

ESTTA Tracking number: **ESTTA561211**

Filing date: **09/25/2013**

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

Proceeding	91204826
Party	Plaintiff Boston Red Sox Baseball Club Limited Partnership, and Chicago White Sox, Ltd.
Correspondence Address	MARY L KEVLIN COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES sis@cll.com, trademark@cll.com, mlk@cll.com, jmn@cll.com
Submission	Other Motions/Papers
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Signature	/Aryn M. Emert/
Date	09/25/2013
Attachments	SOXX - Motion to Amend and Suspend.pdf(224316 bytes) SOXX - Decl of Mandel.pdf(2027385 bytes)

("Applicant") lacked a bona fide intention to use the mark at issue at the time it filed its application to register the mark SOXX.

Opposer further moves that the proceeding be suspended pending the Board's consideration of this motion and, pursuant to 37 C.F.R. § 2.121(a), that the parties' pretrial disclosure and testimony periods be reset once the Board decides the motion.

MEMORANDUM IN SUPPORT OF MOTIONS

STATEMENT OF FACTS

The facts on which this motion is based are set forth fully in the accompanying declaration of Richard S. Mandel ("Mandel Decl."), and are summarized briefly here for the Board's convenience.

Opposers initiated this proceeding by filing a consolidated notice of opposition on April 23, 2012 against Applicant's intent-to-use application to register the mark SOXX for "Running shoes; Shoe soles; Shoes," Appl. No. 85/373,925 (the "Application"). Mandel Decl. ¶ 2. On August 15, 2013, Opposers served Opposers' First Set of Interrogatories and Request for Production of Documents and Things to Applicant (the "Discovery Requests"). *Id.* ¶ 3 and Ex. B. On September 19, 2013, Applicant served Opposers by mail with Applicant's responses to the Discovery Requests. *Id.* ¶ 4 and Ex. C. The responses were received by Opposer on September 24, 2013. *Id.* Applicant failed to produce a single document in response to the Discovery Requests, including any documents relating to its intended use of the SOXX mark, answering every single one of the 23 document requests with the answer: "None." *Id.* ¶ 5 and Exhibit C. Additionally, Applicant confirmed in its responses to Opposers' interrogatories that no steps or actions had been taken by Applicant to use or prepare to use Applicant's SOXX

mark, and that there were no documents of any kind concerning any such steps or actions or any intended use of Applicant's SOXX mark. Id. ¶ 6.

Based on Applicant's responses to the Discovery Requests, Opposers' counsel sought Applicant's counsel's consent on September 24, 2013 to Opposers' proposed amendment of the notice of opposition to include lack of bona fide intent to use as an additional ground for opposition. Mandel Decl. ¶ 7. After Applicant's counsel refused to consent, Opposers filed the present motion. Id.

ARGUMENT

OPPOSERS' MOTION TO AMEND SHOULD BE GRANTED

"Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court." 37 C.F.R. § 2.107. Pursuant to Fed. R. Civ. P. 15(a), leave to amend "shall be freely given when justice so requires." Consistent with this standard, the Board "has recognized that 'amendments to pleadings should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties.'" Commodore Electronics Ltd. v. CBM Kabushiki Kaisha, 26 U.S.P.Q.2d 1503, 1505 (TTAB 1993) (quoting American Optical Corp. v. American Olean Tile Co., Inc., 168 U.S.P.Q. 471, 473 (TTAB 1971)). See also Polaris Industries v. DC Comics, 59 U.S.P.Q.2d 1798, 1799 (TTAB 2001); Boral Ltd. v. FMC Corp., 59 U.S.P.Q.2d 1701 (TTAB 2000).

In the present case, the amendment is plainly in keeping with existing law, which recognizes that the absence of any documentary evidence on the part of an applicant regarding its intent to use a mark "is sufficient to prove that applicant lacks a bona fide intention to use its

mark in commerce as required by Section 1(b).” Commodore Electronics, 26 U.S.P.Q.2d at 1507. In response to the Discovery Requests, Applicant confirmed that it has no documents in its possession, custody or control or any other information supporting its intention to use the mark SOXX. Mandel Decl. ¶¶ 5-6 and Exhibit C. Applicant also admitted in its responses to Opposers’ interrogatories that it has failed to take any steps regarding the potential exploitation of the SOXX mark. Mandel Decl. ¶ 6. Applicant’s responses to the Discovery Requests provide Opposers with a clear basis on which to assert as an additional ground of opposition that Applicant lacked a bona fide intention to use the SOXX mark at the time that it filed the Application.

Moreover, Applicant can make no claim of prejudice based on the assertion of this new ground for opposition. Opposers have acted diligently in seeking such amendment promptly after receiving Applicant’s responses to the Discovery Requests. Additionally, because the facts relating to the additional ground of opposition relate solely to Applicant’s own intentions, there is no additional discovery required on its part or other undue burden imposed by the amendment. Given the absence of any prejudice to Applicant, the motion to amend should be granted. See, e.g., Polaris Industries, 59 U.S.P.Q.2d at 1800; United States Olympic Committee v. O-M Bread Inc., 26 U.S.P.Q.2d 1221, 1223 (TTAB 1993).

**OPPOSERS’ MOTION TO SUSPEND
SHOULD BE GRANTED**

In order to permit sufficient time for the Board to decide Opposers’ motion prior to the onset of the pretrial disclosure and testimony periods,¹ thereby ensuring that the parties have full notice of the actual issues to be tried, Opposers also respectfully request that the proceeding be

¹ The Discovery period already closed and need not be reopened since the facts relevant to bona fide intent to use are exclusively within the knowledge of Applicant.

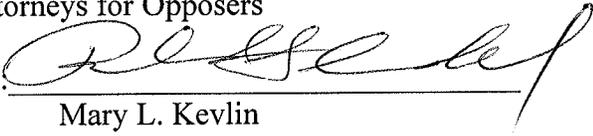
suspended pending consideration of the motion to amend and that, pursuant to 37 C.F.R. § 2.121(a)(1), the pretrial disclosure and testimony periods be reset by the Board following its decision on Opposers' motion to amend.

CONCLUSION

For the foregoing reasons, Opposers respectfully request that the Board suspend proceedings pending its determination of the motion to amend and that the Board issue an order granting Opposers leave to amend their consolidated notice of opposition in the form annexed as Exhibit A to the accompanying Mandel Declaration, and re-setting the pretrial disclosure and testimony periods following Applicant's service of an answer to the amended notice of opposition.

Dated: New York, New York
September 25, 2013

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposers

By: 

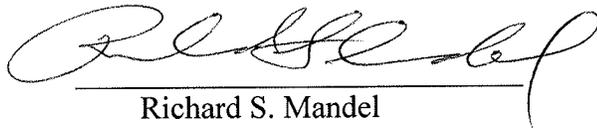
Mary L. Kevlin
Richard S. Mandel

1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposers' Motions to Amend and to Suspend Pending Consideration of the Motion to Amend, including the supporting Declaration of Richard S. Mandel, Esq. and exhibits thereto, was mailed on September 25, 2013 via First Class Mail, postage prepaid, to counsel for Applicant as follows:

Matthew H. Swyers, Esq.
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180



Richard S. Mandel

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

In re Application Serial No. 85/373,925
Filed: July 18, 2011
For Mark: SOXX
Published in the Official Gazette: October 25, 2011

-----X
BOSTON RED SOX BASEBALL CLUB LIMITED :
PARTNERSHIP, and CHICAGO WHITE SOX, :
LTD., :
Opposers, :
v. :
INC INTERNATIONAL COMPANY, :
Applicant. :
-----X

Opposition No. 91204826

**DECLARATION OF RICHARD S. MANDEL, ESQ.
IN SUPPORT OF OPPOSER'S MOTION TO AMEND**

RICHARD S. MANDEL, pursuant to 28 U.S.C. §1746, declares:

1. I am a shareholder of Cowan, Liebowitz & Latman, P.C., attorneys for Opposers Boston Red Sox Baseball Club Limited Partnership ("Red Sox Club") and Chicago White Sox, Ltd. ("White Sox Club") (collectively "Opposers"). I submit this declaration in support of Opposers' motion to amend. Pursuant to T.B.M.P. § 507.01, a signed copy of the proposed Amended Consolidated Notice of Opposition, along with a redline showing the changes from the Notice of Opposition, are attached hereto as Exhibit A.

2. This opposition was commenced on April 23, 2012 by filing a consolidated notice of opposition on behalf of Opposers against the intent-to-use application, Application Serial No.

85/373,925 (the "Application"), of Applicant INC. International Company ("Applicant") to register the mark SOXX for "Running shoes; Shoe soles; Shoes."

3. On August 15, 2013, Opposers served Applicant with Opposers' First Set of Interrogatories and Request for Production of Documents and Things to Applicant (the "Discovery Requests"). A true and correct copy of such Discovery Requests is attached hereto as Exhibit B.

4. On September 19, 2013, Applicant served Opposers by mail with copies of Applicant's responses to the Discovery Requests. Such responses were received by Opposer's counsel on September 24, 2013. A true and correct copy of Applicant's responses to the Discovery Requests is attached hereto as Exhibit C.

5. Applicant failed to produce a single document in response to the Discovery Requests. Indeed, as reflected in the attached Exhibit C, Applicant's response to every single one of the 23 document request consisted solely of the response: "None." In particular, Applicant's responses to document requests 1, 2, 4, 7, 10, 11, 17, 19, 20 and 22 make clear that it does not have any documents concerning its intended use of the SOXX mark or otherwise supporting its bona fide intention to use such mark.

6. Applicant's interrogatory responses likewise confirmed that there are no such documents. In response to interrogatory no. 18 asking for identification of "all documents concerning any actions or steps taken by or on behalf of Applicant to use or prepare to use Applicant's SOXX Marks in the United States or in commerce, including, without limitation, any business plans, marketing plans or other documents concerning the potential exploitation of Applicant's Mark," Applicant responded: "None." Similarly, in response to interrogatory no. 17 asking Applicant to describe in detail all steps or actions taken by or on behalf of Applicant to

use or prepare to use Applicant's SOXX Marks in the United States or in commerce," Applicant responded: "Apart from filing the instant contested application, none."

7. Based on the foregoing responses, I sent an email to Applicant's counsel on September 24, 2013 seeking Applicant's consent to the filing of an amended notice of opposition adding lack of bona fide intention to use as an additional ground for opposition. Applicant's counsel responded that Applicant would not consent to the amendment.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON SEPTEMBER 25, 2013 AT NEW YORK, NEW YORK.

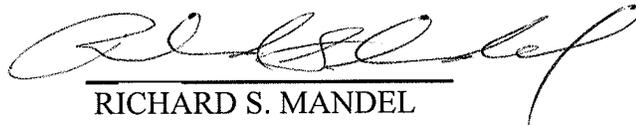

RICHARD S. MANDEL

EXHIBIT A

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

In re Application Serial No. 85/373,925
Filed: July 18, 2011
For Mark: SOXX
Published in the Official Gazette: October 25, 2011

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BOSTON RED SOX BASEBALL CLUB LIMITED :
PARTNERSHIP, and CHICAGO WHITE SOX, :
LTD., :
Opposers, :
v. :
INC INTERNATIONAL COMPANY, :
Applicant. :
-----X

Opposition No. 91204826

**AMENDED
CONSOLIDATED
NOTICE OF OPPOSITION**

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposers, Boston Red Sox Baseball Club Limited Partnership, a Massachusetts limited partnership, with offices at Fenway Park, 4 Yawkey Way, Boston, Massachusetts 02215, and Chicago White Sox, Ltd., an Illinois limited partnership, with offices at 333 West 35th Street, Chicago, Illinois 60616 (together, "Opposers"), believe that they will be damaged by registration of the standard character word mark SOXX in International Class 25 for "Running shoes; Shoe soles; Shoes" as shown in Application Serial No. 85/373,925 (the "Application"), and having been granted extensions of time to oppose up to and including April 22, 2012, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer Boston Red Sox Baseball Club Limited Partnership (the “Red Sox Club”) is the owner of the renowned BOSTON RED SOX MAJOR LEAGUE BASEBALL club.

2. Since long prior to July 18, 2011, Applicant’s constructive first use date, the Red Sox Club, its predecessors, and their affiliated and related entities, licensees and/or sponsors have used marks comprising or containing the word SOX, and/or various depictions of a pair of socks or a single sock designs, alone or with other word, letter and/or design elements (the “Red Sox Club’s Marks”), in connection with baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, shoes, footwear, apparel, paper goods and printed matter, toys, sporting goods, and novelty items, and the Red Sox Club has referred to itself, and has been commonly referred to by fans, the press, media and public, as the SOX since long prior to July 18, 2011.

3. The Red Sox Club owns United States Federal registrations for the Red Sox Club’s Marks in International Classes 6, 9, 14, 16, 18, 20, 21, 24, 25, 26, 28, 29, 34 and 41; namely, Registration Nos. 1,014,874; 1,040,684; 1,043,945; 1,095,475; 1,522,389; 1,528,114; 1,529,324; 1,568,406; 1,596,321; 1,602,303; 1,642,769; 1,772,967; 2,692,105; 3,238,173; 3,373,898; 3,596,573; 3,641,219; 3,641,220; 3,641,221; 3,644,961; 3,738,197; 3,797,632; 3,801,204; 3,842,200 and 3,870,976. Registration Nos. 1,014,874; 1,040,684; 1,043,945; 1,095,475; 1,522,389; 1,528,114; 1,529,324; 1,568,406; 1,596,321; 1,602,303; 1,642,769; 1,772,967 and 2,692,105 are incontestable.

4. Since long prior to July 18, 2011, Applicant’s constructive first use date, the Red Sox Club, its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered

in connection with the Red Sox Club's Marks, including, but not limited to, baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, shoes, footwear, apparel, paper goods and printed matter, toys, sporting goods, and novelty items and have offered such goods and rendered such services in commerce.

5. As a result of the sales and promotion of its goods and services bearing or offered in connection with the Red Sox Club's Marks, the Red Sox Club has built up highly valuable goodwill in the Red Sox Club's Marks, and said goodwill has become closely and uniquely identified and associated with the Red Sox Club.

6. Opposer Chicago White Sox Club, Ltd. (the "White Sox Club") is the owner of the renowned CHICAGO WHITE SOX MAJOR LEAGUE BASEBALL club.

7. Since long prior to July 18, 2011, Applicant's constructive first use date, the White Sox Club, its predecessors, and their affiliated and related entities, licensees and/or sponsors have used marks comprising or containing the word SOX, and/or various depictions of a sock design, alone or with other word, letter and/or design elements (the "White Sox Club's Marks"), in connection with baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, shoes, footwear, apparel, paper goods and printed matter, toys, sporting goods, and novelty items and the White Sox Club has referred to itself, and has been commonly referred to by fans, the press, media and public, as the SOX since long prior to July 18, 2011.

8. The White Sox Club owns United States Federal registrations for the White Sox Club's Marks in International Classes 9, 14, 16, 18, 21, 24, 25, 28, 30, 34, 41 and 42; namely, Registration Nos. 847,465; 855,319; 855,320; 1,054,855; 1,223,508; 1,268,495; 1,529,600; 1,547,488; 1,547,489; 1,598,728; 1,681,138; 1,705,093; 1,705,094; 1,729,202; 1,729,299;

1,729,454; 1,729,455; 1,730,984; 1,734,915; 1,770,152; 1,943,802; 2,563,319; 2,655,846; 3,275,601; 3,331,545; 3,382,971; 3,545,176; 3,545,459, 3,644,996 and 3,775,088. Registration Nos. 847,465; 855,319; 855,320; 1,054,855; 1,223,508; 1,268,495; 1,529,600; 1,547,488; 1,547,489; 1,598,728; 1,681,138; 1,705,093; 1,705,094; 1,729,299; 1,729,454; 1,729,455; 1,734,915; 1,770,152; 1,943,802 and 2,563,319 are incontestable.

9. Since long prior to July 18, 2011, Applicant's constructive first use date, the White Sox Club, its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with the White Sox Club's Marks, including, but not limited to, baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, shoes, footwear, apparel, paper goods and printed matter, toys, sporting goods, and novelty items and have offered such goods and rendered such services in commerce.

10. As a result of the sales and promotion of its goods and services bearing or offered in connection with the White Sox Club's Marks, the White Sox Club has built up highly valuable goodwill in the White Sox Club's Marks, and said goodwill has become closely and uniquely identified and associated with the White Sox Club.

11. On July 18, 2011, Applicant filed the Application for the standard character word mark SOXX ("Applicant's SOXX Mark") for "Running shoes; Shoe soles; Shoes" in International Class 25, based on an intent to use.

12. Upon information and belief, Applicant did not use the Applicant's SOXX Mark for the goods covered in the Application in United States commerce prior to its constructive first use date of July 18, 2011 and has not used Applicant's SOXX Mark to date.

13. Upon information and belief, Applicant did not have a bona fide intent to use Applicant's SOXX Mark in commerce on the specified goods, namely, "Running shoes; Shoe soles; Shoes" when it filed Application Serial No. 85/373,925, as confirmed by the fact that Applicant does not have a single document in its possession to support such an intent.

14. The goods covered by the Application are identical and/or closely related to the goods offered and services rendered in connection with the Red Sox Club's Marks and the White Sox Club's Marks (collectively "Opposers' Marks").

15. Applicant's SOXX Mark so resembles Opposers' Marks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposers and/or that such goods are approved, endorsed or sponsored by the Opposers or associated in some way with the Opposers. Opposers would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's SOXX Mark.

WHEREFORE, Opposers believe that they will be damaged by registration of Applicant's SOXX Mark and request that the consolidated opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Seth Shaifer (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
September 25, 2013

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Richard S. Mandel/

Mary L. Kevlin
Richard S. Mandel
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 25, 2013, I caused a true and correct copy of the foregoing *Amended Consolidated Notice of Opposition* to be sent via First Class Mail, postage prepaid, to Applicant's Correspondent of Record, Matthew H. Swyers, Esq., The Trademark Company, Suite 151, 344 Maple Avenue West, Vienna, Virginia 22180.

/Richard S. Mandel /

Richard S. Mandel

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

In re Application Serial No. 85/373,925
Filed: July 18, 2011
For Mark: SOXX
Published in the Official Gazette: October 25, 2011

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BOSTON RED SOX BASEBALL CLUB LIMITED :
PARTNERSHIP, and CHICAGO WHITE SOX, :
LTD., :
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v. :
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Opposition No. 91204826

AMENDED
CONSOLIDATED
NOTICE OF OPPOSITION

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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As grounds for opposition, it is alleged that:

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3. The Red Sox Club owns United States Federal registrations for the Red Sox Club’s Marks in International Classes 6, 9, 14, 16, 18, 20, 21, 24, 25, 26, 28, 29, 34 and 41; namely, Registration Nos. 1,014,874; 1,040,684; 1,043,945; 1,095,475; 1,522,389; 1,528,114; 1,529,324; 1,568,406; 1,596,321; 1,602,303; 1,642,769; 1,772,967; 2,692,105; 3,238,173; 3,373,898; 3,596,573; 3,641,219; 3,641,220; 3,641,221; 3,644,961; 3,738,197; 3,797,632; 3,801,204; 3,842,200 and 3,870,976. Registration Nos. 1,014,874; 1,040,684; 1,043,945; 1,095,475; 1,522,389; 1,528,114; 1,529,324; 1,568,406; 1,596,321; 1,602,303; 1,642,769; 1,772,967 and 2,692,105 are incontestable.

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12. Upon information and belief, Applicant did not use the Applicant's SOXX Mark for the goods covered in the Application in United States commerce prior to its constructive first use date of July 18, 2011 and has not used Applicant's SOXX Mark to date.

13. Upon information and belief, Applicant did not have a bona fide intent to use Applicant's SOXX Mark in commerce on the specified goods, namely, "Running shoes; Shoe soles; Shoes" when it filed Application Serial No. 85/373,925, as confirmed by the fact that Applicant does not have a single document in its possession to support such an intent.

1314. The goods covered by the Application are identical and/or closely related to the goods offered and services rendered in connection with the Red Sox Club's Marks and the White Sox Club's Marks (collectively "Opposers' Marks").

1415. Applicant's SOXX Mark so resembles Opposers' Marks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposers and/or that such goods are approved, endorsed or sponsored by the Opposers or associated in some way with the Opposers. Opposers would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's SOXX Mark.

WHEREFORE, Opposers believe that they will be damaged by registration of Applicant's SOXX Mark and request that the consolidated opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Seth Shaifer (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
~~April 23~~September _____, 201~~2~~2013

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: ~~/Seth Shaifer~~Richard S. Mandel/
Mary L. Kevlin
Richard S. Mandel
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1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on ~~April 23~~September ____, 20122013, I caused a true and correct copy of the foregoing *Amended Consolidated Notice of Opposition* to be sent via First Class Mail, postage prepaid, to Applicant's Correspondent of Record, Matthew H. Swyers, Esq., The Trademark Company, Suite 151, 344 Maple Avenue West, Vienna, Virginia 22180.

~~/Seth Shaifer~~Richard S. Mandel /
~~Seth Shaifer~~Richard S. Mandel

Summary Report:
Litera Change-Pro ML 6.1.0.45 Document Comparison done on 9/24/2013
6:52:33 PM

Style Name: Default Style	
Original Filename:	
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Changes:	
Add	15
Delete	8
Move From	0
Move To	0
Table Insert	7
Table Delete	6
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Total Changes:	36

EXHIBIT B

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

In re Application Serial No. 85/373,925
Filed: July 18, 2011
For Mark: SOXX
Published in the Official Gazette: October 25, 2011

-----X
BOSTON RED SOX BASEBALL CLUB LIMITED :
PARTNERSHIP, and CHICAGO WHITE SOX, :
LTD., :
Opposers, :
v. :
INC INTERNATIONAL COMPANY, :
Applicant. :
-----X

Opposition No. 91204826

**OPPOSERS' FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposers Boston Red Sox Baseball Club Limited Partnership ("Red Sox Club") and Chicago White Sox, Ltd. ("White Sox Club") (collectively "Opposers") request that Applicant INC International Company ("Applicant") answer under oath the following interrogatories and produce the following documents and things for inspection and copying at the offices of Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036 within 30 days after service hereof. These requests are deemed to be continuing, so as to require prompt production of additional documents and supplemental interrogatory answers should Applicant obtain additional responsive information or documents between the time the answers are served and the time of the final hearing of this opposition proceeding.

DEFINITIONS AND INSTRUCTIONS

- A. The term “Applicant” means Applicant INC International Company and all parent, subsidiary, affiliated and/or related entities, officers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, members, employees, partners, agents and/or representatives thereof.
- B. The term “Red Sox Club” shall mean Opposer Boston Red Sox Baseball Club Limited Partnership and all parent, subsidiary, related, predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof, including, without limitation, its BOSTON RED SOX MAJOR LEAGUE BASEBALL club.
- C. The term “White Sox Club” shall mean Opposer Chicago White Sox, Ltd. and all parent, subsidiary, related, predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof, including, without limitation, its CHICAGO WHITE SOX MAJOR LEAGUE BASEBALL club.
- D. The term “Opposers” shall refer to Red Sox Club and White Sox Club as defined above.
- E. The term “Major League Baseball” means Major League Baseball Properties, Inc., the Office of the Commissioner of Baseball, the thirty individual baseball clubs and their respective affiliated and related entities, and their respective parent, subsidiary, related predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.
- F. The term “Red Sox Club’s Marks” shall refer to marks used, registered and/or applied to be registered by Red Sox Club comprising or containing the word SOX, and/or various depictions of a pair of socks or a single sock designs, alone or with other word, letter

and/or design elements, including, but not limited to the registered marks set forth in Paragraph 3 of the Notice of Opposition relating to this Opposition.

G. The term “White Sox Club’s Marks” shall refer to marks used, registered and/or applied to be registered by White Sox Club comprising or containing the word SOX, and/or various depictions of a sock design, alone or with other word, letter and/or design elements, including, but not limited to the registered marks set forth in Paragraph 8 of the Notice of Opposition relating to this Opposition.

H. The term “Applicant’s SOXX Marks” shall refer to marks used, registered and/or applied to be registered comprising or containing the word SOXX, including, without limitation, the mark represented in Application Serial No. 85/373,925.

I. The term “commerce” means commerce subject to regulation by Congress, as defined in 15 U.S.C. §1127.

J. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

K. The term “document” shall be given the broadest possible scope under Fed. R. Civ. P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, flyers, advertisements, web pages, publications, stickers, posters, catalogs, labels, displays, photographs, CDs, DVDs, cover art for CDs and DVDs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer,

notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

L. The term “identify” when used in connection with a natural person or persons requires Applicant to state the person’s full name and last known business and residential addresses, telephone number and e-mail address.

M. The term “identify” when used in connection with a document requires Applicant to:

(i) Furnish the name or title, date and general description (e.g., letter, memorandum, etc.) of the document, the name and address of the person from whom the document originated, the name and address of the persons to whom the document was addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Applicant is in possession of the original of the document or a copy thereof and, if Applicant is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy; and

(iii) Furnish a general description of the subject matter to which the document(s) pertains.

N. The term “identify” when used in connection with a company, organization or other business entity requires Applicant to state the name, address, and phone number of the company, organization or other business entity.

O. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

P. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

Q. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

R. If any information or document called for in any interrogatory or request is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if Applicant contends that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the State Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory or request to which the information or document is responsive.

S. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible,

including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

T. Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.

INTERROGATORIES

Interrogatory No. 1

State the date(s) when Applicant first selected and adopted Applicant's SOXX Marks for use or intended use in connection with any goods or services in the United States or in commerce (as defined above).

Interrogatory No. 2

Identify all persons who or entities which participated in or were consulted in the design, selection and/or adoption of Applicant's SOXX Marks, including a description of the nature of their participation or consultation.

Interrogatory No. 3

Describe in detail the reason(s) for the design, selection and/or adoption of Applicant's SOXX Marks for use in the United States or in commerce.

Interrogatory No. 4

Identify any trademark searches or other searches, opinions, investigations, analyses or studies related to the design, selection and/or adoption of Applicant's SOXX Marks in the United States or in commerce, including, without limitation, the persons involved, the date(s), and the data or results of those searches, opinions, investigations, analyses or studies.

Interrogatory No. 5

State whether Applicant (or any person or entity authorized by Applicant) has made any use of any marks comprising or containing Applicant's SOXX Marks in the United States or in commerce as of the present date, and if so, identify each product or service on or in connection with which Applicant (or any person or entity authorized by Applicant) has made such use (hereinafter "Applicant's Products/Services").

Interrogatory No. 6

For each of Applicant's Products/Services (as defined in Interrogatory No. 5 above) identified in response to Interrogatory No. 5 above, identify:

- (a) The date of first use for each of Applicant's Products/Services;
- (b) The period of time during which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (c) The geographic area(s) in which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (d) The annual volume of sales for each year to the present, both by dollar amount and unit amount, for each of Applicant's Products/Services;
- (e) Any other revenues, including, but not limited to, any licensing or sponsorship revenues that Applicant has received in connection with each of Applicant's Products/Services;
- (f) The retail and wholesale price for each of Applicant's Products/Services for each year to the present;
- (g) The channels of trade (e.g., types of retail stores, catalogs, mail order, on-line, promotional sales, private sales, etc.) through which each of Applicant's Products/Services was or is being distributed or sold to the ultimate purchaser, consumer or user; and
- (h) The type of customers to whom each of Applicant's Products/Services is or was marketed, distributed, offered for sale, sold or rendered.

Interrogatory No. 7

State whether Applicant's SOXX Marks have been used or are intended to be used in connection with any indicia, designs, stylizations (including, without limitation, font styles), terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with: (a) sports or sports teams (including, without limitation, baseball stadiums, baseball teams, players, managers or coaches, baseball uniforms, or apparel, or equipment used to play baseball); (b) Boston, Chicago or other geographical references; and/or (c) Red Sox Club or White Sox Club, their respective BOSTON RED SOX or CHICAGO WHITE SOX baseball teams, any other Major League Baseball teams or affiliated Minor League Baseball teams, or their respective trademarks, logos, designs or stylizations, including without limitation, any of the Red Sox Club's Marks or White Sox Club's Marks (as defined above), or trademarks, logos, designs, stylizations, or components thereof or similar thereto and, if so, describe the details of each such use or intended use.

Interrogatory No. 8

Identify any persons or entities that have ever, either orally or in writing, authorized, licensed, assigned, granted, conveyed or otherwise transferred to Applicant the right to use Applicant's SOXX Marks in the United States or in commerce, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant or conveyance or other transfer was made, including, but not limited to, the details of the grant of rights to use Applicant's SOXX Marks and financial terms governing such transaction.

Interrogatory No. 9

Identify any persons or entities Applicant has authorized, licensed, assigned, granted, conveyed or otherwise transferred the right to use Applicant's SOXX Marks in the United States or in commerce, or to sell or distribute Applicant's Products/Services, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant, conveyance or other transfer of right to use was made, including, without limitation, the details of the grant of rights to use Applicant's SOXX Marks and financial terms governing such transaction.

Interrogatory No. 10

Identify each website, web auction, web hosting, web listing, web posting, web page or social media page, whether owned or controlled by Applicant or by third parties, including its Internet address, on or through which Applicant's SOXX Marks and/or Applicant's Products/Services have been, are currently being or are intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Interrogatory No. 11

Identify each kind of advertising, marketing and other promotional materials, including, without limitation, point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item that has been used or is intended to be used in connection with any of Applicant's Products/Services and/or Applicant's SOXX Marks.

Interrogatory No. 12

(a) Describe each instance where any person has by word or deed or otherwise -- including, but not limited to, by misdirected mail, e-mail, telephone calls, orders or inquiries --

suggested or reflected a belief that Applicant is licensed, endorsed or sponsored by or is a sponsor of, or is associated or related in any way with or to Red Sox Club or White Sox Club, or that the products or services sold, offered for sale, or otherwise distributed or intended to be sold, offered for sale, or otherwise distributed by Applicant in connection with Applicant's SOXX Marks are licensed, endorsed or sponsored by or associated or related in any way with or to Red Sox Club or White Sox Club, their respective BOSTON RED SOX or CHICAGO WHITE SOX baseball teams and/or Red Sox Club's Marks or White Sox Club's Marks; and

(b) Identify all persons knowledgeable about any such instances referred to in subparagraph 12(a) above and describe the nature of their knowledge.

Interrogatory No. 13

State whether Applicant has marketed or intends to market Applicant's Products/Services to sports fans, fans of the BOSTON RED SOX or CHICAGO WHITE SOX baseball teams, any of the other Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Boston or Chicago, and, if so, describe the means by which Applicant has marketed or intends to market Applicant's Products/Services to sports fans, fans of the BOSTON RED SOX or CHICAGO WHITE SOX baseball teams, any of the other Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Boston or Chicago.

Interrogatory No. 14

State whether Applicant has ever sought a license or other right to use any marks, designs, stylizations or slogans, including without limitation, Red Sox Club's Marks or White Sox Club's Marks, from Red Sox Club or White Sox Club or any of their related entities, including, without limitation, Major League Baseball Properties, Inc.

Interrogatory No. 15

State whether Applicant was aware of Red Sox Club and/or its BOSTON RED SOX Major League Baseball team or its affiliated Minor League Baseball teams, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Red Sox Club or under license from Red Sox Club in connection with Red Sox Club's Marks prior to:

- (a) July 18, 2011, when Applicant filed Application Serial No. 85/373,925.
- (b) Any use by Applicant of Applicant's SOXX Marks in connection with any goods or services.

Interrogatory No. 16

State whether Applicant was aware of White Sox Club and/or its CHICAGO WHITE SOX Major League Baseball team or its affiliated Minor League Baseball teams, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by White Sox Club or under license from White Sox Club in connection with White Sox Club's Marks prior to:

- (c) July 18, 2011, when Applicant filed Application Serial No. 85/373,925.
- (d) Any use by Applicant of Applicant's SOXX Marks in connection with any goods or services.

Interrogatory No. 17

Describe in detail all steps or actions taken by or on behalf of Applicant to use or prepare to use Applicant's SOXX Marks in the United States or in commerce.

Interrogatory No. 18

Identify all documents concerning any steps or actions taken by or on behalf of Applicant to use or prepare to use Applicant's SOXX Marks in the United States or in commerce, including, without limitation, any business plans, marketing plans or other documents concerning

the potential exploitation of Applicant's Mark.

Interrogatory No. 19

With respect to each response to Opposer's First Set of Requests for Admission that is anything other than an unqualified admission, state the basis for the response, including, without limitation, all facts and documents upon which the response is based.

DOCUMENT REQUESTS

Request No. 1

Specimens of each of Applicant's Products/Services (as defined in Interrogatory No. 5) bearing or displaying Applicant's SOXX Marks (as defined above), including, without limitation, each different color combination and each different product design or stylization of products in which Applicant's SOXX Marks have been used or are intended to be used by Applicant and/or its licensees.

Request No. 2

Specimens of each label, hangtag, tag, product package, package insert, sticker, hologram, package material or other device that bear Applicant's SOXX Marks, and which have been used or are intended to be used by Applicant and/or its licensees in the United States or in commerce.

Request No. 3

Specimens of each point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item that bear Applicant's SOXX Marks.

Request No. 4

All documents concerning Applicant's design, selection and/or adoption of Applicant's SOXX Marks for use in the United States or in commerce.

Request No. 5

All documents concerning any trademark searches or other searches, opinions, investigations, analyses or studies conducted or reviewed by or on behalf of Applicant concerning adoption and use of Applicant's SOXX Marks in the United States or in commerce.

Request No. 6

Documents sufficient to identify: (a) the date of first use of Applicant's SOXX Marks; (b) the date of first use of Applicant's SOXX Marks in commerce; (c) the geographic area(s) of use of Applicant's SOXX Marks in the United States or in commerce; (d) Applicant's Products/Services bearing, offered for sale, sold or otherwise distributed under Applicant's SOXX Marks; (e) any and all customers, distributors or other persons or entities to which Applicant's Products/Services have been sold or distributed; (f) all retail, wholesale, commercial, or charitable entities through which Applicant's Products/Services have been offered for sale, sold or otherwise distributed in the United States or in commerce; (g) the channels of trade through which Applicant's Products/Services were or are being distributed or sold to the ultimate purchaser, consumer or user in the United States or in commerce; (h) the annual volume of sales (in dollars and units) in the United States or in commerce made for Applicant's Products/Services for each year from the date of first use to the present; and (i) the annual amount of revenue, including, without limitation, any licensing or sponsorship revenues, that Applicant has received in connection with Applicant's Products/Services for each year from the date of first use to the present.

Request No. 7

All documents concerning the advertising, marketing or promotion of Applicant's Products/Services offered for sale or otherwise distributed or intended to be offered for sale or otherwise distributed in the United States or in commerce, including, without limitation, any media plans, public relations materials, press kits and correspondence with advertising agencies, public relations firms, media planners, graphic designers, website designers or any other such entities in the advertising and promotional field.

Request No. 8

Documents sufficient to identify the amount of money expended by Applicant in advertising and promoting Applicant's Products/Services in the United States or in commerce.

Request No. 9

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer (or proposed authorization, license, assignment, grant, conveyance or other transfer) relating to Applicant's SOXX Marks from any third party to Applicant.

Request No. 10

All documents concerning Applicant's authorization, license, assignment, grant, conveyance or other transfer (or proposed authorization, license, assignment, grant, conveyance or other transfer) relating to Applicant's SOXX Marks from or on behalf of Applicant to any third party, including, without limitation, all license agreements.

Request No. 11

Documents sufficient to identify each website, web auction, web hosting, web listing, web posting, web page or social media page (whether owned or controlled by Applicant or third parties), including its Internet address, on or through which Applicant's SOXX Marks have been displayed and/or Applicant's Products/Services have been, are currently being or are intended to

be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Request No. 12

All documents concerning the use or intended use in the United States or in commerce of Applicant's SOXX Marks in connection with any indicia, designs, stylizations (including, without limitation, font styles), terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with: (a) sports or sports teams (including, without limitation, baseball stadiums, baseball teams, players, managers or coaches, baseball uniforms or apparel or equipment used to play baseball); (b) Boston, Chicago or other geographical references; and/or (c) Red Sox Club and its BOSTON RED SOX baseball team, White Sox Club and its CHICAGO WHITE SOX baseball team, any other Major League Baseball teams or affiliated Minor League Baseball teams, or their respective trademarks, logos, designs or stylizations, including without limitation, any of Red Sox Club's Marks or White Sox Club's Marks, or trademarks, logos, designs, stylizations, or components thereof or similar thereto.

Request No. 13

Apart from the current opposition, all documents concerning any objections, claims, demands or actions lodged or filed against the use or proposed use or registration of Applicant's SOXX Marks, including, without limitation, cease and desist letters, complaints and/or Notices of Opposition.

Request No. 14

All documents concerning Red Sox Club, White Sox Club, Red Sox Club's Marks, White Sox Club's Marks, or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Red Sox Club under Red Sox Club's Marks or White Sox Club under White Sox Club's Marks.

Request No. 15

All documents concerning Applicant's awareness of Red Sox Club's Marks and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Red Sox Club or under license from Red Sox Club in connection with Red Sox Club's Marks prior to:

- (a) July 18, 2011, when Applicant filed Application Serial No. 85/373,925.
- (b) any use in the United States or in commerce by Applicant of Applicant's SOXX Marks.

Request No. 16

All documents concerning Applicant's awareness of White Sox Club's Marks and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by White Sox Club or under license from White Sox Club in connection with White Sox Club's Marks prior to:

- (a) July 18, 2011, when Applicant filed Application Serial No. 85/373,925.
- (b) any use in the United States or in commerce by Applicant of Applicant's SOXX Marks.

Request No. 17

All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Applicant concerning Applicant's SOXX Marks, Applicant's Products/Services, Red Sox Club's Marks, White Sox Club's Marks or any goods or services advertised, promoted, offered for sale, sold, licensed or rendered by Red Sox Club in connection with Red Sox Club's Marks or White Sox Club in connection with White Sox Club's Marks.

Request No. 18

All documents reflecting or indicating any confusion on the part of any member of the public between either of the Opposers and Applicant and/or their respective marks and/or goods or services, including, without limitation, documents referring to or evidencing misdirected mail, e-mails, telephone calls, orders or inquiries suggesting or reflecting a belief by any person that Applicant is licensed, endorsed or sponsored by, or is a sponsor of, or is associated or related in any way with or to either of the Opposers, or that the products or services sold, offered for sale or otherwise distributed, or intended to be sold, offered for sale or otherwise distributed, by Applicant in connection with Applicant's SOXX Marks are licensed, endorsed or sponsored by or associated or related in any way with or to either of the Opposers.

Request No. 19

All documents concerning the actual or intended channels of trade for Applicant's Products/Services sold or rendered or intended to be sold or rendered.

Request No. 20

All documents concerning any designs, logos, renditions, stylizations (including, without limitation, font styles) or formats of or for Applicant's SOXX Marks, including, without limitation, any drafts or proposed versions of same.

Request No. 21

All documents concerning the actual or intended marketing of any of Applicant's Products/Services to fans of the BOSTON RED SOX and CHICAGO WHITE SOX baseball teams, any other Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Boston or Chicago.

Request No. 22

All documents concerning any steps or actions taken by or on behalf of Applicant to use or prepare to use Applicant's SOXX Marks in the United States or in commerce.

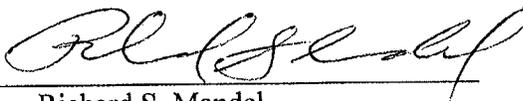
Request No. 23

All documents identified or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories above.

Dated: New York, New York
August 15, 2013

COWAN, LIEBOWITZ & LATMAN, P.C.

Attorneys for Opposers

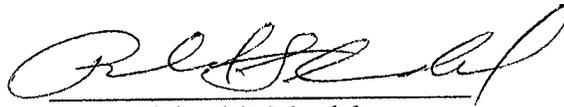
By: 

Richard S. Mandel
1133 Avenue of the Americas
New York, New York 10036
212-790-9200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposers' First Set of Interrogatories and Requests for Production of Documents and Things to Applicant was mailed on August 15, 2013 via First Class Mail, postage prepaid, to counsel for Applicant as follows:

Matthew H. Swyers, Esq.
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180



Richard S. Mandel

EXHIBIT C

Kennett Square, PENNSYLVANIA 19348

*Mr. Vito was solely responsible for the design, selection and/or adoption of Applicant's SOXX Marks. Mr. Vito may be reached through counsel.

Interrogatory No. 3

Describe in detail the reason(s) for the design, selection and/or adoption of Applicant's SOXX Marks for use in the United States or in commerce.

Answer: Applicant is developing and/or has developed a minimalistic shoe design to exist in the market for barefoot or near barefoot running equipment. Within this context, the product to be used in connection with the instant mark is akin to minimalistic footwear and/or a sock. As such, the name SOXX was considered and applied-for as a suggestive name for the product.

Interrogatory No. 4

Identify any trademark searches or other searches, opinions, investigations, analyses or studies related to the design, selection and/or adoption of Applicant's SOXX Marks in the United States or in commerce, including, without limitation, the persons involved, the date(s), and the data or results of those searches, opinions, investigations, analyses or studies.

Answer: Mr. Vito conducted a search of the U.S. Patent and Trademark Office's records using the online search functions at USPTO.gov on the day the application was filed, July 18, 2011. Mr. Vito's search did not reveal any trademarks existing on the register that the mark SOXX would present a conflict with if registered. In support thereof, the examining attorney that reviewed the instant application agreed approving the same for publication. Mr. Vito does not retain any records of the search performed.

Interrogatory No. 5

State whether Applicant (or any person or entity authorized by Applicant) has made any use of any marks comprising or containing Applicant's SOXX Marks in the United States or in commerce as of the present date, and if so, identify each product or service on or in connection with which Applicant (or any person or entity authorized by Applicant) has made such use (hereinafter "Applicant's Products/Services").

Answer: No use of the mark has been made to date.

Interrogatory No. 6

For each of Applicant's Products/Services (as defined in Interrogatory No. 5 above) identified in response to Interrogatory No. 5 above, identify:

- (a) The date of first use for each of Applicant's Products/Services;
- (b) The period of time during which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (c) The geographic area(s) in which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (d) The annual volume of sales for each year to the present, both by dollar amount and unit amount, for each of Applicant's Products/Services;
- (e) Any other revenues, including, but not limited to, any licensing or sponsorship revenues that Applicant has received in connection with each of Applicant's Products/Services;
- (f) The retail and wholesale price for each of Applicant's Products/Services for each year to the present;
- (g) The channels of trade (e.g., types of retail stores, catalogs, mail order, on-line, promotional sales, private sales, etc.) through which each of Applicant's Products/Services was or is being distributed or sold to the ultimate purchaser, consumer or user; and
- (h) The type of customers to whom each of Applicant's Products/Services is or was marketed, distributed, offered for sale, sold or rendered.

Answer: Not applicable.

Interrogatory No. 7

State whether Applicant's SOXX Marks have been used or are intended to be used in connection with any indicia, designs, stylizations (including, without limitation, font styles), terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with: (a) sports or sports teams (including, without limitation, baseball stadiums, baseball teams, players, managers or coaches, baseball uniforms, or apparel, or equipment used to play baseball); (b) Boston, Chicago or other geographical references; and/or (c) Red Sox Club or White Sox Club, their respective BOSTON RED SOX or CHICAGO WHITE SOX baseball teams, any other Major League Baseball teams or affiliated Minor League Baseball teams, or their respective trademarks, logos, designs or stylizations, including without limitation, any of the Red Sox Club's Marks or White Sox Club's Marks (as defined above), or trademarks, logos, designs, stylizations, or components thereof or similar thereto and, if so, describe the details of each such use or intended use.

Answer: As set forth in Interrogatory No. 3, the mark SOXX is only intended to be used in connection with minimalistic footwear in the barefoot or near barefoot shoe market. There is no intent to use the same in connection with the associations listed above in sub parts (a) and (b).

Interrogatory No. 8

Identify any persons or entities that have ever, either orally or in writing, authorized, licensed, assigned, granted, conveyed or otherwise transferred to Applicant the right to use Applicant's SOXX Marks in the United States or in commerce, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant or conveyance or other transfer was made, including, but not limited to, the details of the grant of rights to use Applicant's SOXX Marks and financial terms governing such transaction.

Answer: None.

Interrogatory No. 9

Identify any persons or entities Applicant has authorized, licensed, assigned, granted, conveyed or otherwise transferred the right to use Applicant's SOXX Marks in the United States or in commerce, or to sell or distribute Applicant's Products/Services, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant, conveyance or other transfer of right to use was made, including, without limitation, the details of the grant of rights to use Applicant's SOXX Marks and financial terms governing such transaction.

Answer: None.

Interrogatory No. 10

Identify each website, web auction, web hosting, web listing, web posting, web page or social media page, whether owned or controlled by Applicant or by third parties, including its Internet address, on or through which Applicant's SOXX Marks and/or Applicant's Products/Services have been, are currently being or are intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Answer: None.

Interrogatory No. 11

Identify each kind of advertising, marketing and other promotional materials, including, without limitation, point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item that has been

used or is intended to be used in connection with any of Applicant's Products/Services and/or Applicant's SOXX Marks.

Answer: None.

Interrogatory No. 12

Describe each instance where any person has by word or deed or otherwise including, but not limited to, by misdirected mail, e-mail, telephone calls, orders or inquiries -- suggested or reflected a belief that Applicant is licensed, endorsed or sponsored by or is a sponsor of, or is associated or related in any way with or to Red Sox Club or White Sox Club, or that the products or services sold, offered for sale, or otherwise distributed or intended to be sold, offered for sale, or otherwise distributed by Applicant in connection with Applicant's SOXX Marks are licensed, endorsed or sponsored by or associated or related in any way with or to Red Sox Club or White Sox Club, their respective BOSTON RED SOX or CHICAGO WHITE SOX baseball teams and/or Red Sox Club's Marks or White Sox Club's Marks; and Identify all persons knowledgeable about any such instances referred to in subparagraph 12(a) above and describe the nature of their knowledge.

Answer: None.

Interrogatory No. 13

State whether Applicant has marketed or intends to market Applicant's Products/Services to sports fans, fans of the BOSTON RED SOX or CHICAGO WHITE SOX baseball teams, any of the other Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Boston or Chicago, and, if so, describe the means by which Applicant has marketed or intends to market Applicant's Products/Services to sports fans, fans of the BOSTON RED SOX or CHICAGO WHITE SOX baseball teams, any of the other Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Boston or Chicago.

Answer: Applicant intends to market its goods sold under the SOXX trademark to the running shoes market throughout United States.

Interrogatory No. 14

State whether Applicant has ever sought a license or other right to use any marks, designs, stylizations or slogans, including without limitation, Red Sox Club's Marks or White Sox Club's Marks, from Red Sox Club or White Sox Club or any of their related entities, including, without limitation, Major League Baseball Properties, Inc.

Answer: No.

Interrogatory No. 15

State whether Applicant was aware of Red Sox Club and/or its BOSTON RED SOX Major League Baseball team or its affiliated Minor League Baseball teams, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Red Sox Club or under license from Red Sox Club in connection with Red Sox Club's Marks prior to:

- (a) July 18, 2011, when Applicant filed Application Serial No. 85/373,925;
- (b) Any use by Applicant of Applicant's SOXX Marks in connection with any goods or services.

Answer: (a) Yes.
(b) Currently not applicable as use has yet to occur. However should use commence during the pendency of this proceeding or thereafter the answer would then be yes.

Interrogatory No. 16

State whether Applicant was aware of White Sox Club and/or its CHICAGO WHITE SOX Major League Baseball team or its affiliated Minor League Baseball teams, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by White Sox Club or under license from White Sox Club in connection with White Sox Club's Marks prior to:

- (a) July 18, 2011, when Applicant filed Application Serial No. 85/373,925;
- (b) Any use by Applicant of Applicant's SOXX Marks in connection with any goods or services.

Answer: (a) Yes.
(b) Currently not applicable as use has yet to occur. However should use commence during the pendency of this proceeding or thereafter the answer would then be yes.

Interrogatory No. 17

Describe in detail all steps or actions taken by or on behalf of Applicant to use or prepare to use Applicant's SOXX Marks in the United States or in commerce.

Answer: Apart from filing the instant contested application, none.

Interrogatory No. 18

Identify all documents concerning any steps or actions taken by or on behalf of Applicant to use or prepare to use Applicant's SOXX Marks in the United States or in commerce, including, without limitation, any business plans, marketing plans or other documents concerning the potential exploitation of Applicant's Mark.

Answer: None.

Interrogatory No. 19

With respect to each response to Opposer's First Set of Requests for Admission that is anything other than an unqualified admission, state the basis for the response, including, without limitation, all facts and documents upon which the response is based.

Answer: In regard to Request for Admissions Nos. 1 through 8, Applicant retains no evidence as to whether or not the Opposers' trademarks are famous or not.

In regard to Request for Admissions Nos. 9 and 10, Applicant does not know what the Opposer is asking in reference to "associated with". As such, the same could not be admitted and therefore were denied.

In regard to Request for Admissions Nos. 13, 14, 17 and 18, as Applicant has yet to make use of its mark the requests are not properly founded and, accordingly, were denied as such.

In regard to Request for Admissions No. 19, Applicant's intended goods, as set forth above, are intended to be marketed to the running shoes market throughout United States.

Finally, in regard to Request for Admissions No. 21, as set forth above Applicant is developing and/or has developed a minimalistic shoe design to exist in the market for barefoot or near barefoot running equipment. Within this context, the product to be used in connection with the instant mark is akin to minimalistic footwear and/or a sock. It is not intended to be baseball or softball related.

PRODUCTION OF DOCUMENTS

Request No. 1

Specimens of each of Applicant's Products/Services (as defined in Interrogatory No. 5) bearing or displaying Applicant's SOXX Marks (as defined above), including, without limitation, each different color combination and each different product design or stylization of products in which Applicant's SOXX Marks have been used or are intended to be used by Applicant and/or its licensees.

Response: None.

Request No. 2

Specimens of each label, hangtag, tag, product package, package insert, sticker, hologram, package material or other device that bear Applicant's SOXX Marks, and which have been used or are intended to be used by Applicant and/or its licensees in the United States or in commerce.

Response: None.

Request No. 3

Specimens of each point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item that bear Applicant's SOXX Marks.

Response: None.

Request No. 4

All documents concerning Applicant's design, selection and/or adoption of Applicant's SOXX Marks for use in the United States or in commerce.

Response: None.

Request No. 5

All documents concerning any trademark searches or other searches, opinions, investigations, analyses or studies conducted or reviewed by or on behalf of Applicant concerning adoption and use of Applicant's SOXX Marks in the United States or in commerce.

Response: None.

Request No. 6

Documents sufficient to identify; (a) the date of first use of Applicant's SOXX Marks; (b) the date of first use of Applicant's SOXX Marks in commerce; (c) the geographic area(s) of use of Applicant's SOXX Marks in the United States or in commerce; (d) Applicant's Products/Services bearing, offered for sale, sold or otherwise distributed under Applicant's SOXX Marks; (e) any and all customers, distributors or other persons or entities to which Applicant's Products/Services have been sold or distributed; (f) all retail, wholesale, commercial, or charitable entities through which Applicant's Products/Services have been offered for sale, sold or otherwise distributed in the United States or in commerce; (g) the channels of trade through which Applicant's Products/Services were or are being distributed or sold to the ultimate purchaser, consumer or user in the United States or in commerce; (h) the annual volume of sales (in dollars and units) in the United States or in commerce made for Applicant's Products/Services for each year from the date of first use to the present; and (i) the annual amount of revenue, including, without limitation, any licensing or sponsorship revenues, that Applicant has received in connection with Applicant's Products/Services for each year from the date of first use to the present.

Response: None.

Request No. 7

All documents concerning the advertising, marketing or promotion of Applicant's Products/Services offered for sale or otherwise distributed or intended to be offered for sale or otherwise distributed in the United States or in commerce, including, without limitation, any media plans, public relations materials, press kits and correspondence with advertising agencies, public relations firms, media planners, graphic designers, website designers or any other such entities in the advertising and promotional field.

Response: None.

Request No. 8

Documents sufficient to identify the amount of money expended by Applicant in advertising and promoting Applicant's Products/Services in the United States or in commerce.

Response: None.

Request No. 9

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer (or proposed authorization, license, assignment, grant, conveyance or other transfer) relating to Applicant's SOXX Marks from any third party to Applicant.

Response: None.

Request No. 10

All documents concerning Applicant's authorization, license, assignment, grant, conveyance or other transfer (or proposed authorization, license, assignment, grant, conveyance or other transfer) relating to Applicant's SOXX Marks from or on behalf of Applicant to any third party, including, without limitation, all license agreements.

Response: None.

Request No. 11

Documents sufficient to identify each website, web auction, web hosting, web listing, web posting, web page or social media page (whether owned or controlled by Applicant or third parties), including its Internet address, on or through which Applicant's SOXX Marks have been displayed and/or Applicant's Products/Services have been, are currently being or are intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Response: None.

Request No. 12

All documents concerning the use or intended use in the United States or in commerce of Applicant's SOXX Marks in connection with any indicia, designs, stylizations (including, without

limitation, font styles), terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with: (a) sports or sports teams (including, without limitation, baseball stadiums, baseball teams, players, managers or coaches, baseball uniforms or apparel or equipment used to play baseball); (b) Boston, Chicago or other geographical references; and/or (c) Red Sox Club and its BOSTON RED SOX baseball team, White Sox Club and its CHICAGO WHITE SOX baseball team, any other Major League Baseball teams or affiliated Minor League Baseball teams, or their respective trademarks, logos, designs or stylizations, including without limitation, any of Red Sox Club's Marks or White Sox Club's Marks, or trademarks, logos, designs, stylizations, or components thereof or similar thereto.

Response: None.

Request No. 13

Appl from the current opposition, all documents concerning any objections, claims, demands or actions lodged or filed against the use or proposed use or registration of Applicant's SOXX Marks, including, without limitation, cease and desist letters, complaints and/or Notices of Opposition.

Response: None.

Request No. 14

All documents concerning Red Sox Club, White Sox Club, Red Sox Club's Marks, White Sox Club's Marks, or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Red Sox Club under Red Sox Club's Marks or White Sox Club under White Sox Club's Marks.

Response: None.

Request No. 15

All documents concerning Applicant's awareness of Red Sox Club's Marks and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Red Sox Club or under license from Red Sox Club in connection with Red Sox Club's Marks prior to:

- (a) July 18, 2011, when Applicant filed Application Serial No. 85/373,925;
- (b) any use in the United States or in commerce by Applicant of Applicant's SOXX Marks.

Response: None.

Request No. 16

All documents concerning Applicant's awareness of White Sox Club's Marks and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by White Sox Club or under license from White Sox Club in connection with White Sox Club's Marks prior to:

- (a) July 18, 2011, when Applicant filed Application Serial No. 85/373,925;
- (b) any use in the United States or in commerce by Applicant of Applicant's SOXX Marks.

Response: None.

Request No. 17

All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Applicant concerning Applicant's SOXX Marks, Applicant's Products/Services, Red Sox Club's Marks, White Sox Club's Marks or any goods or services advertised, promoted, offered for sale, sold, licensed or rendered by Red Sox Club in connection with Red Sox Club's Marks or White Sox Club in connection with White Sox Club's Marks.

Response: None.

Request No. 18

All documents reflecting or indicating any confusion on the part of any member of the public between either of the Opposers and Applicant and/or their respective marks and/or goods or

services, including, without limitation, documents referring to or evidencing misdirected mail, e-mails, telephone calls, orders or inquiries suggesting or reflecting a belief by any person that Applicant is licensed, endorsed or sponsored by, or is a sponsor of, or is associated or related in any way with or to either of the Opposers, or that the products or services sold, offered for sale or otherwise distributed, or intended to be sold, offered for sale or otherwise distributed, by Applicant in connection with Applicant's SOXX Marks are licensed, endorsed or sponsored by or associated or related in any way with or to either of the Opposers.

Response: None.

Request No. 19

All documents concerning the actual or intended channels of trade for Applicant's Products/Services sold or rendered or intended to be sold or rendered.

Response: None.

Request No. 20

All documents concerning any designs, logos, renditions, stylizations (including, without limitation, font styles) or formats of or for Applicant's SOXX Marks, including, without limitation, any drafts or proposed versions of same.

Response: None.

Request No. 21

All documents concerning the actual or intended marketing of any of Applicant's Products/Services to fans of the BOSTON RED SOX and CHICAGO WHITE SOX baseball teams, any other Major League Baseball teams or affiliated Minor League Baseball teams, or consumers located in Boston or Chicago.

Response: None.

Request No. 22

All documents concerning any steps or actions taken by or on behalf of Applicant to use or prepare to use Applicant's SOXX Marks in the United States or in commerce.

Response: None.

Request No. 23

All documents identified or otherwise referred to by Applicant in answering Opposer's First Set of interrogatories above.

Response: None.

Respectfully submitted this 19th of September, 2013.

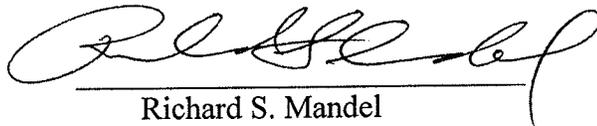
THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposers' Motions to Amend and to Suspend Pending Consideration of the Motion to Amend, including the supporting Declaration of Richard S. Mandel, Esq. and exhibits thereto, was mailed on September 25, 2013 via First Class Mail, postage prepaid, to counsel for Applicant as follows:

Matthew H. Swyers, Esq.
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180

A handwritten signature in black ink, appearing to read 'Richard S. Mandel', is written over a horizontal line. The signature is cursive and stylized.

Richard S. Mandel