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

Proceeding	91203706
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CHATHAM IMPORTS, INC.,  
Opposer, Counterclaim Defendant,  
Counter-counterclaim Plaintiff,

vs.

WASHINGTON PLACE LLC,  
Applicant, Counterclaim Plaintiff,  
Counter-counterclaim Defendant.

**Opposition No. 91203706**

U.S. Serial No. 77/962,565  
For the Mark **KNOW THY FARMER**

**CHATHAM’S REPLY IN SUPPORT OF MOTION TO COMPEL, AND OPPOSITION  
TO WASHINGTON PLACE’S CROSS MOTION TO COMPEL**

In conjunction with its Opposition to Opposer Chatham Imports, Inc.’s (“Chatham”) Motion to Compel Responses to Interrogatory Nos. 8 and 9, Applicant Washington Place LLC (“Washington Place”) filed a Cross Motion to Compel. The Board accepted Washington Place’s Cross Motion and suspended the proceeding pending resolution of both motions. (March 20, 2013 Suspension Order, Dkt. No. 26.) Accordingly, Chatham hereby presents its Reply in Support of its Motion to Compel and its Opposition to Washington Place’s Cross Motion to Compel. For the reasons set forth herein, Chatham respectfully requests that its Motion to Compel be granted, and that Washington Place’s Cross Motion to Compel be denied.

**Chatham’s Reply In Support Of Its  
Motion To Compel Responses To Interrogatory Nos. 8 & 9**

Washington Place cites no authority in its Opposition supporting its refusal to respond to Interrogatory Nos. 8 and 9, nor does it dispute that the information requested in those interrogatories is relevant. Instead, Washington Place argues that it should not have to respond because providing responsive information for each of the alleged – and as yet unidentified – products on which it claims to use the KNOW THY FARMER mark would be unduly

burdensome. (WP Opp.<sup>1</sup> at 2-4.) At the same time, Washington Place maintains that its request for corresponding information from Chatham was proper because Chatham has fewer products. (WP Opp. at 5.) Washington Place put its products at issue in this proceeding, and providing relevant and discoverable information regarding those products does not constitute an undue burden. Chatham's motion should be granted.

**I. Washington Place Cites No Authority Supporting Denial Of Chatham's Motion.**

As set forth in Chatham's motion, Washington Place's objections to Interrogatory Nos. 8 and 9 on the grounds of excessive number fail both substantively and procedurally. (Chatham Mot. at 4-9.) Washington Place has no rebuttal to the statutes, rules and cases cited by Chatham in support of its motion.

Washington Place cites *absolutely no authority* supporting its argument that the thirteen subparts in Interrogatory Nos. 8 and 9 should be multiplied by the alleged number of products to determine the total number of interrogatories for purposes of enforcing the limit in 37 C.F.R § 2.120(d). Washington Place's utter lack of support is not surprising, as the Board's rules contradict its position. By way of example, Washington Place contends that because providing the annual dollar amount of sales for a single one of its products would result in "a separate figure" for each year, each of those "distinct answers" should be treated as a separate interrogatory. (WP Opp. at 3-4.) The Board's rule requires the opposite result, citing a request for annual sales figures for multiple years as an example of one that should be counted as a single interrogatory. TBMP § 405.03(d) ("if an interrogatory ... asks that a particular piece of information, such as, for example, *annual sales figures under a mark*, be given for multiple years, and/or for each of the responding party's involved marks, it will be counted as a single

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<sup>1</sup> Washington Place's Opposition and Cross Motion will be cited herein as "WP Opp." Chatham's Motion to Compel Responses to Interrogatory Nos. 8 & 9 will be cited herein as "Chatham Mot."

interrogatory”) (emphasis added).) Washington Place’s argument is undermined further by the official comments to that rule, which provide that in cases involving more than one mark, a party “may simply request that each interrogatory be answered with respect to each mark, and *the interrogatories will be counted the same as if they pertained to only one mark.*” 54 F.R. 34886 (emphasis added). Thus, interrogatories asking for the same information for each of the products at issue – such as Interrogatory Nos. 8 and 9 – should be counted as if they pertained to only one product, not separately for each product. Washington Place can point to no authority holding otherwise.

Additionally, Washington Place does not dispute that it failed to follow the Board-mandated procedure for objecting to interrogatories on the grounds of excessive number as set forth in 37 C.F.R § 2.120(d). Notwithstanding the authority cited by Chatham, which rejects the very procedure adopted by Washington Place (Chatham Mot. at 6-7), Washington Place maintains that it “elected to take the more productive route to moving forward in discovery,” and argues that forcing it to adhere to the Board’s rules “would make no sense.”<sup>2</sup> (WP Opp. at 6.) Washington Place claims to have made a “good faith attempt to comply with the general spirit of the Federal Rules of Civil Procedure,” but it made no attempt to comply with the Board’s rules that govern this proceeding. (WP Opp. at 6.) Contrary to Washington Place’s assertion, Chatham does not seek to “penalize” Washington Place by elevating form over substance. (WP Opp. at 5.) It merely seeks to hold Washington Place to the same rules that Chatham, and all other parties to Board proceedings, are bound to follow.

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<sup>2</sup> Washington Place cites two cases that it claims support the Board’s discretion to sustain its objections despite their procedural defects – one from the Eastern District of Louisiana and another from the Middle District of Florida. (WP Opp. at 7.) These district court cases do not involve trademark claims and have no bearing on the Board’s discretion to enforce its own rules in this case. Moreover, in both cases cited, the untimely objections were deemed waived and the court granted the motion to compel sufficient responses to the requests. *Amir Ath., LLC v. State Farm Fire & Cas. Co.*, 2012 U.S. Dist. LEXIS 19366, \*8 (E.D. La. Feb. 16, 2012); *Siddiq v. Saudi Arabian Airlines Corp.*, 2011 U.S. Dist. LEXIS 151474, \*8-9 (M.D. Fla. Dec. 7, 2011.)

## II. The Alleged Number of Responsive Products Is No Excuse For Washington Place's Refusal To Comply With Its Discovery Obligations.

Unable to support its refusal to respond to Interrogatory Nos. 8 and 9 with any legal authority, Washington Place argues that the scope of information requested in those interrogatories is overly broad, unduly burdensome and unnecessary. (WP Opp. at 4-5.) This argument fails because Washington Place requested the same scope of information from Chatham. Moreover, Washington Place made all of its products relevant to this proceeding, and it is obligated to produce information relating to those products. (*See* Chatham Mot. at 8-9.)

Washington Place admitted that the information requested in Interrogatory Nos. 8 and 9 was within the proper scope of discovery when it requested the same information from Chatham. (WP Opp., Ex. C, Chatham's Responses to Washington Place's First Set of Interrogatories, at 4-5); Fed. R. Civ. P. 26(g)(1)(B) (signature on a discovery request certifies that the request is "neither unreasonable nor unduly burdensome or expensive..."). Its requests to Chatham were of *the same scope* that it now claims to be "overly broad and unduly burdensome." Both Washington Place and Chatham requested information relating to *all* products on which the other party has used or intends to use the mark at issue.<sup>3</sup> The fact that Washington Place allegedly has more products than Chatham does not make the scope of that request proper when propounded by Washington Place, but improper when propounded by Chatham. At the time it asked for information regarding *all* of Chatham's products, Washington Place did not know that only one Chatham product was at issue. Given Washington Place's Interrogatories to Chatham, its objection to the scope of Interrogatory Nos. 8 and 9 is improper. *Amazon Techs. Inc. v. Wax*, 93

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<sup>3</sup> Specifically, Washington Place's Interrogatory Nos. 2 and 3 seek the identification of, and certain information relating to, "each product sold, licensed, or expected to be sold or licensed by Opposer in connection with Opposer's mark, whether used alone, in typed form, or in conjunction with a design and/or stylized element." (WP Opp., Ex. C, Chatham's Responses to Washington Place's First Set of Interrogatories, at 4-5.) Washington Place objects to Chatham's Interrogatory Nos. 8 and 9 because they are not limited to the specific goods listed in the pleaded registrations, but its interrogatories are similarly unlimited. Indeed, Washington Place's requests are actually broader in scope than Chatham's, because they include licensed products as well as Chatham's products.

USPQ2d 1702, 1706 (TTAB 2009) (citing TBMP § 402.01, “a party ordinarily will not be heard to contend that a request for discovery is proper when propounded by the party itself, but improper when propounded by its adversary”).

Washington Place’s assertion that the information requested in Interrogatory Nos. 8 and 9 is “unnecessary” also is without merit. According to Washington Place, it need only provide discovery for one product, and it “should not be forced” to provide information for each of its products because “arguments regarding a likelihood of confusion must only be supported by showing that confusion is likely to occur between *one* of WP’s goods and Chatham’s goods.”<sup>4</sup> (WP Op. at 5 (emphasis added).) Washington Place is wrong. The scope of discovery in this proceeding is not limited to a single Washington Place product.<sup>5</sup>

Washington Place’s refusal to provide any information regarding its products is particularly egregious given that it introduced those products into this proceeding when it brought a counterclaim for the cancellation of Chatham’s registration for the FARMER’S mark based on its alleged previous use of the KNOW THY FARMER mark on other products, including those listed in Registration No. 3,829,294. As set forth in Chatham’s Motion, Chatham is entitled to learn the identity of those products, as well as the information upon which Washington Place intends to rely to support its claim of priority. (Chatham Mot. at 8.) Thus, Washington Place has only itself to blame for the alleged discovery burden it faces.

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<sup>4</sup> Washington Place’s argument fails for the additional reason that it has not even provided discovery relating to a single product. To date, it has provided only a vague total of “at least 25” products, and has refused to identify any of them with specificity, instead referencing only categories, such as “beverages” “fruit preserves,” and “pickled vegetables.” (WP Opp. at 3-4.)

<sup>5</sup> *Hawkins v. Green Resources Group, LLC*, Opp. No. 91190109, 2012 TTAB LEXIS 219, 20-21 (June 12, 2012), the case upon which Washington Place relies, stands for the unremarkable proposition that if the plaintiff demonstrates a likelihood of confusion with respect to a single product, it has met its burden. It does not hold that discovery on the issue of confusion should be limited to a single product.

### **III. Washington Place's Proposed Solutions Are Unacceptable And Unfair.**

Prior to its Opposition, Washington Place steadfastly refused to provide *any* information relating to its products, including an identification of those products by name, and instead insisted that Chatham simply withdraw Interrogatory Nos. 8 and 9 entirely. Washington Place's refusal to provide admittedly relevant information delayed this proceeding and stifled the discovery process. For the first time in its Opposition, Washington Place offers two proposed resolutions to this dispute, both of which involve limiting the scope of Interrogatory Nos. 8 and 9: (1) limiting the response to an agreed upon number of goods; and (2) limiting the response to vague "categories" of products, such as "beverages." Neither is acceptable or fair.

To date, Washington Place has not even identified the total number of products on which it claims to have used the KNOW THY FARMER mark, let alone the names of those products. Without that information as a starting point, Chatham cannot agree to an arbitrary limitation on the number of responsive products, nor can it agree to limit the responses to certain, undefined "categories" of goods. The category of "beverages" suggested by Washington Place is too broad and would encompass, for example, both milk and gin. Washington Place has argued that distilled spirits are within the zone of expansion of the goods on which it has previously used the KNOW THY FARMER mark. Accordingly, Chatham is entitled to know all of the specific beverages (and any other products) on which Washington Place intends to rely to support that claim. Moreover, providing information regarding vague categories of products would not save Washington Place from having to make inquiries regarding each product in that category to formulate its response. The limitations proposed by Washington Place are not viable.

If Washington Place is willing to identify all of the specific products upon which it intends to rely to support any of its claims or defenses in this proceeding, and would agree to produce the information requested in Interrogatory Nos. 8 and 9 for those products, Chatham

would be willing to accept that resolution, provided that Washington Place be precluded from later introducing any evidence relating to products that are not identified at this time.

#### **IV. Conclusion**

For the foregoing reasons, and the reasons set forth in Chatham's Motion to Compel, Chatham respectfully requests that its motion be granted, and that Washington Place be compelled to provide full and complete responses to Interrogatory Nos. 8 and 9.

#### **Chatham's Opposition To Washington Place's Motion To Compel Response To Interrogatory No. 32**

Washington Place does not deny that Chatham provided a responsive answer to Interrogatory No. 32. It simply does not like that answer, and asks the Board to compel a different one. However, Washington Place makes no effort to support its bare assertion that Chatham should be compelled to provide additional information, nor does it identify any information that it wants Chatham to provide. The brevity of Washington Place's motion suggests that it merely manufactured a deficiency to counter Chatham's motion to compel. Washington Place's unsupported, makeweight motion should be denied.

#### **I. Chatham's Response To Interrogatory No. 32 Is Not Deficient.**

Interrogatory No. 32 asks Chatham to identify "the meaning, definition and connotation" of the FARMER'S mark. Washington Place spends the entirety of its motion arguing that such information is relevant. (WP Opp. at 8-9.) Chatham does not dispute the relevance of the mark's meaning, nor did it object to Interrogatory No. 32 on relevance grounds. Chatham did object to the interrogatory as vague and ambiguous to the extent that it assumed that the mark was susceptible to only a single meaning. Subject to that objection, Chatham provided a response that set forth a meaning for the mark. (WP Opp., Ex. C, Chatham's Responses to Washington Place's First Set of Interrogatories, at 18.)

Washington Place has not identified a single reason *why* Chatham's response is deficient. When Washington Place took issue with that response, Chatham asked for clarification of its request. Washington Place responded that it sought "an explanation for selection of the FARMER'S mark." (WP Opp., Ex. B, January 29, 2013 Letter from Davis to Stitt, at 3.) Contrary to Washington Place's assertion, that is not what Interrogatory No. 32 asks for. Indeed, Washington Place had requested that information already in Interrogatory No. 15 ("Identify and explain the reasons for Opposer's choice of the Opposer's Mark as its trademark."). Chatham provided the explanation requested in response to Interrogatory No. 15, and Washington Place did not object to that response as deficient. (WP Opp., Ex. C, Chatham's Responses to Washington Place's First Set of Interrogatories, at 10.) Washington Place's motion should fail because it does not identify any information that is missing from Chatham's response to Interrogatory No. 32, nor does it explain what additional information Chatham should be compelled to provide.

## **II. Conclusion**

The mere fact that Washington Place does not like Chatham's response is insufficient. For the reasons set forth above, Washington Place's motion should be denied.

Dated this 8<sup>th</sup> day of April, 2013.

Respectfully submitted,

s/Tracy A. Stitt/

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of April, 2013, a true and correct copy of the above and foregoing document entitled CHATHAM'S REPLY IN SUPPORT OF MOTION TO COMPEL, AND OPPOSITION TO WASHINGTON PLACE'S CROSS MOTION TO COMPEL was served via overnight courier on the following:

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