ESTTA Tracking number: **ESTTA631468**
Filing date: **10/07/2014**

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

Proceeding	91210643
Party	Defendant Blue Gentian, LLC
Correspondence Address	CARL J SPAGNUOLO MCHALE & SLAVIN PA 2855 PGA BLVD PALM BEACH GARDENS, FL 33410-2910 UNITED STATES aprice@mchaleslavin.com, ustrademarks@mchaleslavin.com, cspag-nuolo@mchaleslavin.com
Submission	Motion to Compel Discovery
Filer's Name	Brian M. Taillon
Filer's e-mail	litigation@mchaleslavin.com, btaillon@mchaleslavin.com, cspag-nuolo@mchaleslavin.com
Signature	/Brian M. Taillon/
Date	10/07/2014
Attachments	MTC Tristar.pdf(83112 bytes) Memorandum MTC Tristar.pdf(430446 bytes) MTC_Ex A.pdf(1554015 bytes) MTC_Ex B.pdf(36438 bytes)

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

TRISTAR PRODUCTS, INC., Opposer/Petitioner, vs. BLUE GENTIAN, LLC, Applicant/Registrant.	Opposition No. 91210643 Mark: design mark Serial No. 85/684,030 (parent case) Cancellation No. 92057408 Mark: design mark Registration No. 4,351,590

APPLICANT/REGISTRANT'S MOTION TO COMPEL DISCOVERY RESPONSES

Applicant/Registrant, BLUE GENTIAN, LLC ("Blue Gentian") respectfully requests that the Board enter an Order compelling Opposer/Petitioner, TRISTAR PRODUCTS, INC. ("Tristar") to provide full and complete responses to Blue Gentian's Interrogatories Nos. 5-16 and 20, and Requests for Production Nos. 1, 8-19, 22 and 25.

Tristar should be ordered to fully and completely respond to Blue Gentian's Interrogatories Nos. 5-16, which are directed toward sales information for Tristar's Flex-Able Hose expandable and contractible hose product. Blue Gentian's Requests for Production Nos. 8-19 correspond to the information sought with these Interrogatories. Tristar has lodged circular, catch-all objections and refused to respond to these Interrogatories and Requests. Discovery as to sales information is proper in Opposition and Cancellation proceedings, particularly where, as here, Tristar has alleged that the registration of Blue Gentian's marks would prevent it from competing effectively in the marketplace.

Tristar should further be ordered to fully and completely respond to Blue Gentian's Requests for Production Nos. 22 and 25, which are directed toward information concerning the performance of the Flex-Able Hose product in the market. Tristar has lodged boilerplate objections and refused to respond to these Requests, though the information sought is clearly relevant toward Tristar's allegation that the registration of Blue Gentian's marks would prevent it from competing effectively in the marketplace.

Tristar should further be ordered to fully and completely respond to Blue Gentian's Interrogatory No. 20, which seeks the identity of individuals having knowledge of relevant facts regarding the allegations set forth in Tristar's Petitions for Opposition and Cancellation, including a brief description of the subject matter thereof. Tristar responded to this Interrogatory with the same circular objection it raised against the Interrogatories and Requests concerning sales information, and provided only the name of its CEO. Though Tristar later agreed to fully supplement this response, it only added the name of another of its principals. Tristar should be ordered to state the subject matter of which each identified individual would have knowledge.

Lastly, Tristar should be ordered to fully and completely respond to Blue Gentian's Request for Production No. 1, which asks for the documents and things identified in Tristar's Initial Rule 26 Disclosures. Tristar should have been able to provide these items when it served its Initial Disclosures, and should be ordered to produce the documents and things in categories 12-15 of those Disclosures.

For the reasons set forth herein, and stated more fully in the accompanying Memorandum, the Board should compel Tristar to provide full and complete responses to Blue Gentian's Interrogatories Nos. 5-16 and 20, and Requests for Production Nos. 1, 8-19, 22 and 25.

Dated: October 7, 2014

Respectfully submitted,

McHALE & SLAVIN, P.A.

By s/ Brian M. Taillon
Edward F. McHale
Brian M. Taillon
Carl J. Spagnuolo
2855 PGA Boulevard
Palm Beach Gardens, Florida 33410
Telephone: (561) 625-6575
Facsimile: (561) 625-6572
E-mail: litigation@mchaleslavin.com
ustrademarks@mchaleslavin.com

Attorneys for Blue Gentian, LLC

CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY, pursuant to Trademark Rule 2.120(e)(1), that Ed McHale, counsel for Blue Gentian, and Dan Holmander, counsel for Tristar, met and conferred by electronic mail on September 8, 2014, then by telephone on September 12, 2014, and again by electronic mail on September 18, 2014 to attempt to resolve the issues raised in the present Motion, but were unable to do so.

s/ Brian M. Taillon
Brian M. Taillon

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Compel Discovery Responses was filed electronically through the Electronic System for Trademark Trials and Appeals on October 7, 2014. Notice of this filing will be sent to counsel for all parties by operation of the ESTTA, and via email and U.S. mail. Counsel includes:

Daniel J. Holmander, Esq.
Barlow, Josephs & Holmes Ltd.
101 Dyer Street, 5th Floor
Providence, RI 02903
djh@bajos.com
clc@barjos.com
cac@barjos.com
tm@barjos.com
nkritzer@bakoskritzer.com
ebakos@bakoskritzer.com

s/ Brian M. Taillon
Brian M. Taillon

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

TRISTAR PRODUCTS, INC., Opposer/Petitioner, vs. BLUE GENTIAN, LLC, Applicant/Registrant.	Opposition No. 91210643 Mark: design mark Serial No. 85/684,030 (parent case) Cancellation No. 92057408 Mark: design mark Registration No. 4,351,590

APPLICANT/REGISTRANT'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES

McHALE & SLAVIN, P.A.

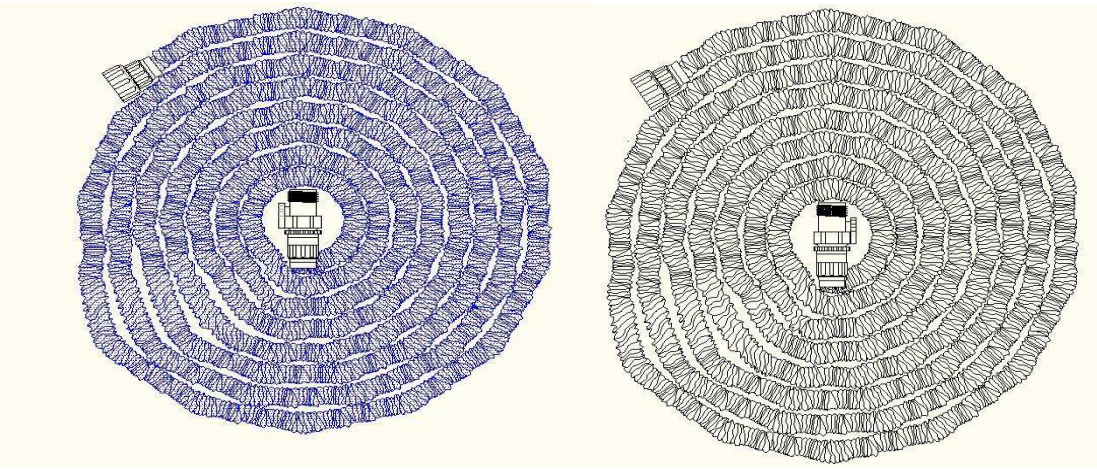
By s/ Brian M. Taillon
Edward F. McHale
Brian M. Taillon
Carl J. Spagnuolo
2855 PGA Boulevard
Palm Beach Gardens, Florida 33410
Telephone: (561) 625-6575
Facsimile: (561) 625-6572
E-mail: litigation@mchaleslavin.com
ustrademarks@mchaleslavin.com

Attorneys for Blue Gentian, LLC

I. INTRODUCTION

Applicant/Registrant, BLUE GENTIAN, LLC ("Blue Gentian") respectfully requests that the Board enter an Order compelling Opposer/Petitioner, TRISTAR PRODUCTS, INC. ("Tristar") to provide full and complete responses to Blue Gentian's Interrogatories Nos. 5-16 and 20, and Requests for Production Nos. 1, 8-19, 22 and 25. The information sought with these Interrogatories and Requests is directly relevant to Tristar's claim that it would be harmed by the registration of Blue Gentian's design marks, and Tristar should be ordered to provide full and complete responses thereto.

Tristar instituted the present Opposition proceedings to prevent the registration of the design mark set forth in Blue Gentian's U.S. Trademark Application No. 85/684,030 ("the '030 Mark"), and then instituted the present Cancellation proceedings to cancel the registration of the design mark set forth in Blue Gentian's U.S. Trademark Registration No. 4,351,590 ("the '590 Mark"). These proceedings were consolidated on January 10, 2014. The '030 and '590 Marks are depicted below:



The '030 Mark The '590 Mark

The '030 and '590 Marks depict garden hoses positioned in a distinctive manner and having textured appearances. The '030 Mark also claims the color blue. Tristar claims that it

will be harmed by the registration of each of these marks. As stated in Tristar's Petitions and acknowledged in Blue Gentian's Answers thereto, the parties are presently adverse to each other in pending patent infringement litigation in the District of New Jersey. Blue Gentian and its exclusive licensee, National Express, Inc., have accused Tristar of infringing U.S. Patents Nos. 8,291,941, 8,291,942, 8,479,776 and 8,757,213 via the manufacture, use, offer for sale, sale and/or importation of Tristar's Flex-Able Hose expandable and contractible garden hose product. The Flex-Able Hose directly competes with the XHose®, the only expandable and contractible garden hose product licensed under these patents. However, Blue Gentian denies that the registration of the '030 and '590 Marks has any relation to the patent infringement litigation.

Tristar served its objections and responses to Blue Gentian's Interrogatories and Requests for Production on September 8, 2014, ten days after they were due. Following a meet-and-confer on September 12, 2014 regarding the deficiencies in Tristar's objections and responses, Tristar served supplemental responses to Interrogatories Nos. 1, 17, 20 and 21 on September 26, 2014, while maintaining its objections to the remaining Interrogatories and Requests in dispute. Tristar's original and supplemental responses, which include the Interrogatories and Requests for Production that are the subject of this Motion, are attached as composite Exhibit "A" hereto.

II. ARGUMENT

A. Interrogatories Nos. 5-16 and Requests for Production Nos. 8-19

Blue Gentian's Interrogatories Nos. 5-16 and corresponding Requests for Production 8-19 are directed toward sales information for Tristar's Flex-Able Hose product. Full and complete responses to the Requests could also constitute responses to the Interrogatories under Fed.R.Civ.P. 33(d). Specifically, these items seek: 1) sales of the Flex-Able Hose, in units; 2) sales, in dollar amounts; and 3) Tristar's profits from such sales. This information is sought for

the time periods before and after July 23, 2012, the filing date of the application to register the '030 Mark, and June 11, 2013, the registration date for the '590 Mark.

Tristar's responses to these Interrogatories and Requests begin with a circular, catch-all objection to the effect that any information requested in discovery is irrelevant because the Board will be the ultimate trier of fact in these proceedings. Such objection is nonsensical. Tristar then refuses to provide any substantive response, in favor of a boilerplate objection that each of these Interrogatories and Requests will not lead to relevant, material, probative or admissible evidence.

The Board has held that sales information is relevant to issues in an opposition or cancellation proceeding. See, e.g., *Sunkist Growers, Inc. v. The Benjamin Ansehl Co.,* 229 USPQ 147, 148 (TTAB 1985). Moreover, Tristar has made this information relevant through its own Petitions, in which it alleges that the registration of the '030 and '590 Marks would prevent it from competing effectively in the marketplace. Blue Gentian's Interrogatories and Requests for Production therefore seek sales information as a relevant indicator of the Flex-Able Hose's performance in the marketplace both before and after the filing date for the '030 Mark and the registration date for the '590 Mark.

Moreover, Tristar's boilerplate objections flout its duty to cooperate in discovery in proceedings before the Board and cannot be sustained. *Bose Corp. v. Hexawave, Inc.,* 88 USPQ 2d 1332, 1339 (TTAB 2007); Fed.R.Civ.P. 33(b)(4). The Board should order Tristar to provide the requested information.

B. <u>Requests for Production Nos. 22 and 25</u>

Blue Gentian's Requests for Production Nos. 22 and 25 are also directed to the Flex-Able Hose's performance in the marketplace. The Requests ask for documents relating to the market

for the product, including price points, market segments, customer base, competition and market share, as well as financial reports, prospectuses and business plans for the product.

Tristar responds to these Requests with boilerplate objections that they are unduly burdensome, overbroad and will not result in any probative or admissible evidence.

Given Tristar's allegation that the registration of the '030 and '590 Marks would prevent it from competing effectively in the marketplace, information as to the Flex-Able Hose's performance in the marketplace is obviously relevant. Tristar's boilerplate objections cannot support its refusal to provide full and complete responses to these Requests. The Board should order Tristar to provide the requested items.

C. <u>Interrogatory No. 20</u>

Blue Gentian's Interrogatory No. 20 asks Tristar to provide the identity and location of individuals having knowledge of relevant facts regarding the allegations set forth in Tristar's Petitions, with a brief description of the subject matter of such knowledge.

After repeating its circular, catch-all objection, Tristar originally responded only by naming Keith Mirchandani, its CEO, without providing any additional requested information. Following the parties' meet-and-confer, Tristar supplemented its response to further name Adam Levy, its Director of Business Development. Despite agreeing to fully supplement its response, Tristar has not included a description of the particular subject matter of which either of these individuals would have knowledge.

Nothing in Tristar's objections relates to its failure to provide a full and complete response to this Interrogatory. It appears to have simply refused to do so. The Board should order Tristar to provide a full and complete response.

D. Request for Production No. 1

Blue Gentian's Request for Production No. 1 asks Tristar to provide the documents identified in Tristar's Initial Rule 26 Disclosures, a copy of which is attached as Exhibit "B" hereto. Tristar responds only by objecting to the Request for seeking publicly available information which Blue Gentian can obtain on its own. Assuming the validity of such an objection, it nevertheless would not account for the documents and things identified in categories 12-15[1] of Tristar's Initial Disclosures. Documents and things falling under these categories would be of particular relevance, in that they purportedly reflect: 1) Tristar's goods – i.e., the Flex-Able Hose; 2) the alleged genericness or descriptiveness of Blue Gentian's marks; 3) the alleged functionality of Blue Gentian's marks; and 4) the alleged failure of Blue Gentian's marks to function as a mark.

The Board encourages the exchange of copies of disclosed documents with their Initial Disclosures. TBMP § 401.02. If Tristar possesses any such evidence, it should produce it in discovery. The Board should order Tristar to produce the requested items.

III. CONCLUSION

For no less than the reasons set forth herein, the Board should enter an Order compelling Tristar to provide full and complete responses to Blue Gentian's Interrogatories Nos. 5-16 and 20, and Requests for Production Nos. 1, 8-19, 22 and 25.

[1] Blue Gentian acknowledges Tristar's production of items falling under category 16 of its Initial Disclosures in response to Request for Production No. 7.

Dated: October 7, 2014

Respectfully submitted,

McHALE & SLAVIN, P.A.

By s/ Brian M. Taillon
Edward F. McHale
Brian M. Taillon
Carl J. Spagnuolo
2855 PGA Boulevard
Palm Beach Gardens, Florida 33410
Telephone: (561) 625-6575
Facsimile: (561) 625-6572
E-mail: litigation@mchaleslavin.com
ustrademarks@mchaleslavin.com

Attorneys for Blue Gentian, LLC

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Memorandum in Support of Motion to Compel Discovery Responses was filed electronically through the Electronic System for Trademark Trials and Appeals on October 7, 2014. Notice of this filing will be sent to counsel for all parties by operation of the ESTTA, and via email and U.S. mail. Counsel includes:

Daniel J. Holmander, Esq.
Barlow, Josephs & Holmes Ltd.
101 Dyer Street, 5th Floor
Providence, RI 02903
djh@bajos.com
clc@barjos.com
cac@barjos.com
tm@barjos.com
nkritzer@bakoskritzer.com
ebakos@bakoskritzer.com

s/ Brian M. Taillon
Brian M. Taillon

EXHIBIT “A”

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

TRISTAR PRODUCTS, INC., Opposer/Petitioner, vs. BLUE GENTIAN, LLC, Applicant/Registrant.	Opposition No. 91210643 Mark: design mark Serial No. 85/684,030 (parent case) Cancellation No. 92057408 Mark: design mark Registration No. 4,351,590

OPPOSER/PETITIONER'S RESPONSES TO APPLICANT/REGISTRANT'S FIRST SET OF INTERROGATORIES

GENERAL OBJECTION

Opposer/Petitioner objects to Applicant/Registrant's Interrogatories to the extent that any Interrogatory seeks information that is irrelevant, immaterial, and/or protected from disclosure by the attorney-client privilege or work product doctrine.

Opposer/Petitioner objects to Applicant/Registrant's Interrogatories to the extent any Interrogatory purports to impose any duty beyond that specified in the Federal Rules of Civil Procedure or TTAB Manual of Procedure, including, without limitation, Applicant/Registrant's purported instructions.

INTERROGATORIES

INTERROGATORY NO. 1:

State, with specificity and in detail, the factual basis for your allegation that the '030 and '590 Marks are each a product design trade dress rather than a trademark.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore Opposer/Petitioner's factual basis for the allegation that the '030 and '590 Marks are each a product design trade dress rather than a trademark is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Applicant/Registrant is the assignee of U.S. Pat. No. 8,291,941 entitled "Expandable and Contractible Hose" and U.S. Pat. No. 8,291,942 entitled "Expandable Hose Assembly". Both U.S. Pat. Nos. 8,291,941 and 8,291,942 disclose the utilitarian advantages of the '030 and '590 Marks. Applicant's description of the '030 Mark is "a stylized blue coiled hose with a black nozzle and attachment" for use with garden hoses. Registrant's description of the '590 Mark is "a stylized coiled hose" for garden hoses.

INTERROGATORY NO. 2:

State, with specificity and in detail, the factual basis for your allegation that the '030 and '590 Marks are functional.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore Opposer/Petitioner's factual basis for the allegation that the '030 and '590 Marks are functional is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Applicant/Registrant is the assignee of U.S. Pat. No. 8,291,941 entitled "Expandable and Contractible Hose" and U.S. Pat. No. 8,291,942 entitled "Expandable Hose Assembly". Both U.S. Pat. Nos. 8,291,941 and 8,291,942 disclose the utilitarian advantages of the '030 and '590 Marks. Applicant's description of the '030 Mark is "a stylized blue coiled hose with a black nozzle and attachment" for use with garden hoses. Registrant's description of the '590 Mark is "a stylized coiled hose" for garden hoses.

INTERROGATORY NO. 3:

State, with specificity and in detail, the factual basis for your allegation that Blue Gentian was required to disclose U.S. Patent Nos. 8,291,941 and 8,291,942 in connection with the '030 and '590 Marks.

OBJECTION:

Objection is made to this interrogatory to the extent that Opposer/Petitioner's allegation in Count 2, paragraphs 9 and 10 did not state that Blue Gentian "was required to disclose U.S. Patent Nos. 8,291,941 and 8,291,942 in connection with the '030 and '590 Marks" but that they "failed to disclose U.S. Patent Nos. 8,291,941 and 8,291,942 in connection with the prosecution of the '030 and '590 Marks. The Trier of Fact must determine whether or not the Applicant/Registrant is "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore Opposer/Petitioner's factual basis for the allegation that Blue Gentian failed to disclose U.S. Patent Nos. 8,291,941 and 8,291,942 in connection with the '030 and '590 Marks is relevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Pursuant to TMEP 1202.02(a)(v)(A), a utility patent is strong evidence that the features therein claimed are functional. If trade dress protection is sought for those features the strong evidence of functionality based on the previous patent adds great weight to the statutory presumption that features are deemed functional until proved otherwise by the party seeking trade dress protection.

INTERROGATORY NO. 4:

State, with specificity and in detail, the factual basis for your allegation that the registration of the '030 and '590 Marks would prevent you from competing effectively in the marketplace.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore how registration of the '030 and '590 Marks would prevent Opposer/Petitioner from competing effectively in the marketplace is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Pursuant to TMEP 1202.02(a)(ii), the functionality doctrine prevents trademark law, which seeks to promote competition by protecting a firm's reputation, from instead inhibiting legitimate competition by allowing a producer to control a useful product feature. It is the province of patent law, not trademark law, to encourage invention by granting inventors a monopoly over new product designs or functions for a limited time, 35 U.S.C. Sections 154, 173, after which competitors are free to use the innovation. If a product's functional features could be used as trademarks, however, a monopoly over such features could be obtained without regard to whether they qualify as patents and could be extended forever (because trademarks may be renewed in perpetuity).

Applicant/Registrant is the assignee of U.S. Pat. No. 8,291,941 entitled "Expandable and Contractible Hose" and U.S. Pat. No. 8,291,942 entitled "Expandable Hose Assembly". Both U.S. Pat. Nos. 8,291,941 and 8,291,942 disclose the utilitarian advantages of the '030 and '590 Marks. Applicant's description of the '030 Mark is "a stylized blue coiled hose with a black nozzle and attachment" for use with garden hoses. Registrant's description of the '590 Mark is "a stylized coiled hose" for garden hoses. If Applicant/Registrant is granted registrations in the '030 and '590 Marks, they could prevent Opposer/Petitioner from competing effectively in the marketplace in the sale of their expandable, garden hose called FLEX~ABLE HOSE.

INTERROGATORY NO. 5:

State the amount of your sales, in number of units, of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3,

paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in number of units, of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark) is irrelevant. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 6:
State the amount of your sales, in number of units, of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in number of units, of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 7:

State the amount of your sales, in terms of dollar amount, of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3,

paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in terms of dollar amount, of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 8:

State the amount of your sales, in terms of dollar amount, of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in terms of dollar amount, of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 9:

State the amount of your profits from sales of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional"

(Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of profits from sales of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 10:

State the amount of your profits from sales of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of profits from sales of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 11:

State the amount of your sales, in number of units, of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in number of units, of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 12:

State the amount of your sales, in number of units, of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in number of units, of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 13:

State the amount of your sales, in terms of dollar amount, of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in terms of dollar amount, of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 14:

State the amount of your sales, in terms of dollar amount, of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of sales, in terms of dollar amount, of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 15:

State the amount of your profits from sales of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of profits from sales of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 16:

State the amount of your profits from sales of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark).

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the amount of profits from sales of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark) is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without

waiving this objection, Applicant responds as set forth below.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 17:

Please identify all marketplace or point-of-sale settings known to you where the Flex-Able Hose is sold in the United States.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. In addition, the interrogatory is overly broad and vague. The information requested is equally available from third parties. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Opposer/Petitioner offers for sale at www.flexablehose.com an expandable, garden hose called "FLEX~ABLE HOSE" as well as retail outlets which will be provided in due course.

INTERROGATORY NO. 18:

Describe, with specificity and in detail, the circumstances in which you became aware of the XHose® expandable and contractible hose product, including any actions you took in response thereto.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore whether Opposer/Petitioner became aware of the XHose® expandable and contractible hose product, including any actions they took in response thereto is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 19:

Describe, with specificity and in detail, the circumstances in which you first decided to manufacture and sell the Flex-Able Hose product, including any actions you took in furtherance thereof.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the circumstances in which Opposer/Petitioner first decided to manufacture and sell the Flex-Able Hose product, including any actions they took in furtherance thereof including any actions they took in response thereto is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege.

ANSWER:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence.

INTERROGATORY NO. 20:

Please provide the identity and location of all individuals, both within Tristar and from any known third party, having knowledge of relevant facts regarding the allegations set forth in your Petitions for Opposition and Cancellation against the '030 and '590 Marks, including a brief description of the subject matter about which they would have such knowledge.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore individuals, both within Tristar and from any known third party, having knowledge of relevant facts regarding the allegations set forth in your Petitions for Opposition and Cancellation against the '030 and '590 Marks is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Keith Mirchandani, CEO at Tristar Products, Inc.

INTERROGATORY NO. 21:

Please provide the identity and location of all individuals, both within Tristar and from any known third party, having knowledge of the design and manufacture of the Flex-Able Hose, including a brief description of the subject matter about which they would have such knowledge.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant's '030 and '590 Marks are "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore individuals, both within Tristar and from any known third party, having knowledge of the design and manufacture of the Flex-Able Hose is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney-client privilege. Without waiving this objection, Applicant responds as set forth below.

ANSWER:

Keith Mirchandani, CEO at Tristar Products, Inc.

TRISTAR PRODUCTS, INC.

By: _____

STATE OF New Jersey)
) SS
COUNTY OF Morris)

BEFORE ME, the undersigned authority, personally appeared Keith Mirchandani, to me personally known or who presented Driver License as identification, and he/she deposes and states that the foregoing Answers to Interrogatories are true and correct to the best of his/her knowledge and belief.

SWORN TO and SUBSCRIBED this _____ day of September 4, 2014.

Filomena Nefissi
Notary Public

Filomena Nefissi
Print Name

7/17/16
My Commission Expires

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **OPPOSER/PETITIONER'S RESPONSES TO APPLICANT/REGISTRANT'S FIRST SET OF INTERROGATORIES** was served to counsel via e-mail and U.S. First Class Mail on August September 8, 2014. Counsel includes:

Carl J. Spagnuolo
McHALE & SLAVIN, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410

_____/daniel j. holmander_____
Daniel J. Holmander
Attorney for Opposer/Petitioner

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

TRISTAR PRODUCTS, INC., Opposer/Petitioner, vs. BLUE GENTIAN, LLC, Applicant/Registrant.	Opposition No. 91210643 Mark: design mark Serial No. 85/684,030 (parent case) Cancellation No. 92057408 Mark: design mark Registration No. 4,351,590

OPPOSER/PETITIONER'S RESPONSES TO APPLICANT/REGISTRANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Opposer/Petitioner, Tristar Products, Inc., hereby responds to the Applicant/Registrant's First Requests for Production of Documents and Things as follows:

GENERAL OBJECTIONS

Opposer/Petitioner objects to Applicant/Registrant's First Requests for Production of Documents and Things to the extent that any Request seeks information that is irrelevant, immaterial, and/or protected from disclosure by the attorney-client privilege or work product doctrine.

Opposer/Petitioner objects to Applicant/Registrant's First Requests for Production of Documents and Things to the extent any Request purports to impose any duty beyond that specified in the Federal Rules of Civil Procedure or TTAB Manual of Procedure including, without limitation, Applicant/Registrant's purported instructions.

REQUEST FOR PRODUCTION NO. 1:

All documents and things identified in your Initial Disclosures pursuant to Fed.R.Civ.P. 26.

OBJECTION:

Opposer/Petitioner objects to this request as it seeks publicly available information, which Applicant/Registrant can obtain on its own. Trademark and Patent file histories can be obtained with little or no burden by Applicant/Registrant and therefore, it is duplicative and unnecessary for Opposer/Petitioner to provide such information.

RESPONSE:

Subject to the forgoing objection and its right to supplement this response in due course, Opposer/Petitioner may produce non-privileged documents

REQUEST FOR PRODUCTION NO. 2:

Documents sufficient to identify every person who participated in the decision to file this action against Blue Gentian.

RESPONSE:

Request is overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 3:

All documents and things pertaining to the circumstances in which you first became aware of the XHose® expandable and contractible hose product, and any actions you took in response thereto.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is overbroad and will not result in any probative or admissible evidence. Opposer/Petitioner also objects to this request to the extent it seeks privileged material.

REQUEST FOR PRODUCTION NO. 4:

All documents and things pertaining to the circumstances in which you first decided to manufacture and sell the Flex-Able Hose expandable and contractible hose product, and any actions you took in furtherance thereof.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is overbroad and will not result in any probative or admissible evidence. Opposer/Petitioner also objects to this request to the extent it seeks privileged material.

REQUEST FOR PRODUCTION NO. 5:

All documents and things pertaining to any research (including focus groups, polls, surveys, interviews or market analysis) conducted by you or on your behalf with respect to the '030 or '590 Marks.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence. Subject to the foregoing, Opposer/Petitioner will produce non-privileged documents, if any.

REQUEST FOR PRODUCTION NO. 6:

All documents and things pertaining to opinions of counsel that you have obtained in relation to the '030 or '590 Marks, including but not limited to all such opinions of counsel upon which you intend to rely in this action, and all documents considered in connection with the preparation of such opinions of counsel.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is overbroad and will not result in any probative or admissible evidence. Opposer/Petitioner also objects to this request to the extent it seeks privileged material.

REQUEST FOR PRODUCTION NO. 7:

All documents and things pertaining to your allegations that the '030 and '590 Marks are functional, including but not limited to:
A. all documents and things relating to or bearing on the scope of coverage of the '030 and '590 Marks;
B. all documents and things related to, relied on, or reviewed in connection with any investigation, test, opinion, study, evaluation, examination, or analysis of products you would contend are depicted by the '030 and '590 Marks; and
C. all documents relating to or reflecting the results of each such investigation, test, opinion, study, evaluation, examination or analysis.

RESPONSE:

Applicant/Registrant is the assignee of U.S. Pat. No. 8,291,941 entitled "Expandable and Contractible Hose" and U.S. Pat. No. 8,291,942 entitled "Expandable Hose Assembly". Both U.S. Pat. Nos. 8,291,941 and 8,291,942 disclose the utilitarian advantages of the '030 and '590 Marks. Applicant's description of the '030 Mark is "a stylized blue coiled hose with a black nozzle and attachment" for use with garden hoses. Registrant's description of the '590 Mark is "a stylized coiled hose" for garden hoses. Applicant/Registrant has filed Civil Action complaints alleging infringement of U.S. Pat. No. 8,291,941 and U.S. Pat. No. 8,291,942 against various third parties selling similar garden hoses.

Printouts of several complaints are enclosed along with documents reflecting third party usage of hose products in a coiled position. Subject to its right to supplement this response in due course, Opposer/Petitioner will produce additional documents.

REQUEST FOR PRODUCTION NO. 8:

Documents sufficient to show all of your unit sales of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 9:

Documents sufficient to show all of your unit sales of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 10:

Documents sufficient to show all your sales, in terms of dollar amount, of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 11:

Documents sufficient to show all your sales, in terms of dollar amount, of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 12:

Documents sufficient to show your profits from sales of the Flex-Able Hose in the United States prior to July 23, 2012 (the filing date of the application to register the '030 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 13:

Documents sufficient to show your profits from sales of the Flex-Able Hose in the United States since July 23, 2012 (the filing date of the application to register the '030 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 14:

Documents sufficient to show all of your unit sales of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 15:

Documents sufficient to show all of your unit sales of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 16:

Documents sufficient to show all your sales, in terms of dollar amount, of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 17:

Documents sufficient to show all your sales, in terms of dollar amount, of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 18:

Documents sufficient to show your profits from sales of the Flex-Able Hose in the United States prior to June 11, 2013 (the registration date for the '590 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 19:

Documents sufficient to show your profits from sales of the Flex-Able Hose in the United States since June 11, 2013 (the registration date for the '590 Mark).

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to show the date of first sale of the Flex-Able Hose in the United States.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it will not result in any probative or admissible evidence. Subject to the foregoing, Opposer/Petitioner encloses a copy of Registration No. 4381182 for the mark FLEX~ABLEHOSE which claims a date of first use of August 25, 2012.

REQUEST FOR PRODUCTION NO. 21:

Documents sufficient to show the date of first commercial promotion of the Flex-Able Hose in the United States.

RESPONSE:

See response to Request No. 20 above.

REQUEST FOR PRODUCTION NO. 22:

All documents and things pertaining to the market for the Flex-Able Hose, including, but not limited to, price points, market segments, customer base, competition, and anticipated and actual market share.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 23:

Documents sufficient to describe or show all technical details of the Flex-Able Hose, including, but not limited to, design schematics and product specifications.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence. Opposer/Petitioner also objects to this request to the extent it seeks privileged material.

REQUEST FOR PRODUCTION NO. 24:

Representative samples of all advertising and marketing materials for the Flex-Able Hose in the United States.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is overbroad and will not result in any probative or admissible evidence. Opposer/Petitioner will produce relevant, non-privileged documents. Subject to the foregoing, a printout of Opposer/Petitioner's website www.flexablehose.com is enclosed.

REQUEST FOR PRODUCTION NO. 25:

All annual reports, financial statements, prospectuses, business plans, and strategic plans related to the Flex-Able Hose in the United States.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome, overbroad and will not result in any probative or admissible evidence.

REQUEST FOR PRODUCTION NO. 26:

Documents sufficient to identify each person that you may call as a fact witness at any hearing or at trial in this action.

RESPONSE:

Opposer/Petitioner objects to this request to the extent it seeks confidential, privileged and/or work product information. Subject to the forgoing objections and its right to supplement this response at a later date Opposer/Petitioner responds as follows:

Opposer/Petitioner has no such documents at this time.

REQUEST FOR PRODUCTION NO. 27:

All documents pertaining to each person that you may call as an expert witness at any hearing or at trial in this action.

RESPONSE:

Opposer/Petitioner objects to this request to the extent it seeks confidential, privileged and/or work product information. Subject to the forgoing objections and its right to supplement this response at a later date Opposer/Petitioner responds as follows:

Opposer/Petitioner has no such documents at this time.

REQUEST FOR PRODUCTION NO. 28:

All documents you may use as an exhibit at trial in this action.

RESPONSE:

Opposer/Petitioner objects to this request to the extent it seeks confidential, privileged and/or work product information. Subject to the forgoing objections and its right to supplement this response at a later date Opposer/Petitioner responds as follows:

Opposer/Petitioner has no such documents at this time.

REQUEST FOR PRODUCTION NO. 29:

All documents identified or relied upon in responding to Blue Gentian's First Set of Interrogatories.

RESPONSE:

Opposer/Petitioner objects to this request on the grounds that it is unduly burdensome and overbroad. Subject to the foregoing objections, Opposer/Petitioner will produce non-privileged documents.

Respectfully submitted,

Dated: September 8, 2014

/daniel j. holmander/
Daniel J. Holmander
Barlow, Josephs & Holmes, Ltd.
101 Dyer Street, 5th Floor
Providence, RI 02903

Attorney for the Opposer/Petitioner,
Tristar Products, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **OPPOSER/PETITIONER'S RESPONSES TO APPLICANT/REGISTRANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS** was served to counsel via e-mail and U.S. First Class Mail on September 8, 2014. Counsel includes:

Carl J. Spagnuolo
McHALE & SLAVIN, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410

____/daniel j. holmander/_____
Daniel J. Holmander
Attorney for Opposer/Petitioner

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

TRISTAR PRODUCTS, INC., Opposer/Petitioner, vs. BLUE GENTIAN, LLC, Applicant/Registrant.	Opposition No. 91210643 Mark: design mark Serial No. 85/684,030 (parent case) Cancellation No. 92057408 Mark: design mark Registration No. 4,351,590

OPPOSER/PETITIONER'S FIRST SUPPLEMENTAL RESPONSE TO APPLICANT/REGISTRANT'S FIRST SET OF INTERROGATORIES

GENERAL OBJECTION

Opposer/Petitioner objects to Applicant/Registrant's Interrogatories to the extent that any Interrogatory seeks information that is irrelevant, immaterial, and/or protected from disclosure by the attorney-client privilege or work product doctrine.

Opposer/Petitioner objects to Applicant/Registrant's Interrogatories to the extent any Interrogatory purports to impose any duty beyond that specified in the Federal Rules of Civil Procedure, including, without limitation, Applicant/Registrant's purported instructions.

INTERROGATORIES

INTERROGATORY NO. 1:

State, with specificity and in detail, the factual basis for your allegation that the '030 and '590 Marks are each a product design trade dress rather than a trademark.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant is "merely

descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore Opposer/Petitioner's factual basis for the allegation that the '030 and '590 Marks are each a product design trade dress rather than a trademark is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney client privilege. Without waiving this objection, Applicant responses as set forth below.

ANSWER:

Applicant/Registrant is the assignee of U.S. Pat. No. 8,291,941 entitled "Expandable and Contractible Hose" and U.S. Pat. No. 8,291,942 entitled "Expandable Hose Assembly". Both U.S. Pat. Nos. 8,291,941 and 8,291,942 disclose the utilitarian advantages of the '030 and '590 Marks. Opposer/Petitioner further believes that Applicant/Registrant also filed a U.S. design patent application on the same utilitarian design. Opposer/Petitioner will explore this position further as discovery proceeds as this application is not in the public domain

Applicant's description of the '030 Mark is "a stylized blue coiled hose with a black nozzle and attachment" for use with garden hoses. Registrant's description of the '590 Mark is "a stylized coiled hose" for garden hoses. Registrant did not submit and/or failed to provide sufficient Trademark Sec. 2(f) evidence during the prosecution of the '590 Registrant to establish distinctiveness of Registrant's Mark.

Applicant/Registrant submitted a statement of use on March 22, 2013, in Registration No. 4,351,590 that included as a specimen of use a photograph of packaging for a coiled hose, which shows a photograph of an actual coiled hose on the packaging.

INTERROGATORY NO. 17:

Please identify all marketplace or point-of-sale settings known to you where the Flex-Able Hose is sold in the United States.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant is "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore the marketplace or point-of-sale settings where the Flex-Able Hose is sold in the United States is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney client privilege. Without waiving this objection, Applicant responses as set forth below.

ANSWER:

Opposer/Petitioner offers for sale an expandable, garden hose called "FLEX~ABLE HOSE". Sales outlets include at least www.flexablehose.com, Walmart Stores, Inc., Target, Boscov's, Do it Best, HE BUTT, Rite Aid, Wegmans, Brookshire Grocery, Super Valu, and Duckwall Alco. Opposer/Petitioner has at least one sale at each of the sales outlets identified for the garden hose called "FLEX~ABLE HOSE".

INTERROGATORY NO. 20:

Please provide the identity and location of all individuals, both within Tristar and from any known third party, having knowledge of relevant facts regarding the allegations set forth in your Petitions for Opposition and Cancellation against the '030 and '590 Marks, including a brief description of the subject matter about which they would have such knowledge.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant is "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore individuals, both within Tristar and from any known third party, having knowledge of relevant facts regarding the allegations set forth in your Petitions for Opposition and Cancellation against the '030 and '590 Marks is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney client privilege. Without waiving this objection, Applicant responses as set forth below.

ANSWER:

Keith Mirchandani, CEO at Tristar Products, Inc.
Adam Levy, Director of Business Development at Tristar Products, Inc.

Opposer lacks knowledge or information of what facts any third party may know regarding the allegations set forth in the Petitions and therefore has no further supplement to this response.

INTERROGATORY NO. 21:

Please provide the identity and location of all individuals, both within Tristar and from any known third party, having knowledge of the design and manufacture of the Flex-Able Hose, including a brief description of the subject matter about which they would have such knowledge.

OBJECTION:

Objection is made to this interrogatory to the extent that it will not lead to relevant, material, probative or

admissible evidence. The Trier of Fact must determine whether or not the Applicant/Registrant is "merely descriptive and/or generic" (Count 1, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 1, paragraph 1 of Petitioner's Amended Petition to Cancel); "functional" (Count 2, paragraph 1 of Opposer's Amended Notice of Opposition) (Count 2, paragraph 1 of Petitioner's Amended Petition to Cancel); and/or "lacks distinctiveness and fails to function as a trademark" (Count 3, paragraph 7 of Opposer's Amended Notice of Opposition) (Count 3, paragraph 7 of Petitioner's Amended Petition to Cancel) and therefore individuals, both within Tristar and from any known third party, having knowledge of the design and manufacture of the Flex-Able Hose is irrelevant. In addition, the interrogatory is overly broad and vague and seeks responses that are protected by the attorney client privilege. Without waiving this objection, Applicant responses as set forth below.

ANSWER:

Keith Mirchandani, CEO at Tristar Products, Inc.
Adam Levy, Director of Business Development at Tristar Products, Inc.

Opposer lacks knowledge or information of what facts any third party may know regarding the design and manufacture of the Flex-Able Hose and therefore has no further supplement to this response.

TRISTAR PRODUCTS, INC.

By: _____

STATE OF New Jersey)
) SS 1HO-88-4281
COUNTY OF Morris)

BEFORE ME, the undersigned authority, personally appeared Keith Mirchandani, to me personally known or who presented Driver License as identification, and he/she deposes and states that the foregoing Answers to Interrogatories are true and correct to the best of his/her knowledge and belief.

SWORN TO and SUBSCRIBED this 26 day of September _____, 2014.

Filomena Nefissi
Notary Public

Filomena Nefissi
Print Name

7/17/2016
My Commission Expires

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **OPPOSER/PETITIONER'S RESPONSES TO APPLICANT/REGISTRANT'S FIRST SET OF INTERROGATORIES** was served to counsel via e-mail and U.S. First Class Mail on September _26th____, 2014. Counsel includes:

Edward F. McHale
Brian M. Taillon
Carl J. Spagnuolo
McHALE & SLAVIN, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410

/daniel j. holmander/
Daniel J. Holmander
Attorney for Opposer/Petitioner

EXHIBIT “B”

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

Tristar Products, Inc. Opposer/Petitioner, v. Blue Gentian, LLC Applicant/Registrant	)))))))))	Opposition No. 91210643 Cancellation No. 92057408

OPPOSER/PETITIONER'S INITIAL DISCLOSURES

Pursuant to Fed. R. Civ. P. 26(a), Opposer/Petitioner Tristar Products, Inc., (hereinafter, "Tristar"), by and through its attorneys, hereby provides the following Initial Disclosures:

A. In accordance with Rule 26(a)(1)(A), following is a list of individuals likely to have discoverable, information that Tristar may use to support its claims or defenses:

1. Keith Mirchandani
   Please contact through undersigned.

   Keith Mirchandani is the CEO at Tristar Products, Inc..
   Subject: litigation referenced in the Amended Notice of Opposition and Tristar's hose product.

Applicant reserves the right to amend this list upon identification of other individuals through discovery or through development of the issues.

B. In accordance with Rule 26(a)(1)(B), a copy of or description by category of all documents and things now in the Applicant's possession, custody, or control that it may use to support its claims or defenses:

1. The file history of United States Trademark Application No. 85/684030 may be used to support Opposer's claims or defenses. Copies of the '030 file history are available from the United States Patent and Trademark Office.

2. The file history of United States Trademark Registration 4,351,590 may be used to support Opposer's claims or defenses. Copies of the '590 file history are available from the United States Patent and Trademark Office.

3. The file history of United States Trademark Registration No. 4,381,183 may be used to support Opposer's claims or defenses. Copies of the '183 file history are available from the United States Patent and Trademark Office.

4. The file history of U.S. Trademark Registration No. 4,233,850 may be used to support Opposer's claims or defenses. Copies of the '850 file history are available from the United States Patent and Trademark Office.

5. The file history of U.S. Trademark Registration No. 4,528,674 may be used to support Opposer's claims or defenses. Copies of the '674 file history are available from the United States Patent and Trademark Office.

6. The file history of U.S. Patent No. 8,291,941 (U.S. Pat. Appl. Serial No. 13/289,447) may be used to support Opposer's claims or defenses. Copies of the '941 file history are available from the United States Patent and Trademark Office.

7. The file history of U.S. Patent No. 8,291,942 (U.S. Pat. Appl. Serial No. 13/488,515) may be used to support Opposer's claims or defenses. Copies of the '942 file history are available from the United States Patent and Trademark Office.

8. The file history of U.S. Pat. Appl. Serial No. 13/654,832 may be used to support Opposer's claims or defenses. Copies of the '832 file history are available from the United States Patent and Trademark Office.

9. The file history of U.S. Pat. No. 8,479,776 (U.S. Pat. Appl. Serial No. 13/690,670) may be used to support Opposer's claims or defenses. Copies of the '670 file history are available from the United States Patent and Trademark Office.

10. The file history of U.S. Pat. No. 8,757,213 (U.S. Pat. Appl. Serial No. 13/859,511) may be used to support Opposer's claims or defenses. Copies of the '511 file history are available from the United States Patent and Trademark Office.

11 Documents filed in the related court proceeding Civil Action No. 2:13-cv-01758, U.S. Dist Ct. of New Jersey involving Tristar and Applicant/Registrant. Some documents of this court proceeding are available through PACER website.

12. Documents reflecting Applicant/Registrant's goods.

13. Documents reflecting the genericness, mere descriptiveness, or descriptiveness of Applicant/Registrant's Marks.

14. Documents reflecting that Applicant/Registrant's mark comprises matter, as a whole, is functional.

15. Documents reflecting that Applicant/Registrant's Marks failure to function as a trademark.

16. Documents reflecting third party usage of hose products in a coiled position.

Applicant reserves the right to amend this list upon identification of other documents and things through discovery or through development of the issues.

Respectfully submitted,

Dated: August 8, 2014

/daniel j. holmander/

Daniel J. Holmander
Cheryl A. Clarkin
Barlow, Josephs & Holmes, Ltd.
101 Dyer Street, 5th Floor
Providence, RI 02903

Attorneys for the Opposer/Petitioner,
Tristar Products, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER/PETITIONER'S INITIAL DISCLOSURES was served on counsel for Applicant/Registrant, this 8th day of August, 2014 by sending same via First Class Mail, postage prepaid, to:

Carl J. Spagnuolo, Esq.
Mchale & Slavin, P.A.
2855 PGA Blvd.
Palm Beach Gardens, FL 33410

/daniel j. holmander/
Daniel J. Holmander