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

Proceeding	91211882
Party	Plaintiff Knowledgent Group Inc.
Correspondence Address	ELYSE A MARCUS SILLS CUMMIS & GROSS PC 30 ROCKEFELLER PLAZA , 29TH FLOOR NEW YORK, NY 10112 UNITED STATES pto@sillscummis.com, emarcus@sillscummis.com, elon-gobardi@sillscummis.com
Submission	Motion to Compel Discovery
Filer's Name	Elyse A. Marcus
Filer's e-mail	pto@sillscummis.com, fwaldbaum@sillscummis.com, emarcus@sillscummis.com
Signature	/Elyse A. Marcus/
Date	05/22/2014
Attachments	Opposer's Motion to Compel.pdf(893145 bytes ) Declaration .pdf(1447935 bytes )

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

KNOWLEDGENT GROUP INC.,	:	Opposition No. 91211882
	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	
GREG SEARLE, DBA,	:	
KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
_____	:	

**OPPOSER’S MOTION TO COMPEL DISCOVERY AND INITIAL  
DISCLOSURES**

Opposer, Knowledgent Group Inc., hereby moves this Board pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120(e) of the Trademark Rules of Practice for an order compelling Applicant, Greg Searle, DBA Knowledgement Pty Ltd., to respond to and serve upon Opposer answers to Opposer’s First Requests for Interrogatories without objection (copy attached as Ex. A), to respond to and produce for inspection and copying documents and things responsive to Opposer’s First Requests for the Production of Documents and Things without objection (copy attached as Ex. B), and to make Initial Disclosures to Opposer.

Opposer further moves this Board to issue a revised Scheduling Order which extends Opposer’s discovery period only such that it closes at least sixty (60) days after Opposer’s receipt of discovery responses and initial disclosures that fully comply with the Board’s Order and which also reschedules the testimony and brief periods as the Board deems appropriate. The

facts and arguments in support of Opposer's Motion are set forth below.

### **CERTIFICATION OF COUNSEL**

Pursuant to the requirements set forth in 37 C.F.R. §2.120(e) and TBMP §523.02, this motion is made following counsel for Opposer's good faith efforts to discuss with Applicant's counsel by e-mail and teleconference the issues set forth in this motion. However, due Applicant's counsel's refusal to respond to these attempts, the parties have been unable to reach an agreement. *See* Marcus Decl. ¶¶ 8-10 and 14-23.

#### **I. Facts Supporting Opposer's Good Faith Efforts to Obtain Discovery**

Opposer's interrogatories and document requests were served via first class mail to Applicant's former counsel on November 21, 2013. (Declaration of Elyse A. Marcus ("Marcus Decl.") ¶ 5). Applicant's responses were due no later than December 26, 2013. (*Id.* at ¶ 6). Opposer's counsel called Applicant's former counsel, Matthew S. Swyers on December 30, 2014 to discuss the outstanding discovery responses and left a voice mail message. (*Id.* at ¶ 8). On December 31, 2013 Mr. Swyers filed a Motion with the Board requesting that he withdraw as counsel. Having had no response from Mr. Swyers concerning the discovery responses, on January 22, 2014, Opposer sent Mr. Swyers a letter via Federal Express inquiring as to when it should expect answers to the outstanding discovery requests (*Id.* at ¶ 10). Opposer received no response. (*Id.*) On February 3, 2014, the Board issued an Order relieving Mr. Swyers as counsel and giving Applicant thirty days to either appoint new counsel or appear pro se. On March 5, 2014, new counsel for Applicant, Darren S. Rimer appeared as counsel. On March 28, 2014 the Board resumed the proceedings. On April 15, 2014 Opposer's counsel contacted Mr. Rimer via e-mail inquiring as to the status of the outstanding discovery requests. (*Id.* ¶ 14). Mr. Rimer

responded on April 15, 2014 stating that he did not receive the file from prior counsel and requested copies of the outstanding discovery requests, an extension to respond and a teleconference. (*Id.* ¶ 15). On April 15, 2014, Opposer's counsel responded by stating that she would forward the copies of the discovery requests the next day, noting that responses were due on December 26, 2014 and providing her availability for a teleconference. (*Id.* ¶ 16). On April 16, 2014, Opposer's counsel forwarded copies of discovery requests giving Applicant until April 28, 2014 to respond and offering a thirty day extension of all other deadlines to enable Mr. Rimer to get up to speed with the proceeding. (*Id.* ¶ 17). Mr. Rimer did not respond to the e-mails and on April 23, 2014, Opposer's counsel left Mr. Rimer a voice mail message following up on his request for a teleconference. (*Id.* ¶¶ 18-19). Applicant did not provide the discovery responses by the April 28, 2014 deadline. (*Id.* ¶ 20). On May 12, 2014, Opposer again left a voice mail message for Mr. Rimer inquiring as to the status of the discovery responses. (*Id.* ¶ 21). To date Applicant has not provided the responses to the discovery requests. (*Id.* ¶ 22).

In addition, pursuant to the Board's Scheduling Order, Initial Disclosures were due on November 13, 2013. Opposer served its Initial Disclosures on Applicant on October 22, 2013. As of the date of this Motion, Applicant has not served initial disclosures. (*Id.* ¶ 4).

## **II. Argument Supporting Order to Compel**

As detailed above, Petitioner has spent over five months making significant efforts to obtain its requested discovery and initial disclosures, but Applicant has failed to cooperate. Opposer is opposing Applicant's application for KNOWLEDGEMENT on the basis that Opposer is the senior user and that Applicant's mark is confusingly similar to Opposer's and likely to confuse consumers. (*See* Notice of Opposition filed on August 5, 2014). And yet, Applicant has refused to timely respond to fundamental discovery requests concerning these

issues and whether the mark is used at all, which of course, bears directly on the issue of whether the mark should be allowed to register. *See American Society of Oral Surgeons v. American College of Oral and Maxillofacial Surgeons*, 201 U.S.P.Q. 531, 533 (TTAB 1979) (information related to marks is relevant and therefore discoverable). Applicant has failed to comply with its obligation to make a good faith effort to satisfy Opposer's reasonable discovery requests and must now be compelled to do so without objection. *See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 408.01*, citing *Panda Travel Inc., v. Resort Option Enterprises, Inc.*, 94 U.S.P.Q.2d 1789, 1791 (TTAB 2009) ("Each party has a duty to make good faith effort to satisfy the reasonable and appropriate discovery needs of its adversary.").

Opposer respectfully requests that the Board enter an Order compelling Applicant to fully answer Opposer's First Requests for Interrogatories and to fully respond to Opposer's First Requests for Production of Documents and Things. *See Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448 (TTAB 1979); *Crane Co. v. Shimano Indus. Co., Ltd.*, 184 U.S.P.Q. 691 (TTAB 1975). Because Applicant has failed to timely respond to any of Opposer's interrogatories, Opposer requests that the Board order Applicant to respond to the interrogatories without objection. *No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551 (T.T.A.B. 2000) (a party who fails to respond to discovery requests during the time allowed may be found to "have forfeited its right to object to the discovery requests on their merits."). Opposer further requests that this Board issue an Order compelling responses to the document requests (without objection) and for Applicant to immediately and specifically identify responsive documents for all of Opposer's document requests.

In addition to its failure to respond to the discovery requests, Applicant has failed to produce the required initial disclosures. The Board's initial scheduling order in this proceeding

set November 13, 2013 as the due date for the parties' reciprocal initial disclosures. Opposer served its initial disclosures by the November 13, 2013 deadline, but Applicant did not. (Marcus Decl. ¶ 4). Applicant can have no excuse for its failure to comply with Trademark Rule of Practice 2.120(a)(2), and therefore the Board should grant this motion and order Applicant to make the initial disclosures required under that rule.

### **III. Relief Sought Would Prevent Prejudice To Opposer Created by Applicant**

In order to preserve the opportunity to take follow-up discovery in the event it became necessary, Opposer served its discovery requests more than three months in advance of the close of the discovery period, anticipating that once it received Applicant's responses it would have several months to review the discovery produced and to conduct additional discovery or address Applicant's discovery failures. *See TBMP §403.05(a)*. Applicant's unilateral decision to ignore the deadline for responding has resulted in Opposer being denied this opportunity. Furthermore, Applicant's decision not to produce initial disclosures has further prejudiced Opposer. Opposer should not suffer prejudice because of Applicant's failure to comply with the applicable rules.

Opposer therefore requests that the Board reset Opposer's discovery period only such that it closes at least sixty (60) days after Opposer's receipt of discovery responses and initial disclosures that fully comply with the Board's order, thereby preserving for Opposer the opportunity to follow-up. This is not the case where it is appropriate for the Board to simply extend all dates as to all parties. To extend Applicant's discovery period would reward Applicant for its delay. Applicant has served *no* discovery requests or initial disclosures to date, has forfeited the right to serve discovery (unless it serves Initial Disclosures before the close of the discovery period) and has given up other rights as a result, namely the ability to obtain follow-up discovery since responses to any discovery requests served by Applicant at this late date would

be due well after the discovery period as originally set by the Board. Therefore, any extension of Applicant's discovery period would give it a second chance to take discovery at Opposer's expense and burden. *Amazon Technologies, Inc. v. Wax*, 95 USPQ2d 1865, 1869 (TTAB 2010) (Board re-opened discovery for one party only).

#### **IV. Conclusion**

For the reasons set forth above, Opposer respectfully requests an Order from the Board that:

(1) Applicant serve Opposer's counsel with written responses (without objections) to Opposer's First Requests for Interrogatories and First Requests for the Production of Documents and Things within one week of the Board's Order compelling discovery.

(2) Applicant serve Opposer's counsel with all responsive documents and things (without objections) within one week of the Board's order compelling discovery;

(3) Applicant serve Opposer's counsel with Applicant's initial disclosures within one week of the Board's order to make initial disclosures;

(4) If Applicant fails to provide initial disclosures and discovery responses as ordered by the Board, that the Board will enter default judgment in Opposer's favor pursuant to Trademark Rule 2.120(g) and Rule 37(b)(2) of the Federal Rules of Civil Procedure;

(5) This proceeding be suspended while the Board considers Opposer's Motion to Compel; and

(6) Issue a revised scheduling order which extends Opposer's discovery period to sixty (60) days after Opposer's receipt of discovery responses and initial disclosures that fully comply with the Board's order and which resets the testimony and brief periods as the Board deems

appropriate.

Respectfully submitted,

SILLS CUMMIS & GROSS P.C.

Dated: May 22, 2014

By: 

Elyse A. Marcus

30 Rockefeller Plaza  
New York, New York 10112  
Tel. 212-643-7000  
Fax 212-643-6500

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served in

Applicant by first class mail, postage prepaid:

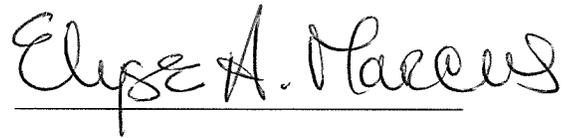
Darren S. Rimer

Rimer & Mathewson LLP

30021 Tomas, Suite 300

Rancho Santa Margarita, CA 92688

Dated this 22 day of May, 2014

A handwritten signature in black ink that reads "Elyse A. Marcus". The signature is written in a cursive style and is positioned above a horizontal line.

Elyse A. Marcus

# **EXHIBIT A**

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

KNOWLEDGENT GROUP INC.,	:	Opposition No. 91211882
	:	
Opposer,	:	<b>OPPOSER'S FIRST REQUESTS FOR INTERROGATORIES</b>
	:	
v.	:	
	:	
GREG SEARLE, DBA, KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
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Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Opposer, Knowledgent Group Inc., hereby serves the following set of interrogatories (the "Interrogatories") on Applicant, Greg Searle, DBA, Knowledgement Pty Ltd. Each of the following Interrogatories shall be answered separately and under oath in accordance with the definitions and instructions set forth below. The responses to these Interrogatories shall be produced to Sills Cummis & Gross P.C., 30 Rockefeller Plaza, New York, New York 10112, within thirty days of the date hereof.

**DEFINITIONS AND INSTRUCTIONS**

**A. Definitions**

1. The terms "Opposer" and "Knowledgent" shall mean the Opposer in this proceeding, namely Knowledgent Group Inc.
  
2. "Applicant" and "Greg Searle" shall mean Greg Searle, DBA, Knowledgement Pty Ltd. and each of its current and former subsidiaries, affiliates, parents, predecessors and

successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting on its behalf.

3. The “Applicant’s Services” shall mean, individually and collectively, each and every service in International Classes 35 and 42 identified in Applicant’s Application No. 85/571,150 for KNOWLEDGEMENT.

4. The term “use” in all of its tenses shall have the meaning ascribed to the term “use in commerce” in 15 U.S.C. § 1127.

5. The term “concerning” means in whole or in part constituting, containing, referring, embodying, reflecting, describing, analyzing, identifying, stating, dealing with, or in any way pertaining to.

6. The term “document” shall be construed as broadly as it appears in Federal Rule of Civil Procedure 34(a) and includes, but is not limited to, all of the following matter in Applicant’s actual or constructive possession, custody, or control: all written, typed, printed, digitally or electronically recorded, graphic or photographic matter, software, source code, object code, communications including, intra-company or inter-company communications and correspondence, electronic mail, telegrams, and telefaxes, however produced or reproduced, any notes or drafts, and all copies on which any mark, alteration, writing, or any other change from the original has been made. The term “document” includes, by way of example and not by way of limitation, trademark registration certificates, trademark applications, reports, compilations, data, diaries, work papers, graphs, charts, drawings, sketches, directions, instruction books,

books and booklets, texts, memoranda, letters and other correspondence, sales and promotional literature, brochures, press releases, forms, written offers for purchase or sale, written contracts, licenses, and sales agreements, ledgers, archive records, minutes or records of meetings, conferences, or telephone conversations including, lists of persons attending the meetings or conferences, legal pleadings or filings, expired files, and information that have been electronically stored or recorded including, voice mail and electronic mail.

7. The term “describe” means to set forth fully and clearly every relevant fact and/or event including, particulars of time, place and manner.

8. The phrase “refer or relate to” means pertaining to, evidencing, containing, setting forth, reflecting, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, whether directly or indirectly.

9. The term “person” means any natural person or individual, public and/or private corporation, partnership, proprietorship, joint venture, group, division, department, unit, organization, union, federation, government of any kind or type, governmental agency, and any other kind of business, legal or governmental entity or association.

10. The term “third parties” shall mean all persons, individuals, corporations, partnerships and other entities of any kind which are not parties to this proceeding, including, without limitation, competitors, customers and investors, as well as all persons acting on behalf of such third parties, including, without limitation, their officers, agents, employees and attorneys.

11. The term “Trademark” means trademarks, service marks, collective marks and certification marks, whether or not registered at the United States Patent and Trademark Office or any state entity.

12. The term “advertisement” includes brochures, pamphlets, newspaper advertisements, magazine advertisements, television advertisements, digitized or electronic advertising including, Internet web pages, radio advertisements, direct mailings, newsletters, promotional materials and all other forms of advertising, promotion or marketing in any and all media.

13. The term “thing” is used in the most comprehensive and inclusive sense permitted by Rule 34 of the Federal Rules of Civil Procedure and includes, but is not limited to, specimens and commercially manufactured items.

14. The term “communications” means any transmission, conveyance or exchange of information, whether written, oral or by other means.

**B. Instructions**

1. Each response shall be in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice. In the event that any information, document or portion of any document within the scope of these Interrogatories is withheld from production upon a claim of privilege or work product, with respect to each document you are required to provide a privilege log in conformity with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

2. If Applicant refuses to answer any part of an Interrogatory, Applicant shall state the objection and answer the remaining portion of the Interrogatory.

3. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these requests all documents which might otherwise be considered to be beyond their scope.

4. The use of capital letters, lower case letters or quotation marks in these Interrogatories shall not be construed to limit the scope of any specific request contained herein.

5. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. The use of the singular form of any word includes the plural and vice versa.

7. Documents produced in response to these Interrogatories shall be produced as they are kept in the ordinary course of business and shall be organized so that Opposer can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

8. Any document that is attached by staple, clip or otherwise to a document requested herein shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein.

9. These Interrogatories are continuing in nature and you are obligated to produce additional documents or information whenever they are acquired, discovered or come into existence after the date of the initial production.

10. Each of these Interrogatories seeks all information and documents, wherever located, which are in your actual or constructive possession.

11. Except as otherwise set forth herein, the relevant time period for these Interrogatories is January 1, 2011 to the present.

### INTERROGATORIES

1. Set forth the date on which Applicant commenced using the mark that is the subject of the Applicant's Application No. 85/571,150 in interstate commerce in the United States and identify all documents that evidence such first use.

2. If, at any time, Applicant has not used its KNOWLEDGEMENT trademark, or any variation thereof, in interstate commerce in the United States for a period of six months or more, (a) identify all such periods and (b) for each such period, set forth the reasons why Applicant did not use the KNOWLEDGEMENT trademark during that period.

3. If, at any time, Applicant has not sold services bearing the KNOWLEDGEMENT trademark to persons located in the United States for a period of six months or more, (a) identify all such periods and (b) for each such period, set forth the reasons why Applicant did not sell services bearing the KNOWLEDGEMENT trademark during that period.

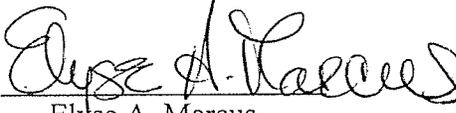
4. For the period January 1, 2011 to the present, identify all trade shows in the United States in which services bearing the KNOWLEDGEMENT trademark have been displayed or offered for sale and the dates and locations of such shows.

5. For the period January 1, 2011 to the present, identify all vendors or retailers in the United States that have sold services bearing the KNOWLEDGEMENT trademark, and for each such vendor or retailer, (a) identify the service and (b) set forth by year, Applicant's sales of

such services to that retailer in dollars and units.

Dated: November 21, 2013

SILLS CUMMIS & GROSS P.C.

By:   
Elyse A. Marcus

30 Rockefeller Plaza  
New York, New York 10112  
Tel. 212-643-7000  
Fax 212-643-6500

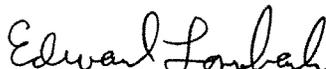
*Attorneys for Opposer*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 21 day of November, 2013, I caused to be served a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES upon counsel for Applicant by first class mail, postage prepaid, addressed to:

Matthew H. Swyers, Esq.  
The Trademark Company  
344 Maple Avenue West, Suite 151  
Vienna, Virginia 22180

Dated: November 21, 2013

  
\_\_\_\_\_  
Edward Longobardi

# **EXHIBIT B**

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

KNOWLEDGENT GROUP INC.,	:	Opposition No. 91211882
	:	
Opposer,	:	<b>OPPOSER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS</b>
	:	
v.	:	
	:	
GREG SEARLE, DBA, KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
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Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer, Knowledgent Group Inc., by its attorneys Sills, Cummis & Gross PC, hereby requests that Applicant, Greg Searle, DBA, Knowledgement Pty Ltd. produce, in accordance with the definitions and instructions below, all requested documents and things. Production should be made to the office of Sills, Cummis & Gross PC, 30 Rockefeller Plaza, New York, NY 10112, or to such other place as may be mutually agreed upon.

**DEFINITIONS AND INSTRUCTIONS**

**A. Definitions**

1. The terms "Opposer" and "Knowledgent" shall mean the Opposer in this proceeding, namely Knowledgent Group Inc.
  
2. "Applicant" and "Greg Searle" shall mean Greg Searle, DBA, Knowledgement Pty Ltd. and each of its current and former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current

or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting on its behalf.

3. The “Applicant’s Services” shall mean, individually and collectively, each and every service in International Classes 35 and 42 identified in Applicant’s Application No. 85/571,150 for KNOWLEDGEMENT.

4. The term “use” in all of its tenses shall have the meaning ascribed to the term “use in commerce” in 15 U.S.C. §1127.

5. The term “concerning” means in whole or in part constituting, containing, referring, embodying, reflecting, describing, analyzing, identifying, stating, dealing with, or in any way pertaining to.

6. The term “document” shall be construed as broadly as it appears in Federal Rule of Civil Procedure 34(a) and includes, but is not limited to, all of the following matter in Applicant’s actual or constructive possession, custody, or control: all written, typed, printed, digitally or electronically recorded, graphic or photographic matter, software, source code, object code, communications including, intra-company or inter-company communications and correspondence, electronic mail, telegrams, and telefaxes, however produced or reproduced, any notes or drafts, and all copies on which any mark, alteration, writing, or any other change from the original has been made. The term “document” includes, by way of example and not by way of limitation, trademark registration certificates, trademark applications, reports, compilations, data, diaries, work papers, graphs, charts, drawings, sketches, directions, instruction books, books and booklets, texts, memoranda, letters and other correspondence, sales and promotional

literature, brochures, press releases, forms, written offers for purchase or sale, written contracts, licenses, and sales agreements, ledgers, archive records, minutes or records of meetings, conferences, or telephone conversations including, lists of persons attending the meetings or conferences, legal pleadings or filings, expired files, and information that have been electronically stored or recorded including, voice mail and electronic mail.

7. The term “describe” means to set forth fully and clearly every relevant fact and/or event including, particulars of time, place and manner.

8. The phrase “refer or relate to” means pertaining to, evidencing, containing, setting forth, reflecting, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, whether directly or indirectly.

9. The term “person” means any natural person or individual, public and/or private corporation, partnership, proprietorship, joint venture, group, division, department, unit, organization, union, federation, government of any kind or type, governmental agency, and any other kind of business, legal or governmental entity or association.

10. The term “third parties” shall mean all persons, individuals, corporations, partnerships and other entities of any kind which are not parties to this proceeding, including, without limitation, competitors, customers and investors, as well as all persons acting on behalf of such third parties, including, without limitation, their officers, agents, employees and attorneys.

11. The term “Trademark” means trademarks, service marks, collective marks and certification marks, whether or not registered at the United States Patent and Trademark Office or any state entity.

12. The term “advertisement” includes brochures, pamphlets, newspaper advertisements, magazine advertisements, television advertisements, digitized or electronic advertising including, Internet web pages, radio advertisements, direct mailings, newsletters, promotional materials and all other forms of advertising, promotion or marketing in any and all media.

13. The term “thing” is used in the most comprehensive and inclusive sense permitted by Rule 34 of the Federal Rules of Civil Procedure and includes, but is not limited to, specimens and commercially manufactured items.

14. The term “communications” means any transmission, conveyance or exchange of information, whether written, oral or by other means.

**B. Instructions**

1. If any of the Requests cannot be responded to in full, please respond to the extent possible and state the reason(s) why a more complete response cannot be provided.

2. In answering these Requests, you are required not only to furnish such documents and things as you have in your own personal possession, custody or control, but also documents and things which are in the possession, custody or control of your attorneys, investigators, or anyone acting on your behalf or their behalf. Where an objection is made to any Request or sub-part thereof, the objection shall state with specificity all grounds on which the objection is based.

3. Where a claim of privilege is asserted in objecting to any request or subpart thereof, and a response is not provided on the basis of such assertion: (a) you shall, in the objection to the request, or sub-part thereof, identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state privilege rule being invoked; (b) the following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information: (i) for documents: the type of document including, the manner of recording or reproduction; the subject matter of the document; the date of the document; the author of the document; the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other; to whom indicated or blind copies of the document are addressed; the number of pages, attachments, or appendices of the document; all persons to whom the document was distributed, shown, or explained; the present custodian of the document; and such other information as is sufficient to identify the document; and (ii) for oral communications: the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; the date and place of communication; and the subject matter of the communication.

4. In the event that any document called for by these Requests has been destroyed in the past three years, that document is to be identified as follows: form (e. g., memorandum, letter), nature (e.g., writing, recording), manner of recording or reproduction, author or preparer or addressor, addressee or recipient, indicated or blind copies, date, subject matter, number of pages, attachments and appendices, all persons to whom distributed, shown or explained, date of destruction, manner of destruction, reason for destruction, person who authorized destruction,

person who destroyed the document, and custodian of the document on the date and time of destruction.

5. Any document that is attached by staple, clip or otherwise to a document requested herein shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein.

6. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. The use of capital letters, lowers case letters or quotation marks in these Interrogatories shall not be construed to limit the scope of any specific request contained herein.

8. The use of the singular form of any word includes the plural and vice versa.

9. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these requests all documents which might otherwise be considered to be beyond their scope.

10. Each of these Requests seeks all information and documents, wherever located, which are in your actual or constructive possession.

11. Except as otherwise set forth herein, the relevant time period for these requests is January 1, 2011 to the present.

12. These requests shall be deemed to be continuing so that any additional documents or things responsive to these requests which you may acquire, or which may become known to

you, shall be furnished to Opposer as required by Federal Rule of Civil Procedure 26(e). Such supplemental documents or things are to be supplied promptly with a designation as the request to which it is responsive.

### **REQUESTS FOR PRODUCTION**

1. Documents sufficient to show use of the KNOWLEDGEMENT trademark in connection with Applicant's Services in the United States during the relevant time period.
2. Documents sufficient to show, by month and year, the gross revenue generated by the sale of Applicant's Services in connection with the KNOWLEDGEMENT trademark in the United States during the relevant time period.
3. Documents sufficient to show every service Applicant has offered for sale in connection with the KNOWLEDGEMENT trademark in the United States during the relevant time period.
4. Documents sufficient to show all persons in the United States to whom Applicant sold services offered for sale in connection with the KNOWLEDGEMENT trademark during the relevant time period and for each such person: (a) the dates of all such sales; (b) the number of services sold on each such date; and (c) the dollar amount of each such sale.
5. All purchases orders and invoices reflecting or showing Applicant's sales of the services used in connection with the KNOWLEDGEMENT trademark to customers located in the United States.

6. Documents sufficient to identify all vendors or retailers in the United States that have sold the services used in connection with the KNOWLEDGEMENT trademark during the relevant time period.

7. Documents sufficient to identify all vendors or retailers in the United States that are currently selling services used in connection with the KNOWLEDGEMENT trademark.

8. All advertisements and any other promotional materials used to market, advertise, or promote the services offered in connection with the KNOWLEDGEMENT trademark in the United States.

9. Documents sufficient to show where advertisements for services bearing the KNOWLEDGEMENT trademark have been placed in the United States.

10. All catalogs distributed in the United States during the relevant time period which display or depict the services used in connection with the KNOWLEDGEMENT trademark offered for sale in the United States.

11. All budgets and plans concerning the advertising, marketing and promotion of services bearing the KNOWLEDGEMENT trademark in the United States.

12. All budgets and business plans concerning the sale or planned sale of services bearing the KNOWLEDGEMENT trademark in the United States.

13. All documents and communications concerning the non-use of the KNOWLEDGEMENT trademark in the United States.

14. All documents and communications concerning the commencement of use of the KNOWLEDGEMENT trademark in the United States.

15. All documents and communications concerning the resumption of use of the KNOWLEDGEMENT trademark in the United States.

16. All documents and communications concerning the cessation of use of the KNOWLEDGEMENT trademark in the United States.

17. All licenses concerning the KNOWLEDGEMENT trademark.

18. Documents sufficient to show, by year, royalties received by Applicant based on sales in the United States of services bearing the KNOWLEDGEMENT trademark.

19. Documents sufficient to show, by year, sales in the United States by Applicant's licensees of services bearing the KNOWLEDGEMENT trademark.

20. Documents sufficient to show, by year, all costs and expenses incurred by Applicant in connection with advertising, marketing, promoting or selling services bearing the KNOWLEDGEMENT trademark in the United States.

21. All communications concerning any objections or challenges to Applicant's ownership, use or registration of the KNOWLEDGEMENT trademark in the United States.

22. All documents filed in actions or proceedings concerning challenges to Applicant's ownership, use or registration of the KNOWLEDGEMENT trademark in the United States.

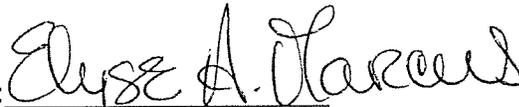
23. All assignments or agreements that refer or relate to the KNOWLEDGEMENT trademark.

24. All articles and photographs concerning goods or services bearing the KNOWLEDGEMENT trademark appearing in periodicals or websites published in or by persons located in the United States.

25. All documents referred to or relied upon in preparing Applicant's responses to Opposer's First Set of Interrogatories.

Dated: November 21, 2013

SILLS CUMMIS & GROSS P.C.

By:   
Elyse A. Marcus

30 Rockefeller Plaza  
New York, New York 10112  
Tel. 212-643-7000  
Fax 212-643-6500

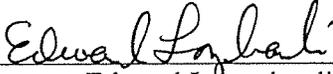
*Attorneys for Opposer*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 21 day of November, 2013, I caused to be served a true and correct copy of the foregoing OPPOSER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS upon counsel for the Applicant by first class mail, postage prepaid, addressed to:

Matthew H. Swyers, Esq.  
The Trademark Company  
344 Maple Avenue West, Suite 151  
Vienna, Virginia 22180

Dated: November 21, 2013

  
\_\_\_\_\_  
Edward Longobardi

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

KNOWLEDGENT GROUP INC.,	:	Opposition No. 91211882
	:	
Opposer,	:	
	:	
v.	:	
	:	
GREG SEARLE, DBA,	:	
KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
_____	:	

**DECLARATION OF ELYSE A. MARCUS**

I, Elyse A. Marcus, declare under penalty of perjury that the following is true and correct:

1. I am one of the attorneys representing Opposer, Knowledgent Group, Inc., in this proceeding and I have personal knowledge of the facts attested to herein.
2. The parties' deadline to serve initial disclosures was November 13, 2013.
3. Opposer served its initial disclosures on October 22, 2013. A copy of Opposer's Initial Disclosures is attached hereto at Exhibit A.
4. Applicant did not serve its initial disclosures by the November 13, 2013 deadline and as of the date of this Declaration, has not done so.
5. Opposer's interrogatories and document requests were initially served via first class mail to Applicant's counsel, Matthew Swyers on November 21, 2013.
6. Applicant's responses were originally due on December 26, 2013.
7. Applicant did not provide discovery responses by December 26, 2013.

8. On December 30, 2013, I left a voice mail message for Mr. Swyers inquiring as to the status of the discovery requests. I received no response from Mr. Swyers.

9. On December 31, 2013 Mr. Swyers filed a motion with the Board requesting that he withdraw as counsel.

10. On January 22, 2014, I sent a letter to Mr. Swyers inquiring as to when Opposer could expect to receive the discovery responses. I received no response from Mr. Swyers. A copy of the January 22, 2014 letter is attached hereto at Exhibit B.

11. On February 3, 2014 the Board issued an Order suspending the proceedings, permitting Mr. Swyers to withdraw as counsel and giving Applicant thirty (30) days to appear pro se or appoint new counsel.

12. On March 5, 2014, attorney Darren S. Rimer filed his Notice of Appearance with the Board.

13. On March 28, 2014 the Board resumed the proceedings.

14. On April 15, 2014 I sent an e-mail to Mr. Rimer inquiring as to the status of the discovery requests. A copy of this e-mail is attached hereto at Exhibit C.

15. On April 15, 2014, Mr. Rimer responded that he did not have the prior file from former counsel, was unaware of the outstanding discovery requests, requested copies of the requests and an extension of time to respond and also a time to speak about the proceeding. A copy of this e-mail is attached hereto at Exhibit D.

16. On April 15, 2014, I responded by e-mail stating that I would send him copies of the requests the next day and noting that the responses were due on December 26, 2013. A copy of this e-mail is attached hereto at Exhibit E.

17. On April 16, 2014, I sent an e-mail to Mr. Rimer attaching the outstanding discovery requests, giving his client until April 28, 2014 to respond and offering a thirty day extension of all other deadlines so that he could get up to speed with the case. A copy of this e-mail (with attachments) is attached at Exhibit F.

18. Mr. Rimer did not respond to this e-mail.

19. On April 23, 2014, I left a telephone message for Mr. Rimer.

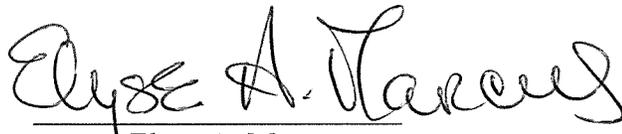
20. Applicant did not provide discovery responses by the April 28, 2014 deadline.

21. On May 12, 2014, I left another telephone message for Mr. Rimer.

22. To date Applicant has failed to respond to my voice mails and e-mails and has not responded to Opposer's November 21, 2013 discovery requests.

23. Opposer has attempted to get discovery responses and initial disclosures from Applicant over the past four months but has received nothing.

Dated this 22 day of May 2014  
New York, New York

  
\_\_\_\_\_  
Elyse A. Marcus

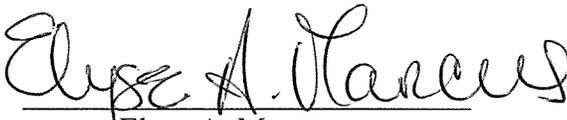
**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served on

Applicant by first class mail, postage prepaid:

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, CA 92688

Dated this 22 day of May, 2014

  
\_\_\_\_\_  
Elyse A. Marcus

# **EXHIBIT A**

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

KNOWLEDGENT GROUP INC.,	:	
	:	
Opposer,	:	Opposition No. 91211882
	:	
v.	:	
	:	
GREG SEARLE,	:	<b>OPPOSER'S INITIAL</b>
	:	<b>DISCLOSURES</b>
	:	
Applicant,	:	

Pursuant to 37 CFR §2.120(a)(2) and Fed. R. Civ. P. 26(a)(1), Opposer, Knowledgent Group Inc. (“Opposer”), by and through its undersigned counsel, hereby provides these Initial Disclosures to Applicant Greg Searle (“Applicant”). Opposer makes these disclosures: (1) without admitting or conceding the admissibility or relevance of any of the information disclosed or referenced; (2) without prejudice to its rights to invoke the attorney-client privilege, work-product doctrine, or any other privileges, objections or assertions pertaining to any of the information disclosed or referenced; and (3) while reserving the right to supplement or amend these initial disclosures and/or to use documents not described herein as more information becomes available during the course of this proceeding. Opposer also reserves the right to use any documents or information disclosed or provided by any other party or person for any purpose to the fullest extent permitted by law and to rely upon the individuals identified below for subjects other than those identified in this disclosure.

**INITIAL DISCLOSURES**

**A. Individuals Likely to Have Discoverable Knowledge**

The following individuals are likely to have discoverable information that Opposer may use to support its claims:

<b>Identity of Individual / Entity</b>	<b>General Subject Matter Area(s) of Knowledge</b>
Robert Caggiano, Opposer's Managing Partner of Operations	Mr. Caggiano has knowledge of Opposer's Use of the KNOWLEDGENT Trademark
Greg Searle	Mr. Searle likely has knowledge of his use of the KNOWLEGEMENT trademark in the United States.

Opposer reserves the right to amend or supplement this list of individuals likely to have knowledge of the subject matter of this action and/or to identify additional potential witnesses based on information obtained from ongoing investigations and future discovery. Opposer also reserves the right to call any person who has been or will be deposed or cross-noticed for deposition or has been listed as a fact witness or any person identified in documents.

**B. Documents and Things**

The categories of documents in Opposer's possession, custody, or control that may be used to support its claims may include, but are not limited to documents relating to:

- (i) Opposer's use of the KNOWLEDGENT trademark since at least as early as March 8, 2010;
- (ii) Documents evidencing the channels of trade through which Opposer's KNOWLEDGENT services are offered for sale and sold; and
- (iii) Advertising for the services bearing Opposer's KNOWLEDGENT trademark.

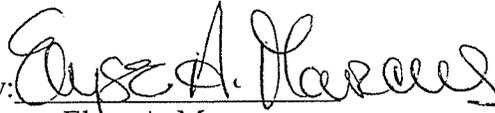
Opposer reserves the right to supplement, modify, or add to this disclosure as discovery progresses. These documents and any other relevant documents that are subject to production and required to be produced either will be produced or made available for inspection upon proper request, subject to all privileges, protections and objections. The above documents are located at Opposer's offices at 3 Mountain View Road, Warren, New Jersey 07059.

**C. Expert Witnesses – 26(a)(2)(A)**

At this time, Opposer has not yet retained any expert witnesses upon whose testimony it will rely in this proceeding. Opposer reserves the right to amend or supplement this response in the future as necessary.

Dated: October 22, 2013

SILLS CUMMIS & GROSS P.C.

By:   
Elyse A. Marcus

30 Rockefeller Plaza  
New York, New York 10112  
Tel. 212-643-7000  
Fax 212-643-6500  
[emarcus@sillscummis.com](mailto:emarcus@sillscummis.com)  
[pto@sillscummis.com](mailto:pto@sillscummis.com)

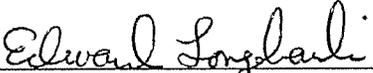
*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 22 day of October, 2013, I caused to be served a true and correct copy of the foregoing Opposer's Initial Disclosures upon counsel for the Applicant first class mail, addressed to:

Matthew H. Swyers, Esq.  
The Trademark Company  
344 Maple Avenue West, Suite 151  
Vienna, Virginia 22180

Dated: October 22, 2013

  
\_\_\_\_\_  
Edward Longobardi

# **EXHIBIT B**

SILLS CUMMIS & GROSS  
A PROFESSIONAL CORPORATION

30 Rockefeller Plaza  
New York, NY 10112  
Tel: 212-643-7000  
Fax: 212-643-6500

One Riverfront Plaza  
Newark, NJ 07102-5400  
Tel: 973-643-7000  
Fax: 973-643-6500

Elyse A. Marcus  
Of Counsel  
Direct Dial: (212) 500-1545  
E-mail: emarcus@sillscummis.com

650 College Road East  
Princeton, NJ 08540  
Tel: 609-227-4600  
Fax: 609-227-4646

January 22, 2014

By Federal Express

Matthew H. Swyers, Esq.  
The Trademark Company, PLLC  
344 Maple Avenue West, PBM 151  
Vienna, VA 22180

Re: Knowledge Group Inc. v. Greg Searle d/b/a Knowledge Pty Ltd.  
(Opposition No. 91211882)

Dear Matthew:

We are in receipt of your motion to the Trademark Trial and Appeal Board ("TTAB") requesting that they grant your request to withdraw as counsel for Greg Searle d/b/a Knowledge Pty Ltd ("Mr. Searle"). We understand that the TTAB is deliberating on the issue.

As you are currently the attorney of record for Mr. Searle, we are writing to advise that we have not yet received Mr. Searle's responses to Knowledge Group Inc.'s First Set of Interrogatories, Admissions and Requests for the Production of Documents and Things (collectively, the "Discovery Requests"). The responses were due on December 26, 2013.

Please let us know when we can expect to receive Mr. Searle's responses to the Discovery Requests.

Please contact us with any questions.

SILLS CUMMIS & GROSS  
A PROFESSIONAL CORPORATION

Matthew H. Swyers, Esq.

January 22, 2014

Page 2

Thank you for your help with this matter.

Sincerely,

A handwritten signature in cursive script that reads "Elyse A. Marcus". The signature is written in black ink and is positioned above the printed name.

Elyse A. Marcus

# **EXHIBIT C**

## Elyse A. Marcus

---

**From:** Elyse A. Marcus  
**Sent:** Tuesday, April 15, 2014 11:20 AM  
**To:** trademarks@rimermath.com  
**Cc:** Elyse A. Marcus; Francine Waldbaum  
**Subject:** Knowledgent v. Greg Searle (Opposition No. 91211882)

**Importance:** High

Dear Mr. Rimer:

We understand that you are new counsel for Mr. Searle. We assume that prior counsel transferred the file to you and that file included Knowledgent's outstanding discovery requests to Mr. Searle.

Please let me know when we can expect to receive Mr. Searle's responses.

We look forward to hearing from you.

Thanks and kind regards.

Elyse

Elyse A. Marcus  
Of Counsel



[website](#) | [bio](#) | [vCard](#) | [newsroom](#) | [email](#)   

30 Rockefeller Plaza, New York, NY 10112  
p (212) 500-1545 | f (212) 643-6500 [map](#)

# **EXHIBIT D**

## Elyse A. Marcus

---

**From:** Darren S. Rimer <darren@rimermath.com>  
**Sent:** Tuesday, April 15, 2014 12:04 PM  
**To:** Elyse A. Marcus  
**Cc:** Francine Waldbaum  
**Subject:** RE: Knowledgent v. Greg Searle (Opposition No. 91211882)

Elyse,

Thanks for your e-mail.

Unfortunately, I did not receive any file from prior counsel, and this is the first I have heard about any outstanding discovery requests. Can you send me a copy please? Can we agree to an extension while we are in discussions? I'd like to schedule a time to discuss this opposition with you later this week.

Thanks.

Darren

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, CA 92688  
(949) 367-1541 x 304  
(949) 265-9010 (fax)  
[darren@rimermath.com](mailto:darren@rimermath.com)  
<http://www.rimermath.com>

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---

**From:** Elyse A. Marcus [<mailto:emarcus@sillscummis.com>]  
**Sent:** 04/15/2014 8:20 AM  
**To:** [trademarks@rimermath.com](mailto:trademarks@rimermath.com)  
**Cc:** Elyse A. Marcus; Francine Waldbaum  
**Subject:** Knowledgent v. Greg Searle (Opposition No. 91211882)  
**Importance:** High

Dear Mr. Rimer:

We understand that you are new counsel for Mr. Searle. We assume that prior counsel transferred the file to you and that file included Knowledgent's outstanding discovery requests to Mr. Searle.

Please let me know when we can expect to receive Mr. Searle's responses.

We look forward to hearing from you.

Thanks and kind regards.

Elyse

**Elyse A. Marcus**  
Of Counsel



[website](#) | [bio](#) | [vCard](#) | [newsroom](#) | [email](#)   

30 Rockefeller Plaza, New York, NY 10112  
p (212) 500-1545 | f (212) 643-6500 [map](#)

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This email message has been scanned for viruses by Mimecast.

# **EXHIBIT E**

## Elyse A. Marcus

---

**From:** Elyse A. Marcus  
**Sent:** Tuesday, April 15, 2014 2:08 PM  
**To:** Darren S. Rimer  
**Cc:** Francine Waldbaum; Elyse A. Marcus  
**Subject:** RE: Knowledgent v. Greg Searle (Opposition No. 91211882)

Darren:

Thank you for your e-mail. I am available for a discussion tomorrow and Thursday. I will be out of the office in meetings all day on Friday. Let me know what would work best for you and I will try and work around your schedule.

I will send you a copy of the outstanding discovery requests tomorrow – I am running out of the office in a few minutes to finish cooking for Passover. Please note that the responses to the discovery requests were due on December 26, 2013. We contacted prior counsel on several occasions concerning the status and received no response.

I look forward to speaking with you.

Have a good rest of the day.

Thanks and kind regards.  
Elyse

**Elyse A. Marcus**  
Of Counsel



website | bio | vCard | newsroom | email   

30 Rockefeller Plaza, New York, NY 10112  
p (212) 500-1545 | f (212) 643-6500 [map](#)

---

**From:** Darren S. Rimer [mailto:darren@rimermath.com]  
**Sent:** Tuesday, April 15, 2014 12:04 PM  
**To:** Elyse A. Marcus  
**Cc:** Francine Waldbaum  
**Subject:** RE: Knowledgent v. Greg Searle (Opposition No. 91211882)

Elyse,

Thanks for your e-mail.

Unfortunately, I did not receive any file from prior counsel, and this is the first I have heard about any outstanding discovery requests. Can you send me a copy please? Can we agree to an extension while we are in discussions? I'd like to schedule a time to discuss this opposition with you later this week.

Thanks.

Darren

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, CA 92688  
(949) 367-1541 x 304  
(949) 265-9010 (fax)  
[darren@rimermath.com](mailto:darren@rimermath.com)  
<http://www.rimermath.com>

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---

**From:** Elyse A. Marcus [<mailto:emarcus@sillscummis.com>]  
**Sent:** 04/15/2014 8:20 AM  
**To:** [trademarks@rimermath.com](mailto:trademarks@rimermath.com)  
**Cc:** Elyse A. Marcus; Francine Waldbaum  
**Subject:** Knowledgent v. Greg Searle (Opposition No. 91211882)  
**Importance:** High

Dear Mr. Rimer:

We understand that you are new counsel for Mr. Searle. We assume that prior counsel transferred the file to you and that file included Knowledgent's outstanding discovery requests to Mr. Searle.

Please let me know when we can expect to receive Mr. Searle's responses.

We look forward to hearing from you.

Thanks and kind regards.  
Elyse

**Elyse A. Marcus**  
Of Counsel



[website](#) | [bio](#) | [vCard](#) | [newsroom](#) | [email](#)   

30 Rockefeller Plaza, New York, NY 10112  
p (212) 500-1545 | f (212) 643-6500 [map](#)

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This email message has been scanned for viruses by Mimecast.

# **EXHIBIT F**

## Elyse A. Marcus

---

**From:** Elyse A. Marcus  
**Sent:** Wednesday, April 16, 2014 4:20 PM  
**To:** Darren S. Rimer  
**Cc:** Francine Waldbaum; Elyse A. Marcus  
**Subject:** RE: Knowledgent v. Greg Searle (Opposition No. 91211882)  
**Attachments:** January 22, 2014 letter to Matthew Swyers.pdf; Opposer's First Requests for the Production of Documents and Things.pdf; Opposer's First Requests for Interrogatories.pdf; Opposer's First Requests for Admissions.pdf

Darren:

Pursuant to my e-mail from yesterday, attached are the following documents:

1. My January 22, 2014 letter to Matthew Swyers, Esq. regarding the outstanding discovery requests;
2. Opposer's First Requests for Interrogatories;
3. Opposer's First Requests for Admissions; and
4. Opposer's First Requests for the Production of Documents and Things.

Given that the responses were due over three months ago, we expect to receive Mr. Searle's responses no later than **April 28, 2014**. In addition, we consent to a thirty (30) day extension of all deadlines. Please confirm that your client is amenable to the thirty day extension of the deadlines.

Please let me know when you are available to discuss the status of the opposition.

We look forward to hearing from you at your earliest possible convenience.

Thanks and kind regards.  
Elyse

**Elyse A. Marcus**  
Of Counsel



[website](#) | [bio](#) | [vCard](#) | [newsroom](#) | [email](#)   

30 Rockefeller Plaza, New York, NY 10112  
p (212) 500-1545 | f (212) 643-6500 [map](#)

---

**From:** Elyse A. Marcus  
**Sent:** Tuesday, April 15, 2014 2:08 PM  
**To:** Darren S. Rimer  
**Cc:** Francine Waldbaum; Elyse A. Marcus  
**Subject:** RE: Knowledgent v. Greg Searle (Opposition No. 91211882)

Darren:

Thank you for your e-mail. I am available for a discussion tomorrow and Thursday. I will be out of the office in meetings all day on Friday. Let me know what would work best for you and I will try and work around your schedule.

I will send you a copy of the outstanding discovery requests tomorrow – I am running out of the office in a few minutes to finish cooking for Passover. Please note that the responses to the discovery requests were due on December 26, 2013. We contacted prior counsel on several occasions concerning the status and received no response.

I look forward to speaking with you.

Have a good rest of the day.

Thanks and kind regards.

Elyse

**Elyse A. Marcus**  
Of Counsel



website | bio | vCard | newsroom | email   

30 Rockefeller Plaza, New York, NY 10112  
p (212) 500-1545 | f (212) 643-6500 [map](#)

---

**From:** Darren S. Rimer [<mailto:darren@rimermath.com>]  
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**To:** Elyse A. Marcus  
**Cc:** Francine Waldbaum  
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Thanks.

Darren

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, CA 92688  
(949) 367-1541 x 304  
(949) 265-9010 (fax)  
[darren@rimermath.com](mailto:darren@rimermath.com)  
<http://www.rimermath.com>

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---

**From:** Elyse A. Marcus [<mailto:emarcus@sillscummis.com>]  
**Sent:** 04/15/2014 8:20 AM  
**To:** [trademarks@rimermath.com](mailto:trademarks@rimermath.com)  
**Cc:** Elyse A. Marcus; Francine Waldbaum  
**Subject:** Knowledgent v. Greg Searle (Opposition No. 91211882)  
**Importance:** High

Dear Mr. Rimer:

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Please let me know when we can expect to receive Mr. Searle's responses.

We look forward to hearing from you.

Thanks and kind regards.  
Elyse

**Elyse A. Marcus**  
Of Counsel



[website](#) | [bio](#) | [vCard](#) | [newsroom](#) | [email](#)   

30 Rockefeller Plaza, New York, NY 10112  
p (212) 500-1545 | f (212) 643-6500 [map](#)

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SILLS CUMMIS & GROSS  
A PROFESSIONAL CORPORATION

30 Rockefeller Plaza  
New York, NY 10112  
Tel: 212-643-7000  
Fax: 212-643-6500

One Riverfront Plaza  
Newark, NJ 07102-5400  
Tel: 973-643-7000  
Fax: 973-643-6500

Elyse A. Marcus  
Of Counsel  
Direct Dial: (212) 500-1545  
E-mail: emarcus@sillscummis.com

650 College Road East  
Princeton, NJ 08540  
Tel: 609-227-4600  
Fax: 609-227-4646

January 22, 2014

By Federal Express

Matthew H. Swyers, Esq.  
The Trademark Company, PLLC  
344 Maple Avenue West, PBM 151  
Vienna, VA 22180

Re: Knowledgent Group Inc. v. Greg Searle d/b/a Knowledgement Pty Ltd.  
(Opposition No. 91211882)

Dear Matthew:

We are in receipt of your motion to the Trademark Trial and Appeal Board ("TTAB") requesting that they grant your request to withdraw as counsel for Greg Searle d/b/a Knowledgement Pty Ltd ("Mr. Searle"). We understand that the TTAB is deliberating on the issue.

As you are currently the attorney of record for Mr. Searle, we are writing to advise that we have not yet received Mr. Searle's responses to Knowledgent Group Inc.'s First Set of Interrogatories, Admissions and Requests for the Production of Documents and Things (collectively, the "Discovery Requests"). The responses were due on December 26, 2013.

Please let us know when we can expect to receive Mr. Searle's responses to the Discovery Requests.

Please contact us with any questions.

SILLS CUMMIS & GROSS  
A PROFESSIONAL CORPORATION

Matthew H. Swyers, Esq.

January 22, 2014

Page 2

Thank you for your help with this matter.

Sincerely,

A handwritten signature in cursive script that reads "Elyse A. Marcus". The signature is written in dark ink and is positioned above the printed name.

Elyse A. Marcus

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

KNOWLEDGENT GROUP INC.,	:	Opposition No. 91211882
	:	
Opposer,	:	<b>OPPOSER'S FIRST REQUESTS FOR INTERROGATORIES</b>
	:	
v.	:	
	:	
GREG SEARLE, DBA, KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
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Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Opposer, Knowledgent Group Inc., hereby serves the following set of interrogatories (the "Interrogatories") on Applicant, Greg Searle, DBA, Knowledgement Pty Ltd. Each of the following Interrogatories shall be answered separately and under oath in accordance with the definitions and instructions set forth below. The responses to these Interrogatories shall be produced to Sills Cummis & Gross P.C., 30 Rockefeller Plaza, New York, New York 10112, within thirty days of the date hereof.

**DEFINITIONS AND INSTRUCTIONS**

**A. Definitions**

1. The terms "Opposer" and "Knowledgent" shall mean the Opposer in this proceeding, namely Knowledgent Group Inc.
  
2. "Applicant" and "Greg Searle" shall mean Greg Searle, DBA, Knowledgement Pty Ltd. and each of its current and former subsidiaries, affiliates, parents, predecessors and

successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting on its behalf.

3. The “Applicant’s Services” shall mean, individually and collectively, each and every service in International Classes 35 and 42 identified in Applicant’s Application No. 85/571,150 for KNOWLEDGEMENT.

4. The term “use” in all of its tenses shall have the meaning ascribed to the term “use in commerce” in 15 U.S.C. § 1127.

5. The term “concerning” means in whole or in part constituting, containing, referring, embodying, reflecting, describing, analyzing, identifying, stating, dealing with, or in any way pertaining to.

6. The term “document” shall be construed as broadly as it appears in Federal Rule of Civil Procedure 34(a) and includes, but is not limited to, all of the following matter in Applicant’s actual or constructive possession, custody, or control: all written, typed, printed, digitally or electronically recorded, graphic or photographic matter, software, source code, object code, communications including, intra-company or inter-company communications and correspondence, electronic mail, telegrams, and telefaxes, however produced or reproduced, any notes or drafts, and all copies on which any mark, alteration, writing, or any other change from the original has been made. The term “document” includes, by way of example and not by way of limitation, trademark registration certificates, trademark applications, reports, compilations, data, diaries, work papers, graphs, charts, drawings, sketches, directions, instruction books,

books and booklets, texts, memoranda, letters and other correspondence, sales and promotional literature, brochures, press releases, forms, written offers for purchase or sale, written contracts, licenses, and sales agreements, ledgers, archive records, minutes or records of meetings, conferences, or telephone conversations including, lists of persons attending the meetings or conferences, legal pleadings or filings, expired files, and information that have been electronically stored or recorded including, voice mail and electronic mail.

7. The term “describe” means to set forth fully and clearly every relevant fact and/or event including, particulars of time, place and manner.

8. The phrase “refer or relate to” means pertaining to, evidencing, containing, setting forth, reflecting, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, whether directly or indirectly.

9. The term “person” means any natural person or individual, public and/or private corporation, partnership, proprietorship, joint venture, group, division, department, unit, organization, union, federation, government of any kind or type, governmental agency, and any other kind of business, legal or governmental entity or association.

10. The term “third parties” shall mean all persons, individuals, corporations, partnerships and other entities of any kind which are not parties to this proceeding, including, without limitation, competitors, customers and investors, as well as all persons acting on behalf of such third parties, including, without limitation, their officers, agents, employees and attorneys.

11. The term “Trademark” means trademarks, service marks, collective marks and certification marks, whether or not registered at the United States Patent and Trademark Office or any state entity.

12. The term “advertisement” includes brochures, pamphlets, newspaper advertisements, magazine advertisements, television advertisements, digitized or electronic advertising including, Internet web pages, radio advertisements, direct mailings, newsletters, promotional materials and all other forms of advertising, promotion or marketing in any and all media.

13. The term “thing” is used in the most comprehensive and inclusive sense permitted by Rule 34 of the Federal Rules of Civil Procedure and includes, but is not limited to, specimens and commercially manufactured items.

14. The term “communications” means any transmission, conveyance or exchange of information, whether written, oral or by other means.

**B. Instructions**

1. Each response shall be in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice. In the event that any information, document or portion of any document within the scope of these Interrogatories is withheld from production upon a claim of privilege or work product, with respect to each document you are required to provide a privilege log in conformity with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

2. If Applicant refuses to answer any part of an Interrogatory, Applicant shall state the objection and answer the remaining portion of the Interrogatory.

3. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these requests all documents which might otherwise be considered to be beyond their scope.

4. The use of capital letters, lower case letters or quotation marks in these Interrogatories shall not be construed to limit the scope of any specific request contained herein.

5. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. The use of the singular form of any word includes the plural and vice versa.

7. Documents produced in response to these Interrogatories shall be produced as they are kept in the ordinary course of business and shall be organized so that Opposer can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

8. Any document that is attached by staple, clip or otherwise to a document requested herein shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein.

9. These Interrogatories are continuing in nature and you are obligated to produce additional documents or information whenever they are acquired, discovered or come into existence after the date of the initial production.

10. Each of these Interrogatories seeks all information and documents, wherever located, which are in your actual or constructive possession.

11. Except as otherwise set forth herein, the relevant time period for these Interrogatories is January 1, 2011 to the present.

### **INTERROGATORIES**

1. Set forth the date on which Applicant commenced using the mark that is the subject of the Applicant's Application No. 85/571,150 in interstate commerce in the United States and identify all documents that evidence such first use.

2. If, at any time, Applicant has not used its KNOWLEDGEMENT trademark, or any variation thereof, in interstate commerce in the United States for a period of six months or more, (a) identify all such periods and (b) for each such period, set forth the reasons why Applicant did not use the KNOWLEDGEMENT trademark during that period.

3. If, at any time, Applicant has not sold services bearing the KNOWLEDGEMENT trademark to persons located in the United States for a period of six months or more, (a) identify all such periods and (b) for each such period, set forth the reasons why Applicant did not sell services bearing the KNOWLEDGEMENT trademark during that period.

4. For the period January 1, 2011 to the present, identify all trade shows in the United States in which services bearing the KNOWLEDGEMENT trademark have been displayed or offered for sale and the dates and locations of such shows.

5. For the period January 1, 2011 to the present, identify all vendors or retailers in the United States that have sold services bearing the KNOWLEDGEMENT trademark, and for each such vendor or retailer, (a) identify the service and (b) set forth by year, Applicant's sales of

such services to that retailer in dollars and units.

Dated: November 21, 2013

SILLS CUMMIS & GROSS P.C.

By:   
Elyse A. Marcus

30 Rockefeller Plaza  
New York, New York 10112  
Tel. 212-643-7000  
Fax 212-643-6500

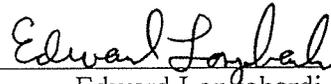
*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 21 day of November, 2013, I caused to be served a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES upon counsel for Applicant by first class mail, postage prepaid, addressed to:

Matthew H. Swyers, Esq.  
The Trademark Company  
344 Maple Avenue West, Suite 151  
Vienna, Virginia 22180

Dated: November 21, 2013

  
\_\_\_\_\_  
Edward Longobardi

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

KNOWLEDGENT GROUP INC.,	:	Opposition No. 91211882
	:	
Opposer,	:	<b>OPPOSER'S FIRST REQUESTS FOR ADMISSIONS</b>
	:	
v.	:	
	:	
GREG SEARLE, DBA, KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
	:	

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Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Opposer, Knowledgent Group Inc., hereby serves the following Requests for Admissions on Applicant, Greg Searle, DBA, Knowledgement Pty Ltd. ("Requests"). Each of the following Requests shall be answered separately and under oath in writing in accordance with the following definitions and instructions set forth below. The responses to these Requests shall be produced to Sills Cummis & Gross P.C., 30 Rockefeller Plaza, New York, New York 10112, within thirty days hereof.

**DEFINITIONS**

1. The terms "Opposer" and "Knowledgent" shall mean the Opposer in this proceeding, namely Knowledgent Group Inc.
  
2. "Applicant" and "Greg Searle" shall mean Greg Searle, DBA, Knowledgement Pty Ltd. and each of its current and former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current or former partners, directors, shareholders, employees, officers, agents, officials, representatives,

associates, consultants, attorneys, advisors, accountants and all persons and entities acting on its behalf.

3. The “Applicant’s Services” shall mean, individually and collectively, each and every service in International Classes 35 and 42 identified in Applicant’s Application No. 85/571,150 for KNOWLEDGEMENT.

4. The term “use” in all of its tenses shall have the meaning ascribed to the term “use in commerce” in 15 U.S.C. § 1127.

5. The term “concerning” means in whole or in part constituting, containing, referring, embodying, reflecting, describing, analyzing, identifying, stating, dealing with, or in any way pertaining to.

6. The term “document” shall be construed as broadly as it appears in Federal Rule of Civil Procedure 34(a) and includes, but is not limited to, all of the following matter in Applicant's actual or constructive possession, custody, or control: all written, typed, printed, digitally or electronically recorded, graphic or photographic matter, software, source code, object code, communications including, intra-company or inter-company communications and correspondence, electronic mail, telegrams, and telefaxes, however produced or reproduced, any notes or drafts, and all copies on which any mark, alteration, writing, or any other change from the original has been made. The term “document” includes, by way of example and not by way of limitation, trademark registration certificates, trademark applications, reports, compilations, data, diaries, work papers, graphs, charts, drawings, sketches, directions, instruction books, books and booklets, texts, memoranda, letters and other correspondence, sales and promotional literature, brochures, press releases, forms, written offers for purchase or sale, written contracts,

licenses, and sales agreements, ledgers, archive records, minutes or records of meetings, conferences, or telephone conversations including, lists of persons attending the meetings or conferences, legal pleadings or filings, expired files, and information that have been electronically stored or recorded including, voice mail and electronic mail.

7. The term “describe” means to set forth fully and clearly every relevant fact and/or event including, particulars of time, place and manner.

8. The phrase “refer or relate to” means pertaining to, evidencing, containing, setting forth, reflecting, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, whether directly or indirectly.

9. The term “person” means any natural person or individual, public and/or private corporation, partnership, proprietorship, joint venture, group, division, department, unit, organization, union, federation, government of any kind or type, governmental agency, and any other kind of business, legal or governmental entity or association.

10. The term “third parties” shall mean all persons, individuals, corporations, partnerships and other entities of any kind which are not parties to this proceeding, including, without limitation, competitors, customers and investors, as well as all persons acting on behalf of such third parties, including, without limitation, their officers, agents, employees and attorneys.

11. The term “Trademark” means trademarks, service marks, collective marks and certification marks, whether or not registered at the United States Patent and Trademark Office or any state entity.

12. The term “advertisement” includes brochures, pamphlets, newspaper advertisements, magazine advertisements, television advertisements, digitized or electronic

advertising including, Internet web pages, radio advertisements, direct mailings, newsletters, promotional materials and all other forms of advertising, promotion or marketing in any and all media.

13. The term “thing” is used in the most comprehensive and inclusive sense permitted by Rule 34 of the Federal Rules of Civil Procedure and includes, but is not limited to, specimens and commercially manufactured items.

14. The term “communications” means any transmission, conveyance or exchange of information, whether written, oral or by other means.

### INSTRUCTIONS

1. Each of these Requests shall be responded to in accordance with the Federal Rules of Civil Procedure and Trademark Rules of Practice. In the event that any information, document or portion of any document within the scope of these Requests is withheld from production upon a claim of privilege or work product, with respect to each document you are required to provide a privilege log in conformity with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

2. If Applicant refuses to answer any part of a Request, Applicant shall state the objection and answer the remaining portion of the Request.

3. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these Requests all documents which might otherwise be considered to be beyond their scope.

4. The use of capital letters, lower case letters or quotation marks in these Requests shall not be construed to limit the scope of any specific request contained herein.

5. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. The use of the singular form of any word includes the plural and vice versa.

7. Documents produced in response to these Requests shall be produced as they are kept in the ordinary course of business and shall be organized so that Opposer can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

8. Any document that is attached by staple, clip or otherwise to a document requested herein shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein.

9. These Requests are continuing in nature and you are obligated to produce or add documents or information whenever they are acquired, discovered or come into existence after the date of the initial production.

10. Each of these Requests seeks all information and documents, wherever located, which are in your actual or constructive possession.

11. Except as otherwise set forth herein, the relevant time period for these Requests is January 1, 2011 to the present.

### REQUESTS FOR ADMISSION

1. Applicant has continuously used the KNOWLEDGEMENT trademark in United States commerce in connection with “business knowledge management services” and “computer

services, namely, acting as an application service provider in the field of knowledge management to host computer application software for the purpose of knowledge acquisition and dissemination” since August 25, 2011.

2. Applicant has marketed, promoted or advertised Applicant’s Services in the United States under the KNOWLEDGEMENT trademark each year since August 25, 2011.

3. Applicant has sold Applicant’s Services in the United States in connection with information or services bearing the KNOWLEDGEMENT trademark.

DATED: November 21, 2013

Respectfully submitted,

SILLS CUMMIS & GROSS P.C.

By:   
Elyse A. Marcus

30 Rockefeller Plaza  
New York, New York 10112  
Tel 212-643-7000  
Fax 212-643-6500

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 21 day of November, 2013, I caused to be served a true and correct copy of the foregoing OPPOSER'S FIRST REQUESTS FOR ADMISSIONS upon counsel for the Applicant by first class mail, postage prepaid, addressed to:

Matthew H. Swyers, Esq.  
The Trademark Company  
344 Maple Avenue West, Suite 151  
Vienna, Virginia 22180

Dated: November 21, 2013

  
\_\_\_\_\_  
Edward Longobardi

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

KNOWLEDGENT GROUP INC.,	:	Opposition No. 91211882
	:	
Opposer,	:	<b>OPPOSER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS</b>
	:	
v.	:	
	:	
GREG SEARLE, DBA, KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
	:	

---

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer, Knowledgent Group Inc., by its attorneys Sills, Cummis & Gross PC, hereby requests that Applicant, Greg Searle, DBA, Knowledgement Pty Ltd. produce, in accordance with the definitions and instructions below, all requested documents and things. Production should be made to the office of Sills, Cummis & Gross PC, 30 Rockefeller Plaza, New York, NY 10112, or to such other place as may be mutually agreed upon.

**DEFINITIONS AND INSTRUCTIONS**

**A. Definitions**

1. The terms "Opposer" and "Knowledgent" shall mean the Opposer in this proceeding, namely Knowledgent Group Inc.
  
2. "Applicant" and "Greg Searle" shall mean Greg Searle, DBA, Knowledgement Pty Ltd. and each of its current and former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments and operating units, and includes without limitation its current

or former partners, directors, shareholders, employees, officers, agents, officials, representatives, associates, consultants, attorneys, advisors, accountants and all persons and entities acting on its behalf.

3. The “Applicant’s Services” shall mean, individually and collectively, each and every service in International Classes 35 and 42 identified in Applicant’s Application No. 85/571,150 for KNOWLEDGEMENT.

4. The term “use” in all of its tenses shall have the meaning ascribed to the term “use in commerce” in 15 U.S.C. §1127.

5. The term “concerning” means in whole or in part constituting, containing, referring, embodying, reflecting, describing, analyzing, identifying, stating, dealing with, or in any way pertaining to.

6. The term “document” shall be construed as broadly as it appears in Federal Rule of Civil Procedure 34(a) and includes, but is not limited to, all of the following matter in Applicant’s actual or constructive possession, custody, or control: all written, typed, printed, digitally or electronically recorded, graphic or photographic matter, software, source code, object code, communications including, intra-company or inter-company communications and correspondence, electronic mail, telegrams, and telefaxes, however produced or reproduced, any notes or drafts, and all copies on which any mark, alteration, writing, or any other change from the original has been made. The term “document” includes, by way of example and not by way of limitation, trademark registration certificates, trademark applications, reports, compilations, data, diaries, work papers, graphs, charts, drawings, sketches, directions, instruction books, books and booklets, texts, memoranda, letters and other correspondence, sales and promotional

literature, brochures, press releases, forms, written offers for purchase or sale, written contracts, licenses, and sales agreements, ledgers, archive records, minutes or records of meetings, conferences, or telephone conversations including, lists of persons attending the meetings or conferences, legal pleadings or filings, expired files, and information that have been electronically stored or recorded including, voice mail and electronic mail.

7. The term “describe” means to set forth fully and clearly every relevant fact and/or event including, particulars of time, place and manner.

8. The phrase “refer or relate to” means pertaining to, evidencing, containing, setting forth, reflecting, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, whether directly or indirectly.

9. The term “person” means any natural person or individual, public and/or private corporation, partnership, proprietorship, joint venture, group, division, department, unit, organization, union, federation, government of any kind or type, governmental agency, and any other kind of business, legal or governmental entity or association.

10. The term “third parties” shall mean all persons, individuals, corporations, partnerships and other entities of any kind which are not parties to this proceeding, including, without limitation, competitors, customers and investors, as well as all persons acting on behalf of such third parties, including, without limitation, their officers, agents, employees and attorneys.

11. The term “Trademark” means trademarks, service marks, collective marks and certification marks, whether or not registered at the United States Patent and Trademark Office or any state entity.

12. The term “advertisement” includes brochures, pamphlets, newspaper advertisements, magazine advertisements, television advertisements, digitized or electronic advertising including, Internet web pages, radio advertisements, direct mailings, newsletters, promotional materials and all other forms of advertising, promotion or marketing in any and all media.

13. The term “thing” is used in the most comprehensive and inclusive sense permitted by Rule 34 of the Federal Rules of Civil Procedure and includes, but is not limited to, specimens and commercially manufactured items.

14. The term “communications” means any transmission, conveyance or exchange of information, whether written, oral or by other means.

**B. Instructions**

1. If any of the Requests cannot be responded to in full, please respond to the extent possible and state the reason(s) why a more complete response cannot be provided.

2. In answering these Requests, you are required not only to furnish such documents and things as you have in your own personal possession, custody or control, but also documents and things which are in the possession, custody or control of your attorneys, investigators, or anyone acting on your behalf or their behalf. Where an objection is made to any Request or sub-part thereof, the objection shall state with specificity all grounds on which the objection is based.

3. Where a claim of privilege is asserted in objecting to any request or subpart thereof, and a response is not provided on the basis of such assertion: (a) you shall, in the objection to the request, or sub-part thereof, identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state privilege rule being invoked; (b) the following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information: (i) for documents: the type of document including, the manner of recording or reproduction; the subject matter of the document; the date of the document; the author of the document; the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other; to whom indicated or blind copies of the document are addressed; the number of pages, attachments, or appendices of the document; all persons to whom the document was distributed, shown, or explained; the present custodian of the document; and such other information as is sufficient to identify the document; and (ii) for oral communications: the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; the date and place of communication; and the subject matter of the communication.

4. In the event that any document called for by these Requests has been destroyed in the past three years, that document is to be identified as follows: form (e. g., memorandum, letter), nature (e.g., writing, recording), manner of recording or reproduction, author or preparer or addressor, addressee or recipient, indicated or blind copies, date, subject matter, number of pages, attachments and appendices, all persons to whom distributed, shown or explained, date of destruction, manner of destruction, reason for destruction, person who authorized destruction,

person who destroyed the document, and custodian of the document on the date and time of destruction.

5. Any document that is attached by staple, clip or otherwise to a document requested herein shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein.

6. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. The use of capital letters, lowers case letters or quotation marks in these Interrogatories shall not be construed to limit the scope of any specific request contained herein.

8. The use of the singular form of any word includes the plural and vice versa.

9. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, as necessary, to bring within the scope of these requests all documents which might otherwise be considered to be beyond their scope.

10. Each of these Requests seeks all information and documents, wherever located, which are in your actual or constructive possession.

11. Except as otherwise set forth herein, the relevant time period for these requests is January 1, 2011 to the present.

12. These requests shall be deemed to be continuing so that any additional documents or things responsive to these requests which you may acquire, or which may become known to

you, shall be furnished to Opposer as required by Federal Rule of Civil Procedure 26(e). Such supplemental documents or things are to be supplied promptly with a designation as the request to which it is responsive.

### **REQUESTS FOR PRODUCTION**

1. Documents sufficient to show use of the KNOWLEDGEMENT trademark in connection with Applicant's Services in the United States during the relevant time period.
2. Documents sufficient to show, by month and year, the gross revenue generated by the sale of Applicant's Services in connection with the KNOWLEDGEMENT trademark in the United States during the relevant time period.
3. Documents sufficient to show every service Applicant has offered for sale in connection with the KNOWLEDGEMENT trademark in the United States during the relevant time period.
4. Documents sufficient to show all persons in the United States to whom Applicant sold services offered for sale in connection with the KNOWLEDGEMENT trademark during the relevant time period and for each such person: (a) the dates of all such sales; (b) the number of services sold on each such date; and (c) the dollar amount of each such sale.
5. All purchases orders and invoices reflecting or showing Applicant's sales of the services used in connection with the KNOWLEDGEMENT trademark to customers located in the United States.

6. Documents sufficient to identify all vendors or retailers in the United States that have sold the services used in connection with the KNOWLEDGEMENT trademark during the relevant time period.

7. Documents sufficient to identify all vendors or retailers in the United States that are currently selling services used in connection with the KNOWLEDGEMENT trademark.

8. All advertisements and any other promotional materials used to market, advertise, or promote the services offered in connection with the KNOWLEDGEMENT trademark in the United States.

9. Documents sufficient to show where advertisements for services bearing the KNOWLEDGEMENT trademark have been placed in the United States.

10. All catalogs distributed in the United States during the relevant time period which display or depict the services used in connection with the KNOWLEDGEMENT trademark offered for sale in the United States.

11. All budgets and plans concerning the advertising, marketing and promotion of services bearing the KNOWLEDGEMENT trademark in the United States.

12. All budgets and business plans concerning the sale or planned sale of services bearing the KNOWLEDGEMENT trademark in the United States.

13. All documents and communications concerning the non-use of the KNOWLEDGEMENT trademark in the United States.

14. All documents and communications concerning the commencement of use of the KNOWLEDGEMENT trademark in the United States.

15. All documents and communications concerning the resumption of use of the KNOWLEDGEMENT trademark in the United States.

16. All documents and communications concerning the cessation of use of the KNOWLEDGEMENT trademark in the United States.

17. All licenses concerning the KNOWLEDGEMENT trademark.

18. Documents sufficient to show, by year, royalties received by Applicant based on sales in the United States of services bearing the KNOWLEDGEMENT trademark.

19. Documents sufficient to show, by year, sales in the United States by Applicant's licensees of services bearing the KNOWLEDGEMENT trademark.

20. Documents sufficient to show, by year, all costs and expenses incurred by Applicant in connection with advertising, marketing, promoting or selling services bearing the KNOWLEDGEMENT trademark in the United States.

21. All communications concerning any objections or challenges to Applicant's ownership, use or registration of the KNOWLEDGEMENT trademark in the United States.

22. All documents filed in actions or proceedings concerning challenges to Applicant's ownership, use or registration of the KNOWLEDGEMENT trademark in the United States.

23. All assignments or agreements that refer or relate to the KNOWLEDGEMENT trademark.

24. All articles and photographs concerning goods or services bearing the KNOWLEDGEMENT trademark appearing in periodicals or websites published in or by persons located in the United States.

25. All documents referred to or relied upon in preparing Applicant's responses to Opposer's First Set of Interrogatories.

Dated: November 21, 2013

SILLS CUMMIS & GROSS P.C.

By:   
Elyse A. Marcus

30 Rockefeller Plaza  
New York, New York 10112  
Tel. 212-643-7000  
Fax 212-643-6500

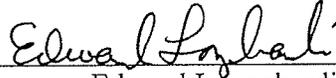
*Attorneys for Opposer*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 21 day of November, 2013, I caused to be served a true and correct copy of the foregoing OPPOSER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS upon counsel for the Applicant by first class mail, postage prepaid, addressed to:

Matthew H. Swyers, Esq.  
The Trademark Company  
344 Maple Avenue West, Suite 151  
Vienna, Virginia 22180

Dated: November 21, 2013

  
\_\_\_\_\_  
Edward Longobardi