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Filing date: **09/23/2013**

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

Proceeding	91202562
Party	Defendant Velocity, LLC
Correspondence Address	ANDREA J MEALEY HINCKLEY ALLEN & SNYDER LLP 28 STATE ST BOSTON, MA 02109-1775 UNITED STATES amealey@haslaw.com, tmdocket@haslaw.com
Submission	Defendant's Notice of Reliance
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Signature	/Andrea J Mealey/
Date	09/23/2013
Attachments	Applicant's Fourth Notice of Reliance.PDF(2225593 bytes)

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

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

APPLICANT’S FOURTH NOTICE OF RELIANCE

Notice is hereby given pursuant to 37 C.F.R. § 2.122(e), that Applicant, Velocity, LLC, introduces as evidence and relies upon the following WHOIS domain name information showing ownership of domain names by parties other than Opposer:

Discovery Request / Response Numbers	Trial Exhibit
Opposer’s Response to Applicant’s First Set of Interrogatories 1, 2, 3, 7, 9, 10, 14, 15, 19, 20, 21, 22, 23, 24, 25	34
Opposer’s Response to Applicant’s First Set of Requests for Production of Documents and Things 4, 6, 9,	35

VELOCITY, LLC
By its attorneys,

/Andrea J. Mealey/
Andrea J. Mealey
Hinckley Allen & Snyder LLP
28 State Street
Boston, MA 02109
Ph: 617-342-9000

Dated: September 23, 2013

CERTIFICATE OF FILING

The undersigns affirms that the foregoing APPLICANT'S FOURTH NOTICE OF RELIANCE was filed with the Trademark Trial and Appeal Board via the ESTTA electronic filing system on the date shown below.

Dated: September 23, 2013

/Andrea J. Mealey/

Andrea J. Mealey

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August 2013, I served a true and accurate copy of the foregoing Applicant's Fourth Notice of Reliance via first class mail, postage prepaid upon Counsel for Opposer addressed as follows:

Barbara A. Barakat
Wilmer Cutler Pickering Hale and Dorr, LLP
60 State Street
Boston, MA 02109

/Andrea J. Mealey/

Andrea J. Mealey

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

_____)	
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APPLICANT'S FOURTH NOTICE OF RELIANCE

TRIAL EXHIBIT 34

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

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

OPPOSER’S RESPONSE TO APPLICANT’S FIRST SET OF INTERROGATORIES

PRELIMINARY STATEMENT

1. These answers are made solely for the purpose of this proceeding and are subject to all objections as to competence, relevance, materiality, and admissibility, as well as to any and all other objections on any other ground. All of these objections and grounds are hereby expressly reserved and may be interposed at the time of any deposition or during any resulting proceedings.

2. These answers are based upon information and documents presently available to and located by Opposer and its attorneys, and Opposer intends no incidental or implied admissions. Opposer’s responses or objections to any interrogatory or part of any interrogatory is not intended and should not be construed as an admission or that the answer or objections constitutes admissible evidence. Opposer’s responses to all, or any part, of an interrogatory is not intended

and shall not be construed as a waiver by Opposer of all, or any part, of any objection to the interrogatory.

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

GENERAL OBJECTIONS

1. Opposer objects to the interrogatories to the extent they seek information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information.
2. Opposer objects to the interrogatories to the extent they seek information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Applicant, its counsel, or agents, or is otherwise equally available to Applicant.
3. Opposer objects to the interrogatories to the extent they seek information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege.
4. Opposer objects to the interrogatories to the extent they are overly broad, unduly burdensome, oppressive, request irrelevant information, and/or are not reasonably calculated to lead to the discovery of admissible evidence.

5. Opposer objects to the interrogatories to the extent they are unreasonably broad or burdensome by not providing a time limit as to the scope of the Interrogatory.
6. Opposer objects to the interrogatories to the extent they are unreasonably broad or burdensome by not providing a geographic scope for the Interrogatory.
7. Opposer objects to the interrogatories to the extent they contain words or phrases that lack an apparent meaning or have an uncertain meaning.
8. Opposer objects to the interrogatories to the extent they impose obligations beyond those set forth in the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure.
9. Opposer objects to the interrogatories to the extent that they number more than the number allowed under the Trademark Trial and Appeal Board Manual of Procedure.

Subject to the forgoing qualifications, General Objections and the specific objections made below, Opposer answers Applicant's First Set of Interrogatories as follows:

INTERROGATORIES

Interrogatory No. 1:

Identify the person(s) most knowledgeable about the selection, creation, adoption, use and/or proposed use of the phrase MARATHON MONDAY by Opposer and describe the areas of knowledge of each person identified.

Response to Interrogatory No. 1:

Opposer incorporates all of its General Objections and, specifically, General Objections 1, 2 and 4. In particular, Opposer objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information. Opposer also objects to this interrogatory to the extent that it seeks information that is not within its possession, custody

or control and/or is a matter of public record, is within the files and/or particular knowledge of Applicant, its counsel, or agents, or is otherwise equally available to Applicant, since the phrase is used commonly to describe the Monday in April on which the Opposer holds the Boston Marathon. Opposer also objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: The person(s) most knowledgeable about the use and/or proposed use of the phrase MARATHON MONDAY by Opposer is Jack Fleming, Director of Marketing and Communications for the Boston Athletic Association. Opposer does not know who first selected created or adopted the phrase MARATHON MONDAY.

Interrogatory No. 2:

Describe in detail all services marketed and offered for sale or intended to be marketed or offered for sale by Opposer under the phrase MARATHON MONDAY.

Response to Interrogatory No. 2:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 2. In particular, Opposer objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information. Opposer also objects to this interrogatory to the extent that it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by

others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: Opposer does not market or offer for sale or intend to market or offer for sale any services under the phrase MARATHON MONDAY.

Interrogatory No. 3:

Describe in detail all goods marketed and offered for sale or intended to be marketed or offered for sale by Opposer under the phrase MARATHON MONDAY.

Response to Interrogatory No. 3:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 2. In particular, Opposer objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information. Opposer also objects to this interrogatory to the extent that it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: Opposer does not market or offer for sale or intend to market or offer for sale any goods under the phrase MARATHON MONDAY.

Interrogatory No. 4:

Describe in detail services marketed and offered for sale or intended to be marketed or offered for sale and offered by Opposer under the mark BOSTON MARATHON and/or the trade name Boston Athletic Association.

Response to Interrogatory No. 4:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since this proceeding relates solely to the phrase MARATHON MONDAY.

Interrogatory No. 5:

Describe in detail goods marketed and offered for sale or intended to be marketed or offered for sale by Opposer under the mark BOSTON MARATHON and/or the trade name Boston Athletic Association.

Response to Interrogatory No. 5:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since this proceeding relates solely to the phrase MARATHON MONDAY.

Interrogatory No. 6:

Describe what factors are used to identify a marathon race as a "major marathon" as set forth in Paragraph 6 of the Notice of Opposition.

Response to Interrogatory No. 6:

Opposer incorporates all of its General Objections and, specifically, General Objection 2. In particular, Opposer objects to this interrogatory to the extent that it seeks information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Applicant, its counsel, or agents, or is otherwise equally available to Applicant. Subject to, and without waiving this objection, Opposer responds as follows:

Among marathon running enthusiasts, the term “major marathons” refers to the Boston Marathon, London Marathon, Berlin Marathon, Chicago Marathon, and the New York Marathon.

Interrogatory No. 7:

Identify all “major marathons” that are run in the United States.

Response to Interrogatory No. 7:

Opposer incorporates all of its General Objections and, specifically, General Objection 2. In particular, Opposer objects to this interrogatory to the extent that it seeks information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Applicant, its counsel, or agents, or is otherwise equally available to Applicant. Subject to, and without waiving this objection, Opposer responds as follows: The major marathons that are run in the United States are the Boston Marathon, Chicago Marathon, and New York Marathon.

Interrogatory No. 8:

Describe all market research that Opposer has conducted relating to Applicant's Mark from January 1, 2010 until the present, including the dates that such research was conducted and providing the names of any third party firms that provided or assisted with such research.

Response to Interrogatory No. 8:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 3. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Subject to, and without waiving these objections, Opposer responds as follows: Opposer has not conducted any market research relating to Applicant's Mark from January 1, 2010 to the present.

Interrogatory No. 9:

For the period of time from January 1, 2010, identify all trademarks or service marks, whether federally registered or under common law, which contain MARATHON MONDAY or any portion thereof, alone or in connection with other terms or with images, that Opposer has researched, investigated or sought opinion of counsel; identify all documents relating to such research, investigation or opinion of counsel, and identify each person having knowledge of the results of such research, investigation or opinion of counsel.

Response to Interrogatory No. 9:

Opposer incorporates all of its General Objections and, specifically, General Objections 1, 3 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client

privilege, the attorney work-product doctrine, or any other applicable privilege. Opposer further objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, to the extent that the Applicant has asked about marks that include the term MARATHON without the term MONDAY and vice versa. Subject to, and without waiving these objections, Opposer responds as follows: As far as Opposer is aware, the only party seeking a federal trademark registration in the phrase MARATHON MONDAY is Applicant. Accordingly, Opposer has not researched, investigated or sought opinion of counsel regarding the use of the phrase MARATHON MONDAY, or the terms MARATHON or MONDAY, as a trademark or service mark in association with goods or services by any other party.

Interrogatory No. 10:

If the mark MARATHON MONDAY has been used any time in the past as a brand for goods or services offered by someone other than Opposer under license or otherwise permitted by Opposer, identify such third party(ies) so licensed or permitted to use the mark MARATHON MONDAY, identify any agreements in relation to such license(s) or permission(s) to use and identify the dates of each such license or permission to use.

Response to Interrogatory No. 10:

Opposer incorporates all of its General Objections and, specifically, General Objections 1, 3 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Opposer objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which

the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: Opposer has not granted any party the right to use the mark MARATHON MONDAY as a brand for goods or services.

Interrogatory No. 11:

State the total sales of goods (number of units per type of article) sold under the MARATHON MONDAY trademark by Opposer in each year from 2000 to the present.

Response to Interrogatory No. 11:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information. Opposer also objects to this interrogatory to the extent that it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: The Opposer has never used the phrase MARATHON MONDAY as a trademark and therefore has not sold any goods under this mark.

Interrogatory No. 12:

Describe the channels of trade in which Opposer has marketed and sold its goods or services under the phrase MARATHON MONDAY from 2000 to the present.

Response to Interrogatory No. 12:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that

constitutes confidential or private business information. Opposer also objects to this interrogatory to the extent that it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: The Opposer has never used the phrase MARATHON MONDAY as a trademark or service mark and therefore has not marketed or provided any goods or services under this mark.

Interrogatory No. 13:

State the total sales of goods (indicating nature of services and number of sales) sold under mark BOSTON MARATHON and/or the trade name Boston Athletic Association by Opposer in each year from 2000 to the present.

Response to Interrogatory No. 13:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since this proceeding relates solely to the phrase MARATHON MONDAY.

Interrogatory No. 14:

Describe all enforcement efforts undertaken by Opposer to limit or prohibit third parties from using the term MARATHON MONDAY.

Response to Interrogatory No. 14:

Opposer incorporates all of its General Objections and, specifically, General Objections 1, 3 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Opposer objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Opposer responds as follows:

Opposer has filed the present proceeding to stop the applicant from claiming exclusive rights in the phrase MARATHON MONDAY, which phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. The phrase MARATHON MONDAY is descriptive of the day of the week in April on which the Boston Marathon is held. Opposer has not tried to limit or prohibit third parties from using the term MARATHON MONDAY as Opposer has not found any party, other than Opposer, who seeks to gain exclusive rights to the term for goods or services.

Interrogatory No. 15:

Describe how Opposer determined that the term MARATHON MONDAY is associated with the Boston Marathon and the Opposer.

Response to Interrogatory No. 15:

Opposer incorporates all of its General Objections and, specifically, General Objections 1, 3 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information

that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Opposer objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Opposer responds as follows: The term MARATHON MONDAY has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. The Boston Marathon is the only major marathon that is held on a Monday, and accordingly, the phrase MARATHON MONDAY is generally associated with the Boston Marathon.

Interrogatory No. 16:

Describe how the Opposer uses and has used the term MARATHON MONDAY to communicate and promote its services to participants, fans and the general public.

Response to Interrogatory No. 16:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information or is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: Opposer

will produce non-privileged and otherwise non-objectionable documents, if any, responsive to this Interrogatory.

Interrogatory No. 17:

Describe how the Opposer uses and has used the term MARATHON MONDAY to identify goods to participants, fans and the general public.

Response to Interrogatory No. 17:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information or is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: The Opposer does not use and has not used the term MARATHON MONDAY to identify its goods to participants, fans and the general public.

Interrogatory No. 18:

Identify each use of MARATHON MONDAY which was made by Opposer in the web search results attached as Exhibit A to the Notice of Opposition.

Response to Interrogatory No. 18:

Opposer incorporates all of its General Objections and, specifically, General Objections 3 and 4. In particular, Opposer objects to this interrogatory to the extent that it seeks information protected by attorney client privilege, attorney work-product doctrine, or any other applicable privilege. Opposer also objects to this interrogatory to the extent it requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence.

~~since the phrase has been used extensively during the more than 40 year time in which the Boston Marathon has been held on a Monday and the phrase is used by Opposer and by others to describe the Monday in April on which the Boston Marathon is held. Subject to, and without waiving these objections, Opposer responds as follows: Opposer used the phrase MARATHON MONDAY in the web search results attached as Exhibit A to the Notice of Opposition when the results were from the sites, <baa.org> or <bostonmarathon.org>. Other search results identified showed use of the phrase by different parties.~~

Interrogatory No. 19:

Identify Jack Fleming, including his title with Opposer, how many years he has worked for Opposer and his job description.

Response to Interrogatory No. 19:

Opposer incorporates all of its General Objections. Subject to, and without waiving these objections, Opposer responds as follows: Jack Fleming is the current Director of Marketing and Communications for the Boston Athletic Association (“B.A.A.”), organizer of the Boston Marathon, the Opposer. He has held the positions of assistant media coordinator, media coordinator, media manager, media and promotions manager, communications director and (now) marketing and communications director for the Opposer. He has worked for the Opposer from December 29, 1991 through present. As Director of Marketing and Communication, he is responsible for all media, advertising, sponsorship, licensing, contributions, brand management and promotions for the Opposer.

Interrogatory No. 20:

Describe the call that Jack Fleming received from the United States Patent and Trademark Office referenced in his email to Applicant of November 7, 2011, including the date and time of the call, the name of the individual from the United States Patent and Trademark Office with whom the conversation took place, as well as the topics discussed.

Response to Interrogatory No. 20:

Opposer incorporates all of its General Objections. Subject to, and without waiving these objections, Opposer responds as follows: Opposer, and Mr. Fleming, have no knowledge of a call received from the United States Patent and Trademark Office on or around November 7, 2011.

Interrogatory No. 21:

Describe the relationship between Opposer and Dennis M. Daly, owner of record of the domain names marathonmoday.com and marathonmonday.net.

Response to Interrogatory No. 21:

Opposer incorporates all of its General Objections and, specifically, General Objection 1. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information. Subject to, and without waiving these objections, Opposer responds as follows: As far as the Opposer is aware, there is no relationship between Opposer and Dennis M. Daly, owner of record of the domain names marathonmoday.com and marathonmonday.net.

Interrogatory No. 22:

Describe all steps taken by Opposer to either effect a transfer of the domain names marathonmoday.com and marathonmonday.net to Opposer from Mr. Daly or to otherwise cause Mr. Daly to cease use of these domain names.

Response to Interrogatory No. 22:

Opposer incorporates all of its General Objections and, specifically, General Objection 1. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information. Subject to, and without waiving these objections, Opposer responds as follows: Opposer has not taken any steps to either effect a

transfer of the domain names marathonmoday.com and marathonmonday.net to Opposer from Mr. Daly or to otherwise cause Mr. Daly to cease use of these domain names.

Interrogatory No. 23:

Identify all person(s) who are or have been employees, consultants or agents of Opposer who have worked with Applicant in Applicant's capacity as a provider of apparel to Opposer.

Response to Interrogatory No. 23:

Opposer incorporates all of its General Objections and, specifically, General Objection 1. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information. Subject to, and without waiving these objections, Opposer responds as follows: Applicant is not a provider of apparel to Opposer. Accordingly, there are no persons who are or have been employees, consultants or agents of Opposer who have worked with Applicant in Applicant's capacity as a provider of apparel to Opposer.

Interrogatory No. 24:

Describe all incidences of employees, consultants or agents of Opposer talking to or writing to Applicant regarding Applicant's use of names, marks or terms that Opposer has alleged are similar to names, marks or terms allegedly belonging to Opposer, including the names of the persons, dates of communications and the details of the communications.

Response to Interrogatory No. 24:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information or is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence, since this proceeding relates solely to the use of the term MARATHON MONDAY. Subject to, and without waiving these objections, Opposer responds as follows: Within the last three years, Mr. Fleming of the Opposer has contacted Applicant

regarding Applicant's use of Opposer's trademark BOSTON MARATHON. One of the persons he spoke with was C. Tuite. Subsequently, Mr. Tuite arranged a meeting with Mr. Fleming to describe the Applicant's services to Opposer.

Interrogatory No. 25:

Identify all efforts undertaken by Opposer to cease use of the term MARATHON

MONDAY by:

- i. Arizona State University
- ii. New York City / ING Marathon
- iii. Disney Marathon
- iv. Blue Mountain State
- v. Chicago Marathon
- vi. Charlottesville, VA Marathon
- vii. San Antonio, TX Marathon

Response to Interrogatory No. 25:

Opposer incorporates all of its General Objections and, specifically, General Objections 1, 3 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Opposer objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, requests irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Opposer responds as follows:

Opposer has taken no efforts to cause the parties listed in this Interrogatory to stop use of the term MARATHON MONDAY as it was not aware that such parties used the term.

Interrogatory No. 26:

Identify the person(s) who provided information responsive to these Interrogatories.

Response to Interrogatory No. 26:

Opposer incorporates all of its General Objections and, specifically, General Objections 1, 3 and 4. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Opposer objects to this interrogatory to the extent it is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Opposer responds as follows: Jack Fleming has provided information responsive to these Interrogatories.

Interrogatory No. 27:

Identify any expert witnesses you intend to call to testify on your behalf in connection with this proceeding and state the facts or subject matter concerning which they are each expected to testify.

Response to Interrogatory No. 26:

Opposer incorporates all of its General Objections and, specifically, General Objections 1 and 3. In particular, Opposer objects to this interrogatory to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this interrogatory to the extent it seeks information protected by attorney/client privilege, the

attorney work-product doctrine, or any other applicable privilege. Opposer also objects to this interrogatory as premature. Subject to, and without waiving these objections, Opposer responds as follows: At this time, Opposer has not identified any expert witnesses it intends to call to testify on its behalf in connection with this proceeding.

As to objections

BOSTON ATHLETIC ASSOCIATION

By its Attorneys,

Date: May 30, 2012



Michael J. Bevilacqua, Esq.

Barbra A. Barakat, Esq.

Wilmer Cutler Pickering Hale and Dorr

LLP

60 State Street

Boston, MA 02109

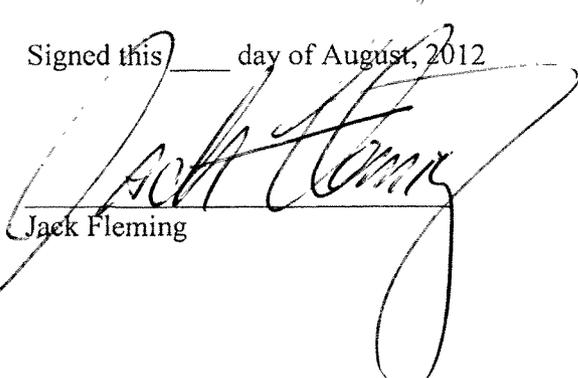
Phone No.: (617) 526-6000

Facsimile: (617) 526-5000

Verification

On behalf of Boston Athletic Association, and in my capacity as Director, MKtg & Comm, I have read the foregoing responses to Applicant Velocity, LLC's Second Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact contained herein. The response was prepared with the assistance of Boston Athletic Association's employees and with the assistance and advice of counsel. The answers are based on records and information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent I do not have personal knowledge, I have relied on others to gather the responsive information. I declare under penalty of perjury that the foregoing is true and correct.

Signed this _____ day of August, 2012



Jack Fleming

JUNE 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 2012, I served the foregoing Opposer's Response to Applicant's First Set of Interrogatories to Opposer by First Class Mail upon:

Andrea J. Mealey
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,	)	Opposition No.: 91202562
	)	Application No.: 85/224698
v.	)	Mark: MARATHON MONDAY
	)	Class: 25
Velocity, LLC)	
)	
Applicant.)	
_____)	

APPLICANT'S FOURTH NOTICE OF RELIANCE

TRIAL EXHIBIT 35

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

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

**OPPOSER’S RESPONSE TO APPLICANT’S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

PRELIMINARY STATEMENT

1. These answers are made solely for the purpose of this proceeding and are subject to all objections as to competence, relevance, materiality, and admissibility, as well as to any and all other objections on any other ground. All of these objections and grounds are hereby expressly reserved and may be interposed at the time of any deposition or during any resulting proceedings.

2. These answers are based upon information and documents presently available to and located by Opposer and its attorneys, and Opposer intends no incidental or implied admissions. Opposer’s response or objections to any Request or part of any Request is not intended and should not be construed as an admission or that the answer or objections constitutes admissible evidence. Opposer’s responses to all, or any part, of a Request is not intended and shall not be construed as a waiver by Opposer of all, or any part, of any objection to the Request.

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

GENERAL OBJECTIONS

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

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

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

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

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

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

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

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

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

REQUESTS

Request No. 1:

Labels and packaging for the goods and/or advertising or promotional materials being marketed, promoted or sold, or planned to be promoted, marketed or sold in relation to the phrase MARATHON MONDAY which you contend forms a basis for the denial of the registration of Applicant's Mark.

Response to Request No. 1:

Opposer incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, Opposer objects to this Document Request to the extent that it seeks documents containing information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or

competitively sensitive information. Opposer also objects to this Document Request to the extent it seeks documents that contain information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Opposer responds as follows: Opposer will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

Request No. 2:

Representative samples of all promotional and advertising materials, including, but not limited to, in-store point-of-purchase materials, circulars, direct mail pieces, newspaper and magazine advertisements, internet or web advertisements, videos, and any such other materials in use, previously used or proposed to be used by Opposer or any predecessor to it or by any company related to it, to advertise, promote, market or sell goods or services bearing the phrase MARATHON MONDAY which you contend forms a basis for the denial of the registration of Applicant's Mark.

Response to Request No. 2:

Opposer incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, Opposer objects to this Document Request to the extent that it seeks documents that contain information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Opposer responds as follows: There are no documents responsive to this Request.

Request No. 3:

All documents identifying all purchasers of Opposer's goods or services bearing the mark MARATHON MONDAY which you contend forms a basis for the denial of the registration of Applicant's Mark.

Response to Request No. 3:

Opposer incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, Opposer objects to this Document Request to the extent that it seeks documents that contain information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Opposer responds as follows: There are no documents responsive to this Request.

Request No. 4:

All documents related actions taken by Opposer to protect the term MARATHON MONDAY.

Response to Request No. 4:

Opposer incorporates all of its General Objections and specifically, General Objections No. 3 and 4. In particular, Opposer objects to this Document Request to the extent that it requests documents that contain information that falls under the attorney/client privilege or the attorney work product doctrine or any other applicable privilege. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections,

Opposer responds as follows: As Opposer knows of no other party who is seeking to gain exclusive rights to use the phrase MARATHON MONDAY in association with its goods or services, Opposer has taken no actions and accordingly, there are no such documents.

Request No. 5:

All documents sufficient to identify each publication, including any electronic publication, in which Opposer has advertised or promoted, or in which Opposer or any third party has otherwise discussed or referred to, goods or services sold, offered for sale, advertised, promoted or distributed in connection with the term MARATHON MONDAY which you contend forms a basis for the denial of the Applicant's application.

Response to Request No. 5:

Opposer incorporates all of its General Objections and specifically, General Objection 4. In particular, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Opposer responds as follows: Opposer will provide representative documents responsive to this Request.

Request No. 6:

All documents related to any and all actions taken by or on behalf of Opposer to stop third parties from using the term MARATHON MONDAY.

Response to Request No. 6:

Opposer incorporates all of its General Objections and specifically, General Objections No. 3 and 4. In particular, Opposer objects to this Document Request to the extent that it requests documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without

waiving, and subject to, these objections, Opposer responds as follows: Opposer does not object to the use of the term MARATHON MONDAY by third parties to refer to the Monday in April on which the Boston Marathon is held. As the Opposer is not aware of any party other than Applicant seeking to gain the exclusive right to use the term MARATHON MONDAY for goods and services, there are no documents responsive to this Request.

Request No. 7:

All documents that evidence, refer to or relate to forecast, actual, proposed, and/or subsequent sales of goods or services provided under or proposed to be provided under the term MARATHON MONDAY, including, without limitation, business and marketing plans.

Response to Request No. 7:

Opposer incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, Opposer objects to this Request for Production of Documents to the extent it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Opposer also objects to this Document Request to the extent that it requests documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Opposer also objects to this Request because it is unclear in that it does not adequately define the owner of the documents requested and accordingly, Opposer assumes that it is requesting documents owned or held by Opposer. Without waiving, and subject to, these objections, Opposer responds as follows: There are no documents responsive to this Request.

Request No. 8:

All documents which evidence, relate to, identify, constitute or describe the first and last use: (i) in commerce of any kind; and (ii) in interstate commerce, by Opposer of the term MARATHON MONDAY in connection with each product and/or services sold, offered or offered for sale by Opposer.

Response to Request No. 8:

Opposer incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, Opposer objects to this Document Request to the extent that it seeks documents that contain information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information.

Without waiving, and subject to, these objections, Opposer responds as follows: There are no documents responsive to this Request.

Request No. 9:

All licenses granted by Opposer or any company or entity of which Opposer is a member, shareholder or officer, to any person to use the term MARATHON MONDAY, including all amendments or modifications to any such licenses, and all documents which evidence, relate to, identify, constitute or describe such licenses and/or amendments or modifications.

Response to Request No. 9:

Opposer incorporates all of its General Objections and specifically, General Objections No. 3 and 4. In particular, Opposer objects to this Document Request to the extent that it requests documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without

waiving, and subject to, these objections, Opposer responds as follows: Persons using the term MARATHON MONDAY do so to refer to the Monday in April on which the Boston Marathon is held. The Opposer is not aware of any party other than Applicant seeking to gain the exclusive right to use the term MARATHON MONDAY for goods and services, and, accordingly, there are no documents responsive to this Request.

Request No. 10:

All documents which evidence, relate to, identify, constitute, or describe any agreement, including, but not limited to, consents, permissions, and settlement agreements, entered into by Opposer with any third party relating to the term MARATHON MONDAY.

Response to Request No. 10:

Opposer incorporates all of its General Objections and specifically, General Objections No. 3 and 4. In particular, Opposer objects to this Document Request to the extent that it requests documents that fall under the attorney/client privilege or the attorney work product doctrine. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Opposer responds as follows: Persons using the term MARATHON MONDAY do so to refer to the Monday in April on which the Boston Marathon is held. The Opposer is not aware of any party other than Applicant seeking to gain the exclusive right to use the term MARATHON MONDAY for goods and services, and, accordingly, there are no documents responsive to this Request.

Request No. 11:

All surveys, polls, and other documents evidencing the association by the public of the term MARATHON MONDAY with Opposer.

Response to Request No. 11:

Opposer incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, Opposer objects to this Document Request to the extent that it seeks documents that contain information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Opposer responds as follows: Opposer will produce non-privileged and otherwise non-objectionable documents responsive to this Request.

Request No. 12:

All documents, not otherwise requested, and identified or relied upon in response to Applicant's First Set of Interrogatories to Opposer.

Response to Request No. 12:

~~Opposer incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, Opposer objects to this Document Request to the extent that it seeks documents that contain information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Further, Opposer objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, Opposer responds as follows: Opposer will produce non-privileged and otherwise non-objectionable documents responsive to this Request.~~

BOSTON ATHLETIC ASSOCIATION

By its Attorneys,



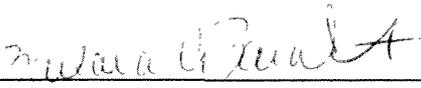
Michael J. Bevilacqua
Barbara A. Barakat
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Phone No.: (617) 526-6000
Facsimile: (617) 526-5000

Date: May 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 2012, I served the foregoing Opposer's Response to Applicant's First Set of Requests for Production of Documents and Things to Opposer by First Class Mail upon Counsel for Applicant addressed as follows:

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



Barbara A. Barakat