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Filing date: **10/09/2013**

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

Proceeding	91209421
Party	Plaintiff Garber Bros., Inc.
Correspondence Address	DAVID O JOHANSON BINGHAM MCCUTCHEN LLP ONE FEDERAL STREET BOSTON, MA 02110 UNITED STATES david.johanson@bingham.com
Submission	Motion to Compel Discovery
Filer's Name	Joshua M. Dalton
Filer's e-mail	josh.dalton@bingham.com, katherine.moskop@bingham.com
Signature	/s/ Joshua M. Dalton
Date	10/09/2013
Attachments	Garber Bros. Motion to Compel.pdf(1560034 bytes) Garber Bros. MTC Exhibit A.pdf(1717640 bytes) Garber Bros. MTC Exhibit B.pdf(5401005 bytes) Garber Bros. MTC Exhibit C.pdf(4015387 bytes) Garber Bros. MTC Exhibit D.pdf(1794166 bytes) Garber Bros. MTC Exhibit E.pdf(425587 bytes)

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

In re Application Serial No. 76/705,356)	
Mark: BEANTOWN EXPRESS (and Design))	
Application Filing Date: November 16, 2010)	
Garber Bros, Inc.,)	
Opposer,)	
v.)	Opposition No. 91209421
U.S. Property Management Enterprise Inc.)	
Applicant.)	

MOTION TO COMPEL INITIAL DISCLOSURES AND DISCOVERY RESPONSES

Opposer Garber Bros., Inc. (hereafter “Opposer”), by and through its attorneys, files this Motion to Compel Initial Disclosures and Discovery Responses from U.S. Property Management Enterprise Inc. (hereafter “Applicant”).

1. On February 7, 2013, Opposer filed with the Trademark Trial and Appeal Board (the “Board”) its Notice of Opposition against Application Serial No. 76/705,356. The Applicant timely filed its Answer *pro se*.

2. In accordance with the Board’s Scheduling Order of February 21, 2013 (the “Scheduling Order”), discovery opened in this proceeding on May 2, 2013, and is scheduled to close on October 29, 2013.

3. The parties attempted to hold a discovery conference via telephone on May 10, 2013 (the “Discovery Conference”). Despite Opposer’s objections, the Applicant ended the Discovery Conference before the parties were able to fully resolve a strategy for

conducting discovery. Although the Applicant stated that he would contact the Opposer the following week to further discuss discovery and a possible settlement of the Opposition, Opposer has not received any substantive communications from the Applicant since May 10, 2013, despite the fact that Opposer has left several voicemail messages and sent the Applicant several emails requesting a response.

4. In accordance with the Board's Scheduling Order, the deadline for the parties to submit their respective initial disclosures was June 1, 2013. As the deadline fell on a weekend, each party had until Monday, June 3, 2013 to serve initial disclosures on the other party. No initial disclosures have been received from the Applicant as of the date of this Motion.

5. On June 3, 2013, Opposer served on the Applicant Opposer's Initial Disclosures (the "Initial Disclosures"), Opposer's First Set of Interrogatories to Applicant (the "Interrogatories"), and Opposer's First Requests for Production (the "Requests"). Copies of Opposer's Initial Disclosures, Interrogatories and Requests are attached hereto as **Exhibits A-C**, respectively.

6. Pursuant to 37 C.F.R. § 2.120(a)(3), Applicant's responses to Opposer's Interrogatories and Requests were due on July 3, 2013, with an additional five days added under 37 C.F.R. § 2.119(c).

7. No response to Opposer's Interrogatories and Requests was received by the July 8, 2013 due date, nor did the Applicant request an extension of time to file its response by this date.

8. On July 26, 2013, Opposer sent the letter attached as **Exhibit D** regarding the Applicant's overdue obligations with respect to its initial disclosures and responses to the Opposer's Interrogatories and Requests.

9. On August 8, 2013, the Opposer finally received an email from the Applicant requesting an extension of time to respond to Opposer's Interrogatories and Requests.

10. On September 6, 2013, with the Applicant's answers still not forthcoming, Opposer again sent a letter, attached as **Exhibit E**, regarding Applicant's overdue disclosures and discovery responses. The Applicant responded with delaying tactics, requesting first via email that Opposer re-send its Disclosures, Interrogatories, and Document Requests as Applicant claimed to have lost them. Then, the following week, Applicant requested that hard copies of the documents be mailed to him.

11. Despite Opposer's efforts, the Opposer has not received any responsive communications from the Applicant since the parties held their Discovery Conference on May 10, 2013. Since that time, the Applicant has generally failed and refused to comply with the deadlines set forth in the Scheduling Order.

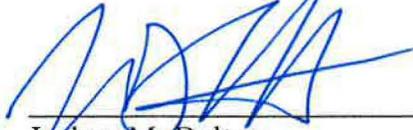
12. By failing to object to Opposer's discovery or request an extension before the due date of July 8, 2013, Applicant has waived any right to object to the Opposer's Interrogatories or Requests. Fed R. Civ. P. 33(b)(4).

13. The Applicant's decision to represent itself *pro se*, and its apparent failure to understand its obligations, does not serve as a valid excuse for failing to comply with the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Strict compliance with the applicable regulations is expected of the Applicant, regardless of whether it is represented by counsel. McDermott v. San Francisco Women's Motorcycle Contingent, 81 U.S.P.Q.2d 1212, 1212 n.2 (TTAB 2006).

CONCLUSION

Based on the foregoing, Opposer respectfully requests that the Board issue an Order that compels Applicant to make its initial disclosures and provide responses to Opposer's discovery requests forthwith.

Respectfully submitted,



Joshua M. Dalton
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Dated: October 9, 2013

Attorneys for Opposer,
Garber Bros., Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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U.S. Property Management Enterprise Inc.)	
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Applicant.)	
)	

CERTIFICATE OF CONFERENCE

I hereby certify that Opposer, through its attorney, has made a good faith effort, by conference or correspondence, to resolve with the other party the issues presented in this motion, and has been unable to reach agreement.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION TO COMPEL INITIAL DISCLOSURES AND DISCOVERY RESPONSES** and this **CERTIFICATE OF SERVICE** were duly served upon Applicant by first-class mail, postage prepaid, on October 9, 2013 to the address set out below:

George Gregoriadis
U.S. Property Management Enterprise Inc.
7 Mosgrove Avenue
Roslindale, Massachusetts 02131

DATED: Boston, MA, October 9, 2013

By:



Joshua M. Dalton
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Attorneys for Opposer
Garber Bros., Inc.

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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OPPOSER'S INITIAL DISCLOSURES

Pursuant to Fed. R. Civ. P. 26(a)(1) and Rule 2.120 of the Trademark Rules of Practice, Opposer Garber Bros., Inc. (hereafter "Opposer") hereby provides the following initial disclosures to Applicant U.S. Property Management Enterprise Inc. (hereafter "Applicant").

Opposer makes these disclosures subject to and without waiving (i) the attorney-client privilege, the work product doctrine or other applicable privileges and protections; (ii) the right to object on grounds provided by law, the Trademark Rules of Practice, the Federal Rules of Civil Procedure or the Federal Rules of Evidence; and (iii) the right to supplement these disclosures at a later date should they become aware of additional responsive information and/or documents.

I. Names and Addresses of Individuals Likely to Have Discoverable Information Relevant to the Allegations Set Forth in Opposer’s Notice of Opposition

The following individuals are likely to have discoverable information relevant to the allegations set forth in Opposer’s Notice of Opposition. For purposes of these disclosures, “Garber Bros. Marks” is defined as Opposer’s marks BEANTOWN, BEANTOWN COFFEE and BEANTOWN COFFEE (and Design), and variations thereof as held by Opposer. The identity of additional individuals may be reflected in the documents described in Part II, below. Opposer will amend this list if, when and as required, Opposer becomes aware of additional individuals likely to have discoverable information that Opposer may use to support its claims or defenses after further investigation and discovery, and after the exchange of initial disclosures.

Name	Address	Subjects
George Gregoriadis	U.S. Property Management Enterprise Inc. 7 Mosgrove Avenue Roslindale, Massachusetts 02131	Applicant’s intended use of and decision to use the mark BEANTOWN EXPRESS, or any mark containing the term BEANTOWN (collectively, the “Applicant’s Marks”); Applicant’s company background; Applicant’s current and intended marketing and sales practices concerning the Applicant’s Marks; consumers and prospective consumers for the goods and/or services offered under the Applicant’s Marks; Applicant’s intended trade channels for the goods and/or services offered under the Applicant’s Marks; the fame, distinctiveness and/or strength of the Applicant’s Marks.
Various employees and affiliates of U.S. Property Management	U.S. Property Management Enterprise Inc. 7 Mosgrove Avenue Roslindale, Massachusetts 02131	Applicant’s intended use of and decision to use the Applicant’s Marks; Applicant’s company

Enterprise Inc.		background; Applicant's current and intended marketing and sales practices concerning the Applicant's Marks; consumers and prospective consumers for the goods and/or services offered under the Applicant's Marks; Applicant's intended trade channels for the goods and/or services offered under the Applicant's Marks; the fame, distinctiveness and/or strength of the Applicant's Marks.
Michael D'Ortenzio	Garber Bros., Inc. Route 139 Kay Way Stoughton, Massachusetts 02072	Opposer's company background; Opposer's use of the Garber Bros. Marks; Opposer's marketing and sales practices concerning the Garber Bros. Marks; consumers for the goods and services offered under the Garber Bros. Marks; Opposer's trade channels for the goods and services offered under the Garber Bros. Marks; the fame, distinctiveness and/or strength of Garber Bros. Marks.
Various employees and affiliates of Garber Bros., Inc.	Garber Bros., Inc. Route 139 Kay Way Stoughton, Massachusetts 02072	Opposer's company background; Opposer's use of the Garber Bros. Marks; Opposer's marketing and sales practices concerning the Garber Bros. Marks; consumers for the goods and services offered under the Garber Bros. Marks; Opposer's trade channels for the goods and services offered under the Garber Bros. Marks; the fame, distinctiveness and/or strength of Garber Bros. Marks.

II. Supporting Documents in Opposer's Possession

Opposer has commenced the process of gathering relevant, discoverable documents, a process which is ongoing. Opposer objects to the disclosure of any documents that contain

confidential or proprietary information until such time as an appropriate confidentiality agreement is executed by the parties. To the extent they exist in the possession, custody, or control of Opposer, the following are categories of documents likely to contain information relevant to the allegations set forth in Opposer's Notice of Opposition:

1. Documents related to Opposer's use of the Garber Bros. Marks.
2. Documents related to the goods and services offered by Opposer under the Garber Bros. Marks.
3. Documents related to Opposer's marketing and sales practices concerning the goods and services offered under the Garber Bros. Marks.
4. Documents related to the trade channels for the goods and services offered under the Garber Bros. Marks.
5. Documents related to the consumers for the goods and services offered under the Garber Bros. Marks.
6. Documents related to the fame, distinctiveness and/or strength of the Garber Bros. Marks.

Respectfully submitted,



Joshua M. Dalton
Devon R. Sparrow
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Dated: June 3, 2013

Attorneys for Opposer,
Garber Bros., Inc.

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Applicant.)	
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S INITIAL DISCLOSURES** and this **CERTIFICATE OF SERVICE** were duly served upon Applicant by first-class mail, postage prepaid, on June 3, 2013 to the address set out below:

George Gregoriadis
U.S. Property Management Enterprise Inc.
7 Mosgrove Avenue
Roslindale, Massachusetts 02131

DATED: Boston, MA, June 3, 2013

By: 
Joshua M. Dalton
Devon R. Sparrow
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Attorneys for Opposer
Garber Bros., Inc.

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer Garber Bros., Inc. (hereafter “Opposer”), by and through its attorneys, hereby requests, that Applicant U.S. Property Management Enterprise Inc. (hereafter “Applicant”) answer the following interrogatories under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice.

DEFINITIONS AND INSTRUCTIONS

I. DEFINITIONS

1. The terms “Applicant”, “U.S. Property Management Enterprise Inc.”, “you” and “your” mean Applicant U.S. Property Management Enterprise Inc. and any past or present predecessor, successor, parent, subsidiary, division or affiliate of either, and all persons acting on their behalf including, without limitation, present and former officers, directors, employees, attorneys, agents, and representatives thereof.

2. The term "Applicant's Marks" refer to the mark or name BEANTOWN EXPRESS by itself and/or in connection with other words and/or designs used by Applicant, and any other mark or name containing the term BEANTOWN, unless otherwise stated or is obvious from the context of the Interrogatory.

3. The term "Applicant's Goods and Services" means the goods and services provided, sold or offered for sale by or under the authority of Applicant in the United States, bearing, or promoted and/or sold in connection with, Applicant's Marks.

4. The term "Applicant's Websites" means any websites operated by or on behalf of Applicant, or any other domain name owned by Applicant, on which any of Applicant's Goods and Services are offered, promoted, or sold.

5. The terms "Opposer" and "Garber Bros." refer to Opposer Garber Bros., Inc., its subsidiaries, its divisions, its affiliates, its present and former officers and directors, employees, and agents, and all of those persons acting on its behalf.

6. The term "Opposer's Marks" refers to one or more of Opposer's marks BEANTOWN, BEANTOWN COFFEE, BEANTOWN COFFEE (and Design), and variations thereof as held by Opposer.

7. The term "documents" shall include, without limitation, all writings or works of authorship of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitation, correspondence, memoranda, literature, notes, diaries, statistics, letters, telegrams, advertisements, publications, brochures, ledgers, papers, drawings, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, messages, pamphlets, price lists, books, interoffice and intra-office communications, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without

limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, motion pictures), and any electronic, mechanical, computer, e-mail, or Internet records or representations of any kind (including, without limitation, tapes cassettes, discs, recordings, and computer memories).

8. "Representative" shall mean any present or former director, officer, partner, agent, counsel, accountant, employee, independent contractor, or other person acting on behalf of a corporation, professional corporation, firm, partnership, proprietorship, association, business, entity, or another person.

9. "Person" shall mean any individual, corporation, professional corporation, firm, partnership, proprietorship, association, government (or any agencies thereof), quasi-public entity, business, or other entity.

10. References to any person, entity or party herein includes his, her, or its agents, attorneys, employees, officers, directors, or others acting on behalf of said person, entity, or party.

11. "Communication" shall mean any manner or means of disclosure, transfer, or exchange, and any disclosure, transfer or exchange of information whether oral or written, or whether face-to-face, by telephone, mail, e-mail, direct computer transfer, or personal delivery.

12. "State the basis for," when used with reference to any fact, allegation, contention, claim, denial, or other subject matter, means: (1) to state each and every fact that is known to Applicant which refers or relates to that fact, allegation, contention, claim, denial or subject matter, including, without limitation, each and every fact that supports, substantiates, contradicts or refutes that fact, allegation, contention, claim, denial or subject matter; (2) to identify the source of Applicant's knowledge or information respecting that fact, allegation, contention, claim, denial or subject matter; (3) to identify each Person having knowledge of that fact, allegation, contention, claim, denial or subject matter; (4) to identify each Document and each statement or communication (whether or not contained in

such Document) which refers or relates to that fact, allegation, contention, claim, denial or subject matter; and (5) to identify each event, occurrence, or instance which refers or relates to that fact, allegation, contention, claim, denial or subject matter, including, without limitation, the date(s) thereof.

13. “Identify” or “Identity” with regards to a person(s), means to give the name, present or last known address, and also if an individual, his present or last known employer, the address of the employer, and the position and job title of the individual.

14. “Identity” or “Identify” with regard to a document means to give the title of the document, the date of the document, the name of the person(s) who signed or prepared, or participated in the preparation of, such document, the name(s) of the person to whom the document was addressed, the name of each person to whom the document was given or sent, or who received such document or a copy thereof, the identity of each person having possession, custody or control of the document or thing, the present location of the document or thing and all copies thereof and the nature and subject matter of the document or thing.

15. “Identity” or “Identify” when used with regard to a product or service means to give: (1) a general description sufficient to identify the item as a particular type of good or service; (2) all names, numbers, letters, or combinations thereof used internally (including, but not limited to, stock numbers, item numbers, warehouse designations and shipping references) to refer to the item or service, identify each such internal reference and its particular use; and (3) all names, numbers, letters, or combinations thereof used in communications with customers, distributors and retailers (including, but not limited to, sales, transactions, distributors and retailers).

II. INSTRUCTIONS

1. Each interrogatory is to be answered separately and under oath.

2. These interrogatories call for all information that is known or available to Applicant, including all information in the possession of or available to Applicant's attorneys, agents, or representatives, or any investigators or any other person acting on behalf of Applicant or under the direction or control of Applicant or his attorneys or agents.

3 If Applicant cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information necessary to the fullest extent possible, then specify the portion of such interrogatory that Applicant claims he is unable to answer fully and completely, state the facts upon which Applicant relies to support his contention that he is unable to answer that interrogatory fully and completely, and state what knowledge, information and belief that Applicant has concerning the unanswered portion of each such interrogatory.

4. If Applicant does not answer an interrogatory in whole or in part because of a claim of privilege, set forth the privilege claimed, identify the facts upon which Applicant relies to support the claim of privilege and identify all documents for which the privilege is claimed. If Applicant refuses to identify a communication based on the attorney-client privilege, identify the date of the communication, the speaker or author of the communication, the capacity in which the speaker or author was acting when he made the communication, and identify the recipient of the communication.

5. When a natural person is required to be identified, state his or her name, street address, e-mail address, current or last known employer and job classification, and his or her employer and job classification at the time of the events referred to in the interrogatory.

6. When a business organization is required to be identified, state its name, address, the name and address of each of its agents that acted for it with respect to the matters that are relevant to the interrogatory, and identify the business organization's relationship, if any, to the parties to this action.

7. When a document is required to be identified, state the type of document (e.g., letter, financial record, memorandum), its date and title and its present location;

identify the person who prepared it, the person for whom it was prepared, and the person who presently has custody of it.

8. If any document was, but no longer is, in the possession of or subject to the control of Applicant, state whether it is missing or lost, has been destroyed, has been transferred, voluntarily or involuntarily to others, or has been otherwise disposed of, and in each instance, explain the circumstances surrounding, and authorization for, such disposition and state the date or approximate date thereof.

9. When a meeting is required to be identified, state the date of the meeting; state where the meeting was held; identify each person who attended or participated in the meeting; state whether any person at the meeting was acting on behalf of any other person; and identify each document which relates or pertains in any manner to the meeting.

10. When an oral communication is required to be identified, state by whom and to whom the communication was made; state who was present when the communication was made; state the date and time the communication was made; state the place at which the communication was made; state with particularity the subject matter and substance of the communication; and identify each document which relates in any manner to the communication.

11. In following these instructions, the singular includes the plural, and vice versa; the masculine includes the feminine and neuter genders, and vice versa; the past tense includes the present tense where the clear meaning is not distorted by a change of tense.

12. The conjunctions "and" and "or" shall not be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of a request.

13. These interrogatories are deemed to be continuing and supplemental answers are to be filed up to the time of trial in the event additional information responsive to these interrogatories is discovered after service of the original answers.

INTERROGATORIES

INTERROGATORY NO. 1:

With respect to Applicant:

- (a) state the address and telephone number of each location at which Applicant has maintained or now maintains an office or other place of business and describe the dates of operation and functions carried out at each such office or other place of business;
- (b) briefly state the nature of Applicant's principal business and the period in which he has conducted such business; and
- (c) list any and all trademarks, service marks and trade names used or adopted for use in connection with Applicant's business within the last ten years and for each state the goods or services in connection with which they are used and the first use date for each.

INTERROGATORY NO. 2:

If Applicant is affiliated with another person(s), and/or controls another person(s) state:

- (a) the name of such person(s);
- (b) the nature of the legal relationship between Applicant and the other person(s);
and
- (c) the character of the business or businesses of the person(s) including a specification of:
 - (i) the products and/or services sold or provided which are in any way similarly, complementary and/or related to products and/or services sold or provided in association with Applicant's Marks; and
 - (ii) any and all trademarks, service marks and trade names used by such person(s) with respect to such products and/or services.

INTERROGATORY NO. 3:

State whether Applicant has any predecessors in title with respect to Applicant's Marks, and, if so:

- (a) identify said predecessor; and
- (b) explain how Applicant obtained title to Applicant's Marks and identify documents relating to acquisition or title to Applicant's Marks.

INTERROGATORY NO. 4:

Identify by title and brief description of duties and responsibilities Applicant's ten (10) primary employees whose duties and responsibilities include using or maintaining Applicant's Marks and Applicant's Goods and Services or overseeing the same.

INTERROGATORY NO. 5:

Identify by common commercial descriptive name each of Applicant's Goods and Services and for each:

- (a) state the date first offered for sale and first sold in the United States and identify all documents relating and/or referring thereto;
- (b) describe how Applicant's Marks are used or will be used in connection with the product or service;
- (c) state the number of units sold or given away (such as via promotional giveaways) and the dollar volume of revenue/sales from the date of first sale to the present, on a yearly basis;
- (d) state the percentage of sales from each channel of trade, including without limitation sales made on any of Applicant's Websites, and sales through each and every other such channel of trade.
- (e) state the dollar volume expended by Applicant in the United States in advertising or promoting the goods and/or services to date, on a yearly basis.

INTERROGATORY NO. 6:

Identify and describe each product or service which is not one of Applicant's Goods and Services but which Applicant intends to sell, offer or distribute (himself or by his authority) in connection with the Applicant's Marks, and state the basis for Applicant's claim of a bona fide intent to so use the Applicant's Marks for each good or service so identified including without limitation:

- (a) the intended date for first sale and first offer for sale in the United States;
- (b) how the Applicant's Marks will be used in connection with the product or service;
- (c) the projected number of units sold and dollar volume of revenue sales from projected date of first sale going forward on a yearly basis for at least five years;
- (d) the projected dollar volume of expenditures in the United States on advertising or promoting the goods and/or services from the present going forward on a yearly basis for at least five years.

INTERROGATORY NO. 7:

Identify representative copies of all tags, labels, product packaging, advertisements, catalogs, brochures, signs, and any other advertising or promotional materials which have ever been used or are proposed to be used by Applicant in connection with Applicant's Goods and Services.

INTERROGATORY NO. 8:

State the date Applicant decided to adopt Applicant's Marks for each of Applicant's Goods and Services, and identify the person(s) who first conceived of Applicant's Marks as a possible mark for use by Applicant and all documents referring or relating to such first conception.

INTERROGATORY NO. 9:

Identify each survey, market research investigation or other inquiry in the United States conducted by or on behalf of Applicant or of which Applicant has otherwise become aware that refers or relates to any designation comprising or incorporating the term BEANTOWN by stating for such inquiry:

- (a) the nature and purpose of such inquiry;
- (b) the date or if not possible, the approximate date such inquiry was conducted;
- (c) the name, address, and employer of such person who conducted or authorized the conduct of such inquiry; and
- (d) the results of such inquiry.

INTERROGATORY NO. 10:

Identify each contract, consent, permission, assignment, license, transfer of title or other interest, including any security interest, or other agreement into which Applicant has entered involving the use of Applicant's Marks by stating for each:

- (a) the name and address of each person who is or was a party thereto;
- (b) the inclusive dates thereof;
- (c) the marks and the products or services that are the subject thereof; and
- (d) the purpose thereof.

INTERROGATORY NO. 11:

Describe in detail how and when Applicant first became aware of Opposer's use of Opposer's Marks.

INTERROGATORY NO. 12:

Describe all instances of actual consumer confusion or mistake known to Applicant between (1) the source of Opposer's products and services marketed under Opposer's Marks and (2) the source of Applicant's Goods and Services, or between (1) the affiliation, sponsorship, or association between Applicant, Applicant's Marks, or Applicant's Goods and Services and (2)

Opposer, Opposer's Marks, or products or services offered or sold in connection with Opposer's Marks by or for Opposer.

INTERROGATORY NO. 13:

State whether Applicant contends that it is or will be a competitor of Opposer in any product or service market, and state the basis for that contention.

INTERROGATORY NO. 14:

List all media, whether written or electronic and from whatever source, where Applicant has advertised in the United States Applicant's Goods and Services or the goods or services identified in answer to Interrogatories Nos. 5 and 6.

INTERROGATORY NO. 15:

If you contend that there is no likelihood of consumer confusion or mistake between (1) the source of Opposer's products and services marketed under Opposer's Marks and (2) the source of Applicant's Goods and Services, or between (1) the affiliation, sponsorship, or association between Applicant, Applicant's Marks, or Applicant's Goods and Services and (2) Opposer, Opposer's Marks, or products or services offered or sold in connection with Opposer's Marks by or for Opposer, state the basis for that contention.

INTERROGATORY NO. 16:

Identify and describe each of Applicant's Websites, including without limitation for each such website:

- (a) all domain names to which the website is connected;
- (b) the volume of "hits" to the website, by year, since its inception; and
- (c) the revenue from the sale of Applicant's Goods and Services via the website.

INTERROGATORY NO. 17:

Identify any advertising agency engaged by Applicant to advertise and promote any of Applicant's Goods and Services or the goods or services identified in answer to Interrogatories Nos. 5 and 6.

INTERROGATORY NO. 18:

Describe in detail the trade channels or intended trade channels for each and any of Applicant's Goods and Services or the goods or services identified in answer to Interrogatories Nos. 5 and 6 which has been or is intended to be sold, offered for sale or provided, in the United States under Applicant's Marks and for each type of goods and/or services:

- (a) describe all methods by which sales/licensing revenue is or will be solicited at any level of distribution;
- (b) identify each type of distributor or proposed distributor and state the name and address of the six largest distributors, or proposed distributors, the name and address of the contact person or buyer of each said distributor, and the annual volume of said revenue since first distribution;
- (c) identify each type of customer or proposed customer, describe the ultimate use of the goods by such customer or proposed customer, and state the name and address of the six largest customers or estimated largest customers, and the name and address of the buyer and/or contact person of each said customer.

INTERROGATORY NO. 19:

Identify by type each purchaser and end user that has purchased, used, uses or will use each type of Applicant's Goods and Services which has been sold, is sold or will be offered for sale in the United States, including without limitation the age, gender, annual income, sophistication, and any other known demographics information for such purchaser and end user.

INTERROGATORY NO. 20:

For each of Applicant's Goods and Services, identify each type of business in the United States which currently sells or offers for sale, or will sell or offer for sale in the future, to the public or trade the Applicant's Goods and Services.

INTERROGATORY NO. 21:

With respect to trade or professional shows, identify all documents relating to Applicant's past, current and prospective advertising and/or promotion of Applicant's Marks on or in connection with the Applicant's Goods and Services. State with respect to each such advertisement or promotion:

- (a) its location, time and duration and sponsor;
- (b) the identity of all individuals involved in the preparation and/or participation of Applicant in the show;
- (c) a brief description of the exhibits or other advertising used or to be used at the show; and
- (d) the location and identification of all exhibits used or to be used at the show.

INTERROGATORY NO. 22:

Identify all objections made or received by Applicant and all legal proceedings instituted or defended by Applicant concerning use of trade names, trademarks, service marks or other designations concerning Applicant's Marks and/or related marks, and for each such objection or legal proceeding state the name, address and telephone number of all parties involved with any such legal proceedings or making or receiving such objections.

INTERROGATORY NO. 23:

Identify by name, occupation, professional title and present address, (1) all experts with whom Applicant has consulted or intends to consult regarding its use of the term BEANTOWN and/or Applicant's Marks, or (2) each individual whom Applicant intends to call as a witness in this proceeding, and for each individual through whom Applicant would offer evidence of the kind admissible under Fed. Rules of Evidence 701, 702, 703 and 705, state:

- (a) the subject matter on which each expert is expected to testify;
- (b) the substance of the facts to which each expert is expected to testify;
- (c) the substance of the opinions to which each expert is expected to testify; and
- (d) a summary of the grounds for each opinion.

Respectfully submitted,



Joshua M. Dalton

Devon R. Sparrow

BINGHAM McCUTCHEN LLP

One Federal Street

Boston, MA 02110

(617) 951-8000

Attorneys for Opposer,

Garber Bros., Inc.

Dated: June 3, 2013

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

In re Application Serial No. 76/705,356)	
)	
Mark: BEANTOWN EXPRESS (and Design))	
)	
Application Filing Date: November 16, 2010)	
)	
Garber Bros, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91209421
)	
U.S. Property Management Enterprise Inc.)	
)	
Applicant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** and this **CERTIFICATE OF SERVICE** were duly served upon Applicant by first-class mail, postage prepaid, on June 3, 2013 to the address set out below:

George Gregoriadis
U.S. Property Management Enterprise Inc.
7 Mosgrove Avenue
Roslindale, Massachusetts 02131

DATED: Boston, MA, June 3, 2013

By: 

Joshua M. Dalton
Devon R. Sparrow
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Attorneys for Opposer
Garber Bros., Inc.

EXHIBIT C

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

In re Application Serial No. 76/705,356)	
)	
Mark: BEANTOWN EXPRESS (and Design))	
)	
Application Filing Date: November 16, 2010)	
)	
Garber Bros, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91209421
)	
U.S. Property Management Enterprise Inc.)	
)	
Applicant.)	
)	

**OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO APPLICANT**

Opposer Garber Bros., Inc. (hereafter "Opposer"), by and through its attorneys, hereby requests, pursuant to Rule 34 of the Federal Rules of Civil Procedure, that Applicant U.S. Property Management Enterprise Inc. (hereafter "Applicant") produce the documents listed below for inspection and copying at the offices of Opposer's undersigned attorneys at Bingham McCutchen LLP, One Federal Street, Boston, Massachusetts 02110.

DEFINITIONS AND INSTRUCTIONS

I. DEFINITIONS

1. The terms "Applicant", "U.S. Property Management Enterprise Inc.", "you" and "your" mean Applicant U.S. Property Management Enterprise Inc. and any past or present predecessor, successor, parent, subsidiary, division or affiliate of either, and all persons acting on their behalf including, without limitation, present and former officers, directors, employees, attorneys, agents, and representatives thereof.

2. The term "Applicant's Marks" refer to the mark or name BEANTOWN EXPRESS by itself and/or in connection with other words and/or designs used by Applicant, and any other mark or name containing the term BEANTOWN, unless otherwise stated or is obvious from the context of the Interrogatory.

3. The term "Applicant's Goods and Services" means the goods and services provided, sold or offered for sale by or under the authority of Applicant in the United States, bearing, or promoted and/or sold in connection with, Applicant's Marks.

4. The term "Applicant's Websites" means any websites operated by or on behalf of Applicant, or any other domain name owned by Applicant, on which any of Applicant's Goods and Services are offered, promoted, or sold.

5. The terms "Opposer" and "Garber Bros." refer to Opposer Garber Bros., Inc., its subsidiaries, its divisions, its affiliates, its present and former officers and directors, employees, and agents, and all of those persons acting on its behalf.

6. The term "Opposer's Marks" refers to one or more of Opposer's marks BEANTOWN, BEANTOWN COFFEE, BEANTOWN COFFEE (and Design), and variations thereof as held by Opposer.

7. The term "documents" shall include, without limitation, all writings or works of authorship of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitation, correspondence, memoranda, literature, notes, diaries, statistics, letters, telegrams, advertisements, publications, brochures, ledgers, papers, drawings, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, messages, pamphlets, price lists, books, interoffice and intra-office communications, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without

limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, motion pictures), and any electronic, mechanical, computer, e-mail, or Internet records or representations of any kind (including, without limitation, tapes cassettes, discs, recordings, and computer memories).

8. "Representative" shall mean any present or former director, officer, partner, agent, counsel, accountant, employee, independent contractor, or other person acting on behalf of a corporation, professional corporation, firm, partnership, proprietorship, association, business, entity, or another person.

9. "Person" shall mean any individual, corporation, professional corporation, firm, partnership, proprietorship, association, government (or any agencies thereof), quasi-public entity, business, or other entity.

10. References to any person, entity or party herein includes his, her, or its agents, attorneys, employees, officers, directors, or others acting on behalf of said person, entity, or party.

11. "Communication" shall mean any manner or means of disclosure, transfer, or exchange, and any disclosure, transfer or exchange of information whether oral or written, or whether face-to-face, by telephone, mail, e-mail, direct computer transfer, or personal delivery.

12. "Identify" or "Identity" with regards to a person(s), means to give the name, present or last known address, and also if an individual, his present or last known employer, the address of the employer, and the position and job title of the individual.

13. "Identity" or "Identify" with regard to a document means to give the title of the document, the date of the document, the name of the person(s) who signed or prepared, or participated in the preparation of, such document, the name(s) of the person to whom the document was addressed, the name of each person to whom the document was given or sent, or who received such document or a copy thereof, the identity of each person having possession, custody or control of the document or thing, the present location of the

document or thing and all copies thereof and the nature and subject matter of the document or thing.

14. "Identity" or "Identify" when used with regard to a product means to give: (1) a general description sufficient to identify the item as a particular type of good; (2) all names, numbers, letters, or combinations thereof used internally (including, but not limited to, stock numbers, item numbers, warehouse designations and shipping references) to refer to the item, identify each such internal reference and its particular use; and (3) all names, numbers, letters, or combinations thereof used in communications with customers, distributors and retailers (including, but not limited to, sales, transactions, distributors and retailers).

II. INSTRUCTIONS

1. If a request is made for production or identification of documents which are no longer in your possession or subject to your control, state when such documents were most recently in your possession or subject to your control and what disposition was made of them, including an identification of the person presently in possession or control of such documents.

2. If a document is claimed to be privileged, you are to identify the document and state all requested information except its contents, together with a description of the subject matter of the document and the basis upon which privilege is claimed.

3. If a document once existed but has been destroyed, identify the document, and state when it was destroyed, who directed for it to be destroyed, who destroyed it, and the circumstances under which it was destroyed.

4. If any of the following requests cannot be answered in full, you are required to answer to the extent possible, specifying the reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion. In answering these requests, you have an obligation to make all reasonable efforts to obtain the information necessary to answer, including, for example,

examining all documents in your care, custody or within your control, and asking your attorney and any other persons who may have the necessary information.

5. If you withhold under a claim of privilege (including attorney work-product) any information requested by these Requests for Production, specify: (a) the nature of the privilege claimed, (b) the identity of the person making the communication, (c) the identity of each person present while the communication was made, (d) the date and place of the communication, (e) the general subject of the communication, and (f) the Request to which the withheld information is responsive.

6. As to any documents produced, identify the request(s) to which the documents are responsive.

7. These Requests for Production shall be deemed to be continuing and require supplemental or amended answers so that any additional information or documents responsive to these requests acquired by you throughout this proceeding shall be furnished to Applicant immediately after such documents are acquired or become known.

DOCUMENTS AND THINGS REQUESTED

1. A sample of each product sold or intended to be sold in the United States by or under the authority of Applicant, in connection with Applicant's Marks, and any documents reflecting or referring to the date the product was first offered for sale in commerce.

2. Documents sufficient to identify each product and service sold or intended to be sold in the United States by or under the authority of Applicant's Marks, including any documents reflecting or referring to the date the service was first offered for sale or sold in commerce.

3. Representative packaging, package inserts, labels and the like that have been or are intended to be used in the United States, by or under the authority of Applicant, in connection with Applicant's Goods and Services.

4. Documents concerning the number of units and the gross dollar sales, by year and by product, of Applicant's Goods and Services sold in the United States, from the introduction of such products to present date broken down by channel of trade, including without limitation those sold via any of Applicant's Websites, those given away (such as via promotional giveaways), and those sold via each and every other channel of trade.

5. Documents showing how Applicant's customers, distributors and retailers call for, describe, order or otherwise specify Applicant's Goods and Services, including, but not limited to, stock numbers, item numbers, warehouse designations and order forms used by Applicant's customers, distributors and retailers.

6. Documents, including, for example, invoices or licensing agreements, concerning the types of stores or channels of trade in which Applicant's Goods and Services are sold or intended to be sold, and the categories of consumers with whom Applicant does or will do business or to whom Applicant offers or will offer Applicant's Goods and Services.

7. Documents, including, for example, licensing agreements, concerning the types of stores or channels of trade in which any products or services mentioned in response to Opposer's Interrogatory No. 6 are intended to be sold, and the categories of consumers with whom Applicant will do business or to whom Applicant will offer such products or services.

8. Copies of all past, current and prospective advertisements and promotional and marketing materials for Applicant's Goods and Services, including Applicant's Websites, other websites, catalogs, circulars, sales sheets, price lists, leaflets, direct mail pieces, newspaper and magazine advertisements, telephone book advertisements, television and radio broadcasts, Internet advertisements and any such other materials used or proposed to be used by Applicant or any predecessor or related company related to Applicant's products or services or bearing or referring to the Applicant's Marks.

9. Documents sufficient to identify and describe each of Applicant's Websites, including without limitation for each such website:

- a. all domain names to which the website is connected;
- b. the volume of "hits" to the website, by year, since its inception; and
- c. the revenue from the sale of Applicant's Goods and Services via the website.

10. Documents sufficient to identify each outside firm, agency or other business which prepared or assisted in the preparation of each advertisement or item of promotional material in connection with Applicant's Goods and Services.

11. All documents reflecting Applicant's total yearly expenditures to date and planned future expenditures with respect to each type of advertising and promotion in connection with Applicant's Goods and Services in the United States.

12. All documents relating to Applicant's creation, consideration, design, development, selection, adoption, and first use or intended use of Applicant's Marks in the United States and any applications seeking registration thereof.

13. All documents relating to Applicant's decision to register or use Applicant's Marks in the United States.

14. All documents relating to Applicant's decision to advertise, offer, or sell Applicant's Goods and Services in the United States.

15. All documents showing the manner or purpose, or intended manner or purpose, in which Applicant uses or intends to use Applicant's Marks in the United States.

16. All documents showing the geographical areas in the United States where Applicant has sold or offered for sale, or intends to offer for sale, products or services under the Applicant's Marks, and the length of time during which such product or service was marketed or sold in each area.

17. All documents relating to the demographics or sophistication of individuals in the United States who have purchased Applicant's Goods and Services.

18. All documents relating to the demographics or sophistication of individuals in the United States who Applicant has targeted to purchase Applicant's Goods and Services.

19. All documents evidencing Applicant's shipment or distribution, or intent to ship or distribute, Applicant's Goods and Services in the United States.

20. All documents relating to Applicant's past, current or future marketing plans in the United States for any products or services referred to in response to Opposer's Interrogatory No. 6.

21. All documents relating to Applicant's past, current or future marketing plans for Applicant's Goods and Services in the United States.

22. All documents referring or relating to any contracts, consents, permissions, agreements, assignments, licenses or other transfer of title, or other interest to or from Applicant of any right in or otherwise relating to Applicant's Marks or similar names or marks.

23. All documents sent to or received from any third party (i.e., any person other than Applicant or Opposer) concerning the use by Applicant of the Applicant's Marks.

24. All documents sent to or received from any third party (i.e., any person other than Applicant or Opposer) concerning the use by the third party of Applicant's Marks or similar names or marks.

25. All documents which evidence, refer or relate to statements, inquiries, comments or other communications by or from Applicant's customers, competitors or other persons, either written or oral, relating to the quality of goods and/or services sold or offered for sale in connection with Applicant's Marks.

26. All documents relating to how and when Applicant first became aware of Opposer's use of Opposer's Marks, and any documents related to subsequent meetings or conversations regarding Opposer's use of Opposer's Marks.

27. All documents relating to any instance of actual or possible consumer confusion or mistake as to the source, affiliation, association or sponsorship of any kind

between (1) Opposer, Opposer's Marks, or any products or services offered or to be offered in the future in connection with Opposer's Marks and (2) Applicant, Applicant's Marks, or Applicant's Goods and Services.

28. All documents relating to whether Applicant and Opposer are or will be competitors in any product or service market.

29. All documents relating to any formal or informal trademark searches or investigations respecting the Applicant's Marks and any similar names or marks in the United States.

30. All documents relating to any objection, litigation, proceeding or other disputes respecting Applicant's use of, or application for registration of, any of Applicant's Marks.

31. Documents showing the channels of trade in which Applicant believes products in connection with Opposer's Marks are sold.

32. All reports, charts, graphs and opinions prepared, written or authored by any expert who you expect to testify at trial on your behalf, and all documents that such expert witness(es) will assert to support his or her (or their) opinions.

33. Documents concerning market research, surveys, polls, focus group studies, market studies or other investigations regarding Applicant's Marks.

34. Documents concerning market research, surveys, polls, focus group studies, market studies or other investigations regarding Opposer and/or Opposer's Marks.

35. All documents that refer to, mention, discuss, relate to, evidence, reflect or constitute the decision by Applicant to file the current application.

36. All documents that are responsive to Opposer's First Set of Interrogatories, but that are not part of any response to one of the above Requests for Production.

37. All documents not otherwise called for by the preceding requests that Applicant intends to submit in connection with this Opposition.

38. All documents provided to any individual who you may use to present evidence of the kind admissible under Federal Rules of Evidence 701, 702, 703, or 705.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Dalton", written over a horizontal line.

Joshua M. Dalton
Devon R. Sparrow
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Dated: June 3, 2013

Attorneys for Opposer,
Garber Bros., Inc.

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

In re Application Serial No. 76/705,356)	
)	
Mark: BEANTOWN EXPRESS (and Design))	
)	
Application Filing Date: November 16, 2010)	
)	
Garber Bros, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91209421
)	
U.S. Property Management Enterprise Inc.)	
)	
Applicant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT** and this **CERTIFICATE OF SERVICE** were duly served upon Applicant by first-class mail, postage prepaid, on June 3, 2013 to the address set out below:

George Gregoriadis
U.S. Property Management Enterprise Inc.
7 Mosgrove Avenue
Roslindale, Massachusetts 02131

DATED: Boston, MA, June 3, 2013

By: 
Joshua M. Dalton
Devon R. Sparrow
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Attorneys for Opposer
Garber Bros., Inc.

EXHIBIT D

Devon R. Sparrow, Esq.
Direct Dial: 617-951-8480
E-Mail: devon.sparrow@bingham.com

July 26, 2013

**Via First-Class Mail and
Certified Mail, Return Receipt Requested**

George Gregoriadis
U.S. Property Management Enterprise Inc.
7 Mosgrove Avenue
Roslindale, Massachusetts 02131

**Re: Applicant: U.S. Property Management Enterprise Inc.
Mark: BEANTOWN EXPRESS (and Design)
Opp. No.: 91209421
Our Ref.: GARBER-004**

Dear Mr. Gregoriadis:

On June 3, 2013, on behalf of Garber Bros., Inc., we served on you by first class U.S. Mail, postage pre-paid, Opposer's Initial Disclosures, Opposer's First Requests for Production to U.S. Property Management Enterprise Inc. (the "Requests") and Opposer's First Set of Interrogatories to U.S. Property Management Enterprise Inc. (the "Interrogatories"). Copies of these documents are enclosed for your reference.

Your responses to these discovery requests were due no later than July 8, 2013, but as of the date of this letter we have not received your answers, nor have we received any correspondence from you requesting an extension of time to respond to the discovery requests. We also note that we have not received your Initial Disclosures.

Unless we receive your Initial Disclosures and proper responses to the Interrogatories and Requests by August 2, 2013, we will file a copy of the enclosed motion under 37 C.F.R. § 2.120(e) asking the Trademark Trial and Appeal Board to compel you to answer our discovery requests.

Regards,


Devon R. Sparrow

Enclosures

cc: Joshua M. Dalton, Esq.

Bingham McCutchen LLP
One Federal Street
Boston, MA 02110-1726

T +1.617.951.8000
F +1.617.951.8736
bingham.com

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- Frankfurt
- Hartford
- Hong Kong
- London
- Los Angeles
- New York
- Orange County
- San Francisco
- Santa Monica
- Silicon Valley
- Tokyo
- Washington

conducting discovery. Although the Applicant stated that he would contact the Opposer the following week to further discuss discovery and a possible settlement of the Opposition, Opposer has not received any communications from the Applicant since May 10, 2013, despite the fact that Opposer has left several voicemail messages with the Applicant requesting a response.

4. In accordance with the Board's Scheduling Order, the deadline for the parties to submit their respective initial disclosures was June 1, 2013. As the deadline fell on a weekend, each party had until Monday, June 3, 2013 to serve initial disclosures on the other party. No initial disclosures have been received from the Applicant as of the date of this Motion.

5. On June 3, 2013, Opposer served on the Applicant Opposer's Initial Disclosures (the "Initial Disclosures"), Opposer's First Set of Interrogatories to Applicant (the "Interrogatories"), and Opposer's First Requests for Production (the "Requests"). Copies of Opposer's Initial Disclosures, Interrogatories and Requests are attached hereto as **Exhibits A-C**, respectively.

6. Pursuant to 37 C.F.R. § 2.2120(a)(3), Applicant's responses to Opposer's Interrogatories and Requests were due on July 3, 2013, with an additional five days added under 37 C.F.R. § 2.119(c).

7. No response to Opposer's Interrogatories and Requests was received by the July 8, 2013 due date, nor did the Applicant request an extension of time to file its response.

8. On July 24, 2013, Opposer sent the letter attached as **Exhibit D** regarding the Applicant's overdue obligations with respect to its initial disclosures and responses to the Opposer's Interrogatories and Requests.

9. Despite Opposer's attempts to contact the Applicant via telephone and written correspondence, the Opposer has not received any responsive communications from the Applicant since the parties held their Discovery Conference on May 10, 2013. Since that

time, the Applicant has generally failed and refused to comply with the deadlines set forth in the Scheduling Order.

10. By failing to object to Opposer's discovery or request an extension before the due date of July 8, 2013, Applicant has waived any right to object to the Opposer's Interrogatories or Requests. Fed R. Civ. P. 33(b)(4).

11. The Applicant's decision to represent itself *pro se*, and its apparent failure to understand its obligations, does not serve as a valid excuse for failing to comply with the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Strict compliance with the applicable regulations is expected of the Applicant, regardless of whether it is represented by counsel. McDermott v. San Francisco Women's Motorcycle Contingent, 81 U.S.P.Q.2d 1212, 1212 n.2 (TTAB 2006).

CONCLUSION

Based on the foregoing, Opposer respectfully requests that the Board issue an Order that compels Applicant to make its initial disclosures and provide responses to Opposer's discovery requests forthwith.

Respectfully submitted,

Joshua M. Dalton
Devon R. Sparrow
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Attorneys for Opposer,
Garber Bros., Inc.

Dated: August __, 2013

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

In re Application Serial No. 76/705,356)	
Mark: BEANTOWN EXPRESS (and Design))	
Application Filing Date: November 16, 2010)	
Garber Bros, Inc.,)	
Opposer,)	
v.)	Opposition No. 91209421
U.S. Property Management Enterprise Inc.)	
Applicant.)	

CERTIFICATE OF CONFERENCE

I hereby certify that Opposer, through its attorney, has made a good faith effort, by conference or correspondence, to resolve with the other party the issues presented in this motion, and has been unable to reach agreement.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION TO COMPEL INITIAL DISCLOSURES AND DISCOVERY RESPONSES** and this **CERTIFICATE OF SERVICE** were duly served upon Applicant by first-class mail, postage prepaid, on August __, 2013 to the address set out below:

George Gregoriadis
U.S. Property Management Enterprise Inc.
7 Mosgrove Avenue
Roslindale, Massachusetts 02131

DATED: Boston, MA, August ___, 2013 By:

Joshua M. Dalton
Devon R. Sparrow
BINGHAM McCUTCHEN LLP
One Federal Street
Boston, MA 02110
(617) 951-8000

Attorneys for Opposer
Garber Bros., Inc.

EXHIBIT E

Joshua M. Dalton
Direct Phone: 617.951.8284
Direct Fax: 617.428.6305
E-mail: josh.dalton@bingham.com

September 6, 2013

**Via Email and Certified Mail
Return Receipt Requested**

George Gregoriadis
U.S. Property Management Enterprise Inc.
7 Mosgrove Avenue
Roslindale, Massachusetts 02131

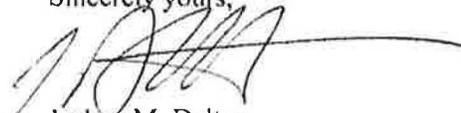
Re: **Applicant: U.S. Property Management Enterprise Inc.**
Mark: BEANTOWN EXPRESS (and Design)
Opp. No.: 91209421
Our Ref.: GARBER-004

Dear Mr. Gregoriadis:

We are writing in connection with the above captioned opposition proceedings between Garber Bros., Inc. and U.S. Property Management Enterprise Inc. As you are aware, on June 3, 2013, we served on you by first class U.S. Mail, postage pre-paid, Opposer's Initial Disclosures, Opposer's First Requests for Production to U.S. Property Management Enterprise Inc. (the "Requests"), and Opposer's First Set of Interrogatories to U.S. Property Management Enterprise Inc. (the "Interrogatories"). Your initial disclosures were due June 3, 2013, as well, and your responses to these discovery requests were due no later than July 8, 2013. Following our July 26, 2013 letter notifying you of your delinquency, we did eventually receive your August 8, 2013 email requesting an extension of time to prepare all of the required documents. However, as of the date of this letter, we have received no further communications from you.

We have now given you an additional month to respond. Unless we receive your Initial Disclosures and answers to the Interrogatories and Requests by Friday, September 13, 2013, we will file on behalf of our client a motion under 37 C.F.R. § 2.120(e) asking the Trademark Trial and Appeal Board to compel you to file your responses and disclosures.

Sincerely yours,


Joshua M. Dalton

Beijing
Boston
Frankfurt
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

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