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

Proceeding	91208266
Party	Plaintiff Uncle Milton Industries, Inc.
Correspondence Address	IRENE Y LEE RUSS AUGUST KABAT 12424 WILSHIRE BOULEVARD, TWELFTH FLOOR LOS ANGELES, CA 90025 UNITED STATES ilee@raklaw.com, azivkovic@raklaw.com, trademark@raklaw.com, nmeyers@raklaw.com
Submission	Motion for Sanctions
Filer's Name	Irene Y. Lee
Filer's e-mail	ilee@raklaw.com, azivkovic@raklaw.com, trademark@raklaw.com
Signature	/Irene Y. Lee/
Date	10/28/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Application Serial No. 85/445,797

Mark: MILTON

OPPOSER’S MOTION FOR SANCTIONS, INCLUDING ENTRY OF JUDGMENT AGAINST APPLICANT

Pursuant to Trademark Rule 2.120(g), 37 CFR § 2.120(g), and the Board’s Order of September 5, 2013, Uncle Milton Industries, Inc. (“Opposer”) respectfully submits this motion for sanctions, seeking entry of judgment against Applicant Team John Whitaker Limited (“Applicant”). In granting Opposer’s motions to compel discovery responses¹ and initial disclosures,² the Board ordered Applicant to serve by October 5, 2013 “its full and complete responses, without objection” to Opposer’s outstanding discovery requests, along with its initial disclosures. Declaration of Irene Y. Lee in Support of Opposer’s Motion for Sanctions, Including Entry of Judgment against Applicant (hereinafter “Lee Decl.”), ¶ 18; Exhibit K. The Board further cautioned Applicant that “[i]n the event applicant fails to respond to opposer’s discovery requests as ordered herein, the Board may entertain a motion for sanctions, including the entry of judgment pursuant to Trademark Rule 2.120(g), 37 CFR Section 2.120(g).” *Id.* The deadline for Applicant to serve its outstanding discovery responses has passed and Opposer has not received any response from Applicant. Lee Decl., ¶ 19.

¹ On May 8, 2013, Opposer moved to compel Applicant to serve responses to Opposer’s interrogatories and requests for production of documents.

² On May 10, 2013, Opposer moved to compel Applicant to serve its initial disclosures.

Accordingly, the instant motion for sanctions is based upon Applicant's repeated and knowing violations of the Board's Order and Trademark Rules, including, without limitation, (1) failure to serve a single response to Opposer's interrogatories by October 5, 2013, (2) failure to produce a single document in response to Opposer's document requests by October 5, 2013, and (3) failure to serve initial disclosures by October 5, 2013.

A. Summary: Applicant Failed to Serve a Single Interrogatory Response, Produce a Single Document or Serve Initial Disclosures; Accordingly, Applicant Is in Violation of The Board's Order and Judgment Should Be Entered against Applicant.

Opposer respectfully submits this motion for an order imposing sanctions against Applicant, including the entry of judgment against Applicant.

Pursuant Fed. R. Civ. Proc. 37 and Rule 2.120(g), the Board has the authority and power to impose sanctions against the non-cooperating party. Specifically, Rule 2.120(g) provides, in pertinent part: "If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure."

Rule 37(b)(2) provides, pertinent mark: "[i]f a party or a party's officer, director, or managing agent . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders." Such orders include: "dismissing the action or proceeding in whole or in part [and] rendering a default judgment against the disobedient party."

Pursuant to Rule 2.120(g), before filing its underlying motions to compel, Opposer repeatedly sought to confer and eventually conferred with Applicant in good faith by sending requests to meet and confer regarding Applicant's failure to provide a response to the interrogatories, produce a document and serve initial disclosures. Opposer ignored the requests, necessitating the underlying motions for the Board's intervention. Opposer ignored Opposer's motions and did not file any responsive brief. Accordingly, the Board granted Opposer's motions as conceded, but allowed Applicant to serve outstanding discovery responses, documents and initial disclosures by October 5, 2013. Lee Decl., ¶ 18; Exhibit K. Opposer has

ignored the Board's Order and failed to serve a single response, document or disclosure, necessitating the instant motion for the Board's intervention.

B. Factual Background.

The motion is based upon the following facts:

- On November 30, 2012, Opposer filed a notice of opposition against Applicant. Lee Decl., ¶ 2; Exhibit A.
- On February 4, 2013, the parties held their discovery teleconference. Lee Decl., ¶ 3.
- Under Trademark Rule 2.120(a)(2) and the Board's Scheduling Order, dated November 30, 2012, the parties were required to serve their respective initial disclosures by March 10, 2013. Lee Decl., ¶ 4, Exhibit B.
- In compliance with the Rule and Board's Scheduling Order, Opposer served its initial disclosures on February 15, 2013. Lee Decl., ¶ 5; Exhibit C.
- On February 15, 2013, Opposer also served upon Applicant a set of interrogatories. Lee Decl., ¶ 7; Exhibit D. Applicant has yet to serve a single response to the interrogatories, despite Opposer's requests and the Board's Order to do so. Lee Decl., ¶ 8.
- On February 15, 2013, Opposer also served upon Applicant a set of requests for documents and things. Lee Decl., ¶ 9; Exhibit E.
- In violation of the Rule and Board's Scheduling Order, Applicant failed to serve its initial disclosures by March 10, 2013. Lee Decl., ¶ 6.
- In this entire opposition proceeding, Applicant has yet to produce a single document, let alone the documents responsive to the requests. Lee Decl., ¶ 9.
- Accordingly, on April 1, 2013, Opposer sent a letter to Applicant, requesting a meet and confer to address Applicant's failure to meet its discovery obligations: failure to serve its answers and documents in response to Opposer's first set of interrogatories and first set of requests for production of documents and things and its failure to serve initial disclosures. Lee Decl., ¶ 11; Exhibit F.

- On April 2, 2013, Applicant responded by email to Opposer's April 1, 2013 letter stating that Applicant refused to meet and confer via teleconference, and would meet and confer only via correspondence. Lee Decl., ¶ 12; Exhibit G.

- On April 2, 2013, I sent a reply letter to Applicant, reiterating Opposer's good faith effort to address Applicant's failure to meet its discovery obligations and violation of the Board's Scheduling Order. Lee Decl., ¶ 13; Exhibit H.

- Despite Opposer's repeated requests, Applicant has yet to serve initial disclosures, or any discovery responses for that matter, necessitating Opposer's motions to compel. Lee Decl., ¶ 14.

- On May 8, 2013, Opposer filed a motion to compel Applicant's responses to Opposer's first set of interrogatories and requests for production of documents and things. Lee Decl., ¶ 15, Exhibit I.

- On May 10, 2013, Opposer filed a motion to compel Applicant's initial disclosures. Lee Decl., ¶ 16, Exhibit J.

- Applicant never filed a responsive brief to either of Opposer's motions. Lee Decl., ¶ 17.

- On September 5, 2013, the Board issued an Order, granting Opposer's motions. Lee Decl., ¶ 18, Exhibit K.

- Despite Opposer's repeated requests and the Board's Order requiring Applicant's full and complete compliance, Applicant has yet to serve initial disclosures, or any discovery responses for that matter, necessitating Opposer's instant motion for sanctions, including entry of judgment against applicant. Lee Decl., ¶ 19.

C. Judgment against Applicant Is the Appropriate Sanction under Trademark Rule 2.120(g)(1).

37 CFR § 2.120(g)(1) calls for imposing of sanctions pursuant to those available under Fed. R. Civ. Proc. 37(b)(2), including "dismissing the action or proceeding in whole or in

part,” or “rendering a default judgment against the disobedient party.” Fed. R. Civ. Proc. 37(b) (2)(A)(v) and (vi).

Here, Applicant has made absolutely no effort to comply with its discovery obligations in this matter. In fact, it has willfully evaded its disclosure and discovery obligations. Applicant has failed to provide *any response* to Opposer’s set of interrogatories served upon it on February 15, 2013. Applicant has failed to provide *any response* to Opposer’s set of requests for production of documents and things served upon it on February 15, 2013. When requested to meet and confer to address Applicant’s failures to comply with its discovery obligations, Applicant made no effort to cooperate, thereby causing further delay and prejudice upon Opposer.

Even after the Board issued an order granting additional time for Applicant to comply with its discovery obligations by serving outstanding discovery responses and initial disclosures by October 5, 2013, Applicant simply ignored it. Given Applicant’s utter failure to comply with the Board’s Order and Trademark Rules and its refusal to address its failures, Applicant cannot represent now that its failure was inadvertent or unintentional. Accordingly, judgment should be entered against Applicant and the opposition proceeding should be sustained in Opposer’s favor.

Accordingly, Opposer respectfully seeks the Board’s intervention to enter judgment against Applicant and sustain the opposition in Opposer’s favor.

Dated: October 28, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991
Attorneys for Opposer
Uncle Milton Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2013, one (1) true and correct copy of the foregoing document has been served on Applicant by mailing the same via First Class Mail and electronic mail to:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic
Anne Zivkovic

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Application Serial No. 85/445,797

Mark: MILTON

**DECLARATION OF IRENE Y. LEE IN SUPPORT OF OPPOSER'S MOTION FOR SANCTIONS,
INCLUDING ENTRY OF JUDGMENT AGAINST APPLICANT**

I, Irene Y. Lee, declare and state as follows:

1. I am a member of the State Bar of California and a partner in the firm of Russ, August & Kabat, counsel of record for Opposer Uncle Milton Industries, Inc. in the above-captioned opposition proceeding. I have personal knowledge of the facts set forth herein, and if called upon to testify, could and would testify competently thereto.

2. On November 30, 2012, I filed a notice of opposition, on behalf of Opposer, against Applicant. A true and correct copy of the notice of opposition is attached hereto as **Exhibit A**.

3. On February 4, 2013, the parties held their discovery teleconference.

4. Under Trademark Rule 2.120(a)(2) and the Board's Scheduling Order, dated November 30, 2012, the parties were required to serve their respective initial disclosures by March 10, 2013. A true and correct copy of the Board's Scheduling Order is attached hereto as **Exhibit B**.

5. In compliance with the Rule and Board's Scheduling Order, Opposer served its initial disclosures on February 15, 2013. A true and correct copy of Opposer's initial disclosures is attached hereto as **Exhibit C**.

6. In violation of the Rule and Board's Scheduling Order, Applicant failed to serve its initial disclosures by March 10, 2013.

7. On February 15, 2013, Opposer also served upon Applicant a set of interrogatories. A true and correct copy of Opposer's interrogatories is attached hereto as **Exhibit D**.

8. Applicant has yet to serve a single response to the interrogatories, despite Opposer's requests to do so.

9. On February 15, 2013, Opposer also served upon Applicant a set of requests for documents and things. A true and correct copy of Opposer's requests for documents and things is attached hereto as **Exhibit E**.

10. In this entire opposition proceeding, Applicant has yet to produce a single document, let alone the documents responsive to the requests.

11. Accordingly, on April 1, 2013, Opposer sent a letter to Applicant, requesting a meet and confer to address Applicant's failure to meet its discovery obligations: failure to serve its answers and documents in response to Opposer's first set of interrogatories and first set of requests for production of documents and things and its failure to serve initial disclosures. A true and correct copy of Opposer's letter is attached hereto as **Exhibit F**.

12. On April 2, 2013, Applicant responded by email to Opposer's April 1, 2013 letter, stating that Applicant refused to meet and confer via teleconference and would meet and confer only via correspondence. A true and correct copy of Applicant's email is attached hereto as **Exhibit G**.

13. On April 2, 2013, I sent a reply letter to Applicant, reiterating Opposer's good faith effort to address Applicant's failure to meet its discovery obligations and violation of the Board's Scheduling Order. A true and correct copy of Opposer's reply letter is attached hereto as **Exhibit H**.

14. Despite Opposer's repeated requests, Applicant has yet to serve initial disclosures, or any discovery responses for that matter, necessitating Opposer's motions to compel.

15. On May 8, 2013, Opposer filed a motion to compel Applicant's responses to Opposer's first set of interrogatories and requests for production of documents and things. A true and correct copy of Opposer's motion to compel discovery is attached hereto as **Exhibit I**.

16. On May 10, 2013, Opposer filed a motion to compel Applicant's initial disclosures. A true and correct copy of Opposer's motion to compel initial disclosure is attached hereto as **Exhibit J**.

17. Applicant never filed a responsive brief to either of Opposer's motions.

18. On September 5, 2013, the Board issued an Order, granting Opposer's motions to compel, the Board ordered Applicant to serve by October 5, 2013 "its full and complete responses, without objection" to Opposer's outstanding discovery requests, along with its initial disclosures. A true and correct copy of the Board's Order is attached hereto as **Exhibit K**.

19. Despite Opposer's repeated requests and the Board's Order requiring "full and complete" responses, Applicant has yet to serve initial disclosures, or any discovery responses for that matter, necessitating Opposer's instant motion for sanctions including entry of judgment against applicant.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this 28th day of October, 2013 in Los Angeles, California.



Irene Y. Lee

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2013, one (1) true and correct copy of the foregoing document has been served on Applicant by mailing the same via First Class Mail and electronic mail to:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic
Anne Zivkovic

EXHIBIT A

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No.

Serial No. **85/445,797**

Mark: MILTON

NOTICE OF OPPOSITION

Opposer, Uncle Milton Industries, Inc. (“Uncle Milton” or “Opposer”), a California Corporation, with a place of business at 31186 La Baya Drive, Westlake Village, California 91362, believes that it is being and will continue to be damaged by use and registration of the mark MILTON shown in Application Serial No. 85/445,797 (the “MILTON” mark), and hereby opposes the same.

As grounds for opposition, Uncle Milton alleges as follows:

1. Uncle Milton is informed and believes that Applicant Team John Whitaker Limited is a corporation formed in the United Kingdom having a place of business at Park House, 200 Drake Street, Rochdale, United Kingdom O1161PJ and that the application for the MILTON mark was filed on or about October 12, 2011.

2. Uncle Milton is the owner of, among other things, the following United States trademark and service mark registrations for the UNCLE MILTON formative marks (collectively, the “UNCLE MILTON” marks):

Mark	Reg. No. Reg. Date	Ser. No. Filing Date	Goods/Services
UNCLE MILTON	2,858,040 June 29, 2004	78/265,317 June 20, 2003	Magnifying lenses, planetarium projectors, and microscopes in Class 9.

Mark	Reg. No. Reg. Date	Ser. No. Filing Date	Goods/Services
			<p>Posters, insect habitats, frog habitats, aquariums and terrariums and instructional manuals therefor in Class 16.</p> <p>Science and nature toys, playthings and activity kits; namely, toy microscopes, insect viewers, outdoor exploration toys, gyroscopes, wind-up toys, science themed activity and play sets, geology exploration toys, plant growing kits, chemistry sets, biology sets, earth science sets, physics sets and anatomy sets, insect habitats, interlocking tiles and play pieces; activity kits comprised of toy picks, tweezers, brushes, lenses, specimens and specimen bags and instructional manuals therefor in Class 28.</p>
Uncle Milton	3,987,795 July 5, 2011	77/963,758 March 19, 2010	<p>Gyroscopes; magnifying lenses; microscopes; picture projectors; planetarium projectors in Class 9.</p> <p>Ant vivaria; indoor terrariums for animals or insects; insect habitats; insect vivaria in Class 21.</p>
Uncle Milton	4,133,574 May 1, 2012	77/963,809 March 19, 2010	<p>Science and nature toys, educational playthings and activity kits, namely, toy insect viewers, wind-up toys, toy globes, toy rocks, planetariums, moon replicate, toy solar system, toy rainbow, toy rockets, hobby craft plant growing kits, hobby craft biology sets, hobby craft earth science sets, hobby craft physics sets, radio controlled toys, animals, reptiles and insects, namely, toy vehicles, toy telescopes, toy cameras, toy mechanical arms, toy airplanes and toy volcanoes in Class 28.</p>

3. The foregoing registrations are valid and subsisting and constitute *prima facie* evidence of the validity of the marks and registrations and Uncle Milton's ownership of and exclusive right to use the UNCLE MILTON marks in commerce, and provide constructive notice of ownership thereof by Uncle Milton.

4. Uncle Milton has continuously used the UNCLE MILTON marks in commerce since long before the filing date of the opposed application for the MILTON mark. Uncle Milton's pleaded registrations were also applied for and issued well before the filing date of the opposed application for the MILTON mark.

5. Founded in 1946, over the past six decades, Uncle Milton has created, developed, produced, and marketed toys with primary focus in the science, nature, and space categories.

6. Today, Uncle Milton leads the science, nature and space categories with popular toys that inspire wonder, learning and fun, such as Ant Farm®, Back 2 Nature®, Bug Town®, Tarantula Planet™, and Star Wars™ Science, to name a few.

7. Particularly, the flagship product, Ant Farm®, has been a staple in homes and classrooms for over 50 years and has sold more than 20 million units during the lifetime of its creator and founder of Uncle Milton, Milton Levine, who passed away last year. *See*, January 26, 2011 article, entitled, "*Milton Levine dies at 97; co-creator of popular ant farm toys*," by Valerie Nelson, Times Staff Writer, Los Angeles Times, a true and correct copy of which is attached hereto, marked as **Exhibit A** and incorporated herein, along with true and correct copy of The Washington Post article of January 27, 2011, "*Uncle Milton sold millions of ant farms*."

8. The company sells its products worldwide through mass merchandisers such as Toys 'R' Us, Target, and Amazon as well as through several thousand specialty toy stores.

9. Through Uncle Milton's extensive, continuous and nationwide use, and considerable resource expenditures to advertise, market and promote its products – all under the UNCLE MILTON marks – the UNCLE MILTON marks have come to represent the leading, nationally-recognized toy brand for consumers, households, and classrooms.

10. Uncle Milton has also invested significantly in licensing agreements such as with NASA's Jet Propulsion Laboratory to launch the Mars and Beyond Space Exploration System, a line of interplanetary toys for children, to give Uncle Milton access to some of the world's top engineers and scientists.

11. For over half a century, Uncle Milton's products have garnered considerable media attention through the years and have been featured in various films, television shows, newspapers, and magazines such as the Science Channel, National Geographic, as well as NBC's hit show "The Office" and CBS's "CSI: Crime Scene Investigation".

COUNT ONE

12. Uncle Milton repeats and realleges the allegations set forth in paragraph 1 through 11 as though set forth herein.

13. As a result of Uncle Milton's widespread use in commerce of the UNCLE MILTON marks, promotional efforts, and commercial success, the marks have acquired extensive goodwill, have developed a high degree of distinctiveness and are well known and recognized as identifying high quality goods which have their origin with or have been authorized by Uncle Milton.

14. According to its own application, Applicant has made no use of the MILTON mark as a trademark in the United States.

15. Applicant's MILTON mark is confusingly similar to Uncle Milton's UNCLE MILTON marks in sound, appearance and commercial impression. It so resembles Uncle Milton's marks as to be likely, when applied to the goods, to cause confusion, or to cause mistake, or to deceive.

16. Applicant's proposed goods are related to the goods sold and provided in connection with Uncle Milton's UNCLE MILTON marks and/or represent a natural zone of expansion for Uncle Milton and such goods would travel and/or be promoted through the same channels of trade for sale to, and used by, the same class of purchasers.

17. Applicant's use of the MILTON mark in connection with its proposed goods is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods in that the public, the trade and others are likely to believe that Applicant's goods are same goods as Uncle Milton's goods or provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Uncle Milton and/or its goods.

COUNT TWO

18. Uncle Milton repeats and realleges the allegations set forth in paragraph 1 through 17 as though set forth herein.

19. Uncle Milton's UNCLE MILTON marks are distinctive and famous and had become famous long before the filing date of the opposed application for the MILTON mark.

20. Use of the MILTON mark by Applicant causes dilution of the distinctive quality of Uncle Milton's famous UNCLE MILON marks.

21. Uncle Milton will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in use of its mark and thereby dilute Uncle Milton's rights in its distinctive and famous UNCLE MILTON marks.

WHEREFORE, Opposer Uncle Milton respectfully requests that this opposition be sustained and Applicant's application to register the MILTON mark be denied in all respects.

Dated: November 30, 2012

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

Attorneys for Opposer
Uncle Milton Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2012, one (1) true and correct copy of the foregoing document has been served on Applicant by email and mailing the same via First Class Mail, postage prepaid, to:

John S. Egbert, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

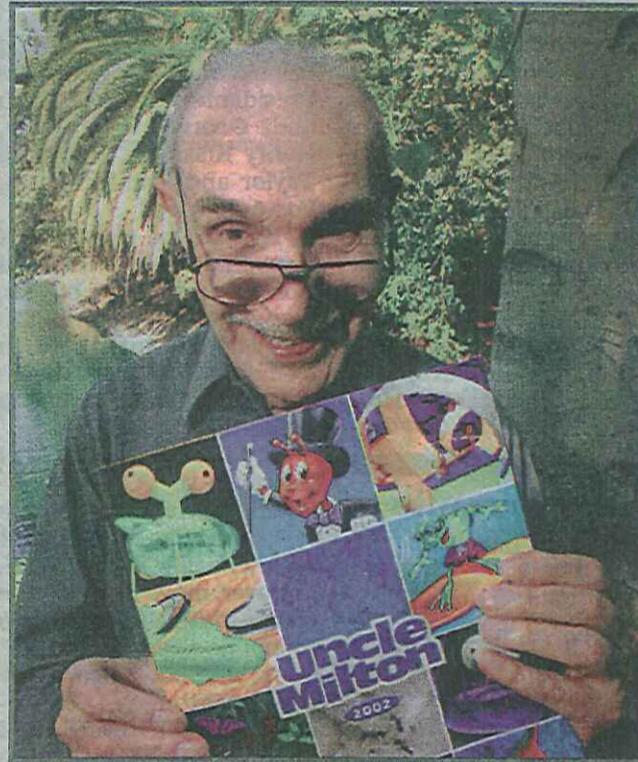
/s/ Anne Zivkovic

Anne Zivkovic

EXHIBIT A

LATEXTRA

WEDNESDAY, JANUARY 26, 2011 :: LATIMES.COM/LANOW



'UNCLE MILTON' DIES

Milton Levine's ant farm toy became an instant hit in the fad-crazy 1950s. His company ultimately sold more than 20 million of them. AA4

OBITUARIES

MILTON LEVINE, 1913 - 2011

Co-creator of wildly popular ant farm toy

VALERIE J. NELSON

The creation of a toy that would become an American classic was triggered in 1956 by a Fourth of July parade of ants at a Studio City picnic.

While gazing at the industrious insects, novelty-toy entrepreneur Milton Levine was transported back to childhood and his uncle's farm, where he collected ants in jars and watched them "cavort," Levine told *The Times* in 2002.

"We should make an antarium," he recalled announcing.

With his brother-in-law, Levine soon devised what was eventually named Uncle Milton's Ant Farm, which was an instant hit in the fad-crazy 1950s. More than 20 million of the now-familiar green ant colonies were sold in Levine's lifetime, according to the Westlake Village company that makes them.

Levine, who was known as Uncle Milton, died of natural causes Jan. 16 at a Thousand Oaks assisted-care facility, said his son, Steven. He was 97.

At first, the ant farm was sold through a mail-order business that Levine established in 1946 in Pittsburgh with his brother-in-law, E.J.



Los Angeles Times

AN AMERICAN CLASSIC

More than 20 million Uncle Milton's Ant Farm toys were sold during Milton Levine's lifetime. "Humanity can learn a lot from the ant," Levine said.

Cossman, a gifted pitchman. The whimsical ant community was one more offbeat product from a company that marketed plastic shrunken heads to hang on rear-view mirrors and spud guns that fired potato pellets.

After moving the company to Hollywood in 1952, Levine decided that he would need a "unique product" if the business were to succeed long term, he told *The Times* in 1986.

Once Levine hit on the idea for the ant farm, models

were fashioned out of plastic tissue dispensers. The first farms that were sold — two sheets of transparent plastic that framed sand topped by a farm scene — looked much like they do today.

He advertised them in *The Times* by saying something akin to "Watch the ants dig tunnels and build bridges" and received so many orders for the \$1.98 product he "couldn't believe it," he said.

The ant farm became a classic partly because it "stoked the curiosity" of

budding scientists and provided a fascinating educational experience, said Tim Walsh, a toy historian who last interviewed Levine in 2006 for the documentary "Toyland" (2010).

Because ants won't survive on the store shelf, they are obtained by mailing in a coupon that comes in the box, which added to the toy's mystique, Walsh said.

"Part of the thrill of the ant farm was that you had to wait and check your mail every day" for the 25 or so ants to arrive in a vial, Walsh said.

The insects were gathered by ant rustlers who were paid a penny apiece for red harvester ants from the Mojave Desert.

Over time, the ant farm was tinkered with. The original glue was toxic to some ants, so a replacement was found. Sand made way for white-ish volcanic ash, which made the ants more visible.

Both Levine and Cossman promoted the ant farm on television. Levine made an "executive" ant farm of mahogany and glass for Dick Clark and spoke at length with the puppet Lamb Chop on "The Shari Lewis Show."

In 1965, Levine bought out Cossman, who went on to become a marketing guru. He died at 84 in 2002.

Cossman & Levine Inc. was renamed Uncle Milton Industries, a re-branding that came about partly because Levine often said he was tired of hearing the joke, "If you're in the ant business, where's the 'uncle'?"

Milton Martin Levine was born Nov. 3, 1913, in Pittsburgh to Harry and Mary Levine, Jewish immigrants from Russia. His father started a chain of dry cleaners.

In the Army during World War II, Milton led a platoon that built bridges in France and Germany.

He met his future wife, Mauricette, when the French citizen was playing

classical piano at a USO in Normandy.

After the war, Levine followed the advice of a newsletter that said the best businesses to go into were toys or bobby pins, both of which were in short supply, he later recalled.

The multimillion-dollar company Levine co-founded became known for educational and scientific toys that include frog and butterfly habitats, planetariums and mini-greenhouses. After the business moved to Westlake Village in the mid-1990s, Levine retired and his son ran the company. When Uncle Milton Industries was sold in June to Transom Capital Group, a private-equity firm, it was valued at between \$30 million and \$40 million.

"Ants work day and night, they look out for the common good and never procrastinate," Levine told *The Times* in 2002. "Humanity can learn a lot from the ant."

More than once, Levine said of ants: "I found out their most amazing feat yet. They put three kids through college."

Besides his son Steven, Levine is survived by Mauricette, his wife of 65 years; daughters Harriet and Ellen; sisters Pearl Cossman and Ruth Shriber; and three grandchildren.

valerie.nelson@latimes.com

The Washington Post

'Uncle Milton' sold millions of ant farms

Advertisement

By Valerie J. Nelson

Thursday, January 27, 2011; B08

The creation of a toy that would become an American classic was triggered in 1956 by a Fourth of July parade of ants at a picnic in Studio City, Calif.

While gazing at the industrious insects, novelty-toy entrepreneur Milton Levine was transported back to childhood and his uncle's farm, where he collected ants in jars and watched them "cavort," he said in 2002.

"We should make an antarium," he recalled announcing.

With his brother-in-law, Mr. Levine soon devised what was eventually named Uncle Milton's Ant Farm, which was an instant hit in the fad-crazy 1950s. More than 20 million of the now-familiar green ant colonies were sold in Mr. Levine's lifetime, according to the Westlake Village company that makes them.

Mr. Levine, who was known as Uncle Milton, died of undisclosed causes Jan. 16 at an assisted-living facility in Thousand Oaks, Calif. He was 97.

At first, the ant farm was sold through a mail order business that Mr. Levine established in 1946 in Pittsburgh with his brother-in-law E.J. Cossman, a gifted pitchman. The whimsical ant community was one more offbeat product from a company that marketed plastic shrunken heads to hang on rear-view mirrors and spud guns that fired potato pellets.

After moving the company to Hollywood in 1952, Mr. Levine decided that he needed a "unique product" if the business were to succeed long term, he told the Los Angeles Times in 1986.

Once Mr. Levine hit on the idea for the ant farm, models were fashioned out of plastic tissue dispensers. The first farms that were sold - two sheets of transparent plastic that framed sand topped by a farm scene - looked much like they do today.

He advertised them in the Times by saying something akin to "Watch the ants dig tunnels and build bridges" and received so many orders for the \$1.98 product he "couldn't believe it," he said in the 1986 interview.

The ant farm became a classic partly because it "stoked the curiosity" of budding scientists and provided a fascinating educational experience, said Tim Walsh, a toy historian who interviewed Mr. Levine in 2006 for the documentary "Toyland" (2010).

Because ants won't survive on the store shelf, they are obtained by mailing in a coupon that comes in the box, which added to the toy's mystique, Walsh said.

"Part of the thrill of the ant farm was that you had to wait and check your mail every day" for the 25 or so ants to arrive in a vial, Walsh said.

The insects were gathered by ant rustlers who were paid a penny apiece for red harvester ants from the Mojave Desert.

Over time, the ant farm was tinkered with. The original glue was toxic to some ants, so a replacement was found. Sand made way for white-ish volcanic ash, which made the ants more visible.

In 1965, Mr. Levine bought out Cossman, who went on to become a marketing guru. He died at 84 in 2002.

Cossman & Levine was renamed Uncle Milton Industries, a re-branding that came about partly because Mr. Levine often said he was tired of hearing the joke, "If you're in the ant business, where's the 'uncle?'"

Milton Martin Levine was born Nov. 3, 1913, in Pittsburgh to Jewish immigrants from Russia. His father started a chain of dry cleaners.

In the Army during World War II, Mr. Levine led a platoon that built bridges in France and Germany. He met his future wife, Mauricette, when the French citizen was playing classical piano at a USO in Normandy.

Besides his wife, survivors include three children, two sisters and three grandchildren.

After the war, Mr. Levine followed the advice of a newsletter that said the best businesses to go into were toys or bobby pins, both of which were in short supply, he later recalled.

The multimillion-dollar company Mr. Levine co-founded became known for educational and scientific toys that include frog and butterfly habitats, planetariums and mini-greenhouses. After the business moved to Westlake Village in the mid-1990s, Mr. Levine retired and his son, Steven, ran the company.

When Uncle Milton Industries was sold in June to Transom Capital Group, a private-equity firm, it was valued at between \$30 million and \$40 million.

"Ants work day and night. They look out for the common good and never procrastinate," Mr. Levine told The Times in 2002. "Humanity can learn a lot from the ant."

- Los Angeles Times

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Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site. Additionally, entries that are unsigned or contain "signatures" by someone other than the actual author will be removed. Finally, we will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. Please review the [full rules](#) governing commentaries and discussions. You are fully responsible for the content that you post.

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 30, 2012

Opposition No. 91208266
Serial No. 85445797

John S. Egbert
EGBERT LAW OFFICES, PLLC
1314 Texas, 21st Floor
HOUSTON, TX 77002
mail@egbertlawoffices.com

Uncle Milton Industries, Inc.

v.

Team John Whitaker Limited

Uncle Milton Industries, Inc.

31186 La Baya Drive
Westlake Village, CA 91362
ilee@raklaw.com, azivkovic@raklaw.com, trademark@raklaw.com

ESTTA508580

A notice of opposition to the registration sought by the above-identified application has been filed. A service copy of the notice of opposition was forwarded to applicant (defendant) by the opposer (plaintiff). An electronic version of the notice of opposition is viewable in the electronic file for this proceeding via the Board's TTABVUE system: <http://ttabvue.uspto.gov/ttabvue/v?qs=91208266>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or

through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address:**
<http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	1/9/2013
Deadline for Discovery Conference	2/8/2013
Discovery Opens	2/8/2013
Initial Disclosures Due	3/10/2013
Expert Disclosures Due	7/8/2013
Discovery Closes	8/7/2013
Plaintiff's Pretrial Disclosures	9/21/2013
Plaintiff's 30-day Trial Period Ends	11/5/2013
Defendant's Pretrial Disclosures	11/20/2013
Defendant's 30-day Trial Period Ends	1/4/2014
Plaintiff's Rebuttal Disclosures	1/19/2014
Plaintiff's 15-day Rebuttal Period Ends	2/18/2014

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or

defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVUE record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stdagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking

(72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

EXHIBIT C

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Serial No. 85/445,797

Mark: MILTON

OPPOSER UNCLE MILTON INDUSTRIES, INC.’S INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure, Opposer Uncle Milton Industries, Inc. (“Uncle Milton”) hereby makes the following initial disclosures. These disclosures are based on Uncle Milton’s reasonable inquiries to date, and Uncle Milton reserves the right to amend, supplement, or otherwise modify these disclosures. Uncle Milton’s initial disclosures represent a good faith effort to identify information and documents it may use to support claims and defenses.

By making these disclosures, Uncle Milton does not represent that it is identifying every document, tangible thing or witness possibly relevant to this proceeding. Uncle Milton’s initial disclosures are made without in any way waiving: (1) the right to object to the use of any of the disclosed information, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (2) the right to object on any and all grounds, at any time, to any discovery request or proceeding involving or relating to the subject matter of these disclosures.

Fed. R. Civ. Proc. 26(a)(1)(A)(i) Witnesses:

The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), Uncle Milton identifies the following individuals. Uncle Milton expressly reserves the right to identify and/or call as witnesses additional and/or different individuals if, during the course of discovery and investigation relating to this case, Uncle Milton learns that such additional and/or different individuals have relevant knowledge.

1. Frank Adler (*)
Uncle Milton.com, Inc.

Subjects: Uncle Milton's adoption, ownership, application for service mark registrations, actual use and planned use of its UNCLE MILTON trademarks; Uncle Milton's advertising, promotional, and marketing activities and publications featuring its UNCLE MILTON trademarks and its products.

2. Person Most Knowledgeable
c/o John S. Egbert, Esq.
EGBERT LAW OFFICES, PLLC

Subjects:

- Applicant Team John Whitaker Limited ("Applicant")'s purported adoption, ownership, application for registration, protection, actual use and planned use of its trademarks at issue;
- Applicant's actual and planned advertising, marketing, distribution and sales of products offered and provided under its trademarks at issue;
- The channels of distribution and/or trade of products Applicant offers in connection with its trademarks at issue;
- Applicant's customers for products offered under its trademarks at issue;
- History of Applicant;
- Business of Applicant;
- Applicant's identification and awareness of Uncle Milton and its registration(s) and use of the UNCLE MILTON marks;
- Applicant's advertising, promotional and marketing activities for products offered under its trademarks at issue and associated costs and expenditures;

- Factual bases for denying the allegation that “Applicant’s MILTON mark is confusingly similar to Uncle Milton’s UNCLE MILTON marks in sound, appearance and commercial impression.”;
- Factual bases for denying the allegation that “[Applicant’s MILTON mark] so resembles Uncle Milton’s marks as to be likely, when applied to the goods, to cause confusion, or to cause mistake, or to deceive”;
- Factual bases for the affirmative defense that “Opposer’s Notice of Opposition fails to state a claim upon which relief can be granted.”;
- Factual bases for the affirmative defense that “Applicant’s mark and the alleged trademarks listed in Opposer’s Notice of Opposition are different in sound, appearance, meaning and commercial impression, [sic] that the goods of the parties are unrelated and marketed through different channels of trade.”;
- Factual bases for the affirmative defense that “the term ‘MILTON’ contained in the alleged common law trademarks and trademark registrations listed in Opposer’s Notice of Opposition have been used by various third parties for various goods and services and, as such, are ‘weak’ marks that are entitled to limited protection.”;
- Applicant’s sales of goods offered under its trademark mark at issue and revenues generated, and income derived, from such sales; and
- Pre-filing investigation, filing and prosecuting application, Serial No. 85/445,797.

3. John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
1314 Texas, 21st Floor
Houston, Texas 77002

- Pre-filing investigation, filing and prosecuting application, Serial No. 85/445,797; and
- Applicant’s actual and planned use of its trademark at issue; and
- Identification and awareness of Uncle Milton and its registrations and use of the UNCLE MILTON marks.

No current or former Uncle Milton officer, employee or consultant may be contacted without the prior consent of Uncle Milton’s counsel. People listed above with asterisks (*) by

their name are represented by Uncle Milton's counsel for the purpose of this opposition proceeding, and can be contacted only through Uncle Milton's counsel.

Fed. R. Civ. Proc. 26(a)(1)(A)(ii) Documents:

A copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii), and based upon presently available information, Uncle Milton may use relevant documents from the following categories to support its claims. Uncle Milton expressly reserves the right to identify and use documents from additional categories if, during the course of discovery and investigation relating to this case, Uncle Milton learns that such additional categories contain relevant documents. Uncle Milton also reserves the right to respond to and/or rebut the contentions and allegations Applicant may make.

1. Documents showing Uncle Milton's valid, enforceable rights in UNCLE MILTON marks.
2. Documents showing fame in UNCLE MILTON marks.
3. Investigation, analysis, studies or opinion of counsel concerning the strength, ownership, validity and/or enforceability of Applicant's trademark at issue.
4. Documents concerning Applicant's pre-filing investigation, filing and prosecuting applications, Serial No. 85/445,797.
5. Applicant's goods offered for sale and/or sold under the trademark at issue.
6. Applicant's marketing and promotional materials and associated expenditures.
7. Sales of Applicant's goods offered under its trademark at issue.

Numerous documents in the categories identified above are already in Applicant's possession, custody or control. These items which Uncle Milton may use to supports its claims will be made available for inspection at the offices of counsel for Uncle Milton, at a mutually

agreeable and convenient time for the parties and their respective counsel, subject to a protective order acceptable to all parties.

Further discovery and investigation may reveal additional tangible items or documents, which may be relevant and discoverable. Uncle Milton may produce other relevant and non-privileged documents in its own possession, custody or control, to the extent reasonably available, in response to the appropriate document requests, subject to its objections.

Dated: February 15, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

*Attorneys for Opposer
Uncle Milton Industries, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Opposer Uncle Milton Industries, Inc.'s Initial Disclosures** was served by first class mail, postage prepaid, and electronic mail on February 15, 2013 upon counsel of Applicant:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic

Anne Zivkovic

EXHIBIT D

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Serial No. 85/445,797

Mark: MILTON

**OPPOSER UNCLE MILTON INDUSTRIES, INC.'S FIRST SET OF
INTERROGATORIES TO APPLICANT TEAM JOHN WHITAKER LIMITED**

Propounding Party: Opposer Uncle Milton Industries, Inc.
Responding Party: Applicant Team John Whitaker Limited
Set Number: One

Pursuant to the provisions of 37 CFR §2.120 and Rule 33 of the Federal Rules of Civil Procedure, Applicant Team John Whitaker Limited is required to provide its answers under oath to the attention of Irene Y. Lee at Russ, August & Kabat, Twelfth Floor, 12424 Wilshire Boulevard, Los Angeles, California 90025 within thirty (30) days of service thereof.

INSTRUCTIONS AND DEFINITIONS

A. Instructions.

1. If you claim that any information requested is privileged, please provide all information falling within the scope of the interrogatory which is not privileged, and identify, with sufficient particularity for purposes of a motion to compel, a response, with respect to which you claim a privilege, and state the basis on which the privilege is claimed.

2. You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing. With respect to any documents which you may withhold on a claim of privilege, a statement shall be provided by you, signed by one of your attorneys, setting forth as to each such document:

- (a) The name(s) of the sender(s) of the document;
- (b) The name(s) of the author(s) of the document;
- (c) The name(s) of the person(s) to whom the original or copies were sent;
- (d) The date of the document;
- (e) The date on which the document was received by those having possession of the document; and
- (f) The statute, rule or decision which is claimed to give rise to the privilege.

3. Your responses to the following interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

4. All requests contained in the following interrogatories to identify a document or thing are to be answered by providing a complete and accurate description sufficient for a request for production of documents and things and for a motion to compel the production of documents and things, based only upon the description provided, including giving the following information concerning the same:

- (a) The title or brief description of the document or thing;
- (b) A brief description of the subject matter, if a document;
- (c) The date on which the document or thing was first prepared or received;
- (d) Identification (see definition below) of the person who prepared the document or thing;
- (e) Identification (see definition below) of the person or persons who received the document or thing;

(f) Identification (see definition below) of the person or persons who presently have custody of the document or thing;

(g) In case of correspondence, the individuals who are the addresser and the addressee; and

(h) If a publication, the title, date of publication, author, specific page numbers and the publisher.

5. All requests contained in the following interrogatories to identify a person, whether a natural person or organization, are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, by mail and to serve legal documents on such person, including that person's full name, title (if any), address and telephone number.

6. Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

7. If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the requesting party.

8. Your answers to these interrogatories must be verified, dated, and signed.

9. Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one (1) page, refer to the page and section where the answer to the interrogatory can be found.

10. Whenever you are asked to describe an event or a chain of events, please: (a) state the date or dates of each occurrence relevant to the event; (b) identify all individuals having knowledge of any occurrence or aspect of the event, including but not limited to those involved in witnessing, supervising, controlling, supporting, requesting, or otherwise participating in the

event; (c) describe the role and contribution of each person identified; (d) describe all related events, and all previous or subsequent related attempts whether or not completed and whether or not successful; and (e) describe the motivation and causation for the event.

11. For each objection asserted, state: (a) the basis for the objection; (b) facts supporting the assertion of the objection; and (c) the statute, rule or decision which is claimed to give rise to the objection.

B. Definitions.

1. “APPLICANT” refers to the applicant Team John Whitaker Limited and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with the applicant, including all of the partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for the applicant.

2. “MILTON” refers to the designation and/or trademark or service mark containing “Milton” APPLICANT has used or intends to use, including without limitation, the one sought to be registered by means of Application Serial No. 85/445,797.

3. “COMMUNICATION” means any oral or written transmission of information between PERSONS, including but not limited to, meetings, discussions, conversations, telephone calls, memoranda, electronic mail, instant messages (including, without limitation, text messages), letters, telegram, record or notation of any conversation, inter-office memorandum, telecopies, telexes, conferences or seminars.

4. “DOCUMENT” or “ITEM” or any similar term shall be used in their broadest sense and shall include, but not be limited to, the following: any written, printed, typed or other graphic matter of any kind or nature; all mechanical, magnetic or electrical sound recordings or transcripts thereof; any retrievable data, information or statistics contained on any memory device or other information retrieval systems (whether encarded, taped or coded electrostatically, electromagnetically, or otherwise); and also without limitation, agreements, bills of sale, books,

charts, checks, computer records, compilations, conversations, correspondence, descriptions, diagrams, diaries, directives, drawings, electronic recordings, files, films, financial memoranda, financial records, financial statements, graphs, inspection reports, interoffice correspondence, instructions, invoices, journals or other books of account, ledgers, letters, maps, measurements, memoranda, minutes, notes, notebooks, notices, pamphlets, periodicals, photocopies, photographs, plans, plats, proposals, publications and published or unpublished speeches or articles, purchase orders, receipts, recordings, records, reports, reproductions, samples, schedules, sketches, specifications, statements, studies, summaries, surveys, telegrams, telephone call slips and transcripts of telephone conversations, e-mails, instant messages (commonly called IMs), texts, voice mail transcripts, test results, transcripts, work sheets, working papers, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1) of the Federal Rules of Civil Procedure. The term “ITEM” or “DOCUMENT” or any similar term shall also mean all drafts and final versions, and all copies of documents, by whatever means made (including, but not limited to, carbon, handwritten, microfilmed, photostatic, xerographic, scanned or other copies), and include all non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto, or otherwise). The term “ITEM” or “DOCUMENT” or any similar term shall also include any attachment thereto or enclosures therewith. The term “ITEM” or “DOCUMENT” or any similar term shall also include any and all data compilations from which information can be obtained. The term “ITEM” or “DOCUMENT” or any similar term shall also mean and include any “writing” as defined in Rule 1001 of the Federal Rules of Evidence.

5. “OPPOSER” refers to Uncle Milton Industries, Inc.

6. “OPPOSER'S MARKS” refers to any designation and/or trademark used or intended to be used by OPPOSER to identify OPPOSER in connection with the goods and/or

services offered or promoted by OPPOSER, and collectively refers to the UNCLE MILTON marks owned by OPPOSER, including without limitation, United States Trademark Registration Nos. 2,858,040; 3,987,795; and 4,133,574 and cited by OPPOSER in its Notice of Opposition.

7. “PERSON” means any natural person, general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, association, firm, trust, or any other kind of organization or entity.

8. “YOU” or “YOUR” refers to APPLICANT, any of its present and former agents, officers, directors, principals, employees, affiliates, licensees, franchisees, distributors, consultants, advisors, accountants, attorneys and all other PERSONS or entities acting or purporting to act on its behalf.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all officers and directors of APPLICANT from its inception to the present.

INTERROGATORY NO. 2:

Describe in detail all past and existing relations, including contracts, agreements, licenses, assignments, or other relations, between APPLICANT and any third party, including predecessor companies, related, or affiliated companies, relating in any manner to MILTON.

INTERROGATORY NO. 3:

Identify the circumstances under which APPLICANT became aware of OPPOSER, including any of OPPOSER’S MARKS.

INTERROGATORY NO. 4:

With respect to MILTON, identify the PERSON or PERSONS most knowledgeable about APPLICANT's sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights.

INTERROGATORY NO. 5:

Identify all state, federal and foreign trademark and/or service mark registrations, applications for trademark and/or service mark registration, and uses by APPLICANT of MILTON or any mark which incorporates the term "Milton," and for each of such registrations, applications, and uses, identify all DOCUMENTS relating thereto, including, without limitation, the filing date, application serial number, registration date, registration number, registrant information, first use date, and method of use.

INTERROGATORY NO. 6:

Identify all third-party state and federal registrations, applications for registration, and uses known to APPLICANT of any mark which incorporates the term "Milton."

INTERROGATORY NO. 7:

Describe in detail the nature of APPLICANT's business or businesses, including the date on which APPLICANT first engaged in each such business.

INTERROGATORY NO. 8:

Identify and describe each of the goods and/or services on which APPLICANT intends to use or has used MILTON.

INTERROGATORY NO. 9:

Identify all DOCUMENTS and set forth with specificity all facts regarding the selection by or for APPLICANT of MILTON including, without limitation, the circumstances and method by which APPLICANT adopted the term "Milton" as a part of its mark.

INTERROGATORY NO. 10:

Identify all PERSONS who were involved in, or participated in any way with, the decision to adopt, register and/or use the term “Milton”, and for each such PERSON state his/her title and the role he/she played to adopt, register and/or use such term.

INTERROGATORY NO. 11:

State whether any searches or investigations were conducted by or on behalf of YOU to determine whether a mark containing the term “Milton,” such as MILTON, was available for use and/or registration, and, if so, identify each such search or investigation including the date(s) such search or investigation was performed, the marks located in such search or investigation and all DOCUMENTS relating thereto.

INTERROGATORY NO. 12:

Identify all manufacturers or intended manufacturers of goods, and all promoters or intended promoters of services, bearing MILTON.

INTERROGATORY NO. 13:

For each of the goods and services identified in YOUR response to Interrogatory No. 8 above, describe with specificity YOUR use of MILTON, the date on which MILTON was first used, the method in which MILTON was used, where the MILTON was placed, where the good was sold or where the service was provided, the identity of the PERSON(S) most knowledgeable about each of such uses, and the DOCUMENTS evidencing the foregoing.

INTERROGATORY NO. 14:

Identify all DOCUMENTS and set forth with specificity all facts with respect to any instance where a PERSON has been confused, mistaken, and/or deceived as to whether any goods or services advertised or sold under MILTON are those of OPPOSER, or are connected or associated with OPPOSER, and for each such incident provide the date of such incident, the identity of the PERSON, and a detailed description of the circumstances of such confusion, mistake and/or deception.

INTERROGATORY NO. 15:

Identify all DOCUMENTS and set forth with specificity the substance of each COMMUNICATION, oral or written, received by APPLICANT, which suggests, implies or infers that any of the products or services of APPLICANT sold or offered under MILTON, or any mark that includes the term “Milton”, is a product or service of OPPOSER or is affiliated, connected and/or associated with OPPOSER, or which inquires as to whether there is or may be an affiliation, connection and/or association between APPLICANT and OPPOSER, and identify any response(s) by APPLICANT to each such COMMUNICATION.

INTERROGATORY NO. 16:

Identify all inquiries, investigations, surveys, evaluations and or studies conducted by or on behalf of YOU with respect to MILTON or a mark containing the term “Milton” as an element of the mark, including the date conducted, the name, address and title of each PERSON(S) who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all DOCUMENTS which record, refer to, or relate to such inquiry, investigation, survey, evaluation or study.

INTERROGATORY NO. 17:

Identify each different sign, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, promotional material, and the like, known to APPLICANT which contains or bears MILTON or any variation thereof and which is intended to be used or has been used or disseminated at any time by or on behalf of APPLICANT.

INTERROGATORY NO. 18:

Identify each PERSON employed by or on behalf of APPLICANT, or each outside agency or agent retained by or on behalf of APPLICANT, who has been or now is responsible for the following activity with respect to any of the goods or services intended to be offered or rendered or actually offered or rendered under MILTON or any mark that includes that term “Milton”: (a) marketing; (b) advertising and promotion; and (c) bookkeeping and accounting.

INTERROGATORY NO. 19:

Has APPLICANT ever licensed or permitted or had negotiations to license or permit, or otherwise granted rights to third parties to use MILTON or any mark including the term “Milton” as a component? If so, identify the party or parties who have received or sought such license or permission or other right, state the nature and extent of any such license or permitted use or right, given or negotiated, and identify and describe all DOCUMENTS comprising or containing any such license, permission, or other right, or any agreement in respect to such mark.

INTERROGATORY NO. 20:

For each of the goods or services identified in response to Interrogatory No. 8, set forth the number of units and dollar amount of the monthly sales of such goods or services, the dollar amount of monthly advertising expenditure on such goods or services, and the individual media through which such advertising took place, and the U.S. dollar amount of advertising through each such media; and identify DOCUMENTS sufficient to support YOUR response to this interrogatory.

INTERROGATORY NO. 21:

State in detail the channels of trade in which MILTON is used and/or in which goods bearing MILTON are sold or services rendered under MILTON, including the geographic area by city and state in which MILTON is used and the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify DOCUMENTS sufficient to support YOUR response to this interrogatory.

INTERROGATORY NO. 22:

Identify each statement or opinion obtained by or for APPLICANT regarding any issue in this opposition proceeding including, but not limited to, whether the statement was oral or in writing, and identify all DOCUMENTS which record, refer to, or relate to such statement or opinion.

INTERROGATORY NO. 23:

Identify with specificity the marketing methods used in the advertising and/or sale of goods and/or services by or for APPLICANT under MILTON or any designation containing the term “Milton,” including, without limitation, the names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which APPLICANT has advertised and intends to advertise its goods and/or services under MILTON or such designation, and identify DOCUMENTS referring to, reflecting and/or supporting YOUR response to this interrogatory.

INTERROGATORY NO. 24:

Identify the ordinary purchaser of the goods or services sold and intended to be sold under MILTON or any designation containing the term “Milton,” including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods or services sold under MILTON or such designation.

INTERROGATORY NO. 25:

Identify all DOCUMENTS relating to and set forth with specificity all facts regarding any instance where APPLICANT has notified any PERSON that any trademark or service mark used by that PERSON infringed APPLICANT's rights in MILTON and/or any mark of APPLICANT that includes the term “Milton,” and for each such instance provide a detailed description of any action taken and/or disposition thereafter.

INTERROGATORY NO. 26:

Has APPLICANT ever been a party to any litigation or administrative proceeding, other than the present opposition? If so, state all circumstances surrounding same including, without limitation, the name of the parties and identification of the proceeding, APPLICANT's status therein, the mark or marks involved, if any, the type of proceeding involved, the name and location of the court or agency in which it was filed, the date of the filing and the file number, the ultimate disposition of the proceedings, and identify each DOCUMENT relating to such proceeding.

INTERROGATORY NO. 27:

Identify the earliest date upon which YOU intend to rely in this proceeding with respect to YOUR use of MILTON and/or any mark that includes the term “Milton,” and identify all DOCUMENTS relating to, reflecting and/or supporting such use(s) and all PERSONS with knowledge of such use.

INTERROGATORY NO. 28:

Describe the meaning and derivation of the term “Milton” as used in connection with the services of APPLICANT upon or in connection with which APPLICANT has used that term.

INTERROGATORY NO. 29:

State the approximate percentage of sales of products bearing, or services promoted under, MILTON via the Internet versus other sales channels, and identify DOCUMENTS sufficient to support YOUR response to this Interrogatory.

INTERROGATORY NO. 30:

Identify all experts employed by or on behalf of APPLICANT for purposes of this action. For each expert, identify his or her field of specialization, whether APPLICANT intends to call him or her as a witness, the subject matter on which he or she is expected to testify, the bases for each opinion, and identify all DOCUMENTS that relate in any way to the subject matter, facts, and/or circumstances as to which the expert is expected to testify.

INTERROGATORY NO. 31:

Identify each non-expert witness that APPLICANT expects to testify, the subject matter on which the witness is expected to testify, each fact and/or opinion to which the witness is expected to testify, the bases for each opinion and identify all DOCUMENTS that relate in any way to the subject matter, facts, and/or circumstances as to which the witness is expected to testify.

INTERROGATORY NO. 32:

Identify in full all facts and circumstances on which YOU base the affirmative defense no. 2 in YOUR answer that “Applicant’s mark and the alleged trademark registrations listed in Opposer’s Notice of Opposition are different in sound, appearance, meaning and commercial impression, that the goods of the parties are unrelated and marketed through different channels of trade.”

INTERROGATORY NO. 33:

Identify in full all facts and circumstances on which YOU base the affirmative defense no. 3 in YOUR answer that “the term ‘MILTON’ contained in the alleged common law trademarks and trademark registrations listed in Opposer’s Notice of Opposition have been used by various third parties for various goods and services and, as such, are ‘weak’ marks that are entitled to limited protection.”

INTERROGATORY NO. 34:

Identify each individual who participated in or supplied information used in answering any of the above interrogatories; beside the name of each such individual, state the number of the interrogatory answer(s) with respect to which that individual participated in or supplied information.

Dated: February 15, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

*Attorneys for Opposer
Uncle Milton Industries, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Opposer Uncle Milton Industries, Inc.'s First Set of Interrogatories to Applicant Team John Whitaker Limited** was served by first class mail, postage prepaid, and electronic mail on February 15, 2013, upon counsel of Applicant:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic
Anne Zivkovic

EXHIBIT E

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Serial No. 85/445,797

Mark: MILTON

**OPPOSER UNCLE MILTON INDUSTRIES, INC.'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT TEAM JOHN
WHITAKER LIMITED**

Propounding Party: Opposer Uncle Milton Industries, Inc.

Responding Party: Applicant Team John Whitaker Limited

Set Number: One

Pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Applicant Team John Whitaker Limited (“Team John Whitaker”) is required to provide both: (a) the actual physical production of the items requested to be produced; and (b) written responses under oath. Actual physical production shall be at Russ, August & Kabat, Twelfth Floor, 12424 Wilshire Boulevard, Los Angeles, California 90025, to the attention of Irene Y. Lee within thirty (30) days of service thereof.

INSTRUCTIONS AND DEFINITIONS

The following instructions and definitions shall apply to these and all subsequent requests for production of documents and things:

A. Instructions.

1. This request requires the production of all of the specified items in the actual or constructive possession, custody or control of the responding party and/or the responding party's present and/or former employees, officers, directors, agents, representatives, attorneys, accountants, underwriters, investigators or other persons in any way acting or purporting to act on behalf of or attributable to the responding party. If any item was, but no longer is, in such possession, custody or control of the responding party, please state whether and when it: (a) is lost or destroyed; (b) has been transferred to another person, either voluntarily or involuntarily; or (c) has been otherwise disposed of. In each such case, explain the circumstances and dates surrounding such disposition, *e.g.*, at whose direction, for what purpose, pursuant to what authority, what record was made, etc.

2. Whenever objection is asserted to a particular request or portion thereof, please produce all responsive items or parts thereof which are not subject to such objection. Similarly, wherever an item is not produced in full, please state with particularity the reason or reasons it is not being produced in full, and describe, to the best of your knowledge, information and belief and with as much particularity as possible, those portions of the item which are not produced.

3. Please produce items in such a manner as will facilitate their identification with the particular request or category of requests to which they are responsive.

4. The words "and" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other wherever such dual constructions will serve to bring within the course and scope of a request any item(s) which would otherwise not be brought within its scope.

5. The singular form shall include the plural and vice versa wherever such dual construction will serve to bring within the scope of a request any item(s) which would otherwise not be brought within its scope.

6. This request requires the production of items in the same form and in the same filing manner and order as existing and maintained prior to production. The items are to be produced in the same boxes, files, folders or other containers or storage media in which the items were found. All titles, labels or other descriptions of the files, documents, etc. are to be left intact.

7. With respect to any item that you withhold on a claim of privilege, provide a statement, signed by one of your attorneys, setting forth as to each such document:

- (a) The name(s) of the sender(s) of the item;
- (b) The name(s) of the author(s) of the item;
- (c) The name(s) of the person(s) to whom the original or copies were sent;
- (d) The date of the item;
- (e) The date on which the item was received by those having possession of the item;
- (f) The statute, rule or decision which is claimed to give rise to the privilege;
- (g) A summary of the contents of the item without disclosing the matter that you claim is privileged.

B. Definitions.

1. “APPLICANT” refers to the applicant Team John Whitaker Limited and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with the applicant, including all of the partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for the applicant.

2. “MILTON” refers to the designation and/or trademark sought to be registered by means of Application Serial No. 85/445,797.

3. “COMMUNICATION” means any oral or written transmission of information between PERSONS, including but not limited to, meetings, discussions, conversations, telephone calls, memoranda, electronic mail, instant messages (including, without limitation, text messages), letters, telegram, record or notation of any conversation, inter-office memorandum, telecopies, telexes, conferences or seminars.

4. “DOCUMENT” or “ITEM” or any similar term shall be used in their broadest sense and shall include, but not be limited to, the following: any written, printed, typed or other graphic matter of any kind or nature; all mechanical, magnetic or electrical sound recordings or transcripts thereof; any retrievable data, information or statistics contained on any memory device or other information retrieval systems (whether encarded, taped or coded electrostatically, electromagnetically, or otherwise); and also without limitation, agreements, bills of sale, books, charts, checks, computer records, compilations, conversations, correspondence, descriptions, diagrams, diaries, directives, drawings, electronic recordings, files, films, financial memoranda, financial records, financial statements, graphs, inspection reports, interoffice correspondence, instructions, invoices, journals or other books of account, ledgers, letters, maps, measurements, memoranda, minutes, notes, notebooks, notices, pamphlets, periodicals, photocopies, photographs, plans, plats, proposals, publications and published or unpublished speeches or articles, purchase orders, receipts, recordings, records, reports, reproductions, samples, schedules, sketches, specifications, statements, studies, summaries, surveys, telegrams, telephone call slips and transcripts of telephone conversations, e-mails, instant messages (commonly called IMs), texts, voice mail transcripts, test results, transcripts, work sheets, working papers, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1) of the Federal Rules of Civil Procedure. The term “ITEM” or “DOCUMENT” or any similar term shall also mean all drafts and final versions, and all copies of documents, by whatever means made (including, but

not limited to, carbon, handwritten, microfilmed, photostatic, xerographic, scanned or other copies), and include all non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto, or otherwise). The term “ITEM” or “DOCUMENT” or any similar term shall also include any attachment thereto or enclosures therewith. The term “ITEM” or “DOCUMENT” or any similar term shall also include any and all data compilations from which information can be obtained. The term “ITEM” or “DOCUMENT” or any similar term shall also mean and include any “writing” as defined in Rule 1001 of the Federal Rules of Evidence.

5. “OPPOSER” refers to Uncle Milton Industries, Inc.

6. “OPPOSER’S MARKS” refers to any designation and/or trademark used or intended to be used by OPPOSER to identify OPPOSER in connection with the goods and/or services offered or promoted by OPPOSER, and collectively refers to the UNCLE MILTON marks owned by OPPOSER, including without limitation, United States Trademark Registration Nos. 2,858,040; 3,987,795; and 4,133,574 and cited by OPPOSER in its Notice of Opposition.

7. “PERSON” means any natural person, general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, association, firm, trust, or any other kind of organization or entity.

8. “YOU” or “YOUR” refers to APPLICANT, any of its present and former agents, officers, directors, principals, employees, affiliates, licensees, franchisees, distributors, consultants, advisors, accountants, attorneys and all other PERSONS or entities acting or purporting to act on its behalf.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All DOCUMENTS recording, referring to, or relating to the organization, incorporation, structure, operation and activities of APPLICANT insofar as they relate to any products sold and/or services offered by and/or intended to be sold, offered or promoted by APPLICANT under MILTON or any designation containing the term “Milton.”

REQUEST NO. 2:

All DOCUMENTS recording, referring to, or relating to any licenses, assignments, agreements, contracts, and/or arrangements between APPLICANT and any third party which relate in any manner to MILTON and/or any designation containing the term “Milton.”

REQUEST NO. 3:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR expressed intended use of MILTON or any designation containing the term “Milton,” including any investigation of the term “Milton” for its availability for adoption, use or registration, its licensing, use, intended use, exploitation, and/or intended exploitation.

REQUEST NO. 4:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR use or intended use of MILTON or any designation containing the term “Milton.”

REQUEST NO. 5:

All DOCUMENTS evidencing, recording, referring to, or relating to goods and/or services which are or are to be provided by or on behalf of YOU under MILTON or any designation containing the term “Milton.”

REQUEST NO. 6:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR advertising, intended advertising, promotion, and/or intended promotion of any goods and/or services under MILTON or any designation containing the term “Milton.”

REQUEST NO. 7:

DOCUMENTS sufficiently identifying the name and address of the PERSON(S) who created, came up with, or conceptualized MILTON.

REQUEST NO. 8:

All DOCUMENTS evidencing, recording, referring to, or relating to the selection, design, adoption, proposed use of, decision to use, and first use of MILTON and/or any designation containing the term “Milton” including samples of any names, designations and/or other marks conceived, considered and/or rejected by or on behalf of APPLICANT.

REQUEST NO. 9:

All DOCUMENTS evidencing, recording, referring to, or relating to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of YOU regarding the availability and/or registrability of MILTON, or of the term “Milton.”

REQUEST NO. 10:

All DOCUMENTS that refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state, federal or foreign, of marks incorporating the term “Milton” including, without limitation, Application Serial No. 85/445,797, including, without limitation, prosecution history, opposition pleadings and registration certificate.

REQUEST NO. 11:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR consideration or decision to select, adopt and/or use MILTON and/or any designation containing the term “Milton” in each different logotype, label, design, hang tag, packaging, font of type or style in which MILTON and/or said designation is being used, or is intended to be used, by or on behalf of YOU.

REQUEST NO. 12:

Produce a sample of each different logotype, label, design, hang tag, packaging, font of type or style in which MILTON and/or any designation including the term “Milton” is being used, or is intended to be used, by or on behalf of YOU.

REQUEST NO. 13:

Produce a sample of each and every different advertisement, intended advertisement, item of promotional material and/or intended item of promotional material printed and/or disseminated by or for YOU in which MILTON appears and/or any designation that includes the term “Milton.”

REQUEST NO. 14:

A specimen of each product on which MILTON or any designation containing the term “Milton” has been used or is intended to be used.

REQUEST NO. 15:

Copies of all television commercials, web commercials, press releases, publications (paid or unpaid), radio scripts, smart phone apps, and other media advertising, prepared by or for YOU whether or not released or aired, in which MILTON and/or the term “Milton” appears.

REQUEST NO. 16:

All DOCUMENTS evidencing, reflecting, recording, referring to, or relating to YOUR advertising and/or promotional expenditures, or expected advertising and/or promotional expenditures, for any goods offered for sale, sold and/or distributed under MILTON or any designation containing the term “Milton” including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with each of such advertisements and/or promotions.

REQUEST NO. 17:

All DOCUMENTS evidencing, reflecting, recording, referring to, or relating to the amount of sales, actual and/or projected, by month of goods or services sold by or for YOU under MILTON or any designation containing the term “Milton” including, without limitation, the identification of the goods and/or services, the number of units of the goods and/or services rendered, separately for each of the goods or services, the dates of the sales, and the dollar value of the sales.

REQUEST NO. 18:

All DOCUMENTS evidencing, recording, referring to, or relating to any COMMUNICATION, oral or written, received by YOU from any PERSON which suggests, implies, or infers any connection or association between OPPOSER and YOU.

REQUEST NO. 19:

All DOCUMENTS evidencing, recording, referring to, or relating to any COMMUNICATION, oral or written, received by YOU from any PERSON which inquires as to whether there is or may be such a connection or association between OPPOSER and YOU.

REQUEST NO. 20:

All DOCUMENTS evidencing, recording, referring to, or relating to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any PERSON between YOUR, YOUR licensees' or sublicensees' use of MILTON and/or any designation containing the term “Milton” and any of the OPPOSER'S MARKS.

REQUEST NO. 21:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's use of any of the OPPOSER'S MARKS.

REQUEST NO. 22:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's use of a designation that includes the term "Uncle Milton."

REQUEST NO. 23:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's application(s) for registration of any of the OPPOSER'S MARKS.

REQUEST NO. 24:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's trademark registration(s) for any of the OPPOSER'S MARKS.

REQUEST NO. 25:

All DOCUMENTS evidencing, recording, referring to, or relating to any inquiry, investigation, evaluation, analysis, or survey conducted by YOU or any person acting for or on behalf of YOU regarding any issues involved in the present opposition proceeding.

REQUEST NO. 26:

All DOCUMENTS evidencing, recording, referring to, or constituting any research, reports, surveys, or studies conducted by or on behalf of YOU of consumer or customer perception of MILTON or the mark "Milton."

REQUEST NO. 27:

All DOCUMENTS in YOUR possession, custody or control that refer or relate to OPPOSER.

REQUEST NO. 28:

All DOCUMENTS in YOUR possession, custody or control that refer or relate to any of the OPPOSER'S MARKS.

REQUEST NO. 29:

All press releases, articles and clippings relating to or commenting on goods or services marketed or sold under MILTON or the mark "Milton."

REQUEST NO. 30:

All DOCUMENTS sufficient to identify all goods and/or services in connection with which YOU have used, use and/or intend to use MILTON and/or any mark that includes the term “Milton.”

REQUEST NO. 31:

All DOCUMENTS referring to, relating to, or including any statements and/or opinions of any consultant or expert obtained by YOU or any person acting for or on behalf of YOU regarding any of the issues in this opposition proceeding.

REQUEST NO. 32:

All DOCUMENTS evidencing YOUR first use of MILTON.

REQUEST NO. 33:

All DOCUMENTS evidencing YOUR first use of a designation containing the term “Milton.”

REQUEST NO. 34:

All DOCUMENTS, other than those produced to any of the foregoing requests, upon which YOU intend to rely in connection with this opposition proceeding.

REQUEST NO. 35:

All DOCUMENTS identified in response to Uncle Milton Industries, Inc.’s First Set of Interrogatories to Team John Whitaker Limited.

REQUEST NO. 36:

All DOCUMENTS that contain the word "Uncle Milton."

Dated: February 15, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

*Attorneys for Opposer
Uncle Milton Industries, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Opposer Uncle Milton Industries, Inc.'s First Set of Requests for Production of Documents and Things to Applicant Team John Whitaker Limited** was served by first class mail, postage prepaid, and electronic mail on February 15, 2013 upon counsel of Applicant:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic

Anne Zivkovic

EXHIBIT F



Irene Y. Lee
ilee@raklaw.com

April 1, 2013

12424
Wilshire Boulevard
12th Floor
Los Angeles
California
90025

Tel 310.826.7474
Fax 310.826.6991
www.raklaw.com

VIA FIRST CLASS MAIL
VIA ELECTRONIC MAIL - mail@egbertlawoffices.com

John S. Egbert, Esq.
Egbert Law Offices PLLC
21st Floor
1314 Texas Avenue
Houston, Texas 77002

Re: *Uncle Milton Industries, Inc. v. Team John Whitaker Limited*
Opposition No. 91208266
Application No. 85/445,797
Mark: MILTON

Dear Mr. Egbert,

I am writing to initiate the meet-and-confer process to address Applicant Team John Whitaker Limited's failure to serve its answers and documents in response to Opposer Uncle Milton Industries, Inc.'s first set of interrogatories and first set of requests for production of documents and things, both of which were served on February 15, 2013, along with Uncle Milton Industries, Inc.'s initial disclosures.

We are available on April 2, 3, 4 and 5 to meet and confer between 9:00 a.m. and noon (Pacific Time). Please let me know if you are available on any of the proposed dates. If you are not available, please suggest a few alternative dates and times.

Very truly yours,

Russ, August & Kabat



Irene Y. Lee

EXHIBIT G

From: Kevin Wilson <kwilson@egbertlawoffices.com>
Subject: **Re: US: MILTON (Opposition No. 91208266) [3186-003]**
Date: April 2, 2013 1:47:42 PM PDT
To: Irene Lee <ilee@raklaw.com>
Cc: Anne Zivkovic <azivkovic@raklaw.com>, Nathan Meyer <nmeyer@raklaw.com>, Mike Swartz <mswartz@egbertlawoffices.com>, Egbert Law Offices <mail@egbertlawoffices.com>

Dear Irene:

Perhaps you are unfamiliar with practice in the TTAB. I would suggest you read TBMP Section 523.02. The rules of this administrative court clearly includes the phrase "by conference or correspondence." All we have explained is that we are not going to have a conference call with you. We are certainly open to any correspondence you may have for us.

If you have any other questions or concerns, please feel free to contact our office at any time.

Sincerely,
Kevin Wilson

Egbert Law Offices, PLLC
Great Southwest Building
1314 Texas, 21st Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 206
Fax: (713) 223-4873

CONFIDENTIALITY NOTICE: This e-mail and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (713-224-8080) or by electronic mail, and delete this message and all copies and backups thereof. Thank you.
On 4/2/2013 3:32 PM, Irene Lee wrote:

Dear Kevin,

As a moving party, we are required to conduct a meet and confer before filing a motion to compel discovery responses. Please advise if you refuse to participate in the meet and confer process so we can properly advise the Board.

Regards,

--
Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Main: 001.310.826.7474
Direct: 001.310.979.8224

IRS Circular 230 Notice: This communication is not intended to be used and cannot be used, for the purpose of avoiding U.S. federal tax-related penalties or promoting, marketing or recommending to another party any tax-related matter addressed herein.

This communication shall not create, waive or modify any right, obligation or liability, or be construed to contain or be an electronic signature. This communication may contain information that is legally privileged, confidential or exempt from disclosure, and is intended only for the named addressee(s). If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is prohibited.

On Apr 2, 2013, at 12:21 PM, Kevin Wilson <kwilson@egbertlawoffices.com> wrote:

Dear Irene:

At this point, we believe a conference is unnecessary, therefore, we do not plan on setting up a time for a conference. We are, of course, open to any correspondence regarding any issues you may have. We, therefore, ask at this time that you proceed with your case as you deem fit.

If you have any other questions or concerns, please feel free to contact our office at any time.

Sincerely,
Kevin Wilson

Egbert Law Offices, PLLC
Great Southwest Building

1314 Texas, 21st Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 206
Fax: (713) 223-4873

CONFIDENTIALITY NOTICE: This e-mail and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (713-224-8080) or by electronic mail, and delete this message and all copies and backups thereof. Thank you.

--- On **Mon, 4/1/13**, **Anne Zivkovic** <azivkovic@raklaw.com> wrote:

From: Anne Zivkovic <azivkovic@raklaw.com>
Subject: US: MILTON (Opposition No. 91208266) [3186-003]
To: mail@egbertlawoffices.com
Cc: "Irene Lee" <ilee@raklaw.com>, "Nathan Meyer" <nmeyer@raklaw.com>
Date: Monday, April 1, 2013, 5:43 PM

Dear Mr. Egbert,

Please find attached a letter from Ms. Irene Lee regarding the referenced trademark opposition. Thank you.

Sincerely,

Anne Zivkovic
Intellectual Property Paralegal
Russ August & Kabat
12424 Wilshire Blvd., Suite 1200
Los Angeles, CA 90025
(310) 826-7474

EXHIBIT H



Irene Y. Lee
ilee@raklaw.com

April 2, 2013

12424
Wilshire Boulevard
12th Floor
Los Angeles
California
90025

Tel 310.826.7474
Fax 310.826.6991
www.raklaw.com

VIA FIRST CLASS MAIL
VIA ELECTRONIC MAIL

John S. Egbert, Esq.
mail@egbertlawoffices.com
Kevin Wilson, Esq.
kwilson@egbertlawoffices.com
Egbert Law Offices PLLC
21st Floor
1314 Texas Avenue
Houston, Texas 77002

Re: *Uncle Milton Industries, Inc. v. Team John Whitaker Limited*
Opposition No. 91208266
Application No. 85/445,797
Mark: MILTON

Dear Messrs. Egbert and Wilson,

Thank you for your email of even date herewith, where you pointed out the "by conference or correspondence" language in Section 523.02. Pursuant to that very language, we made a good faith effort by sending a letter to you yesterday. In the letter, we requested that the parties meet and confer to address Applicant's failure to serve any answer or document in response to Opposer's first set of interrogatories and first set of requests for documents and things, both of which were served on February 15, 2013, along with Opposer's initial disclosures. Applicant has yet to serve its initial disclosures, which were due March 10, 2013.

While we are puzzled by your refusal to participate in a conference call to address Applicant's failure to serve discovery responses and resolve its violation of the Board's scheduling order of November 30, 2012, we remain open and willing to resolve the matter in good faith through correspondence.

As we endeavor to prosecute this matter in compliance with the Board's scheduling order, we ask that Applicant's initial disclosures be served by April 12, 2013, along with full and complete responses and documents in response to Opposer's first set of interrogatories and first set of requests for documents and things. Otherwise, we will have to seek the Board's intervention.



John S. Egbert, Esq.
Kevin Wilson, Esq.
Egbert Law Offices PLLC
April 2, 2013
Page 2 of 2

Please confirm that Applicant's will serve all outstanding discovery responses, documents and initial disclosures by April 12, 2013.

Very truly yours,

Russ, August & Kabat



Irene Y. Lee

IYL/az

EXHIBIT I

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Application Serial No. 85/445,797

Mark: MILTON

**OPPOSER’S MOTION TO COMPEL APPLICANT TO SERVE RESPONSES TO
INTERROGATORIES AND PRODUCE DOCUMENTS, WITHOUT OBJECTIONS**

The motion to compel is based upon Applicant Team John Whitaker Limited (“Applicant”)’s absolute failure to fulfill its discovery obligations,¹ including, without limitation, (1) failure to serve a single response to Opposer’s interrogatories and (2) failure to produce a single document.

A. Summary: Applicant Failed to Provide a Single Interrogatory Response or Produce a Single Document in This Opposition Proceeding, Nor Has It Responded to Any of Opposer’s Requests to Resolve Discovery Issues.

Uncle Milton Industries, Inc. (“Opposer”) respectfully submits this motion compelling Applicant to serve responses to Opposer’s first set of interrogatories and produce documents responsive to Opposer’s first set of document requests, all without objections, within 20 days of the motion to avoid further delay.

Pursuant to Rule 2.120(g), before filing this motion, Opposer sought to confer with Applicant in good faith by sending requests to meet and confer regarding Applicant’s failure to provide a response to the interrogatories or produce a document. Applicant ignored the requests

¹ Applicant’s failure to serve initial disclosures—which were due March 10, 2013—is addressed in Opposer’s concurrently filed Motion to Compel Applicant to Serve Initial Disclosures.

and refused to participate in the conference as set forth below, necessitating the motion for the Board's intervention.

B. Factual Background.

The motion is made based upon the following facts:

- On November 30, 2012, Opposer filed a notice of opposition against Applicant. *See* the concurrently filed Declaration of Irene Y. Lee in Support of Opposer's Motion to Compel Applicant to Serve Responses to Interrogatories and Produce Documents, without Objections (hereinafter referred to as "Lee Decl."), ¶ 2.

- Pursuant to the Board's Notice, dated November 30, 2012, Applicant's initial disclosures were due March 10, 2013. Applicant has yet to serve initial disclosures. Lee Decl., ¶ 3.

- On February 4, 2013, the parties participated in discovery conference. Lee Decl., ¶ 4.

- On February 15, 2013, Opposer served its initial disclosures. Lee Decl., ¶ 5.

- On February 15, 2013, Opposer served upon Applicant a set of interrogatories. Lee Decl., ¶ 6; Exhibit A. Applicant has yet to serve a single response to the interrogatories, despite Opposer's requests to do so. Lee Decl., ¶ 7.

- On February 15, 2013, Opposer served upon Applicant a set of requests for documents and things. Lee Decl., ¶ 8; Exhibit B.

- In this entire opposition proceeding, Applicant has yet to produce a single document, let alone the documents responsive to the requests. Lee Decl., ¶ 9.

- Accordingly, on April 1, 2013, Opposer sent a letter to Applicant, requesting a meet and confer to discuss Applicant's failure to serve its responses and documents in response to Opposer's first set of interrogatories and first set of requests for production of documents and things. Lee Decl., ¶ 10; Exhibit ¶ 10.

▪ On April 2, 2013, Applicant responded by email to Opposer's April 1, 2013 letter, stating that Applicant refused to meet and confer via teleconference but would participate via correspondence only. Lee Decl., ¶ 11; Exhibit D.

▪ On April 2, 2013, Opposer sent a reply letter to Applicant, reiterating Opposer's good faith effort to address Applicant's failure to meet its discovery obligations and violation of the Board's Scheduling Order. Lee Decl., ¶ 12; Exhibit E.

▪ Applicant did not respond to Opposer's letter, nor did it ever serve documents. Lee Decl., ¶ 13.

▪ Despite Opposer's repeated requests, Applicant has yet to respond to any of the requests; nor has it served a response to Opposer's interrogatories or produced a single document in this proceeding. Lee Decl., ¶ 14.

C. The Board May Compel Applicant to Serve Interrogatory Responses and Produce Responsive Documents, Without Objections, Within 20 days.

Because Applicant has failed to serve *any responses* to Opposer's interrogatories or document requests, it has waived its right to object to answering any of the interrogatories or from producing any document requested. *Bison Corporation v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (TTAB 1987); *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303 (TTAB 1987). Accordingly, Opposer respectfully seeks the Board's intervention to compel answer to all the interrogatories without objection and to compel production of all documents requested, without objection, by delivering them to Opposer's counsel within 20 days.

Dated: May 8, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard

Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991
Attorneys for Opposer
Uncle Milton Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2013, one (1) true and correct copy of the foregoing document has been served on Applicant by mailing the same via First Class Mail and electronic mail to:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic
Anne Zivkovic

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Application Serial No. 85/445,797

Mark: MILTON

**DECLARATION OF IRENE Y. LEE IN SUPPORT OF OPPOSER'S MOTION TO
COMPEL APPLICANT TO SERVE RESPONSES TO INTERROGATORIES AND
PRODUCE DOCUMENTS, WITHOUT OBJECTIONS**

I, Irene Y. Lee, declare and state as follows:

1. I am a member of the State Bar of California and a partner in the firm of Russ, August & Kabat, counsel of record for Opposer Uncle Milton Industries, Inc. in the above-captioned opposition proceeding. I have personal knowledge of the facts set forth herein, and if called upon to testify, could and would testify competently thereto.

2. On November 30, 2012, Opposer filed a notice of opposition against Applicant.

3. Pursuant to the Board's Scheduling Order, dated November 30, 2012, Applicant's initial disclosures were due March 10, 2013. As of today, Opposer has not received Applicant's initial disclosures.

4. On February 4, 2013, I, on behalf of Opposer, conducted discovery conference with Applicant's counsel.

5. On February 15, 2013, Opposer served its initial disclosures.

6. On February 15, 2013, Opposer served upon Applicant a set of interrogatories. A true and correct copy of the interrogatories served upon Applicant is attached hereto as **Exhibit A**.

7. Applicant has yet to serve a single response to the interrogatories, despite Opposer's requests to do so.

8. On February 15, 2013, Opposer served upon Applicant a set of requests for documents and things. A true and correct copy of the requests is attached hereto as **Exhibit B**.

9. In this entire opposition proceeding, Applicant has yet to produce a single document, let alone the documents responsive to the requests.

10. Accordingly, on April 1, 2013, I sent a letter to Applicant's counsel, requesting a meet and confer to discuss Applicant's failure to serve its responses and documents in response to Opposer's first set of interrogatories and first set of requests for production of documents and things. A true and correct copy of my April 1, 2013, letter is attached hereto as **EXHIBIT C**.

11. On April 2, 2013, I received an email from Applicant's counsel, who refused to meet and confer via teleconference, and would participate via correspondence only. A true and correct copy of the email is attached hereto as **EXHIBIT D**.

12. On April 2, 2013, I sent a reply letter to Applicant, reiterating Opposer's good faith effort to address Applicant's failure to meet its discovery obligations and violation of the Board's Scheduling Order. A true and correct copy of my letter of April 2, 2013, is attached hereto as **EXHIBIT E**.

13. Applicant did not respond to my letter, nor did it ever serve documents.

14. Despite Opposer' repeated requests, Applicant has yet to respond to any of the requests; nor has it served a response to Opposer's interrogatories or produced a single document in this proceeding.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this 8th day of May, 2013 in Los Angeles, California.



Irene Y. Lee

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2013, one (1) true and correct copy of the foregoing document has been served on Applicant by mailing the same via First Class Mail and electronic mail to:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic
Anne Zivkovic

EXHIBIT A

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Serial No. 85/445,797

Mark: MILTON

**OPPOSER UNCLE MILTON INDUSTRIES, INC.'S FIRST SET OF
INTERROGATORIES TO APPLICANT TEAM JOHN WHITAKER LIMITED**

Propounding Party: Opposer Uncle Milton Industries, Inc.
Responding Party: Applicant Team John Whitaker Limited
Set Number: One

Pursuant to the provisions of 37 CFR §2.120 and Rule 33 of the Federal Rules of Civil Procedure, Applicant Team John Whitaker Limited is required to provide its answers under oath to the attention of Irene Y. Lee at Russ, August & Kabat, Twelfth Floor, 12424 Wilshire Boulevard, Los Angeles, California 90025 within thirty (30) days of service thereof.

INSTRUCTIONS AND DEFINITIONS

A. Instructions.

1. If you claim that any information requested is privileged, please provide all information falling within the scope of the interrogatory which is not privileged, and identify, with sufficient particularity for purposes of a motion to compel, a response, with respect to which you claim a privilege, and state the basis on which the privilege is claimed.

2. You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing. With respect to any documents which you may withhold on a claim of privilege, a statement shall be provided by you, signed by one of your attorneys, setting forth as to each such document:

- (a) The name(s) of the sender(s) of the document;
- (b) The name(s) of the author(s) of the document;
- (c) The name(s) of the person(s) to whom the original or copies were sent;
- (d) The date of the document;
- (e) The date on which the document was received by those having possession of the document; and
- (f) The statute, rule or decision which is claimed to give rise to the privilege.

3. Your responses to the following interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

4. All requests contained in the following interrogatories to identify a document or thing are to be answered by providing a complete and accurate description sufficient for a request for production of documents and things and for a motion to compel the production of documents and things, based only upon the description provided, including giving the following information concerning the same:

- (a) The title or brief description of the document or thing;
- (b) A brief description of the subject matter, if a document;
- (c) The date on which the document or thing was first prepared or received;
- (d) Identification (see definition below) of the person who prepared the document or thing;
- (e) Identification (see definition below) of the person or persons who received the document or thing;

(f) Identification (see definition below) of the person or persons who presently have custody of the document or thing;

(g) In case of correspondence, the individuals who are the addresser and the addressee; and

(h) If a publication, the title, date of publication, author, specific page numbers and the publisher.

5. All requests contained in the following interrogatories to identify a person, whether a natural person or organization, are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, by mail and to serve legal documents on such person, including that person's full name, title (if any), address and telephone number.

6. Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

7. If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the requesting party.

8. Your answers to these interrogatories must be verified, dated, and signed.

9. Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one (1) page, refer to the page and section where the answer to the interrogatory can be found.

10. Whenever you are asked to describe an event or a chain of events, please: (a) state the date or dates of each occurrence relevant to the event; (b) identify all individuals having knowledge of any occurrence or aspect of the event, including but not limited to those involved in witnessing, supervising, controlling, supporting, requesting, or otherwise participating in the

event; (c) describe the role and contribution of each person identified; (d) describe all related events, and all previous or subsequent related attempts whether or not completed and whether or not successful; and (e) describe the motivation and causation for the event.

11. For each objection asserted, state: (a) the basis for the objection; (b) facts supporting the assertion of the objection; and (c) the statute, rule or decision which is claimed to give rise to the objection.

B. Definitions.

1. “APPLICANT” refers to the applicant Team John Whitaker Limited and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with the applicant, including all of the partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for the applicant.

2. “MILTON” refers to the designation and/or trademark or service mark containing “Milton” APPLICANT has used or intends to use, including without limitation, the one sought to be registered by means of Application Serial No. 85/445,797.

3. “COMMUNICATION” means any oral or written transmission of information between PERSONS, including but not limited to, meetings, discussions, conversations, telephone calls, memoranda, electronic mail, instant messages (including, without limitation, text messages), letters, telegram, record or notation of any conversation, inter-office memorandum, telecopies, telexes, conferences or seminars.

4. “DOCUMENT” or “ITEM” or any similar term shall be used in their broadest sense and shall include, but not be limited to, the following: any written, printed, typed or other graphic matter of any kind or nature; all mechanical, magnetic or electrical sound recordings or transcripts thereof; any retrievable data, information or statistics contained on any memory device or other information retrieval systems (whether encarded, taped or coded electrostatically, electromagnetically, or otherwise); and also without limitation, agreements, bills of sale, books,

charts, checks, computer records, compilations, conversations, correspondence, descriptions, diagrams, diaries, directives, drawings, electronic recordings, files, films, financial memoranda, financial records, financial statements, graphs, inspection reports, interoffice correspondence, instructions, invoices, journals or other books of account, ledgers, letters, maps, measurements, memoranda, minutes, notes, notebooks, notices, pamphlets, periodicals, photocopies, photographs, plans, plats, proposals, publications and published or unpublished speeches or articles, purchase orders, receipts, recordings, records, reports, reproductions, samples, schedules, sketches, specifications, statements, studies, summaries, surveys, telegrams, telephone call slips and transcripts of telephone conversations, e-mails, instant messages (commonly called IMs), texts, voice mail transcripts, test results, transcripts, work sheets, working papers, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1) of the Federal Rules of Civil Procedure. The term “ITEM” or “DOCUMENT” or any similar term shall also mean all drafts and final versions, and all copies of documents, by whatever means made (including, but not limited to, carbon, handwritten, microfilmed, photostatic, xerographic, scanned or other copies), and include all non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto, or otherwise). The term “ITEM” or “DOCUMENT” or any similar term shall also include any attachment thereto or enclosures therewith. The term “ITEM” or “DOCUMENT” or any similar term shall also include any and all data compilations from which information can be obtained. The term “ITEM” or “DOCUMENT” or any similar term shall also mean and include any “writing” as defined in Rule 1001 of the Federal Rules of Evidence.

5. “OPPOSER” refers to Uncle Milton Industries, Inc.

6. “OPPOSER'S MARKS” refers to any designation and/or trademark used or intended to be used by OPPOSER to identify OPPOSER in connection with the goods and/or

services offered or promoted by OPPOSER, and collectively refers to the UNCLE MILTON marks owned by OPPOSER, including without limitation, United States Trademark Registration Nos. 2,858,040; 3,987,795; and 4,133,574 and cited by OPPOSER in its Notice of Opposition.

7. “PERSON” means any natural person, general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, association, firm, trust, or any other kind of organization or entity.

8. “YOU” or “YOUR” refers to APPLICANT, any of its present and former agents, officers, directors, principals, employees, affiliates, licensees, franchisees, distributors, consultants, advisors, accountants, attorneys and all other PERSONS or entities acting or purporting to act on its behalf.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all officers and directors of APPLICANT from its inception to the present.

INTERROGATORY NO. 2:

Describe in detail all past and existing relations, including contracts, agreements, licenses, assignments, or other relations, between APPLICANT and any third party, including predecessor companies, related, or affiliated companies, relating in any manner to MILTON.

INTERROGATORY NO. 3:

Identify the circumstances under which APPLICANT became aware of OPPOSER, including any of OPPOSER’S MARKS.

INTERROGATORY NO. 4:

With respect to MILTON, identify the PERSON or PERSONS most knowledgeable about APPLICANT's sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights.

INTERROGATORY NO. 5:

Identify all state, federal and foreign trademark and/or service mark registrations, applications for trademark and/or service mark registration, and uses by APPLICANT of MILTON or any mark which incorporates the term "Milton," and for each of such registrations, applications, and uses, identify all DOCUMENTS relating thereto, including, without limitation, the filing date, application serial number, registration date, registration number, registrant information, first use date, and method of use.

INTERROGATORY NO. 6:

Identify all third-party state and federal registrations, applications for registration, and uses known to APPLICANT of any mark which incorporates the term "Milton."

INTERROGATORY NO. 7:

Describe in detail the nature of APPLICANT's business or businesses, including the date on which APPLICANT first engaged in each such business.

INTERROGATORY NO. 8:

Identify and describe each of the goods and/or services on which APPLICANT intends to use or has used MILTON.

INTERROGATORY NO. 9:

Identify all DOCUMENTS and set forth with specificity all facts regarding the selection by or for APPLICANT of MILTON including, without limitation, the circumstances and method by which APPLICANT adopted the term "Milton" as a part of its mark.

INTERROGATORY NO. 10:

Identify all PERSONS who were involved in, or participated in any way with, the decision to adopt, register and/or use the term “Milton”, and for each such PERSON state his/her title and the role he/she played to adopt, register and/or use such term.

INTERROGATORY NO. 11:

State whether any searches or investigations were conducted by or on behalf of YOU to determine whether a mark containing the term “Milton,” such as MILTON, was available for use and/or registration, and, if so, identify each such search or investigation including the date(s) such search or investigation was performed, the marks located in such search or investigation and all DOCUMENTS relating thereto.

INTERROGATORY NO. 12:

Identify all manufacturers or intended manufacturers of goods, and all promoters or intended promoters of services, bearing MILTON.

INTERROGATORY NO. 13:

For each of the goods and services identified in YOUR response to Interrogatory No. 8 above, describe with specificity YOUR use of MILTON, the date on which MILTON was first used, the method in which MILTON was used, where the MILTON was placed, where the good was sold or where the service was provided, the identity of the PERSON(S) most knowledgeable about each of such uses, and the DOCUMENTS evidencing the foregoing.

INTERROGATORY NO. 14:

Identify all DOCUMENTS and set forth with specificity all facts with respect to any instance where a PERSON has been confused, mistaken, and/or deceived as to whether any goods or services advertised or sold under MILTON are those of OPPOSER, or are connected or associated with OPPOSER, and for each such incident provide the date of such incident, the identity of the PERSON, and a detailed description of the circumstances of such confusion, mistake and/or deception.

INTERROGATORY NO. 15:

Identify all DOCUMENTS and set forth with specificity the substance of each COMMUNICATION, oral or written, received by APPLICANT, which suggests, implies or infers that any of the products or services of APPLICANT sold or offered under MILTON, or any mark that includes the term “Milton”, is a product or service of OPPOSER or is affiliated, connected and/or associated with OPPOSER, or which inquires as to whether there is or may be an affiliation, connection and/or association between APPLICANT and OPPOSER, and identify any response(s) by APPLICANT to each such COMMUNICATION.

INTERROGATORY NO. 16:

Identify all inquiries, investigations, surveys, evaluations and or studies conducted by or on behalf of YOU with respect to MILTON or a mark containing the term “Milton” as an element of the mark, including the date conducted, the name, address and title of each PERSON(S) who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all DOCUMENTS which record, refer to, or relate to such inquiry, investigation, survey, evaluation or study.

INTERROGATORY NO. 17:

Identify each different sign, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, promotional material, and the like, known to APPLICANT which contains or bears MILTON or any variation thereof and which is intended to be used or has been used or disseminated at any time by or on behalf of APPLICANT.

INTERROGATORY NO. 18:

Identify each PERSON employed by or on behalf of APPLICANT, or each outside agency or agent retained by or on behalf of APPLICANT, who has been or now is responsible for the following activity with respect to any of the goods or services intended to be offered or rendered or actually offered or rendered under MILTON or any mark that includes that term “Milton”: (a) marketing; (b) advertising and promotion; and (c) bookkeeping and accounting.

INTERROGATORY NO. 19:

Has APPLICANT ever licensed or permitted or had negotiations to license or permit, or otherwise granted rights to third parties to use MILTON or any mark including the term “Milton” as a component? If so, identify the party or parties who have received or sought such license or permission or other right, state the nature and extent of any such license or permitted use or right, given or negotiated, and identify and describe all DOCUMENTS comprising or containing any such license, permission, or other right, or any agreement in respect to such mark.

INTERROGATORY NO. 20:

For each of the goods or services identified in response to Interrogatory No. 8, set forth the number of units and dollar amount of the monthly sales of such goods or services, the dollar amount of monthly advertising expenditure on such goods or services, and the individual media through which such advertising took place, and the U.S. dollar amount of advertising through each such media; and identify DOCUMENTS sufficient to support YOUR response to this interrogatory.

INTERROGATORY NO. 21:

State in detail the channels of trade in which MILTON is used and/or in which goods bearing MILTON are sold or services rendered under MILTON, including the geographic area by city and state in which MILTON is used and the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify DOCUMENTS sufficient to support YOUR response to this interrogatory.

INTERROGATORY NO. 22:

Identify each statement or opinion obtained by or for APPLICANT regarding any issue in this opposition proceeding including, but not limited to, whether the statement was oral or in writing, and identify all DOCUMENTS which record, refer to, or relate to such statement or opinion.

INTERROGATORY NO. 23:

Identify with specificity the marketing methods used in the advertising and/or sale of goods and/or services by or for APPLICANT under MILTON or any designation containing the term “Milton,” including, without limitation, the names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which APPLICANT has advertised and intends to advertise its goods and/or services under MILTON or such designation, and identify DOCUMENTS referring to, reflecting and/or supporting YOUR response to this interrogatory.

INTERROGATORY NO. 24:

Identify the ordinary purchaser of the goods or services sold and intended to be sold under MILTON or any designation containing the term “Milton,” including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing the goods or services sold under MILTON or such designation.

INTERROGATORY NO. 25:

Identify all DOCUMENTS relating to and set forth with specificity all facts regarding any instance where APPLICANT has notified any PERSON that any trademark or service mark used by that PERSON infringed APPLICANT's rights in MILTON and/or any mark of APPLICANT that includes the term “Milton,” and for each such instance provide a detailed description of any action taken and/or disposition thereafter.

INTERROGATORY NO. 26:

Has APPLICANT ever been a party to any litigation or administrative proceeding, other than the present opposition? If so, state all circumstances surrounding same including, without limitation, the name of the parties and identification of the proceeding, APPLICANT's status therein, the mark or marks involved, if any, the type of proceeding involved, the name and location of the court or agency in which it was filed, the date of the filing and the file number, the ultimate disposition of the proceedings, and identify each DOCUMENT relating to such proceeding.

INTERROGATORY NO. 27:

Identify the earliest date upon which YOU intend to rely in this proceeding with respect to YOUR use of MILTON and/or any mark that includes the term “Milton,” and identify all DOCUMENTS relating to, reflecting and/or supporting such use(s) and all PERSONS with knowledge of such use.

INTERROGATORY NO. 28:

Describe the meaning and derivation of the term “Milton” as used in connection with the services of APPLICANT upon or in connection with which APPLICANT has used that term.

INTERROGATORY NO. 29:

State the approximate percentage of sales of products bearing, or services promoted under, MILTON via the Internet versus other sales channels, and identify DOCUMENTS sufficient to support YOUR response to this Interrogatory.

INTERROGATORY NO. 30:

Identify all experts employed by or on behalf of APPLICANT for purposes of this action. For each expert, identify his or her field of specialization, whether APPLICANT intends to call him or her as a witness, the subject matter on which he or she is expected to testify, the bases for each opinion, and identify all DOCUMENTS that relate in any way to the subject matter, facts, and/or circumstances as to which the expert is expected to testify.

INTERROGATORY NO. 31:

Identify each non-expert witness that APPLICANT expects to testify, the subject matter on which the witness is expected to testify, each fact and/or opinion to which the witness is expected to testify, the bases for each opinion and identify all DOCUMENTS that relate in any way to the subject matter, facts, and/or circumstances as to which the witness is expected to testify.

INTERROGATORY NO. 32:

Identify in full all facts and circumstances on which YOU base the affirmative defense no. 2 in YOUR answer that “Applicant’s mark and the alleged trademark registrations listed in Opposer’s Notice of Opposition are different in sound, appearance, meaning and commercial impression, that the goods of the parties are unrelated and marketed through different channels of trade.”

INTERROGATORY NO. 33:

Identify in full all facts and circumstances on which YOU base the affirmative defense no. 3 in YOUR answer that “the term ‘MILTON’ contained in the alleged common law trademarks and trademark registrations listed in Opposer’s Notice of Opposition have been used by various third parties for various goods and services and, as such, are ‘weak’ marks that are entitled to limited protection.”

INTERROGATORY NO. 34:

Identify each individual who participated in or supplied information used in answering any of the above interrogatories; beside the name of each such individual, state the number of the interrogatory answer(s) with respect to which that individual participated in or supplied information.

Dated: February 15, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

*Attorneys for Opposer
Uncle Milton Industries, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Opposer Uncle Milton Industries, Inc.'s First Set of Interrogatories to Applicant Team John Whitaker Limited** was served by first class mail, postage prepaid, and electronic mail on February 15, 2013, upon counsel of Applicant:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic

Anne Zivkovic

EXHIBIT B

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Serial No. 85/445,797

Mark: MILTON

**OPPOSER UNCLE MILTON INDUSTRIES, INC.'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT TEAM JOHN
WHITAKER LIMITED**

Propounding Party: Opposer Uncle Milton Industries, Inc.

Responding Party: Applicant Team John Whitaker Limited

Set Number: One

Pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Applicant Team John Whitaker Limited (“Team John Whitaker”) is required to provide both: (a) the actual physical production of the items requested to be produced; and (b) written responses under oath. Actual physical production shall be at Russ, August & Kabat, Twelfth Floor, 12424 Wilshire Boulevard, Los Angeles, California 90025, to the attention of Irene Y. Lee within thirty (30) days of service thereof.

INSTRUCTIONS AND DEFINITIONS

The following instructions and definitions shall apply to these and all subsequent requests for production of documents and things:

A. Instructions.

1. This request requires the production of all of the specified items in the actual or constructive possession, custody or control of the responding party and/or the responding party's present and/or former employees, officers, directors, agents, representatives, attorneys, accountants, underwriters, investigators or other persons in any way acting or purporting to act on behalf of or attributable to the responding party. If any item was, but no longer is, in such possession, custody or control of the responding party, please state whether and when it: (a) is lost or destroyed; (b) has been transferred to another person, either voluntarily or involuntarily; or (c) has been otherwise disposed of. In each such case, explain the circumstances and dates surrounding such disposition, *e.g.*, at whose direction, for what purpose, pursuant to what authority, what record was made, etc.

2. Whenever objection is asserted to a particular request or portion thereof, please produce all responsive items or parts thereof which are not subject to such objection. Similarly, wherever an item is not produced in full, please state with particularity the reason or reasons it is not being produced in full, and describe, to the best of your knowledge, information and belief and with as much particularity as possible, those portions of the item which are not produced.

3. Please produce items in such a manner as will facilitate their identification with the particular request or category of requests to which they are responsive.

4. The words "and" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other wherever such dual constructions will serve to bring within the course and scope of a request any item(s) which would otherwise not be brought within its scope.

5. The singular form shall include the plural and vice versa wherever such dual construction will serve to bring within the scope of a request any item(s) which would otherwise not be brought within its scope.

6. This request requires the production of items in the same form and in the same filing manner and order as existing and maintained prior to production. The items are to be produced in the same boxes, files, folders or other containers or storage media in which the items were found. All titles, labels or other descriptions of the files, documents, etc. are to be left intact.

7. With respect to any item that you withhold on a claim of privilege, provide a statement, signed by one of your attorneys, setting forth as to each such document:

- (a) The name(s) of the sender(s) of the item;
- (b) The name(s) of the author(s) of the item;
- (c) The name(s) of the person(s) to whom the original or copies were sent;
- (d) The date of the item;
- (e) The date on which the item was received by those having possession of the item;
- (f) The statute, rule or decision which is claimed to give rise to the privilege;
- (g) A summary of the contents of the item without disclosing the matter that you claim is privileged.

B. Definitions.

1. “APPLICANT” refers to the applicant Team John Whitaker Limited and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with the applicant, including all of the partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for the applicant.

2. “MILTON” refers to the designation and/or trademark sought to be registered by means of Application Serial No. 85/445,797.

3. “COMMUNICATION” means any oral or written transmission of information between PERSONS, including but not limited to, meetings, discussions, conversations, telephone calls, memoranda, electronic mail, instant messages (including, without limitation, text messages), letters, telegram, record or notation of any conversation, inter-office memorandum, telecopies, telexes, conferences or seminars.

4. “DOCUMENT” or “ITEM” or any similar term shall be used in their broadest sense and shall include, but not be limited to, the following: any written, printed, typed or other graphic matter of any kind or nature; all mechanical, magnetic or electrical sound recordings or transcripts thereof; any retrievable data, information or statistics contained on any memory device or other information retrieval systems (whether encarded, taped or coded electrostatically, electromagnetically, or otherwise); and also without limitation, agreements, bills of sale, books, charts, checks, computer records, compilations, conversations, correspondence, descriptions, diagrams, diaries, directives, drawings, electronic recordings, files, films, financial memoranda, financial records, financial statements, graphs, inspection reports, interoffice correspondence, instructions, invoices, journals or other books of account, ledgers, letters, maps, measurements, memoranda, minutes, notes, notebooks, notices, pamphlets, periodicals, photocopies, photographs, plans, plats, proposals, publications and published or unpublished speeches or articles, purchase orders, receipts, recordings, records, reports, reproductions, samples, schedules, sketches, specifications, statements, studies, summaries, surveys, telegrams, telephone call slips and transcripts of telephone conversations, e-mails, instant messages (commonly called IMs), texts, voice mail transcripts, test results, transcripts, work sheets, working papers, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1) of the Federal Rules of Civil Procedure. The term “ITEM” or “DOCUMENT” or any similar term shall also mean all drafts and final versions, and all copies of documents, by whatever means made (including, but

not limited to, carbon, handwritten, microfilmed, photostatic, xerographic, scanned or other copies), and include all non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto, or otherwise). The term “ITEM” or “DOCUMENT” or any similar term shall also include any attachment thereto or enclosures therewith. The term “ITEM” or “DOCUMENT” or any similar term shall also include any and all data compilations from which information can be obtained. The term “ITEM” or “DOCUMENT” or any similar term shall also mean and include any “writing” as defined in Rule 1001 of the Federal Rules of Evidence.

5. “OPPOSER” refers to Uncle Milton Industries, Inc.

6. “OPPOSER’S MARKS” refers to any designation and/or trademark used or intended to be used by OPPOSER to identify OPPOSER in connection with the goods and/or services offered or promoted by OPPOSER, and collectively refers to the UNCLE MILTON marks owned by OPPOSER, including without limitation, United States Trademark Registration Nos. 2,858,040; 3,987,795; and 4,133,574 and cited by OPPOSER in its Notice of Opposition.

7. “PERSON” means any natural person, general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, association, firm, trust, or any other kind of organization or entity.

8. “YOU” or “YOUR” refers to APPLICANT, any of its present and former agents, officers, directors, principals, employees, affiliates, licensees, franchisees, distributors, consultants, advisors, accountants, attorneys and all other PERSONS or entities acting or purporting to act on its behalf.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All DOCUMENTS recording, referring to, or relating to the organization, incorporation, structure, operation and activities of APPLICANT insofar as they relate to any products sold and/or services offered by and/or intended to be sold, offered or promoted by APPLICANT under MILTON or any designation containing the term “Milton.”

REQUEST NO. 2:

All DOCUMENTS recording, referring to, or relating to any licenses, assignments, agreements, contracts, and/or arrangements between APPLICANT and any third party which relate in any manner to MILTON and/or any designation containing the term “Milton.”

REQUEST NO. 3:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR expressed intended use of MILTON or any designation containing the term “Milton,” including any investigation of the term “Milton” for its availability for adoption, use or registration, its licensing, use, intended use, exploitation, and/or intended exploitation.

REQUEST NO. 4:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR use or intended use of MILTON or any designation containing the term “Milton.”

REQUEST NO. 5:

All DOCUMENTS evidencing, recording, referring to, or relating to goods and/or services which are or are to be provided by or on behalf of YOU under MILTON or any designation containing the term “Milton.”

REQUEST NO. 6:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR advertising, intended advertising, promotion, and/or intended promotion of any goods and/or services under MILTON or any designation containing the term “Milton.”

REQUEST NO. 7:

DOCUMENTS sufficiently identifying the name and address of the PERSON(S) who created, came up with, or conceptualized MILTON.

REQUEST NO. 8:

All DOCUMENTS evidencing, recording, referring to, or relating to the selection, design, adoption, proposed use of, decision to use, and first use of MILTON and/or any designation containing the term “Milton” including samples of any names, designations and/or other marks conceived, considered and/or rejected by or on behalf of APPLICANT.

REQUEST NO. 9:

All DOCUMENTS evidencing, recording, referring to, or relating to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of YOU regarding the availability and/or registrability of MILTON, or of the term “Milton.”

REQUEST NO. 10:

All DOCUMENTS that refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state, federal or foreign, of marks incorporating the term “Milton” including, without limitation, Application Serial No. 85/445,797, including, without limitation, prosecution history, opposition pleadings and registration certificate.

REQUEST NO. 11:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR consideration or decision to select, adopt and/or use MILTON and/or any designation containing the term “Milton” in each different logotype, label, design, hang tag, packaging, font of type or style in which MILTON and/or said designation is being used, or is intended to be used, by or on behalf of YOU.

REQUEST NO. 12:

Produce a sample of each different logotype, label, design, hang tag, packaging, font of type or style in which MILTON and/or any designation including the term “Milton” is being used, or is intended to be used, by or on behalf of YOU.

REQUEST NO. 13:

Produce a sample of each and every different advertisement, intended advertisement, item of promotional material and/or intended item of promotional material printed and/or disseminated by or for YOU in which MILTON appears and/or any designation that includes the term “Milton.”

REQUEST NO. 14:

A specimen of each product on which MILTON or any designation containing the term “Milton” has been used or is intended to be used.

REQUEST NO. 15:

Copies of all television commercials, web commercials, press releases, publications (paid or unpaid), radio scripts, smart phone apps, and other media advertising, prepared by or for YOU whether or not released or aired, in which MILTON and/or the term “Milton” appears.

REQUEST NO. 16:

All DOCUMENTS evidencing, reflecting, recording, referring to, or relating to YOUR advertising and/or promotional expenditures, or expected advertising and/or promotional expenditures, for any goods offered for sale, sold and/or distributed under MILTON or any designation containing the term “Milton” including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with each of such advertisements and/or promotions.

REQUEST NO. 17:

All DOCUMENTS evidencing, reflecting, recording, referring to, or relating to the amount of sales, actual and/or projected, by month of goods or services sold by or for YOU under MILTON or any designation containing the term “Milton” including, without limitation, the identification of the goods and/or services, the number of units of the goods and/or services rendered, separately for each of the goods or services, the dates of the sales, and the dollar value of the sales.

REQUEST NO. 18:

All DOCUMENTS evidencing, recording, referring to, or relating to any COMMUNICATION, oral or written, received by YOU from any PERSON which suggests, implies, or infers any connection or association between OPPOSER and YOU.

REQUEST NO. 19:

All DOCUMENTS evidencing, recording, referring to, or relating to any COMMUNICATION, oral or written, received by YOU from any PERSON which inquires as to whether there is or may be such a connection or association between OPPOSER and YOU.

REQUEST NO. 20:

All DOCUMENTS evidencing, recording, referring to, or relating to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any PERSON between YOUR, YOUR licensees' or sublicensees' use of MILTON and/or any designation containing the term “Milton” and any of the OPPOSER'S MARKS.

REQUEST NO. 21:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's use of any of the OPPOSER'S MARKS.

REQUEST NO. 22:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's use of a designation that includes the term "Uncle Milton."

REQUEST NO. 23:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's application(s) for registration of any of the OPPOSER'S MARKS.

REQUEST NO. 24:

All DOCUMENTS evidencing, recording, referring to, or relating to YOUR knowledge and/or awareness of OPPOSER's trademark registration(s) for any of the OPPOSER'S MARKS.

REQUEST NO. 25:

All DOCUMENTS evidencing, recording, referring to, or relating to any inquiry, investigation, evaluation, analysis, or survey conducted by YOU or any person acting for or on behalf of YOU regarding any issues involved in the present opposition proceeding.

REQUEST NO. 26:

All DOCUMENTS evidencing, recording, referring to, or constituting any research, reports, surveys, or studies conducted by or on behalf of YOU of consumer or customer perception of MILTON or the mark "Milton."

REQUEST NO. 27:

All DOCUMENTS in YOUR possession, custody or control that refer or relate to OPPOSER.

REQUEST NO. 28:

All DOCUMENTS in YOUR possession, custody or control that refer or relate to any of the OPPOSER'S MARKS.

REQUEST NO. 29:

All press releases, articles and clippings relating to or commenting on goods or services marketed or sold under MILTON or the mark "Milton."

REQUEST NO. 30:

All DOCUMENTS sufficient to identify all goods and/or services in connection with which YOU have used, use and/or intend to use MILTON and/or any mark that includes the term “Milton.”

REQUEST NO. 31:

All DOCUMENTS referring to, relating to, or including any statements and/or opinions of any consultant or expert obtained by YOU or any person acting for or on behalf of YOU regarding any of the issues in this opposition proceeding.

REQUEST NO. 32:

All DOCUMENTS evidencing YOUR first use of MILTON.

REQUEST NO. 33:

All DOCUMENTS evidencing YOUR first use of a designation containing the term “Milton.”

REQUEST NO. 34:

All DOCUMENTS, other than those produced to any of the foregoing requests, upon which YOU intend to rely in connection with this opposition proceeding.

REQUEST NO. 35:

All DOCUMENTS identified in response to Uncle Milton Industries, Inc.’s First Set of Interrogatories to Team John Whitaker Limited.

REQUEST NO. 36:

All DOCUMENTS that contain the word "Uncle Milton."

Dated: February 15, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

*Attorneys for Opposer
Uncle Milton Industries, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Opposer Uncle Milton Industries, Inc.'s First Set of Requests for Production of Documents and Things to Applicant Team John Whitaker Limited** was served by first class mail, postage prepaid, and electronic mail on February 15, 2013 upon counsel of Applicant:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic

Anne Zivkovic

EXHIBIT C



Irene Y. Lee
ilee@raklaw.com

April 1, 2013

12424
Wilshire Boulevard
12th Floor
Los Angeles
California
90025

Tel 310.826.7474
Fax 310.826.6991
www.raklaw.com

VIA FIRST CLASS MAIL
VIA ELECTRONIC MAIL - mail@egbertlawoffices.com

John S. Egbert, Esq.
Egbert Law Offices PLLC
21st Floor
1314 Texas Avenue
Houston, Texas 77002

Re: *Uncle Milton Industries, Inc. v. Team John Whitaker Limited*
Opposition No. 91208266
Application No. 85/445,797
Mark: MILTON

Dear Mr. Egbert,

I am writing to initiate the meet-and-confer process to address Applicant Team John Whitaker Limited's failure to serve its answers and documents in response to Opposer Uncle Milton Industries, Inc.'s first set of interrogatories and first set of requests for production of documents and things, both of which were served on February 15, 2013, along with Uncle Milton Industries, Inc.'s initial disclosures.

We are available on April 2, 3, 4 and 5 to meet and confer between 9:00 a.m. and noon (Pacific Time). Please let me know if you are available on any of the proposed dates. If you are not available, please suggest a few alternative dates and times.

Very truly yours,

Russ, August & Kabat

Irene Y. Lee

EXHIBIT D

From: Kevin Wilson <kwilson@egbertlawoffices.com>
Subject: Re: US: MILTON (Opposition No. 91208266) [3186-003]
Date: April 2, 2013 1:47:42 PM PDT
To: Irene Lee <ilee@raklaw.com>
Cc: Anne Zivkovic <azivkovic@raklaw.com>, Nathan Meyer <nmeyer@raklaw.com>, Mike Swartz <mswartz@egbertlawoffices.com>, Egbert Law Offices <mail@egbertlawoffices.com>

Dear Irene:

Perhaps you are unfamiliar with practice in the TTAB. I would suggest you read TBMP Section 523.02. The rules of this administrative court clearly includes the phrase "by conference or correspondence." All we have explained is that we are not going to have a conference call with you. We are certainly open to any correspondence you may have for us.

If you have any other questions or concerns, please feel free to contact our office at any time.

Sincerely,
Kevin Wilson

Egbert Law Offices, PLLC
Great Southwest Building
1314 Texas, 21st Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 206
Fax: (713) 223-4873

CONFIDENTIALITY NOTICE: This e-mail and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (713-224-8080) or by electronic mail, and delete this message and all copies and backups thereof. Thank you.

On 4/2/2013 3:32 PM, Irene Lee wrote:

Dear Kevin,

As a moving party, we are required to conduct a meet and confer before filing a motion to compel discovery responses.

Please advise if you refuse to participate in the meet and confer process so we can properly advise the Board.

Regards,

--

Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor

12424 Wilshire Boulevard
Los Angeles, California 90025
Main: 001.310.826.7474
Direct: 001.310.979.8224

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This communication shall not create, waive or modify any right, obligation or liability, or be construed to contain or be an electronic signature. This communication may contain information that is legally privileged, confidential or exempt from disclosure, and is intended only for the named addressee(s). If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is prohibited.

On Apr 2, 2013, at 12:21 PM, Kevin Wilson <kwilson@egbertlawoffices.com> wrote:

Dear Irene:

At this point, we believe a conference is unnecessary, therefore, we do not plan on setting up a time for a conference. We are, of course, open to any correspondence regarding any issues you may have. We, therefore, ask at this time that you proceed with your case as you deem fit.

If you have any other questions or concerns, please feel free to contact our office at any time.

Sincerely,
Kevin Wilson

Egbert Law Offices, PLLC
Great Southwest Building
1314 Texas, 21st Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 206
Fax: (713) 223-4873

CONFIDENTIALITY NOTICE: This e-mail and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (713-224-8080) or by electronic mail, and delete this message and all copies and backups thereof. Thank you.

--- On Mon, 4/1/13, Anne Zivkovic <azivkovic@raklaw.com> wrote:

From: Anne Zivkovic <azivkovic@raklaw.com>
Subject: US: MILTON (Opposition No. 91208266) [3186-003]
To: mail@egbertlawoffices.com
Cc: "Irene Lee" <ilee@raklaw.com>, "Nathan Meyer" <nmeyer@raklaw.com>
Date: Monday, April 1, 2013, 5:43 PM

Dear Mr. Egbert,

Please find attached a letter from Ms. Irene Lee regarding the referenced trademark opposition. Thank you.

Sincerely,

Anne Zivkovic
Intellectual Property Paralegal
Russ August & Kabat
12424 Wilshire Blvd., Suite 1200
Los Angeles, CA 90025
(310) 826-7474

EXHIBIT E



Irene Y. Lee
ilee@raklaw.com

April 2, 2013

12424
Wilshire Boulevard
12th Floor
Los Angeles
California
90025

Tel 310.826.7474
Fax 310.826.6991
www.raklaw.com

VIA FIRST CLASS MAIL
VIA ELECTRONIC MAIL

John S. Egbert, Esq.
mail@egbertlawoffices.com
Kevin Wilson, Esq.
kwilson@egbertlawoffices.com
Egbert Law Offices PLLC
21st Floor
1314 Texas Avenue
Houston, Texas 77002

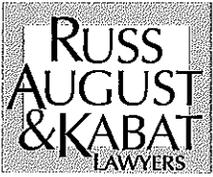
Re: *Uncle Milton Industries, Inc. v. Team John Whitaker Limited*
Opposition No. 91208266
Application No. 85/445,797
Mark: MILTON

Dear Messrs. Egbert and Wilson,

Thank you for your email of even date herewith, where you pointed out the "by conference or correspondence" language in Section 523.02. Pursuant to that very language, we made a good faith effort by sending a letter to you yesterday. In the letter, we requested that the parties meet and confer to address Applicant's failure to serve any answer or document in response to Opposer's first set of interrogatories and first set of requests for documents and things, both of which were served on February 15, 2013, along with Opposer's initial disclosures. Applicant has yet to serve its initial disclosures, which were due March 10, 2013.

While we are puzzled by your refusal to participate in a conference call to address Applicant's failure to serve discovery responses and resolve its violation of the Board's scheduling order of November 30, 2012, we remain open and willing to resolve the matter in good faith through correspondence.

As we endeavor to prosecute this matter in compliance with the Board's scheduling order, we ask that Applicant's initial disclosures be served by April 12, 2013, along with full and complete responses and documents in response to Opposer's first set of interrogatories and first set of requests for documents and things. Otherwise, we will have to seek the Board's intervention.



John S. Egbert, Esq.
Kevin Wilson, Esq.
Egbert Law Offices PLLC
April 2, 2013
Page 2 of 2

Please confirm that Applicant's will serve all outstanding discovery responses, documents and initial disclosures by April 12, 2013.

Very truly yours,

Russ, August & Kabat

Irene Y. Lee

IYL/az

EXHIBIT J

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Application Serial No. 85/445,797

Mark: MILTON

**OPPOSER’S MOTION TO COMPEL APPLICANT TO
SERVE INITIAL DISCLOSURES**

Pursuant to 37 CFR § 2.120(e), Uncle Milton Industries, Inc. (“Opposer”) respectfully submits this motion for the Board to issue an order compelling Applicant Team John Whitaker Limited (“Applicant”) to serve initial disclosures. It is well established that “a motion to compel is the available remedy when an adversary has failed to make, or has made inadequate, initial disclosures” Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42256 (August 2007); see also 37 CFR §2.120(e).

Accordingly, Opposer seeks the Board’s order compelling Applicant’s initial disclosures, based upon the following facts:

- On February 4, 2013, the parties held their discovery teleconference. See Declaration of Irene Y. Lee in Support of Opposer’s Motion to Compel Applicant to Serve Initial Disclosures (hereinafter referred to as “Lee Decl.”), ¶ 2.
- Under Trademark Rule 2.120(a)(2) and the Board’s Scheduling Order, dated November 30, 2012, the parties were required to serve their respective initial disclosures by March 10, 2013. Lee Decl., ¶ 3.

- In compliance with the Rule and Board's Scheduling Order, Opposer served its initial disclosures on February 15, 2013. Lee Decl., ¶ 4; Exhibit A.
- In violation of the Rule and Board's Scheduling Order, Applicant failed to serve its initial disclosures by March 10, 2013. Lee Decl., ¶ 5.
- On April 1, 2013, Opposer sent a letter to Applicant, requesting a meet and confer to address Applicant's failure to meet its discovery obligations: failure to serve its answer and documents in response to Opposer's first set of interrogatories and first set of requests for production of documents and things and its failure to serve initial disclosures. Lee Decl., ¶ 6; Exhibit B.
- On April 2, 2013, Applicant responded by email to Opposer's April 1, 2013 letter stating that Applicant refused to meet and confer via teleconference, and would meet and confer only via correspondence. Lee Decl., ¶ 7; Exhibit C.
- On April 2, 2013, I sent a reply letter to Applicant, reiterating Opposer's good faith effort to address Applicant's failure to meet its discovery obligations and violation of the Board's Scheduling Order. Lee Decl., ¶ 8; Exhibit D.
- Despite Opposer's repeated requests, Applicant has yet to serve initial disclosures, or any discovery responses for that matter. Lee Decl., ¶ 9.

Accordingly, Opposer respectfully seeks the Board's intervention to compel Applicant to serve initial disclosures within 20 days, without further delay.

Dated: May 10, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard

Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991
Attorneys for Opposer
Uncle Milton Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2013, one (1) true and correct copy of the foregoing document has been served on Applicant by mailing the same via First Class Mail and electronic mail to:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic
Anne Zivkovic

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Application Serial No. 85/445,797

Mark: MILTON

**DECLARATION OF IRENE Y. LEE IN SUPPORT OF OPPOSER'S MOTION TO
COMPEL APPLICANT TO SERVE INITIAL DISCLOSURES**

I, Irene Y. Lee, declare and state as follows:

1. I am a member of the State Bar of California and a partner in the firm of Russ, August & Kabat, counsel of record for Opposer Uncle Milton Industries, Inc. in the above-captioned opposition proceeding. I have personal knowledge of the facts set forth herein, and if called upon to testify, could and would testify competently thereto.

2. Pursuant to the Board's Scheduling Order, dated November 30, 2012, on February 4, 2013, I conducted discovery teleconference with Applicant's counsel.

3. Under Trademark Rule 2.120(a)(2) and the Board's Scheduling Order, the parties were required to serve their respective initial disclosures by March 10, 2013.

4. In compliance with the Rule and Board's Scheduling Order, Opposer served its initial disclosures on February 15, 2013. A true and correct copy of Opposer's initial disclosures is attached hereto as **Exhibit A**.

5. Applicant violated the Board's Scheduling Order by failure to serve its initial disclosures by March 10, 2013.

6. On April 1, 2013, on behalf of Opposer, I sent a letter to Applicant's counsel, requesting a meet and confer to address Applicant's failure to meet its discovery obligations: failure to serve its answer and documents in response to Opposer's first set of interrogatories and first set of requests for production of documents and things and its failure to serve initial disclosures. A true and correct copy of my April 1, 2013, letter is attached hereto as **EXHIBIT B**.

7. On April 2, 2013, Applicant's counsel responded by email to my letter, stating that Applicant refused to meet and confer via teleconference, and would meet and confer only via correspondence. A true and correct copy of his email is attached hereto as **EXHIBIT C**.

8. On April 2, 2013, I sent a reply letter to Applicant's counsel, reiterating Opposer's good faith effort to address Applicant's failure to meet its discovery obligations and violation of the Board's Scheduling Order. A true and correct copy of my letter of April 2, 2013, is attached hereto as **EXHIBIT D**.

9. Despite Opposer's repeated requests, Applicant has yet to serve initial disclosures, or any discovery responses for that matter.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this 10th day of May, 2013 in Los Angeles, California.



Irene Y. Lee

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2013, one (1) true and correct copy of the foregoing document has been served on Applicant by mailing the same via First Class Mail and electronic mail to:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic
Anne Zivkovic

EXHIBIT A

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

Uncle Milton Industries, Inc.,

Opposer,

v.

Team John Whitaker Limited,

Applicant.

Opposition No. 91208266

Serial No. 85/445,797

Mark: MILTON

OPPOSER UNCLE MILTON INDUSTRIES, INC.’S INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure, Opposer Uncle Milton Industries, Inc. (“Uncle Milton”) hereby makes the following initial disclosures. These disclosures are based on Uncle Milton’s reasonable inquiries to date, and Uncle Milton reserves the right to amend, supplement, or otherwise modify these disclosures. Uncle Milton’s initial disclosures represent a good faith effort to identify information and documents it may use to support claims and defenses.

By making these disclosures, Uncle Milton does not represent that it is identifying every document, tangible thing or witness possibly relevant to this proceeding. Uncle Milton’s initial disclosures are made without in any way waiving: (1) the right to object to the use of any of the disclosed information, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (2) the right to object on any and all grounds, at any time, to any discovery request or proceeding involving or relating to the subject matter of these disclosures.

Fed. R. Civ. Proc. 26(a)(1)(A)(i) Witnesses:

The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), Uncle Milton identifies the following individuals. Uncle Milton expressly reserves the right to identify and/or call as witnesses additional and/or different individuals if, during the course of discovery and investigation relating to this case, Uncle Milton learns that such additional and/or different individuals have relevant knowledge.

1. Frank Adler (*)
Uncle Milton.com, Inc.

Subjects: Uncle Milton's adoption, ownership, application for service mark registrations, actual use and planned use of its UNCLE MILTON trademarks; Uncle Milton's advertising, promotional, and marketing activities and publications featuring its UNCLE MILTON trademarks and its products.

2. Person Most Knowledgeable
c/o John S. Egbert, Esq.
EGBERT LAW OFFICES, PLLC

Subjects:

- Applicant Team John Whitaker Limited ("Applicant")'s purported adoption, ownership, application for registration, protection, actual use and planned use of its trademarks at issue;
- Applicant's actual and planned advertising, marketing, distribution and sales of products offered and provided under its trademarks at issue;
- The channels of distribution and/or trade of products Applicant offers in connection with its trademarks at issue;
- Applicant's customers for products offered under its trademarks at issue;
- History of Applicant;
- Business of Applicant;
- Applicant's identification and awareness of Uncle Milton and its registration(s) and use of the UNCLE MILTON marks;
- Applicant's advertising, promotional and marketing activities for products offered under its trademarks at issue and associated costs and expenditures;

- Factual bases for denying the allegation that “Applicant’s MILTON mark is confusingly similar to Uncle Milton’s UNCLE MILTON marks in sound, appearance and commercial impression.”;
- Factual bases for denying the allegation that “[Applicant’s MILTON mark] so resembles Uncle Milton’s marks as to be likely, when applied to the goods, to cause confusion, or to cause mistake, or to deceive”;
- Factual bases for the affirmative defense that “Opposer’s Notice of Opposition fails to state a claim upon which relief can be granted.”;
- Factual bases for the affirmative defense that “Applicant’s mark and the alleged trademarks listed in Opposer’s Notice of Opposition are different in sound, appearance, meaning and commercial impression, [sic] that the goods of the parties are unrelated and marketed through different channels of trade.”;
- Factual bases for the affirmative defense that “the term ‘MILTON’ contained in the alleged common law trademarks and trademark registrations listed in Opposer’s Notice of Opposition have been used by various third parties for various goods and services and, as such, are ‘weak’ marks that are entitled to limited protection.”;
- Applicant’s sales of goods offered under its trademark mark at issue and revenues generated, and income derived, from such sales; and
- Pre-filing investigation, filing and prosecuting application, Serial No. 85/445,797.

3. John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
1314 Texas, 21st Floor
Houston, Texas 77002

- Pre-filing investigation, filing and prosecuting application, Serial No. 85/445,797; and
- Applicant’s actual and planned use of its trademark at issue; and
- Identification and awareness of Uncle Milton and its registrations and use of the UNCLE MILTON marks.

No current or former Uncle Milton officer, employee or consultant may be contacted without the prior consent of Uncle Milton’s counsel. People listed above with asterisks (*) by

their name are represented by Uncle Milton's counsel for the purpose of this opposition proceeding, and can be contacted only through Uncle Milton's counsel.

Fed. R. Civ. Proc. 26(a)(1)(A)(ii) Documents:

A copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii), and based upon presently available information, Uncle Milton may use relevant documents from the following categories to support its claims. Uncle Milton expressly reserves the right to identify and use documents from additional categories if, during the course of discovery and investigation relating to this case, Uncle Milton learns that such additional categories contain relevant documents. Uncle Milton also reserves the right to respond to and/or rebut the contentions and allegations Applicant may make.

1. Documents showing Uncle Milton's valid, enforceable rights in UNCLE MILTON marks.
2. Documents showing fame in UNCLE MILTON marks.
3. Investigation, analysis, studies or opinion of counsel concerning the strength, ownership, validity and/or enforceability of Applicant's trademark at issue.
4. Documents concerning Applicant's pre-filing investigation, filing and prosecuting applications, Serial No. 85/445,797.
5. Applicant's goods offered for sale and/or sold under the trademark at issue.
6. Applicant's marketing and promotional materials and associated expenditures.
7. Sales of Applicant's goods offered under its trademark at issue.

Numerous documents in the categories identified above are already in Applicant's possession, custody or control. These items which Uncle Milton may use to supports its claims will be made available for inspection at the offices of counsel for Uncle Milton, at a mutually

agreeable and convenient time for the parties and their respective counsel, subject to a protective order acceptable to all parties.

Further discovery and investigation may reveal additional tangible items or documents, which may be relevant and discoverable. Uncle Milton may produce other relevant and non-privileged documents in its own possession, custody or control, to the extent reasonably available, in response to the appropriate document requests, subject to its objections.

Dated: February 15, 2013

Respectfully submitted,



Irene Y. Lee
RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

*Attorneys for Opposer
Uncle Milton Industries, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **Opposer Uncle Milton Industries, Inc.'s Initial Disclosures** was served by first class mail, postage prepaid, and electronic mail on February 15, 2013 upon counsel of Applicant:

John S. Egbert, Esq.
Kevin S. Wilson, Esq.
EGBERT LAW OFFICES, PLLC
21st Floor
1314 Texas
Houston, Texas 77002
Telephone: 713-224-8080 x 204
Facsimile: 713-223-4873
Email: mail@egbertlawoffices.com

/s/ Anne Zivkovic

Anne Zivkovic

EXHIBIT B



Irene Y. Lee
ilee@raklaw.com

April 1, 2013

12424
Wilshire Boulevard
12th Floor
Los Angeles
California
90025

Tel 310.826.7474
Fax 310.826.6991
www.raklaw.com

VIA FIRST CLASS MAIL
VIA ELECTRONIC MAIL - mail@egbertlawoffices.com

John S. Egbert, Esq.
Egbert Law Offices PLLC
21st Floor
1314 Texas Avenue
Houston, Texas 77002

Re: *Uncle Milton Industries, Inc. v. Team John Whitaker Limited*
Opposition No. 91208266
Application No. 85/445,797
Mark: MILTON

Dear Mr. Egbert,

I am writing to initiate the meet-and-confer process to address Applicant Team John Whitaker Limited's failure to serve its answers and documents in response to Opposer Uncle Milton Industries, Inc.'s first set of interrogatories and first set of requests for production of documents and things, both of which were served on February 15, 2013, along with Uncle Milton Industries, Inc.'s initial disclosures.

We are available on April 2, 3, 4 and 5 to meet and confer between 9:00 a.m. and noon (Pacific Time). Please let me know if you are available on any of the proposed dates. If you are not available, please suggest a few alternative dates and times.

Very truly yours,

Russ, August & Kabat

Irene Y. Lee

EXHIBIT C

From: Kevin Wilson <kwilson@egbertlawoffices.com>
Subject: **Re: US: MILTON (Opposition No. 91208266) [3186-003]**
Date: April 2, 2013 1:47:42 PM PDT
To: Irene Lee <ilee@raklaw.com>
Cc: Anne Zivkovic <azivkovic@raklaw.com>, Nathan Meyer <nmeyer@raklaw.com>, Mike Swartz <mswartz@egbertlawoffices.com>, Egbert Law Offices <mail@egbertlawoffices.com>

Dear Irene:

Perhaps you are unfamiliar with practice in the TTAB. I would suggest you read TBMP Section 523.02. The rules of this administrative court clearly includes the phrase "by conference or correspondence." All we have explained is that we are not going to have a conference call with you. We are certainly open to any correspondence you may have for us.

If you have any other questions or concerns, please feel free to contact our office at any time.

Sincerely,
Kevin Wilson

Egbert Law Offices, PLLC
Great Southwest Building
1314 Texas, 21st Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 206
Fax: (713) 223-4873

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On 4/2/2013 3:32 PM, Irene Lee wrote:

Dear Kevin,

As a moving party, we are required to conduct a meet and confer before filing a motion to compel discovery responses. Please advise if you refuse to participate in the meet and confer process so we can properly advise the Board.

Regards,

--

Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Main: 001.310.826.7474
Direct: 001.310.979.8224

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On Apr 2, 2013, at 12:21 PM, Kevin Wilson <kwilson@egbertlawoffices.com> wrote:

Dear Irene:

At this point, we believe a conference is unnecessary, therefore, we do not plan on setting up a time for a conference. We are, of course, open to any correspondence regarding any issues you may have. We, therefore, ask at this time that you proceed with your case as you deem fit.

If you have any other questions or concerns, please feel free to contact our office at any time.

Sincerely,
Kevin Wilson

Egbert Law Offices, PLLC
Great Southwest Building

1314 Texas, 21st Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 206
Fax: (713) 223-4873

CONFIDENTIALITY NOTICE: This e-mail and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (713-224-8080) or by electronic mail, and delete this message and all copies and backups thereof. Thank you.

--- On **Mon, 4/1/13**, **Anne Zivkovic** <azivkovic@raklaw.com> wrote:

From: Anne Zivkovic <azivkovic@raklaw.com>
Subject: US: MILTON (Opposition No. 91208266) [3186-003]
To: mail@egbertlawoffices.com
Cc: "Irene Lee" <ilee@raklaw.com>, "Nathan Meyer" <nmeyer@raklaw.com>
Date: Monday, April 1, 2013, 5:43 PM

Dear Mr. Egbert,

Please find attached a letter from Ms. Irene Lee regarding the referenced trademark opposition. Thank you.

Sincerely,

Anne Zivkovic
Intellectual Property Paralegal
Russ August & Kabat
12424 Wilshire Blvd., Suite 1200
Los Angeles, CA 90025
(310) 826-7474

EXHIBIT D



Irene Y. Lee
ilee@raklaw.com

April 2, 2013

12424
Wilshire Boulevard
12th Floor
Los Angeles
California
90025

Tel 310.826.7474
Fax 310.826.6991
www.raklaw.com

VIA FIRST CLASS MAIL
VIA ELECTRONIC MAIL

John S. Egbert, Esq.
mail@egbertlawoffices.com
Kevin Wilson, Esq.
kwilson@egbertlawoffices.com
Egbert Law Offices PLLC
21st Floor
1314 Texas Avenue
Houston, Texas 77002

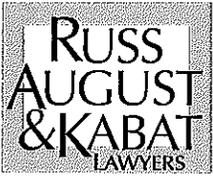
Re: *Uncle Milton Industries, Inc. v. Team John Whitaker Limited*
Opposition No. 91208266
Application No. 85/445,797
Mark: MILTON

Dear Messrs. Egbert and Wilson,

Thank you for your email of even date herewith, where you pointed out the "by conference or correspondence" language in Section 523.02. Pursuant to that very language, we made a good faith effort by sending a letter to you yesterday. In the letter, we requested that the parties meet and confer to address Applicant's failure to serve any answer or document in response to Opposer's first set of interrogatories and first set of requests for documents and things, both of which were served on February 15, 2013, along with Opposer's initial disclosures. Applicant has yet to serve its initial disclosures, which were due March 10, 2013.

While we are puzzled by your refusal to participate in a conference call to address Applicant's failure to serve discovery responses and resolve its violation of the Board's scheduling order of November 30, 2012, we remain open and willing to resolve the matter in good faith through correspondence.

As we endeavor to prosecute this matter in compliance with the Board's scheduling order, we ask that Applicant's initial disclosures be served by April 12, 2013, along with full and complete responses and documents in response to Opposer's first set of interrogatories and first set of requests for documents and things. Otherwise, we will have to seek the Board's intervention.



John S. Egbert, Esq.
Kevin Wilson, Esq.
Egbert Law Offices PLLC
April 2, 2013
Page 2 of 2

Please confirm that Applicant's will serve all outstanding discovery responses, documents and initial disclosures by April 12, 2013.

Very truly yours,

Russ, August & Kabat

Irene Y. Lee

IYL/az

EXHIBIT K

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: September 5, 2013

Opposition No. 91208266

Uncle Milton Industries,
Inc.

v.

Team John Whitaker Limited

Nicole Thier, Paralegal Specialist:

Insofar as the Board is not in receipt of a responsive brief from applicant, opposer's motion (filed July 25, 2013) to compel is hereby granted as conceded. See Trademark Rule 2.127(a).

In view thereof, applicant is hereby ordered to serve no later than **THIRTY DAYS** from the mailing date of this order its full and complete responses, without objection, to opposer's initial disclosures, responses to interrogatories and production of documents. See *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, (TTAB 1987).

In the event applicant fails to respond to opposer's discovery requests as ordered herein, the Board may entertain a motion for sanctions, including the entry of

judgment pursuant to Trademark Rule 2.120(g), 37 CFR Section 2.120(g). Trial dates, including the close of discovery are reset as follows:

Expert Disclosures Due	11/16/2013
Discovery Closes	12/16/2013
Plaintiff's Pretrial Disclosures	1/30/2014
Plaintiff's 30-day Trial Period Ends	3/16/2014
Defendant's Pretrial Disclosures	3/31/2014
Defendant's 30-day Trial Period Ends	5/15/2014
Plaintiff's Rebuttal Disclosures	5/30/2014
Plaintiff's 15-day Rebuttal Period Ends	6/29/2014

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.