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Filing date: **11/09/2015**

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

Proceeding	91214578
Party	Plaintiff LeMans Corporation
Correspondence Address	PAUL J WILLIAMSON VOLD & WILLIAMSON PLLC 8251 GREENSBORO DRIVE, SUITE 340 MCLEAN, VA 22102 UNITED STATES trademark@vwiplaw.com
Submission	Other Motions/Papers
Filer's Name	Tara M. Vold
Filer's e-mail	trademark@vwiplaw.com
Signature	/tmv/
Date	11/09/2015
Attachments	Opposer's Response to Applicant's Untitled Paper of November 4, 2015.pdf(694437 bytes ) Exhibit A to Opposer's Response to Applicant's Untitled Paper of November 4, 2015.pdf(2653251 bytes )

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

LeMans Corporation,	)	
	)	Opposition No. 91214578
Opposer,	)	
	)	
v.	)	Mark: THORO
	)	Serial No. 85/956,925
Lemar Xavier Lewis,	)	
	)	
Applicant.	)	

**OPPOSER’S RESPONSE TO  
APPLICANT’S UNTITLED PAPER OF NOVEMBER 4, 2015**

On August 7, 2015, LeMans Corporation (“Opposer”) filed a Further Motion to Compel and Request for Sanctions moving the Board to: (i) issue the requested sanctions in connection with the refusal by Lemar Lewis (“Applicant”) to provide full and complete responses to Opposer’s First Set of Interrogatories and Opposer’s First Request for Production of Documents; (ii) compel Applicant to respond to Opposer’s Second Set of Interrogatories and Opposer’s Second Request for the Production of Documents; and (iii) deem as admitted each of the unanswered requests in Opposer’s First Set of Requests for Admission.

On August 14, 2015 the Board suspended proceedings pending its decision on the Motion and specifically reminding the parties that neither the filing of the Motion nor the suspension order tolled the time for the parties to make required discovery disclosures or to respond to any outstanding discovery requests served prior to the order.

Since that time, the Board has issued further suspension orders given service problems with the address on record for Applicant. In the most recent Suspension Order issued October 9,

2015, the Board allowed Applicant an additional 20 days time to respond to the August 7, 2015 Motion.

Assuming, without conceding, that the Board's October 9, 2015, Order properly allowed Applicant an additional 20 days to respond to the August 7, 2015 Motion, Applicant's untitled November 4, 2015 filing should be considered untimely. Moreover, Applicant's November 4, 2015 filing does not substantively address any issues raised in the August 7, 2015 Motion.

Oppose further rebuts as inaccurate certain of the assertions made in Applicant's November 4, 2015 filing. Applicant asserts that he submitted the "necessary responses," regarding, presumably, the discovery which was the subject of the Board's Orders of January 30, 2015 and April 16, 2015. As the Board will note, these "necessary responses," copies of which are attached as Exhibit A, are nearly identical in substance to the insufficient discovery responses and supplemental responses previously provided by Applicant which served as the basis for the Motion (See Exhibits 1, 2 and 6 to Motion.). In fact, the only substantive difference is that Applicant's Responses to Document Requests No. 1-6 served on October 29, 2015 have been changed to now include non-responsive statements rather than to indicate whether any responsive documents exist.

As such, many of the issues that formed the basis for the original Motion to Compel on Opposer's First Set of Interrogatories and Opposer's First Request for Production of Documents remain unchanged:

- The interrogatory responses are not verified;
- There is no place of employment or contact information provided for identified knowledgeable persons in the employ of or associated with Applicant (Response to Interrogatory No. 2);
- There is no required designation of discovery requests to which the documents previously produced;
- No information has been identified as to the context, date or place for any of the photograph documents previously produced.

Further, Applicant still has failed to provide any responses to Opposer's Second Set of Interrogatories and Opposer's Second Request for the Production of Documents or for Opposer's First Set of Requests for Admission (Opposer's "Second Set of Discovery Requests") due July 24, 2015 (in light of the extensions provided by Opposer). Applicant's November 4, 2015 filing provides no explanation for Applicant's statement that since he had not yet been "compelled" to answer Opposer's Second Set of Discovery Requests he did not have to provide such responses.

As such, Opposer restates the requests for relief in its Motion of August 7, 2015:

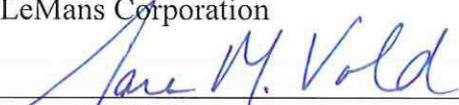
- (i) Applicant's unverified written responses to Opposer's First Set of Interrogatories be deemed insufficient and that Applicant not be allowed to introduce or rely upon facts or documents in this case that were encompassed by the interrogatory requests;
- (ii) Applicant's written responses and documents produced in response to Opposer's First Set of Document Requests be deemed insufficient and that Applicant not be allowed to introduce or rely upon facts or documents in this case that were encompassed by the document requests;
- (iii) The requests in Opposer's First Set of Requests for Admission been deemed admitted;
- (iv) Applicant be barred from now introducing any evidence, including documents or testimony that would have been responsive to Opposer's Second Set of Interrogatories and
- (v) Applicant be barred from now introducing any evidence, including documents or testimony that would have been responsive to Opposer's Second Set of Document Request.

Respectfully submitted,

LeMans Corporation

Date: November 9, 2015

By: \_\_\_\_\_

  
Tara M. Vold  
J. Paul Williamson  
VOLD & WILLIAMSON PLLC  
8251 Greensboro Drive, Suite 340  
McLean, VA 22012  
571-395-4630  
*Attorneys for the Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S UNTITLED PAPER OF NOVEMBER 15, 2105 was served via email on this 9<sup>th</sup> day of November, 2015 to Applicant at the following email address: lemarlewis@hotmail.com.

  
Alexandra Thiery-Gore

## Tara Vold

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**From:** Lemar Lewis <lemarlewis@hotmail.com>  
**Sent:** Thursday, October 29, 2015 2:37 AM  
**To:** Tara Vold  
**Subject:** Applicants Verified and Updated Responses  
**Attachments:** reponses inter.pdf

Tara,

Here are the requested docs.

Regards,

LeMar Lewis

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**From:** Lemar Lewis <lemarlewis@hotmail.com>  
**Sent:** Wednesday, October 28, 2015 7:57 AM  
**To:** Lemar Lewis  
**Subject:** responses 2

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

LeMans Corporation,

: Opposer, :

v.

: Opposition No. 91214578

LeMar Xavier Lewis, :

Applicant. :

**Applicants Response To Opposer's Interrogatories 1-16**

**INTERROGATORY NO. 1**

Identify with each product and/or service promoted or sold, or proposed to be promoted or sold by Applicant (see definitions and instructions) under the designation

"THORO" (see definitions and instructions) at any time in the United States,

Response:

Sportswear, Gym Bags, Headware, eyewear, sports/athletic/gym equipment, body care products, jewelry, fragrances

## **INTERROGATORY NO. 2**

Identify the person or persons in the employ of or associated in any manner with Applicant most knowledgeable with respect to the following.

Selection and adoption of the designation "THORO" for the products set forth in application Serial No. 85/956,925; the current uses and any intended uses of the designation "THORO" (including any composite or design presentations); and any sales and advertising, or intended sales and advertising of any of the products identified in application Serial No. 85/956,925 or any services offered or to be offered under the designation "THORO" (including any composite or design terms incorporating the designation "THORO").

Response:

Diondre Lewis

Jason Alphonso

Rasheed Wiggins

Charlie Lewis

## **INTERROGATORY NO. 3**

Identify each publication and broadcast advertisement (e.g., radio, television, email, web site) authorized by or on behalf of Applicant in which any of the goods and/or services identified in application Serial No. 85/956,925 have been offered under the designation "THORO" (including any composite or stylized terms incorporating the designation "THORO") by identifying the following:

The title(s) and date(s) of each publication in which any advertisement appeared or is scheduled to appear; and

Each actual or scheduled broadcast by date(s), and station(s) or web site(s), and whether the broadcast was or will be on radio, television or computer.

Response:

Thoro "Willis Mcgahee" television advertising 2007

Daunte Culpepper Television add 'ESPN" 2007

Thorowear.com company website

Storenv.com/thorosportswear

#### **INTERROGATORY NO. 4**

Identify any instances of actual confusion, mistake or deception known to Applicant as to the source or origin, a sponsorship or an association as between its use of "THORO" (including any composite or stylized terms incorporating the designation 'THORO") for any goods and/or services and Opposer's use of THOR, by identifying for each such instance the following:

the date of such instance and the person or entity confused; the nature of the confusion; and the person in Applicant's organization to whom the instance was reported or to whose attention the instance was first brought.

Response

None to my knowledge

#### **INTERROGATORY NO. 5**

Identify (see definitions and instructions) all third persons using, applying for or having registered any mark or designation incorporating the term "THORO", "THOR" or a phonetic equivalent to 'THOR" that Applicant shall rely on in support of any claimed affirmative defenses in Applicant's Answer. On such uses, applications or registrations and state: (a) the mark/designation being used and/or the mark applied for or registered the goods and/or services offered or proposed to be offered under the mark/designation, and when Applicant first became aware of such use, application or registration.

Response

None to my knowledge

**INTERROGATORY NO. 6**

Identify the activity which provided the basis for the claim of bona fide use of the THORO mark in commerce on September 5, 2001 for the products identified in Application Serial No. 86/956,925, specifically including the nature of the use and the point of sale for any alleged products.

Response:

The production of clothing and apparel with a label "Thoro" on tags namely labels on the apparel. Products were sold face to face to family, friends, close associates and at times the general public.

**INTERROGATORY NO. 7**

Identify the activity which provided the basis for the claim of bona fide continuing use of the THORO mark in commerce on June 11, 2013 for the products identified in Application Serial No. 86/956,925, specifically including the nature of the use and the point of sale for any alleged products.

Response:

\*Sales events, tradeshow, promoting at various venues, celebrity promotions, signs and banner product.

**INTERROGATORY NO. 8**

Identify the activity which provided the basis for the claim of bona fide continuing use of the THORO mark in commerce on October 21, 2012 as reflected in Registration No. 3,206,498, specifically including the nature of the use and the point of sale for any alleged products.

**Response:**

• Website, various sales events

**INTERROGATORY NO. 9**

Identify any and all periods of non-use of the THORO mark since the claim of bona fide use in commerce on September 5, 2001. 3,206,498

Response:

\*None

**INTERROGATORY NO. 10**

Identify the reason that a Section 15 Affidavit of Incontestability was not filed with the Section 8 Continued Use Affidavit on October 21, 2012 in connection with Registration No. 3,206,698

Response:

Applicant chose not to complete the section 15 filing.

**INTERROGATORY NO. 11**

Describe when and by what means Applicant first became aware of Opposer's THOR products and/or services. Further, identify the person or persons who first became aware of Opposer's THOR products and/or services.

Response

2009 -2010

**INTERROGATORY NO. 12**

Describe with particularity all of the channels of trade in or through which Applicant markets and sells, or intends to market and sell, under the designation "THORO" any of the products and/or services offered by Applicant,

Response

Website, various sales events , sportswear retailers..

**INTERROGATORY NO. 13**

Identify all bases that Applicant shall rely upon for the Applicant's assertions in Affirmative Defense No. 1 that:

1. Opposer's Registrations are directed to goods and/or services which are are "distinguishable" from the Applicant's goods;
2. Opposer's Registrations are directed to channels of trade which are are "distinguishable" from the Applicant's channels of trade; and
3. Opposer's Registrations are directed to consumers who are "distinguishable" from the Applicant's consumers;

**Response**

- (a) Opposers offers clothing that are related to the motorsports industry:  
Applicant does not
- (b) Opposers offers clothing that are related to the motorsports industry:  
Applicant does not
- (c) Opposers offers clothing that are related to the motorsports industry:  
Applicant does not

**INTERROGATORY NO. 14**

Identify with particularity how, if at all, Applicant plans to market any of the products and/or services offered under the THORO name or mark to any consumer base or market.

Response:

Website, Social Media, Flyers, Brochures, Print Ads, Radio ads, Television Ads, Celebrity endorsements

**INTERROGATORY NO. 15**

Identify (a) all authorized licensees of the THORO marks; and (b) any assignments to which Applicant is a party that relate to the THORO marks.

Response

None

**INTERROGATORY NO. 16**

Identify those persons who had more than a clerical role in the answering of the foregoing interrogatories or in any search for documents in connection with said interrogatories or the Opposer's First Request for production of documents.

Response: None

Respectfully,

LeMar Lewis

33 W. Tradestreet Suite 2100

Charlotte N.C 27708

lemarlewis@hotmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES was served via electric mail on this 28th day Of October, 2015 upon the following:

Tara M. Vold, at trademark@vwiplaw.com, Vold & Williamson PLLC, 8521 Greensboro Drive, Suite 340, Mclean, VA 22102

Signed *Laura X Lewis*

Date *10-28-2015*

## Tara Vold

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**From:** Lemar Lewis <lemarlewis@hotmail.com>  
**Sent:** Thursday, October 29, 2015 2:39 AM  
**To:** Tara Vold  
**Subject:** Applicants responses to opposers request for docs/ interrogatories.  
**Attachments:** 2015\_10\_28\_12\_49\_46.pdf; IN THE UNITED STATES PATENT AND TRADEMARK OFFICE TRADEMARK TRIAL AND APPEAL BOARD.pdf

Tara,

Here are the requested docs.

Regards,

LeMar

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

LeMans Corporation, : Opposer, :

v.

: Opposition No. 91214578

: LeMar Xavier Lewis, : Applicant. :

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Applicant responds as follows:

**REQUEST NO. 1:** All documents and things which reflect, refer to, relate to, concern or support the claimed first use of the mark THORO by, or on behalf of, Applicant with regard to the products identified in Application Serial No. 85/956,925 on September 5, 2001.

**RESPONSE:** See signed witness statements of first hand knowledge of proof of claimed first in use date. Due to the extent of time that has elapsed since the the time of first use , additional forms of documentation that could support claim of use could be obtained.

Witnesses Rasheed Wiggins/ Charlie Lewis

**REQUEST NO. 2:**

All documents and things which reflect, refer to, relate to, concern or support the claimed continued use of the mark THORO by, or on behalf of, Applicant with regard to the products identified in Application Serial No. 85/956,925 as of June 11, 2013.

**RESPONSE:** Requested "visual" documentation is not available." The standard mark Serial No. 85/956,925THORO" was affixed to the inside of the neck collar and inside labeling of apparel .

**REQUEST NO. 3:** All documents and things which reflect, refer to, relate to, concern or support the claimed continued use of the THORO mark set forth in Registration No. 3, 206,498 ("the THORO Design") by, or on behalf of, Applicant for the products identified in Registration No. 3,206,498 as of October 21, 2012.

**RESPONSE:** The standard mark Serial No. 85/956,925THORO" was affixed to the inside of the neck collar and inside labeling of apparel

**REQUEST NO. 4:** All documents and things which reflect, refer to, relate to evidence or concern the consumer understanding of, the consumer acceptance of, consumer reaction to, or the trademark availability of the designation THORO for Applicant's products identified in Serial No. 85/956,925.

**RESPONSE:** The standard mark Serial No. 85/956,925THORO" was affixed to the inside of the neck collar and inside labeling of apparel.

**REQUEST NO. 5:** All documents and things which reflect, refer to, relate to, evidence or concern any trademark use or use analogous to trademark use of THORO (including any composite terms or designs incorporating the designation "THORO") occurring on or before June 11, 2013 by or on behalf of Applicant, for any products and/or services offered by Applicant.

**RESPONSE:** The standard mark Serial No. 85/956,925THORO" was affixed to the inside of the neck collar and inside labeling of apparel.

**REQUEST NO. 6:** Representative documents and things which reflect, refer to, relate to or concern any trademark use or use analogous to trademark use of THORO (including any composite terms incorporating the designation "THORO"), occurring after June 11, 2013 by or on behalf of Applicant, for any products and/or services offered by Applicant.

**RESPONSE:** The standard mark Serial No. 85/956,925THORO" was affixed to the inside of the neck collar and inside labeling of apparel

**REQUEST NO. 7:** All documents and things which reflect, refer to, relate to or evidence any searches conducted by or on behalf of Applicant concerning the designation THORO, and any opinions requested or received by Applicant regarding the right to use and/or to register the designation THORO in the United States in connection with the products and identified in Application Serial No. 85/956,925 or for any other products or services offered by Applicant.

**RESPONSE:** These documents do not exist for standard THORO mark Serial No. 85/956,925

**REQUEST NO. 8:** Representative documents and things which reflect, refer to, relate to or concern advertising and/or promotional and/or marketing activity carried on or planned by Applicant in connection with any of Applicant's products and services, including those products identified in application Serial No. 85/956,925, on which or in connection with which the designation "THORO" has been used or is intended to be used in any fashion by Applicant.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 9:** Representative documents and things which reflect, refer to, relate to or concern any and all trade shows, professional shows, professional meetings, seminars and conventions where Applicant, or another on Applicant's behalf, has promoted or offered for sale products and/or services, or is scheduled to promote or offer for sale products and/or services, which products and/or services are offered by Applicant or which products are covered by application Serial No. 85/956,925 and where such products and/or services are identified by the designation "THORO" (including any composite or stylized terms incorporating the designation "THORO").

**RESPONSE:** These documents do not exist for standard THORO mark Serial No. 85/956,925

**REQUEST NO. 10:** Representative documents sufficient to show the actual or projected annual dollar volume of Applicant's sales in the United States of each of the products identified in application Serial No. 85/956,925, if any, under the designation "THORO" (including any composite or stylized terms incorporating the designation "THORO"), from the first sale of each such product to the present.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 11:** Representative documents sufficient to show the actual or projected annual advertising and promotional expenditures in the United States by or on behalf of Applicant relating to the promotion of any products and/or services offered by Applicant, including those products identified in application Serial No. 85/956,925 if any, under the designation "THORO" (including any composite or stylized terms incorporating the designation "THORO").

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 12:** Representative documents and things which reflect, refer to, relate to or evidence the date the designation "THORO" was first used by or on behalf of Applicant, for each product and/or service identified in response to Interrogatory No. 1.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 13:** All documents and things which reflect, refer to, relate to or evidence any and all surveys or reports of consumer understanding, recognition or perception of any mark or designation consisting of or incorporating the designation "THORO" or Opposer's THORO mark that Applicant has ever conducted, prepared or had conducted or prepared.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 14:** All documents and things which reflect, refer to, relate to or evidence any and all surveys, reports or opinions concerning consumer confusion or likelihood of confusion as between Applicant's use or proposed use of THORO for any goods and/or services and Opposer's THOR mark that Applicant has ever conducted, prepared or had conducted or prepared.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 15:** All documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 4 which requests, among other things, the identification of all instances of actual confusion, mistake or deception known to

Applicant as to the source or origin, a sponsorship or an association as between Applicant's use or proposed use of "THORO" and Opposer's use of THOR.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 16:** To the extent no produced in response to Request No. 15, all documents and things which reflect, refer to or concern any mail (including electronic mail), telephone calls, checks, orders, inquiries, payments, complaints, deliveries or other communications or materials which were received by Applicant but which were address to or which appeared to have been intended for Opposer or which relate to Opposer's products and/or services offered under Opposer's THOR Marks.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 17:** All documents and things which concern, reflect, refer to, relate to or mention Opposer's products and/or services offered under Opposer's THOR Marks.

**RESPONSE:** These documents do not exist.

**REQUEST NO. 18:** Representative documents and things which reflect, refer to, relate to or concern any state or federal trademark applications filed by Applicant which would cover any marks consisting of or including the designation "THORO" for any of the products and/or services.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 19:** Representative documents and things which reflect, refer to, relate to or concern advertising agency or public relations firm activity, including correspondence, for any of the products and/or services of Applicant, including those products identified in application Serial No. 85/956,925, offered or to be offered under the designation without waiving any objections, all non- Applicant's possession will be made available for inspection and copying.

"THORO."

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 20:** To the extent not provided in response to an earlier request, all documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 5.

**RESPONSE:** These documents do not exist.

**REQUEST NO. 21:** To the extent not provided in response to an earlier request, documents sufficient to show all channels of trade through which Applicant's products and/services, offered or to be offered under the designation "THORO" move or will move and the marketing channels used or intended to be used by Applicant for such products and/or services.

**RESPONSE:** These documents do not exist for THORO Serial No. 85/956,925

**REQUEST NO. 22:** Documents sufficient to show or reflect the nature of the purchasers to whom Applicant markets, or to whom Applicant intends to market any of its "THORO" products and/or services, including those products identified in application Serial No. 85/956,925.

**RESPONSE:** Athletes and fitness enthusiasts. .

**REQUEST NO. 23:** To the extent not produced in response to an earlier request, a representative example of each different advertisement or promotional item presently distributed by or for Applicant, or which is planned to be distributed by or for Applicant, that mentions, identifies or describes any products and/or services offered by Applicant, including those identified in application Serial No. 85/956,925, and which are offered or are to be offered by Applicant under the designation "THORO."

**RESPONSE:** These documents do not exist for THORO mark No. 85/956,925

**REQUEST NO. 24:** Representative documents and things which reflect, refer to, relate to or concern any licenses taken or given by Applicant or contemplated by Applicant (or any predecessor of Applicant) relating to the designation "THORO."

**RESPONSE;** These documents do not exist for THORO mark Serial No. 85/956,925

**REQUEST NO. 25:** Representative documents and thing which reflect, refer to, relate to or concern any assignments taken or given by Applicant (or any predecessor of Applicant) which relate to the designation "THORO."

**RESPONSE:** The requested documentation is not currently available at this time.

**REQUEST NO. 26:** Any documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 9.

**RESPONSE:** These documents do not exist.

**REQUEST NO. 27:** Any documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 10.

**RESPONSE:** These documents do not exist for THORO mark Serial No. 85/956,925

To the extent not otherwise produced, all documents mentioned or identified in response to Opposer's First Set of Interrogatories No. 1-16 to Applicant.

**RESPONSE:** None

Respectfully submitted,

LeMar Lewis  
33 West Trade Street unit 2100  
Charlotte N.C 27708  
lemarlewis@hotmail.com



Date 10-28-2015

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent, via email, to Tara M. Vold, at trademark@vwiplaw.com, Vold & Williamson PLLC, 8521 Greensboro Drive, Suite 340, Mclean, VA 22102, on this 28th day of October, 2015.

*Tara M. Vold*

Date 10-28-2015