

Ms Elizabeth Dum
Interlocutory Attorney.
TTAB,

TTAB

9/6/12

Joel Belling
1 Mirboo Crt
Dalla Victoria
Australia, 3047.

Dear Ms Dum,
Re: Opposition No: 91203884.
Please read the attached motion to Compel
and Exhibit 2, together with my
documents filed through ESTTA on
8th July 2012.

#85324443

Sincerely,

Joel B

Joel Belling
Applicant.



07-18-2012

U.S. Patent & TM Office Mail Rept Dt. #72

rejected the republic, only Victoria and the Australian Capital Territory voting to end the constitutional monarchy. As reflected in the vote, the referendum split the nation. Prime Minister John Howard, who had campaigned to retain the links with the monarchy, declared that the people had spoken and that the issue would not be revisited in the foreseeable future. A disappointed Australian Republican Movement (ARM) leader Malcolm Turnbull condemned Howard, labelling him 'the Prime Minister who broke this nation's heart'. The referendum campaigns were vigorous: the 'yes' camp attempted to highlight the role of the Queen and the British monarchy in the country's constitutional structures and the 'no' camp highlighted public dissatisfaction with the parliamentary election of a President. The 'no' campaign was bolstered by the support of republicans who favoured direct election of a President.

The media coverage of the constitutional convention and the referendum was integral to both events. The issue of an Australian republic not only centres on constitutional matters but is a central site of struggle over the *meaning* of the nation and the worth of national symbols and values. The republic is largely a symbolic issue: the question of Australia becoming a republic is centrally concerned with the national identity—with the events, stories, myths and emblems that together constitute the nation's image of itself. Debate about the republic has focused on national symbols such as the Australian flag, which retains the British Union Jack in the top left corner. In response to charges that the republic will result in no practical change to the country's circumstances, comedian, lawyer and convention delegate Steve Vizard (1998; p. 13) declared:

It's simply not good enough to argue that the Queen doesn't do us any harm . . . That's not the point. Symbols are supposed to get in the way, to be powerful, living and relevant. Symbols need to be tripped over, to unite, bond and draw together people, whether as a family, a team, a culture or a nation.

The media reportage of the constitutional convention and the referendum provided representations of the symbols associated with the republic while also offering a panorama of different types of Australian people, together with their views on the republic. The journalistic

coverage demonstrated how the media perform the vital function of 'realising' the nation: they picture the diversity of daily practices, rituals and customs that constitute national life, they provide a sense of the temporal and spatial coordinates of everyday and institutional life. Newspaper coverage of the republican referendum did represent these different aspects of national life. *The Australian*, for example, ran a series of stories about 'average' Australians and their views on the republic. In the series, some young surfers profess ignorance about the details of the referendum but dismiss the republic as peripheral to their 'real-life worries' (Rothwell 1999a, p. 4); boat repairers in a 'sleepy, slow-paced fishing community' declare that the monarchy is 'hardly something to look up to' and that it is a 'natural progression' for Australia to become a republic (Rothwell 1999b, p. 5). It would be a mistake to dismiss such journalism as mere 'colour' stories, peripheral to the 'real' importance of the republic. The stories perform the important task of positioning the republic in the very 'Australian way of life' that is said to inform the need for a new, independent national identity. Such stories and photographs are significant because they visualise and individualise public opinion, grounding the republican issue in the exigencies of particular everyday lives, in specific life-narratives. The regular and mundane reportage of everyday life provides a vocabulary of ways of living and doing that help fashion the solidity of modern Australian life.

The issue of an Australian republic, more than other dominant news issues, was characterised not only by the active involvement of the public but also by the fact that 'the public' was *the* site of struggle in the debate. Arguably, no other contemporary Australian issue has subjected the identity and nature of the public to a greater degree of scrutiny and problematisation. The central struggle in the republican debate was over the degree of public involvement in the election of a head of state. The refusal of the ARM and many leading politicians to grant the public a greater say in the process was a dominant theme of the media coverage at the constitutional convention and became a decisive factor in the referendum on the republic. The 'no' campaigners directed their strategy away from support for the monarchy when they adopted the slogan 'This republic—vote no', playing on the popular support for the direct election of the President.

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

In Re: Application Serial No. 85/324,443
For the Mark: COLOR WARS
Filed: May 18, 2011
Published in the Official Gazette: January 17, 2012

Ennis, Inc.)	
)	
Opposer)	
)	
v.)	Opp. No. 91203884
)	
Joel L. Beling d/b/a Supa Characters Pty Ltd)	
)	
Applicant)	
)	
)	

APPLICANT’S MOTION TO COMPEL DISCOVERY RESPONSES

To: Ennis Inc. (“Opposer”), 2441 Presidential Parkway, Midlothian, TX
76065, United States.

Joel L. Beling d/b/a Supa Characters Pty Ltd (“Applicant”) serves this Motion to Compel Discovery on Ennis Inc (“Opposer”) pursuant to Federal Rule of Civil Procedure 37 and Trademark Rule 2.120(e), 37 C.F.R. § 2.120(d).

Applicant respectfully requests an order compelling Opposer, Ennis Inc., to respond to the following Interrogatories, Requests for Admission, and Requests for Production, without objection and within 10 days of this Board's Order.

On 10 May 2012, Applicant served Opposer with its First Request for Production, First Request for Admissions and First Set of Interrogatories. Apart from the documents

produced in Exhibits 36 and 42, Opposer has flagrantly refused to comply with Applicant's Discovery requests (see Exhibits 2-26) and still refuses to comply. As at the date of this filing of this Motion to Compel, 28 days have elapsed, significantly prejudicing Applicant's right to a fair trial. In order to prepare for trial, which is currently set of for 21st December 2012, Applicant must have the cooperation of Opposer as Discovery is pursued. This cooperation must of necessity include the following the mandates of the Federal Rules of Civil Procedure. Opposer's cooperation is especially paramount to Applicant because Applicant is not a resident of the United States and, being a foreign resident residing in Australia, Applicant has no access whatsoever, to any of the materials in the possession, custody and control of Opposer. Applicant has complied fully with his Discovery obligations whereas Opposer has defiantly flaunted its Discovery obligations.

In general, Applicant submits for each of the below Interrogatories and Requests, that Opposer has offered the identically phrased objection for all of the Interrogatories and Requests it refused and failed to answer, that is, that "Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial." Applicant notes that this objection is in bad faith because it fails to particularize a single, relevant objection. In other words, this objection is a multi-pronged, catch-all, kitchen-sink objection designed to frustrate Applicant's legitimate discovery attempts. Put simply, if Opposer had a bona fide objection to a particular Interrogatory or Request, it would have stated it in plain terms, without offering a blanket multi-faceted objection which in most cases has two or more of the four objections mentioned as irrelevant and inappropriate.

Additionally, Applicant submits that Rule 26 of the Federal Rules of Civil Procedure provide for broad discovery. Under Rule 26(b)(1), "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." As a general matter, "relevance" for discovery purposes is broadly construed, and "information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Fed. R. Civ. P. 26(b)(1); see, e.g., *Lewis v. ACB Business Services, Inc.*, 135 F.3d 389, 402 (6th Cir. 1998) ("The scope of examination permitted under Rule 26 (b) is broader than that permitted at trial."). Courts have long held that pretrial discovery is "to be accorded a broad and liberal treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947) ("No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case.").⁷ It is respectfully submitted that all of Applicant's Discovery Requests and questions are relevant, proper, fair, probative and narrowly tailored.

Furthermore, Applicant submits for each of the below Interrogatories and Requests, that Applicant's Interrogatories and Requests are not harassing because they were served on Opposer *in response* to Opposer's Notice of Opposition. Opposer commenced this action by filing its Notice of Opposition, presumably because it had a good faith basis for opposing the registration of the COLOR WARS mark, and now it simply refuses and fails to answer relevant questions or to disclose anything other than product samples about its company or the use of the COLORWORX mark in commerce. Furthermore, a recurring theme throughout Opposer's Discovery responses (or lack thereof) is an absolute aversion to answering any questions or disclosing any information which would support or rebut the allegation that Opposer committed fraud on the United States Patent and Trademark Office by applying for and obtaining the COLORWORX registration. If Opposer did not commit fraud on the USPTO, then the most logical course of action would be to disclose all documents and answer all questions in relation to alleged fraud. In contrast, Opposer has done the opposite, concealing all evidence in relation to the COLORWORX mark save and except for product samples, which demonstrates a consciousness of guilt and an intent to obstruct justice. As shown in the Exhibit List, Applicant has given Opposer numerous opportunities to comply with its Discovery obligations and Opposer has blatantly violated the Federal Rules of Civil Procedure in refusing to comply.

MOTION TO COMPEL OPPOSER TO ANSWER INTERROGATORIES

Opposer has failed and indeed blatantly refused to answer each and every one of the nineteen (19) interrogatories served on it. Subdivision (a)(3) of section 37 of the Federal Rules of Civil Procedure makes clear that an evasive or incomplete answer is to be considered, for purposes of subdivision (a), a failure to answer. The courts have consistently held that they have the power to compel adequate answers. E.g., *Cone Mills Corp. v. Joseph Bancroft & Sons Co.*, 33 F.R.D. 318 (D.Del. 1963). This power is recognized and incorporated into the rule. The following lists the relevant interrogatory, the answer given by Opposer, and the reasons for the interrogatory's relevance to the Opposition and Petition for Cancellation and why Opposer's objections are invalid.

INTERROGATORY NO. 1 was in the following form:

Specify the date and describe the details of Opposer's first use of the "COLORWORX" mark on any works of color, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters and identifying all persons involved and all materials referring or relating to the usage.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial. Opposer has continuously used the COLORWORX mark in interstate commerce as a trademark for a variety of printing goods and printing services, including but not limited to, business cards, letterhead, sell sheets, rack cards, postcards, brochures and posters since August of 2002. Opposer refers Applicant to Opposer's document production produced on May 24, 2012 showing various other items Opposer uses its COLORWORX mark on including, but not limited to, various advertising tools and promotional items, financial tools and promotional items, financial tools, hospitality products, award products and business products.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 1 is relevant to the Opposition and Cancellation because it pertains to Opposer's use of the COLORWORX registration in commerce and the time of that use. While Opposer has

stated that the documents produced (shown in Exhibit 36) were used since August 2002, there is absolutely no breakdown or itemization of the date of use for each particular sample. Theoretically, this means that Opposer could have produced one sample in August 2002 and produced the rest of the samples in January 2011, thereby sustaining a fraud allegation that the COLORWORX mark, contrary to Opposer's declaration to the USPTO in order to obtain the COLORWORX registration, was not used in commerce at the time it applied for its registration (see Applicant's Motion to Amend Pleadings in Petition to Cancel in Exhibit 35).

The temporality of each use of Opposer's mark is also critical in determining the reputation and popularity of the COLORWORX mark in commerce, since, as Opposer alleges in its *Notice of Opposition*, "Opposer has established an outstanding reputation as to the quality of its products sold under the COLORWORX Mark" and "[b]y virtue of its sales of high-quality products bearing Opposer's Mark in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Mark and a valuable reputation" (see p. 6 of Exhibit 38).

In addition, in Applicant's (Petitioner's) Petition to Cancel the COLORWORX registration (Cancellation No. 92055374), Opposer (Registrant) offered the following alleged Affirmative Defences in its Registrant's Answers to Petition to Cancel dated 7 May 2012, reproduced in full in Exhibit 33:

AFFIRMATIVE DEFENSES

30. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.

31. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.

32. Petitioner is barred from seeking cancellation of Registrant's mark COLORWORX under the doctrines of laches, estoppel and waiver.

33. *Through Registrant's long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said*

mark has acquired a strong secondary meaning identifying the services provided by Registrant.

34. Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant's continued registration of its mark COLORWORX.

35. Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant's mark COLORWORX (emphasis added).

In this document, Opposer (Registrant) refers to its "long, substantial and widespread use, advertising and promotion in support of its mark, and the mark's "strong secondary meaning" and "goodwill."

Moreover, the Interrogatory asks Opposer to "identify all persons involved" in Opposer's first use of the "COLORWORX" mark in commerce. Opposer refused to identify *any* person involved in the first use of the COLORWORX mark in commerce. The question is not overbroad and harassing because the COLORWORX brand was first offered for sale by Admore, a small subsidiary of Opposer, in 2002. In its 2003 Annual Report, Opposer states that the COLORWORX brand was designed by Admore to "serve the short run color needs of [Opposer's] distributors" (p. 9, Exhibit 34D). This information was discovered through a public search of Opposer's website, which revealed its annual reports (see Exhibits 34A-34M). In this action Opposer has blatantly refused and failed to disclose *any* information about its company save and except for product samples bearing the COLORWORX mark (see Exhibits 36 & 42). In this light, the Interrogatory's focus on identifying all persons involved in the first use of the COLORWORX mark is narrowly tailored, highly relevant and very specific.

INTERROGATORY NO. 2 was in the following form:

Describe in detail the process, procedure, facts, material and information you use for each of the works of color offered for sale by you, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters, from the point at which a customer first contacts you to the point at which your customer is satisfied, including any system, process or procedure for satisfying dissatisfied customers.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 2 is relevant to the Opposition and Cancellation because Opposer has based its entire Opposition on the continuous use in interstate commerce of the mark COLORWORX "as a trademark for a variety of printing goods and printing services including, but not limited to, business cards, letterhead, rack cards, postcards, brochures, and posters ('Opposer's Goods')": *see* Exhibit 38, p.6.

In addition, in Applicant's (Petitioner's) Petition to Cancel the COLORWORX registration (Cancellation No. 92055374), Opposer (Registrant) offered the following alleged Affirmative Defences in its Registrant's Answers to Petition to Cancel dated 7 May 2012, reproduced in full in Exhibit 33:

AFFIRMATIVE DEFENSES

30. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.
31. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.
32. Petitioner is barred from seeking cancellation of Registrant's mark COLORWORX under the doctrines of laches, estoppel and waiver.
33. *Through Registrant's long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said mark has acquired a strong secondary meaning identifying the services provided by Registrant.*
34. *Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant's continued registration of its mark COLORWORX.*
35. *Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant's mark COLORWORX (emphasis added).*

In this document, Opposer (Registrant) refers to its “long, substantial and widespread use, advertising and promotion in support of its mark, and the mark’s “strong secondary meaning” and “goodwill.”

Opposer’s objections that the interrogatory is overbroad and harassing are invalid because Opposer itself identifies these products as “Opposer’s Goods” and there are only *six* goods identified, not ten or twenty. The interrogatory refers to these goods as “works of color,” a central issue in Petitioner’s Petition to Cancel the ColorWorx mark on the basis of being generic and descriptive because Opposer’s Goods are in fact works of color (*see* Exhibit 40s & 33). Moreover, Opposer claims its COLORWORX mark is “highly distinctive” (*see* Exhibit 32) and is “closely identified with Opposer’s Goods” (Exhibit 38, p.6). Information about how each of Opposer’s six goods is manufactured is critical to ascertaining the extent of customer involvement in the use and choice of color in the printing process, since Opposer itself advertises its printed goods as “economical four color process printing” and its printing process as a “gang run” commercial printing style (*ColorWorx website, see* Exhibit 39). Ascertaining who chooses the color of the goods and services (the customer or Ennis Inc), which colors are available, and at which stage of the printing process is highly relevant to the question of whether color is a descriptive and/or generic part of Opposer’s printing business. The question is not overbroad because it can be answered in a five or ten bullet points for each of Opposer’s Goods (e.g. customers brings in sample, sample is uploaded to a central computer system, etc).

INTERROGATORY NO. 3 was in the following form:

Identify and describe in detail each possible color choice, including black and white, you currently offer or have offered to your customers for each work of color you sell, advertise, promote or distribute, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters.

Opposer’s answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 3 is relevant to the Opposition and Cancellation because Opposer's very business is printing goods and printing services. Its very business is producing printed works of color such as business cards, letterhead, rack cards, postcards, brochures, and posters. It has filed a Notice of Opposition based on its "established... outstanding reputation as to the quality of its products sold under the COLORWORX Mark" and "[b]y virtue of its sales of high-quality products bearing Opposer's Mark in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Mark and a valuable reputation" (Exhibit 38, p. 6).

In addition, in Applicant's (Petitioner's) Petition to Cancel the COLORWORX registration (Cancellation No. 92055374), Opposer (Registrant) offered the following alleged Affirmative Defences in its Registrant's Answers to Petition to Cancel dated 7 May 2012, reproduced in full in Exhibit 33:

AFFIRMATIVE DEFENSES

30. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.

31. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.

32. Petitioner is barred from seeking cancellation of Registrant's mark COLORWORX under the doctrines of laches, estoppel and waiver.

33. *Through Registrant's long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said mark has acquired a strong secondary meaning identifying the services provided by Registrant.*

34. *Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant's continued registration of its mark COLORWORX.*

35. *Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant's mark COLORWORX (emphasis added).*

In this document, Opposer (Registrant) refers to its "long, substantial and widespread use, advertising and promotion in support of its mark, and the mark's "strong secondary meaning" and "goodwill."

The very trademark registration allegedly being confused, mistaken, deceived and/or diluted in this action bears the name COLORWORX. Therefore, it is obvious to any reasonable observer that color and the use of color are fair, reasonable and open subjects for investigation. Indeed, Opposer's own advertising material for the COLORWORX brand self-markets as "economical, four color process printing" (*see* Exhibits 36 & 42). It is highly relevant, therefore, to inquire as to which four colors are being used and/or whether there are more than four colors being used in Opposer's printing business and, if so, which colors they are. It is respectfully submitted that Opposer simply refused to answer the question because it would lead to evidence that the mark COLORWORX is generic and/or descriptive and therefore ought be cancelled as a registered trademark.

INTERROGATORY NO. 4 was in the following form:

Define in detail your understanding of the phrases "color works" and "works of color."

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 4 is relevant to the Opposition and Cancellation because, to state the blaring obvious, Opposer's COLORWORX registration is the subject matter of the action and the name of Opposer's printing business. Answering questions about Opposer's understanding of the phrases "color works" and "works of color," which are the common understandings of the compound word COLORWORX, goes to the heart of the action and Opposer's

Opposition. It simply defies logic to object to a question on the basis of ostensible irrelevancy, overbreadth, harassment and being not reasonably calculated to lead to the discovery of evidence admissible at trial. This objection is a perfect example of Opposer's failure to answer; it has stated four objections none of which are even remotely valid or meritorious. Opposer's refusal to answer questions about its own understanding of the name of its own brand is simply ludicrous, deceptive, evasive and fraudulent. The question is precise, narrowly tailored, highly relevant and probative. Opposer's failure to answer is a textbook example of abuse of the Discovery process and why its Opposition ought be struck out as frivolous, trivial, without foundation and fraudulent.

INTERROGATORY NO. 5 was in the following form:

Identify the media in or through which Opposer advertises or promotes its works of color, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters, under or with the "COLORWORX" mark.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial. Subject to, and without waiving, the foregoing objections, Opposer answers as follows: Opposer has continuously used the COLORWORX mark in interstate commerce as a trademark for a variety of printing goods and printing services, including but not limited to, business cards, letterhead, sell sheets, rack cards, postcards, brochures and posters since August of 2002. Opposer refers Applicant to Opposer's document production produced on May 24, 2012 showing various other items Opposer uses its COLORWORX mark on including, but not limited to, various advertising tools and promotional items, financial tools and promotional items, financial tools, hospitality products, award products and business products.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 5 is relevant to the Opposition and Cancellation because the media in or through which Opposer advertises or promotes its works of color will determine the nature and extent of the reputation and good will of the COLORWORX brand. Opposer filed a Notice of

Opposition based on its “established... outstanding reputation as to the quality of its products sold under the COLORWORX Mark” and “[b]y virtue of its sales of high-quality products bearing Opposer’s Mark in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Mark and a valuable reputation” (see Exhibit 38, p. 6).

In addition, in Applicant’s (Petitioner’s) Petition to Cancel the COLORWORX registration (Cancellation No. 92055374), Opposer (Registrant) offered the following alleged Affirmative Defences in its Registrant’s Answers to Petition to Cancel dated 7 May 2012, reproduced in full in Exhibit 33:

AFFIRMATIVE DEFENSES

30. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.

31. Petitioner’s Petition to Cancel fails to state any claim upon which relief may be granted.

32. Petitioner is barred from seeking cancellation of Registrant’s mark COLORWORX under the doctrines of laches, estoppel and waiver.

33. *Through Registrant’s long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said mark has acquired a strong secondary meaning identifying the services provided by Registrant.*

34. *Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant’s continued registration of its mark COLORWORX.*

35. *Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant’s mark COLORWORX (emphasis added).*

In this document, Opposer (Registrant) refers to its “long, substantial and widespread use, advertising and promotion in support of its mark, and the mark’s “strong secondary meaning” and “goodwill.”

Opposer’s answer is evasive, non-responsive, and incomplete because it fails to identify the media in or through which Opposer advertises or promotes its goods. Rather, it

simply lists the *date from which* Opposer's goods were sold and lists some *examples* of the type of goods sold. No specific *media* are ever mentioned, rendering the answer evasive, non-responsive and incomplete. The answer is highly relevant, narrowly tailored and specific because the use of the COLORWORX mark in commerce lies at the heart of the Opposition. All Opposer need have answered was, for example, "business cards were advertised in local newspapers in the Dallas, Texas, area from 2002-2004," "brochures were advertised on radio in New York City in March of 2005," and so on. But it failed to do this, giving a disingenuous, dishonest and evasive answer which was designed to mislead and deceive the Applicant and the TTAB. Furthermore, the interrogatory is not harassing because Opposer asked the same question of Applicant in Opposer's First Set of Interrogatories to Applicant (*see* Exhibit 29) and Applicant answered completely and honestly.

INTERROGATORY NO. 6 was in the following form:

Identify each person or the entity whom distributed, circulated, sold, or advertised your works of color, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters, in connection with the "COLORWORX" mark, including whether any contract exists for distribution, circulation, sale, or advertisement.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 6 is relevant to the Opposition and Cancellation because Opposer is a large corporation with over 5,000 employees across the United States and Mexico working through a number of subsidiaries. It has two segments: the Print Segment and Apparel Segment and ascertaining the precise distribution, advertising and/or promotional chain through which the COLORWSROX brand is sold is central to its reputation, profitability and popularity in the marketplace. Applicant has subsequently learned through perusal of Opposer's

Annual Reports since this Interrogatory was served that the COLORWORX brand is sold, distributed and marketed through a subsidiary of Opposer called Admore (see Ennis Inc, 2003 Annual Report, p. 9, in Exhibit 34D). Admore is a small company specializing in presentation products and ascertaining which persons run the COLORWORX brand is highly relevant and necessary to discovering evidence admissible at trial. Opposer has simply refused to answer the question because its COLORWORX brand is a mere shadow of what it alleged in its pleadings and therefore Opposer desires to conceal the fact that its has filed falsified and fraudulent pleadings with the TTAB. Furthermore, the interrogatory is not harassing because Opposer asked the same question of Applicant in in Opposer's First Set of Interrogatories to Applicant (*see* Exhibit 29) and Applicant answered completely and honestly.

INTERROGATORY NO. 7 was in the following form:

Identify all facts, laws, information, or materials that Opposer relies on to support the contention that all or part of the mark "COLOR WARS" is confusingly similar to the mark "COLORWORX[®]".

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 7 is not overbroad, harassing or premature because Opposer possesses a great deal of evidence which is readily available and accessible to Opposer but which it simply refuses to disclose. Such evidence includes its internal memoranda, internal emails, Annual Reports, tax returns filed with the Internal Revenue Service, internal marketing analyses, customer opinion surveys, and customer demographic data related to the OCLORWORX mark, none of which Opposer has served on Applicant. Opposer has been in business for 103 years and to suggest that Opposer has no accessible filing system or computerized storage facility which can easily store, save and send electronic documents such as those

mentioned above is simply preposterous (*see* Annual Reports in Exhibit 34). Opposer is again concealing evidence because it has realized it has filed a frivolous action with no good faith basis or factual foundation. Furthermore, the interrogatory is not harassing because Opposer asked the same question of Applicant in Opposer's First Set of Interrogatories to Applicant (*see* Exhibit 29) and Applicant answered completely and honestly.

INTERROGATORY NO. 8 was in the following form:

Identify all facts, laws, information, or materials that Opposer relies on to support the contention that there is a likelihood of confusion and/or deception between any trademark, service mark, domain name, or other designation of Opposer and any trademark, service mark, domain name, or other designation of Applicant.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 8 is not overbroad, harassing or premature for the same reasons as those identified for INTERROGATORY NO. 7. Furthermore, the interrogatory is not harassing because Opposer asked the same question of Applicant in in Opposer's First Set of Interrogatories to Applicant (*see* Exhibit 29) and Applicant answered completely and honestly.

INTERROGATORY NO. 9 was in the following form:

Describe in detail the similarities and/or points of confusion and/or deception between the word "wars" and the word "works."

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 9 is relevant to the Opposition and Cancellation because the words “wars” and “worx” are the dominant points of difference between the COLOR WARS and COLORWORX marks. Each mark shares the word “COLOR” and ascertaining Opposer’s understanding of the similarities and/or points of confusion and/or deception between the word “wars” and the word “works” will assist Applicant in marshalling his evidence and understanding the basis of Opposer’s case. Moreover, in Opposer’s *Notice of Opposition*, Opposer states that “Applicant’s Mark is the same as or substantially the same as, Opposer’s Mark, including in visual appearance and in pronunciation” (p.7, Exhibit 38). Ascertaining in greater detail the basis for such alleged similarities and/or sameness will assist Applicant in marshalling his evidence and understanding the basis of Opposer’s case. There is simply no legal or factual basis for any of Opposer’s objections to answering this interrogatory and the only inference that can be drawn from Opposer’s answer is that Opposer is being deliberately evasive in order to conceal filing a frivolous Opposition proceeding. A bona fide Opposer would answer this question unreservedly.

INTERROGATORY NO. 10 was in the following form:

Identify all facts, laws, information, or materials that Opposer relies on to support the contention that Applicant’s mark is the same as, or substantially the same as, Opposer’s mark in visual appearance and in pronunciation.

Opposer’s answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer’s Notice of Opposition and Opposer’s document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 10 is relevant to the Opposition and Cancellation for the same reasons identified in relation to INTERROGATORY NO. 9. Again, Opposer is being deliberately evasive in concealing evidence such as customer opinion surveys, customer geographical data, and customer demographic data which would shed light on Opposer's customers' knowledge, concerns and attitudes toward the COLORWORX brand. Furthermore, the interrogatory is not harassing because Opposer asked the same question of Applicant in Opposer's First Set of Interrogatories to Applicant (*see* Exhibit 29) and Applicant answered completely and honestly.

INTERROGATORY NO. 11 was in the following form:

Identify each officer of any company and/or business connected with the design, sale, marketing, advertising, promotion and distribution of works of color connected to the "COLORWORX" mark, including each officer's name, title, address, and job duties.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 11 is relevant to the Opposition and Cancellation because the identification of officers connected to the "COLORWORX" mark will lead to the discovery of evidence admissible at trial. Such officers can provide evidence as to the creation of the COLORWORX concept, its commercialization in practice, sales figures, geographical areas, target markets, distribution practices, marketing and advertising strategies and practices, and information about Opposer's competitors. In short, identification of the officers involved in managing and controlling the COLORWORX brand in commerce will shed a great deal of light on the brand's reputation and goodwill and whether Applicant's COLOR WARS mark will be likely to cause confusion, mistake, deception and/or dilution in the marketplace.

Moreover, this question is not overbroad, harassing or unduly burdensome because the COLORWORX brand was first offered for sale and is currently managed by Admore, a small subsidiary of Opposer, in 2002. In its 2003 Annual Report, Opposer states that the COLORWORX brand was designed by Admore to “serve the short run color needs of [Opposer’s] distributors” (p. 9, Exhibit 34D). This information was discovered through a public search of Opposer’s website, which revealed its annual reports. In this action Opposer has blatantly refused and failed to disclose *any* information about its company save and except for product samples bearing the COLORWORX mark. In this light, the Interrogatory’s focus on identifying all officers involved in the design, sale, marketing, advertising, promotion and distribution of products and services connected to the COLORWORX mark is narrowly tailored, highly relevant and very specific. It should be borne in mind that Opposer refused to identify *any* officer involved in the use of the COLORWORX mark in commerce. Furthermore, the interrogatory is not overbroad or harassing because Opposer asked a very similar question of Applicant in Opposer’s First Set of Interrogatories to Applicant (*see* Exhibit 29) and Applicant answered completely and honestly.

INTERROGATORY NO. 12 was in the following form:

Identify each person who participated in the selection, design and adoption of the "COLORWORX" mark.

Opposer’s answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 12 is relevant to the Opposition and Cancellation because, quite simply, it pertains to particulars of the creation of the COLORWORX mark, which Opposer alleges forms the basis of its Opposition proceeding. If the question is overbroad, harassing, irrelevant and

not reasonably calculated to lead to the discovery of evidence admissible at trial, then Opposer's entire Opposition is misconceived, frivolous, vexatious and unmeritorious. On the contrary, the question is highly relevant, narrowly tailored, and reasonably calculated to lead to the discovery of highly probative evidence admissible at trial. Opposer's answer to this interrogatory is a perfect example of why Opposer's pleadings should be struck out. It has filed a Notice of Opposition and then refuses to answer even the most basic questions about the Opposition. This also bears on the question of Opposer's commission of fraud on the USPTO, which Opposer raised – and denied – in Requests 25-27 of its Opposer's First Request for Admissions to Applicant dated April 26, 2012 and shown in full in Exhibit 27:

REQUEST NO. 25: Statements made in Ennis's application to the United States Patent and Trademark Office to register the mark COLORWORX[®] were not false or misleading.

RESPONSE:

REQUEST NO. 26: Statements made in Ennis's application to the United States Patent and Trademark Office to register the mark COLORWORX[®] did not constitute a knowingly false representation of material fact.

RESPONSE:

REQUEST NO. 27: Ennis did not commit fraud on the United States Patent and Trademark Office in obtaining the registration for the mark COLORWORX[®].

RESPONSE:

If Opposer did not commit fraud on the USPTO to register the COLORWORX mark by making false and misleading statements which constituted knowingly false representations of material facts, then it would have no problem answering questions about the creation of the COLORWORX mark. It refuses and fails to answer such questions, therefore the only inference that can be drawn is that Opposer wishes to conceal evidence and conceal its fraud, thereby obstructing justice and engaging in a conspiracy to commit fraud. Furthermore, the interrogatory is not overbroad or harassing because Opposer asked the same question of Applicant in Opposer's First Set of Interrogatories to Applicant (*see* Exhibit 29) and Applicant answered completely and honestly.

INTERROGATORY NO. 13 was in the following form:

Describe in detail the role and contributions made that each person identified in Interrogatory number 12 played in the selection, design and adoption of the "COLORWORX" mark.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 13 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of INTERROGATORY NO. 12. If Opposer will not even answer questions about the roles played and contributions made by those involved in creating the COLORWORX brand, then its entire pleadings should be struck out. This question also bears significantly on the question of Opposer's commission on fraud on the USPTO in obtaining the COLORWORX registration (*see* Exhibit 40) and reference is made to Opposer's Interrogatories as cited in respect of INTERROGATORY NO. 12 and the arguments related thereto.

INTERROGATORY NO. 14 was in the following form:

Describe in detail the rationale, philosophy and ideas behind the selection, design and adoption of each feature and/or part of the "COLORWORX" mark, including the logo, words, style of lettering, visual appearance, sound, compound/composite nature and misspelling.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 14 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of INTERROGATORY NO. 12. If Opposer will not even answer questions about the rationale, philosophy and ideas behind the selection, design and adoption of each feature and/or part of the "COLORWORX" mark, then its entire pleadings should be struck out. This question also bears significantly on the question of Opposer's commission on fraud on the USPTO in obtaining the COLORWORX registration and reference is made to Opposer's Interrogatories as cited in respect of INTERROGATORY NO. 12 and the arguments related thereto.

INTERROGATORY NO. 15 was in the following form:

Describe in detail your understanding of the connections between each aspect of your answer to Interrogatory No. 14 and the works of color you sell, promote, advertise and distribute, including but not limited to business cards, letterhead, rack cards, postcards, brochures, and posters.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 15 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of INTERROGATORY NO. 12. If Opposer will not even answer questions about the connections between the rationale, philosophy and ideas behind the selection, design and adoption of each feature and/or part of the "COLORWORX" mark and Opposer's goods and services, then its entire pleadings should be struck out. Its entire Opposition is based on the COLORWORX mark and its connections with Opposer's goods and services and the "valuable reputation" and "goodwill" it has built up since August 2002 (see *Notice of Opposition* in Exhibit 38). This question also bears significantly on the question of Opposer's commission on fraud on the USPTO in obtaining the COLORWORX

registration and reference is made to Opposer's Interrogatories as cited in respect of INTERROGATORY NO. 12 and the arguments related thereto.

INTERROGATORY NO. 16 was in the following form:

Identify every opinion, legal or otherwise, requested or received by you, regarding the right to use the marks "COLORWORX," "COLOR WORX," "COLORWORKS," or "COLOR WORKS," including the identity of the persons requesting the opinion, the date and substance of the opinion, and the persons receiving the opinion.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 16 is relevant to the Opposition and Cancellation because Opposer has received numerous sources of legal opinion and advice since it first commenced using the COLORWORX mark in commerce and especially during the time it applied for and obtained registration of the COLORWORX trademark. Opposer applied for and obtained registration of its mark with the law firm Pitts and Eckl, P.C., attorneys Conrad C. Pitts and Sean L. Collin the attorneys of record. Opposer then engaged Chalker Flores LLP, with attorney Edwin Flores the attorney of record, and, at least in this Opposition and Applicant's Cancellation Petition in respect of the COLORWORX mark, attorneys Scott A. Myer and Thomas G. Jacks performing all legal work on behalf of Opposer. Legal opinions relating to the COLORWORX mark are relevant to this Opposition because Opposer rendered the validity of its COLORWORX registration a material fact in issue in its Notice of Opposition pleadings, when it alleged that "Opposer is the owner of U.S. Trademark Registration No. 3,372,884 for the mark COLORWORX[®] ('Opposer's Mark'). Opposer's Mark is valid, subsisting, and in full force and effect" (p.6, Exhibit 38).

In addition, in Applicant's (Petitioner's) Petition to Cancel the COLORWORX registration (Cancellation No. 92055374), Opposer (Registrant) offered the following

alleged Affirmative Defences in its Registrant's Answers to Petition to Cancel dated 7 May 2012, reproduced in full in Exhibit 33:

AFFIRMATIVE DEFENSES

30. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.

31. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.

32. Petitioner is barred from seeking cancellation of Registrant's mark COLORWORX under the doctrines of laches, estoppel and waiver.

33. *Through Registrant's long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said mark has acquired a strong secondary meaning identifying the services provided by Registrant.*

34. *Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant's continued registration of its mark COLORWORX.*

35. *Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant's mark COLORWORX (emphasis added).*

In this document, Opposer (Registrant) refers to its "long, substantial and widespread use, advertising and promotion in support of its mark, and the mark's "strong secondary meaning" and "goodwill."

More significantly, Applicant (Petitioner) has alleged in his Petition to Cancel the COLORWORX mark (*see* Exhibit 40), more particularly in his Motion to Amend Pleadings (*see* Exhibit 35), that Opposer (Registrant) committed fraud on the USPTO in applying for and obtaining the COLORWORX registration. Applicant also alleges that Opposer's (Registrant's) attorneys conspired with Opposer (Registrant) to commit fraud on the USPTO by applying for and obtaining the COLORWORX registration when both parties, that is, Ennis Inc and its attorneys (past and present), knew or ought to have known that Opposer (Registrant) did not have the substantially exclusive right to use the COLORWORX mark in respect of printing goods and services.

As regards Opposer's assertion of the attorney-client and work-product privileges, it is settled law that there is no blanket privilege covering all attorney-client communications. *Wesp v. Everson*, 33 P.3d 191, 197 (Colo. 2001). The privilege must be claimed with respect to each specific communication at issue, and the Board must examine each communication independently. Of course, the party asserting the privilege bears the burden of establishing its application to a particular communication (*Id.* at 198). Opposer has refused to identify *any* document over which it claims privilege and it is submitted that Opposer be compelled, as a matter of law, to identify all documents in its possession over which it claims privilege. Further, under the control group test, the communication must be made by an employee of Opposer who is in a position to control or take a substantial part in the determination of corporate action in response to legal advice for the privilege to attach. Only such employees qualify as the "client" for attorney-client privilege purposes. Under the subject matter test, a communication may be privileged if it is made for the purpose of securing legal advice for the corporation, the employee making the communication does so at a superior's request or direction, and the employee's responsibilities include the subject matter of the communication with counsel. It is respectfully submitted that these matters must be addressed by Opposer after it has properly identified the documents to which privilege attaches, including the date of the document, its author and recipient, and a summary of the contents of the document.

Additionally, it should be borne in mind that Courts narrowly construe the attorney-client privilege because it limits full disclosure of the truth. *PSE Consulting, Inc. v. Frank Mercede & Sons, Inc.*, 838 A.2d 135, 167 (Conn. 2004); *In re Bryan*, 61 P.3d 641, 656 (Kan. 2003); *E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 718 A.2d 1129, 1138 (Md. 1998); *Whitehead v. Nev. Comm'n on Judicial Discipline*, 873 P.2d 946, 948 (Nev. 1994); *In re Grand Jury Subpoena Dated June 30, 2003*, 770 N.Y.S.2d 568, 572 (N.Y. Sup. Ct. 2003); *Callahan v. Nystedt*, 641 A.2d 58, 61 (R.I. 1994); *Lane*, 640 N.W.2d at 798 (quoting cases). Further, while the privilege protects the content of an attorney-client communication from disclosure, it does not protect from disclosure the

facts communicated. *Mackey v. IBP, Inc.*, 167 F.R.D. 186, 200 (D. Kan. 1996). It is submitted that Opposer ought be compelled to reveal these facts.

Moreover, Applicant relies on the crime-fraud exception to obviate both the attorney-client and work product privileges. While opinion work product receives almost absolute protection against discovery, in this case Applicant has reasonable grounds for believing Opposer's attorneys have committed fraud since, in this proceeding, Opposer's attorneys' conclusions, mental impressions or opinions are at issue in the case and there is a compelling need for their discovery (see *Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992)). It is respectfully submitted that since, at the time of the lawyer-client communications the client, Ennis Inc, was participating in a fraud or crime, the Board can find that there is no privilege protection. Through its refusal and failure to answer the overwhelming majority of Applicant's Discovery requests, Opposer has deliberately and egregiously attempted to evade and frustrate Applicant's legitimate attempts to secure discovery. As demonstrated by Applicant's email correspondence to Opposer (see Exhibit 37), Opposer has been given numerous opportunities to disprove the allegation that it committed fraud on the USPTO in applying for and obtaining the COLORWORX registration, yet it has steadfastly refused to produce any documents, thereby concealing evidence, demonstrating a consciousness of guilt and obstructing justice. As Applicant stated to Opposer, it would seem obvious to any reasonable observer that if Opposer and its attorneys have not committed fraud on the United States Patent and Trademark Office in applying for and obtaining the COLORWORX registration, then surely the best way to prove innocence is to disclose all documents concerning the registration and Opposer's communications to its attorneys. Applicant is entitled to prove his case to the Board and the crime-fraud exception to the attorney-client and work-product privileges enable the Board to obviate the protection of both privileges.

As to the work product doctrine, Applicant relies on *Hickman v. Taylor*, 329 U.S. 495 (1947) and seeks an Order requiring Opposer to reveal its tangible work product. The basis for the order is that Applicant resides in Australia and has substantial need of the opinions, documents and things requested for the preparation of his case and that he is

unable without undue hardship to obtain the substantial equivalent of the materials by other means. As submitted above, Applicant seeks that Opposer identify the date, author, recipient and summary of all communications Opposer asserts fall under the attorney-client and work-product privileges, since these elements are not covered by the privileges.

Moreover, as to the discoverability of trademark search reports, the Board has taken the position that while the contents of a search report are not privileged from discovery, an attorney's opinion as to the legal significance of the report is protected by the attorney-client privilege: *Fisons, Ltd v. Capability Brown, Ltd*, 209 U.S.P.Q. 167 (T.T.A.B 1980).

INTERROGATORY NO. 17 was in the following form:

Describe in detail any instances in which you have been involved which have called into question, created conflict in respect of, or challenged the right to use the marks "COLORWORX," "COLOR WORX," "COLORWORKS," or "COLOR WORKS."

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 17 is relevant to the Opposition and Cancellation because Opposer claims the exclusive right to use the mark COLORWORX in related to printing goods and services and has filed at least two Opposition proceedings with the USPTO against traders whose marks call into question, create conflict in respect of, or challenge Opposer's right to use the COLORWORX mark. The two Opposition proceedings are the present one, Opposition No. 91203884, and Opposition No. 91203773, which Opposer filed against the "PSC COLOR WORKS" mark, which was applied for by the Pioneer Supply Company. What is most disturbing is that Opposer's Attorney Thomas G. Jacks, referred to this proceeding in the Discovery Conference which Elizabeth Dunn, attorney for the board,

participated in on April 24, 2012 together with Applicant. Mr Jacks obviously had and has intimate knowledge of Opposition No. 91203773 and yet he and his law firm refuse to answer this highly relevant, narrowly tailored question about the issue. The corollary is that Opposer and its attorneys are attempting to conceal fraud and have engaged in a conspiracy to commit fraud. If Opposer and its attorneys refuse to answer even basis questions about the COLORWORX mark, in respect of which there is independent, TTAB-corroborated evidence, there is no telling what lengths Opposer and its attorneys will go to conceal fraud and perpetuate the conspiracy to commit fraud. Doubtless, there have been other occasions wherein Opposer has been involved which call into question, conflict with and challenge its right to use the COLORWORX mark, which Opposer refuses to disclose.

INTERROGATORY NO. 18 was in the following form:

Describe in detail any plans for future expansion, including but not limited to, expansion of marketing lines, services, customer base or geographical areas served, and goods and services in international classes 16 and 41.

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 18 is relevant to the Opposition and Cancellation because nowhere in any Annual Report of Opposer for the previous 12 years is there even a single mention of expanding Opposer's goods and services to include goods and services listed in international class 41 (*see* Exhibit 34). Opposer has filed a Notice of Opposition opposing Applicant's use of the COLOR WARS brand in international classes 16 and 41 yet there is simply no basis, good faith or otherwise, for Opposer to have filed an Opposition to Applicant's class 41 trademark application. Moreover, as discussed below, this issue, Opposer's intent to expand its business to include class 41 goods, was one of only five Requests for Admissions which Opposer refused to answer point-blank. It was simply too dangerous

for Opposer to answer the question because Opposer (and its attorneys) had full knowledge that it was committing perjury, fraud and had filed a frivolous Opposition by alleging that it intended to expand its goods and services to include class 41 goods and services. With respect to class 16 goods and services, it seems that Opposer does have a bona fide intent to trade in such goods and therefore the question is less dangerous for Opposer to answer. Yet it did not, presumably because of the connection to the fraud, perjury and lack of good faith pleadings Opposer filed in respect of class 41.

INTERROGATORY NO. 19 was in the following form:

Identify and describe all facts, laws, information, or materials that Opposer found, discovered, became aware of and/or knew about before, during and after its registration of the COLORWORX mark involving use of the marks "COLORWORX," "COLOR WORX," "COLORWORKS," and "COLOR WORKS."

Opposer's answer was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

In so answering, Opposer refuses to and fails to answer. INTERROGATORY NO. 19 is relevant to the Opposition and Cancellation for the same reasons and submissions relied on by Applicant in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 16, which are incorporated herein by reference.

MOTION TO COMPEL OPPOSER TO ADMIT OR DENY QUESTIONS

Opposer has blatantly refused to answer five (5) of Applicant's Requests for Admissions. Significantly, four out of the five Requests pertains to the subject of Opposer's alleged fraud in obtaining its COLORWORX registration. In general, Opposer's response to Applicant's Discovery requests have been confined to the barest minimum of responses

which fall well below standards of reasonableness normally expected under the Federal Rules of Civil Procedure and relevant case law. With respect to the five Requests for Admissions reproduced below, however, Opposer has simply *refused* to answer, signifying a willful element or deliberate disobedience to the Discovery rules. It is respectfully submitted that this suggests a consciousness of guilt concerning Opposer's commission of fraud on the USPTO in applying for and obtaining its COLORWORX registration. All other Requests for Admissions were answered, except for the four pertaining to the subject of fraud (and one Request pertaining to Opposer's Opposition to Applicant's applied-for goods and services in international class 41). The following lists the relevant Request for Admissions, the answer given by Opposer, and the reasons for the Request's relevance to the Opposition and Petition for Cancellation and why Opposer's objections are invalid.

REQUEST TO ADMIT OR DENY NO. 33 was in the following form:

Opposer has no intention of expanding its business to include goods and services in international class 41.

Opposer's response was as follows:

Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Admit or Deny No. 33 is relevant to the Opposition because *Opposer* filed its Notice of Opposition specifically opposing Applicant's applied-for Goods and Services in international class 41. The question is relevant because, by so pleading in its Notice of Opposition, Opposer must have had a good faith basis for opposing Applicant's registration. To file a Notice of Opposition against a particular class without a good faith basis amounts to professional misconduct. Coupled with Opposer's failure to answer INTERROGATORY NO. 18 which also pertains to Opposer's plans for future expansion in class 41, the inescapable inference is that Opposer filed its Opposition without any evidentiary foundation whatsoever. Indeed, nowhere in any Annual Report of Opposer for the previous 12 years

is there even a single mention of expanding Opposer's goods and services to include goods and services listed in international class 41 (*see* Exhibit 34). Opposer's response to this Request was one of only five Requests for Admissions which Opposer refused to answer point-blank. It was simply too dangerous for Opposer to answer the question because Opposer (and its attorneys) had full knowledge that it was committing perjury, fraud and had filed a frivolous Opposition by alleging that it intended to expand its goods and services to include class 41 goods and services. With respect to class 16 goods and services, it seems that Opposer does have a bona fide intent to trade in such goods and therefore the question is less dangerous for Opposer to answer. Yet it did not, presumably because of the connection to the fraud, perjury and lack of good faith pleadings Opposer filed in respect of class 41.

REQUEST TO ADMIT OR DENY NO. 38 was in the following form:

Prior to applying to the United States Trademark and Patent Office for registration of its mark, Opposer, by itself and through its attorneys and agents, conducted a thorough check and search of all commercial uses of the words "Color Works" and "ColorWorx" in the United States, including but not limited to internet searches and searches of the USPTO trademark database.

Opposer's response was as follows:

Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Admit or Deny No. 38 is relevant to the Opposition because it relates to Opposer's registration upon which it based its Notice of Opposition. The circumstances surrounding the obtaining of the COLORWORX registration are highly relevant because Opposer's entire COLORWORX products line is now advertised, promoted, marketed and sold with the COLORWORX mark in full prominence with the registered "®" symbol. In other words, Opposer relies on its trademark registration to boost sales through the commercial legitimization associating with the USPTO procures.

As noted above in relation to INTERROGATORY NO. 12, if the Request is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial, then Opposer's entire Opposition is misconceived, frivolous, vexatious and unmeritorious. On the contrary, the Request is highly relevant, narrowly tailored, and reasonably calculated to lead to the discovery of highly probative evidence admissible at trial. Opposer's answer to this Request is a perfect example of why Opposer's pleadings should be struck out. It has filed a Notice of Opposition and then refuses to answer even the most basic questions about the Opposition. This also bears on the question of Opposer's commission of fraud on the USPTO, which Opposer raised – and denied – in Requests 25-27 of its Opposer's First Request for Admissions to Applicant dated April 26, 2012 and shown in full in Exhibit 27:

REQUEST NO. 25: Statements made in Ennis's application to the United States Patent and Trademark Office to register the mark COLORWORX[®] were not false or misleading.

RESPONSE:

REQUEST NO. 26: Statements made in Ennis's application to the United States Patent and Trademark Office to register the mark COLORWORX[®] did not constitute a knowingly false representation of material fact.

RESPONSE:

REQUEST NO. 27: Ennis did not commit fraud on the United States Patent and Trademark Office in obtaining the registration for the mark COLORWORX[®].

RESPONSE:

If Opposer did not commit fraud on the USPTO to register the COLORWORX mark by making false and misleading statements which constituted knowingly false representations of material facts, then it would have no problem answering questions about the creation of the COLORWORX mark. It refuses and fails to answer such questions, therefore the only inference that can be drawn is that Opposer wishes to conceal evidence and conceal its fraud, thereby obstructing justice and engaging in a conspiracy to commit fraud.

REQUEST TO ADMIT OR DENY NO. 39 was in the following form:

At the time it applied for registration of its mark with the United States Trademark and Patent Office, Opposer was aware and had knowledge that other traders outside the printing industry used the words “Color Works” and/or “ColorWorx” to indicate the origin of their goods and services.

Opposer’s response was as follows:

Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Applicant relies on and incorporates by reference the same reasons and submissions it advanced in respect of Request to Admit or Deny No. 38 above.

REQUEST TO ADMIT OR DENY NO. 40 was in the following form:

At the time it applied for registration of its mark with the United States Trademark and Patent Office, Opposer was aware and had knowledge that other traders in fields related to the printing industry used the words “Color Works” and/or “ColorWorx” to indicate the origin of their goods and services.

Opposer’s response was as follows:

Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Applicant relies on and incorporates by reference the same reasons and submissions it advanced in respect of Request to Admit or Deny No. 38 above.

REQUEST TO ADMIT OR DENY NO. 41 was in the following form:

At the time it applied for registration of its mark with the United States Trademark and Patent Office, Opposer was aware and had knowledge that other traders in fields closely related to the printing industry used the words “Color Works” and/or “ColorWorx” to indicate the origin of their goods and services.

Opposer's response was as follows:

Opposer objects to the request as it is irrelevant, harassing, and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Applicant relies on and incorporates by reference the same reasons and submissions it advanced in respect of Request to Admit or Deny No. 38 above.

MOTION TO COMPEL OPPOSER TO PRODUCE DOCUMENTS

Opposer has provided satisfactory answers and/or produced documents to only eight of the 43 Requests for Production made of it by Applicant. It is submitted that this refusal to produce suggests a consciousness of guilt on the part of Opposer with respect to fraud and corroboration that Opposer filed a frivolous action with no good faith and/or legal basis. The following lists the relevant Request for Production, the answer given by Opposer, and the reasons for the Request's relevance to the Opposition and Petition for Cancellation and why Opposer's objections are invalid.

REQUEST TO PRODUCE NO. 5 was in the following form:

Produce all photographs, videotapes, drawings, and other tangible things that pertain in any way to the subject matter of this suit.

Opposer's response was as follows:

None at this time.

In so answering, Opposer refuses to and fails to answer. Request No. 5 is relevant to the Opposition and Cancellation because Opposer's COLORWORX mark contains a logo/design element which is clearly visible in all of Opposer's advertising and promotional material which bears the COLORWORX mark (*see* Exhibits 36 & 42). In official correspondence with the USPTO, Opposer described its logo/design as a "crosshairs logo" (*see* Exhibit 46). Moreover, in Applicant's First Request for

Admissions, Opposer answered that this logo/design, independent of the words COLORWORX, was “distinctive” and “highly distinctive” and capable of distinguishing Opposer’s goods and services from the goods and services of other traders (*see* Exhibit 32). To file an Opposition based on a trademark registration which involves a logo/design and then to state, on oath, that Opposer has no drawings to produce, is simply dishonest, fraudulent and perjurious, and demonstrates a clear intent to obstruct justice and conceal evidence.

REQUEST TO PRODUCE NO. 6 was in the following form:

Produce copies of complaints or petitions in any action filed by or against You in which the allegations are similar to those of this suit.

Opposer’s response was as follows:

Opposer objects to this Request as Applicant has equal or greater access to the complaint or petition filed in *Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis Inc.*; Cancellation No. 92055374.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 6 is relevant to the Opposition and Cancellation because for the same reasons and submissions advanced in respect of INTERROGATORY NO. 17. That is, Opposer claims the exclusive right to use the mark COLORWORX in related to printing goods and services and has filed at least two Opposition proceedings with the USPTO against traders whose marks call into question, create conflict in respect of, or challenge Opposer’s right to use the COLORWORX mark. The two Opposition proceedings are the present one, Opposition No. 91203884, which Opposer referred to in its answer, and Opposition No. 91203773, which **Opposer** filed against the “PSC COLOR WORKS” mark, which was applied for by the Pioneer Supply Company, which Opposer simply omitted to mention. As noted above, what is most disturbing is that Opposer’s Attorney Thomas G. Jacks, referred to this proceeding in the Discovery Conference which Elizabeth Dunn, attorney for the board, participated in on April 24, 2012 together with Applicant. Mr Jacks obviously had and has intimate knowledge of Opposition No. 91203773 and yet he and his law firm failed to answer any questions and produce any

documents relating to this action. The corollary is that Opposer and its attorneys are attempting to conceal fraud and have engaged in a conspiracy to commit fraud. If Opposer and its attorneys refuse to answer even basic questions about the COLORWORX mark, in respect of which there is independent, TTAB-corroborated evidence, there is no telling what lengths Opposer and its attorneys will go to conceal fraud and perpetuate the conspiracy to commit fraud. Doubtless, there have been other occasions wherein Opposer has been involved which call into question, conflict with and challenge its right to use the COLORWORX mark, which Opposer refuses to disclose.

REQUEST TO PRODUCE NO. 8:

Produce all oral or written statements made by You or Your representatives concerning this suit.

Opposer's response was as follows:

None.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 8 is relevant to the Opposition and Cancellation because Applicant is entitled to know the full case against him. Opposer's answer is patently false and perjurious because, if true, it assumes there was never any written or email correspondence between Opposer's attorneys and between Opposer and Opposer's attorneys regarding any matter in this suit or in Applicant's Petition to Cancel the COLORWORX mark. Before Applicant filed his Motion to Amend Pleadings to include an allegation of fraud against Opposer in his Petition to Cancel the COLORWORX mark, Applicant wrote to Opposer's attorneys and asked them whether such an amendment could be done by consent. Opposer consulted with its attorneys and, approximately 10 days later, replied via email that it did not consent to the fraud allegation (*see* email correspondence in Exhibit 37). Applicant's fraud allegation would have generated a flurry of emails amidst the senior management at Opposer during those 10 days, especially given that Opposer is a public company listed on the New York Stock Exchange. Moreover, it also beggars belief to suggest that there was no written or email correspondence concerning Opposer's other Opposition

proceeding against the Pioneer Supply Company regarding the use of the "PSC COLOR WORKS" mark (Opposition No. 91203773). In this respect, Opposer's response of "none" is false, perjurious and designed to conceal incriminating evidence and evidence of fraud and to obstruct justice. A final reason the question is fair and relevant is because Opposer made the identical Request to Produce of Applicant in its "First Request for Production to Applicant" (see Exhibit 28).

REQUEST TO PRODUCE NO. 9:

Produce all documents and things relating to the creation, consideration, design, development, selection, adoption, and first use of the "COLORWORX" mark on any work of color (including black and white) or service.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 9 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 12, which are incorporated herein by reference. In short, it is respectfully submitted that Opposer refuses to produce documents related to the creation and origins of the COLORWORX mark because it stole the concept from other traders and passed it off as its own, alleging substantially exclusive use in respect to printing goods and printing services in its declarations to the USPTO, thereby committing fraud on the USPTO. If there was no fraud committed, Opposer should have no problem producing the relevant documents. Moreover, this Request is not harassing, overbroad or irrelevant because Opposer made the identical Request to Produce of Applicant in its "First Request for Production to Applicant" (see Exhibit 28).

REQUEST TO PRODUCE NO. 11:

Produce all documents and things relating to the geographic areas where services or works of color (including black and white) relating to Opposer's "COLORWORX" mark are advertised, marketed, sold, or promoted and the length of time each work of color (including black and white) or service has been advertised, marketed, sold, or promoted in each area.

Opposer's response was as follows:

Opposer is currently offering goods and services worldwide via the Internet and through qualified dealers. Opposer refers Applicant to Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Opposer has stated that it offers "goods and services worldwide via the Internet and through qualified dealers." This answer is incredibly evasive as Opposer certainly possesses sales figures and customer lists pertaining to the specific geographic areas where Opposer's "COLORWORX" mark is advertised, marketed, sold, or promoted. Indeed, Opposer stated as much in its Opposer's First Supplement to Initial Disclosures (*see* Exhibit 44). Applicant reminded Opposer of the fact that these documents were encompassed in Applicant's Requests to Produce by email on the 15th June 2012 (*see* Exhibit 8), yet Opposer simply refused to respond. Another reason Opposer has failed to answer the Request is that it fails to state the length of time each work of color (including black and white) or service has been advertised, marketed, sold, or promoted in each area. In this respect, Opposer's evasiveness and lack of candor is simply breathtaking.

REQUEST TO PRODUCE NO. 12:

Produce all documents and things relating to the distribution channels through which work of color (including black and white) or services relating to Opposer's "COLORWORX" mark are advertised, marketed, sold, or promoted.

Opposer's response was as follows:

Opposer is currently offering goods and services worldwide via the Internet and through qualified dealers. Opposer refers Applicant to Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 12 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of Opposer's refusal and failure to answer Request to Produce No. 11, which are incorporated herein by reference. Half of Opposer's entire business is predicated on the supply of printed goods and services to distributors (*see* Opposer's Annual Reports in Exhibit 34) and again, its failure to answer is dishonest, evasive and demonstrates an intent to conceal evidence and conceal fraud.

REQUEST TO PRODUCE NO. 13:

Produce all documents and things relating to the classes of customers to whom You advertise, market, sell, or promote works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

Opposer's response was as follows:

Opposer is currently offering goods and services worldwide via the Internet and through qualified dealers. Opposer refers Applicant to Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 13 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of Opposer's refusal and failure to answer Requests to Produce No. 11, which are incorporated herein by reference. In Opposer's answer, there is simply no mention of *customers*; there is reference, in a very general way, to *how* goods are sold and *what* is sold, yet no information in respect of to whom Opposer's goods are sold. Half of Opposer's entire business is predicated on the supply of printed goods and services to distributor-customers (*see* Opposer's Annual Reports in Exhibit 34) and again, its failure to answer is dishonest, evasive and demonstrates an intent to conceal evidence and conceal fraud.

REQUEST TO PRODUCE NO. 14:

Produce all documents and things relating to the yearly dollar and unit volume of sales to date and projected future dollar and unit volume of sales for each of the works of color (including black and white) or services produced by Opposer in connection with the "COLORWORX" mark.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 14 is relevant to the Opposition and Cancellation because Opposer itself alleged, in its *Notice of Opposition*, that "[b]y virtue of its sales of high-quality products bearing Opposer's Mark in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Mark and a valuable reputation" (p.6, Exhibit 38). By relying on its "sales," advertising expenditures," significant goodwill," and "valuable reputation," Opposer has opened the door to any discovery request about the past, current and futures sales of goods and services connected to the COLORWORX mark. Opposer's refusal to answer demonstrates a clear evasiveness and intent to conceal evidence and obstruct justice.

In addition, in Applicant's (Petitioner's) Petition to Cancel the COLORWORX registration (Cancellation No. 92055374), Opposer (Registrant) offered the following alleged Affirmative Defences in its Registrant's Answers to Petition to Cancel dated 7 May 2012, reproduced in full in Exhibit 33:

AFFIRMATIVE DEFENSES

30. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.

31. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.

32. Petitioner is barred from seeking cancellation of Registrant's mark COLORWORX under the doctrines of laches, estoppel and waiver.

33. *Through Registrant's long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said mark has acquired a strong secondary meaning identifying the services provided by Registrant.*

34. *Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant's continued registration of its mark COLORWORX.*

35. *Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant's mark COLORWORX (emphasis added).*

In this document, Opposer (Registrant) refers to its "long, substantial and widespread use, advertising and promotion in support of its mark, and the mark's "strong secondary meaning" and "goodwill."

REQUEST TO PRODUCE NO. 15:

Produce all documents and things relating to variable and fixed costs for sales of works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 15 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of Opposer's refusal and failure to answer Requests to Produce No. 14, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 16:

Produce all documents and things relating to gross and net profits from sales of works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 16 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of Opposer's refusal and failure to answer Requests to Produce No. 14, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 17:

Produce all documents and things relating to the yearly cost to You of advertising, marketing, selling, and promoting works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 17 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of Opposer's refusal and failure to answer Requests to Produce No. 14, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 18:

Produce all documents and things concerning Your past, present, and future plans to advertise, market, sell, or promote works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 18 is relevant to the Opposition and Cancellation because Opposer has filed a Notice of Opposition with respect to a large number of goods and services in which Applicant has intended to trade in commerce in international classes 16 and 41. Applicant relies on its arguments and submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO.18 and Request to Admit or Deny No. 33. In addition, Applicant respectfully submits that Opposer refuses to answer this Request because Opposer has absolutely no intention to trade in commerce for the remaining goods and services in international class 16 which Opposer opposed, nor for any goods or service listed in international class 41.

REQUEST TO PRODUCE NO. 20:

Produce all documents and things relating to Your yearly expenses to date and planned future expenses corresponding to each type of adverting and promotion used for works of color (including black and white) or services relating to Opposer's "COLORWORX" mark.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 20 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of

Opposer's refusal and failure to answer Request to Produce No. 14, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 21:

Produce documents and things relating to Opposer's intended and/or proposed works of color (including black and white) or services utilizing the "ColorWorx" mark.

Opposer's response was as follows:

Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012, which shows representative specimens. Opposer is continuously updating the goods and services it offers under the mark COLORWORX and reserves the right to supplement its Response during the pendency of discovery in this matter.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 21 is relevant to the Opposition and Cancellation for the same reasons submitted in respect of Opposer's refusal and failure to answer Request to Produce No. 14, INTERROGATORY No.18 and Request to Admit or Deny No. 33, which are incorporated herein by reference. In addition, Applicant notes that Opposer's Notice of Opposition (Exhibit 38) and Opposer's document production produced on May 24, 2012 (Exhibit 36), which shows representative specimens, pertain to *past* goods produced under the COLORWORX mark. The Request seeks documents and things pertaining to Opposer's "intended and/or proposed" goods and services sold under the COLORWORX mark. In other words, Opposer has simply avoided and evaded the Request by providing material irrelevant to the Request; this constitutes an egregious failure and refusal to answer.

REQUEST TO PRODUCE NO. 23:

Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will injure

Opposer by causing the trade/or purchasing public to be confused and/or deceived.

Opposer's response was as follows:

Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 23 is relevant to the Opposition and Cancellation because it seeks documents and things pertaining to Opposer's reputation and goodwill in the COLORWORX brand. A number of types of documents in Opposer's possession, custody or control will easily answer this Request, including sales figures, advertising and promotional budgets, marketing plans, geographical financial and demographic data, customer lists, tax returns, and accounting statements. Opposer has been in business 103 years and is a public company (*see* Opposer's Annual Reports in Exhibit 34); it has easy access to these documents yet simply refuses to produce anything connected to its reputation, which it relied on in its Notice of Opposition. Opposer's Notice of Opposition refers to bald generalizations and has no concrete information or data, while Opposer's document production produced on May 24, 2012 consists of only product samples, nothing which will assist Applicant gauge Opposer's reputation in the COLORWORX brand. In so answering, Opposer has evaded the Request and failed to answer.

REQUEST TO PRODUCE NO. 24:

Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will injure Opposer by causing the trade/or purchasing public to be confused and/or deceived into believing that Applicant's Goods are those of Opposer or are sponsored by Opposer.

Opposer's response was as follows:

Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. As regards Request to Produce No. 24, Applicant relies on its submissions in respect of Opposer's failure to answer Request to Produce No. 23, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 25:

Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will injure Opposer by placing a cloud over Opposer's title to its "COLORWORX[®]" mark.

Opposer's response was as follows:

Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. As regards Request to Produce No. 25, Applicant relies on its submissions in respect of Opposer's failure to answer Request to Produce No. 23, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 26:

Produce all documents and things You contend supports Your contention that Applicant's "COLOR WARS" mark is the same, or substantially the same, as Opposer's mark "COLORWORX[®]" including in visual appearance and in pronunciation.

Opposer's response was as follows:

Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. As regards Request to Produce No. 26, Applicant relies on its submissions in respect of Opposer's failure to answer Request to Produce No. 23, which are incorporated herein by reference. In addition, Applicant respectfully submits that Opposer's documents pertaining to its customer base will shed significant light on this Request since the vast majority of Opposer's customers

are in fact distributors and/or private printers who are specialists in the printing business (see Opposer's Annual Reports in Exhibit 34). These distributors and/or private printers are the ones who deal with the public, who, it is submitted, are relatively more likely than professional distributors and/or private printers to be confused, mistaken and/or deceived by the COLOR WARS mark relative to the COLORWORX mark.

REQUEST TO PRODUCE NO. 27:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer Interrogatory No. 3. Applicant relies on his submissions made in respect of that Interrogatory which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 28:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 5 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 5. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 5, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 29:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 6 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 6. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 6, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 30:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 7 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's

Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 7. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 7, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 31:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 8 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 8. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 8, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 32:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 9 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 9. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 9, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 33:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 10 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Request as it is overbroad, harassing, and requires Opposer to marshal its evidence prior to trial. Subject to, and without waiving, the foregoing objections, Opposer refers Applicant to Opposer's Notice of Opposition and Opposer's document production produced on May 24, 2012.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 10. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 10, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 34:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 11 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 11. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 11, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 35:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 12 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 12. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 12, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 36:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 13 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 13. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 13, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 37:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 14 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 14. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 14, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 38:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 15 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 15. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 15, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 39:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 16 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Request as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 39 is relevant to the Opposition and Cancellation for the same reasons and submissions relied on by Applicant in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 16, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 40:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 17 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 17. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 17, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 41:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 18 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Indeed, not only did Opposer refuse and fails to answer this Request, but it also refused and failed to answer INTERROGATORY NO. 18. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 18, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

REQUEST TO PRODUCE NO. 42:

Produce all documents and things relating to the information requested to be identified in Interrogatory No. 19 of Applicant's First Set of Interrogatories to Opposer.

Opposer's response was as follows:

Opposer objects to this Request as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial. Additionally, Opposer asserts the attorney-client and work-product privileges.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 42 is relevant to the Opposition and Cancellation for the same reasons and submissions relied on by Applicant in respect of Opposer's refusal and failure to answer INTERROGATORY NO. 16, which are incorporated herein by reference.

REQUEST TO PRODUCE NO. 43:

Produce all documents and things relating to the financial health of the ColorWorx mark, including all documents and things submitted to and received from the Internal Revenue Service and all accounting documents.

Opposer's response was as follows:

Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial.

In so answering, Opposer refuses to and fails to answer. Applicant relies on his submissions made in respect of Opposer's refusal and failure to answer Request to Produce No. 14, which are incorporated herein by reference and submits that Opposer be made to fully comply with this Request.

CERTIFICATE OF CONFERENCE

On June 12, 2012, Applicant sent Opposer's attorneys an e-mail entitled "Applicant's first good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions," reminding Opposer of its discovery obligations and asking it to provide responses (*see* Exhibit 2 herein *and* attached PDF file separately). Opposer refused to comply, stating that its responses were sufficient (*see* Exhibit 26). Other email correspondence ensue between the parties with Applicant continually reminding Opposer about its Discovery obligations (*see* Exhibits 3, 5, 6, 8, 9). On June 19, 2012, Applicant sent Opposer's attorneys an e-mail entitled "Applicant's second good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions," reminding Opposer of its discovery obligations and asking it to provide responses (*see* Exhibit 11). Opposer did not reply at all. Further correspondence ensued between the parties, with Applicant reinforcing the need to comply with Applicant's discovery requests and Opposer vigorously attempting to settle this matter without prosecuting its Opposition and without answering any allegations in Petitioner's Petition to Cancel the COLORWORX mark, especially allegations about Opposer's commission of fraud on the USPTO (*see* Exhibits 19-25). On June 23, 2012, Applicant sent Opposer's attorneys an e-mail entitled "Applicant's third good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions," reminding Opposer of its discovery obligations and asking it to provide responses, and reminding Opposer of its professional conduct obligations under the *Texas Disciplinary Rules of Professional Conduct* (*see* Exhibit 18). Opposer replied on 27th June 2012 that it would attempt to supplement its discovery reponses with further production (*see* Exhibit 23) but has failed to respond at all with further production. The sum total of Opposer's production, as shown in Exhibits 36 and 42, is wholly inadequate and unsatisfactory and amounts to a monumental failure to disclose. Applicant was forced to file this Motion to Compel and remind Opposer for the second time about its professional conduct obligations (*see* Exhibit 47).

PRAYER

WHEREFORE, PREMISES CONSIDERED, applicants prays that this Applicant's Motion to Compel Discovery Responses be granted and that the Board compel Opposer, Ennis Inc., to respond to the above Interrogatories, Requests for Admission, and Requests for Production, without objection and within 10 days of this Board's Order.

Furthermore, although under T.M.R.P.2.120(g)(1) it is the Board's policy not to award expenses to any party, it is respectfully submitted that in this action Opposer has deliberately and egregiously attempted to evade and frustrate Applicant's legitimate attempts to secure discovery on such a grand scale as to warrant an exception to the Board's usual practice. Applicant is a practicing lawyer in Australia and was prevented by Opposer from completing his usual work in Australia as a result of Opposer's failure to answer Applicant's Discovery requests and Applicant seeks that Opposer be ordered to pay Applicant's reasonable expenses incurred in obtaining this Order, to be assessed at the reasonable United States trademark attorney fee rate since or at a reasonable rate as determined by the Board. In addition, it is respectfully submitted that Opposer had no substantial justification or other circumstance for failing to respond to Applicant's legitimate, probative, relevant, specific and narrowly tailored Discovery requests which would make an award of expenses unjust. Finally, pursuant to the Board's observations at the Discovery Conference on April 24, 2012, Applicant seeks all orders made in this proceeding to be admissible in Applicant-Petitioner's Cancellation Petition (Cancellation No. 92055374).

Dated: July 8, 2012

Respectfully submitted,

JOEL BELING

By: /Joel Beling/

Joel L. Beling
1 Mirboo Court
Dallas, Victoria, 3047
Australia
(03) 8307 6932 (telephone)
0405 329 078 (cell)
joelbeling@hotmail.com
Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES** was served on all parties, this the 10TH day of July 2012, by sending the same electronic mail, to the following:

Scott A. Meyer
Thomas Jacks
CHALKER FLORES, LLP
smeyer@chalkerflores.com
tjacks@chalkerflores.com
ATTORNEYS FOR OPPOSER

/Joel Beling/
Joel Beling
Applicant

LIST OF EXHIBITS

NO.	DESCRIPTION OF COMMUNICATION	DATE
1	Opposer's Discovery Responses to Applicant's Discovery Requests	11 June 2012
2	Applicant's Email to Opposer, including Applicant's first good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions	12 June 2012
3	Applicant's Email to Opposer	12 June 2012
4	Opposer's Email to Applicant	12 June 2012
5	Applicant's Email to Opposer	13 June 2012
6	Applicant's Email to Opposer	13 June 2012
7	Opposer's Email to Applicant	13 June 2012
8	Applicant's Email to Opposer	15 June 2012
9	Applicant's Email to Opposer	18 June 2012
10	Opposer's Email to Applicant	19 June 2012
11	Applicant's Email to Opposer, including Applicant's second good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions	19 June 2012
12	Opposer's Email to Applicant	20 June 2012
13	Applicant's Email to Opposer	20 June 2012
14	Applicant's Email to Opposer	21 June 2012
15	Applicant's Email to Opposer	21 June 2012
16	Applicant's Email to Opposer	21 June 2012
17	Opposer's Email to Applicant	21 June 2012
18	Applicant's email to Opposer which includes first professional conduct letter and Applicant's third good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions	22 June 2012
19	Opposer's Email to Applicant	25 June 2012
20	Opposer's Email to Applicant	25 June 2012
21	Applicant's Email to Opposer	26 June 2012
22	Applicant's Email to Opposer	26 June 2012
23	Opposer's Email to Applicant	27 June 2012
24	Applicant's Email to Opposer	27 June 2012
25	Opposer's Email to Applicant	28 June 2012
26	Opposer's formal response to Applicant's first good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions	18 June 2012
27	Opposer's First Request for Admissions to Applicant	26 April 2012
28	Opposer's First Request for Production to Applicant	26 April 2012
29	Opposer's First Set of Interrogatories to Applicant	26 April 2012
30	Opposer's Objections and Answers to Applicant's First	11 June 2012

	Request for Production	
31	Opposer's Objections and Answers to Applicant's First Set of Interrogatories	11 June 2012
32	Opposer's Objections and Answers to Applicant's First Request for Admissions	11 June 2012
33	Registrant's Answers to Petition to Cancel	7 May 2012
34	Opposer's Annual Reports from 2000 to 2012 (34A-34M; 2004 Annual Report unavailable on website)	2000-2012
35	Petitioner's Motion to Amend Pleading (to include fraud)	3 June 2012
36	Opposer's Document Production Produced on May 24, 2012 (36A, 36B)	24 May 2012
37	Email Correspondence between Applicant and Opposer regarding Consent to Add Fraud Allegation to Pleading	May-June 2012
38	Opposer's Notice of Opposition	15 February 2012
39	Opposer's Colorworx website	
40	Amended Petition to Cancel	9 May 2012
41	Opposer's Supplement to Initial Disclosures	12 June 2012
42	Opposer's Document Production Produced on June 11, 2012	11 June 2012
43	Opposer's Initial Disclosures	24 May 2012
44	Opposer's First Supplement to Initial Disclosures	12 June 2012
45	Registrant's Motion to Strike Petition to Cancel	7 May 2012
46	Opposer's Response to Office Action in respect of the COLORWORX mark prior to registration with the USPTO	11 September 2006
47	Applicant's Second Letter to Opposer reminding it of its Professional Conduct obligations	5 July 2012

Exhibit 1: Opposer's Discovery Responses to Applicant's Discovery Requests dated 11 June 2012

From: cminchillo@chalkerflores.com
To: joelbeling@hotmail.com
CC: smeyer@chalkerflores.com; tjacks@chalkerflores.com; cminchillo@chalkerflores.com
Date: Mon, 11 Jun 2012 17:25:12 -0400
Subject: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd

Mr. Beling,

Attached please find the following documents:

1. Opposer's Objections and Response to Applicant's First Request for Production;
2. Opposer's Objections and Answers to Applicant's First Set of Interrogatories; and
3. Opposer's Objections and Responses to Application's First Request for Admissions.

If you have any questions, please let us know. Thank you.

Cynthia Minchillo, RP | Chalker Flores, LLP Board Certified Paralegal – Personal Injury Trial Law

by the Texas Board of Legal Specialization **Paralegal to Scott Meyer and Tom Jacks** 14951 North
Dallas Parkway, Suite 400 | Dallas, Texas 75254
Phone: 214-445-4060 | Fax: 214-866-0010 | DD: 214-445-4055
cminchillo@chalkerflores.com | www.chalkerflores.com

Exhibit 2: Applicant's Email to Opposer, including Applicant's first good faith attempt to convince opposer to produce documents, answer interrogatories and admit or deny questions dated 12 June 2012

- Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd

12/06/2012

joel beling

To cminchillo@chalkerflores.com, smeyer@chalkerflores.com, tjacks@chalkerflores.com,
joelbeling@hotmail.com

Scott and Tom,

Please find attached my response to your below-mentioned Discovery Answers.

If you have any questions, please let me know.

Joel

Exhibit 3 Applicant's Email to Opposer dated June 12, 2012

- **RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd**

From: **joel beling** (joelbeling@hotmail.com)
Sent: Tuesday, 12 June 2012 6:01:52 AM
To: cminchillo@chalkerflores.com; Joel (joelbeling@hotmail.com)
Cc: smeyer@chalkerflores.com; tjacks@chalkerflores.com
Scott and Tom,

If you are unclear about any of the requests I am making, I am happy to discuss the issues with you by telephone at a mutually convenient time prior to 5pm Dallas time on the 18th June 2012.

Please advise.

Thanks

Joel

Exhibit 4: Opposer's Email to Applicant dated June 12, 2012

Mr. Beling,

Attached please find Opposer's Supplement to Initial Disclosures and Opposer's additional document production Bates labeled ENNI 0221 to ENNI 0245. If you have any questions, please do not hesitate to contact us. Thank you.

Cynthia Minchillo, RP | Chalker Flores, LLP

Board Certified Paralegal – Personal Injury Trial Law

by the Texas Board of Legal Specialization

Paralegal to Scott Meyer and Tom Jacks

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Phone: 214-445-4060 | Fax: 214-866-0010 | DD: 214-445-4055
cminchillo@chalkerflores.com | www.chalkerflores.com

Exhibit 5: Applicant's Email to Opposer dated June 13, 2012

• **RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters
Pty Ltd**

From: **joel beling** (joelbeling@hotmail.com)
Sent: Wednesday, 13 June 2012 12:45:45 AM
To: cminchillo@chalkerflores.com
Cc: smeyer@chalkerflores.com; tjacks@chalkerflores.com
Scott and Tom,

Thank you for those supplemental disclosures. I note that all those documents are covered in my first request for production.

Please note that none of these disclosures satisfies my concerns about your discovery obligations expressed in yesterday's letter. Please bear in mind the deadline of 5pm on the 18th June, 2012.

I look forward to receiving much more relevant and admissible evidence from you in the coming few days.

Thanks

Joel

Exhibit 6: Applicant's Email to Opposer dated June 13, 2012

- **RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd**

From: **joel beling** (joelbeling@hotmail.com)
Sent: Wednesday, 13 June 2012 3:48:18 AM
To: cminchillo@chalkerflores.com; joelbeling@hotmail.com
Cc: smeyer@chalkerflores.com; tjacks@chalkerflores.com
Scott,

I'm not sure if it's assumed by the TTAB or we need to make a stipulation, but does your client consent to all evidence gathered in the Opposition proceeding to be admissable in the Petition to Cancel and vice versa?

Please advise.

If not, I'll be filing a motion to this effect.

Thanks

Joel

Exhibit 7: Opposer's Email to Applicant dated June 13, 2012

- RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd

From: **Scott Meyer** (smeyer@chalkerflores.com)
Sent: Wednesday, 13 June 2012 10:02:56 PM
To: joel beling (joelbeling@hotmail.com); Cynthia Minchillo (cminchillo@chalkerflores.com)
Cc: Tom Jacks (tjacks@chalkerflores.com)
Joel:

Evidence produced is not automatically admissible. We will not stipulate to the admissibility of evidence in this fashion. As we approach the trial period we would be happy to discuss admissibility of specific evidence with you.

Thanks,

Scott

Scott A. Meyer, P.C. | Chalker Flores, LLP

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Phone: 214-866-0001 | Fax: 214-866-0010
smeyer@chalkerflores.com | www.chalkerflores.com

Exhibit 8: Applicant's Email to Opposer dated June 15, 2012

• **RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters
Pty Ltd**

From: **joel beling** (joelbeling@hotmail.com)

Sent: Friday, 15 June 2012 2:42:03 AM

To: smeyer@chalkerflores.com

Cc: Joel (joelbeling@hotmail.com); cminchillo@chalkerflores.com; tjacks@chalkerflores.com
Scott,

Forsake of compleness, the documents and things stated in your First Supplement to Initial Disclosures are covererd in my First Request for Production to Opposer.

In particular: the "Documents evidencing use of "COLORWORX" mark in commerce" is requested in,for example, Requests 8 and 18;

the "documents evidencing the products and services offered by Opposer utilising the "COLORWORX" is requested in, for example,Requests 8 and 18;

the "documents evidencing the geographic area where the "COLORWORX" mark is used" is requested in Requests 8,11,12, and 13;

the "documents evidencing filings with the USPTO related to registration 3372884 "COLORWORX" is requested in Requests 8,9, 23,24,25 and 26.

I look forward to receiving those documents,in addition to my other discovery requests,on Tuesday 18th June 2012, Melbourne, Australia time.

I thank you in anticipation of your co-operation.

Joel

Exhibit 9: Applicant's Email to Opposer dated June 18, 2012

From: joel beling [mailto:joelbeling@hotmail.com]
Sent: Monday, June 18, 2012 9:05 PM
To: Tom Jacks
Subject: Your responses to my Discovery Requests

Tom,

Were you involved in the drafting of Ennis Inc's responses to my Discovery Requests or was it just Scott?

Joel

Exhibit 10: Opposer's Email to Applicant dated June 19, 2012

From: tjacks@chalkerflores.com
To: joelbeling@hotmail.com
Date: Tue, 19 Jun 2012 10:28:33 -0400
Subject: RE: Your responses to my Discovery Requests

Joel,

I do not understand why this is important. We should talk on the phone about the discovery issues that are going on. It is always beneficial to talk about the issues in person or on the phone rather than exchanging emails or letters. Are you free at 5:00 pm CST today or tomorrow? We can use the same conference call number that we've used in the past.

Tom

Thomas G. Jacks | Chalker Flores, LLP

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Main: 214-866-0001 | Direct: 214-445-4021 | Fax: 214-866-0010
tjacks@chalkerflores.com | www.chalkerflores.com

Exhibit 11: Applicant's Second Good Faith Attempt To Convince Opposer To Produce Documents, Answer Interrogatories And Admit Or Deny Questions dated June 19, 2012

19 June 2012

Mr Scott Myer and Mr Thomas Jacks
Attorneys-at-Law
Chalker Flores

Mr Joel Beling

1 Mirboo Court
DALLAS VICTORIA
AUSTRALIA 3047

BY EMAIL

APPLICANT'S SECOND GOOD FAITH ATTEMPT TO CONVINCING OPPOSER TO PRODUCE DOCUMENTS, ANSWER INTERROGATORIES AND ADMIT OR DENY QUESTIONS

Dear Sirs,

Re: Color Wars Opposition; Opposition No. 91203884

I refer to your Opposer's Objections and Response to Applicant's First Request for Production, Opposer's Objections and Answers to Applicant's First Set of Interrogatories, and Opposer's Objections and Responses to Application's First Request for Admissions served on me by email on the 12th June, 2012, to my letter to you dated 12th June 2012 seeking full and complete disclosure pursuant to my Discovery requests, and to your letter dated 18th June 2012.

I reiterate and incorporate by reference all matters put to you in my letter of 12th June 2012 and refer you to *your* Notice of Opposition, to *your* Answers to my Petition to Cancel, and to *your* Opposer's First Request for Admissions wherein *you* raised the issues of, inter alia, the validity of your client's COLORWORX registration, your client's use in commerce of the COLORWORX mark since 2002, your client's "very valuable public recognition" of the COLORWORX mark, your client's "valuable reputation," your client's "sales of high-quality products bearing Opposer's Mark in interstate commerce," your client's "expenditures of considerable sums for promotional activities and the excellence of its products," your client's "significant goodwill in its mark," alleged claims of diminishment and dilution to your client's mark if my COLOR WARS mark was registered, alleged claims of placing a cloud over your mark if my COLOR WARS mark was registered, the likelihood of confusion, deception and mistake between our

marks, and fraud (which you have denied but offered no evidence in support of such denials).

With respect to the last issue, fraud, it would seem obvious to any reasonable observer that if you and your client have not committed fraud on the United States Patent and Trademark Office in applying for and obtaining the COLORWORX registration, then surely the best way to prove your innocence is to disclose all documents concerning the registration and your client's communications to you. Refusing to answer all questions and requests in relation to possible fraud smacks of a consciousness of guilt and an intent to conceal evidence of a crime and obstruct justice. Accordingly, I implore you to be honest and co-operate with all my requests in relation to fraud so as to enable me to prepare my case in the manner in which I am legally entitled and, more importantly, to preserve the integrity of the trademark registration process in the United States.

I note it has been eight (8) days since your statutory deadline to answer my Discovery requests has passed, and, save and except from samples of use of the COLORWORX mark in commerce, I have no material from you upon which I can prepare and base my case. I need not remind you that *you* commenced this action by filing a Notice of Opposition, alleging a number of serious allegations. Accordingly, I have a right under the Federal Rules of Civil Procedure to obtain documents and other things from you to examine the evidence upon which you based your allegation. To date, you have flagrantly violated your Discovery obligations and I have fully complied with mine, the commercially sensitive and top secret nature of my disclosures.

As regards your claims of attorney-client and work-product privilege, I respectfully request that you identify all documents and things in your possession that you say falls under these privileges and we let the Trademark Trial and Appeal Board decide if the privileges apply. I reiterate that I reside in Australia and have substantial need of the documents and things requested in my Discovery Requests for the preparation of my case and that I am unable without undue hardship to obtain the substantial equivalent of the materials by other means. I also seek that you produce – or at the very least *identify* - all documents and things I have requested from you in my Discovery requests not prepared in anticipation of litigation. I further seek all documents prepared by Chalker Flores and Ennis Inc's previous attorneys before this Opposition claim arose.

Please answer the following requests and questions in full detail by 5pm on Friday the 22nd June 2012.

Applicant's First Request for Production

Request Numbers: 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

Applicant's First Set of Interrogatories

Request Numbers: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

Applicant's First Request for Admissions

Request Numbers: 33, 38, 39, 40, 41

As regards your offer to discuss the above issues by telephone, I prefer to communicate in writing because it leaves a clear and unambiguous paper trail of your refusal to answer and co-operate in relevant and probative Discovery requests.

Please review your answers to all my Discovery Requests and advise if you cannot understand the precise evidence I seek from you. I am happy to explain my requests in detail if you cannot comprehend anything. From my point of view, my requests are clear and unambiguous. In your response to this letter, please confirm you understand each and every Discovery Request I have made of you.

I advise this document shall be relied on in a Motion to Compel Discovery and on the question of costs if you fail to answer the above requests. I further advise that I will be seeking sanctions as well as costs for either my time or for an attorney's time in the event that you fail to co-operate. This action is significantly disrupting my ability to work in Australia as a lawyer and on my character licensing business through Supa Characters Pty Ltd and I sincerely hope you had and have a good faith basis for initiating it.

I look forward to your honesty and co-operation.

Regards,

/JOEL BELING/

Joel Beling

Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Applicant's Second Good Faith Attempt to Convince Opposer to Produce Documents, Answer Interrogatories and Admit or Deny Questions** was served on all parties, this the 19th day of June, 2012, by sending the same electronic mail, to the following:

Scott A. Meyer
Thomas Jacks
CHALKER FLORES, LLP
smeyer@chalkerflores.com
tjacks@chalkerflores.com
ATTORNEYS FOR OPPOSER

/Joel Beling/
Joel Beling
Applicant

Exhibit 12: Opposer's Email to Applicant dated June 20, 2012

• **RE: Your responses to my Discovery Requests**

From: **Tom Jacks** (tjacks@chalkerflores.com)

Sent: Wednesday, 20 June 2012 7:48:00 PM

To: joel beling (joelbeling@hotmail.com)

Cc: Scott Meyer (smeyer@chalkerflores.com)

Joel,

We respectfully disagree with your assertion that we failed to disclose documents and are more than willing to discuss your concerns on the phone. I still think a phone conversation is the best way to resolve disputes or misunderstandings. Unfortunately, email exchanges are usually detrimental to resolving issues. I hope that you will reconsider your position that you do not want to talk about your concerns on the phone.

Tom

Thomas G. Jacks | Chalker Flores, LLP

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254

Main: 214-866-0001 | Direct: 214-445-4021 | Fax: 214-866-0010

tjacks@chalkerflores.com | www.chalkerflores.com

Exhibit 13: Applicant's Email to Opposer dated June 20, 2012

From: joel beling [mailto:joelbeling@hotmail.com]
Sent: Wednesday, June 20, 2012 1:28 AM
To: Tom Jacks
Subject: RE: Your responses to my Discovery Requests

Tom,

As a result of your failure to disclose I've had to do a great deal of additional work to attempt to compel discovery. This has significantly interfered with my normal job and cost me a lot of money, wasted my time and caused massive stress.

Please put your concerns and queries in writing. We can talk on the phone once we resolve the discovery issues.

Please produce all documents by 5pm Friday, CST time.

Thanks

Joel

Exhibit 14: Applicants Email to Opposer dated June 21, 2012

• **RE: Your responses to my Discovery Requests**

From: **joel beling** (joelbeling@hotmail.com)

Sent: Thursday, 21 June 2012 1:18:31 AM

To: tjacks@chalkerflores.com

Cc: smeyer@chalkerflores.com

Tom,

I've got NOTHING from you apart from a few product samples. That's 2 per cent of my case at best. You are concealing 98 per cent of the evidence I need for my case. That's not fair.

For whatever reasons, which I will get to the bottom of, you are violating the Federal Rules of Civil Procedure and obstructing justice and, as a result, I cannot prepare my case.

You may not want to produce the documents and answer my questions, but, as a matter of law, you have to. I didn't want to hand over my character material, which NOBODY in the world had seen yet, but I had to and did.

Now is the time to play ball before matters escalate. I look forward to receiving your documents and answers by 5pm Friday, CST.

You're wasting my time, costing me a lot of money and causing me massive stress. Unlike you, I don't work for a fancy law firm and cannot bill a rich corporate client for the work I'm doing. Please, do the right thing and disclose.

Joel

Exhibit 15 Applicant's Email to Opposer dated June 21, 2012

- **Supplement to Applicant's Initial Disclosures**

From: **joel beling** (joelbeling@hotmail.com)
Sent: Thursday, 21 June 2012 3:03:05 AM
To: tjacks@chalkerflores.com
Cc: smeyer@chalkerflores.com; joelbeling@hotmail.com; cminchillo@chalkerflores.com; eflores@chalkerflores.com

1 attachment (137.5 KB)



Supplemen...pdf
Download(137.5 KB)
Download as zip

Tom,

Please find attached the following document:

1. Supplement to Applicant's Initial Disclosures

Thanks

Joel

Exhibit 16 Opposer's Email to Applicant dated June 21, 2012

From: cminchillo@chalkerflores.com
To: joelbeling@hotmail.com
CC: smeyer@chalkerflores.com; tjacks@chalkerflores.com; cminchillo@chalkerflores.com
Date: Thu, 21 Jun 2012 17:30:28 -0400
Subject: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd

Mr. Beling,

Please find our correspondence attached. Thank you.

***Cynthia Minchillo, RP* | Chalker Flores, LLP**

Board Certified Paralegal – Personal Injury Trial Law

by the Texas Board of Legal Specialization

Paralegal to Scott Meyer and Tom Jacks

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Phone: 214-445-4060 | Fax: 214-866-0010 | DD: 214-445-4055
cminchillo@chalkerflores.com | www.chalkerflores.com

Exhibit 17 Opposer's Email to Applicant dated June 21, 2012

• **Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd**

From: **Cynthia Minchillo** (cminchillo@chalkerflores.com)
Sent: Thursday, 21 June 2012 9:34:12 PM
To: joelbeling@hotmail.com (joelbeling@hotmail.com)
Cc: Scott Meyer (smeyer@chalkerflores.com); Tom Jacks (tjacks@chalkerflores.com); Cynthia Minchillo (cminchillo@chalkerflores.com)
Hotmail Active View

1 attachment (992.1 KB)



Ltr to Be...pdf
Download(983.7 KB)
Download as zip

Mr. Beling,

Please find our correspondence attached. Thank you.

***Cynthia Minchillo, RP* | Chalker Flores, LLP**

Board Certified Paralegal – Personal Injury Trial Law

by the Texas Board of Legal Specialization

Paralegal to Scott Meyer and Tom Jacks

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Phone: 214-445-4060 | Fax: 214-866-0010 | DD: 214-445-4055
cminchillo@chalkerflores.com | www.chalkerflores.com

Exhibit 18 Applicant's Email to Opposer dated June 22, 2012, which includes professional conduct letter and Applicant's Third Good Faith Attempt To Convince Opposer To Produce Documents, Answer Interrogatories And Admit Or Deny Questions

• RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters
Pty Ltd

From: **joel beling** (joelbeling@hotmail.com)

Sent: Friday, 22 June 2012 11:21:41 PM

To: cminchillo@chalkerflores.com

Cc: smeyer@chalkerflores.com; tjacks@chalkerflores.com; joelbeling@hotmail.com; eflores@chalkerflores.com

4 attachments (total 337.9 KB)



Applicant...pdf

Download(117.0 KB)



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Petitione...pdf

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Petitione...doc

Please see the attached documents:

1. Professional Conduct letter;
2. Petitioner's Second Set of Interrogatories to Registrant;
3. Applicant's Third Good Faith Attempt to Produce Discovery.

For completeness, your settlement offer emailed yesterday is refused.

Thank you

Joel

22 June 2012

Mr Scott Myer
Mr Edwin Flores
Mr Thomas Jacks
Attorneys-at-Law
Chalker Flores

Mr Joel Beling

1 Mirboo Court
DALLAS VICTORIA
AUSTRALIA 3047

BY EMAIL

Dear Sirs,

**Re: Your Professional Conduct Representing Ennis Inc in
Opposition No. 91203884 and Cancellation No. 92055374 before the Trademark
Trial and Appeal Board**

I refer to the above and write to express my concerns regarding your professional conduct in this matter.

In particular, I draw your attention to the following Texas Disciplinary Rules of Professional Conduct: Rule 1.01, Rule 1.02, Rule 1.05, Rule 1.06, Rule 1.15, Rule 2.01, Rule 3.01, Rule 3.02, Rule 3.03, Rule 3.04, Rule 3.08, and Rule 4.01

I look forward to your adherence to these and the other Rules of Professional Conduct in future dealings with you.

I thank you in anticipation of your assistance.

Regards,

/JOEL BELING/

Joel Beling

Applicant

23 June 2012

Mr Scott Myer and Mr Thomas Jacks
Attorneys-at-Law
Chalker Flores

Mr Joel Beling

1 Mirboo Court
DALLAS VICTORIA
AUSTRALIA 3047

BY EMAIL

APPLICANT'S THIRD GOOD FAITH ATTEMPT TO CONVINCe OPPOSER TO
PRODUCE DOCUMENTS, ANSWER INTERROGATORIES AND ADMIT OR DENY
QUESTIONS

Dear Sirs,

Re: Color Wars Opposition; Opposition No. 91203884

I refer to my numerous previous attempts to persuade you to comply with your Discovery obligations under the Federal Rules of Civil Procedure.

I note that you are still in flagrant violation of the Federal Rules of Civil Procedure and that you still refuse to co-operate and answer my relevant and probative requests.

I note it has been twelve (12) days since your statutory deadline to answer my Discovery requests has passed, and, save and except from samples of use of the COLORWORX mark in commerce, I have no material from you upon which I can prepare and base my case. I need not remind you that *you* commenced this action by filing a Notice of Opposition, alleging a number of serious allegations. Accordingly, I have a right under the Federal Rules of Civil Procedure to obtain documents and other things from you to examine the evidence upon which you based your allegation.

Please answer the following requests and questions in full detail by 5pm on Wednesday the 27th June 2012 (American CST time).

Applicant's First Request for Production Request Numbers: 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43
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Applicant's First Set of Interrogatories Request Numbers: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

Applicant's First Request for Admissions Request Numbers: 33, 38, 39, 40, 41
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I advise this document shall be relied on in a Motion to Compel Discovery and on the question of costs in recouping my reasonable expenses if you fail to answer the above requests. As you are aware, I have made many attempts to persuade you to do what you are legally required to do, to no avail. This action, initiated by you, is costing me massive amounts of money which I cannot afford, wasting my time, and causing me immeasurable stress.

I look forward to your honesty and co-operation.

Regards,

/JOEL BELING/

Joel Beling, Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S THIRD GOOD FAITH ATTEMPT TO CONVINCe OPPOSER TO PRODUCE DOCUMENTS, ANSWER INTERROGATORIES AND ADMIT OR DENY QUESTIONS** was served on all parties, this the 23rd day of June, 2012, by sending the same electronic mail, to the following:

Scott A. Meyer
Thomas Jacks
CHALKER FLORES, LLP
smeyer@chalkerflores.com
tjacks@chalkerflores.com
ATTORNEYS FOR OPPOSER

/Joel Beling/
Joel Beling
Applicant

Exhibit 19: Opposer's Email to Applicant dated June 25, 2012

• **Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd**

From: **Cynthia Minchillo** (cminchillo@chalkerflores.com)
Sent: Monday, 25 June 2012 4:46:51 PM
To: joelbeling@hotmail.com (joelbeling@hotmail.com)
Cc: Scott Meyer (smeyer@chalkerflores.com); Tom Jacks (tjacks@chalkerflores.com); Cynthia Minchillo (cminchillo@chalkerflores.com)
1 attachment (221.5 KB)

Ltr to Be...pdf
Download(213.1 KB)
Download as zip

Mr. Beling,

Please see our correspondence attached. Thank you.

Cynthia Minchillo, RP | Chalker Flores, LLP

Board Certified Paralegal – Personal Injury Trial Law

by the Texas Board of Legal Specialization

Paralegal to Scott Meyer and Tom Jacks

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Phone: 214-445-4060 | Fax: 214-866-0010 | DD: 214-445-4055
cminchillo@chalkerflores.com | www.chalkerflores.com

Exhibit 20: Opposer's Email to Applicant dated June 25, 2012

From: cminchillo@chalkerflores.com
To: joelbeling@hotmail.com
CC: smeyer@chalkerflores.com; tjacks@chalkerflores.com; cminchillo@chalkerflores.com
Date: Mon, 25 Jun 2012 12:43:09 -0400
Subject: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd

Mr. Beling,

Please see our correspondence attached. Thank you.

***Cynthia Minchillo, RP* | Chalker Flores, LLP**

Board Certified Paralegal – Personal Injury Trial Law

by the Texas Board of Legal Specialization

Paralegal to Scott Meyer and Tom Jacks

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Phone: 214-445-4060 | Fax: 214-866-0010 | DD: 214-445-4055
cminchillo@chalkerflores.com | www.chalkerflores.com

Exhibit 21: Applicant's Email to Opposer dated June 26, 2012

- **RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters
Pty Ltd**

From: **joel beling** (joelbeling@hotmail.com)

Sent: Tuesday, 26 June 2012 11:09:38 AM

To: cminchillo@chalkerflores.com

Cc: smeyer@chalkerflores.com; tjacks@chalkerflores.com; joelbeling@hotmail.com
Scott,

Settlement offer is refused. Please comply with your Discovery obligations.

Joel

Exhibit 22: Applicant's Email to Opposer dated June 26, 2012

- RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters
Pty Ltd

From: **joel beling** (joelbeling@hotmail.com)

Sent: Tuesday, 26 June 2012 4:57:44 PM

To: cminchillo@chalkerflores.com

Can you please send me your Discovery Responses in Word format?

Thank you.

- **RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd**

From: **Tom Jacks** (tjacks@chalkerflores.com)
Sent: Wednesday, 27 June 2012 8:50:16 PM
To: joel beling (joelbeling@hotmail.com)
Cc: Scott Meyer (smeyer@chalkerflores.com); Cynthia Minchillo (cminchillo@chalkerflores.com)
Joel,

We continue to stand by our objections. However, in a good faith effort to resolve this discovery dispute, we are attempting to gather more documents and will provide those to you next week. As always, we are available to further discuss these issues by phone.

Tom

Thomas G. Jacks | Chalker Flores, LLP

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Main: 214-866-0001 | Direct: 214-445-4021 | Fax: 214-866-0010
tjacks@chalkerflores.com | www.chalkerflores.com

Exhibit 24: Applicant's Email to Opposer dated June 28, 2012

• **Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd**

From: **joel beling** (joelbeling@hotmail.com)
Sent: Thursday, 28 June 2012 2:25:01 AM
To: tjacks@chalkerflores.com
Cc: cminchillo@chalkerflores.com; smeyer@chalkerflores.com; joelbeling@hotmail.com
Tom,

Thank you. Please provide all your documents and answers to all interrogatories and requests for admissions by Tuesday 5pm, CST time.

Amongst other live issues, it should be borne in mind that fraud is a very, very serious allegation and I am giving your client the opportunity to clear its name. Concealing evidence and violating the Federal Rules of Civil Procedure only confirms suspicions of fraud. I'm sure Ennis Inc doesn't want to undo 103 years of hard work, destroy its public reputation and decimate its stock value with a couple of years of criminal activity perpetrated to offset the obscelence of standard business forms and the resultant massive drop in profits.

Of course, I need not remind you of Chalker Flores' alleged role in conspiracy to commit fraud on the USPTO and other offences.

I fully disclosed my case when I absolutely did not want to. Please show me the same courtesy and abide by the law.

I will be relying on this correspondence in a Motion to Compel all discovery responses and requests not satisfactorily disclosed by you and on the question of my reasonable expenses in filing the motion.

This is the last time I will be communicating to you before filing my motion to compel on Tuesday evening, CST time. Please do the right thing and answer all my Discovery Requests completely.

Remember, this is YOUR action. Prove it.

Joel

Exhibit 25: Opposer's Email to Applicant dated June 28, 2012

• **RE: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters
Pty Ltd**

From: **Tom Jacks** (tjacks@chalkerflores.com)
Sent: Thursday, 28 June 2012 10:28:34 PM
To: joel beling (joelbeling@hotmail.com)
Cc: Cynthia Minchillo (cminchillo@chalkerflores.com); Scott Meyer (smeyer@chalkerflores.com)
Joel,

As we have done throughout this matter, we are actively searching for additional documents and will continue to supplement our production according to the Federal Rules of Civil Procedure. I cannot and will not promise that the supplementation, if any, will occur by Tuesday 5 pm, CST.

Additionally, I am extremely disappointed in the lack of professionalism demonstrated in your email below and throughout this matter. Your continued accusations that our client and our firm committed fraud on the USPTO and that we are trying to hide evidence are unfounded and reckless. We have treated you with respect and our actions have been ethical and professional. We understand that you are emotionally involved in this matter but respectfully request that you afford us the same professionalism that we have consistently shown you.

We would prefer not to involve the TTAB in this matter but if you continue to disparage our client and our firm, we will be forced to do so. As always, we are available to further discuss any issues with you by phone.

Tom

Thomas G. Jacks | Chalker Flores, LLP

14951 North Dallas Parkway, Suite 400 | Dallas, Texas 75254
Main: 214-866-0001 | Direct: 214-445-4021 | Fax: 214-866-0010
tjacks@chalkerflores.com | www.chalkerflores.com

Exhibit 2.

12 June 2012

Mr Joel Beling
1 Mirboo Court
DALLAS VICTORIA
AUSTRALIA 3047

Mr Scott Myer and Mr Thomas Jacks
Attorneys-at-Law
Chalker Flores

BY EMAIL

Applicant's First Good Faith Attempt to Convince Opposer to Produce Documents, Answer Interrogatories and Admit or Deny Questions

Dear Sirs,

Re: Color Wars Opposition; Opposition No. 91203884

I refer to your Opposer's Objections and Response to Applicant's First Request for Production, Opposer's Objections and Answers to Applicant's First Set of Interrogatories, and Opposer's Objections and Responses to Application's First Request for Admissions served on me by email on the 12th June, 2012.

I advise your client's answers in these documents for the most part fail to answer my requests and are an egregious violation of the Trademark Trial and Appeal Board's (TTAB) Discovery rules. In particular, your client has failed to answer the questions and requests in the table below. Moreover, your objections cite a number of bases without particularisation. In some cases there is simply an objection without an answer. This is most apparent in questions and requests in respect of possible fraud committed by Opposer and/or its attorneys, which supports my claim in my Motion to Amend Pleading in my Cancellation Petition. In general, it appears you and your client have partly answered those questions and requests which are not as damaging to your case and completely ignored any questions which are damaging to your case. This amounts to a gross violation of the letter and spirit of the Discovery Rules.

As you are aware, the TTAB's discovery rules must be respected and I believe, based on your client's answers and your client's response to my motion to amend my pleading in my cancellation petition to add a fraud claim, that you and your client are not respecting the rules and are in fact concealing a great deal of relevant and admissible evidence. This makes it especially difficult for me to prepare my case, as I reside in Australia and I am wholly reliant on your trust, honesty and co-operation in complying with your Discovery obligations. Parties should produce relevant documents and answer questions that the other party asks, unless they are confident that they have substantial justification for refusing to do so. In the vast majority of cases where you have failed to answer, you have not provided a substantial justification for not answering.

Please answer the following requests and questions in full detail by 5pm on Monday the 18th June 2012.

Applicant's First Request for Production
Request Numbers: 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43
Applicant's First Set of Interrogatories
Request Numbers: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19
Applicant's First Request for Admissions
Request Numbers: 33, 38, 39, 40, 41

I advise this document shall be relied on in a Motion to Compel Discovery and on the question of costs if you fail to answer the above requests. I further advise that I will be seeking sanctions as well as costs for either my time or for an attorney's time in the event that you fail to co-operate.

I look forward to your co-operation.

Regards,

/JOEL BELING/

Joel Beling

Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Applicant's First Good Faith Attempt to Convince Opposer to Produce Documents, Answer Interrogatories and Admit or Deny Questions** was served on all parties, this the 12th day of June, 2012, by sending the same electronic mail, to the following:

Scott A. Meyer
Thomas Jacks
CHALKER FLORES, LLP
smeyer@chalkerflores.com
tjacks@chalkerflores.com
ATTORNEYS FOR OPPOSER

/Joel Beling/

Joel Beling

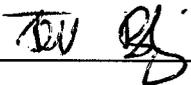
Applicant

CERTIFICATE OF MAILING

Opposition No.: 91203884

I hereby certify that this Applicant's Motion to Compel Discovery Responses is being deposited with Australia Post in an envelope addressed to: Commissioner for Trademarks, PO Box 1451, Alexandria, Virginia 22313-1451 on the date shown below.

JOEL BELING



10 July 2012