

ESTTA Tracking number: **ESTTA597676**

Filing date: **04/09/2014**

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

| | |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 91210506 |
| Party | Defendant E! Entertainment Television, LLC |
| Correspondence Address | MICHAEL J MCCUE LEWIS ROCA ROTHGERBER LLP 3993 HOWARD HUGHES PKWY, STE 600 LAS VEGALS, 89169 UZBEKISTAN TRADEMARKS-LASVEGAS@LRRLAW.COM, MMCCUE@LRRLAW.COM |
| Submission | Motion to Compel Discovery |
| Filer's Name | Jonathan W. Fountain |
| Filer's e-mail | jfountain@lrrlaw.com, mmccue@lrrlaw.com |
| Signature | /Jonathan W. Fountain/ |
| Date | 04/09/2014 |
| Attachments | 2014.04.09 - Applicant's Mot. to Compel and Exhibits.pdf(3395162 bytes) |

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

OVATION, LLC,
a Delaware limited liability company,

Opposer,

v.

E! ENTERTAINMENT TELEVISION, LLC,
a Delaware limited liability company,

Applicant.

Opposition No. 91210506

Mark: POP OF CULTURE

Serial No. 85/569,798

APPLICANT’S MOTION TO COMPEL AND TO EXTEND DISCOVERY DEADLINES

Applicant E! Entertainment Television, LLC (“Applicant” and/or “E! Entertainment”) hereby moves the Board, pursuant to 37 C.F.R. § 2.120(e) and Federal Rule of Civil Procedure 37, for an order: (a) compelling Opposer Ovation, LLC (“Opposer” and/or “Ovation”) to either answer Interrogatory Nos. 2, 4-9, 14, and 15 fully and completely in writing, under oath, and without objection, or to serve amended answers that fully comply with Rule 33(d) of the Federal Rules of Civil Procedure; (b) compelling Opposer to produce documents in response to each of Applicant’s document requests without objection and specifically including RFP Nos. 4, 13, 14, and 23-24; (c) deeming RFA Nos. 2-4, 19-34, 63, 67-73, and 77-84 admitted or requiring Opposer to serve amended answers that fully detail Opposer’s reasonable investigation and the reasons why it cannot admit or deny these requests under oath; (d) deeming RFA Nos. 9-18, 37-47, 49-50, 53-57, 64-66, and 74 admitted, or requiring that Opposer serve amended, non-evasive, answers to these requests without objection; (e) deeming RFA Nos. 48, 51-52, and 75-76 admitted or requiring that amended, non-evasive, answers be served that respond to these

requests; (f) extending the time for Applicant to serve its written objections and responses to Opposer's discovery requests by 30 days; and (g) extending all remaining case management deadlines by 90 days.

As set forth in the accompanying Declaration of Michael J. McCue In Support of Applicant's Motion to Compel, Applicant has made a good faith effort to meet-and-confer with Opposer's counsel to resolve this dispute without the Board's intervention, but Opposer's counsel has refused to meet and confer, making this motion necessary. Accordingly, Opposer has not consented to this motion, and presumably, will oppose it.

STATEMENT OF FACTS

Applicant is a corporate affiliate of NBCUniversal Media, LLC and the owner of the popular E! Entertainment cable television network. (McCue Decl. ¶ 2.) On March 14, 2012, Applicant filed United States Trademark Application Serial No. 85/569798, seeking to register the mark POP OF CULTURE, for use in International Classes 38 and 41 in connection with, among other services, entertainment in the nature of television programming. (*Id.* ¶ 3.)

On April 29, 2013, Opposer Ovation LLC ("Opposer" and/or "Ovation") filed its Notice of Opposition, initiating these proceedings. (*Id.* ¶ 4.)

On May 3, 2013, the Board notified the parties of the case management deadlines that would apply to these proceedings. (*Id.* ¶ 5, Dkt. No. 2.) Expert disclosures were initially due on December 9, 2013, and discovery was initially scheduled to close on January 8, 2014. (*Id.*) Applicant appeared and answered on June 12, 2013. (*Id.* ¶ 6, Dkt. Nos. 4, 5.)

On November 12, 2013, Applicant served Opposer's counsel with Applicant's first set of discovery requests, namely, 16 interrogatories, 26 requests for the production of documents, and 85 requests for admissions. (*Id.* ¶ 7.) Opposer's written objections and responses were due 35

days later, on December 17, 2013. (*Id.*)

Between December 3, 2013 and March 31, 2014, Applicant's counsel exchanged several emails with Opposer's counsel, Ms. Jill Pietrini ("Ms. Pietrini") and Ms. Whitney Walters ("Ms. Walters") concerning responding to Applicant's discovery requests. (*Id.* ¶ 8.)

On December 3, 2013, Applicant's counsel received an email from Opposer's counsel, Ms. Walters, requesting that Applicant agree to a 30-day extension of time for Opposer to serve its written objections and responses to Applicant's discovery requests (*i.e.*, from December 17, 2013 until January 16, 2014), and that Applicant agree to a 60-day extension of all remaining case management deadlines. (*Id.* ¶ 9.)

On December 4, 2013, Applicant's counsel sent Ms. Walters an email agreeing to the requested extensions "as long as [Opposer] will not serve discovery requests on [Applicant] until [Opposer] responds to [Applicant's] discovery requests and agrees to a reciprocal 30-day extension of time for [Applicant] to respond to [Opposer's] discovery requests." (*Id.* ¶ 10.) At that point in time, Opposer had not yet served any discovery requests on Applicant. (*Id.*)

On December 4, 2013, Ms. Walters responded by email stating that: (a) Opposer would not agree to hold off on serving its own discovery requests until after it responded to Applicant's requests; (b) Opposer may be willing to grant Applicant a reciprocal 30-day extension of time for Applicant to respond to Opposer's discovery requests; and (c) Opposer should be able to respond to Applicant's discovery requests within 30 days. In addition, Opposer asked whether Applicant would consent to a 60-day extension of the case management deadlines. (*Id.* ¶ 11.)

On December 6, 2013, Applicant's counsel consented to a 60-day extension of the case management deadlines. (*Id.* ¶ 13.)

On December 6, 2013, Ms. Walters responded and indicated that she would prepare and

file the stipulation to extend the case management deadlines with the Board and that Opposer had agreed to give Applicant a 30-day extension of time to respond to Opposer's discovery requests, once they were served. (*Id.* ¶ 14.)

On December 10, 2013, Opposer filed a consent motion with the Board and the Board granted the parties a 60-day extension of the discovery and trial periods. (*Id.* ¶ 15.) The expert disclosure deadline was extended until February 7, 2014, and the discovery deadline was extended to March 9, 2014. (*Id.*)

On January 10, 2014, Ms. Walters sent me an email requesting an additional week to serve written objections and responses to Applicant's discovery requests (*i.e.*, from January 16, 2014 until January 23, 2014). (*Id.* ¶ 16.) She also stated that "We will give you the same [*i.e.*, an additional week to respond to Opposer's discovery requests] if you need it." (*Id.*) Applicant's counsel sent Ms. Walters an email agreeing to the request, provided that the parties also agree to extend the case management deadlines by an additional 60 or 90 days. (*Id.*) Ms. Walters responded by email on January 11, 2014, indicating that Opposer would agree to a second 60-day extension of the case management deadlines. (*Id.*)

On January 13, 2014, in accordance with this agreement, Applicant's counsel filed a consented motion with the Board and the Board granted the parties a second 60-day extension of the discovery and trial periods. (*Id.* ¶ 17.) The expert disclosure deadline was extended until May 8, 2014 and the discovery deadline was extended to June 7, 2014. (*Id.*)

On January 23, 2014, Opposer served its written objections and responses to Applicant's interrogatories, requests for the production of documents, and requests for admissions. (*Id.* ¶ 18.) Despite never having before raised the issue, in its written objections to Applicant's requests for the production of documents, Opposer ***refused to produce documents*** in the absence

of a protective order including documents Opposer claimed to be relying on in response to Applicant's interrogatories under Rule 33(d) of the Federal Rules of Civil Procedure. (*Id.*)

The next day, on January 24, 2014, Opposer served Applicant via first class mail with its first sets of discovery requests comprised of 33 interrogatories and 82 requests for production of documents. (*Id.* ¶ 19.)

On January 27, 2014, Applicant's counsel sent Ms. Walters an email concerning Opposer's failure to produce documents, highlighting the fact that Opposer had not previously indicated that it required a protective order or that it would not produce documents unless and until a protective order was entered. (*Id.* ¶ 20.) Applicant's counsel also asked Ms. Walters whether Opposer's counsel would consent to the Board's standard protective order. (*Id.*)

On January 29, 2014, the parties submitted a stipulated protective order to the Board, (*id.* ¶ 21.), which the Board approved. (*Id.*)

On February 6, 2014, Applicant's counsel sent Ms. Walters and Ms. Pietrini an email ***requesting that Opposer serve the documents*** pending the protective order. (*Id.* ¶ 22.)

On February 6, 2014, Ms. Pietrini responded and, among other things, proposed that the parties "delay the document production for both sides to minimize costs," ostensibly while the parties discuss settlement, but Ms. Pietrini also stated that Opposer would not entertain any settlement discussions without first receiving Applicant's responses to Opposer's discovery requests. (*Id.* ¶ 23.)

On February 6, 2014, Applicant's counsel telephoned Ms. Pietrini and left her a voicemail and then sent her and Ms. Walters an email requesting a telephone conference to discuss Opposer's February 6 proposal. (*Id.* ¶ 24.) Applicant's counsel received ***no response*** from either Ms. Walters or Ms. Pietrini. (*Id.*)

On February 10, 2014, Applicant’s counsel sent Ms. Pietrini and Ms. Walters an email and stated, among other things, that Applicant’s counsel would communicate Opposer’s request to “postpone [Opposer’s] document production” to Applicant and asked Ms. Pietrini and Ms. Walters to *specify when Opposer would produce its documents* if Applicant was not willing to accept a further delay of the document production. (*Id.* ¶ 25.)

On February 12, 2014, Opposer’s counsel, Ms. Pietrini sent me an email, copying Ms. Walters, stating, among other things, that Opposer would “begin [its] document production *shortly*,” and that she had “been out of the office for several months because of foot surgery and recently because of family issues, so to the extent there [was] any delay, the blame lies with [her].” (*Id.* ¶ 26.) (Emphasis added.)

On February 14, 2014, Applicant’s counsel sent Ms. Pietrini and Ms. Walters an email noting that Opposer had still not “identified any *date certain*” by which Opposer would produce the documents, and Applicant’s counsel proposed a 120-day suspension of the proceedings so that the parties could explore settlement. (*Id.* ¶ 27.) Applicant’s counsel also proposed a suspension of Opposer’s obligation to produce documents until 15 days after proceedings resumed and a suspension of Applicant’s obligation to respond to Opposer’s discovery requests until 45 days after proceedings resumed, if settlement discussions were unsuccessful. (*Id.*) Applicant’s counsel *specifically requested a response* indicating whether Opposer would accept the proposal and, if not, a “*date certain* by which [Opposer] [would] serve documents that [Opposer] relied on in response to interrogatories and the documents responsive to [Applicant’s] discovery requests.” (*Id.*) (Emphasis added.)

Having received *no response* to my email for 10 days, on February 24, 2014, Applicant’s counsel sent an email to Ms. Pietrini and Ms. Walters asking for a response to my February 14,

2014, email. (*Id.* ¶ 28.)

On February 24, 2014, Ms. Walters responded, stating that Ms. Pietrini had been out of the office because her stepfather had passed away. (*Id.* ¶ 29.) Applicant's counsel responded immediately indicating that Applicant's counsel understood. (*Id.*)

Because of the death of Ms. Pietrini's stepfather, Applicant's counsel waited another 3 weeks before Applicant's counsel attempted to contact Ms. Pietrini again. (*Id.* ¶ 30.) On March 14, 2014, Applicant's counsel sent Ms. Walters and Ms. Pietrini an email again asking for a response concerning Applicant's proposal of February 14 (which would have suspended both parties' discovery obligations) or, if the proposal was not acceptable, "a few dates and times" to *meet and confer* on Opposer's responses to Applicant's discovery requests and the status of Opposer's document production. (*Id.*)

Again, Applicant's counsel received *no response* from Opposer's counsel. (*Id.* ¶ 31.)

Then, approximately two weeks later, on March 27, 2014, Applicant's counsel emailed Ms. Walters and Ms. Pietrini and *again asked for a response* to Applicant's February 14 proposal or, in the alternative, for specific dates to *meet and confer* concerning Opposer's inadequate discovery responses and Opposer's failure to produce even a single document. (*Id.* ¶ 32.) Since Opposer's counsel had *not responded* to Applicant's proposal to suspend the proceeding and discovery pending settlement discussions that Applicant's counsel first proposed on February 14, Applicant's counsel also requested an extension of time, until April 29, for Applicant to serve its written objections and responses to Opposer's discovery requests. (*Id.*)

Finally, approximately 6 weeks after Applicant's February 14, 2014, proposal, Opposer's counsel finally provided a response. (*Id.* ¶ 33.) On March 28, 2014, Ms. Walters indicated that Opposer would not accept Applicant's February 14 proposal to suspend the proceedings pending

settlement discussion, stating that Opposer “prefer[s] to keep the proceeding moving forward” (although she would be on maternity leave and Ms. Pietrini was headed into trial). (*Id.*) However, despite my repeated requests, Ms. Walters did not identify a *date certain* on which Opposer would produce documents and did not provide the requested dates to *meet and confer*. (*Id.*) Although Applicant had waited 6 weeks for a response from Opposer regarding suspension of the proceeding to discussion settlement (including suspending discovery obligations), Opposer refused to grant Applicant a 30-day extension of time to respond to discovery. Instead, Opposer offered a 5-day extension of time as a “professional courtesy.” (*Id.*)

On March 31, 2014, Applicant’s counsel emailed Ms. Walters and Ms. Pietrini. Applicant’s counsel noted that Opposer had waited 6 weeks to respond to the February 14 proposal, Opposer still failed to produce any documents (giving itself a *de facto* extension of time), and Opposer still failed to respond to requests to meet and confer. (*Id.* ¶ 34.) Applicant’s counsel also explained that Applicant had been prejudiced by Opposer’s failure to produce documents, particularly given the rapidly approaching May 8, 2014 deadline for the disclosure of experts and Opposer’s refusal to further extend the case management deadlines. (*Id.*) Applicant’s counsel also requested that Opposer *immediately* produce the withheld documents. (*Id.*)

As of April 9, 2014, Applicant’s counsel received *no response* from Opposer’s counsel to the March 31, 2014, email. (*Id.* ¶ 35.) Instead, on Saturday, April 5, 2014, Applicant’s counsel received an email from Opposer’s law firm with a link to 485 pages of documents. (*Id.* ¶ 36.) The documents consist of: (a) 252 pages consisting of the USPTO file histories for the parties’ respective marks; (b) 98 pages from Opposer’s own website, Facebook, YouTube, Twitter, and Pinterest pages/accounts; (c) 64 pages of Internet articles concerning Applicant and/or Opposer;

and (d) 71 pages from various websites. (*Id.*)

These documents do not respond to the vast majority of Applicant's interrogatories and documents requests. (*Id.* ¶ 37.) Opposer relied on Rule 33(d) of the Federal Rules of Civil Procedure (in whole or in part) to answer Interrogatory Nos. 2, 5, 6, 7, 8, 9, 14, and 15. However, Opposer did not, among other things, specifically identify any documents that respond to these interrogatories. (*Id.*) Nor do these documents respond to the vast majority of Applicant's document requests. (*Id.*) More specifically, they do not respond at all to Document Request Nos. 1-6, 14-20, and 22-26, and only minimally to Document Request Nos. 7-11, 13, and 21. (*Id.*) Opposer produced no internal documents, no emails, no letters, no business plans, no strategy documents, no memoranda, no presentations, or trademark search reports of any kind (even though Opposer has suggested that a search report exists). (*Id.*) Notably, many, if not most of the documents bear footers indicating that they were printed in February and March, but Opposer has provided no reason for withholding these documents until April 2014. (*Id.*)

To date, Opposer: (a) ***has produced only the limited publicly available documents*** in response to Applicant's November 12, 2013 requests; (b) has not provided a specification showing Applicant which documents respond to Applicant's interrogatories; and (d) has not responded to Applicant's efforts to schedule a ***meet and confer*** to address Opposer's failure to produce documents or Opposer's deficient discovery responses. (*Id.* ¶ 38.)

Applicant has attempted to confer with Opposer's counsel to resolve the above-noted issues, but that Opposer's counsel has failed to communicate, making this motion to compel necessary. (*Id.* ¶ 39.)

///

///

ARGUMENT

I. THE BOARD SHOULD COMPEL OPPOSER TO ANSWER APPLICANT'S INTERROGATORIES FULLY AND COMPLETELY OR COMPLY WITH FEDERAL RULE OF CIVIL PROCEDURE 33(d).

A. The Board Should Compel Opposer To Answer Interrogatory No. 4 Because The Answer Opposer Gave is Non-Responsive.

Interrogatory No. 4 states the following: "Explain whether the CULTUREPOP Mark as used by Opposer is descriptive or inherently distinctive and state all facts supporting Opposer's position." Opposer responded to this interrogatory with a laundry-list of conclusory and boilerplate objections which appear to have not been interposed in good faith, but rather, to stonewall and avoid answering a clearly relevant question. To the extent Opposer did answer, Opposer's answer is non-responsive. Opposer states: "The mark CULTUREPOP is not descriptive as evidenced by the PTO's allowance of the application without a descriptiveness refusal or a Section 2(f) requirement." This response, however, does not answer the question asked. It does not address any of the ways in which Opposer has used the CULTUREPOP mark or discuss whether any such use is descriptive. It merely states a conclusion ginned-up with a reference to the prosecution history of the mark. This is clearly insufficient, as "an evasive or incomplete disclosure, answer, or response, must be treated as a failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(4). Accordingly, the Board should compel Opposer to answer Interrogatory No. 4 fully and completely under oath.

B. The Board Should Compel Opposer to Answer Interrogatory Nos. 2, 5-9, and 14-15 Fully and Completely or, in the Alternative, to Fully Comply With Federal Rule of Civil Procedure 33(d) Because Opposer Relied on Rule 33(d) But Has Not Provided a Specification, and Has Not Shown That the Parties' Burdens Are the Same.

Again, Opposer responded to each of these interrogatories with a laundry-list of conclusory and boilerplate objections which appear not to have been interposed in good faith, but

rather, for the purpose of stonewalling Applicant and avoiding answering clearly relevant questions. Opposer answered each of these interrogatories, either in whole, or in part, by relying on the option to produce business records in lieu of answering set forth in Federal Rule of Civil Procedure 33(d). That portion of the rule, states the following:

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

- (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
- (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Fed. R. Civ. P. 33(d); *see also Jain v. Ramparts, Inc.*, 49 U.S.P.Q.2d 1429 (T.T.A.B. 1998).

While Opposer produced a small number of publicly available documents, Opposer has failed to satisfy the requirements of Rule 33(d) of the Federal Rules of Civil Procedure.

“[I]f a party wishes to respond by invoking this option, the responding party must identify the documents which are known to contain the responsive information” Gary D. Krugman, *Trademark Trial and Appeal Board Practice and Procedure* § 3:74 (2012); Fed. R. Civ. P. 33(d). Here, Opposer ***has completely failed to specify*** which documents it would have to review to determine the answers to any of these interrogatories.

In addition, Opposer has failed to show that answering the interrogatories would impose a burden significant enough to merit the application of Rule 33(d). Rule 33(d) is not properly invoked simply because Opposer does not want to answer Applicant's interrogatories or because doing so would require the normal and modest burden generally associated with responding to discovery requests. “[T]he courts have found that Rule 33(d) is implicitly limited to situations in

which answering the interrogatory would impose a *significant* burden on the responding party.” 8B Charles Alan Wright et al. eds., Federal Practice and Procedure Civ. § 2178 (3d ed. & Supp. 2013) (emphasis added). Here, Opposer has failed to show that answering Applicant’s interrogatories would impose a burden beyond the burden ordinarily associated with discovery and significant enough to require application of Rule 33(d).

Moreover, Opposer has *completely failed* to present any evidence that the burden of ascertaining the answers is substantially the same for both parties. See, e.g., *Little Hocking Water Ass’n v. E.I. Du Pont De Nemours & Co.*, No. 2:09-cv-1081, 2013 WL 608154, at *44 (S.D. Ohio Feb. 19, 2013) (granting motion to compel answers to interrogatories in absence of evidence that the burden of ascertaining or deriving the answers from business records was substantially the same for both parties); Fed. R. Civ. P. 33(d) (advisory committee’s note to 1970 amendment) (“A respondent may not impose on an interrogating party a mass of records as to which research is feasible only for one familiar with the records.”); *Pascale v. G.D. Searle & Co.*, 90 F.R.D. 55, 61 (D.P.R. 1981) (“If a party could invoke Rule 33[d] in every such case, by claiming that the ‘burden’ of ‘deriving’ the information from the records is substantially the same for both parties, discovery would be thwarted at every turn.”).

In sum, Opposer has not demonstrated that the answers to these interrogatories may be “determined by examining, auditing, compiling, abstracting, or summarizing a [its] business records (including electronically stored information)” Opposer has not demonstrated that “the burden of deriving or ascertaining the answer will be substantially the same for either party.” Opposer has not specified “the records that must be reviewed, in sufficient detail to enable [Applicant] to locate and identify them as readily as [Opposer] could.” And Opposer has not given Applicant “a reasonable opportunity to examine and audit the records and to make

copies, compilations, abstracts, or summaries” because Opposer has not identified and produced responsive documents. In short, Opposer has failed to comply with every single one of the requirements set forth in Rule 33(d).

Accordingly, the Board should enter an order compelling Opposer to answer Interrogatory Nos. 2, 5-9, and 14-15 fully and completely and without objection or, in the alternative, to fully comply with Federal Rule of Civil Procedure 33(d), without objection.

II. THE BOARD SHOULD COMPEL OPPOSER TO PRODUCE ALL DOCUMENTS APPLICANT REQUESTED WITHOUT OBJECTION.

A. The Board Should Compel Opposer to Produce The Documents it Said it Would Produce But to Date, Has Not.

As was the case with Applicant’s interrogatories, Opposer asserted pages and pages of conclusory and boilerplate objections which appear not to have been interposed in good faith, but rather, for the purpose of stonewalling Applicant and avoiding having to produce documents in response to Applicant’s clearly relevant document requests. Of the 26 requests for the production of documents Applicant served on Opposer, Opposer completely objected to 5 requests -- Nos. 4, 13-14, and 23-24, indicating that it would not produce documents in response to those requests. With respect to the remaining 21 requests, Opposer said it would produce a copy of its search report in response to Request Nos. 6-8. With respect to Request Nos. 1-3, 5-12, 15-22, and 25-26, Opposer stated that it would produce responsive, non-privileged documents in its possession, custody, or control if such documents exist.

On Saturday, April 5, Applicant’s counsel received an email from Opposer’s law firm with a link to 485 pages of documents. (McCue Decl. ¶ 36.) As indicated above, the documents consist of limited publicly available documents, such as trademark file histories, screen shots of websites, and the like. (*Id.*)

These documents, however, do not respond to the vast majority of Applicant's documents requests. More specifically, they do not respond at all to Document Request Nos. 1-6, 14-20, and 22-26, and only minimally respond to Document Request Nos. 7-11, 13, and 21. (McCue Decl. ¶ 37.) Opposer produced no internal documents of any kind. Opposer has not even produced the trademark search report it said it would produce in response to Request Nos. 6-8. Moreover, none of Opposer's responses state that it has conducted a diligent search to locate responsive documents. However, Opposer is obligated to check its records thoroughly to provide the requested documents. *See Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718, 1720 (T.T.A.B. 1987).

Accordingly, the Board should compel Opposer to produce all responsive, non-privileged, documents in its possession, custody, or control responsive to Request Nos. 1-3, 5-12, 15-22, and 25-26.

B. The Board Should Specifically Compel Opposer to Produce Documents In Response to RFP Nos. 4, 13-14, and 23-24.

1. RFP No. 4:

This request seeks "All documents referring or relating to Opposer's decision to apply for a registration of the CULTUREPOP Mark." Opposer interposed boilerplate objections to this request claiming that it is vague, ambiguous, overbroad, unduly burdensome, oppressive, seeks confidential and privileged documents, and seeks irrelevant documents. Opposer has not stated how the request is vague, ambiguous, or overbroad. Nor has Opposer identified any particular burden or otherwise described how this request is "oppressive." Since a protective order is in place, Opposer's concern about protecting confidential information is a non-issue. In addition, nothing in the request expressly seeks privileged documents and Applicant is not seeking the production of privileged documents. Moreover, the Board has long held that information

concerning a party's selection and adoption of its trademark is discoverable. *See* TBMP § 414(4) & n. 5 (citing *Varian Associates v. Fairfield-Noble Corp.*, 188 U.S.P.Q. 581, 583 (T.T.A.B. 1975) (must identify knowledgeable employees); *Goodyear Tire & Rubber Co. v. Tyrco Indus.*, 186 U.S.P.Q. 207, 208 (T.T.A.B. 1975) (whether applicant received opinions concerning adoption of mark is not privileged and applicant must identify person, date and documents relating thereto); *Volkswagenwerk Aktiengesellschaft v. MTD Products Inc.*, 181 U.S.P.Q. 471, 473 (T.T.A.B. 1974) (identification of persons who suggested use of involved mark on involved goods is not improper).

2. RFP No. 13:

This request seeks “All documents reflecting Opposer’s use of the phrase ‘pop culture’ or ‘popular culture’ in connection with any of goods and services offered under the CULTUREPOP Mark.” Documents concerning how Opposer has used the phrase “pop culture” and/or “popular culture” in connection with goods or services offered under Opposer’s CULTUREPOP mark are directly relevant to the weakness of Opposer’s mark including whether Opposer’s mark is merely descriptive.

3. RFP No. 14:

This request seeks “All documents reflecting the content of Opposer’s television programming offered under the CULTUREPOP mark, including, without limitation, scripts and transcriptions.” Documents concerning the nature of Opposer’s goods and services are clearly relevant to the relatedness of the parties’ goods and services and the class of potential consumers of Opposer’s goods and services, both of which are factors used to assess potential confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 (C.C.P.A. 1973).

///

4. RFP No. 23:

This request seeks “All documents reflecting any association between pop culture and Opposer’s CULTUREPOP Mark.” Documents concerning an association between pop culture and Opposer’s CULTUREPOP mark are directly relevant to the weakness of Opposer’s mark including whether Opposer’s mark is merely descriptive.

5. RFP No. 24:

This request seeks “All documents reflecting any association between popular culture and Opposer’s CULTUREPOP Mark.” Documents concerning an association between popular culture and Opposer’s CULTUREPOP mark are directly relevant to the weakness of Opposer’s mark including whether Opposer’s mark is merely descriptive.

Here, because Opposer has failed to substantiate any of its boilerplate objections and because the requested documents are clearly relevant, the Board should enter an order compelling Opposer to produce documents in response to RFP Nos. 4, 13-14, and 23-24.

IV. THE BOARD SHOULD COMPEL OPPOSER TO RESPOND TO ADMIT OR DENY APPLICANT’S REQUESTS FOR ADMISSIONS WITHOUT OBJECTION.

Of Applicant’s 85 requests for admissions, Opposer admitted or denied just 13 of Applicant’s 85 requests. Opposer admitted RFA Nos. 6 and 7. Opposer denied RFA Nos. 1, 5, 8, 35-36, 58-62, and 85. Of the remaining 72 requests, Opposer claims to lack sufficient information to admit or deny 35 requests, Nos. 2-4, 19-34, 63, 67-73, and 77-84. Opposer objected and refused to provide any response to 32 requests, RFA Nos. 9-18, 37-47, 49-50, 53-57, 64-66, and 74. And Opposer provided a non-responsive answer to five requests, RFA Nos. 48, 51-52, and 75-76.

///

///

A. The Board Should Compel Opposer to Admit or Deny RFA Nos. 2-4, 19-34, 63, 67-73, and 77-84.

In response to each of these requests, Opposer cited a laundry list of boilerplate objections, and failed to admit or deny the requests. The Board, however, should enter an order compelling Opposer to admit or deny each of these requests. While Opposer claims that it has conducted a reasonable investigation and that the information currently available to it is insufficient to admit or deny these requests, Opposer has not provided any details concerning the scope or conduct of its investigation. Rather, Opposer simply concludes, without providing any facts, that its investigation was “reasonable.” This, however, does not satisfy the requirements of Rule 36. As one court has stated:

We are not persuaded that an answer to a request for admission necessarily complies with Rule 36(a) merely because it includes a statement that the party has made reasonable inquiry and that the information necessary to admit or deny the matter is not readily obtainable by him. The discovery process is subject to the overriding limitation of good faith.

Asea, Inc. v. Southern Pac. Transp. Co., 669 F.2d 1242, 1246-47 (9th Cir. 1981); *Han v. United States Dep’t of Agriculture*, 580 F. Supp. 1564, 1566 (D. N.J. 1984) (“[P]laintiff states in his brief: ‘plaintiff has responded that he has insufficient information to admit or deny same as defendant has refused to provide discovery in this regard.’ On its face, this response is inadequate under Rule 36(a), ***for it fails to allege and specify any reasonable inquiry undertaken to obtain information which would enable plaintiff to admit or deny the admissions requested.***”). As the Ninth Circuit has further held: “The Rule was amended in 1970 to adopt the majority view that a party may not refuse to admit or deny a request for admission based upon a lack of personal knowledge if the information relevant to the request is reasonably available to him.” *Asea, Inc.*, 669 F.2d at 1245 (citing 8 Charles Alan Wright et al. eds., *Federal Practice and Procedure* § 2261 (1970)).

“Thus, Rule 36 requires the responding party to make a reasonable inquiry, a reasonable effort, to secure information that is readily obtainable from persons and documents within the responding party’s relative control and to state fully those efforts.” *A. Farber & Partners, Inc. v. Garber*, 237 F.R.D. 250, 254 (C.D. Cal. 2006). “Such reasonable inquiry includes an investigation and inquiry of employees, agents, and others, who conceivably, but in realistic terms, may have information which may lead to or furnish the necessary and appropriate response.” *Id.*

Applicant believes that Opposer has not, in fact, conducted a good faith investigation, or any investigation, whatsoever for the purpose of responding to Applicant’s requests. Applicant believes that Opposer is stonewalling in an attempt to evade Applicant’s discovery requests. Indeed, as set forth above, Opposer has failed to respond to no less than 35 of Applicant’s 85 requests for admissions, citing its allegedly reasonable inquiry and lack of information. Further, Opposer’s claims that it lack information sufficient to admit or deny appear highly disingenuous in several instances. Just a few examples are sufficient to make the point:

- RFA No. 3 asked Opposer to “[a]dmit that ‘pop culture’ is a well-known phrase in the United States.”
- RFA No. 4 asked Opposer to “[a]dmit that ‘pop culture’ is short for ‘popular culture.’”
- RFA No. 19 asked Opposer to “[a]dmit that entertainment is considered part of popular culture.”

Opposer said it lacked sufficient information to admit or deny each of these simple requests. However, none of these propositions are controversial. Yet Opposer said it lacked sufficient information to admit or deny. These responses and all of the others cited are

disingenuous, as is Opposer's conclusory and unsupported statement that it has conducted a reasonable inquiry and that the information available to it is insufficient is evasive and not interposed in good faith, but rather, to thwart Applicant's efforts to obtain discovery. "[A]n evasive or incomplete disclosure, answer, or response must be treated as a failure to respond." Fed. R. Civ. P. 37(a)(4). "On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served." Fed. R. Civ. P. 36(a)(6).

Accordingly, for the reasons set forth above, the Board should enter an order deeming RFA Nos. 2-4, 19-34, 63, 67-73, and 77-84 admitted or requiring that amended answers be served that fully detail Opposer's reasonable investigation and the reasons why it cannot admit or deny these requests.

B. The Board Should Compel Opposer to Admit or Deny RFA Nos. 9-18, 37-47, 49-50, 53-57, 64-66, and 74.

Opposer objected to each of these 32 requests in their entirety by interposing boilerplate objections. However, as with the responses discussed above, Opposer's objections are either meritless or simply disingenuous. Indeed, as just a few examples indicate, Opposer should have easily been able to admit or deny these simple requests.

- RFA No. 39 states: "Admit that third parties use the term 'pop culture' to refer to Media regarding entertainment."
- RFA No. 43 states: "Admit that third parties use the term 'pop culture' to refer to Media regarding new music."
- RFA No. 66 states: "Admit that you were not the first to use a mark comprised of the terms 'pop' and 'culture' in connection with Media in the United States."
- RFA No. 74 states: "Admit that you have not used the CULTUREPOP Mark in

connection with all of the goods and services identified in Serial No. 85096252.

Opposer's boilerplate objections are nothing more than a transparent attempt to avoid having to respond to Applicant's requests. The Board should not endorse Opposer's interposition of boilerplate objections as a means of dodging its discovery obligations. "[A]n evasive or incomplete disclosure, answer, or response must be treated as a failure to respond." Fed. R. Civ. P. 37(a)(4). "On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served." Fed. R. Civ. P. 36(a)(6). Accordingly, the Board should also enter an order deeming RFA Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 53, 54, 55, 56, 57, 64, 65, 66, and 74 admitted or requiring that amended, non-evasive, answers be served that respond to these requests.

C. The Board Should Compel Opposer to Admit or Deny RFA Nos. 48, 51-52, and 75-76.

1. RFA No. 48:

This request states: "Admit that you describe television programming offered under the CULTUREPOP Mark as relating to popular culture." Opposer's response states: "Opposer admits that CulturePOP, the content service owned by Opposer, is described as offering a daily culture content service." This is non-responsive because Applicant asked how Opposer describes television programming, not how it "is described" by others.

2. RFA No. 51:

This request states: "Admit that you do not own trademark rights in 'popular culture.'" Opposer's response states: "Opposer admits that it has not filed an application for federal registration of the trademark POPULAR CULTURE." This is non-responsive because Applicant did not ask Opposer about whether it had filed a trademark application.

3. RFA No. 52:

This request states: “Admit that you do not own trademark rights in ‘pop culture.’” Opposer’s response states: “Opposer admits that it has not filed an application for federal registration of the trademark POP CULTURE.” This is non-responsive because Applicant did not ask Opposer about whether it had filed a trademark application.

4. RFA No. 75:

This request states: “Admit that you are not aware of any instances of actual confusion among consumers arising from E!’s use of the POPULAR CULTURE Mark.” Opposer’s response states: “Opposer is not aware of the existence of any actual confusion as of yet. This is non-responsive because Applicant did not ask Opposer to qualify its answer with “as of yet,” and, if Opposer became aware of an instance of actual confusion, it remains free to supplement its answer.

5. RFA No. 76:

This request states: “Admit that you are not aware of any instances of actual confusion among consumers arising from E!’s use of the E POP OF CULTURE Mark.” Opposer’s response states: “Opposer is not aware of the existence of any actual confusion as of yet. Again, this is non-responsive because Applicant did not ask Opposer to qualify its answer with “as of yet,” and, if Opposer became aware of an instance of actual confusion, it remains free to supplement its answer.

In each instance, these answers are evasive. “[A]n evasive or incomplete disclosure, answer, or response must be treated as a failure to respond.” Fed. R. Civ. P. 37(a)(4). “On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.” Fed. R. Civ. P. 36(a)(6). Accordingly, the

Board should also enter an order deeming RFA Nos. 48, 51-52, and 75-76 admitted or requiring that amended, non-evasive, answers be served that respond to these requests.

V. THE BOARD SHOULD EXTEND THE TIME FOR APPLICANT TO SERVE ITS WRITTEN OBJECTIONS AND RESPONSES TO OPPOSER'S JANUARY 24, 2014 DISCOVERY REQUESTS BY 30 DAYS.

The Board should enter an order extending the time for Applicant to serve its written objections and responses to Opposer's discovery requests because, *for six full weeks*, between February 14, 2014 and March 28, 2014, Opposer's counsel refused to respond to Applicant's proposal to suspend the proceedings to discuss settlement, including the time for Applicant to serve its written objections and responses to Opposer's discovery requests. During this time period, Applicant made periodic efforts to contact Opposer's counsel, but, because of a death in the family of one of Opposer's lawyers, Applicant did not aggressively press Opposer's counsel for a response and did not reasonably expect that Opposer would suddenly be concerned about maintaining the current discovery schedule, given Opposer's ongoing failure to produce documents.

Accordingly, given Opposer's counsel's failure to respond to Applicant's counsel's February 14 proposal for six full weeks, good cause exists for a further extension of time for Applicant to serve its written objections and responses to Opposer's January 24, 2014 discovery requests. Applicant seeks a 30-day extension of time to May 9, 2014.

VI. THE BOARD SHOULD EXTEND ALL REMAINING CASE MANAGEMENT DEADLINES BY 90 DAYS.

"A party upon whom discovery is served cannot impede the progress of its opponent's discovery by failing to respond in a timely manner. The Board will, upon motion, 'reopen and extend discovery solely for the benefit of a party whose opponent, by wrongfully refusing to answer, or delaying its responses to, discovery, has unfairly deprived the propounding party of

the right to take follow-up.” 1 Jeffery A. Handleman, Guide to TTAB Practice § 12.06[B] (2008 & Supp. 2011) (citing *Miss America Pageant v. Petite Productions, Inc.*, 17 U.S.P.Q.2d 1067, 1070 (T.T.A.B. 1990); *Neville Chem. Co. v. The Lubrizol Corp.*, 184 U.S.P.Q. 689, 690 (T.T.A.B. 1975)).

As set forth above, it took nearly 6 months for Opposer to serve a single document in this case. Even then, Opposer’s document production and its discovery responses are substantially deficient. Applicant’s efforts to obtain responses from Opposer to requests to meet and confer have been met with silence or non-responses. Opposer’s counsel has stonewalled discovery from the beginning and continuing to the present. Accordingly, good cause exists to extend the remaining case management deadlines. Applicant seeks a 90-day extension of time.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Board enter an order: order: (a) compelling Opposer Ovation, LLC (“Opposer” and/or “Ovation”) to either answer Interrogatory Nos. 2, 4-9, 14, and 15 fully and completely in writing, under oath, and without objection, or to serve amended answers that fully comply with Rule 33(d) of the Federal Rules of Civil Procedure; (b) compelling Opposer to produce documents in response to each of Applicant’s document requests without objection and specifically including RFP Nos. 4, 13, 14, and 23-24; (c) deeming RFA Nos. 2-4, 19-34, 63, 67-73, and 77-84 admitted or requiring Opposer to serve amended answers that fully detail Opposer’s reasonable investigation and the reasons why it cannot admit or deny these requests under oath; (d) deeming RFA Nos. 9-18, 37-47, 49-50, 53-57, 64-66, and 74 admitted, or requiring that Opposer serve amended, non-evasive, answers to these requests without objection; (e) deeming RFA Nos. 48, 51-52, and 75-76 admitted or requiring that amended, non-evasive, answers be served that respond to these

requests; (f) extending the time for Applicant to serve its written objections and responses to Opposer's discovery requests by 30 days; and (g) extending all remaining case management deadlines by 90 days.

Dated: this 9th day of April, 2014.

LEWIS ROCA ROTHGERBER LLP

By: /s/ Jonathan W. Fountain
Michael J. McCue
Jonathan W. Fountain
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
(Tel.) 702-949-8200
(Fax) 702-949-8398

Attorneys for Applicant
E! Entertainment Television, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2014, I served a true and accurate copy of the foregoing document entitled, APPLICANT’S MOTION TO COMPEL, by first-class, United States mail, upon the following counsel for Opposer:

Jill M. Pietrini, Esq.
Whitney Walters, Esq.
Sheppard Mullin Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6017

/s/ Jonathan W. Fountain
An employee of Lewis and Roca LLP

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

OVATION, LLC,
a Delaware limited liability company,

Opposer,

v.

E! ENTERTAINMENT TELEVISION, LLC,
a Delaware limited liability company,

Applicant.

Opposition No. 91210506

Mark: POP OF CULTURE

Serial No. 85/569798

**DECLARATION OF MICHAEL J. McCUE
IN SUPPORT OF APPLICANT'S MOTION TO COMPEL**

I, Michael J. McCue, declare under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am a partner of Lewis Roca Rothgerber LLP, counsel for Applicant E! Entertainment Television LLC (“Applicant” and/or “E! Entertainment”). This declaration is based upon my own personal knowledge and I am competent to testify to the facts set forth herein.

2. Applicant is a corporate affiliate of NBCUniversal Media, LLC and the owner of the popular E! Entertainment cable television network.

3. On March 14, 2012, Applicant filed United States Trademark Application Serial No. 85/569798, seeking to register the mark POP OF CULTURE, for use in International classes 38 and 41 in connection with, among other services, entertainment in the nature of television programming.

4. On April 29, 2013, Opposer Ovation LLC (“Opposer” and/or “Ovation”) filed its Notice of Opposition, initiating these proceedings.

5. On May 3, 2013, the Board notified the parties of the case management deadlines that would apply to these proceedings. (Dkt. No. 2.) Expert disclosures were initially due on 12/9/2013 and discovery was initially scheduled to close on 1/8/2014. (*Id.*)

6. Applicant appeared and answered on June 12, 2013. (Dkt. Nos. 4, 5.)

7. On November 12, 2013, my office served Opposer’s counsel by mail with Applicant’s first set of discovery requests, namely, 16 interrogatories, 26 requests for the production of documents, and 85 requests for admissions. True and accurate copies are attached hereto as Exhibits B, C and D, respectively. Opposer’s written objections and responses were due 35 days later, on December 17, 2013. *See* TBMP § 405.04(a) (time for response is 30 days

plus five days if served by mail).

8. Between December 3, 2013 and March 31, 2014, I exchanged several emails with Opposer's counsel, Ms. Jill Pietrini ("Ms. Pietrini") and Ms. Whitney Walters ("Ms. Walters") concerning responding to Applicant's discovery requests. True and accurate copies of the most relevant emails are attached hereto as Exhibit A in chronological order.

9. On December 3, 2013, I received an email from Opposer's counsel, Ms. Walters, requesting that Applicant agree to a 30-day extension of time for Opposer to serve its written objections and responses to Applicant's discovery requests (*i.e.*, from December 17, 2013 until January 16, 2014), and that Applicant agree to a 60-day extension of all remaining case management deadlines. (Ex. A at 1, Email @ 11:27 AM.)

10. On December 4, 2013, I sent Ms. Walters an email agreeing to the requested extensions "as long as [Opposer] will not serve discovery requests on [Applicant] until [Opposer] responds to [Applicant's] discovery requests and agrees to a reciprocal 30-day extension of time for [Applicant] to respond to [Opposer's] discovery requests." (Ex. A at 2, Email @ 10:01 AM.) At that point in time, Opposer had not yet served any discovery requests on Applicant.

11. On December 4, 2013, Ms. Walters responded by email stating that: (a) Opposer would not agree to hold off on serving its own discovery requests until after it responded to Applicant's requests; (b) stating that Opposer may be willing to grant Applicant a reciprocal 30-day extension of time for Applicant to respond to Opposer's discovery requests; (c) stating that Opposer should be able to respond to Applicant's discovery requests within 30 days; and (d) asking whether Applicant would consent to a 60-day extension of the case management deadlines. (Ex. A at 2, Email @ 3:51 PM.)

12. On December 5, 2013, Ms. Walter's sent me an email requesting a response to her proposal for a 60-day extension of the case management deadlines. (Ex. A at 2, Email @ 5:08 PM.)

13. On December 6, 2013, I responded to Ms. Walter's email and indicated that Applicant would consent to a 60-day extension of the case management deadlines. (Ex. A at 3, Email @ 1:05 AM.)

14. On December 6, 2013, Ms. Walters responded to my email and indicated that she would prepare and file the stipulation to extend the case management deadlines with the Board and that Opposer had agreed to give Applicant a 30-day extension of time to respond to Opposer's discovery requests, once they were served. (Ex. A at 3, Email @ 5:52 AM.)

15. On December 10, 2013, Opposer filed a consent motion with the Board and the Board granted the parties a 60-day extension of the discovery and trial periods. (Dkt. Nos. 6, 7.) The expert disclosure deadline was extended until February 7, 2014, and the discovery deadline was extended to March 9, 2014. (*Id.*)

16. On January 10, 2014, Ms. Walters sent me an email requesting an additional week to serve written objections and responses to Applicant's discovery requests (*i.e.*, from January 16, 2014 until January 23, 2014). (Ex. A at 3, Email @ 1:45 PM.) She also stated that "We will give you the same [*i.e.*, an additional week to respond to Opposer's discovery requests] if you need it." (*Id.*) I sent Ms. Walters an email agreeing to the request, provided that the parties also agree to extend the case management deadlines by an additional 60 or 90 days. (Ex. A at 4, Email @ 3:35 PM.) Ms. Walters responded by email on January 11, 2014, indicating that Opposer would agree to a second 60-day extension of the case management deadlines. (Ex. A at 4, Email @ 1:37 PM.)

17. On January 13, 2014, in accordance with this agreement, my office filed a consented motion with the Board and the Board granted the parties a second 60-day extension of the discovery and trial periods. (Dkt. Nos. 8, 9.) The expert disclosure deadline was extended until May 8, 2014 and the discovery deadline was extended to June 7, 2014. (*Id.*)

18. On January 23, 2014, Opposer served its written objections and responses to Applicant's interrogatories, requests for the production of documents, and requests for admissions. True and accurate copies are attached hereto as Exhibits E, F, and G, respectively. Despite never having before raised the issue, in its written objections to Applicant's requests for the production of documents, Opposer *refused to produce documents* in the absence of a protective order including documents Opposer claimed to be relying on to Applicant's interrogatories pursuant to Rule 33(d) of the Federal Rules of Civil Procedure. (*Id.*)

19. On January 24, 2014, Opposer served Applicant via first class mail with its first sets of discovery requests comprised of 33 interrogatories and 82 requests for production of documents.

20. On January 27, 2014, I sent Ms. Walters an email concerning Opposer's failure to produce documents, highlighting the fact that Opposer had not previously indicated that it required a protective order or that it would not produce documents unless and until a protective order was entered. (Ex. A at 5, Email @ 10:38 AM.) I also asked Ms. Walters whether Opposer's counsel would consent to the Board's standard protective order. (*Id.*)

21. On January 29, 2014, the parties submitted a stipulated protective order to the Board, (Dkt. No. 11), which the Board approved on March 7, 2014. (Dkt. No. 12.) In its order approving the protective order, the Board noted that "Discovery and trial dates remain as reset in the Board's January 13, 2014 order." (*Id.*)

22. On February 6, 2014, I sent Ms. Walters and Ms. Pietrini an email *requesting that Opposer serve the documents* that it withheld since the Board had entered the parties' stipulated protective order. (Ex. A at 5, Email @ 10:24 AM.)

23. On February 6, 2014, Ms. Pietrini responded to my email and, among other things, proposed that the parties "delay the document production for both sides to minimize costs," ostensibly while the parties discuss settlement, but Ms. Pietrini also stated that Opposer would not entertain any settlement discussions without first receiving Applicant's responses to Opposer's discovery requests. (Ex. A at 5, Email @ 11:30 AM.)

24. On February 6, 2014, I telephoned Ms. Pietrini and left her a voicemail and then sent her and Ms. Walters an email requesting a telephone conference to discuss Opposer's February 6 proposal. (Ex. A at 6, Email @ 11:52 AM.) I received *no response* from either Ms. Walters or Ms. Pietrini.

25. On February 10, 2014, I sent Ms. Pietrini and Ms. Walters an email and stated, among other things, that I would communicate Opposer's request to "postpone [Opposer's] document production," to Applicant, and I asked Ms. Pietrini and Ms. Walters to *specify when Opposer would produce its documents* if Applicant was not willing to accept a further delay of the document production. (Ex. A at 6, Email @ 4:03 PM.)

26. On February 12, 2014, Opposer's counsel, Ms. Pietrini sent me an email, copying Ms. Walters, stating, among other things, that Opposer would "begin [its] document production *shortly*," and that she had "been out of the office for several months because of foot surgery and recently because of family issues, so to the extent there [was] any delay, the blame lies with [her]." (Ex. A at 7, Email @ 2:25 PM) (Emphasis added.)

27. On February 14, 2014, I sent Ms. Pietrini and Ms. Walters an email noting that

Opposer had still not “identified any *date certain* by which [Applicant] will receive the documents,” and I proposed a 120-day suspension of the proceedings so that the parties could explore settlement. (Ex. A at 7-8, Email @ 2:21 PM.) I also proposed a suspension of Opposer’s obligation to produce documents until 15 days after proceedings resumed and a suspension of Applicant’s obligation to respond to Opposer’s discovery requests until 45 days after proceedings resumed, if settlement discussions were unsuccessful. (*Id.*) I *specifically requested a response* indicating whether Opposer would accept the proposal and, if not, a “*date certain* by which [Opposer] [would] serve documents that [Opposer] relied on in response to interrogatories and the documents responsive to [Applicant’s] discovery requests.” (*Id.*) (Emphasis added.)

28. Having received *no response* to my email for ten days, on February 24, 2014, I sent an email to Ms. Pietrini and Ms. Walters asking for a response to my February 14, 2014, email. (Ex. A at 8, Email @ 1:30 PM.)

29. On February 24, 2014, Ms. Walters responded, stating that Ms. Pietrini had been out of the office because her stepfather had passed away. (Ex. A at 9, Email @ 1:33 PM.) I responded immediately indicating that I understood. (Ex. A at 9, Email @ 1:42 PM.)

30. Because of the death of Ms. Pietrini’s stepfather, I waited another 3 weeks before I attempted to contact Ms. Pietrini again. On March 14, 2014, I sent Ms. Walters and Ms. Pietrini an email again asking for a response concerning Applicant’s proposal of February 14 (which would have suspended both parties’ discovery obligations) or, if the proposal was not acceptable, “a few dates and times” to *meet and confer* on Opposer’s responses to Applicant’s discovery requests and the status of Opposer’s document production. (Ex. A at 9, Email @ 9:38 AM.)

31. Again, I received *no response* from Opposer's counsel.

32. Then, approximately two weeks later, on March 27, 2014, I emailed Ms. Walters and Ms. Pietrini *and again asked for a response* to Applicant's February 14 proposal or, in the alternative, for specific dates to *meet and confer* concerning Opposer's inadequate discovery responses and Opposer's failure to produce even a single document. (Ex. A at 10, Email @ 12:10 PM.) Since Opposer's counsel had *not responded* by my offer to suspend the proceeding and discovery pending settlement discussions that I first proposed on February 14, I also requested an extension of time, until April 29, for Applicant to serve its written objections and responses to Opposer's discovery requests. (*Id.*)

33. Finally, approximately 6 weeks after my February 14, 2014, email, I finally received a substantive response. On March 28, 2014, Ms. Walters sent me an email in which she stated, for the first time that Opposer would not accept Applicant's February 14 proposal to suspend the proceedings pending settlement discussion, stating that Opposer "prefer[s] to keep the proceeding moving forward" (although she would be on maternity leave and Ms. Pietrini was headed into trial). (Ex. A at 10, Email @ 11:37 AM.) However, despite my repeated requests, Ms. Walters did not identify a *date certain* on which Opposer would produce documents and did not provide the requested dates to *meet and confer*. Although Applicant had waited 6 weeks for a response from Opposer regarding suspension of the proceeding to discussion settlement (including suspending discovery obligations), Opposer refused to grant Applicant a 30-day extension of time to respond to discovery. Instead, Opposer offered a 5-day extension of time as a "professional courtesy."

34. On March 31, 2014, I emailed Ms. Walters and Ms. Pietrini. I noted that Opposer had waited 6 weeks to respond to my February 14 email and Opposer still failed to produce any

documents (giving itself a *de facto* extension of time), and Opposer still failed to respond to my requests to meet and confer. I also explained that Applicant had been prejudiced by Opposer's failure to produce documents, particularly given the rapidly approaching May 8, 2014 deadline for the disclosure of experts and Opposer's refusal to further extend the case management deadlines. (Ex. A at 11, Email @ 9:29 AM.) I also requested that Opposer *immediately* produce the withheld documents. (*Id.*)

35. As of April 4, 2014, I received *no response* from Opposer's counsel to my March 31, 2014, email.

36. On Saturday, April 5, I received an email from Opposer's counsel with a link to 485 pages of documents. The documents consist of: (a) 252 pages consisting of the USPTO file histories for the parties' respective marks; (b) 98 pages from Opposer's own website, Facebook, YouTube, Twitter, and Pinterest pages/accounts; (c) 64 pages of Internet articles concerning Applicant and/or Opposer; and (d) 71 pages from various websites.

37. These documents do not respond to the vast majority of Applicant's interrogatories and documents requests. Opposer relied on Rule 33(d) of the Federal Rules of Civil Procedure (in whole or in part) to answer Interrogatory Nos. 2, 5, 6, 7, 8, 9, 14, and 15. However, Opposer did not identify any significant burden sufficient to justify the application of Rule 33(d), did not make any showing that the burden of deriving the answers are substantially the same for both parties, and, most importantly, did not specifically identify any documents that respond to these interrogatories. Nor do these documents respond to the vast majority of Applicant's document requests. More specifically, they do not respond at all to Document Request Nos. 1-6, 14-20, and 22-26, and only minimally respond to Document Request Nos. 7-11, 13, and 21. Opposer produced no internal documents, emails, letters, business plans, strategy

documents, memoranda, presentations, or trademark search reports of any kind were produced. Notably, many, if not most of the documents bear footers indicating that they were printed in February and March, but Opposer has provided no reason for withholding these documents.

38. To date Opposer: (a) *has produced only the aforementioned documents* in response to Applicant's November 12, 2013 requests; (b) has not indicated when, if ever, it will complete its document production; (c) has not provided a specification showing Applicant which documents respond to Applicant's interrogatories; and (d) has not responded to my efforts to schedule a *meet and confer* to address Opposer's failure to produce documents or Opposer's deficient discovery responses.

39. Accordingly, I hereby certify that, pursuant to Trademark Rule 2.120(e), I have attempted to confer with Opposer's counsel to resolve the above-noted issues, but that Opposer's counsel has failed and refused to so confer, making this motion to compel necessary.

Executed: April 9, 2014.

/s/ Michael J. McCue
Michael J. McCue

Exhibit A

Exhibit A

From: Whitney Walters [<mailto:wwalters@sheppardmullin.com>]
Sent: Friday, August 09, 2013 1:18 PM
To: McCue, Michael
Subject: RE: Ovation v E! Entertainment

Michael,

I see that our initial disclosures are due Monday, and I need some additional time. Would you agree to a one-week extension of our time to serve them? Thanks in advance.

Best,

Whitney

From: McCue, Michael [<mailto:MMcCue@lrlaw.com>]
Sent: Friday, August 09, 2013 1:41 PM
To: Whitney Walters
Subject: RE: Ovation v E! Entertainment

Whitney: Sure. We can use another week as well. Thanks, Michael

From: Whitney Walters [<mailto:wwalters@sheppardmullin.com>]
Sent: Tuesday, December 03, 2013 11:27 AM
To: McCue, Michael
Subject: RE: Ovation v E! Entertainment

Michael,

I just returned to the office and received the discovery requests you served on November 12, 2013. I have been out of commission for the past couple of weeks for medical reasons. My partner, Jill Pietrini, has also been out of the office for the last six weeks, as she had foot surgery in late October. In light of this, I am wondering if you will consent to a 30-day extension of our time to respond to discovery and an extension of all deadlines in the scheduling order by 60 days. Please let me know if this would be acceptable.

Thanks in advance,

Whitney

From: McCue, Michael [<mailto:MMcCue@lrrlaw.com>]
Sent: Wednesday, December 04, 2013 10:01 AM
To: Whitney Walters
Subject: RE: Ovation v E! Entertainment

Hi Whitney: Yes, we can agree to the extensions as long as Ovation will not serve discovery requests on us until it responds to our discovery requests and agrees to a reciprocal 30-day extension of time for us to respond to Ovation's requests. If that is ok, can you prepare the stip? Also, is there any news on Ovation's settlement position? I think last time we spoke Ovation still wanted E! to stop use of the POP OF CULTURE mark. Is Ovation willing to settle for anything short of cessation of use? Thanks, Michael

From: Whitney Walters
Sent: Wednesday, December 04, 2013 3:51 PM
To: 'McCue, Michael'
Subject: RE: Ovation v E! Entertainment

Thanks, Michael. We were planning to serve our discovery shortly, so I can't agree not to serve discovery until we respond to yours, but if we agree to give Ovation a reciprocal extension of time to respond to ours, would that work? I will confirm that it works on our end and also confirm how much additional time we really need to respond to your discovery. I conservatively said 30 days with the holidays approaching, but it may not be that long. We would still like to extend the deadlines by 60 days in any event.

As far as settlement goes, do you have anything concrete to propose?

Let me know.

Thanks,

Whitney

From: Whitney Walters [<mailto:wwalters@sheppardmullin.com>]
Sent: Thursday, December 05, 2013 5:08 PM
To: McCue, Michael
Subject: RE: Ovation v E! Entertainment

Does this work for you?

Thanks,

Whitney

From: McCue, Michael [<mailto:MMcCue@Irrlaw.com>]
Sent: Friday, December 6, 2013 1:05 AM
To: Whitney Walters
Subject: RE: Ovation v E! Entertainment

Whitney: Yes, that's fine. With respect to settlement, I do not have a proposal. Since your client initiated the action, I again pose the question whether your client is willing to settle for anything less than E!'s cessation of use of POP OF CULTURE. If not, there is no reason to talk. If so, then we can explore what might be workable. Thanks, Michael

From: Whitney Walters
Sent: Friday, December 06, 2013 5:52 AM
To: McCue, Michael
Cc: Jill Pietrini
Subject: Re: Ovation v E! Entertainment

Thanks Michael. I will inquire. We will also prepare the stipulation extending the schedule by 60 days. As to discovery responses, we agree to give each other reciprocal extensions up to 30 days.

Whitney

From: Whitney Walters [<mailto:wwalters@sheppardmullin.com>]
Sent: Friday, January 10, 2014 1:45 PM
To: McCue, Michael
Subject: RE: Ovation v E! Entertainment

Michael,

Happy New Year. Pursuant to the parties' agreement, our discovery responses are due Thursday, January 16. Will you agree to give us an extra week to respond? We will give you the same if you need it.

Thanks,

Whitney

From: McCue, Michael [<mailto:MMcCue@lrrlaw.com>]
Sent: Friday, January 10, 2014 3:35 PM
To: Whitney Walters
Subject: RE: Ovation v E! Entertainment

Hi Whitney: Happy new year. Yes, no problem on the additional week if we can bump out remaining deadlines another 60 or 90 days. Also, we have not received service of any discovery requests from you, but your email may imply that you have sent some. Can you let me know? Thanks, Michael

From: Whitney Walters [<mailto:wwalters@sheppardmullin.com>]
Sent: Friday, January 10, 2014 3:38 PM
To: McCue, Michael
Subject: RE: Ovation v E! Entertainment

Thanks, Michael. Let me confer with my partner Jill on the remaining deadlines and get back to you. We haven't yet served the discovery – I can't remember if I told you, but I'm pregnant with twins and was out sick a good portion of November and December, so I'm a little behind as a result.

From: McCue, Michael [<mailto:MMcCue@lrrlaw.com>]
Sent: Friday, January 10, 2014 3:44 PM
To: Whitney Walters
Subject: RE: Ovation v E! Entertainment

Whitney: Wow! Congratulations on the twins. Sorry you have been sick. Let me know what Jill says. Thanks, Michael

From: Whitney Walters [wwalters@sheppardmullin.com]
To: McCue, Michael
Cc:
Subject: RE: Ovation v. E! Entertainment
Sent: Sat 1/11/2014 1:37 PM

Thanks so much, Michael. The extension is fine with us. Can you prepare and file the stipulation?

Whitney

From: McCue, Michael
To: 'Whitney Walters'
Cc: Fountain, Jonathan; LV IP Litigation
Subject: E!/Ovation: Protective Order
Sent: Mon 1/27/2014 10:38 AM

Whitney: We received service of Ovation's discovery responses. I will address the discovery responses in a separate email/letter after I have had the chance to review them in detail. However, I noticed that Ovation is refusing to produce documents without a protective order, including documents you are relying on under Rule 33(d). Ovation would have raised the need for a protective order during the 10 weeks between service of the requests and responses. In any event, please let me know by COB on Wednesday whether Ovation will agree to the standard TTAB protective order and, if not, what changes Ovation proposes. Thanks, Michael

From: McCue, Michael [<mailto:MMcCue@Irrlaw.com>]
Sent: Thursday, February 06, 2014 10:24 AM
To: Whitney Walters; Jill Pietrini
Subject: E!/Ovation

Jill and Whitney: Now that the protective order has been entered, can you send me the document production or are you making the documents available for production? Also, before we get too far into discovery, can we have a discussion about whether there is any prospect of settlement? I have time this afternoon or tomorrow. Thanks, Michael

From: Jill Pietrini [<mailto:JPietrini@sheppardmullin.com>]
Sent: Thursday, February 06, 2014 11:30 AM
To: McCue, Michael; Whitney Walters
Subject: RE: E!/Ovation

Hi Michael:

It would be helpful to have your client's responses to our interrogatories before we discuss settlement. If we served RFAs as well, it would be helpful to have those too. We can delay the document production for both sides to minimize costs, but we have already answered all of your discovery and it would be a bit one-sided settlement discussion without having your client's responses. Our client is interested in settlement, but would like to have the information requested. Is that acceptable to you?

From: McCue, Michael
Sent: Thursday, February 06, 2014 11:52 AM
To: 'Jill Pietrini'; Whitney Walters
Subject: RE: E!/Ovation

Hi Jill: I left you a vm. Do you have a few minutes to chat via telephone? Michael

From: McCue, Michael [<mailto:MMcCue@lrrlaw.com>]
Sent: Monday, February 10, 2014 4:03 PM
To: Jill Pietrini; Whitney Walters
Subject: RE: E!/Ovation

Jill and Whitney: I am writing to follow up on my voice mail and email from last Thursday. I wanted to address a few issues by phone, but will go ahead and set them forth in this email.

First, although we have received Ovation's responses to written discovery requests, we have not received any of the documents that Ovation relied on pursuant to Rule 33(d). In effect, we do not have answers to interrogatories that relied on Rule 33(d). Please produce those documents immediately.

Second, since our responses to Ovation's discovery requests are not due for some time, are you suggesting that the parties hold off on any settlement discussion until we respond? If there is specific information that Ovation believes it needs to have a settlement discussion, then perhaps we can provide that information in some other form. However, I do not understand how settlement discussions would be "one-sided" when the basic information regarding the parties' use of the marks at issue is public and the parties must already have some sense regarding what, if anything, they are willing to do to settle the matter.

Third, I will let you know as soon as possible whether my client is willing to postpone Ovation's document production but, if not, when will you produce the documents requested?

Finally, we are reviewing Ovation's objections and response to E!'s discovery requests and we will get back to you to discuss any additional issues.

Thanks,

Michael

From: Jill Pietrini JPietrini@sheppardmullin.com
To: McCue, Michael; Whitney Walters
Cc:
Subject: RE: E!/Ovation
Sent: Wed 2/12/2014 2:25 PM

Michael:

I am a bit confused by your response. You apparently believed that you needed discovery from Ovation before broaching settlement. We would like the same. We will begin our document production shortly. I have been out of the office for several months because of foot surgery and recently because of family issues, so to the extent there is any delay, the blame lies with me.

The parties can discuss settlement in earnest, but we would like to have your client's discovery responses, just as your client did.

From: McCue, Michael
To: 'Jill Pietrini'
Cc: 'Whitney Walters'
Subject: E!/Ovation
Sent: Fri 2/14/2014 2:21 PM

Jill:

I am sorry to hear about your foot surgery and family issues. When requested, we have granted requests for extensions of time and we are generally amenable to granting such requests.

In your email, you assumed that E! needed discovery from Ovation before broaching settlement. However, I broached settlement with Whitney on July 18, 2013, 4 months prior to serving discovery requests. I specifically asked whether Ovation was willing to settle and, if so, on what terms. I also asked whether Ovation is interested in discussing settlement short of E! stopping use of the mark at issue. After not receiving any substantive response, we proceeded with serving discovery requests in November 2013.

I do not understand why Ovation needs discovery in advance of discussing settlement. Since this is a trademark case, the parties' use of the marks at issue and their respective services offered under the marks is public. Since Ovation initiated this proceeding, I assume it has some idea regarding the terms on which it is willing to settle this matter. As I indicated in my prior email, if there is something specific that Ovation needs to know before commencing settlement discussions, we will consider providing it. However, E! is not going to unnecessarily incur fees in responding to discovery

requests that are artificially tied to commencing settlement discussions. Moreover, since Ovation agreed that E! would have a reciprocal extension of time (i.e., a total of 67 days to respond to discovery requests), the requests would not be due until the end of March. By that time, we will have little time left to discuss settlement and, if settlement fails, complete discovery on time.

With respect to Ovation's document production, we served our requests more than 3 months ago. After asking for and receiving 2 extensions of time to respond, Ovation had 67 days to respond to the document requests and assemble responsive documents. Ovation obtained additional time by waiting until serving the responses to raise the need for a protective order. Now that the protective order has been entered, we still do not have any documents from Ovation, including the documents that Ovation allegedly relied on in support of its interrogatory responses, which should have been produced with the interrogatory responses. In response to my request below, Ovation has not identified any date certain by which we will receive the documents.

Notwithstanding any of the foregoing, if Ovation is genuinely interested in discussing settlement, E! proposes the following:

1. The parties would agree to suspend the opposition for a period of time (we propose 120 days) to enable the parties to engage in good faith efforts to settle the matter (provided that Ovation's settlement position cannot be that E! cease use of the mark at issue) and that the parties have an initial in person meeting (with or without outside counsel present) to discuss settlement within 45 days after the date on which we file a motion to suspend. If the parties are unable to settle the matter during the suspension period, then the proceeding will resume.
2. Ovation will produce documents responsive to E!'s requests within 15 days after proceedings resume. E! reserves all of its rights to challenge Ovation's objections and the sufficiency of its responses.
3. E! will serve responses to Ovation's first set of written discovery requests within 45 days after proceedings resume.

Please let me know if E!'s proposal is acceptable. If not, please provide a proposed date certain by which Ovation will serve the documents that Ovation relied on in response to interrogatories and the documents responsive to our document requests. We will let you know whether the proposed date is acceptable or not. If not, we can resolve the dispute with the Board.

Thanks,
Michael

On Feb 24, 2014, at 1:30 PM, "McCue, Michael" <MMcCue@Irrlaw.com> wrote:

Jill: Can you please provide a response to my email below? Thanks, Michael

From: Whitney Walters [<mailto:wwalters@sheppardmullin.com>]
Sent: Monday, February 24, 2014 1:33 PM
To: McCue, Michael
Cc: Jill Pietrini
Subject: Re: E!/Ovation

Michael,

Jill's stepfather passed away last week, so she has been out of the office attending to family matters. I know she will respond to your email as soon as she can.

Whitney

From: McCue, Michael
Sent: Monday, February 24, 2014 1:42 PM
To: 'Whitney Walters'
Cc: Jill Pietrini
Subject: RE: E!/Ovation

Whitney: I am sorry to hear that. Thanks for letting me know. Thanks, Michael

From: McCue, Michael
Sent: Friday, March 14, 2014 9:38 AM
To: 'Whitney Walters'
Cc: 'Jill Pietrini'
Subject: RE: E!/Ovation

Whitney: One month has passed since I conveyed the proposal below. I understand and empathize with the family tragedy, but at this point the clock is ticking on the TTAB schedule and E!'s responses to Ovation's discovery requests, which are due on April 4. If Ovation is interested, the proposal I conveyed below is still on the table. However, in the interim, we need to move forward. Please let me know a few dates and times that you are available to confer on Ovation's responses to E!'s discovery requests and Ovation's document production. Thanks, Michael

From: McCue, Michael [<mailto:MMcCue@lrrlaw.com>]
Sent: Thursday, March 27, 2014 12:10 PM
To: Whitney Walters
Cc: Jill Pietrini
Subject: RE: E!/Ovation

Whitney: We have not received any response to our proposal below for a settlement procedure or, in the alternative, our request that Ovation provide proposed dates to meet and confer on Ovation's discovery responses. I have been assuming that, under the circumstances, you and/or Jill have not had time to address the matter. While we are waiting for a response, E! requests an additional extension of time to respond to Ovation's discovery requests to April 29. This will provide us and you with more breathing room to address this case. Please let me know. Thanks, Michael

From: Whitney Walters [wwalters@sheppardmullin.com]
To: McCue, Michael
Cc: Jill Pietrini
Subject: RE: E!/Ovation
Sent: Fri 3/28/2014 11:37 AM

Michael,

We continue to believe that it is necessary for Ovation to have the benefit of E!'s discovery responses (in particular, E!'s responses to interrogatories and RFAs) before the parties begin to discuss settlement. Given that E!'s responses are due April 4, 2014, we suggest waiting until after that to broach settlement. Jill is in trial starting April 7, and I am going on pregnancy leave within the next week. Nonetheless, based on our limited information about the E! show, we are working on a proposed coexistence agreement. However, we reserve the right to modify the terms once we receive your client's discovery responses.

In the meantime, if E! has a concrete settlement proposal to make, please send it to us. While you made some settlement overtures at the outset of the case, indicating E! openness to considering a settlement demand from Ovation, E! has never proposed any terms of its own. We invite you to do so, as that will give the parties a starting point for discussions in April. Since the discovery deadline in this case has been extended to June 7, 2014, we prefer to keep the proceeding moving forward while the parties pursue the possibility of a good faith resolution.

As to your request for an extension, we note that the current deadline of April 4, 2014 already reflects two prior reciprocal extensions of time (one for 30 days and another for 7 days). However, we will give you until April 9, 2014, to serve responses as a professional courtesy.

Best,

Whitney

From: McCue, Michael
To: 'Whitney Walters'
Cc: 'Jill Pietrini'
Subject: E! Ovation
Sent: Mon 3/31/2014 9:29 AM

Whitney: While I am encouraged to hear that Ovation is working on a proposed settlement agreement, we have procedural issues that must be addressed.

We made a proposal regarding settlement on February 14 that included postponing our responses to discovery requests. In the alternative, we asked you to provide a date certain by which you would produce Ovation's long-overdue document production. Ten days later, on February 24, you responded and indicated that Jill's father had passed away. Given the personal circumstances, I waited another 3 weeks -- until March 14 -- to reach out again regarding the February 14 proposal. I also asked you to provide dates and times to meet and confer on Ovation's discovery responses. You did not respond. Assuming that you and Jill were addressing family issues, I waited another couple of weeks to March 27, when I asked you again for a response to my February 14 email and again for dates on which we can meet and confer regarding Ovation's discovery responses. I also asked for an extension of 30 days for E! to respond to discovery requests since I had held off work pending your response to my February 14 proposal and assuming that your delay in responding was due to family issues that you and Jill were experiencing. Now, after waiting nearly 6 weeks to respond to my February 14 email, you: (1) again ignored our request for a date certain to produce documents; (2) again ignored our request for a meet and confer; and (3) agreed to give us only 5 days extra days to respond to discovery requests, when we have been waiting for 6 weeks for you to respond to our proposal and waiting months for you to produce even a single document. Ovation has effectively taken an open-ended extension of time to produce documents. E! has been prejudiced by Ovation's failure to produce documents, including, for example, because of the deadline for disclosure of experts.

We will respond to Ovation's discovery requests by April 9. However, given the fact that we have waited months for Ovation to produce documents and given Ovation's refusal to extend the discovery cutoff, we must receive the document production immediately. We do not foreclose settlement discussions or reviewing Ovation's proposed coexistence agreement, but Ovation's delay in producing documents coupled with its refusal to extend the discovery deadlines leaves us with no choice but to again demand immediate compliance.

Michael

Exhibit B

Exhibit B

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

OVATION, LLC,
a Delaware limited liability company,

Opposer,

v.

E! ENTERTAINMENT TELEVISION, LLC,
a Delaware limited liability company,

Applicant.

Opposition No. 91210506

Mark: POP OF CULTURE

Serial No. 85/569798

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Applicant E! Entertainment Television, LLC ("Applicant" or "E!") hereby submits its first set of interrogatories to Ovation, LLC ("Opposer" or "Ovation").

DEFINITIONS

1. "You" or "your" refers to Opposer Ovation, LLC, its subsidiaries, parents, affiliates, licensees, and their respective officers, directors, employees, agents, and predecessors-in-interest.
2. "CULTUREPOP Mark" means any trademark or service mark owned or used by Ovation containing the words "CULTURE" and "POP," with or without a space between them, and alone or in connection with other letters, numbers, words or designs, including, but not limited to, Ovation's CULTUREPOP mark that is the subject of U.S. trademark application bearing the Serial No. 85096252.
3. "POP OF CULTURE Mark" means the trademark that is the subject of U.S. trademark application bearing the Serial No. 85569798.

4. “E POP OF CULTURE Mark” means the trademarks that are the subject of U.S. trademark applications bearing the Serial Nos. 85937423 and 85937399.

5. “Identify” with respect to an event, occurrence or decision means to state the date, circumstances, place, and persons involved in or with direct or indirect knowledge of the event, occurrence or decision.

6. The terms “documents” and “materials” shall refer to anything that would be a “writing” or “recording” as defined in Rule 1001(1) of the Federal Rules of Evidence or a “document” as defined in Rule 34 of the Federal Rules of Civil Procedure, including, without limitation, the original and any non-identical copy that is different from the original or any copy because of notations thereon or attached thereto or otherwise, that is or was at any time in your possession, custody or control or known or believed by you to exist or have existed. Without limitation, as used in this definition, a document is deemed to be or to have been in your “control” if you have or had the right to secure the document or a copy thereof from another person or governmental entity having physical possession thereof. Any comment or notation appearing on any document, and not a part of the original text, is considered a separate document, and any draft or preliminary form of any document is also considered a separate document.

7. The term “person” or “persons” means any natural person, firm, partnership, joint venture, corporation, proprietorship, team, association, or any other legal entity and denotes both the single and plural.

8. The term “and” includes “or” and vice versa.

9. The term “including” means “including, but not limited to.”

10. The terms “any” and “all ” shall include “each and every.”

INSTRUCTIONS

A. If you contend that you are entitled to withhold the whole or any part of any responsive communication or information on the basis of the attorney-client privilege, the work product doctrine, or other grounds, for all such communications, state all facts supporting your basis for withholding the information.

B. If you object to any interrogatory, all responsive information not subject to the objection should be disclosed.

C. These interrogatories are continuing in nature and require reasonable supplemental production whenever you acquire or receive responsive information.

D. If you cannot answer an interrogatory in full, after exercising due diligence to secure the requested information, you must so state and answer to the fullest extent possible. In such case, explain fully why you are unable to answer.

INTERROGATORIES

1. Identify the persons most knowledgeable about Opposer's adoption and use of the CULTUREPOP Mark and, for each such individual, describe in detail the nature and extent of their knowledge.

2. Identify all facts supporting or relating to Opposer's decision to adopt the CULTUREPOP Mark.

3. State the meaning of the CULTUREPOP Mark as used by Opposer.

4. Explain whether the CULTUREPOP Mark as used by Opposer is descriptive or inherently distinctive and state all facts supporting Opposer's position.

5. Identify all goods and services for which Opposer has used the CULTUREPOP mark and the date of first use in commerce for each.

6. Identify all goods and services for which Opposer intends to use the CULTUREPOP mark and state all activities undertaken by Opposer to prepare to commence such use.

7. For each of the goods and services identified in response to Interrogatory No. 6, explain in detail whether each such good or service is related to art, music, or other forms of popular culture.

8. Describe in detail Opposer's promotional, marketing and advertising plans and activities for the goods and services offered under the CULTUREPOP Mark.

9. Describe the consumers for Opposer's goods and services offered under the CULTUREPOP Mark.

10. Identify all third parties that use or have used the terms "POP CULTURE," "POPULAR CULTURE" or other names or phrases containing "POP" and "CULTURE" on or in connection with television programming, websites or publications.

11. State all facts supporting Opposer's allegation in Paragraph 7 of the Notice of Opposition that E!'s use of the POP OF CULTURE Mark is likely to cause confusion, mistake or deception as to the source or origin of E!'s goods and services offered under the POP OF CULTURE Mark.

12. Identify all instances of actual confusion, if any, between Opposer and E! based on E!'s use of the POP OF CULTURE Mark or E POP OF CULTURE Mark.

13. To the extent your response to any of the Requests for Admissions served contemporaneously herewith is anything other than an unqualified admission, describe in detail

the facts upon which you base your response, identifying by number the specific request(s) for admission to which the facts stated relate.

14. List all domain names and social media user names (including on Facebook, Twitter, Instagram, and YouTube) that you own or use that contain the CULTUREPOP Mark or any element thereof.

15. Identify with specificity all media (including, without limitation, social media, websites, television, radio and print) that you use to promote the CULTUREPOP Mark or any goods or services offered under the CULTUREPOP Mark, including, without limitation, names of television channels; names of social media sites, including Facebook, Twitter, Instagram, and YouTube; and the like.

16. Identify each person whom you expect to call as an expert witness at the opposition, and for each such person state:

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

Dated: November 12, 2013

LEWIS ROCA ROTHGERBER LLP

By: _____


Michael J. McQue
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** was served by United States mail this 12th day of November, 2013 on:

Jill M. Pietrini
Sheppard Mullin Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017

Dated: this 12th day of November, 2013.

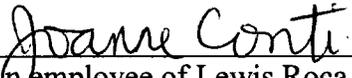

An employee of Lewis Roca Rothgerber LLP

Exhibit C

Exhibit C

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

OVATION, LLC,
a Delaware limited liability company,

Opposer,

v.

E! ENTERTAINMENT TELEVISION, LLC,
a Delaware limited liability company,

Applicant.

Opposition No. 91210506

Mark: POP OF CULTURE

Serial No. 85/569798

APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER

Applicant E! Entertainment Television, LLC ("Applicant" or "E!") hereby submits its first set of document requests to Ovation, LLC ("Opposer").

DEFINITIONS

1. "You" or "your" refers to Opposer Ovation, LLC, its subsidiaries, parents, affiliates, licensees, and their respective officers, directors, employees, agents, and predecessors-in-interest.
2. "CULTUREPOP Mark" means any trademark or service mark owned or used by Ovation containing the words "CULTURE" and "POP," with or without a space between them, and alone or in connection with other letters, numbers, words or designs, including, but not limited to, Ovation's CULTUREPOP mark that is the subject of U.S. trademark application bearing the Serial No. 85096252.
3. "POP OF CULTURE Mark" means the trademark that is the subject of U.S. trademark application bearing the Serial No. 85569798.

4. “E POP OF CULTURE Mark” means the trademarks that are the subject of U.S. trademark applications bearing the Serial Nos. 85937423 and 85937399.

5. The terms “documents” and “materials” shall refer to anything that would be a “writing” or “recording” as defined in Rule 1001(1) of the Federal Rules of Evidence or a “document” as defined in Rule 34 of the Federal Rules of Civil Procedure, including, without limitation, the original and any non-identical copy that is different from the original or any copy because of notations thereon or attached thereto or otherwise, that is or was at any time in your possession, custody or control or known or believed by you to exist or have existed. Without limitation, as used in this definition, a document is deemed to be or to have been in your “control” if you have or had the right to secure the document or a copy thereof from another person or governmental entity having physical possession thereof. Any comment or notation appearing on any document, and not a part of the original text, is considered a separate document, and any draft or preliminary form of any document is also considered a separate document.

6. The term “person” or “persons” means any natural person, firm, partnership, joint venture, corporation, proprietorship, team, association, or any other legal entity and denotes both the single and plural.

7. The term “and” includes “or” and vice versa.

8. The term “including” means “including, but not limited to.”

9. The terms “any” and “all” shall include “each and every.”

INSTRUCTIONS

A. If you contend that you are entitled to withhold the whole or any part of any document on the basis of the attorney-client privilege, the work product doctrine, or other

grounds, for each such document, state all facts supporting your basis for withholding the information.

B. If you object to any document request, all responsive documents not subject to the objection should be disclosed.

C. These document requests are continuing in nature and require reasonable supplemental production whenever you acquire, receive or locate responsive documents.

DOCUMENT REQUESTS

1. All documents referring or relating to Opposer's selection and adoption of the CULTUREPOP Mark.

2. All documents referring or relating to Opposer's trademark search or clearance of the CULTUREPOP Mark.

3. All documents referring or relating to alternative trademarks considered for adoption by Opposer for the services for which the CULTUREPOP Mark was adopted.

4. All documents referring or relating to Opposer's decision to apply for registration of the CULTUREPOP Mark.

5. All documents referring or relating to the meaning or intended meaning of the CULTUREPOP Mark.

6. All documents referring or relating to third party uses of "POP" and "CULTURE" in connection with television programming.

7. All documents referring or relating to third party uses of "POP" and "CULTURE" in connection with websites.

8. All documents referring or relating to third party uses of "POP" and "CULTURE" in connection with publications.

9. All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with television programming, including, without limitation, videos of all television programming.

10. All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with websites, including, without limitation, printouts of all pages of all websites on which Opposer has used the CULTUREPOP Mark.

11. All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with publications, including, without limitation, printouts of all such publications.

12. All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with social, including, without limitation, printouts of screen shots of such use.

13. All documents reflecting Opposer's use of the phrase "pop culture" or "popular culture" in connection with any of goods and services offered under the CULTUREPOP Mark.

14. All documents reflecting the content of Opposer's television programming offered under the CULTUREPOP mark, including, without limitation, scripts and transcriptions.

15. All documents reflecting Opposer's promotion, advertising or marketing of goods or services under the CULTUREPOP Mark, including, without limitation, marketing plans, media buys, ad copy, and the like.

16. All documents reflecting the sales of all goods and services under or in connection with the CULTUREPOP Mark.

17. All documents reflecting the actual and intended demographics of consumers of Opposer's goods and services offered under the CULTUREPOP Mark.

18. All documents reflecting the channels through which Opposer distributes goods and services under the CULTUREPOP Mark.

19. All documents reflecting, referring or relating to Opposer's intended future uses of the CULTUREPOP Mark.

20. All documents relating to any license or assignment of the CULTURE POP Mark.

21. All documents relating to Opposer's knowledge of E!'s adoption and use of the CULTURE OF POP Mark.

22. All documents relating to any damage or injury suffered by Opposer based on E!'s adoption and use of the CULTURE OF POP Mark.

23. All documents reflecting any association between pop culture and Opposer's CULTUREPOP Mark.

24. All documents reflecting any association between popular culture and Opposer's CULTUREPOP Mark.

25. All documents relating to Opposer's allegation in Paragraph 7 of the Notice of Opposition that E!'s use of the POP OF CULTURE Mark is likely to cause confusion, mistake or deception as to the source or origin of E!'s goods and services offered under the POP OF CULTURE Mark.

26. All documents relating to any instances of actual confusion between Opposer and E! based on E!'s use of the POP OF CULTURE Mark or E POP OF CULTURE Mark.

Dated: November 12, 2013

LEWIS ROCA ROTHGERBER LLP

By: _____



Michael J. McCue
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S FIRST SET OF DOCUMENT REQUESTS OPPOSER** was served by mail this 12th day of November, 2013 on:

Jill M. Pietrini
Sheppard Mullin Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017

Dated: this 12th day of November, 2013.

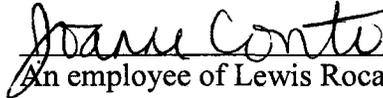

An employee of Lewis Roca Rothgerber LLP

Exhibit D

Exhibit D

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

OVATION, LLC,
a Delaware limited liability company,

Opposer,

v.

E! ENTERTAINMENT TELEVISION, LLC,
a Delaware limited liability company,

Applicant.

Opposition No. 91210506

Mark: POP OF CULTURE

Serial No. 85/569798

APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS

Applicant E! Entertainment Television, LLC ("Applicant" or "E!") hereby submits its first set of requests for admissions to Ovation, LLC ("Opposer").

DEFINITIONS

1. "You" or "your" refers to Opposer Ovation, LLC, its subsidiaries, parents, affiliates, licensees, and their respective officers, directors, employees, agents, and predecessors-in-interest.
2. "CULTUREPOP Mark" means any trademark or service mark owned or used by Ovation containing the words "CULTURE" and "POP," with or without a space between them, and alone or in connection with other letters, numbers, words or designs, including, but not limited to, Ovation's CULTUREPOP mark that is the subject of U.S. trademark application bearing the Serial No. 85096252.
3. "POP OF CULTURE Mark" means the trademark that is the subject of U.S. trademark application bearing the Serial No. 85569798.

4. "E POP OF CULTURE Mark" means the trademarks that are the subject of U.S. trademark applications bearing the Serial Nos. 85937423 and 85937399.

5. The "E! Mark" means the trademark:



6. The term "Media" refers to the television programming, websites and/or electronic publications.

7. The term "and" includes "or" and vice versa.

8. The term "including" means "including, but not limited to."

9. The terms "any" and "all " shall include "each and every."

INSTRUCTIONS

A. If you contend that you are entitled to withhold any answer on the basis of the attorney-client privilege, the work product doctrine, or other grounds, for each such document, state all facts supporting your basis for withholding the response.

B. If a matter is not admitted, the answer must specifically deny it or state in detail why you cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter. When good faith requires you to qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. You shall not assert lack of knowledge or information as a reason for failing to admit or deny only if you state that you have made reasonable inquiry and that the information you know or can readily obtain is insufficient to enable you to admit or deny.

C. These requests are continuing in nature and require reasonable supplemental production whenever you acquire, receive or locate responsive documents.

REQUESTS FOR ADMISSION

1. Admit that “pop” is short for “popular.”
2. Admit that “pop” is commonly known as an abbreviation for “popular.”
3. Admit that “pop culture” is a well-known phrase in the United States.
4. Admit that “pop culture” is short for “popular culture.”
5. Admit that “pop” in the CULTUREPOP Mark refers to “popular.”
6. Admit that “CULTUREPOP” is comprised of the words “culture” and “pop”.
7. Admit that the CULTUREPOP Mark contains the words “culture” and “pop.”
8. Admit that “CULTUREPOP” is “pop culture” with the terms transposed.
9. Admit that you use the CULTUREPOP Mark in connection with Media in the field of popular culture.
10. Admit that you use the CULTUREPOP Mark in connection with Media in the field of pop culture.
11. Admit that you use the CULTUREPOP Mark in connection with Media in the field of entertainment, among other topics.
12. Admit that you use the CULTUREPOP Mark in connection with Media in the field of theater, among other topics.
13. Admit that you use the CULTUREPOP Mark in connection with Media in the field of art, among other topics.
14. Admit that you use the CULTUREPOP Mark in connection with Media in the field of visual arts, among other topics.
15. Admit that you use the CULTUREPOP Mark in connection with Media about new music, among other topics.

16. Admit that you use the CULTUREPOP Mark in connection with Media about emerging artists, among other topics.

17. Admit that you use the CULTUREPOP Mark in connection with Media about influential artists, among other topics.

18. Admit that you use the CULTUREPOP Mark in connection with Media about innovators, among other topics.

19. Admit that entertainment is considered part of popular culture.

20. Admit that theater is considered part of popular culture.

21. Admit that art is considered part of popular culture.

22. Admit that the visuals arts is considered part of popular culture.

23. Admit that new music is considered part of popular culture.

24. Admit that emerging artists are considered part of popular culture.

25. Admit that influential artists are considered part of popular culture.

26. Admit that innovators are considered part of popular culture.

27. Admit that entertainment is considered part of pop culture.

28. Admit that theater is considered part of pop culture.

29. Admit that art is considered part of pop culture.

30. Admit that the visuals arts is considered part of pop culture.

31. Admit that new music is considered part of pop culture.

32. Admit that emerging artists are considered part of pop culture.

33. Admit that influential artists are considered part of pop culture.

34. Admit that innovators are considered part of pop culture.

35. Admit that you selected the CULTUREPOP Mark because it conveys the message that the services offered under the mark relate to popular culture.

36. Admit that the CULTUREPOP Mark because it conveys the message that the services offered under the mark relate to pop culture.

37. Admit that the CULTUREPOP Mark describes Media relating to popular culture.

38. Admit that the CULTUREPOP Mark describes Media relating to pop culture.

39. Admit that third parties use the term “pop culture” to refer to Media regarding entertainment.

40. Admit that third parties use the term “pop culture” to refer to Media regarding theater.

41. Admit that third parties use the term “pop culture” to refer to Media regarding the arts.

42. Admit that third parties use the term “pop culture” to refer to Media regarding the visual arts.

43. Admit that third parties use the term “pop culture” to refer to Media regarding new music.

44. Admit that third parties use the term “pop culture” to refer to Media regarding emerging artists.

45. Admit that third parties use the term “pop culture” to refer to Media regarding influential artists.

46. Admit that third parties use the term “pop culture” to refer to Media regarding innovators.

47. Admit that you describe Media offered under the CULTUREPOP Mark as relating to popular culture.

48. Admit that you describe television programming offered under the CULTUREPOP Mark as relating to popular culture.

49. Admit that the term “popular culture” is descriptive when used in connection with Media about popular culture.

50. Admit that the term “pop culture” is descriptive when used in connection with Media about popular culture.

51. Admit that you do not own trademark rights in “popular culture”.

52. Admit that you do not own trademark rights in “pop culture”.

53. Admit that you do not own trademark rights in “popular culture” for Media.

54. Admit that you do not own trademark rights in “pop culture” for Media.

55. Admit that you do not own trademark rights in “popular culture” for Media relating to popular culture.

56. Admit that you do not own trademark rights in “pop culture” for Media relating to pop culture.

57. Admit that the CULTUREPOP Mark is not the same as “pop culture.”

58. Admit that the CULTUREPOP Mark is commercially weak.

59. Admit that the CULTUREPOP Mark is conceptually weak.

60. Admit that the CULTUREPOP Mark is not protectable absent a showing of secondary meaning.

61. Admit that the CULTUREPOP Mark has not acquired secondary meaning.

62. Admit that the CULTUREPOP Mark is entitled to only a narrow scope of protection.

63. Admit that, prior to August 2010, third parties used “pop culture” to describe popular culture.

64. Admit that, prior to August 2010, third parties used “pop culture” to describe Media about popular culture.

65. Admit that there is a crowded field of uses of “pop culture” in connection with Media about popular culture.

66. Admit that you were not the first to use a mark comprised of the terms “pop” and “culture” in connection with Media in the United States.

67. Admit that <CulturePop.me> predated your use of the CULTUREPOP Mark.

68. Admit that the Culture Pop show by John Badesow predated your use of the CULTUREPOP Mark.

69. Admit that the Culture Pop Mirabelle show on YouTube predated your use of the CULTUREPOP Mark.

70. Admit that Culture Pop Films predated your use of the CULTUREPOP Mark.

71. Admit that Seth Cushner’s Culture Pop 01 predated your use of the CULTUREPOP Mark.

72. Admit that the Culture Pop Studio on Etsy predated your use of the CULTUREPOP Mark.

73. Admit that the Culture Pop radio on Facebook predated your use of the CULTUREPOP Mark.

74. Admit that you have not used the CULTUREPOP Mark in connection with all of the goods and services identified Serial No. 85096252.

75. Admit that you are not aware of any instances of actual confusion among consumers arising from E!'s use of the POP OF CULTURE Mark.

76. Admit that you are not aware of any instances of actual confusion among consumers arising from E!'s use of the E POP OF CULTURE Mark.

77. Admit that the E! Mark is well-known.

78. Admit that the E! Mark is famous.

79. Admit that Applicant has used the E! mark for more than 20 years.

80. Admit that Applicant uses the E! Mark in connection with a television network.

81. Admit that the E! Mark is used in connection with a television network available to millions of U.S. consumers.

82. Admit that the E! Mark is used in connection with a television network available to tens of millions of U.S. consumers.

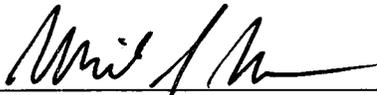
83. Admit that the E! Mark identifies Applicant as the source or origin of programming offered under the E! Mark.

84. Admit that the Applicant uses the E! Mark in connection with the POP OF CULTURE Mark.

85. Admit that the E POP OF CULTURE Mark and the CULTUREPOP Mark are not confusingly similar.

Dated: November 12, 2013

LEWIS ROCA ROTHGERBER LLP

By:  _____

Michael J. McCue
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS** was served by mail this 12th day of November, 2013 on:

Jill M. Pietrini
Sheppard Mullin Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017

Dated: this 12th day of November, 2013.

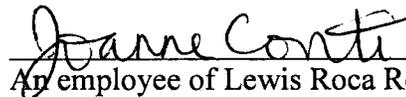

An employee of Lewis Roca Rothgerber LLP

Exhibit E

Exhibit E

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

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <p>In re Matter of Application No. 85/569,798 for the mark: POP OF CULTURE</p> <p>Ovation LLC, Opposer, vs. E! Entertainment Television, LLC, Applicant.</p> | <p>Opposition No. 91-210506</p> <p>OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|

I. PRELIMINARY STATEMENT

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP"), and Section 405 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Ovation LLC ("Opposer") hereby objects and responds to Applicant E! Entertainment Television, LLC's ("Applicant") First Set of Interrogatories to Opposer ("Interrogatories") as set for below.

These responses are made solely for the purposes of this action. Any response supplied to any particular Interrogatory is or will be supplied by Opposer subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections on any grounds that would require the exclusion of the response or portion thereof if such response were offered into evidence, all of which objections and grounds are hereby expressly reserved and may be interposed during testimony in this case.

No incidental or implied admissions are intended by the responses herein. The fact that Opposer has supplied or agreed to supply, or hereafter supplies or agrees to supply, a response to any particular Interrogatory should not be taken as an admission that Opposer accepts or admits the existence of any fact set forth or assumed by such Interrogatory. The fact that Opposer makes a response and/or objection to any Interrogatory is not intended, and shall not be construed, as an admission that information responsive to that Interrogatory exists or is in Opposer's possession, custody, or control.

Opposer reserves the right to make changes to these responses if it appears that omissions or errors have been made herein, or that future or more accurate information is available. Opposer has not completed its own investigation and discovery. Therefore, the following responses state Opposer's knowledge, information, and belief as of the date of such responses, and Opposer expressly reserves the right to rely upon and/or introduce into evidence at trial such additional documents or information as Opposer may discover.

II. GENERAL OBJECTIONS

The following General Objections apply to each and every Interrogatory and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to each Interrogatory insofar as it is unintelligible, vague, overly broad, oppressive, harassing or vexatious; imposes burden or expense that outweighs its likely benefit; seeks information equally available to Opposer and Applicant; seeks information not relevant to the claim or defense of any party nor likely to lead to the discovery of admissible evidence; seeks Opposer's confidential

information; seeks information not within Opposer's possession, custody, or control; does not describe with reasonable particularity the information and/or documents requested; contains erroneous and/or contentious factual allegations or legal assertions; and/or seeks information related to facts, events or activities, or documents dated, prepared or received after the commencement of this action.

2. Opposer objects to these Interrogatories the extent they seek to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

3. Opposer objects to each Interrogatory to the extent that it: (i) seeks disclosure of information and/or documents that would violate the privacy rights of individuals; or (ii) seeks disclosure of confidential business or commercial information and/or documents, trade secrets, and/or proprietary information and documents, including financial information and documents, of Opposer or third parties. To the extent that Opposer responds to the Interrogatories by stating that it will provide information that it, any party to this litigation, or any third party deems to embody material that is private, business confidential, proprietary, trade secret, or otherwise protected from disclosure pursuant to FRCP 26 or otherwise, Opposer will do so only pursuant to a protective order entered in this action.

4. Opposer's responses are made to the best of its current knowledge, information, and belief, and are made according to documents or information currently in its possession, custody, or control. Opposer does not represent that any information or documents actually exist, but that it will, as appropriate, make a good faith search

and attempt to ascertain whether information or documents responsive to these Interrogatories do, in fact, exist.

5. Opposer is responding to the Interrogatories as it interprets and understands them. If Applicant subsequently asserts an interpretation of the Interrogatories that differs from Opposer's understanding, Opposer reserves the right to supplement its objections and/or responses herein.

6. Opposer objects to the Interrogatories to the extent that they seek the identification of "all" and/or "all" persons or things pertaining to a specific subject, on the ground that such language is overly broad and unduly burdensome. To the extent that a search is required, Opposer will search those files in its possession, custody, or control where there is a reasonable likelihood that responsive information and/or documents may be located.

7. Opposer also objects to the Interrogatories on the grounds that, when all subparts are counted, it causes the cumulative number to exceed the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

8. Opposer makes the objections and responses set forth below without in any manner waiving: (i) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (ii) the right to object to any other Interrogatories involving, or relating to, the subject matter of the responses herein; (iii) the right to revise, correct, supplement, or clarify any of the responses provided below at any time; (iv) the right to assert the attorney-client privilege, work product protections, or any other applicable

privilege; and (v) the right to assert any additional or supplemental objections should additional grounds for such objections become apparent. Opposer expressly reserves the right to supplement its responses.

III. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The following Objections to Definitions and Instructions apply to each and every Interrogatory and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to Applicant's Definitions and Instructions to the extent they seek to use broader definitions or rules of construction than those set forth in FRCP 26 or to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

2. Opposer objects to Applicant's definitions of "You" or "your"—which are defined to include "Opposer Ovation, LLC, its subsidiaries, parents, affiliates, licensees, and their respective officers, directors, employees, agents, and predecessors-in-interest"—to the extent that these definitions seek to impose on Opposer the obligation to provide information or produce documents and things not under its possession, custody, or control, or to obtain information or documents from other non-parties to the instant proceeding. Opposer will not undertake to gather or provide any such information. Opposer further objects to these definitions on the grounds that the terms as defined are vague, ambiguous, and unintelligible. For the purpose of its responses, Opposer will construe these terms to refer to Ovation, LLC only, as defined herein.

3. Opposer objects to Applicant's definition of "CULTUREPOP Mark" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of

admissible evidence, vague, ambiguous, and unintelligible to the extent it encompasses “any trademark or service mark owned or used by Ovation containing the words ‘CULTURE’ and ‘POP,’ with or without a space between them, and alone or in connection with other letters, numbers, words or designs.”

4. Opposer objects to Applicant’s definition of “identify” as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, and unintelligible to the extent it encompasses “persons involved in or with direct or indirect knowledge of the event, occurrence or decision.” For purposes of its responses, Opposer will identify the persons most knowledgeable with direct knowledge of the events, occurrences, or decisions at issue.

IV. RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify the persons most knowledgeable about Opposer’s adoption and use of the CULTUREPOP Mark and, for each such individual, describe in detail the nature and extent of their knowledge.

RESPONSE TO INTERROGATORY NO. 1:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to the Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or other applicable privilege. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understand the Interrogatory, Opposer responds as follows: Person(s) Most Knowledgeable at Opposer, pursuant to FRCP § 30(b)(6), regarding the following subject matter: Rob Canter, Senior Vice President, Head of Production/Media Services (origination and transformation of the use of the CULTUREPOP Mark); Evan Minskoff, Senior Vice President, Head of Marketing & Brand Strategy (marketing of the CULTUREPOP Mark); and Shaw Bowman, GM, Digital Media (online use of the CULTUREPOP Mark).

Opposer has not completed its own investigation and discovery. Therefore, this response states Opposer's knowledge, information, and belief as of the date hereof, and Opposer expressly reserves the right to amend this response or to rely upon and/or introduce into evidence at trial additional information that Opposer may discover.

INTERROGATORY NO. 2:

Identify all facts supporting or relating to Opposer's decision to adopt the CULTUREPOP Mark.

RESPONSE TO INTERROGATORY NO. 2:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege

and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control from which the information sought in this Interrogatory may be derived or ascertained, once a suitable protective order has been entered.

INTERROGATORY NO. 3:

State the meaning of the CULTUREPOP Mark as used by Opposer.

RESPONSE TO INTERROGATORY NO. 3:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information equally available to Applicant, and seeks premature

expert discovery. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: There is no particular meaning for the mark CULTUREPOP.

INTERROGATORY NO. 4:

Explain whether the CULTUREPOP Mark as used by Opposer is descriptive or inherently distinctive and state all facts supporting Opposer's position.

RESPONSE TO INTERROGATORY NO. 4:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information equally available to Plaintiff, and seeks premature expert discovery. Opposer also objects to this Interrogatory on the grounds that it calls for a legal conclusion. Opposer also objects to this Interrogatory on the grounds that it

seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving such objections, Opposer responds as follows: The mark CULTUREPOP is not descriptive as evidenced by the PTO's allowance of the application without a descriptiveness refusal or a Section 2(f) requirement.

INTERROGATORY NO. 5:

Identify all goods and services for which Opposer has used the CULTUREPOP mark and the date of first use in commerce for each.

RESPONSE TO INTERROGATORY NO. 5:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is

substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the goods and services for which Opposer has used the CULTUREPOP mark and the date of first use in commerce for each, once a suitable protective order has been entered. Specifically, Opposer directs Applicant to the Statement of Use filed for its application to register CULTUREPOP, Serial No. 85/096252.

INTERROGATORY NO. 6:

Identify all goods and services for which Opposer intends to use the CULTUREPOP mark and state all activities undertaken by Opposer to prepare to commence such use.

RESPONSE TO INTERROGATORY NO. 6:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive, particularly in that it seeks to impose an unreasonable obligation on Opposer with respect to numerous, separate goods and services. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks

information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the goods and services for which Opposer intends to use the CULTUREPOP mark, once a suitable protective order has been entered.

INTERROGATORY NO. 7:

For each of the goods and services identified in response to Interrogatory No. 6, explain in detail whether each such good or service is related to art, music, or other forms of popular culture.

RESPONSE TO INTERROGATORY NO. 7:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer also objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive, particularly in that it seeks to impose an unreasonable obligation on Opposer with respect to numerous, separate goods and services. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information

and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory because it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to derive or ascertain the nature of the goods and services at issue, once a suitable protective order has been entered.

INTERROGATORY NO. 8:

Describe in detail Opposer's promotional, marketing and advertising plans and activities for the goods and services offered under the CULTUREPOP Mark.

RESPONSE TO INTERROGATORY NO. 8:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets,

and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to reflect representative samples of promotional, marketing, and advertising plans and activities for the goods and services offered under the CULTUREPOP Mark, to the extent any such documents are found to exist and once a suitable protective order has been entered. Further, Opposer promotes and has promoted its CULTUREPOP mark on-air and through its websites, social media, and word of mouth.

INTERROGATORY NO. 9:

Describe the consumers for Opposer's goods and services offered under the CULTUREPOP Mark.

RESPONSE TO INTERROGATORY NO. 9:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this

Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the consumers of Opposer's goods and services offered under the CULTUREPOP Mark, once a suitable protective order has been entered. Further, Opposer believes that the demographics for its CULTUREPOP services include adults in an age group ranging from 25 to 54 years of age.

INTERROGATORY NO. 10:

Identify all third parties that use or have used the terms "POP CULTURE," "POPULAR CULTURE" or other names or phrases containing "POP" and "CULTURE" on or in connection with television programming, websites or publications.

RESPONSE TO INTERROGATORY NO. 10:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information equally available to Applicant, and seeks premature expert discovery. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: Opposer is not aware of any other person or entity using the terms "POP CULTURE," "POPULAR CULTURE" or other names or phrases containing "POP" and "CULTURE" as trademarks on or in connection with television programming, websites, or publications, other than Applicant.

INTERROGATORY NO. 11:

State all facts supporting Opposer's allegation in Paragraph 7 of the Notice of Opposition that E!'s use of the POP OF CULTURE Mark is likely to cause confusion,

mistake or deception as to the source or origin of E!'s goods and services offered under the POP OF CULTURE Mark.

RESPONSE TO INTERROGATORY NO. 11:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks premature expert discovery.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: The marks used by the parties are very similar – both use POP and CULTURE. Applicant merely reversed the order of the words in Opposer's mark. The services offered by the parties are similar. Opposer's mark is strong as shown by such things as the marketing of Opposer's program, discussions on social media regarding Opposer's program, and public recognition of the mark. The channels of trade and marketing of the parties are similar or related because of the nature of the content and targeted demographic. Opposer has expanded from downloadable electronic publications in the nature of e-newsletters in the field of arts, culture and entertainment featuring recommendations, reviews, trivia questionnaires,

news, recipes and opinion polls; providing a website featuring information about arts and culture; providing non-downloadable electronic publications in the nature of e-newsletters in the field of arts, culture and entertainment featuring recommendations, reviews, trivia questionnaires, recipes, news and opinion polls; on-line journals, namely, blogs featuring arts and culture; and creating and maintaining blogs for others to television programs under its mark. Opposer believes that Applicant is likely to have intended to trade on Ovation's rights because Opposer's CULTUREPOP services are well-known, and if Applicant had done a trademark search, it would have learned of Opposer's applications to register and use CULTUREPOP.

INTERROGATORY NO. 12:

Identify all instances of actual confusion, if any, between Opposer and E! based on E!'s use of the POP OF CULTURE Mark or E POP OF CULTURE Mark.

RESPONSE TO INTERROGATORY NO. 12:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks premature expert discovery.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: Opposer is not aware of the existence of any actual confusion as of yet. Discovery is continuing.

INTERROGATORY NO. 13:

To the extent your response to any of the Requests for Admissions served contemporaneously herewith is anything other than an unqualified admission, describe in detail the facts upon which you base your response, identifying by number the specific request(s) for admission to which the facts stated relate.

RESPONSE TO INTERROGATORY NO. 13:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it seeks information to impose burdens upon Opposer not contemplated by the FRCP, the TBMP, or other applicable law. Opposer also objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive, particularly because it imposes an unreasonable burden on Opposer with respect to numerous of the 85 Requests for Admission propounded by Applicant. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks premature expert discovery. Opposer also objects to this

Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

INTERROGATORY NO. 14:

List all domain names and social media user names (including on Facebook, Twitter, Instagram, and YouTube) that you own or use that contain the CULTUREPOP Mark or any element thereof.

RESPONSE TO INTERROGATORY NO. 14:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written

Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the domain names and social media user names used or owned by Opposer that contain the CULTUREPOP Mark, once a suitable protective order has been entered. Opposer further responds that the domain names and social media names containing the CULTUREPOP mark include the following:

<http://www.ovationtv.com/culturepop/>

<http://www.ovationtv.com/series/culture-pop>

<http://www.ovationtv.com/schedule/>

<http://www.ovationtv.com/advertisers/adsales/> in the videos)

<http://www.ovationtv.com/advertisers/adsales/programming/>

<http://www.youtube.com/watch?v=1c3Rz6-haA>

<http://www.youtube.com/watch?v=RQfbKYtnN7Y>

<http://www.youtube.com/watch?v=Oi5fTeXTuWg>

<http://www.youtube.com/watch?v=QkBe2AtuoZE>

<http://www.youtube.com/watch?v=6di85FnSGwY>

http://www.youtube.com/watch?v=XtBIHT_hw6U

<http://www.youtube.com/watch?v=HkGotAHoXZ4>
<http://www.youtube.com/watch?v=Wb7Aldb8UKg>
http://www.youtube.com/watch?v=Qi50WQs_ILM
<http://www.youtube.com/watch?v=feMNEGPr0mg>
<http://www.youtube.com/watch?v=wJtipDJZD04>
<http://www.youtube.com/watch?v=b6REUrnrIHE>
<http://www.youtube.com/watch?v=i5bldv8PCHQ>
<http://www.youtube.com/watch?v=K7C5zfJUOxo>
<http://www.youtube.com/watch?v=tnalJ80sOro>
<http://www.youtube.com/watch?v=LJvCKCmWL7s>
http://www.youtube.com/watch?v=_fl5tlg-P5w
<http://www.youtube.com/watch?v=fTbVVGgq50c>
<http://www.youtube.com/watch?v=whUDsJhV4rl>
<http://www.youtube.com/watch?v=V9mCkwfPFtQ>
<http://www.youtube.com/watch?v=XnRsgLIViY0>
<http://www.youtube.com/watch?v=iEtZqUIF8oY>
<http://www.youtube.com/watch?v=DLvKCA4BLql>
http://www.youtube.com/watch?v=1Gw_Lne8CJM
<http://www.youtube.com/watch?v=POjI9hRaFNk>
<https://twitter.com/culturepoptv>
https://www.facebook.com/CulturePopTV/app_533557586679429
Instagram - @culturepoptv
<http://www.pinterest.com/culturepoptv/>

INTERROGATORY NO. 15:

Identify with specificity all media (including, without limitation, social media, websites, television, radio and print) that you use to promote the CULTUREPOP Mark or any goods or services offered under the CULTUREPOP Mark, including, without limitation, names of television channels; names of social media sites, including Facebook, Twitter, Instagram, and YouTube; and the like.

RESPONSE TO INTERROGATORY NO. 15:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous, and duplicative of other interrogatories herein. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls

for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer.

Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to derive or ascertain the information sought in this Interrogatory, once a suitable protective order has been entered. Opposer further responds that the television channels, domain names, and social media names containing the CULTUREPOP mark have included the following:

The Ovation television channel

<http://www.ovationtv.com/culturepop/>

<http://www.ovationtv.com/series/culture-pop>

<http://www.ovationtv.com/schedule/>

<http://www.ovationtv.com/advertisers/adsales/> in the videos)

<http://www.ovationtv.com/advertisers/adsales/programming/>

<http://www.youtube.com/watch?v=1c3Rz6-haA>

<http://www.youtube.com/watch?v=RQfbKYtnN7Y>

<http://www.youtube.com/watch?v=Oi5fTeXTuWg>

<http://www.youtube.com/watch?v=QkBe2AtuoZE>

<http://www.youtube.com/watch?v=6di85FnSGwY>

http://www.youtube.com/watch?v=XtBIHT_hw6U

<http://www.youtube.com/watch?v=HkGotAHoXZ4>

<http://www.youtube.com/watch?v=Wb7Aldb8UKg>

http://www.youtube.com/watch?v=Qi50WQs_ILM

<http://www.youtube.com/watch?v=feMNEGPr0mg>
<http://www.youtube.com/watch?v=wJtjpDJZD04>
<http://www.youtube.com/watch?v=b6REUrnrlHE>
<http://www.youtube.com/watch?v=i5bldv8PCHQ>
<http://www.youtube.com/watch?v=K7C5zfJUOxo>
<http://www.youtube.com/watch?v=tnaIJ80sOro>
<http://www.youtube.com/watch?v=LJvCKCmWL7s>
http://www.youtube.com/watch?v=_fl5tlg-P5w
<http://www.youtube.com/watch?v=fTbVVGgq50c>
<http://www.youtube.com/watch?v=whUDsJhV4rl>
<http://www.youtube.com/watch?v=V9mCkwfPFtQ>
<http://www.youtube.com/watch?v=XnRsgLIViy0>
<http://www.youtube.com/watch?v=iEtZqUIF8oY>
<http://www.youtube.com/watch?v=DLvKCA4BLqI>
http://www.youtube.com/watch?v=1Gw_Lne8CJM
<http://www.youtube.com/watch?v=POjI9hRaFNk>
<https://twitter.com/culturepoptv>
https://www.facebook.com/CulturePopTV/app_533557586679429
Instagram - @culturepoptv
<http://www.pinterest.com/culturepoptv/>

INTERROGATORY NO. 16:

Identify each person whom you expect to call as an expert witness at the opposition, and for each such person state:

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

RESPONSE TO INTERROGATORY NO. 16:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it seeks information to impose burdens upon Opposer not contemplated by the FRCP, the TBMP, or other applicable law. Opposer also objects to the Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or other applicable privilege. Opposer also objects to this Interrogatory on the grounds that it seeks premature discovery of expert testimony. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

//

//

//

//

//

Subject to the foregoing objections, and to the extent Opposer understand the Interrogatory, Opposer responds as follows: To the extent necessary, Opposer will disclose any experts it intends to call at trial in accordance with FRCP 26(a)(2) and the TBMP.

SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP

Dated: January 23, 2014

By: 

Jill J. Pietrini
Whitney Walters

Attorneys for Opposer
Ovation LLC

VERIFICATION

I, Rob Canter, declare and state as follows:

I have read the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** and know its contents. The factual matters stated in the foregoing document are true based on information in the possession of Opposer, except as to any matters that are stated on information and belief, and as to those matters, Opposer believes them to be true.

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



Name: Rob Canter

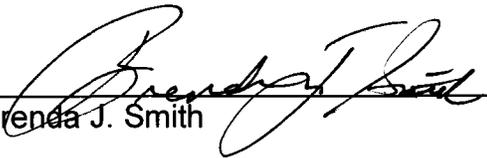
Title: Senior Vice President, Head of Production/Media Services

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, Nevada 89169

on this 23rd day of January, 2014.


Brenda J. Smith

SMRH:415540167.4

Exhibit F

Exhibit F

No incidental or implied admissions are intended by the responses herein. The fact that Opposer has supplied or agreed to supply, or hereafter supplies or agrees to supply, a document in response to any particular Request should not be taken as an admission that Opposer accepts or admits the existence of any fact set forth or assumed by such Request or said document or that such document constitutes admissible evidence. The fact that Opposer has supplied or agreed to supply, or hereafter supplies or agrees to supply, a document in response to any Request is not intended, and shall not be construed as, a waiver by Opposer of any part of any objection to any such Request or any part of any general or other objection. The fact that Opposer makes a response and/or objection to any Request is not intended, and shall not be construed as an admission that documents responsive to that Request exist or are in Opposer's possession, custody, or control.

Opposer reserves the right to make changes to these responses if it appears that omissions or errors have been made herein, or that future or more accurate information is available. Opposer has not completed its own investigation or discovery. Therefore, the following responses state Opposer's knowledge, information, and belief as of the date of such responses, and Opposer expressly reserves the right to rely upon and/or introduce into evidence at trial such additional documents as Opposer may discover.

II. GENERAL OBJECTIONS

The following General Objections apply to each and every Request and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to each Request insofar as it is unintelligible, vague, overly broad, oppressive, harassing or vexatious; imposes burden or expense that

outweighs its likely benefit; seeks information equally available to Opposer and Applicant; seeks information not relevant to the claim or defense of any party nor likely to lead to the discovery of admissible evidence; seeks Opposer's or its licensees' confidential information; seeks information not within Opposer's possession, custody, or control; does not describe with reasonable particularity the information and/or documents requested; contains erroneous and/or contentious factual allegations or legal assertions; and/or seeks information related to facts, events or activities, or documents dated, prepared or received after the commencement of this action.

2. Opposer objects to these Requests to the extent they seek to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

3. Opposer objects to each Request to the extent that it: (i) seeks disclosure of information and documents that would violate the privacy rights of individuals; or (ii) seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents, including financial information and documents, of Opposer or third parties. To the extent that Opposer responds to the Requests by stating that it will provide information that it, any party to this litigation, or any third party deems to embody material that is private, business confidential, proprietary, trade secret or otherwise protected from disclosure pursuant to FRCP 26 or otherwise, Opposer will do so only pursuant to a protective order entered in this action.

4. Opposer's responses are made to the best of its current knowledge, information, and belief, and are made according to documents or information currently

in its possession, custody, or control. Opposer does not represent that any information or documents actually exist, but that it will, as appropriate, make a good faith search and attempt to ascertain whether information or documents responsive to these Requests do, in fact, exist.

5. Opposer is responding to the Requests as it interprets and understands them. If Applicant subsequently asserts an interpretation of the Requests that differs from Opposer's understanding, Opposer reserves the right to supplement its objections and/or responses herein.

6. Opposer objects to the Requests to the extent they call for the production of information or documents that are already in the public domain, already in Applicant's possession, custody, or control, or otherwise available to Applicant through more closely involved third parties, and therefore are substantially less burden for Applicant to obtain than for Opposer to obtain.

7. Opposer objects to the Requests to the extent that they seek the identification of "all" and/or "all" documents or communications pertaining to a specific subject, on the ground that such language is overly broad and unduly burdensome. To the extent that a search is required, Opposer will search those files in its possession, custody, or control where there is a reasonable likelihood that responsive documents may be located.

8. Opposer makes the objections and responses set forth below without in any manner waiving: (i) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (ii) the right to object to any other Requests involving, or

relating to, the subject matter of the responses herein; (iii) the right to revise, correct, supplement, or clarify any of the responses provided below at any time; (iv) the right to assert the attorney-client privilege, work product protections, or any other applicable privilege; and (v) the right to assert any additional or supplemental objections should additional grounds for such objections become apparent. Opposer expressly reserves the right to supplement its responses.

III. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The following Objections to Definitions and Instructions apply to each and every Request and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to Applicant's Definitions and Instructions to the extent they seek to use broader definitions or rules of construction than those set forth in FRCP 26 or to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

2. Opposer objects to Applicant's definitions of "You" or "your"—which are defined to include "Opposer Ovation, LLC, its subsidiaries, parents, affiliates, licensees, and their respective officers, directors, employees, agents, and predecessors-in-interest"—to the extent that these definitions seek to impose on Opposer the obligation to produce documents and things not under its possession, custody, or control, or to obtain information or documents from other non-parties to the instant proceeding. Opposer will not undertake to gather or provide any such information. Opposer further objects to these definitions on the grounds that the terms as defined are vague,

ambiguous, and unintelligible. For the purpose of its responses, Opposer will construe these terms to refer to Ovation, LLC only, as defined herein.

3. Opposer objects to Applicant's definition of "CULTUREPOP Mark" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, and unintelligible to the extent it encompasses "any trademark or service mark owned or used by Ovation containing the words 'CULTURE' and 'POP,' with or without a space between them, and alone or in connection with other letters, numbers, words or designs."

4. Opposer objects to the definitions of "documents" and "materials" and the instructions related thereto to the extent they seek to use broader definitions or rules of construction than those set forth in FRCP 26 or to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

Without waiving any of the objections asserted herein and reserving the rights stated above, Opposer supplies the responses appearing below:

IV. SPECIFIC OBJECTIONS AND RESPONSES

REQUEST FOR PRODUCTION NO. 1:

All documents referring or relating to Opposer's selection and adoption of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also

objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 2:

All documents referring or relating to Opposer's trademark search or clearance of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the

extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce its search report for CULTUREPOP.

REQUEST FOR PRODUCTION NO. 3:

All documents referring or relating to alternative trademarks considered for adoption by Opposer for the services for which the CULTUREPOP Mark was adopted.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 4:

All documents referring or relating to Opposer's decision to apply for registration of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 5:

All documents referring or relating to the meaning or intended meaning of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control sufficient to identify the meaning or intended meaning of the CULTUREPOP Mark to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 6:

All documents referring or relating to third party uses of "POP" and "CULTURE" in connection with television programming.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on

the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Opposer will produce its search report for CULTUREPOP. No other responsive documents are known to exist.

REQUEST FOR PRODUCTION NO. 7:

All documents referring or relating to third party uses of “POP” and “CULTURE” in connection with websites.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the

extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Opposer will produce its search report for CULTUREPOP. No other responsive documents are known to exist.

REQUEST FOR PRODUCTION NO. 8:

All documents referring or relating to third party uses of “POP” and “CULTURE” in connection with publications.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Opposer will produce its search report for CULTUREPOP. No other responsive documents are known to exist.

REQUEST FOR PRODUCTION NO. 9:

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with television programming, including, without limitation, videos of all television programming.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of

non-privileged documents in its possession, custody, or control responsive to this Request.

REQUEST FOR PRODUCTION NO. 10:

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with websites, including, without limitation, printouts of all pages of all websites on which Opposer has used the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request to the extent that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

REQUEST FOR PRODUCTION NO. 11:

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with publications, including, without limitation, printouts of all such publications.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

REQUEST FOR PRODUCTION NO. 12:

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with social, including, without limitation, printouts of screen shots of such use.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request to mean social media, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

REQUEST FOR PRODUCTION NO. 13:

All documents reflecting Opposer's use of the phrase "pop culture" or "popular culture" in connection with any of goods and services offered under the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 14:

All documents reflecting the content of Opposer's television programming offered under the CULTUREPOP mark, including, without limitation, scripts and transcriptions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the

extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 15:

All documents reflecting Opposer's promotion, advertising or marketing of goods or services under the CULTUREPOP Mark, including, without limitation, marketing plans, media buys, ad copy, and the like.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of

non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 16:

All documents reflecting the sales of all goods and services under or in connection with the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

REQUEST FOR PRODUCTION NO. 17:

All documents reflecting the actual and intended demographics of consumers of Opposer's goods and services offered under the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the actual and intended demographics of consumers of Opposer's goods and services offered under the CULTUREPOP Mark to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 18:

All documents reflecting the channels through which Opposer distributes goods and services under the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the channels through which Opposer distributes goods and services under the CULTUREPOP Mark to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 19:

All documents reflecting, referring or relating to Opposer's intended future uses of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify Opposer's intended future uses of the CULTUREPOP Mark to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 20:

All documents relating to any license or assignment of the CULTURE POP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to reflect the licensing or assignment of the CULTUREPOP Mark to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 21:

All documents relating to Opposer's knowledge of E!'s adoption and use of the CULTURE OF POP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on

the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

REQUEST FOR PRODUCTION NO. 22:

All documents relating to any damage or injury suffered by Opposer based on E!'s adoption and use of the CULTURE OF POP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or

commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks premature expert discovery, and seeks a legal conclusion.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request.

REQUEST FOR PRODUCTION NO. 23:

All documents reflecting any association between pop culture and Opposer's CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it

seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 24:

All documents reflecting any association between popular culture and Opposer's CULTUREPOP Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 25:

All documents relating to Opposer's allegation in Paragraph 7 of the Notice of Opposition that E!'s use of the POP OF CULTURE Mark is likely to cause confusion, mistake or deception as to the source or origin of E!'s goods and services offered under the POP OF CULTURE Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks premature expert discovery.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request.

REQUEST FOR PRODUCTION NO. 26:

All documents relating to any instances of actual confusion between Opposer and E! based on E!'s use of the POP OF CULTURE Mark or E POP OF CULTURE Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on

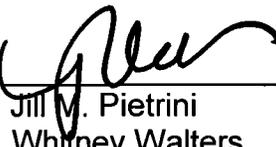
the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks premature expert discovery.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP

Dated: January 23, 2014

By: _____


Jill M. Pietrini
Whitney Walters

Attorneys for Opposer
Ovation LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, Nevada 89169

on this 23rd day of January, 2014.


Brenda J. Smith

SMRH:415540157.1

Exhibit G

Exhibit G

documents as Opposer may discover and/or amend, or withdraw these responses prior to trial.

II. GENERAL OBJECTIONS

Opposer incorporates herein by reference the General Objections and Objections to Definitions and Instructions set forth in Opposer's responses to Applicant's First Set of Interrogatories and First Set of Document Requests to Opposer. Such General Objections and Objections to Definitions and Instructions shall have the same force and effect as if fully set forth in the response to each of the below RFA responses.

RESPONSE TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that "pop" is short for "popular."

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 2:

Admit that "pop" is commonly known as an abbreviation for "popular."

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Opposer objects to this RFA on the grounds that it is vague and ambiguous,

particularly as to the phrase “commonly known,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 3:

Admit that “pop culture” is a well-known phrase in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “well-known,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny

this RFA.

REQUEST FOR ADMISSION NO. 4:

Admit that “pop culture” is short for “popular culture.”

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 5:

Admit that “pop” in the CULTUREPOP Mark refers to “popular.”

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particular as to the phrase “refers to.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds to the extent that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the

RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 6:

Admit that "CULTUREPOP" is comprised of the words "culture" and "pop".

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase "comprised of." Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Admit.

REQUEST FOR ADMISSION NO. 7:

Admit that the CULTUREPOP Mark contains the words "culture" and "pop."

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Admit.

REQUEST FOR ADMISSION NO. 8:

Admit that "CULTUREPOP" is "pop culture" with the terms transposed.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and

unintelligible. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 9:

Admit that you use the CULTUREPOP Mark in connection with Media in the field of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “in the field of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined.

REQUEST FOR ADMISSION NO. 10:

Admit that you use the CULTUREPOP Mark in connection with Media in the field of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “in the field of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined.

REQUEST FOR ADMISSION NO. 11:

Admit that you use the CULTUREPOP Mark in connection with Media in the field of entertainment, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “in the field of.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 12:

Admit that you use the CULTUREPOP Mark in connection with Media in the field of theater, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “in the field of.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 13:

Admit that you use the CULTUREPOP Mark in connection with Media in the field of art, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “in the field of.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 14:

Admit that you use the CULTUREPOP Mark in connection with Media in the field

of visual arts, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “in the field of” and “visual arts.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 15:

Admit that you use the CULTUREPOP Mark in connection with Media about new music, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “new music.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 16:

Admit that you use the CULTUREPOP Mark in connection with Media about emerging artists, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “emerging artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 17:

Admit that you use the CULTUREPOP Mark in connection with Media about influential artists, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “influential artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 18:

Admit that you use the CULTUREPOP Mark in connection with Media about innovators, among other topics.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

REQUEST FOR ADMISSION NO. 19:

Admit that entertainment is considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of

Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 20:

Admit that theater is considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 21:

Admit that art is considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 22:

Admit that the visuals arts is considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “visuals arts,” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the

RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 23:

Admit that new music is considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “new music,” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 24:

Admit that emerging artists are considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “emerging artists” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer

also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 25:

Admit that influential artists are considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “influential artists” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 26:

Admit that innovators are considered part of popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators” and the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 27:

Admit that entertainment is considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of

admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 28:

Admit that theater is considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 29:

Admit that art is considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Opposer objects to this RFA on the grounds that it is vague and ambiguous,

particularly as to the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 30:

Admit that the visual arts is considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “visuals arts,” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny

this RFA.

REQUEST FOR ADMISSION NO. 31:

Admit that new music is considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “new music,” and “pop culture.”

Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 32:

Admit that emerging artists are considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “emerging artists,” and “pop culture.”

Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks

information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA

REQUEST FOR ADMISSION NO. 33:

Admit that influential artists are considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “influential artists,” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA

REQUEST FOR ADMISSION NO. 34:

Admit that innovators are considered part of pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators” and the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA

REQUEST FOR ADMISSION NO. 35:

Admit that you selected the CULTUREPOP Mark because it conveys the message that the services offered under the mark relate to popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “conveys the message” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 36:

Admit that the CULTUREPOP Mark because it conveys the message that the

services offered under the mark relate to pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and unintelligible, and thus, denies the RFA on that basis.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 37:

Admit that the CULTUREPOP Mark describes Media relating to popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture” and what is meant by the term “describes” in this context. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 38:

Admit that the CULTUREPOP Mark describes Media relating to pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “pop culture” and what is meant by the term “describes” in this context. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the

discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 39:

Admit that third parties use the term “pop culture” to refer to Media regarding entertainment.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 40:

Admit that third parties use the term “pop culture” to refer to Media regarding theater.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 41:

Admit that third parties use the term “pop culture” to refer to Media regarding the arts.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 42:

Admit that third parties use the term “pop culture” to refer to Media regarding the visual arts.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “visual arts.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 43:

Admit that third parties use the term “pop culture” to refer to Media regarding new music.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “new music.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 44:

Admit that third parties use the term “pop culture” to refer to Media regarding emerging artists.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “emerging artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 45:

Admit that third parties use the term “pop culture” to refer to Media regarding influential artists.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “influential artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 46:

Admit that third parties use the term “pop culture” to refer to Media regarding innovators.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 47:

Admit that you describe Media offered under the CULTUREPOP Mark as relating to popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 48:

Admit that you describe television programming offered under the CULTUREPOP Mark as relating to popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer admits that CulturePOP, the content service powered by Opposer, is described as offering a daily culture content service.

REQUEST FOR ADMISSION NO. 49:

Admit that the term “popular culture” is descriptive when used in connection with Media about popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

REQUEST FOR ADMISSION NO. 50:

Admit that the term “pop culture” is descriptive when used in connection with Media about popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

REQUEST FOR ADMISSION NO. 51:

Admit that you do not own trademark rights in “popular culture”.

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer admits that it has not filed an application for federal registration of the trademark POPULAR CULTURE.

REQUEST FOR ADMISSION NO. 52:

Admit that you do not own trademark rights in “pop culture”.

RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer admits that it has not filed an application for federal registration of the trademark POP CULTURE.

REQUEST FOR ADMISSION NO. 53:

Admit that you do not own trademark rights in “popular culture” for Media.

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

REQUEST FOR ADMISSION NO. 54:

Admit that you do not own trademark rights in “pop culture” for Media.

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

REQUEST FOR ADMISSION NO. 55:

Admit that you do not own trademark rights in “popular culture” for Media relating to popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not

relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

REQUEST FOR ADMISSION NO. 56:

Admit that you do not own trademark rights in “pop culture” for Media relating to pop culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

REQUEST FOR ADMISSION NO. 57:

Admit that the CULTUREPOP Mark is not the same as “pop culture.”

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and unintelligible, seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence, and to the extent it seeks a legal conclusion, and thus, denies the RFA on that basis.

REQUEST FOR ADMISSION NO. 58:

Admit that the CULTUREPOP Mark is commercially weak.

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 59:

Admit that the CULTUREPOP Mark is conceptually weak.

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 60:

Admit that the CULTUREPOP Mark is not protectable absent a showing of secondary meaning.

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible

evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 61:

Admit that the CULTUREPOP Mark has not acquired secondary meaning.

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 62:

Admit that the CULTUREPOP Mark is entitled to only a narrow scope of protection.

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “narrow scope.” Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the

RFA, Opposer responds as follows: Denied.

REQUEST FOR ADMISSION NO. 63:

Admit that, prior to August 2010, third parties used “pop culture” to describe popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad, and seeks a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 64:

Admit that, prior to August 2010, third parties used “pop culture” to describe Media about popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as to Media. Opposer also objects to this RFA on the

grounds that it is overbroad, and seeks a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 65:

Admit that there is a crowded field of uses of “pop culture” in connection with Media about popular culture.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “crowded field of uses” and “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as to Media. Opposer also objects to this RFA on the grounds that it is overbroad, and seeks a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 66:

Admit that you were not the first to use a mark comprised of the terms “pop” and “culture” in connection with Media in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and unintelligible, particularly as to the phrase “comprised of.” Opposer also objects to

this RFA on the grounds that it is compound, as to Media. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 67:

Admit that <CulturePop.me> predated your use of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 68:

Admit that the Culture Pop show by John Badesow predated your use of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 68:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 69:

Admit that the Culture Pop Mirabelle show on YouTube predated your use of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 69:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the

information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 70:

Admit that Culture Pop Films predated your use of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 70:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 71:

Admit that Seth Cushner's Culture Pop 01 predated your use of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 71:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks

information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 72:

Admit that the Culture Pop Studio on Etsy predated your use of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 72:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 73:

Admit that the Culture Pop radio on Facebook predated your use of the CULTUREPOP Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 73:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 74:

Admit that you have not used the CULTUREPOP Mark in connection with all of the goods and services identified Serial No. 85096252.

RESPONSE TO REQUEST FOR ADMISSION NO. 74:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad and compound. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 75:

Admit that you are not aware of any instances of actual confusion among consumers arising from E!'s use of the POP OF CULTURE Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 75:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects on the grounds that it seeks a legal conclusion and premature expert discovery.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer is not aware of the existence of any actual confusion as of yet. Discovery is continuing.

REQUEST FOR ADMISSION NO. 76:

Admit that you are not aware of any instances of actual confusion among consumers arising from E!'s use of the E POP OF CULTURE Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 76:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects on the grounds that it seeks a legal conclusion and premature expert discovery.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer is not aware of the existence of any actual confusion as of yet. Discovery is continuing.

REQUEST FOR ADMISSION NO. 77:

Admit that the E! Mark is well-known.

RESPONSE TO REQUEST FOR ADMISSION NO. 77:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “well-known,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 78:

Admit that the E! Mark is famous.

RESPONSE TO REQUEST FOR ADMISSION NO. 78:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad, and would require expert testimony and/or research. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or

defenses of any party, nor likely to lead to the discovery of admissible evidence.

Opposer also objects to this RFA to the extent that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 79:

Admit that Applicant has used the E! mark for more than 20 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 79:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 80:

Admit that Applicant uses the E! Mark in connection with a television network.

RESPONSE TO REQUEST FOR ADMISSION NO. 80:

Opposer objects to this RFA on the grounds that it is vague and ambiguous.

Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 81:

Admit that the E! Mark is used in connection with a television network available to millions of U.S. consumers.

RESPONSE TO REQUEST FOR ADMISSION NO. 81:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “millions,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny

this RFA.

REQUEST FOR ADMISSION NO. 82:

Admit that the E! Mark is used in connection with a television network available to tens of millions of U.S. consumers.

RESPONSE TO REQUEST FOR ADMISSION NO. 82:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “tens of millions,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 83:

Admit that the E! Mark identifies Applicant as the source or origin of programming offered under the E! Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 83:

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “tens of millions,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad, and

calls for a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 84:

Admit that the Applicant uses the E! Mark in connection with the POP OF CULTURE Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 84:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

REQUEST FOR ADMISSION NO. 85:

Admit that the E POP OF CULTURE Mark and the CULTUREPOP Mark are not confusingly similar.

RESPONSE TO REQUEST FOR ADMISSION NO. 85:

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP

Dated: January 23, 2014

By: 

Jill M. Pietrini
Whitney Walters

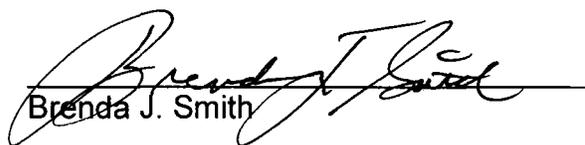
Attorneys for Opposer
Ovation LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, Nevada 89169

on this 23rd day of January, 2014.


Brenda J. Smith

SMRH:415540172.3