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

Proceeding	91207367
Party	Plaintiff Armando Ernesto Dollero Figueroa and Carlo Dollero Figueroa
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Date	10/10/2012
Attachments	Shana Mot for Exp Discovery.pdf (4 pages)(37845 bytes) Shana Not of Deposition.pdf (1 page)(21184 bytes) Shana 1st Set of Interrog.pdf (9 pages)(58435 bytes) Shana 1st Req for Production.pdf (8 pages)(54058 bytes)

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

ARMANDO ERNESTO DOLLERO FIGUEROA)	
and)	
CARLO DOLLERO FIGUEROA (Individuals))	
)	
Opposers,)	
)	
)	Opposition No. 91207367
)	Application No. 79110124
)	
v.)	
)	
JULIAN IMAZ VILLAR (Individual))	Mark: SHANA (and Design)
)	
Applicant.)	Filed: February 10, 2012
)	Published: September 11, 2012
)	Applicant: Julian Imaz Villar
)	

OPPOSERS’ MOTION FOR LEAVE TO TAKE EXPEDITED DISCOVERY

Opposers respectfully request the Board enter an order opening the period for discovery in this matter immediately, and to authorize Opposers to serve discovery requests (including a Notice of Deposition) upon Applicant prior to the service of Opposers’ Rule 26(a)(1) disclosures. Good cause exists for such expedited discovery as set forth more fully in this Motion:

1. The Board specifies the deadline for the parties to conduct their discovery conference, the opening and closing dates for the taking of discovery, and the deadlines within the discovery period the parties must make their initial disclosures and expert disclosures to one another. 37 CFR § 2.120(a)(1).

2. But the Board, like any tribunal operating under the Federal Rules of Civil Procedure, has broad discretion to dictate the sequence of discovery. *Malibu Media, LLC v. John*

Does 1-16, 2012 WL 1681819, at *2 (D.D.C. April 11, 2012), citing *Watts v. Sec. & Exch. Comm'n*, 482 F.3d 501, 507 (D.C.Cir.2007).

3. The Rules provide that the parties may undertake early discovery for the parties' and witnesses' convenience and in the interests of justice. *Zoosk Inc. v. Doe 1*, 2010 WL 5115670, at *2 (N.D.Cal. December 9, 2010).

4. The Board may look to Fed. R. Civ. P. 26(d) for guidance in allowing early discovery. Under this Rule, a court may deviate from the typical sequence of discovery by authorizing parties to engage in discovery prior to the Rule 26(f) conference (which ordinarily is the "starting gun" for discovery absent agreement of the parties or a court order).

5. A party may obtain leave to take early discovery upon a showing of "good cause". Fed. R. Civ. P. 26(d)(1); *Malibu Media, supra*, 2012 WL 1681819, at *1.

6. In this case, "good cause" exists for allowing early discovery for the following reasons:

- a. Opposers have reason to believe that Applicant will resist these proceedings before the Board, and obstreperously refuse to cooperate in the matter, including discovery. Allowing discovery to begin at this point will give more time for the filing and briefing of anticipated motions to compel. Waiting the ordinary sixty-plus days following the filing of a Notice of Opposition for discovery to begin might needlessly delay the resolution of this matter. Earlier attention to discovery disputes will hasten the ultimate determination of issues in this case.

- b. Similarly, Opposers anticipate that Applicant will resist travel to the United States for his deposition. Getting to these issues earlier rather than later will speed the resolution of this case.
- c. Opposers have reason to believe that Applicant is about to undertake certain imminent marketing efforts within the United States, relying upon its purported rights arising from the present application. These efforts will prejudice Opposers, and earlier attention to all procedures in this case, including discovery, will mitigate these harmful effects upon Opposers.

WHEREFORE, for the reasons stated above, Opposers respectfully request the Board enter an order opening the discovery period immediately, authorizing the service by Opposers of the attached Notice of Deposition (Ex. A), Interrogatories (Ex. B), and Requests to Produce (Ex. C) prior to the service by Opposers of their Rule 26(a)(1) initial disclosures.

Respectfully submitted,

AMANDO ERNESTO DOLLERO FIGUEROA
and CARLO DOLLERO FIGUEROA

By: /s/ Evan D. Brown

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Attorneys for Opposers

CERTIFICATE OF FILING

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on October 10, 2012.

/s/ Evan D Brown

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NOTICE OF DEPOSITION OF JULIAN IMAZ VILLAR

To: JULIAN IMAZ VILLAR

PLEASE TAKE NOTICE that the undersigned counsel for Opposers shall take the sworn deposition of JULIAN IMAZ VILLAR, by oral examination before a qualified notary public and court reporter who shall record the sworn testimony stenographically, at 9:00 a.m. on the 15th day of October 2012, at the offices of Hinshaw & Culbertson, LLP, 222 N. LaSalle, Suite 300, Chicago, Illinois 60601.

AMANDO ERNESTO DOLLERO FIGUEROA
and CARLO DOLLERO FIGUEROA

By: /s/ Evan D. Brown

Kourtney A. Mulcahy
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OPPOSERS’ FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposers, Armando Ernesto Dollero Figueroa and Carlo Dollero Figueroa (“Opposers”), through their attorneys, hereby serve Opposers’ First Set of Interrogatories upon Applicant, Julian Imaz Villar (“Applicant”) Opposers request that Applicant respond to these Interrogatories, subject to the following definitions and instructions, under oath, within thirty (30) days of the date of service hereof:

DEFINITIONS AND INSTRUCTIONS

“Opposers” shall mean Armando Ernesto Dollero Figueroa and Carlo Dollero Figueroa, including, without limitation, any predecessors in interest, as well as any affiliate, division or related companies (as defined by 15 U.S.C. §1127), and the officers, directors, employees, agents, representatives, and other personnel thereof.

“Applicant” shall mean Julian Imaz Villar including, without limitation, any predecessors in interest, as well as any affiliate, division or related companies (as defined by 15 U.S.C. §

1127), and the officers, directors, employees, agents, representatives, and other personnel thereof.

The terms “you,” “your,” and “yours” refer to Applicant, as that term is defined herein.

“Person” or “Persons” shall mean any individual, association, business, partnership, corporation, firm, organization, or entity.

“Documents” shall be given the meaning set forth in Fed. R. Civ. P. 34 and all nonidentical copies of same.

“Identify” or “state the identity of” means:

In the case of a person, to state the name; last known residence; employer or business affiliation; and occupation and business position held.

In the case of a company, to state the name; if incorporated, the place of incorporation; the principal place of business; and the identity of the persons having knowledge of the matter with respect to which the company is named.

In the case of a document, to state the identity of the persons who prepared it; the sender and recipient; the title or a description of the general nature of the subject matter; the date of preparation; the date and manner of distribution and publication; the location of each copy and the identity of the present custodian; and the identity of the persons who can identify it.

In the case of an act or event, to state a complete description of the act or event; when it occurred; where it occurred; the identity of the person(s) performing said act (or omission); the identity of all persons who have knowledge, information or belief about the act; when the act, event, or omission first became known; the circumstances; the manner in which such knowledge was first obtained; and the documents or other writings memorializing the instance.

Words of gender shall be construed as including all genders, without limitation.

Words in the singular shall be construed to mean the plural or vice versa as appropriate.

“And” and “or” shall mean “and/or”.

The terms “refer,” “referring to,” “relate,” or “relating to” shall mean having a legal, factual or logical connection, relationship, correlation, or association with the subject matter of the request.

The words “communication” or “communications” shall mean all meetings, conversations, conferences, discussions, correspondence, messages, telegrams, telefaxes, facsimiles, e-mail, mailgrams, and all oral and written expressions or other occurrences whereby thoughts, opinions or data are transmitted between two or more persons.

“Oral communication” shall mean any verbal conversation or other statement from one person to another, including but not limited to, any interview, conference, meeting or telephone conversation.

“Applicant’s Mark” shall mean the mark SHANA and Design as shown in Application Serial No. 79/110,124.

“Opposers’ Marks” shall mean the SHASA mark(s), including but not limited to the marks shown in Reg. Nos. 2,226,033, 2,763,116, and 3,483,744.

The terms “concerning,” or “concern,” shall mean memorializing, mentioning, to be connected with, comprising, consisting, indicating, describing, referring, relating to, evidencing, showing, discussing, or involving in any way whatsoever the subject matter of the Interrogatory.

If you object to any Interrogatory or Interrogatory subpart, or otherwise withhold responsive information because of the claim of privilege, work product, or other grounds:

- identify the Interrogatory question and subpart to which objection or claim of privilege is made;
- state whether the information is found in a document, oral communication, or in some other form;
- identify all grounds for objection or assertion of privilege, and set forth the factual basis for assertion of the objection or claim of privilege;
- identify the information withheld by description of the topic or subject matter, the date of the communication, and the participants; and

- identify all persons having knowledge of any facts relating to your claim of privilege

If you object to any portion of an Interrogatory, explain your objection and answer the remainder.

The information requested herein is intended to include all knowledge and information of Applicant in his personal capacity, and includes, unless otherwise specifically indicated, his predecessors, agents, legal representatives, divisions, subsidiary entities, both controlled and wholly-owned, and all other related companies (as defined by 15 U.S.C. §1127), and the past and present officers, directors, employees, agents, representatives, attorneys and other personnel thereof, as well as each entity through which Applicant claims the right to use Applicant's Mark.

These Interrogatories are deemed continuing in nature, requiring Applicant to serve upon Opposers further responses promptly after Applicant has acquired additional knowledge or information.

INTERROGATORIES

1. Identify all goods and services for which Applicant is presently using Applicant's Mark.
2. Identify all goods and services for which Applicant has a present bona fide intent to use Applicant's Mark.
3. With respect to each of the goods and services identified in response to Interrogatory No. 1, describe all relevant facts and circumstances regarding the first use of Applicant's Mark in commerce in the United States.
4. With respect to each of the goods and services identified in response to Interrogatory No.2, describe in detail all plans and steps taken to commence use of Applicant's Mark in connection with such goods and services in the United States.
5. Identify the channels of trade through which:
 - a. Applicant presently markets or intends to market products and services identified by Applicant's Mark; and

- b. Products or services identified by Applicant's Mark reach end consumers.
6. Identify the users and/or purchasers to whom Applicant advertises or promotes or intends to advertise or promote products and services identified or intended to be identified by Applicant's Mark.
7. Identify the persons with primary knowledge concerning Applicant's sale of or intent to sell 'products or services under Applicant's Mark.
8. Identify the annual sales in dollars for each year Applicant's Mark has been in use for all of the goods and services identified in response to Interrogatory No. 1.
9. Identify the annual expenditure in dollars spent marketing or promoting Applicant's Mark and the goods and services sold or intended to be sold under Applicant's Mark.
10. Identify the persons primarily involved in the selection of Applicant's Mark.
11. Describe in detail the process of selection of Applicant's Mark.
12. Identify the persons with primary knowledge concerning any market research, searches, investigations, reports, surveys, or studies conducted involving, relating, or referring to (A) Applicant's Mark; and (B) Opposers' Marks.
13. Describe in detail any survey conducted to determine whether there exists a likelihood of confusion between the Applicant's marks and any other marks.
14. Identify the principal persons or entities, including but not limited to advertising agencies, market research firms, or website development firms, who designed or created advertisements, packaging, catalogues, annual reports, signs, promotional materials, informational materials, handbills, stationery, business cards, decals, labels, or other materials displaying Applicant's Mark. For each such person or entity, specify:
 - a. what items were designed, created, printed, or manufactured by it;
 - b. the media in which the item was produced;
 - c. when work on the item was completed;

- d. the dates (month, day, year) on which the item was distributed;
 - e. the quantities of the item that were distributed;
 - f. the persons to whom the item was distributed; and
 - g. what products or services were referred to in or promoted by the item.
15. To the extent not otherwise provided in response to Interrogatory No. 14, identify all third parties, including advertising agencies, marketing firms, website development firms, and other persons, involved in promoting; and/or marketing the products and services identified by Applicant's Mark, and state the location (city, state) and dates (month, day, year) each was acting for Applicant.
 16. Identify the persons who have or had managerial responsibilities involving the marketing and/or provision of products or services offered or intended to be offered under Applicant's Mark.
 17. Identify by name, date (month, day, year) and location (city, state) all trade shows in which Applicant has exhibited or promoted goods or services identified or intended to be identified by Applicant's Mark.
 18. Identify the address(es) of any Internet website(s) owned or operated by Applicant that contains Applicant's Mark in the domain name itself, or promotes the products and services identified or intended to be identified by Applicant's Mark.
 19. For each website identified in Interrogatory No. 18, identify the persons who participated in the creation, development, and design of the Internet website(s).
 20. For each website identified in Interrogatory No. 18, identify the persons responsible for maintaining and operating the Internet website(s), and for receiving and reviewing incoming email at or through such website(s).
 21. Identify all instances in which a person has inquired as to whether Applicant, Applicant's products and services, or Applicant's Mark are or were affiliated with, connected to, sponsored by, or otherwise related to Opposers, Opposers' products, or Opposers' Marks, and vice-versa.

22. For each such instance, state:
 - a. the identity of the person who made the inquiry;
 - b. the date (month, day, year) and place (city, state) the inquiry occurred;
 - c. the manner or circumstances in which the person made the inquiry;
 - d. the manner in which Applicant received notice of the inquiry; and
 - e. the identity of each person who has knowledge of the inquiry.
23. State the date (month, day, year) and circumstances by which Applicant first became aware of Opposers' Marks.
24. Identify each controversy, including litigation proceedings, whether judicial or administrative, involving Applicant's Mark, including:
 - a. the title, civil action number, tribunal and case citation (if reported) of each proceeding;
 - b. the date (month, day, year), nature and basis of the controversy;
 - c. the disposition of the proceeding, including the terms of any settlement of the controversy and the date (month, day, year) thereof; and
 - d. if not disposed of, its current status.
25. Identify each person who Applicant intends to call as an expert witness in this proceeding and state the qualifications of each witness to testify as an expert, the subject matter as to which each such expert is to testify, the substance of the facts and opinions as to which each such expert is expected to testify, and a summary of the grounds for each such expert opinion.
26. Identify each person who answered or assisted in the preparation of the answers to the foregoing Interrogatories and Opposer's First Request For Production.

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Respectfully submitted,

AMANDO ERNESTO DOLLERO FIGUEROA
and CARLO DOLLERO FIGUEROA

By: /s/ Evan D. Brown

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OPPOSERS’ FIRST REQUEST FOR PRODUCTION

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“Applicant” shall mean Julian Imaz Villar including, without limitation, any predecessors in interest, as well as any affiliate, division or related companies (as defined by 15 U.S.C. §1127), and the officers, directors, employees, agents, representatives, and other personnel thereof.

The terms “you,” “your,” and “yours” refer to Applicant, as that term is defined herein.

“Person” or “Persons” shall mean any individual, association, business, partnership, corporation, firm, organization, or entity.

“Documents” shall be given the meaning set forth in Fed. R. Civ. P. 34 and all nonidentical copies of same.

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The words “communication” or “communications” shall mean all meetings, conversations, conferences, discussions, correspondence, messages, telegrams, telefaxes, facsimiles, e-mail, mailgrams, and all oral and written expressions or other occurrences whereby thoughts, opinions or data are transmitted between two or more persons.

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“Applicant’s Mark” shall mean the mark SHANA and Design as shown in Application Serial No. 79/110,124.

“Opposers’ Marks” shall mean the SHASA mark(s), including but not limited to the marks shown in Reg. Nos. 2,226,033, 2,763,116, and 3,483,744.

The terms “concerning,” or “concern,” shall mean memorializing, mentioning, to be connected with, comprising, consisting, indicating, describing, referring, relating to, evidencing,

showing, discussing, or involving in any way whatsoever the subject matter of the category of request.

If you object to any category of this request or subpart thereof, or otherwise withhold responsive documents because of the claim of privilege, work product, or other grounds:

- identify the request category and subpart to which objection or claim of privilege is made;
- state whether the information is found in a document, oral communication, or in some other form;
- identify all grounds for objection or assertion of privilege, and set forth the factual basis for assertion of the objection or claim of privilege;
- identify the information withheld by description of the topic or subject matter, the date of the communication, and the participants; and
- identify all persons having knowledge of any facts relating to your claim of privilege

If you object to any portion of a category of production, explain your objection and answer the remainder.

The information requested herein is intended to include all knowledge and information of Applicant in his personal capacity, and includes, unless otherwise specifically indicated, his predecessors, agents, legal representatives, divisions, subsidiary entities, both controlled and wholly-owned, and all other related companies (as defined by 15 U.S.C. §1127), and the past and present officers, directors, employees, agents, representatives, attorneys and other personnel thereof, as well as each entity through which Applicant claims the right to use Applicant's Mark.

This document request is deemed continuing in nature, requiring Applicant to serve upon Opposers further responses promptly after Applicant has acquired additional knowledge or information.

CATEGORIES OF PRODUCTION

1. Documents which identify, refer, relate to or concern all goods and services for which Applicant is presently using Applicant's Mark.

2. Documents which identify, refer, relate to or concern all goods and services for which Applicant has a present bona fide intent to use Applicant's Mark.
3. All documents concerning the first use of Applicant's Mark in commerce in the United States.
4. Documents which refer, relate to or concern all plans and steps taken to commence use of Applicant's Mark in connection with goods and services in the United States.
5. Documents which identify all channels of trade through which:
 - a. Applicant presently markets or intends to market products and services identified by Applicant's Mark; and
 - b. Products or services identified by Applicant's Mark reach end consumers.
6. Documents which identify or describe the users and/or purchasers to whom Applicant advertises or promotes or intends to advertise or promote products and services identified or intended to be identified by Applicant's Mark.
7. Documents which identify all persons with primary knowledge concerning Applicant's sale of or intent to sell products or services under Applicant's Mark.
8. Documents which identify the annual sales in dollars for each year Applicant's Mark has been in use for all of the goods and services identified in response to Interrogatory No. 1 in Opposer's First Set of Interrogatories.
9. Documents which set forth the annual expenditure in dollars spent marketing or promoting Applicant's Mark and the goods and services sold or intended to be sold under Applicant's Mark.
10. Documents which identify all persons primarily involved in the selection of Applicant's Mark.
11. All documents which refer, relate to or concern the process of selection of Applicant's Mark.

12. Documents that identify all persons with primary knowledge concerning any market research, searches, investigations, reports, surveys, or studies conducted involving, relating, or referring to (A) Applicant's Mark; and (B) Opposers' Marks.
13. All documents referring, relating to or concerning any survey conducted to determine whether there exists a likelihood of confusion between any of Applicant's marks and any other marks.
14. All documents which identify the principal persons or entities, including but not limited to advertising agencies, market research firms, or website development firms, who designed or created advertisements, packaging, catalogues, annual reports, signs, promotional materials, informational materials, handbills, stationery, business cards, decals, labels, or other materials displaying Applicant's Mark. For each such person or entity, provide:
 - a. Documents concerning all items which were designed, created, printed, or manufactured by it;
 - b. Documents concerning the media in which the item was produced;
 - c. Documents concerning when work on the item was completed;
 - d. Documents that show the dates (month, day, year) on which the item was distributed;
 - e. Documents that show all quantities of the item that were distributed;
 - f. Documents that identify or describe all persons to whom the item was distributed; and
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16. All documents which identify all persons who have or had managerial responsibilities involving the marketing and/or provision of products or services offered or intended to be offered under Applicant's Mark.
17. Documents referring, relating to or concerning all trade shows in which Applicant has exhibited or promoted goods or services identified or intended to be identified by Applicant's Mark.
18. Documents which identify all Internet website(s) owned or operated by Applicant that contains Applicant's Mark in the domain name itself, or promotes the products and services identified or intended to be identified by Applicant's Mark.
19. Documents which identify all persons who participated in the creation, development, design and maintenance of the Internet websites referred to in the preceding category of production.
20. Documents which identify all persons who received email or other communications through the websites referred to in production category no. 18 above.
21. Documents which refer, relate to or concern all instances in which a person has inquired as to whether Applicant, Applicant's products and services, or Applicant's Mark are or were affiliated with, connected to, sponsored by, or otherwise related to Opposers, Opposers' products, or Opposers' Marks, and vice-versa.
22. For each such instance, please produce:
 - a. All documents which identify the person who made the inquiry;
 - b. All documents which set forth the date (month, day, year) and place (city, state) the inquiry occurred;
 - c. All documents referring, relating to or concerning the manner or circumstances in which the person made the inquiry;
 - d. All documents referring, relating to or concerning the manner in which Applicant received notice of the inquiry; and
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23. Documents which refer, relate to or concern the date (month, day, year) and circumstances by which Applicant first became aware of Opposers' Marks.
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25. Documents which identify each person who Applicant intends to call as an expert witness in this proceeding, and documents which refer, relate to or concern the qualifications of each witness to testify as an expert, the subject matter as to which each such expert is to testify, the substance of the facts and opinions as to which each such expert is expected to testify, and a summary of the grounds for each such expert opinion.

Respectfully submitted,

AMANDO ERNESTO DOLLERO FIGUEROA
and CARLO DOLLERO FIGUEROA

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/s/ Evan D. Brown