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

Proceeding	91203884
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Attachments	Motion to Compel COLORWORX.pdf(3399761 bytes)

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

In re Registration No. 3,372,884 (COLORWORX), Registered January 22, 2008

Opposition No. 91203884

Ennis Inc.

v.

Joel L. Beling d/b/a Supa Characters Pty Ltd

MOTION TO COMPEL

Cancellation No. 92055374

Joel L. Beling d/b/a Supa Characters Pty Ltd

v.

Ennis, Inc.

APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES

To: Ennis Inc. ("Opposer"), 2441 Presidential Parkway, Midlothian, TX 76065, U.S.

Joel L. Beling d/b/a Supa Characters Pty Ltd ("applicant" or "petitioner") serves this Motion to Compel Discovery on Ennis Inc ("opposer" or "registrant") pursuant to Federal Rule of Civil Procedure 37 and Trademark Rule 2.120(e), 37 C.F.R. § 2.120(d).

On 10 May 2012, Applicant served Opposer with its First Request for Production and First Set of Interrogatories. Apart from some product samples featuring the COLORWORX mark, Opposer has flagrantly refused to comply with Applicant's Discovery requests (see Exhibits 1-29) and still refuses to comply. As at the date of this filing of this Motion to Compel, more than one year has elapsed, significantly prejudicing Applicant's right to a fair trial. In order to prepare for trial, applicant must have the cooperation of opposer as discovery is pursued. 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, opposer has offered the same identically-phrased, boilerplate 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 submits that this objection is in bad faith because it fails to particularize a single, relevant objection. 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 taken as irrelevant and inappropriate. Additionally, Applicant submits that Fed. R. Civ. P. 26(b)(1) provides for broad discovery. It is respectfully submitted that all of Applicant’s Discovery Requests and questions are relevant, proper, fair, probative and narrowly tailored. Finally, pursuant to TBMP §412.01 and the cases cited thereunder, opposer cannot object to complying with applicant’s discovery requests because it propounded the same requests on applicant. *See* Exhibits 28 and 29.

**MOTION TO COMPEL OPPOSER TO ANSWER INTERROGATORIES AND,
WHERE RELEVANT, PRODUCE DOCUMENTS**

For the following reasons, opposer has failed and indeed blatantly failed or refused to answer each and every one of the 19 interrogatories served on it and has provided satisfactory answers and/or produced documents to only eight of the 43 Requests for Production propounded by applicant. Fed. R. Civ. P. 37(a)(3) makes clear that an evasive or incomplete answer is to be considered, for purposes of subdivision (a), a failure to answer.

INTERROGATORY NO. 1: 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.

ANSWER: 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 this proceeding 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 on May 24, 2012 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 and design, contrary to opposer's declaration to the USPTO in order to procure its registration, was not used in commerce at the time it applied for its registration.

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." Doc. #1, at 6.

In addition, in applicant/petitioner's petition to cancel the COLORWORX registration, opposer/registrant offered the following alleged Affirmative Defenses (hereinafter "Ennis' Affirmative Defenses"):

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). Doc. #20, at 11.

In this document, opposer 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." See Exhibit 1, of applicant's Declaration, *infra*. 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 and 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: 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.

ANSWER: 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 proceeding 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’).” Doc #1, at 6. In addition, in Ennis’ Affirmative Defenses, Ennis 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 more. The interrogatory refers to these goods as “works of color,” a central issue in petitioner’s genericness and descriptiveness cancellation claims because Opposer’s Goods are in fact works of color. Moreover, Opposer claims its COLORWORX mark is “highly distinctive” and is “closely identified with Opposer’s Goods”. Doc. #1, at 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. *See* ColorWorx website, Exhibit 1 of applicant’s Declaration, *infra*. 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 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: 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.

ANSWER: 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.

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.

RESPONSE: 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 and REQUEST TO PRODUCE NO.27 are relevant to this proceeding 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 the reputation, sales, advertising expenditure and reputation connected to the COLORWORX Mark and design, and confirmed these claims in its affirmative defenses to the cancellation petition. Doc #1, at 6; Doc #20, at 11.

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." It is highly relevant, therefore, to inquire as to which four colors are being used, whether there are more than four colors being used in Opposer's printing business, and, if so, of which colors these consist. It is respectfully submitted that Opposer simply refused to answer the question because it would lead to evidence that the term COLORWORX is generic and/or descriptive and therefore ought to be cancelled as a registered trademark.

INTERROGATORY NO. 4: Define in detail your understanding of the phrases "color works" and "works of color."

ANSWER: 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 this proceeding because, to state the strikingly 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. 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. Opposer's refusal to answer questions about its understanding of the name of its own brand is simply ridiculous and the height of dishonesty.

INTERROGATORY NO. 5: 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.

ANSWER: 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.

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.

RESPONSE: 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. INTERROGATORY NO. 5 and REQUEST TO PRODUCE NO. 28 are relevant to this proceeding 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 use, sales, reputation, goodwill, and advertising expenditure under its

COLORWORX mark and design. Doc #1, at 6. 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. Furthermore, the interrogatory is not harassing because opposer propounded the same Interrogatory of applicant in Opposer's First Set of Interrogatories to Applicant. TBMP §412.01.

INTERROGATORY NO. 6: 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.

ANSWER: 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.

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.

RESPONSE: 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 and REQUEST TO PRODUCE NO.29 are relevant to this proceeding 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 COLORWORX 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* Exhibit 1 of applicant's Declaration, *infra*. 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.

Furthermore, the interrogatory is not harassing because opposer asked the same question of applicant in opposer's First Set of Interrogatories to Applicant. TBMP §412.01.

INTERROGATORY NO. 7: 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®".

ANSWER: 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.

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.

RESPONSE: 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.

INTERROGATORY NO. 8: 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.

ANSWER: 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.

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.

RESPONSE: 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. INTERROGATORY NOS. 7 and 8 and REQUESTS TO PRODUCE NOS.30 and 31 are 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 COLORWORX 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. Opposer is again concealing evidence because it has realized it has filed a frivolous action with no good faith basis or factual foundation. Furthermore, these interrogatories are not harassing because opposer asked the same questions of applicant in opposer's First Set of Interrogatories to applicant. TBMP §412.01.

INTERROGATORY NO. 9: Describe in detail the similarities and/or points of confusion and/or deception between the word "wars" and the word "works."

ANSWER: 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.

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.

RESPONSE: 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 and REQUEST TO PRODUCE NO. 32 are relevant to this proceeding 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" Doc #1, at 7. 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.

INTERROGATORY NO. 10: 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.

ANSWER: 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.

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.

RESPONSE: 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. INTERROGATORY NO. 10 and REQUEST TO PRODUCE NO. 33 are relevant to this proceeding 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, these interrogatories are not harassing because opposer asked the same questions of applicant in opposer's First Set of Interrogatories to applicant. TBMP §412.01.

INTERROGATORY NO. 11: 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.

ANSWER: 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.

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.

RESPONSE: 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 this proceeding 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. 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. TBMP §412.01.

INTERROGATORY NO. 12: Identify each person who participated in the selection, design and adoption of the "COLORWORX" mark.

ANSWER: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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.

INTERROGATORY NO. 13: 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.

ANSWER: 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.

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.

RESPONSE: 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.

INTERROGATORY NO. 14: 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.

ANSWER: 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.

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.

RESPONSE: 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.

INTERROGATORY NO. 15: 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.

ANSWER: 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.

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.

RESPONSE: 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 NOS. 12, 13, 14 & 15 and REQUESTS TO PRODUCE NOS. 35, 36, 37 & 38 are relevant to this proceeding because, quite simply, they pertain to particulars of the creation of the COLORWORX mark and design, which Opposer alleges forms the basis of its Opposition proceeding. If the questions and requests are 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 questions and requests are highly relevant, narrowly tailored, and reasonably calculated to lead to the discovery of highly probative evidence admissible at trial. They also bear on the question of Opposer's alleged commission of fraud on the USPTO as particularized in the claims which the Board did not strike out in petitioner's second amended petition to cancel. Doc. #27. Finally, the interrogatories and requests are not overbroad or harassing because Opposer asked the same questions of Applicant in Opposer's First Set of Interrogatories to Applicant and First Requests for Production. TBMP §412.01.

INTERROGATORY NO. 16: 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.

RESPONSE: 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.

INTERROGATORY NO. 19: 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.”

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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. INTERROGATORY NOS. 16 and 19 and REQUEST TO PRODUCE NOS. 39 and 42 are relevant to this proceeding 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 proceeding, attorneys Scott A. Myer and Thomas G. Jacks as lead counsel, which was followed by Daniel Chalker and Jesica Flores as lead counsel. Legal opinions relating to the COLORWORX mark are relevant to this proceeding 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.” Doc. #1, at 6. In addition, in Ennis’ Affirmative Defenses, Ennis 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 interrogatories and requests also bear on the question of Opposer’s alleged commission of fraud on the USPTO as particularized in the claims which the Board did not strike out in petitioner’s second amended petition to cancel. Doc. #27. They are not overbroad or harassing because opposer asked the same questions of Applicant in Opposer’s First Set of Interrogatories to Applicant and First Requests for Production. TBMP §412.01.

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. Ennis has produced an incomplete and evasive privilege log dated August 27, 2012, which is now almost ten months old. *See* Exhibit 27. Applicant seeks a further and more definite statement of all documents in this privilege log as well as production of those documents. 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.

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 to 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 that Ennis has committed fraud on the USPTO as particularized in the portions of his second amended petition to cancel which were not struck out by the Board in its order of May 15, 2013; therefore, Ennis' 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 was participating in a fraud, 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 in the Exhibits, 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 relevant evidence.

As to the work product doctrine, Applicant relies on *Hickman v. Taylor*, 329 U.S. 495 (1947) and seeks an Order requiring Opposer to produce 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. 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: 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."

RESPONSE: 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.

REQUEST TO PRODUCE NO. 6: 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.

RESPONSE: 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.

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.

RESPONSE: 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 and REQUESTS TO PRODUCE NOS. 6 & 40 are relevant to this proceeding 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.

INTERROGATORY NO. 18: 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.

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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 and REQUESTS TO PRODUCE NOS. 18, 21 & 41 are relevant to this proceeding 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 Applicant’s Declaration, *infra*. Opposer has filed a Notice of Opposition opposing Applicant’s use of the COLOR WARS mark in international classes 16 and 41 yet there is simply no basis, legal or factual, for Opposer

to have filed an Opposition to Applicant's class 41 trademark application. 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. In addition, Applicant respectfully submits that opposer refuses to answer these Requests 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. 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. REQUEST TO PRODUCE NO. 21 seeks documents and things pertaining to Opposer's "intended and/or proposed" goods and services sold under the COLORWORX mark.

REQUEST TO PRODUCE NO. 5: Produce all photographs, videotapes, drawings, and other tangible things that pertain in any way to the subject matter of this suit.

RESPONSE: None at this time.

In so answering, Opposer refuses to and fails to answer. Request No. 5 is relevant to this proceeding 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. In official correspondence with the USPTO, Opposer described its logo/design as a "crosshairs logo." 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. Doc. #26. For Ennis to commence an opposition proceeding based on a trademark registration which involves a design and then to state that it has no drawings to produce, is the height of dishonesty.

REQUEST TO PRODUCE NO. 8: Produce all oral or written statements made by You or Your representatives concerning this suit.

RESPONSE: None.

In so answering, Opposer refuses to and fails to answer. Request to Produce No. 8 is relevant to this proceeding because Applicant is entitled to know the full case against him. Opposer's answer is patently false 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, especially when the fraud allegations were first raised. See applicant's Declaration, *infra*. 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. Exhibit 28; TBMP §412.01.

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.

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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." These answers are incredibly evasive as Opposer certainly possesses sales figures, distribution lists and customer lists pertaining to the specific geographic areas where Opposer's "COLORWORX" mark is

advertised, marketed, sold, or promoted. 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 Request to Produce No. 11, 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 dishonesty and evasiveness is simply breathtaking. Moreover, in Opposer's answer to Request to Produce No. 13, 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

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.

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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.

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.

RESPONSE: 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. Requests to Produce Nos. 14, 15, 16, 17, 20 & 43 are relevant to this proceeding because Opposer expressly relied on its "sales," advertising expenditures," significant goodwill," and "valuable reputation" in its Notice of Opposition, thereby opening the door to any discovery request about the past, current and futures sales of goods and services connected to the COLORWORX mark and design. Opposer's refusal to answer demonstrates a clear evasiveness, dishonesty and intent to conceal evidence. In addition, in Ennis' Affirmative Defenses, Ennis 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. 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.

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

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.

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

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.

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

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.

RESPONSE: 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. Requests to Produce Nos. 23, 24, 25 & 26 are relevant to this proceeding because they seek 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; 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. Doc. #1. 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. In addition, with respect to REQUEST TO PRODUCE No. 26, 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. 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.

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). Opposer refused to comply, stating that its responses were sufficient (*see* Exhibit 26). Other email correspondence ensued 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 (*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. Opposer replied on 27th June 2012 that it would attempt to supplement its discovery responses with further production (*see* Exhibit 23) but has failed to respond at all with further production.

PRAYER

WHEREFORE, PREMISES CONSIDERED, applicants prays that this applicant’s motion to compel discovery responses be granted and that the Board compel opposer to respond to the above Interrogatories and Requests for Production, without objection and within 30 days of this Board's Order. Applicant also seeks a further and more definite statement of all documents in Ennis’ privilege log dated August 27, 2012, and a privilege log of all documents over which Ennis claims privilege from August 27, 2012 to the date of the Board’s decision concerning the present motion, as well as production of those documents.

Dated: June 20, 2013

Respectfully submitted,

By: /Joel Beling/

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

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 20th day of June 2013, by sending the same electronic mail, to the following:

Daniel Chalker
Jessica Flores
CHALKER FLORES, LLP
dchalker@chalkerflores.com
jflores@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 (<i>see</i> TTABVUE Doc. #26)	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 Privilege Log	27 August 2012
28	Opposer's Request for Production to Applicant	26 April 2012
29	Opposer's First Set of Interrogatories to Applicant	26 April 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

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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 admissible 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 covered 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)



PROFESSIO...pdf

[Download](#)(18.6 KB)



Petitione...pdf

[Download](#)(147.1 KB)



Petitione...doc

Please see the attached documents:

1. [Correspondence omitted pursuant to Board order in decision dated May 15, 2013];
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

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

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 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.

Exhibit 23: Opposer's Email to Applicant dated June 27, 2012

- **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

CHALKER FLORES, LLP

June 18, 2012

Via Electronic Mail

Joel L. Beling
1 Mirboo Court
Dallas, Victoria 3047
Australia

Re: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd
Opposition No. 91203884, USPTO Trademark Trial and Appeal Board

Dear Mr. Beling,

In response to your letter dated June 12, 2012, we have reviewed our responses and objections to your various discovery and stand by the responses and objections as provided. We also believe that the objections made provide adequate explanation of the bases for our position.

Please be advised that, should you file a motion to compel based upon your reasoning set forth in your June 12, 2012 correspondence, we will seek attorney's fees from you for any time spent in relation to such a motion and for the time spent responding to your improper discovery requests in the first place.

We are happy to discuss this with you should you wish to call us.

Sincerely,



Scott A. Meyer

SAM/cm

Scott A. Meyer, PC
14951 N. Dallas Parkway, Suite 400
Dallas, Texas 75254

Tel: 214.866.0001
Fax: 214.866.0010
smeyer@chalkerflores.com

Exhibit 27: Opposer's Privilege Log

**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.)	Opposition No. 91203884
)	
Joel L. Beling d/b/a Supa Characters Pty Ltd)	
)	
Applicant)	
)	

Joel L. Beling d/b/a Supa Characters Pty Ltd,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92055374
)	
Ennis, Inc.)	
)	
)	Registration No. 3,372,884
)	Mark: COLORWORX
Registrant.)	
)	

PRIVILEGE LOG

NO.	DATE	AUTHOR	RECIPIENTS	DESCRIPTION	PRIVILEGE
PRIV1	00/00/0000	Pitts & Eckl, PC	Pitts & Eckl, PC	Attorney notes and opinions, regarding trademark prosecution.	Work Product
PRIV 2	00/00/0000	Pitts & Eckl, PC	Ennis, Inc.	Attorney-client communications regarding	Attorney-Client

PRIVILEGE LOG

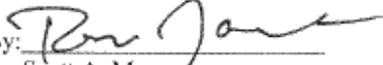
PAGE 1

NO.	DATE	AUTHOR	RECIPIENTS	DESCRIPTION	PRIVILEGE
PRIV3	02/09/2012	Jesica Flores	Scott A. Meyer, Thomas G. Jacks, Marsha Green	trademark prosecution. Attorney work-product regarding prosecution of opposition.	Work Product
PRIV4	02/09/2012	Scott A. Meyer	Thomas G. Jacks, Jesica Flores, Marsha Green	Attorney work-product regarding prosecution of opposition.	Work Product
PRIV5	02/09/2012	Scott A. Meyer	Steven Osterloh, Michael Magill, Thomas G. Jacks	Attorney-client communications regarding prosecution of opposition.	Attorney-Client
PRIV6	02/09/2012	Steven Osterloh	Michael Magill, Thomas G. Jacks, Scott A. Meyer	Attorney-client communications regarding prosecution of opposition.	Attorney-Client
PRIV7	02/09/2012	Scott A. Meyer	Steven Osterloh, Michael Magill, Thomas G. Jacks	Attorney-client communications regarding prosecution of opposition.	Attorney-Client
PRIV8	02/09/2012	Jesica Flores	Scott A. Meyer, Thomas G. Jacks	Attorney work-product regarding prosecution of opposition.	Work Product
PRIV9	02/10/2012	Scott A. Meyer	Thomas G. Jacks, Cynthia Minchillo	Attorney work-product regarding prosecution of opposition.	Work Product
PRIV10	02/15/2012	Scott A. Meyer	Thomas G. Jacks, Cynthia Minchillo, John Sokatch	Attorney work-product regarding prosecution of opposition.	Work Product
PRIV11	00/00/0000	Chalker Flores, LLP	Ennis, Inc.	Attorney-client communications regarding prosecution of opposition.	Attorney-Client
PRIV12	00/00/0000	Chalker Flores, LLP	Chalker Flores, LLP	Attorney work-product regarding prosecution of opposition.	Work Product

Dated: August 27, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: 
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Thomas G. Jacks
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ATTORNEYS FOR REGISTRANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing PRIVILEGE LOG was served on all counsel of record, this the 27th of August, 2012, by sending the same via electronic mail service.

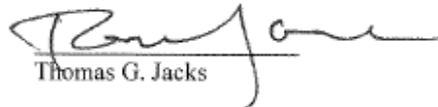

Thomas G. Jacks

Exhibit 28: Opposer's First Request for Production to Applicant

**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)	
_____)	

OPPOSER'S FIRST REQUEST FOR PRODUCTION TO APPLICANT

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Ennis, Inc. ("Opposer") serves these Requests for Production on Joel L. Beling d/b/a Supa Characters Pty Ltd ("Applicant") as authorized by Federal Rule of Civil Procedure 34 and Trademark Rule 2.120(d), 37 C.F.R. § 2.120(d).

DEFINITIONS AND INSTRUCTIONS

The following terms have the following meanings, unless the context requires otherwise:

1. "Opposer" and/or "Ennis" as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries,

affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.

2. "You" or "your" means Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, as well as its agents, employees, and all other persons acting on behalf of Applicant or its successors, predecessors, heirs, beneficiaries or assigns.

3. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

4. "Identify (person)." When referring to a person, "identify" means to give, to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.

5. "Identify (document)." When referring to a document, "identify" means to give, to the extent known, the following information: (a) the type of document; (b) the general subject matter of the document; (c) the date of the document; (d) the authors, addressees, and recipients of the document; (e) the location of the document; (f) the identity of the person who has custody of the document; and (g) whether the document has been destroyed, and if so, (i) the date of its destruction, (ii) the reason for its destruction, and (iii) the identity of the person who destroyed it.

6. "Any" should be understood in either its most or its least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. "And/Or." The connectives "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

8. "Number." The use of the singular form of any word includes the plural and vice versa.

9. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

10. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

11. "COLOR WARS" defines the mark COLOR WARS, U.S. Trademark Application Serial No. 85/324,443, applied for by Joel L. Beling d/b/a Supa Characters Pty Ltd.

12. "COLORWORX" defines the mark COLORWORX[®], U.S. Trademark Registration No. 3,372,884 and includes a variety of printing goods and printing services that are international Class 40 products manufactured and put into the stream of commerce by Ennis, Inc.

13. "Identify" or "describe" when referring to a person, means you must state the following:

- a. The full name.
- b. The present or last known residential address and residential telephone number.
- c. The present or last known office address and office telephone number.
- d. The occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular interrogatory.
- e. In the case of any entity, identify the officer, employee, or agent most closely connected with the subject matter of the interrogatory and the officer who is responsible for supervising that officer or employee.

14. "Identify" or "describe" when referring to a document, means you must state the following:

- a. The nature (e.g., letter, handwritten note) of the document.
- b. The title or heading that appears on the document.
- c. The date of the document and the date of each addendum, supplement, or other addition or change.
- d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered.
- e. The present location of the document, and the name, address, position or title, and telephone number of the person or persons having custody of the document.

15. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action.

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

- a. general type of document, e.g., letter, memorandum, report, miscellaneous, notes, etc.;
- b. date;
- c. author;
- d. organization, if any, with which author was connected;
- e. addressee or recipient;
- f. other distributees;

- g. organization, if any, with which addressee or recipient, or distributees were connected;
- h. general nature of the subject matter to extent that Applicant can do so without divulging matter considered by it to be privileged;
- i. present location of such document and each copy thereof known to Applicant, including the title, index number and location, if any, of the file in which the document is kept by the Applicant or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

17. "Relate" or "relating to" as used herein includes, without limitation, referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, describing, measuring, reflecting, supporting, analyzing, explaining, constituting, evidencing, or pertaining to.

18. "Privilege." If Applicant relies on any privilege or the work product doctrine in objecting to these Requests or in failing to produce a requested document, please state in the response to the Request that the Applicant is invoking a privilege, specify which privilege or doctrine is being invoked and the nature and reasons supporting the claim of privilege.

19. "Attorney-Client Privilege." If Applicant invokes the attorney-client privilege, please provide the following additional information for each document not disclosed or information withheld, to the extent that providing this information will not destroy the privilege.

- a. the name and job title of the author of the document or communication;
- b. the name and job title of every person who received the document or a copy of it, or who was present when the communication was made or who overheard it;
- c. the relationship between the author(s) and each person who received the document or a copy of it or who was present when the communication was made or who overheard it;
- d. whether the primary purpose of the document or communication was to seek or provide legal advice or services;
- e. the date of the document or communication;
- f. the subject matter(s) addressed in the document or communication;
- g. whether the document or communication was transmitted in confidence; and
- h. a brief statement as to why the document or communication is protected by the attorney-client privilege.

REQUESTS FOR PRODUCTION

REQUEST 1: Produce working papers, notes, calculations, diagrams, photographs, models, exhibits, and other materials, including reports and factual observations, prepared or reviewed by any expert who will testify at trial on Applicant's behalf.

RESPONSE:

REQUEST 2: Produce copies of all transcripts of testimony previously provided by any individual listed by You as an expert witness.

RESPONSE:

REQUEST 3: Produce treatises, rules, regulations, guidelines, statutes, policies, procedures, and any other authoritative materials considered by any testifying expert in forming an opinion.

RESPONSE:

REQUEST 4: Produce invoices, bills, and other billing materials for each expert You expect will testify at trial.

RESPONSE:

REQUEST 5: Produce all photographs, videotapes, drawings, and other tangible things that pertain in any way to the subject matter of this suit.

RESPONSE:

REQUEST 6: 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.

RESPONSE:

REQUEST 7: Produce copies of any claim made by or against You for damages similar to those alleged in this suit.

RESPONSE:

REQUEST 8: Produce all oral or written statements made by You or Your representatives concerning this suit.

RESPONSE:

REQUEST 9: Produce all documents and things relating to the creation, consideration, design, development, selection, adoption, and first use of the "COLOR WARS" mark on any product or service.

RESPONSE:

REQUEST 10: Produce representative specimens of each label, container, trade dress, wrapper, packaging, letterhead, sign, catalog, brochure, or other materials used to advertise, market, sell, promote, or otherwise commercialize any of Applicant's "COLOR WARS" mark products or services.

RESPONSE:

REQUEST 11: Produce all documents and things relating to the geographic areas where products or services relating to Applicant's "COLOR WARS" mark are advertised, marketed, sold, or promoted and the length of time each product or service has been advertised, marketed, sold, or promoted in each area.

RESPONSE:

REQUEST 12: Produce all documents and things relating to the distribution channels through which products or services relating to Applicant's "COLOR WARS" mark are advertised, marketed, sold, or promoted.

RESPONSE:

REQUEST 13: Produce all documents and things relating to the classes of customers to whom You advertise, market, sell, or promote products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 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 Applicant's "COLOR WARS" mark products or services.

RESPONSE:

REQUEST 15: Produce all documents and things relating to variable and fixed costs for sales of products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 16: Produce all documents and things relating to gross and net profits from sales of products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 17: Produce all documents and things relating to the yearly cost to You of advertising, marketing, selling, and promoting products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 18: Produce all documents and things concerning Your past, present, and future plans to advertise, market, sell, or promote products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 19: Produce representative specimens of all advertising and other promotional materials for products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 20: Produce all documents and things relating to Your yearly expenses to date and planned future expenses corresponding to each type of advertising and promotion used for products or services relating to Applicant's "COLOR WARS" mark.

RESPONSE:

REQUEST 21: Produce documents and things relating to Opposer's products or services utilizing the "Color Wars" mark.

RESPONSE:

REQUEST 22: Produce all documents and things You contend supports Your contention that Applicant's "COLOR WARS" mark does not resemble "COLORWORXSM" when used on or in connection with Your goods and services.

RESPONSE:

REQUEST 23: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will not injure Opposer by causing the trade/or purchasing public to be confused and/or deceived.

RESPONSE:

REQUEST 24: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will not 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.

RESPONSE:

REQUEST 25: Produce all documents and things You contend supports Your contention that registration of Applicant's "COLOR WARS" mark will not injure Opposer by placing a cloud over Opposer's title to its "COLORWORXSM" mark.

RESPONSE:

REQUEST 26: Produce all documents and things You contend supports Your contention that Applicant's "COLOR WARS" mark is not the same, or substantially the same, as Opposer's mark "COLORWORX[®]" including in visual appearance and in pronunciation.

RESPONSE:

REQUEST 27: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 5 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 28: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 6 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 29: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 7 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 30: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 8 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 31: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 9 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 32: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 10 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 33: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 11 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 34: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 12 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 35: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 13 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 36: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 14 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 37: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 15 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

REQUEST 38: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 16 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

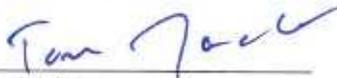
REQUEST 39: Produce all documents and things relating to the information requested to be identified in Interrogatory No. 17 of Opposer's First Set of Interrogatories to Applicant.

RESPONSE:

Dated: April 26, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: 

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Thomas G. Jacks
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smever@chalkersflores.com
tjacks@chalkersflores.com

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION TO APPLICANT was served on all parties, this the 26th day of April, 2012, by sending the same electronic mail, to the following:

Joel L. Beling
1 Mirboo Court
Dallas, Victoria 3047
Australia
joelbeling@hotmail.com



Thomas G. Jacks

Exhibit 29: Opposer's First Set of Interrogatories to Applicant

**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)	
)	

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

To: Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, 1 Mirboo Court, Dallas, Victoria 3047, Australia.

Ennis, Inc. ("Opposer") serves these interrogatories on Joel L. Beling d/b/a Supa Characters Pty Ltd ("Applicant") as authorized by Federal Rule of Civil Procedure 33 and Trademark Rule 2.120(d), 37 C.F.R. § 2.120(d). Applicant must serve an answer to each Interrogatory separately and fully, in writing and under oath, within 30 days after service.

DEFINITIONS AND INSTRUCTIONS

The following terms have the following meanings, unless the context requires otherwise:

1. "Opposer" and/or "Ennis" as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.

2. "You" or "your" means Joel L. Beling d/b/a Supa Characters Pty Ltd, Applicant, as well as its agents, employees, and all other persons acting on behalf of Applicant or its successors, predecessors, heirs, beneficiaries or assigns.

3. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

4. "Identify (person)." When referring to a person, "identify" means to give, to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.

5. "Identify (document)." When referring to a document, "identify" means to give, to the extent known, the following information: (a) the type of document; (b) the general subject matter of the document; (c) the date of the document; (d) the authors, addressees, and recipients of the document; (e) the location of the document; (f) the identity of the person who has custody of the document; and (g) whether the document has been destroyed, and if so, (i) the date of its destruction, (ii) the reason for its destruction, and (iii) the identity of the person who destroyed it.

6. "Any" should be understood in either its most or its least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. "And/Or." The connectives "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

8. "Number." The use of the singular form of any word includes the plural and vice versa.

9. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

10. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

11. "COLOR WARS" defines the mark COLOR WARS, U.S. Trademark Application Serial No. 85/324,443, applied for by Joel L. Beling d/b/a Supa Characters Pty Ltd.

12. "COLORWORX" defines the mark COLORWORX[®], U.S. Trademark Registration No. 3,372,884 and includes a variety of printing goods and printing services that are international Class 40 products manufactured and put into the stream of commerce by Ennis, Inc.

13. "Identify" or "describe" when referring to a person, means you must state the following:

- a. The full name.
- b. The present or last known residential address and residential telephone number.
- c. The present or last known office address and office telephone number.
- d. The occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular interrogatory.
- e. In the case of any entity, identify the officer, employee, or agent most closely connected with the subject matter of the interrogatory and the officer who is responsible for supervising that officer or employee.

14. "Identify" or "describe" when referring to a document, means you must state the following:

- a. The nature (e.g., letter, handwritten note) of the document.
- b. The title or heading that appears on the document.
- c. The date of the document and the date of each addendum, supplement, or other addition or change.
- d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered.
- e. The present location of the document, and the name, address, position or title, and telephone number of the person or persons having custody of the document.

15. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action.

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

- a. general type of document, e.g., letter, memorandum, report, miscellaneous, notes, etc.;
- b. date;
- c. author;
- d. organization, if any, with which author was connected;
- e. addressee or recipient;
- f. other distributees;
- g. organization, if any, with which addressee or recipient, or distributees were connected;

h. general nature of the subject matter to extent that Applicant can do so without divulging matter considered by it to be privileged;

i. present location of such document and each copy thereof known to Applicant, including the title, index number and location, if any, of the file in which the document is kept by the Applicant or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

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

18. Wherever in the following interrogatories Applicant is asked to identify a product, it is requested that the product be identified by stating the catalog, stock, model or the like number or designation, the trademark, name, type, grade, and any other designation customarily used by the party concerned to designate such product, and to distinguish it from others made by the same or a different producer.

19. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date they are answered. However, these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Opposition herein which Applicant acquires or which becomes known to Applicant up to and including the close of discovery shall be furnished to Opposer within a reasonable time after such information is acquired or becomes known. Applicant's response to these interrogatories is to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Fed. R. Civ. P. 26(e).

INTERROGATORIES

INTERROGATORY NO. 1: Specify the date and describe the details of Applicant's first use of "COLOR WARS" on its services and/or products, including indentifying all persons involved and all materials referring or relating to the usage.

ANSWER:

INTERROGATORY NO. 2: When did Applicant first intend to use, sell or offer to sell products and/or services under the mark "COLOR WARS"?

ANSWER:

INTERROGATORY NO. 3: Identify each and every geographical location where Applicant intends to use or has used "COLOR WARS", including specifying the dates of first use and first offer of services and/or products in the identified geographical location.

ANSWER:

INTERROGATORY NO. 4: Identify every product and service in connection with which you have used, are using, or plan to use under or with the "COLOR WARS" mark.

ANSWER:

INTERROGATORY NO. 5: Identify the media in or through which Applicant advertises or promotes its services and/or products under or with the "COLOR WARS" mark.

ANSWER:

INTERROGATORY NO. 6: Identify each person or the entity whom distributed, circulated, sold, or advertised services and/or products in connection with the "COLOR WARS" mark, including whether any contract exists for distribution, circulation, sale, or advertisement.

ANSWER:

INTERROGATORY NO. 7: Identify all facts, laws, information, or materials that Applicant relies on to support the contention that all or part of the mark "COLOR WARS" is not confusingly similar to the mark "COLORWORX[®]".

ANSWER:

INTERROGATORY NO. 8: Identify all facts, laws, information, or materials that Applicant relies on to support the contention that there is no likelihood of confusion between any trademark, service mark, domain name, or other designation of Opposer and any trademark, service mark, domain name, or other designation of Applicant.

ANSWER:

INTERROGATORY NO. 9: Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Applicant's mark will not injure Opposer by causing the trade and/or purchasing public to be confused and/or deceived.

ANSWER:

INTERROGATORY NO. 10: Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Opposer's mark has not acquired secondary meaning among the public or trade.

ANSWER:

INTERROGATORY NO. 11: Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Applicant's mark will not place a cloud over Opposer's mark.

ANSWER:

INTERROGATORY NO. 12: Identify all facts, laws, information, or materials that Applicant relies on to support the contention that Applicant's mark is not the same as, or substantially the same as, Opposer's mark in visual appearance and in pronunciation.

ANSWER:

INTERROGATORY NO. 13: Identify each officer of Supa Characters Pty Ltd, including each officer's name, title, address, and job duties.

ANSWER:

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

PAGE 6

INTERROGATORY NO. 14: Identify each person who participated in the selection, design and adoption of the "COLOR WARS" mark.

ANSWER:

INTERROGATORY NO. 15: Identify every opinion, legal or otherwise, requested or received by you, regarding the right to use the mark "COLOR WARS", including the identity of the persons requesting the opinion, the date and substance of the opinion, and the persons receiving the opinion.

ANSWER:

INTERROGATORY NO. 16: Describe in detail any instances in which a third party, other than Opposer, has challenged your right to use the mark "COLOR WARS".

ANSWER:

INTERROGATORY NO. 17: Describe in detail any plans for future expansion, including but not limited to, expansion of marketing lines, services, customer base or geographical areas served.

ANSWER:

Dated: April 26, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: 

Scott A. Meyer
State Bar No. 24013162
Thomas G. Jacks
State Bar No. 24067681
14951 N. Dallas Parkway, Suite 400
Dallas, Texas 75254
(214) 866-0001 (telephone)
(214) 866-0010 (telecopy)
smeyer@chalkersflores.com
tjacks@chalkersflores.com

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on all parties, this the 26th day of April, 2012, by sending the same via electronic mail, to the following:

Joel L. Beling
1 Mirboo Court
Dallas, Victoria 3047
Australia
joelbeling@hotmail.com


Thomas G. Jacks

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

PAGE 8

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

Opposition No. 91203884

Ennis Inc.

v.

Joel L. Beling d/b/a Supa Characters Pty Ltd

DECLARATION IN SUPPORT OF
MOTION TO COMPEL

Cancellation No. 92055374

Joel L. Beling d/b/a Supa Characters Pty Ltd

v.

Ennis, Inc.

DECLARATION OF JOEL L. BELING

1. I am the Applicant and Petitioner in the present proceeding. I submit this declaration pursuant to Trademark Rule 2.20 in support of my motion to compel. It contains a statement of the facts relevant to the motion in respect of which I am willing to give evidence if called upon.
2. On April 24, 2012 I participated in the Discovery Conference for this matter along with Mr. Thomas G. Jacks, attorney for Ennis Inc. (“Ennis”), and Ms. Elizabeth Dunn, Board Interlocutory Attorney. Subjects discussed included the pleadings, priority, settlement, legal representation, ACR (accelerated case resolution), and a stipulation as to service, most of which are discussed in the Board’s order dated April 26, 2012.
3. Another subject discussed at the Discovery Conference in this proceeding was whether there were any other similar proceedings on foot. That is, proceedings which involved similar issues to those which were before the Board. Mr. Jacks advised Ms. Dunn and me that there was in fact another similar opposition proceeding on foot that involved Ennis’ COLORWORX mark

and design, and that his client was the opposer. I asked Mr. Jacks what the issues were and he said the other mark was COLOR WORKS with a “K-S.” We moved on to different topics for a couple of minutes and then I asked Mr. Jacks what the file number was for the opposition proceeding involving the similar allegations to the present suit and he replied that he did not have the file in front of him. For the record, I make no allegations of attorney misconduct in this declaration or the above motion against Ennis’ attorneys, including Mr. Jacks.

4. On the 19th June, 2013, I did an internet search and found Ennis’ internet homepage, which is located at www.ennis.com. I went to the “Investor Relations” section of the website and downloaded Ennis’ 2003 annual report. A true and correct copy of pages 8 and 9 of the annual report which relate to the creation of the COLORWORX brand is shown in Exhibit 1. In its 2003 Annual Report, Ennis states that the COLORWORX brand was designed by Admore to “serve the short run color needs of [Ennis’] distributors” (p. 9). Throughout the discovery process in this proceeding, Ennis has failed to produce any of its annual reports to me, despite all being relevant under a number of my discovery requests. In addition, during my initial research into Ennis in mid-2012 while preparing my first motion to compel (which was not considered by the Board in its decision on May 15, 2013), I skim-read each of Ennis’ annual reports for the previous 12 years. I discovered that nowhere in Ennis’ annual reports for the previous 12 years, to the best of my knowledge and belief, is there even a single reference to Ennis expanding its goods and services to include goods and services listed in international class 41.

5. On the 19th June, 2013, I did an internet search for Ennis’ COLORWORX mark, registration number 3372884, on the United States and Patent Office’s TARR site and retrieved a status report, which is shown in Exhibit 2. It shows an opposition by Ennis against the Pioneer Supply Company in opposition no. 91203773, with Ennis relying on its COLORWORX and design registration to oppose the application for the mark PSC COLOR WORKS.

6. On the 19th June, 2013, I did an internet search and found Ennis’ COLORWORX website, which is located at www.colorworxonline.com. I downloaded the page “About Us” from

the webpages from this site which I believe is relevant to my motion to compel. A true and correct copy of this webpage is shown in Exhibit 3. The main text of the page reads as follows:

High Quality, Full Color

ColorWorx provides the quality, full color printing you expect at an affordable price.

Quick Turnaround

Most orders ship in 3-5 working days or less from receipt of acceptable artwork/disk.

Standard Printing

All standard ColorWorx products are printed in 4-color process only. All PMS colors in files will be automatically converted to CMYK process equivalents. Be aware this can cause a slight color shift.

Color Matching

ColorWorx is a "gang run" style print company. Your job will be run on a press sheet with other jobs and will be run to standard color densities. The overall dominant color on a sheet may cause individual job colors to shift slightly. We make every effort to produce a reasonable representation; however, ColorWorx, like all other gang run commercial printers, does not guarantee an exact color match.

ColorWorx...Guarantee

We're proud of the work we do. And if we don't do it right, we'll make it right. Period.

Ennis' COLORWORX website, "About Us"
<http://www.colorworxonline.com/aboutus.html>

7. Finally, in early-mid 2012, before I filed my motion to amend my pleadings in my cancellation petition to include an allegation of fraud against Ennis, I wrote to Ennis' then-attorney, Mr. Scott Myer, and asked him whether Ennis consented to this amendment. Approximately 10 days later, Ennis replied, through Mr. Myer, that it did not consent. *See* Exhibit 4. I believe that my fraud allegation would have generated a flurry of emails amidst Ennis' senior management during those 10 days, especially given that Ennis is a public company listed on the New York Stock Exchange. I also believe it beggars belief to suggest that there was no written or email correspondence concerning Ennis's other opposition proceeding against the Pioneer Supply Company regarding the use of the "PSC COLOR WORKS" mark (Opposition No. 91203773).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 20th day of June, 2013.

Dated: June 20, 2013

Respectfully submitted,

JOEL BELING

By: /Joel Beling/

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

Exhibit 1

promotional solutions group



The Promotional Solutions Group exudes an image of distinction to customers and competitors alike. The companies that make up this division of Ennis are viewed as leaders in their industries and work hard to ensure that their products, capabilities and relationships are second to none. This attitude of distinction, mixed with a service-first mindset has led to a history of success and trust in the industry.

Success & Trust

The Promotional Solutions Group of companies is characterized by the word Distinction. Our oldest company, Wolfe City Tag and Label, has been a leading supplier of tags, labels and ad specialty products to Ennis' customers for over 34 years. This company has set itself apart by being the largest supplier of cotton tags in the United States and has excelled in the manufacture of unique and difficult custom labels for almost any application. With the addition of new flexographic equipment, Wolfe City now offers its customers an array of new promotional label opportunities in vivid color. The focus this past year has been to enhance the capability to service a wider range of customers' needs.

Whether these needs are for products that offer more promotion or for a unique environment at higher volume, Wolfe City has enhanced its product offerings for distributors with the addition of medium format screen-printing capability. This division partners with the Forms Solutions Group and the other divisions within this group to offer customers a broader range of promotional products. Wolfe City Tag and Label has distinguished itself and stands ready to do so in the future.

Expansion & Growth

Admore is distinguished as the leading manufacturer of presentation folders in the nation. What really distinguishes Admore is the outstanding quality of its products and the people who manufacture them. The efforts of Admore employees to reduce costs while maintaining this outstanding quality is allowing the company to be more aggressive in the market, leading to sales growth in a challenging economic environment. A focused marketing effort was initiated at the beginning of the year that emphasized a renewed push by Admore to distinguish the company as the leader in its product category.

A successful effort was made to promote the Admore Line of products to our traditional forms customers. This effort will continue with the increase in traditional forms distributors selling commercial color printing. During the year, Admore introduced the ColorWorx Line, which is designed to serve the short run color needs of our distributors. We also introduced a technologically unique series of expansion products called the Conformer® Line. Admore experienced significant volume growth during this past year and expects to continue growth in the coming year.

Development & Promotions

The Adams McCure division has distinguished itself as one of the leading temporary point-of-purchase product manufacturers in the commercial printing industry. This profile has continued the past year with substantial growth with key customers. A refocusing of attention on the temporary point-of-purchase core product line resulted in substantial improvement in the profitability of the division. Less profitable product lines that were not contributing to our key competency were discontinued or

transferred to other Ennis facilities more suitable for the manufacture and distribution of these lines. Another area that distinguished Adams McCure is in the kitting and fulfillment of complex point-of-purchase promotional programs for major customers such as 7-Eleven and Sonic. In addition to these continuing monthly programs, Adams McCure offers many other programs on a less frequent basis.

A dedicated marketing effort to expand awareness of Adams McCure in new market regions and with new customers has successfully led to new business opportunities. This should allow continued growth in the next year as our new relationships develop.

Adams McCure has improved its cross-selling activity with the Forms Solutions and Financial Solutions Groups, which has led to enhanced product offerings for Ennis' customers. With continued effort to grow profitable sales while operating with greater efficiency, Adams McCure will be a strong contributor to Ennis' growth.

Exhibit 2

Mark Information

Mark Literal Elements: COLORWORX

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 21.03.12 - Targets without crosshairs or alignment guides; Dart boards

26.01.21 - Circles that are totally or partially shaded.

26.17.06 - Diagonal line(s), band(s) or bar(s); Bars, diagonal; Lines, diagonal; Bands, diagonal

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

Brackets [...] indicate deleted goods/services;

Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of

Asterisks *.* identify additional (new) wording in the goods/services.

For: Printing Services

International Class(es): 040 - Primary Class **U.S Class(es):** 100, 103, 106

Class Status: ACTIVE

Basis: 1(a)

First Use: Aug. 2002 **Use in Commerce:** Aug. 2002

Basis Information (Case Level)

Filed Use: Yes **Currently Use:** Yes **Amended Use:** No

Filed ITU: No **Currently ITU:** No **Amended ITU:** No

Filed 44D: No **Currently 44D:** No **Amended 44D:** No

Filed 44E: No **Currently 44E:** No **Amended 44E:** No

Filed 66A: No **Currently 66A:** No

Filed No Basis: No **Currently No Basis:** No

Current Owner(s) Information

Owner Name: Ennis, Inc.

Owner Address: 2441 Presidential Pkwy

Midlothian, TEXAS 76065

UNITED STATES

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

TEXAS

Attorney/Correspondence Information

Generated on: This page was generated by TSDR on 2013-06-19 21:54:01 EDT

Mark: COLORWORX

US Serial Number: 78698743 **Application Filing Date:** Aug. 23, 2005

US Registration Number: 3372884 **Registration Date:** Jan. 22, 2008

Register: Principal

Mark Type: Service Mark

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board.

For further information, see TTABVUE on the

Trademark Trial and Appeal Board web page.

Status Date: Mar. 26, 2012

Publication Date: Nov. 06, 2007

Attorney of Record

Attorney Name: Edwin S. Flores **Docket Number:** ENNI:3010

Attorney Primary Email

Address:

doCKET@chalkerflores.com **Attorney Email**

Authorized:

Yes

Correspondent

Correspondent

Name/Address:

Edwin S. Flores
CHALKER FLORES LLP
14951 N DALLAS PARKWAY
Suite 400
DALLAS, TEXAS 75254
UNITED STATES

Phone: 214-866-0001 **Fax:** 214-866-0010

Correspondent e-mail: doCKET@chalkerflores.com **Correspondent e-mail**

Authorized:

Yes

Domestic Representative - Not Found

Prosecution History

Date Description Proceeding

Number

Jun. 07, 2013 TEAS PETITION TO DIRECTOR RECEIVED 1111
Feb. 13, 2013 NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED
Feb. 13, 2013 REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. 64591
Feb. 12, 2013 CASE ASSIGNED TO POST REGISTRATION PARALEGAL 64591
Jan. 31, 2013 TEAS SECTION 8 & 15 RECEIVED
Mar. 26, 2012 CANCELLATION INSTITUTED NO. 999999 55374
Jul. 06, 2011 ATTORNEY REVOKED AND/OR APPOINTED
Jul. 06, 2011 TEAS REVOKE/APPOINT ATTORNEY RECEIVED
Apr. 29, 2011 TEAS CHANGE OF CORRESPONDENCE RECEIVED
Jan. 22, 2008 REGISTERED-PRINCIPAL REGISTER
Nov. 06, 2007 PUBLISHED FOR OPPOSITION
Oct. 17, 2007 NOTICE OF PUBLICATION
Oct. 02, 2007 LAW OFFICE PUBLICATION REVIEW COMPLETED 77978
Oct. 02, 2007 APPROVED FOR PUB - PRINCIPAL REGISTER
Sep. 29, 2007 LIE CHECKED SUSP - TO ATTY FOR ACTION 77978
Sep. 29, 2007 ASSIGNED TO LIE 77978
Mar. 28, 2007 REPORT COMPLETED SUSPENSION CHECK CASE STILL
SUSPENDED
Sep. 28, 2006 LETTER OF SUSPENSION E-MAILED 6332
Sep. 28, 2006 SUSPENSION LETTER WRITTEN 81878
Sep. 28, 2006 TEAS/EMAIL CORRESPONDENCE ENTERED 70824
Sep. 11, 2006 CORRESPONDENCE RECEIVED IN LAW OFFICE 70824
Sep. 11, 2006 TEAS RESPONSE TO OFFICE ACTION RECEIVED
Mar. 10, 2006 NON-FINAL ACTION E-MAILED 6325
Mar. 10, 2006 NON-FINAL ACTION WRITTEN 81878
Mar. 10, 2006 ASSIGNED TO EXAMINER 81878
Aug. 31, 2005 NEW APPLICATION ENTERED IN TRAM

Maintenance Filings or Post Registration Information

Affidavit of Continued

Use:

Section 8 - Accepted

Affidavit of

Incontestability:

Section 15 - Accepted

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 102 **Date in Location:** Jun. 07, 2013

Assignment Abstract Of Title Information

Summary

Total Assignments: 1 **Registrant:** Ennis, Inc.

Assignment 1 of 1

Conveyance: SECURITY INTEREST

Reel/Frame: [4094/0597](#) **Pages:** 17

Date Recorded: Nov. 11, 2009

Supporting Documents: [assignment-tm-4094-0597.pdf](#)

Assignor

Name: [ENNIS, INC.](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

TEXAS

Name: [ENNIS BUSINESS FORMS OF KANSAS, INC.](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

KANSAS

Name: [CONNOLLY TOOL AND MACHINE COMPANY](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: COMPANY **State or Country Where**

Organized:

DELAWARE

Name: [ADMORE, INC.](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

TEXAS

Name: [PFC PRODUCTS, INC.](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

DELAWARE

Name: [ENNIS ACQUISITIONS, INC.](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

NEVADA

Name: [NORTHSTAR COMPUTER FORMS, INC.](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

MINNESOTA

Name: [GENERAL FINANCIAL SUPPLY, INC.](#) **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

IOWA

Name: CALIBRATED FORMS CO. INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

KANSAS

Name: CRABAR/GBF, INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

DELAWARE

Name: ROYAL BUSINESS FORMS INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

TEXAS

Name: ALSTYLE APPAREL LLC **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where**

Organized:

DELAWARE

Name: A AND G, INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

ILLINOIS

Name: ALSTYLE ENSENADA LLC **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where**

Organized:

ILLINOIS

Name: ALSTYLE HERMOSILLA LLC **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where**

Organized:

ILLINOIS

Name: DIACO USA, LLC **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where**

Organized:

CALIFORNIA

Name: TENNESSEE BUSINESS FORMS COMPANY **Execution Date:** Nov. 03, 2009

Legal Entity Type: COMPANY **State or Country Where**

Organized:

TENNESSEE

Name: TBF REALTY, LLC **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where**

Organized:

DELAWARE

Name: BLOCK GRAPHICS, INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

OREGON

Name: SPECIALIZED PRINTED FORMS, INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

NEW YORK

Name: B&D LITHO OF ARIZONA, INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

DELAWARE

Name: SKYLINE BUSINESS FORMS, INC. **Execution Date:** Nov. 03, 2009

Legal Entity Type: CORPORATION **State or Country Where**

Organized:

DELAWARE

Name: SKYLINE BUSINESS PROPERTIES LLC **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where**

Organized:

DELAWARE

Name: SPF REALTY, LLC **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED LIABILITY COMPANY **State or Country Where**

Organized:

DELAWARE

Name: AMERICAN FORMS I, L.P. **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED PARTNERSHIP **State or Country Where**

Organized:

TEXAS

Name: ADAMS MCCLURE I, L.P. **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED PARTNERSHIP **State or Country Where**

Organized:

TEXAS

Name: TEXAS EBF, L.P. **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED PARTNERSHIP **State or Country Where**

Organized:

TEXAS

Name: ENNIS SALES, L.P. **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED PARTNERSHIP **State or Country Where**

Organized:

TEXAS

Name: ENNIS MANAGEMENT, L.P. **Execution Date:** Nov. 03, 2009

Legal Entity Type: LIMITED PARTNERSHIP **State or Country Where**

Organized:

TEXAS

Assignee

Name: BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT

Legal Entity Type: NATIONAL BANKING ASSOCIATION **State or Country Where**

Organized:

UNITED STATES

Address: 901 MAIN STREET

MAIL CODE: TX1-492-14-11

DALLAS, TEXAS 75202-3714

Correspondent

Correspondent Name: ANDREA WALKER, WINSTEAD PC

Correspondent Address: P.O. BOX 50784

DALLAS, TX 75250-0784

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 3

Type of Proceeding: Cancellation

Proceeding Number: [92055374](#) **Filing Date:** Mar 25, 2012

Status: Pending **Status Date:** Mar 25, 2012

Interlocutory Attorney: ELIZABETH A DUNN

Defendant

Name: Ennis, Inc.

Correspondent Address: SCOTT A MEYER

CHALKER FLORES LLP

14951 N DALLAS PARKWAY , SUITE 400

DALLAS TX , 75254

UNITED STATES

Correspondent e-mail:

smeyer@chalkerflores.com,docket@chalkerflores.com,cminchillo@chalkerflores.com,tjacks@chalkerflores.com

Associated marks

Mark Application Status Serial

Number

Registration

Number

COLORWORX Cancellation Pending [78698743 3372884](#)

Plaintiff(s)

Name: Joel L. Beling d/b/a Supa Characters Pty Ltd

Correspondent Address: JOEL L BELING

1 MIRBOO COURT

DALLAS VICTORIA , 3047

AUSTRALIA

Correspondent e-mail: joelbeling@hotmail.com

Associated marks

Mark Application Status Serial

Number

Registration

Number

COLOR WARS Opposition Pending [85324443](#)

Prosecution History

Entry

Number History Text Date Due Date

1 FILED AND FEE Mar 25, 2012

2 NOTICE AND TRIAL DATES SENT; ANSWER DUE: Mar 26, 2012 May 05, 2012

3 PENDING, INSTITUTED Mar 26, 2012

4 DEF'S MOT FOR MORE DEFINITE STATEMENT OR MOT TO

STRIKE May 07, 2012

5 ANSWER May 07, 2012

6 CHANGE OF CORRESPONDENCE ADDRESS May 09, 2012

7 P'S MOTION TO AMEND PLEADING/AMENDED PLEADING May 08, 2012

8 P'S OPPOSITION/RESPONSE TO MOTION May 21, 2012

9 P'S MOTION TO AMEND PLEADING/AMENDED PLEADING Jun 03, 2012

10 CONSOLIDATED - CHILD of 91203884 Jul 13, 2012

11 DELETE ENTRY Sep 19, 2012

12 DELETE ENTRY Sep 19, 2012

13 DELETE ENTRY Sep 19, 2012

Type of Proceeding: Opposition

Proceeding Number: [91203884](#) **Filing Date:** Feb 15, 2012

Status: Pending **Status Date:** Feb 15, 2012
Interlocutory Attorney: ELIZABETH A DUNN

Defendant

Name: Joel L. Beling d/b/a Supa Characters Pty Ltd

Correspondent Address: JOEL L BELING
1 MIRBOO COURT
DALLAS VICTORIA , 3047
AUSTRALIA

Correspondent e-mail: joelbeling@hotmail.com

Associated marks

Mark Application Status Serial

Number

Registration

Number

COLOR WARS Opposition Pending [85324443](#)

Plaintiff(s)

Name: Ennis, Inc.

Correspondent Address: SCOTT A MEYER
CHALKER FLORES LLP
14951 N DALLAS PARKWAY, SUITE 400
DALLAS TX , 75254
UNITED STATES

Correspondent e-mail:

smeyer@chalkerflores.com,docket@chalkerflores.com,cminchillo@chalkerflores.com,tjacks@chalkerflores.com

Associated marks

Mark Application Status Serial

Number

Registration

Number

COLORWORX Cancellation Pending [78698743](#) [3372884](#)

Prosecution History

Entry

Number History Text Date Due Date

- 1 FILED AND FEE Feb 15, 2012
- 2 NOTICE AND TRIAL DATES SENT; ANSWER DUE: Feb 16, 2012 Mar 27, 2012
- 3 PENDING, INSTITUTED Feb 16, 2012
- 4 ANSWER Mar 04, 2012
- 5 D REQUEST FOR DISCOVERY CONFERENCE-PHONE Apr 13, 2012
- 6 BOARD'S COMMUNICATION Apr 26, 2012
- 7 D'S ANSWER AND MOTION TO STRIKE May 11, 2012
- 8 D'S MOTION TO COMPEL DISCOVERY Jul 08, 2012
- 9 D'S MOTION TO COMPEL DISCOVERY Jul 08, 2012
- 10 D'S MOTION TO COMPEL DISCOVERY Jul 08, 2012
- 11 D'S MOTION TO COMPEL DISCOVERY Jul 08, 2012
- 12 D'S MOTION TO COMPEL DISCOVERY Jul 08, 2012
- 13 CONSOLIDATED - PARENT/SUSPENDED Jul 13, 2012
- 14 D'S MOTION TO COMPEL DISCOVERY Jul 16, 2012
- 15 SUSPENDED Jul 17, 2012
- 16 D'S MOTION TO DIVIDE Jul 18, 2012
- 17 D'S MOTION TO COMPEL DISCOVERY Jul 24, 2012

18 P'S SECOND AMENDED PETITION TO CANCEL Jul 27, 2012
19 P'S MOTION TO DISMISS - RULE 12(B) Aug 27, 2012
20 ANSWER Aug 27, 2012
21 P'S OPPOSITION/RESPONSE TO MOTION Sep 14, 2012
22 P'S REPLY IN SUPPORT OF MOTION Sep 14, 2012
23 P'S OPPOSITION/RESPONSE TO MOTION Sep 14, 2012
24 P'S MOTION TO EXCEED PAGE LIMIT W/ SECOND AMENDED
PETITION TO CANCEL Sep 18, 2012
25 P'S OPPOSITION/RESPONSE TO MOTION Sep 18, 2012
26 P'S OBJECTIONS NAD RESPONSES TO D'S THIRD REQUEST
FOR ADMISSIONS Sep 18, 2012
27 PROCEEDINGS RESUMED May 15, 2013
28 PAPER RECEIVED AT TTAB May 30, 2013

Type of Proceeding: Opposition

Proceeding Number: [91203773](#) **Filing Date:** Feb 10, 2012

Status: Terminated **Status Date:** Sep 11, 2012

Interlocutory Attorney: ELIZABETH WINTER

Defendant

Name: Pioneer Supply Company, Inc.

Correspondent Address: J MATTHEW PRITCHARD

THE WEBB LAW FIRM

420 FORT DUQUESNE BLVD STE 1200

PITTSBURGH PA , 15222 2803

UNITED STATES

Correspondent e-mail: ttab@webblaw.com

Associated marks

Mark Application Status Serial

Number

Registration

Number

PSC COLORWORKS Abandoned - After Inter-Partes Decision [85374011](#)

Plaintiff(s)

Name: Ennis, Inc.

Correspondent Address: Scott A Meyer

Chalker Flores LLP

14951 N Dallas Parkway Suite 400

Dallas TX , 75254

UNITED STATES

Correspondent e-mail:

tjacks@chalkerflores.com, smeyer@chalkerflores.com, docket@chalkerflores.com

Associated marks

Mark Application Status Serial

Number

Registration

Number

COLORWORX Cancellation Pending [78698743](#) [3372884](#)

Prosecution History

Entry

Number History Text Date Due Date

1 FILED AND FEE Feb 10, 2012

2 NOTICE AND TRIAL DATES SENT; ANSWER DUE: Feb 10, 2012 Mar 21, 2012

3 PENDING, INSTITUTED Feb 10, 2012
4 D'S MOT FOR EXTEN. OF TIME W/ CONSENT Mar 21, 2012
5 EXTENSION OF TIME GRANTED Mar 21, 2012
6 D'S MOT FOR EXTEN. OF TIME W/ CONSENT Apr 20, 2012
7 EXTENSION OF TIME GRANTED Apr 20, 2012
8 D'S MOT FOR EXTEN. OF TIME W/ CONSENT May 21, 2012
9 EXTENSION OF TIME GRANTED May 21, 2012
10 NOTICE OF DEFAULT Jul 31, 2012
11 CHANGE OF CORRESPONDENCE ADDRESS Sep 06, 2012
12 BOARD'S DECISION: SUSTAINED Sep 11, 2012
13 TERMINATED Sep 11, 2012

Exhibit 3



COLORWORX

NOTHING MAKES A BIGGER IMPACT THAN COLOR!

High Quality, Full Color

ColorWorx provides the quality, full color printing you expect at an affordable price.

Quick Turnaround

Most orders ship in 3-5 working days or less from receipt of acceptable artwork.

Standard Printing

All standard ColorWorx products are printed in 4-color process only. All CMYK colors in files will be automatically converted to CMYK process equivalents. Please allow for possible slight color shift.

Color Matching

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Exhibit 4

- RE: Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis, Inc. (Cancellation Proceeding: 92055374)

To see messages related to this one, [group messages by conversation](#).

Scott Meyer (smeyer@chalkerflores.com)

[Add to contacts](#)

30/05/2012

To: joel beling

Cc: Tom Jacks, Cynthia Minchillo

From: **Scott Meyer** (smeyer@chalkerflores.com) This sender is in your [safe list](#).

Sent: Wednesday, 30 May 2012 11:13:26 PM

To: joel beling (joelbeling@hotmail.com)

Cc: Tom Jacks (tjacks@chalkerflores.com); Cynthia Minchillo
(cminchillo@chalkerflores.com)

Joel:

Based upon the reasoning you set forth below, we do not consent to the addition of a fraud claim.

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

From: Scott Meyer

Sent: Friday, May 25, 2012 4:41 PM

To: 'joel beling'
Cc: 'Tom Jacks'; Cynthia Minchillo
Subject: RE: Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis, Inc. (Cancellation Proceeding: 92055374)

Joel:

We are reviewing the basis for your request but cannot have an answer to you today. Monday is a holiday, so we plan to respond to you on Tuesday or Wednesday at the latest.

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

From: joel beling [<mailto:joelbeling@hotmail.com>]
Sent: Friday, May 25, 2012 6:40 AM
To: Scott Meyer
Subject: RE: Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis, Inc. (Cancellation Proceeding: 92055374)

Scott,

Can you indicate by close of business today, Friday, whether you consent to my motion to amend my pleading.

Thanks

Joel

From: smeyer@chalkerflores.com
To: joelbeling@hotmail.com
CC: tjacks@chalkerflores.com
Date: Tue, 15 May 2012 13:22:29 -0400
Subject: RE: Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis, Inc. (Cancellation Proceeding: 92055374)

Joel:

Let me understand—you want to add a claim against Ennis for fraud because you were served with Requests for Admissions? If my understanding is correct, then we do not consent. If the basis for your desire to add a new claim is incorrect, please elaborate.

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

From: joel beling [<mailto:joelbeling@hotmail.com>]

Sent: Wednesday, May 09, 2012 9:17 AM

To: Scott Meyer

Subject: RE: Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis, Inc. (Cancellation Proceeding: 92055374)

Scott,

I seek your written consent to amend my petition to cancel to include a count for fraud. The basis for this request is your recently served request for admissions.

I will be filing a motion to amend my pleading if consent is not granted.

Thanks

Joel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DECLARATION OF JOEL L. BELING** was served on all parties, this the 20th June, 2013, by sending the same by electronic mail, to the following:

Daniel Chalker
CHALKER FLORES, LLP
dchalker@chalkerflores.com

Jesica Flores
CHALKER FLORES, LLP
jflores@chalkerflores.com
ATTORNEYS FOR REGISTRANT

/s/ Joel L. Beling

Joel L. Beling