ESTTA Tracking number: **ESTTA587365**
Filing date: **02/14/2014**

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

Proceeding	91212722
Party	Plaintiff Karma Athletics, Ltd.
Correspondence Address	JOSEPH W BERENATO III BERENATO & WHITE LLC 6550 ROCK SPRING DRIVE, SUITE 240 BETHESDA, MD 20817 UNITED STATES jberenato@bw-iplaw.com, dinman@bw-iplaw.com, prehfield@bw-iplaw.com
Submission	Motion to Compel Discovery
Filer's Name	Patricia M. Rehfield
Filer's e-mail	prehfield@bw-iplaw.com, dinman@bw-iplaw.com, jberenato@bw-iplaw.com
Signature	/Patricia M. Rehfield/
Date	02/14/2014
Attachments	motion with exhibit.pdf(1379134 bytes)

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

IN THE MATTER OF OPPOSITION NO. 91212722
OF SERIAL NO. 85/816,871 FOR GOT KARMA?

KARMA ATHLETICS, LTD.,	:	
Opposer,	:	Opposition No. 91212722
v.	:	
RISING LOTUS CHILDRENS VILLAGE,	:	
Applicant.	:	Serial No. 85/816,871

OPPOSER'S MOTION TO COMPEL

Karma Athletics, Ltd. (hereinafter "Opposer"), by and through its undersigned counsel, submits this motion (the "Motion") to compel[1] Rising Lotus Children's Village (hereinafter "Applicant") to respond to outstanding and overdue Interrogatories and Requests for Production (collectively "Discovery Requests"). Further, because Applicant did not and has not objected to the discovery, responses should be compelled without objection.

In accordance with 37 CFR § 2.120(e)(2), Opposer requests the Board issue an order suspending this proceeding until such time the Board rules on the present Motion to Compel.

PROCEDURAL BACKGROUND AND RELEVANT FACTS

On September 30, 2013, Opposer timely filed its Notice of Opposition with the Trademark Trial and Appeal Board (the "Board"), claiming priority and likelihood of confusion based upon three (3) federal registrations for KARMA and Design owned by Opposer.

[1] The discovery period for the instant matter is not set to close until June 7, 2014.

Applicant filed its Answer November 8, 2013. Discovery opened on December 9, 2013 and Initial Disclosures were due by January 8, 2014.

In accordance with TBMP 401.02 and TBMP 403.02, Opposer served Applicant, via electronic mail, with its initial disclosures and Discovery Requests on December 13, 2013. Attached as Oppoer's Exhibit 1 is a copy of Opposer's Initial Disclosures, First Set of Interrogatories and First Requests for Production of Documents and Things. Responses to Opposer's Discovery Requests were due by Monday, January 13, 2014[2]. The parties engaged in settlement negotiations during the period between December 13, 2013 and January 13, 2014.

On January 23, 2014, when it became apparent settlement would not be reached, the undersigned counsel advised counsel for the Applicant that the parties would need to discuss Applicant's failure to respond to the Discovery Requests. On February 3, 2014 and February 6, 2014, the undersigned counsel again advised Applicant's counsel that no discovery had been received from Applicant and that the parties needed to meet and confer to discuss. The undersigned counsel gave the Applicant until Monday, February 10, 2014, almost two (2) months after Opposer served Applicant with its Discovery Requests, to provide either the responses to the outstanding Discovery Requests, or alternatively meet and confer to discuss the matter.

On February 10, 2014, counsel for Applicant did not provide any responses to the Discovery Requests or confer with the undersigned counsel regarding the matter, but instead informed the undersigned counsel he had filed his withdrawal as counsel for the Applicant with the Board[3].

---

[2] Thirty (30) days from service of Opposer's Discovery Requests was Sunday, January 12, 2014.
[3] As of February 13, 2014, said Motion to Withdrawal remains pending with the Board.

On February 11, 2014, the undersigned counsel provided both Applicant's attorney of record and Applicant with a copy of the Discovery Requests, and again requested that Applicant either respond or be available for a meet-and-confer. To date, no discovery responses have been received and Applicant and its attorney have not advised of their availability for a meet-and-onfer. Nor has Applicant ever provided Opposer with its initial disclosures.

ARGUMENT

Responses to interrogatories and requests for production of documents and things *must* be served within thirty (30) days after the date of service of the discovery requests. *See 37 CFR § 2.120(a)(3) and TMBP 405.04(a).* Settlement negotiations generally do not relieve a party from its discovery obligations. *See Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 USPQ2d 1858 (TTAB 1998). Indeed, it is advisable to request an extension of time to respond to any pending discovery requests while settlement discussions are ongoing. *Id.* In the event that a party fails to make its required initial disclosures, or fails to answer any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party propounding the discovery requests can motion the Board to order the non-complying party to produce the documentation or information requested. *See 37 CFR § 2.120(e) and TMBP 523.*

To date, Applicant has failed to provide the required initial disclosures, failed to timely respond to the Discovery Requests or request any extensions to respond thereto, failed to object to the Discovery Requests and failed to provide *any* reason for such failures. Counsel for Applicant has avoided the undersigned counsel's requests to confer, either on his own accord or alternatively by not receiving authorization from Applicant, and thus the Discovery Requests remain outstanding.

As a substitute to providing discovery responses, counsel for Applicant has instead filed a

motion to withdrawal as counsel for Applicant, seeming to indicate that he has had difficulty communicating with his client. However, counsel representing clients in matters before the Board have a duty to make reasonable efforts to communicate with their clients, even when it may be difficult to do so. *See SFW Licensing Corp. and Shoppers Food Warehouse Corp. v. Di Pardo Packing Limited*, 60 U.S.P.Q.2d 1372 (TTAB 2001). What's more, counsel cannot fail in his duty to communicate with his client and then use his failure as grounds to withdraw from representation in a manner that may prejudice both his client and other parties to the proceeding. *Id.* In the instant matter, Opposer will surely be prejudiced, as Applicant's counsel's request to withdrawal will needlessly delay the instant proceeding.

Opposer has made a good faith effort to settle the instant matter, has given Applicant every opportunity to respond to the Discovery Requests of Exhibit 1, all to no avail. By providing no discovery responses, Applicant has already forfeited its right to object to Opposer's Discovery Requests. *See No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551 (TTAB 2000). Furthermore, a party who fails to provide initial disclosures will be barred from propounding discovery requests. *See 37 CFR § 2.123(c)*. However, regardless of any inability Applicant may have to propound discovery, in the end Opposer is due the discovery it has requested.

CONCLUSION

In light of Applicant's lack discovery responses, Opposer respectfully requests that this Board grant the present Motion and thereby compel Applicant to respond fully and without objection to the Discovery Requests of Exhibit 1.

Respectfully submitted,

Joseph W. Berenato, III
Attorney for Petitioner

Berenato & White, LLC
6550 Rock Spring Drive, Suite 240
Bethesda, Maryland 20817
Telephone: (301) 896-0600
Facsimile: (301) 896-0607

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Opposer's Motion To Compel upon Applicant and Applicant's attorney of record via electronic mail and by depositing one copy thereof in the United States Mail, first-class postage prepaid on February 14, 2014, addressed as follows:

Ms. Tracy Brandt
Rising Lotus Childrens Village
12644 Lake Mary Jane Road
Orlando, Florida 32832
tracy@risinglotuschildrensvillage.org

Eric Menhart, Esq.
Lexero Law
10 G St NE, Suite 710
Washington, DC 20002
p17a35@Lexero.com

By: _____

Joseph W. Berenato, III
Berenato & White, LLC
6550 Rock Spring Drive
Suite 240
Bethesda, Maryland 20817
Tel: (301) 896-0600
Fax: (301) 896-0607
Attorneys for Opposer

In the matter of Opposition No. 91212722 of
Serial No. 85/816,871 for
GOT KARMA?

Exhibit 1

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

IN THE MATTER OF OPPOSITION NO. 91212722
OF SERIAL NO. 85/816,871 FOR GOT KARMA?

KARMA ATHLETICS LTD.	:	
Opposer;	:	Opposition No. 91212722
v.	:	
RISING LOTUS CHILDRENS VILLAGE	:	
Applicant.	:	Serial No. 85/816,871

OPPOSER KARMA ATHLETICS' FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to the Rules of Practice of the United States Patent and Trademark Office and the applicable Federal Rules of Civil Procedure, Opposer Karma Athletics, LTD. (hereinafter "Opposer") hereby requests that Applicant Rising Lotus Children's Village (hereinafter "Applicant") produce the following documents and things for inspection and copying at the offices of Berenato & White, LLC, 6550 Rock Spring Drive, Suite 240, Bethesda, MD 20817, or such other place as may be agreed between the parties, within thirty (30) days of service hereof.

DEFINITIONS

The following definitions and instructions shall apply to each of the requests herein:

1. The term "Opposer" shall mean Karma Athletics Ltd. and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company.

2. The term "Applicant" shall mean Rising Lotus Children's Village and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on his behalf, and shall include any predecessor, successor, affiliate company, wholly-owned or partially-owned subsidiary or other related company related to Applicant's business.
3. The term "you" or "your" shall mean the party or person to whom the Request is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Request is propounded has the right to or does control or direct any activities.
4. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals or instruction bulletins, voice recording, cables or telegrams, maps, charts, surveys, test data, HTML code, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody or control of Applicant, and every copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear on the original.
5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.
6. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

7. A document or thing "relating or referring" or which "relates" to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.
8. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.
9. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.
10. The terms "trademark" or "mark" include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.
11. The terms "all" and "each" shall be construed to include all and each.
12. The term "and" shall be construed to include "or" and *vice versa,* and shall be the logical equivalent of "and/or".
13. The use of the singular form of any word also includes the plural and *vice versa.*
14. The term "Opposer's marks" shall mean Opposer's marks identified in its Notice of Opposition, including U.S. Registration Nos. 3,319,351, 3,875,261, and 3,918,906.
15. The term "Applciant's mark" or "Mark" or "GOT KARMA? mark" shall mean the mark identified in U.S. trademark application Serial No. 85/816,871.
16. The terms "use in commerce," "used in commerce," "United States commerce" and "commercial use" shall have the meaning ascribed to them in 15 U.S.C. § 1127.
17. The term "used" and "use" shall mean and refer to "used in commerce" and "use in

commerce".

18. The terms "marketing activity" or "marketing activities" shall mean the ways in which Applicant has promoted the goods and/or services offered and/or sold under the Mark to the public.

GENERAL INSTRUCTIONS

1. In multi-part requests, the separate parts of such requests are to be read in context of the entire Interrogatory, but each part is to be answered separately.
2. All requests contained herein to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:
    a. full name;
    b. current business and residence addresses, including telephone numbers;
    c. present employer, occupation and position;
    d. a brief description of the job responsibilities of such person; and
    e. a brief description of the responsibilities of such person with the pertinent organization if the person is other than a natural person by stating:
        i. its full name or designation;
        ii. the legal classification of the entity (e.g. corporation, partnership, etc.), giving the state of incorporation where appropriate;
        iii. the principal place of business;
        iv. the current or last known address and telephone number of the organization; and
        v. any other information reasonably necessary to permit efficient contact with the organization.
3. All requests contained herein to identify a document are to be answered by stating:
    a. the identity of the person(s) originating and preparing it and the sender;

b. its general type (i.e. letter, memo, report, invoice, etc.), and identifying title or number;

c. the nature of its subject matter;

d. the identity of the addressees and distributes, if any;

e. its date of preparation;

f. its date and manner of transmission, distribution and publication, if any;

g. the location of each copy and the identity of the present person responsible for its filing or other disposition; and

h. the identity of persons who can authenticate or identify it.

4. If you claim that any information requested is privileged, please provide all information falling within the scope of the request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production of each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

   a. the basis on which the privilege is claimed;

   b. the author of the document;

   c. each individual or other person to whom the document, or copy thereof, was sent or otherwise disclosed; and

   d. the date of the document.

   You are not requested to provide privileged information or information for which you claim privileged, but only to identify such information, document or thing.

5. Applicant's responses to the following requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the

Federal Rules of Civil Procedure.

REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

All documents and things identified in your responses to Opposer's First Set of Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

All documents and things consulted or reviewed in preparing your responses to Opposer's First Set of Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

Documents and things sufficient to identify the period or periods of Applicant's use of its GOT KARMA? mark since the date of first use, including any periods of nonuse.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

Documents and things sufficient to identify the period or periods of licensed use, if any, of the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

Documents and things sufficient to establish Applicant's current use of the GOT KARMA? mark, providing separate documentation for each good and/or service listed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

All trademark search reports, market studies, surveys, focus groups, or other studies that relate to use of the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

All documents and things relating to all lawsuits, oppositions, cancellations, and challenges involving Applicant's GOT KARMA? mark, including all pleadings, discovery, deposition testimony, motions, oppositions to motions, replies to motions, and orders.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

All licenses, contracts and agreements by which you authorize any other person to use the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11:

All documents which contain or reflect information bearing upon the conception, adoption and selection of the GOT KARMA? mark by Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12:

Samples and/or specimens of each different use made by Applicant of the GOT KARMA? mark in connection with Applicant's goods and/or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13:

All advertising, publicity releases, promotional pieces and materials used by Applicant, or at Applicant's request or direction or under license from Applicant, in the marketing, advertising, sale, and/or offering for sale, of goods and/or services under the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14:

All documents which refer to, relate to, or involve, any challenge by any third party to Applicant's right to use the mark GOT KARMA?, or which contain any suggestion or demand by any third party that Applicant use a different mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15:

All documents which refer to, relate to, or involve, any challenge by Applicant to any third party's right to use the mark GOT KARMA?, or which contain any suggestion or demand by Applicant that a third party use a different mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16:

All documents evidencing Applicant's first use of the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17:

Documents sufficient to show all channels of trade through which Applicant offers, has offered, or intends to offer, goods and/or services under the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18:

Documents sufficient to show the types of purchasers to whom Applicant has offered goods and/or services, or intends to offer goods and/or services, under the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19:

Documents sufficient to identify each catalog, sales outlet, Internet website or other electronic means, retail outlet, and wholesale outlet in which products offered in connection with the GOT KARMA? mark are, or are intended to be, advertised, promoted, distributed, sold or offered for sale.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20:

All correspondence between Applicant and any third party concerning or referring to the GOT KARMA? mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21:

Documents sufficient to establish when Applicant became aware of Opposer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22:

Documents sufficient to establish when Applicant became aware of Opposer's use of Opposer's Marks.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23:

All documents relating to and/or evidencing any actual confusion between Applicant and Opposer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24:

All documents and things supporting Your Affirmative Defenses..

RESPONSE:

Respectfully submitted,

By: /Joseph W. Berenato, III/

Joseph W. Berenato, III
Berenato and White, LLC
6550 Rock Spring Drive
Suite 240
Bethesda, Maryland 20817
Tel: (301) 896-0600
Fax: (301) 896-0607
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Opposer Karma Athletics' First Requests For Production Of Documents And Things by email on December 13, 2013, addressed as follows:

Eric Menhart, Esq.
Lexero Law
10 G St NE, Suite 710
Washington, DC 20002
a35p17@Lexero.com

By: /Joseph W. Berenato, III/
Joseph W. Berenato, III
Berenato and White, LLC
6550 Rock Spring Drive
Suite 240
Bethesda, Maryland 20817
Tel: (301) 896-0600
Fax: (301) 896-0607
Attorneys for Opposer

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

IN THE MATTER OF OPPOSITION NO. 91212722
OF SERIAL NO. 85/816,871 FOR GOT KARMA?

KARMA ATHLETICS LTD.	:	
Opposer;	:	Opposition No. 91212722
v.	:	
RISING LOTUS CHILDRENS VILLAGE	:	
Applicant.	:	Serial No. 85/816,871

OPPOSER KARMA ATHLETICS' FIRST SET OF INTERROGATORIES TO APPLICANT RISING LOTUS CHILDRENS VILLAGE

Pursuant to the Rules of Practice of the United States Patent and Trademark Office and the applicable Federal Rules of Civil Procedure, Opposer Karma Athletics Ltd. (hereinafter "Opposer") hereby requests that Applicant Rising Lotus Children's Village (hereinafter "Applicant") answer separately and fully within thirty (30) days of service hereof, in writing and under oath, each of the following interrogatories.

DEFINITIONS

The following definitions and instructions shall apply to each of the Interrogatories herein:

1. The term "Opposer" shall mean Karma Athletics Ltd. and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company.

2. The term "Applicant" shall mean Rising Lotus Children's Village and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate company, wholly-owned or partially-owned subsidiary or other related company related to Applicant's business.
3. The term "you" or "your" shall mean the party or person to whom the Interrogatory is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.
4. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals or instruction bulletins, voice recording, cables or telegrams, maps, charts, surveys, test data, HTML code, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody or control of Applicant, and every copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear on the original.
5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.
6. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

7. A document or thing "relating or referring" or which "relates" to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.
8. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.
9. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.
10. The terms "trademark" or "mark" include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.
11. The terms "all" and "each" shall be construed to include all and each.
12. The term "and" shall be construed to include "or" and *vice versa,* and shall be the logical equivalent of "and/or".
13. The use of the singular form of any word also includes the plural and *vice versa.*
14. The term "Opposer's marks" shall mean Opposer's marks identified in its Notice of Opposition, including U.S. Registration Nos. 3,319,351, 3,875,261, and 3,918,906.
15. The term "Applicant's mark" or "Mark" or "GOT KARMA? mark" shall mean the mark identified in U.S. trademark application Serial No. 85/816,871.
16. The terms "use in commerce," "used in commerce," "United States commerce" and "commercial use" shall have the meaning ascribed to them in 15 U.S.C. § 1127.
17. The term "used" and "use" shall mean and refer to "used in commerce" and "use in

commerce".

18. The terms "marketing activity" or "marketing activities" shall mean the ways in which Applicant has promoted the goods and/or services offered and/or sold under the Mark to the public.

GENERAL INSTRUCTIONS

1. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in context of the entire Interrogatory, but each part is to be answered separately.
2. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:
    a. full name;
    b. current business and residence addresses, including telephone numbers;
    c. present employer, occupation and position;
    d. a brief description of the job responsibilities of such person; and
    e. a brief description of the responsibilities of such person with the pertinent organization if the person is other than a natural person by stating:
        i. its full name or designation;
        ii. the legal classification of the entity (e.g. corporation, partnership, etc.), giving the state of incorporation where appropriate;
        iii. the principal place of business;
        iv. the current or last known address and telephone number of the organization; and
        v. any other information reasonably necessary to permit efficient contact with the organization.
3. All requests contained in the following Interrogatories to identify a document are to be answered by stating:

a. the identity of the person(s) originating and preparing it and the sender;

b. its general type (i.e. letter, memo, report, invoice, etc.), and identifying title or number;

c. the nature of its subject matter;

d. the identity of the addressees and distributes, if any;

e. its date of preparation;

f. its date and manner of transmission, distribution and publication, if any;

g. the location of each copy and the identity of the present person responsible for its filing or other disposition; and

h. the identity of persons who can authenticate or identify it.

4. If you claim that any information requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production of each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

   a. the basis on which the privilege is claimed;

   b. the author of the document;

   c. each individual or other person to whom the document, or copy thereof, was sent or otherwise disclosed; and

   d. the date of the document.

   You are not requested to provide privileged information or information for which you claim privileged, but only to identify such information, document or thing.

5. Applicant's responses to the following Interrogatories are to be promptly supplemented to

include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1:

State when Applicant first used its GOT KARMA? mark, describe in detail the nature and extent, including geographic extent, of such use, from the first commercial use until the present, and identify documents sufficient to establish such use from the asserted first use until the present.

RESPONSE:

INTERROGATORY NO. 2:

Identify the person or persons most knowledgeable about Applicant's actual and/or intended use of its GOT KARMA? mark.

RESPONSE:

INTERROGATORY NO. 3:

Identify the person or persons most knowledgeable concerning:

i. the goods and/or services offered by Applicant;

ii. trademarks, trade names and service marks used by Applicant; and

iii. advertising and advertising plans in connection with which the GOT KARMA? mark has been used, is currently used or is intended to be used.

RESPONSE:

INTERROGATORY NO. 4:

Describe all of your present plans to use the GOT KARMA? mark and identify documents sufficient to corroborate such plans.

RESPONSE:

INTERROGATORY NO. 5:

Describe in detail the nature of Applicant's business and identify documents sufficient to corroborate such business.

RESPONSE:

INTERROGATORY NO. 6:

Describe in detail any agreement whereby Applicant has licensed use of the GOT KARMA? mark, and identify all documents related thereto.

RESPONSE:

INTERROGATORY NO. 7:

Describe in detail the circumstances surrounding Applicant's selection of the GOT KARMA? mark, identify the person or persons with the most knowledge of the selection of the Mark and identify documents sufficient to corroborate the selection process.

RESPONSE:

INTERROGATORY NO. 8:

Identify any variation of Applicant's mark that has been or will be used in commerce, describing in detail any design element contained therein, and identify documents sufficient to corroborate such use.

RESPONSE:

INTERROGATORY NO. 9:

Identify and describe all goods and/or services that have been offered and/or sold, or are intended to be offered and/or sold, in the United States under the GOT KARMA? mark, setting forth the dates of use, and identify documents sufficient to establish all such use.

RESPONSE:

INTERROGATORY NO. 10:

With respect to each of the goods and/or services identified in your response to Interrogatory No. 9, identify where Applicant's goods and/or services have been offered and/or sold, providing specific business name(s) and/or Internet website URL(s), identify which business and/or Internet website offered the goods and/or services, identify the period of time, by month and year, the goods and/or services were made available, and identify all person(s) with knowledge thereof and documents sufficient to corroborate such use.

RESPONSE:

INTERROGATORY NO. 11:

Identify and describe in detail any conflict, controversy, lawsuits, infringement, cease and desist letter, opposition, and any other challenge, whether currently pending or already resolved, with any third party involving Applicant's mark, and identify all documents referring or relating thereto.

RESPONSE:

INTERROGATORY NO. 12:

Identify and describe in detail all channels of trade through which goods and/or services are offered, advertised, promoted, sold, distributed and/or rendered by or on your behalf under the GOT KARMA? mark and identify documents sufficient to corroborate such channels of trade.

RESPONSE:

INTERROGATORY NO. 13:

Identify and describe in detail the types or classes of consumers to whom you offer, advertise, promote, sell, distribute and/or render the goods and/or services offered by or on your behalf under the GOT KARMA? mark, including information concerning, generally, the geographic location where your target consumers reside.

RESPONSE:

INTERROGATORY NO. 14:

For each good and/or service offered under the GOT KARMA? mark, state the quarterly revenue, broken-down by good or service provided, for each year from inception of use to the present, and identify documents sufficient to corroborate such revenue.

RESPONSE:

INTERROGATORY NO. 15:

Identify any press releases or other public statements in which you mention or promote the GOT KARMA? mark.

RESPONSE:

INTERROGATORY NO. 16:

Identify all ways Applicant markets, advertises or promotes the GOT KARMA? mark, identifying the specific marketing medium utilized, the geographic area(s) in which such marketing, advertising or promoting occurred, indicate the time period(s) during which such marketing, advertising or promoting was conducted, the specific goods and/or services marketed, advertised or promoted, and identify documents sufficient to corroborate such marketing.

RESPONSE:

INTERROGATORY NO. 17:

State the quarterly marketing expenses made by or on your behalf in relation to the GOT KARMA? mark, broken-down by goods or services provided, for each year from inception of use of the GOT KARMA? mark to the present, and identify documents sufficient to corroborate such expenditure.

RESPONSE:

INTERROGATORY NO. 18:

Identify all advertising agencies, public relations agencies, marketing firms, or market research agencies that Applicant has used in connection with the marketing, advertising or promoting of any goods and/or services offered under the GOT KARMA? mark, identify each person responsible for, or consulted in connection with, such marketing, advertising or promoting, and identify documents sufficient to identify each such agency.

RESPONSE:

INTERROGATORY NO. 19:

Identify each communication, whether oral or written, that you have had with any third party, person, entity, business or corporate representative, regarding the sale of goods and/or services offered under the GOT KARMA? mark, and identify documents sufficient to corroborate any such communications.

RESPONSE:

INTERROGATORY NO. 20:

Identify and describe in detail all agreements, whether written or oral, which Applicant has entered into, relating to the GOT KARMA? mark, identifying all parties thereto and identify documents sufficient to identify each such agreement.

RESPONSE:

INTERROGATORY NO. 21:

Identify all persons who participated in any way in the preparation of answers or responses to these Interrogatories, and state specifically, with reference to interrogatory numbers, the area(s) of participation of each such person.

RESPONSE:

INTERROGATORY NO. 22:

Identify all documents, in addition to those documents whose identification was specifically requested herein, which were employed to formulate answers to these Interrogatories.

RESPONSE:

INTERROGATORY NO. 24:

Identify each trademark search conducted by you or on your behalf with regard to the GOT KARMA? mark prior to filing the application for the GOT KARMA? mark, and describe in detail the findings of each trademark search that was conducted, prior to filing the application for the GOT KARMA? mark.

RESPONSE:

INTERROGATORY NO. 25:

Identify each opinion of counsel that you have received regarding your right to register the GOT KARMA? mark, identify each written or oral communication by counsel, providing each opinion and each such communication requesting such opinion.

RESPONSE:

INTERROGATORY NO. 26:

State with particularity all reasons why You contend that there is no likelihood of confusion between Your use of Applicant's mark on or in association with each good identified in Your trademark application serial number 85/816,871 and each of Opposer's marks when used on or in association with the goods and services identified in each associated registration and for each reason identify all facts supporting each reason, and identify documents sufficient to establish each such fact.

RESPONSE:

Respectfully submitted,

By: /Joseph W. Berenato, III/
Joseph W. Berenato, III
Berenato and White, LLC
6550 Rock Spring Drive
Suite 240
Bethesda, Maryland 20817
Tel: (301) 896-0600
Fax: (301) 896-0607
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Opposer Karma Athletics' First Set Of Interrogatories To Applicant Rising Lotus Children's Village upon Applicant by email on December 13, 2013, addressed as follows:

Eric Menhart, Esq.
Lexero Law
10 G St NE, Suite 710
Washington, DC 20002
a35p17@Lexero.com

By: /Joseph W. Berenato, III/
Joseph W. Berenato, III
Berenato and White, LLC
6550 Rock Spring Drive
Suite 240
Bethesda, Maryland 20817
Tel: (301) 896-0600
Fax: (301) 896-0607
Attorneys for Opposer

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

IN THE MATTER OF OPPOSITION NO. 91212722
OF SERIAL NO. 85/816,871 FOR GOT KARMA?

KARMA ATHLETICS LTD.	:	
Opposer;	:	Opposition No. 91212722
v.	:	
RISING LOTUS CHILDRENS VILLAGE	:	
Applicant.	:	Serial No. 85/816,871

KARMA ATHLETICS' RULE 26(a)(1) INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1) and 37 C.F.R. 2.120(a)(3), Karma Athletics Ltd. (hereinafter "Karma Athletics"), by and through its undersigned counsel, hereby make the following Initial Disclosures to Applicant, Rising Lotus Children's Village. Karma Athletics reserves the right to supplement and/or amend its disclosures herein.

A. In accordance with Rule 26(a)(1)(A)(i), following is a list of persons who are likely to have discoverable non-privileged information that Karma Athletics may use to supports its claims, unless solely for impeachment:

Darryl Kopke
Karma Athletics Ltd.
205 1008 Homer Street
Vancouver, British Columbia
Canada V6B 2X1

Mr. Kopke has information regarding use and ownership of Karma Athletics' marks; Karma Athletics' business operations and activities; Karma Athletics' goods and services; Karma Athletics' sale of goods under the marks; and facts and assertions alleged in the Notice of Opposition filed by Karma Athletics.

Karma Athletics reserves the right to amend this list upon identification of additional individuals through discovery or through development of the issues.

B. In accordance with Rule 26(a)(1)(A)(ii), a copy of or description by category of all documents and things now in Karma Athletics' possession, custody or control that it may use to support its claims, unless solely for impeachment:

1. Documents associated with Karma Athletics' federal trademark registrations.
2. Documents reflecting Karma Athletics' use of its marks.
3. Documents reflecting Karma Athletics' goods.
4. Documents reflecting Karma Athletics' customers and channel of trade.

Karma Athletics submits that said documents are located at its facilities in Vancouver, British Columbia, Canada and will be made available for inspection and copying upon agreement of counsel. Documents regarding Karma Athletics' federal registrations are available from the United States Patent and Trademark Office website.

Karma Athletics reserves the right to amend this list upon identification of additional documents and things through discovery or through development of the issues.

C. In accordance with Rule 26(a)(1)(A)(iii), Karma Athletics submits there are no damages available.

D. In accordance with Rule 26(a)(1)(A)(iv), Karma Athletics submits there is no insurance available to it regarding this Opposition.

Respectfully submitted,

_____/s/_____
Joseph W. Berenato, III
Attorney for Karma Athletics Ltd.

Berenato & White, LLC
6550 Rock Spring Drive, Suite 240
Bethesda, Maryland 20817
Telephone: (301) 896-0600
Facsimile: (301) 896-0607

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Karma Athletic' Rule 26(a)(1) Initial Disclosures upon Rising Lotus Children's Village by emailing a copy on December 13, 2013, to the following:

Eric Menhart, Esq.
Lexero Law
10 G St NE, Suite 710
Washington, DC 20002

By: _____/s/_____
Joseph W. Berenato, III
Berenato & White, LLC
6550 Rock Spring Drive, Suite 240
Bethesda, Maryland 20817
Tel: (301) 896-0600
Fax: (301) 896-0607
jberenato@bw-iplaw.com
Attorneys for Karma Athletics Ltd.