a product bearing Applicant's Mark and/or each entity that you have approached to distribute or provide a service in association with Applicant's Mark.

RESPONSE NO. 18

Applicant objects on the grounds that this interrogatory is overbroad, unduly burdensome, vague, and not relevant to the claims or defenses of the parties. Subject to and without waiving these objections, Applicant states as follows to the subparts of this interrogatory:
(a) Applicant states that its t shirts and caps compete with similar products offered under the brand LIFE IS GOOD, by Nike, Mizuno, adidas, New Balance, Saucony, Under Armour, Hanes, Fruit of the Loom and similar brands.
(b) Applicant directs Petitioner to its Response to Interrogatory No. 8.
(c) Applicant states that to date it has not undertaken any market research.
(d) In 2012, Applicant plans to develop a direct to consumer web site and will explore additional retailer expansion as well as licensing.
(e) Applicant purchases shirts and caps at wholesale and then printing and distribution of products is through Applicant, using its facilities and its sales representatives.

INTERROGATORY NO. 19

Identify all past or present licenses of Applicant's Mark, whether express, implied, written, oral or otherwise.

RESPONSE NO. 19

Applicant objects on the grounds that this interrogatory is vague and seeks information that is not relevant to the claims and defenses of the parties. Subject to and without waiving these objections, Applicant states that it currently has no and has not had any licensees for Applicant's Mark.

INTERROGATORY NO. 20

Please describe in detail any contact Applicant has had with Opposer.

RESPONSE NO. 20

Applicant objects on the grounds that this interrogatory is overly broad, unduly burdensome, vague, and ambiguous, and that it asks for information as readily available to Opposer as to Applicant. Subject to and without waiving these objections, Applicant states that it has provided apparel printing and embroidery services to Opposer.

INTERROGATORY NO. 21

Please state the names and addresses of all natural persons who supplied information on which the answers to the foregoing Interrogatories are based and for each such person list the specific Interrogatory numbers for which he or she supplied such information. If the information is not within the personal knowledge of such person, identify the source of the information so furnished.

RESPONSE NO. 21

Charles B. Tuite, President
Velocity, LLC
120 Tremont St.
Everett, MA 02149

INTERROGATORY NO. 22

Please state the names and addresses of all natural persons who participated in any way in locating or providing documents or things in response to Opposer's First Set of Requests for Production of Documents and Things, specifying for each such person the specific Requests on which the person participated in preparing a response.

RESPONSE NO. 22

Charles B. Tuite, President
Velocity, LLC
120 Tremont St.
Everett, MA 02149

Mr. Tuite provided information regarding Responses to all the Interrogatories.

VERIFICATION

The undersigned, Charles B. Tuite, states under oath that I have read Velocity, LLC's Response to Opposer's First Set of Interrogatories, that all facts contained herein are based upon my personal knowledge or information that has been provided to me, and that all facts contained herein are true to the best of my knowledge.

Signed under the penalties of perjury this 9th day of March 2012.

/Charles B. Tuite/
Charles B. Tuite
President
Velocity, LLC

AS TO OBJECTIONS

VELOCITY, LLC,

By its Attorneys:

/Andrea J. Mealey/
Andrea Mealey
HINCKLEY, ALLEN & SNYDER LLP
28 State Street
Boston, MA 02109
Tel: (617) 378-4328
Fax: (617) 345-9020
amealey@haslaw.com

Dated: March 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March 2012, I served a true and accurate copy of the foregoing via first class mail, postage prepaid, upon Counsel for Opposer, Barbara A. Barakat, Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109

/Andrea J. Mealey
Andrea J. Mealey

#50567542

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

Boston Athletic Association, Opposer v. Velocity, LLC, Applicant	)	Opposition No. 91/202562

OPPOSER'S NOTICE OF RELIANCE

TRIAL EXHIBIT #29

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

Boston Athletic Association, Opposer, v. Velocity, LLC Applicant.	)	Opposition No.: 91202562 Application No.: 85/224698 Mark: MARATHON MONDAY Class: 25

APPLICANT VELOCITY, LLC'S RESPONSES TO PETITIONER'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

In accordance with Federal Rule of Civil Procedure 34, Applicant Velocity, LLC objects and responds to Petitioner Boston Athletic Association's First Request for Production of Documents and Things.

GENERAL OBJECTIONS

Each of Applicant's responses, in addition to any specifically stated objections, is subject to and incorporates the following general objections. The assertion of the same, similar, or additional objections, or a partial response to any individual request does not waive any of Applicant's general objections.

1. Applicant objects to these Requests to the extent that they are vague or ambiguous, unduly burdensome, or purport to impose obligations on Applicant beyond those imposed by the Federal Rules of Civil Procedure.

2. Applicant objects to the Requests to the extent that they seek documents that are protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other privilege cognizable at law. The inadvertent production by Applicant of any document containing information protected from disclosure by the attorney-client privilege, work product doctrine, or

any other applicable privilege or immunity, shall not constitute a waiver by Applicant of any such protection.

3. Applicant objects to the Requests to the extent that they seek documents that are neither relevant to the claims or defenses of the parties, nor reasonably calculated to lead to the discovery of admissible evidence.

4. Applicant objects to the Requests to the extent that they seek documents that are not within Applicant's possession, custody or control.

5. Applicant objects to the Requests to the extent that they seek documents that are a matter of public record or equally available to Petitioner.

6. Applicant objects to the Requests to the extent that they seek to define terms, characterize the evidence in this matter, or assume contested facts to be true. To the extent that Applicant may adopt any terms used by Petitioner in the Requests, such adoption is limited solely to these responses and shall not be construed as an admission of any factual or legal principle.

7. None of the objections or responses contained herein is an admission concerning the existence of any documents, the relevance or admissibility of any documents, or the truth or accuracy of any statement or characterization contained in the Requests. Applicant reserves its right to object at trial, on the grounds of relevance, competency, privilege, materiality or otherwise, to the admissibility or use of the documents that it produces in response to the Requests.

8. Applicant specifically reserves its right to correct, clarify, modify, amend or supplement its responses to the Requests as discovery progresses.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1

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

RESPONSE NO. 1

Applicant objects on the grounds that this request is overly broad and unduly burdensome. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 2

All documents concerning Applicant's first use of Applicant's Mark in connection with each different product and/or service with which the marks have been used or are intended to be used.

RESPONSE NO. 2

Applicant objects on the grounds that this request is impossible with respect to those goods that Applicant has listed in its application but not yet produced under the mark. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 3

All documents concerning Applicant's first use in interstate commerce, or commerce between the United States and a foreign country, of Applicant's Mark with each different product and/or service with which Applicant's Mark has been used.

RESPONSE NO. 3

Applicant objects on the grounds that this request is overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 4

All licenses and/or assignment documents that transfer Applicant's rights in Applicant's Mark and their good will, including any license(s) by a parent to any subsidiary or any affiliate.

RESPONSE NO. 4

Applicant objects on the grounds that this request is overly broad, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant states that it has no documents responsive to this Request No. 4.

REQUEST NO. 5

For each product and/or service identified in response to Interrogatory Number 5, all documents evidencing or relating to Applicant's continued use of Applicant's Mark in connection with each product and/or service, such as documents for each year of use.

RESPONSE NO. 5

Applicant objects on the grounds that this request is overly broad, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 6

All documents referring or relating to each instance wherein any person has been confused, mistaken or deceived as to the identity of the parties to this proceeding or their respective products or services, or wherein any person believed or indicated a belief that our and your respective products, services, or organizations were related in some way to each other or some other entity.

RESPONSE NO. 6

Applicant objects on the grounds that this request is overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant states that it has no documents responsive to this Request No. 6.

REQUEST NO. 7

All documents which relate or pertain in any manner to any advertisements or promotions of Applicant's business and products or services with which Applicant's Mark has been used or are intended to be used, including but not limited to specimens of each and every advertisement or promotion used by Applicant in connection with Applicant's Mark.

RESPONSE NO. 7

Applicant objects on the grounds that this request is overly broad, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant states that it has no documents responsive to this Request No. 7.

REQUEST NO. 8

All documents that refer or relate to the use by any person, other than Applicant and Opposer, of any name or mark which consists of the terms "MARATHON MONDAY" or any colorable imitation or variation thereof.

RESPONSE NO. 8

Applicant objects on the grounds that this request is overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 9

All documents that refer or relate to the use by any person of the phrase "MARATHON MONDAY" as a descriptive term to describe the day of the Boston Marathon.

RESPONSE NO. 9

Applicant objects on the grounds that this request is overbroad, unduly burdensome, vague, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence.

REQUEST NO. 10

All documents relating to, embodying the results of, or referring to, any survey or research activity that you conducted or had others conduct on your behalf related to Opposer's use of any mark including the terms "MARATHON MONDAY."

RESPONSE NO. 10

Subject to and without waiving its general objections, Applicant states that it currently has no documents responsive to this Request No. 10. Responsive consumer surveys, marketing studies, polls or focus groups, if any, will be produced in accordance with Fed. R. Civ. P. 26(a)(2).

REQUEST NO. 11

All documents referring or relating to Applicant's past and present trademark registrations and/or applications (federal, state and foreign) for Applicant's Mark.

RESPONSE NO. 11

Applicant objects on the grounds that this request is unduly burdensome because it calls for production of documents that are publicly available and as easily accessed by the Petitioner as by the Applicant. Applicant further objects on the grounds that documents are protected by the attorney-client privilege. Subject to and without waiving its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 12

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

RESPONSE NO. 12

Subject to and without waiving its objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 13

All tags, labels, packaging, brochures, point of purchase displays, promotional material, brochures or other written materials which show use of Applicant's Mark from the date of first use to date, and specify the products and/or services in connection with which, and the periods during which, each identified item was used.

RESPONSE NO. 13

Applicant objects on the grounds that this request is overbroad, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 14

All documents, if any, relating to the manufacture of any product sold, or other materials distributed, by Applicant bearing Applicant's Mark.

RESPONSE NO. 14

Applicant objects on the grounds that this request is overbroad, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 15

All documents relating to the provision of services by Applicant or its authorized users for services to be provided in connection with Applicant's Mark.

RESPONSE NO. 15

Applicant objects on the grounds that this request is vague, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence. Subject to and without waiving these and its general objections, Applicant states that it has no documents responsive to this Request No. 15.

REQUEST NO. 16

All documents relating to the manufacture or printing of any packaging, tag, label displays, promotional material, brochures or any other written material for any product or service sold or intended to be sold by Applicant bearing Applicant's Mark.

RESPONSE NO. 16

Applicant objects on the grounds that this request is vague, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 17

All documents relating to the production of advertising, brochures or other promotional material for any products or services sold or intended to be sold or otherwise provided by Applicant bearing Applicant's Mark.

RESPONSE NO. 17

Applicant objects on the grounds that this request is overly broad, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant states that it has no documents responsive to this Request No. 17 with respect to services and refers Petitioner to the documents produced herewith.

REQUEST NO. 18

All documents relating to the selection, adoption, use, registration or defense of Applicant's Mark.

RESPONSE NO. 18

Applicant objects on the grounds that this request is unduly burdensome because in part it calls for production of documents that are publicly available and as easily accessed by the Petitioner as by the Applicant. Applicant further objects on the grounds that documents are protected by the attorney-client privilege. Subject to and without waiving its objections, Applicant refers Petitioner to the non-privileged documents produced herewith.

REQUEST NO. 19

All documents relating to the selection, adoption, use or registration of any name for the

Applicant's business including the terms "MARATHON MONDAY."

RESPONSE NO. 19

Applicant objects on the grounds that this request overbroad, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence to the extent it seeks information about marks or names other than the Applicant's mark that is the subject of the Opposition. Applicant further objects on the ground that this request is unduly burdensome because it calls for production of documents that are publicly available and as easily accessed by the Petitioner as by the Applicant. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced in response to Request No 18.

REQUEST NO. 20

All documents relating to the adoption and use of any domain name including the terms

"MARATHON MONDAY" or any colorable imitation or variation thereof.

RESPONSE NO. 20

Applicant objects on the grounds that this request is unduly burdensome because in part it calls for production of documents that are publicly available and as easily accessed by the Petitioner as by the Applicant. Subject to and without waiving its objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 21

All documents establishing the volume, dates, places of sales, advertising, distribution and annual gross income derived from goods or services sold or otherwise provided under Applicant's Mark by Applicant in the United States.

RESPONSE NO. 21

Applicant objects on the grounds that this request is overly broad, unduly burdensome, vague, and ambiguous. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 22

All documents relating to Applicant's merchandising and promotional strategy for goods or services sold or intended to be sold under Applicant's Mark.

RESPONSE NO. 22

Applicant objects on the grounds that this request is overly broad, unduly burdensome, vague and ambiguous. Subject to and without waiving these and its general objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 23

All documents evidencing any relationship between Applicant and Opposer.

RESPONSE NO. 23

Applicant objects on the grounds that this request is unduly burdensome because in part it calls for production of documents that are publicly available and as easily accessed by the Petitioner as by the Applicant. Subject to and without waiving its objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 24

All minutes, notes or other records of any meetings at which Applicant's Mark and marks of Opposer containing the terms "MARATHON MONDAY" were discussed.

RESPONSE NO. 24

Applicant objects on the grounds that this request is vague and ambiguous. Applicant also objects on the grounds that the requested information is protected by the attorney-client privilege. Subject

to and without waiving its objections, Applicant refers Petitioner to the documents produced herewith.

REQUEST NO. 25

All minutes, notes or other records of any meetings at which the use of the phrase "MARATHON MONDAY" by anyone other than Applicant and Opposer were discussed.

RESPONSE NO. 25

Applicant objects on the grounds that this request overbroad, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence to the extent it seeks information about marks or names other than the Applicant's mark that is the subject of the Opposition. Applicant also objects on the grounds that the requested information is protected by the attorney-client privilege. Subject to these objections, Applicant has no documents responsive to this Request No. 25.

REQUEST NO. 26

To the extent not included in previous requests, all contracts and written documents between Applicant and third parties which relate to Applicant's Mark.

RESPONSE NO. 26

Applicant objects on the grounds that this request overbroad, not relevant to the claims or defenses of the parties and not reasonably calculated to lead to the production of admissible evidence to the extent it seeks information that is not the subject of the Opposition. Subject to these objections, Applicant has no documents responsive to this Request No. 26.

REQUEST NO. 27

All documents referring to Opposer, including but not limited to documents referring or relating to marks of Opposer containing the terms "MARATHON MONDAY."

RESPONSE NO. 27

Applicant objects on the grounds that this request overbroad, vague, and ambiguous. Subject to these and its general objections, Applicant has no documents responsive to this Request No. 27.

REQUEST NO. 28

All documents referring to the phrase "MARATHON MONDAY" excluding those documents relating to use of that phrase by Applicant or Opposer.

RESPONSE NO. 28

Applicant objects on the grounds that this request overbroad, vague and ambiguous. Without waiving these and its general objections, Applicant refers Opposer to the documents produced herewith.

REQUEST NO. 29

All correspondence or other communication between Applicant and its advertising agencies and mediums for dissemination of advertising referring or relating to the Applicant's Mark.

RESPONSE NO. 29

Subject to and without waiving its objections, Applicant states that it has no documents responsive to this Request No. 29.

VELOCITY, LLC,

By its Attorneys:

/Andrea J. Mealey/
Andrea Mealey
HINCKLEY, ALLEN & SNYDER LLP
28 State Street
Boston, MA 02109
Tel: (617) 378-4328
Fax: (617) 345-9020
amealey@haslaw.com

Dated: March 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March 2012, I served a true and accurate copy of Velocity, LLC's Responses to Petitioner's First Request for Production of Documents and Things via first class mail, postage prepaid, upon Counsel for Opposer, Barbara A. Barakat, Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109.

/Andrea J. Mealey/
Andrea J. Mealey

marathon monday™

Pukka HEADWEAR	VELOCITY PO# _002	DESIGNER: KG

GRAPHICS (PRINT PAGE AT 100% TO VIEW ACTUAL SIZE)

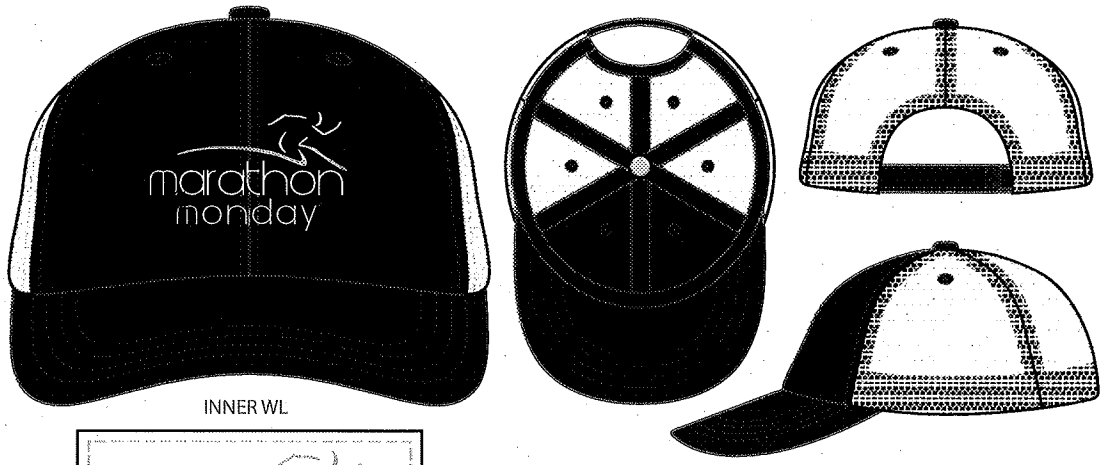
FRONT (0.625" FROM VISOR)
RAISED & FLAT EMBROIDERY

3.7"

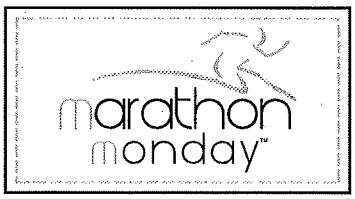
RAISED EMBROIDERY

2.1"

C014MU10



INNER WL

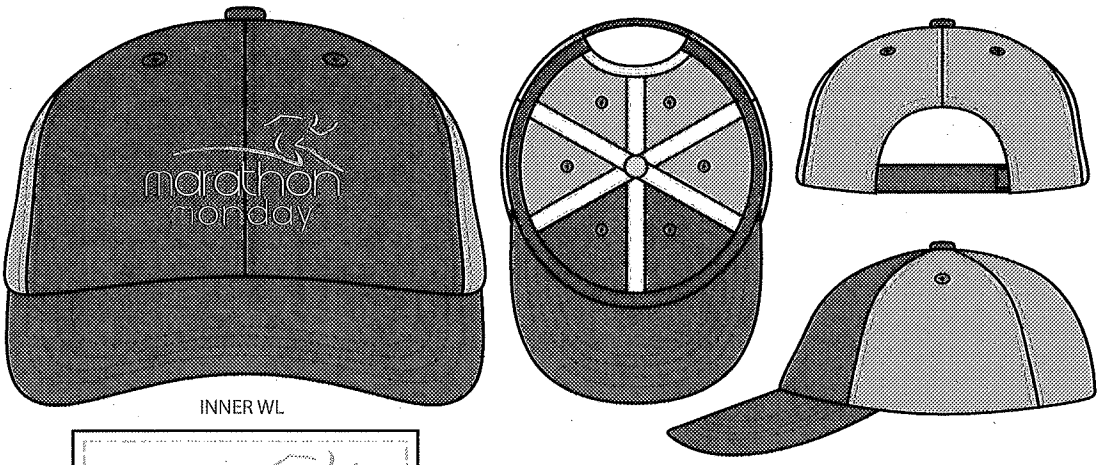


ABBREVIATIONS: BT-BUTTON, CL-CLOSURE, CS-CONTRAST STITCHING, CT-CROWN TAPING, EY-EYELETS, IV-INNER VISOR, PP-PIPING, SB-SWEATBAND, UV-UNDERVISOR, V-VISOR, VS-VISOR SANDWICH , VB-VISOR BINDING

Pukka HEADWEAR

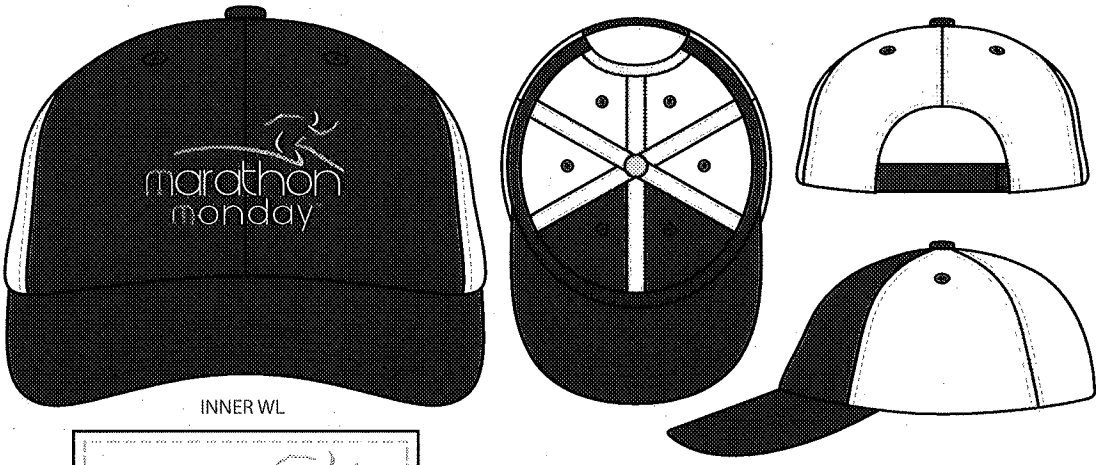
VELOCITY
PO# _002

C014PU214

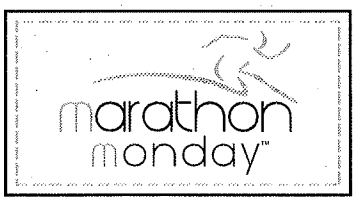


INNER WL

C014PU118



INNER WL

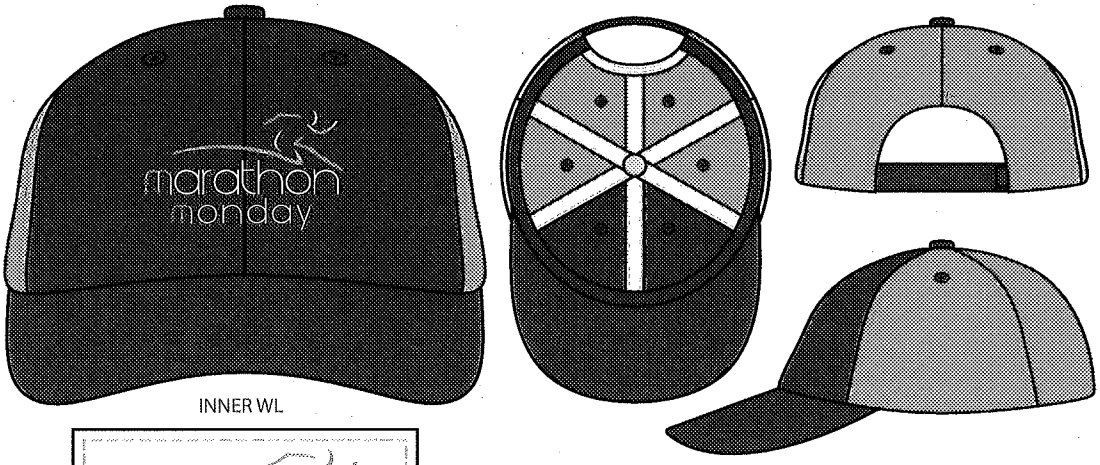


ABBREVIATIONS: BT-BUTTON, CL-CLOSURE, CS-CONTRAST STITCHING, CT-CROWN TAPING, EY-EYELETS, IV-INNER VISOR, PP-PIPING, SB-SWEATBAND, UV-UNDERVISOR, V-VISOR, VS-VISOR SANDWICH , VB-VISOR BINDING

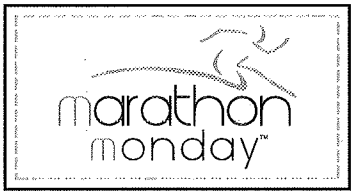
Pukka HEADWEAR

VELOCITY
PO# _002

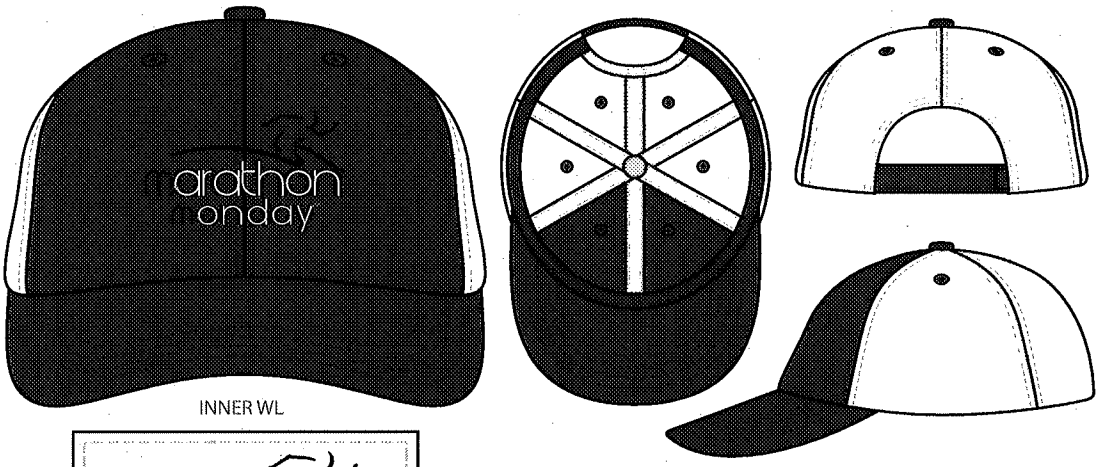
C014PU9



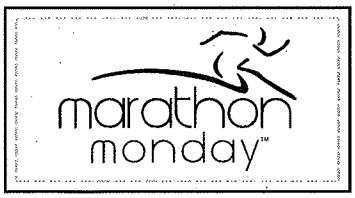
INNER WL



C014PU118



INNER WL



ABBREVIATIONS: BT-BUTTON, CL-CLOSURE, CS-CONTRAST STITCHING, CT-CROWN TAPING, EY-EYELETS, IV-INNER VISOR, PP-PIPING, SB-SWEATBAND, UV-UNDERVISOR, V-VISOR, VS-VISOR SANDWICH , VB-VISOR BINDING

marathon monday™

a sports & lifestyle brand

marathon monday™

36 - 143 = $7.50 each

144 - 288 = $6.50 each

velocity

Embroidery & Screen Print

velocityscreenprint.com

120 Tremont Street
Everett, MA 02149

PH: (617) 389-5452
FAX: (617) 381-9409

J.Moldau@VelocityScreenPrint.com

Ship to: PO#: (if applicable)

CONTACT:

COLOR	PRICE	QTY	S	M	L	XL
black						
gray						

Authorized signature Date

marathon monday™

36 - 143 = $7.50 each

144 - 288 = $6.50 each

velocity
Embroidery & Screen Print
velocityscreenprint.com
120 Tremont Street
Everett, MA 02149
PH: (617) 389-5452
FAX: (617) 381-9409
J.Moldau@VelocityScreenPrint.com

Ship to: PO#: (if applicable)

CONTACT:

COLOR	PRICE	QTY	S	M	L	XL
white						
pink						

Authorized signature Date

Velocity, LLC

Velocity, LLC
120 Tremont St.
Everett, MA 02149

(617)389-5452
lcahill@velocityscreenprint.com

Invoice

Date	Invoice #
04/11/2011	217418
Terms	**Due Date**
Net 15	04/26/2011

Bill To

Mike Wilson
Ecco
16 Delta Drive
Londonderry, NH 03053

PAID

Job Name
marathon monday

Activity	Quantity	Rate	Amount
• Cap	3	24.99	74.97
• T-Shirts	7	14.99	104.93
• T-Shirts	1	19.99	19.99

Thank you for your order!
Terms: Net 30

Total	$199.89
Payment	$199.89
Balance Due	$0.00

Velocity, LLC

Velocity, LLC
120 Tremont St.
Everett, MA 02149

(617)389-5452
lcahill@velocityscreenprint.com

Invoice

Date	Invoice #
04/18/2011	217309
Terms	**Due Date**
Net 30	05/18/2011

Bill To

Boston Tops
131 Towerhill Drive
Hanover, MA 02339

PAID

Job Name	P.O. #	Sales Agent
marathon monday	vel217309	jackie

Activity	Quantity	Rate	Amount
• T-Shirts	312	7.50	2,340.00
• T-Shirts	238	9.50	2,261.00

Thank you for your order!
Terms: Net 30

Total	$4,601.00
Payment	$4,601.00
Balance Due	$0.00

Velocity, LLC

Velocity, LLC
120 Tremont St.
Everett, MA 02149

(617)389-5452
lcahill@velocityscreenprint.com

Invoice

Date	Invoice #
04/08/2011	217416
Terms	**Due Date**
Net 30	05/08/2011

Bill To

Supah Fans
470 Commonweath Av
Boston, MA 02215

PAID

Job Name	Sales Agent
marathon monday	jackie

Activity	Quantity	Rate	Amount
• T-Shirts	72	8.50	612.00
• T-Shirts	72	10.50	756.00

Thank you for your order!
Terms: Net 30

Total	$1,368.00
Payment	$1,368.00
Balance Due	$0.00

Velocity, LLC

Velocity, LLC
120 Tremont St.
Everett, MA 02149

(617)389-5452
lcahill@velocityscreenprint.com

Invoice

Date	Invoice #
04/07/2011	217360
Terms	**Due Date**
Net 30	05/07/2011

Bill To

Supah Fans
470 Commonweath Av
Boston, MA 02215

PAID

Job Name
marathon monday

Activity	Quantity	Rate	Amount
• T-Shirts	48	8.50	408.00

Thank you for your order!
Terms: Net 30

Total	$408.00
Payment	$408.00
Balance Due	$0.00

Velocity, LLC

Velocity, LLC
120 Tremont St.
Everett, MA 02149

(617)389-5452
lcahill@velocityscreenprint.com

Invoice

Date	Invoice #
04/15/2011	217439
Terms	**Due Date**
Net 30	05/15/2011

Bill To
Hudson News Terminal C Boston, MA

Job Name	P.O. #	Sales Agent
MARATHON MON.	JASON	CB

Activity	Quantity	Rate	Amount
• MARATHON MONDAY VISORS	46	12.50	575.00
• MARATHON MONDAY HATS	48	12.50	600.00
		Total	$1,175.00

Thank you for your order!
Terms: Net 30

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

Boston Athletic Association, Opposer v. Velocity, LLC, Applicant	)	Opposition No. 91/202562

OPPOSER'S NOTICE OF RELIANCE

TRIAL EXHIBIT #30

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

WILMER CUTLER PICKERING HALE AND DORR LLP
SEP 19 2002
DOCKET DEPT
INTELLECTUAL PROPERTY DEPARTMENT

Boston Athletic Association, Opposer, v. Velocity, LLC, Applicant.	)	Opposition No. 91202562

APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT

The Applicant, Velocity LLC, pursuant to 37 C.F.R. § 2.120 and Rule 36 of the Federal Rules of Civil Procedure, hereby responds to Request for Admissions promulgated by Opposer, Boston Athletic Association. Pursuant to Fed. R. Civ. P. 26, Velocity LLC reserves its right to supplement and/or amend these responses in light of additional or new information.

PRELIMINARY STATEMENT

1. These answers are based upon information and documents presently available to Applicant, Velocity LLC and its counsel and hold no intention for incidental or implied admissions. Applicant's response or objection to any Request, whether in part or in whole, is not intended and therefore should not be interpreted as an admission, constitute admissible evidence, or be construed as a waiver by Applicant of all, or any part, of any objection to the Request.

2. Regardless of whether the Applicant states a specific objection to an individual request, all answers are intended to encompass all of the following general objections and inclusion of general objection in any answer is used for a purpose of emphasis. Failure to include a general objection in any specific answer shall not be construed as a waiver of any general objections to that answer.

GENERAL OBJECTIONS

1. Applicant objects to the Requests for Admissions to the extent they seek information that constitutes confidential or proprietary business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information and incorporates herein by reference the terms of TTAB's Protective Order.

2. Applicant objects to the Requests for Admissions to the extent they seek information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity. The inadvertent supplying of information protected from disclosure by any privilege or immunity shall not constitute a waiver by Applicant of such privileges or protections.

3. Applicant objects to the Requests for Admissions to the extent that they are premature and/or dependent on depositions and documents that have not been taken or produced.

4. Applicant objects to the Requests for Admissions to the extent that they are overbroad, unduly burdensome, or purport to impose upon Applicant any duty or obligation that is inconsistent with or in excess of those imposed by the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure.

5. Applicant objects to the Requests for Admissions to the extent they seek information that is not relevant to the claims or defenses of the parties or are not reasonably calculated to lead to the discovery of admissible evidence.

6. Applicant objects to the Requests for Admissions to the extent they contain words or phrases that have an uncertain meaning or multiple interpretations.

7. Applicant objects to any instruction or Requests for Admissions to the extent that they seek information that is a matter of public record and/or not within its possession, custody or control

and would impose a duty on Applicant to undertake a search for or an evaluation of information, documents, or things for which Opposer is equally able to search for and evaluate or that are uniquely in Opposer's possession, custody, and control.

8. Applicant objects to each Request for Admission that is not limited to any reasonable time period as vague, ambiguous, overbroad, and unduly burdensome. Applicant will provide information concerning the time period relevant to the claims and defenses of the parties.

9. Applicant objects to the Requests for Admissions to the extent that they seek information that is protected from discovery by the work products doctrine, the attorney-client privilege, the settlement negotiations/mediation privilege, a confidentiality agreement and/or any other privilege cognizable by law.

10. Nothing contained herein is an admission relative to the existence of any information sought, to the relevance or admissibility of any response, or to the truth or accuracy of any statement or characterization contained in any particular Admission.

11. Applicant objects to the Requests for Admissions to the extent that they seek disclosure of confidential and proprietary business information. Applicant's responses to the Request for Admissions are made without waiver and with preservation of: all questions as to competency, relevancy, materiality, privilege, and admissibility of the responses and the subject matter thereof for any purpose and in any further proceeding in this lawsuit (including trial) and in any other action or matter; the right to object to the use of any such responses or the subject matter thereof on any ground in any further proceeding in this lawsuit (including trial) and in any other action or matter; the right to object on any ground at any time to a demand or admission for further response; and the right at any time to review, correct, add to, supplement, or clarify any of the responses contained herein.

12. All responses to the following Requests for Admissions are based on information presently known to Applicant after reasonable investigation. Applicant's objections as set forth herein

are made without prejudice to Applicant's right to assert any additional or supplemental objections. Applicant reserves the right to supplement or amend its responses as discovery progresses.

REQUESTS

1. Admit that Applicant is located in Everett, Massachusetts.

Response: Subject to and without waiving the foregoing General Objections, Applicant admits that its corporate address is located in Everett, Massachusetts.

2. Admit that Patriot's Day, the third Monday in April, is referred to by one or more media outlets (e.g., television reporters, sports writers, etc.) as "Marathon Monday" in Massachusetts.

Response: Subject to and without waiving the foregoing General Objections, Applicant admits that Patriot's Day, the third Monday in April, is referred to by one or more media outlets (e.g., television reporters, sports writers, etc.) as "Marathon Monday" in Massachusetts.

3. Admit that Patriot's Day, the third Monday in April, is referred to by one or more food establishments as "Marathon Monday" in Massachusetts.

Response: In addition to the foregoing General Objections, Applicant objects to this Request to the extent that Applicant does not have knowledge regarding whether food establishments in Massachusetts use this term or not to admit or deny this request.

4. Admit that Patriot's Day, the third Monday in April, is referred to by one or more hotels as "Marathon Monday" in Massachusetts.

Response: In addition to the foregoing General Objections, Applicant objects to this Request to the extent that Applicant does not have knowledge regarding whether hotels in Massachusetts use this term or not to admit or deny this request.

5. Admit that Patriot's Day, the third Monday in April, is referred to by one or more government officials as "Marathon Monday" in Massachusetts.

Response: In addition to the foregoing General Objections, Applicant objects to this Request to the extent that Applicant does not have knowledge regarding whether government officials in Massachusetts use this term or not to admit or deny this request.

6. Admit that the marathon held on the third Monday in April is the Boston Marathon.

Response: In addition to the foregoing General Objections, Applicant admits that the Boston Marathon was run on the third Monday of April in April of 2012.

7. Admit that the Boston Marathon is organized by Opposer.

Response: Applicant incorporates all of its Objections, and specifically General Objection No. 8. Applicant objects to this Request to the extent it seeks information that is a matter of public record and/or not within its possession, custody or control and would impose a duty on Applicant to undertake a search for or an evaluation of information, documents, or things for which Opposer is equally able to search for and evaluate or that are uniquely in Opposer's possession, custody, and control.

8. Admit that Applicant has provided screen printing and embroidery services to Opposer in the past.

Response: Subject to and without waiving the foregoing General Objections, Applicant admits that it has provided screen printing services to Opposer in the past, none of which featured Applicant's Mark, only Opposer's mark BOSTON MARATHON.

9. Admit that Applicant has used Opposer's mark BOSTON MARATHON without the permission of Opposer in advertising on the Internet.

Response: Subject to and without waiving the foregoing General Objections, Applicant denies that Applicant has used Opposer's BOSTON MARATHON mark in advertising on the Internet.

10. Admit that, upon Opposer's request, Applicant removed references to Opposer and/or its mark BOSTON MARATHON from Applicant's advertising on the Internet.

Response: Subject to and without waiving the foregoing General Objections, Applicant denies that Applicant removed references to Opposer and/or its mark BOSTON MARATHON from Applicant's advertising on the Internet.

11. Admit that Applicant has marketed its goods and services to the Opposer for the Opposer's needs related to the Boston Marathon and other events.

Response: Subject to and without waiving the foregoing General Objections, Applicant

admits that it has marketed its goods and services to the Opposer for the Opposer's needs related to the Boston Marathon and other events.

12. Admit that Applicant selected the mark MARATHON MONDAY for its goods to connote a connection to the Boston Marathon and Opposer.

Response: Subject to and without waiving the foregoing General Objections, Applicant denies that it selected the mark MARATHON MONDAY for its goods to connote a connection to the Boston Marathon and Opposer.

13. Admit that Applicant has provided its MARATHON MONDAY products only through sales made from a physical location in Massachusetts.

Response: Subject to and without waiving the foregoing General Objections, Applicant denies that it has provided its MARATHON MONDAY products only through sales made from a physical location in Massachusetts.

14. Admit that Applicant attempted to become an authorized sponsor of the Opposer to promote its products.

Response: Subject to and without waiving the foregoing General Objections, Applicant denies that it attempted to become an authorized sponsor of the Opposer to promote its products.

15. Admit that Applicant did not use the mark MARATHON MONDAY on any products prior to 2011.

Response: Subject to and without waiving the foregoing General Objections, Applicant admits that it did not use the mark MARATHON MONDAY on any products prior to 2011.

VELOCITY, LLC

By its attorney,

Andrea J. Mealey
HINCKLEY, ALLEN & SNYDER LLP
28 State Street
Boston, MA 02109
Tel: (617) 378-4348
Fax: (617) 345-9020

Date: September 19, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September 2012, I served a true and accurate copy of the foregoing, Applicant's Responses to Opposer's First Request for Admissions to Applicant, via courier, upon Counsel for Opposer, Barbara A. Barakat, Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, MA 02109.

Andrea J. Mealey

50844033