

ESTTA Tracking number: **ESTTA703149**

Filing date: **10/19/2015**

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

Proceeding	91215699
Party	Plaintiff Boston Scientific Corporation, on behalf of itself and its subsidiaries, Asthmatx, Inc.
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Signature	/Timothy D. Sitzmann/
Date	10/19/2015
Attachments	11040490_1.pdf(422406 bytes) 11040485_1.pdf(626335 bytes) 11040496_1.pdf(42053 bytes)

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
For the mark: HOLAIRA
Published in the Trademark Official Gazette on December 3, 2013

Boston Scientific Corp. and
Asthmatx, Inc.

Opposers,

v.

Opposition No. 91215699

Holaira, Inc.

Applicant.

OPPOSERS' OBJECTIONS TO APPLICANT'S EVIDENCE

Pursuant to TBMP § 707.02, Opposers Boston Scientific Corp. and Asthmatx, Inc. hereby asserts the following objections to Applicant's evidence.

FACTUAL BACKGROUND

On June 10, 2014, Opposers served upon Applicant Opposers' First Set of Requests for Production of Documents. *Sitzmann Decl.*, Ex. A. Opposers requested that Applicant produce "[a]ll documents, other than those produced in response to any of the foregoing requests, upon which Applicant intends to rely in connection with this proceeding." *Id.*, Ex. A, Request No. 25. On July 24, 2014, Applicant responded that it would "produce responsive, non-privileged documents." *Id.* at Ex. B, Request No. 25. However, no documents were produced responsive to this request during the discovery period. *Sitzmann Decl.* ¶ 6.

Discovery for the present proceeding closed on December 7, 2014. [Dkt. No. 2.] Opposers' trial period ended May 6, 2015. [Dkt. No. 10.] On July 6, 2015, nearly one year after

the original deadline for Applicant to respond to Opposers' request, Applicant supplemented its response to Request No. 25 with evidence of third-party trademark registrations and third-party website printouts. *Sitzmann Decl.* Ex. C. Applicant submitted these documents through its Notice of Reliance. [Dkt. Nos. 15–16, Exs. 1–77.] Applicant identified the relevance of these documents as relevant to the following *du Pont* factors: strength of Opposers' mark, similarity of the marks, number and nature of similar marks in use on similar goods, and the extent of potential confusion. [Dkt. No. 15.]

Additionally, Opposers and Applicant entered into a stipulation regarding the admissibility of evidence. [Dkt. No. 14, Ex. 26] The parties agreed that:

documents produced during the discovery period that were created by a party or Six Degrees are authentic, qualify as business records for purposes of FRE 803(6)(B), and may be introduced into evidence through the affidavit of a party's counsel, subject to any objections other than authenticity or objections cured by FRE 803(6)(B).

[*Id.* ¶.] Applicant introduced through the affidavit of Applicant's counsel a branding presentation created by Stratagem Healthcare Communications and a trademark search report created by Corsearch. [Dkt. No. 20, Exs. 96, 97.]

ARGUMENT

Applicant's evidence regarding third-party use and registration is inadmissible. The evidence submitted through Applicant's Notice of Reliance was untimely produced to Opposers, after Opposers' trial period closed. Moreover, this evidence is irrelevant because the evidence consists of dissimilar marks, identifying different goods, with many failing to even claim any use in commerce of the mark shown. In addition, Applicant has submitted two documents that constitute inadmissible hearsay.

A. Applicant's Supplemental Response Was Untimely.

A party that has responded to a request for discovery is under a duty to supplement the response “in a timely manner.” T.B.M.P. § 408.03; F.R.C.P. 26(e). The Board has previously found supplemental responses served during the opposing party’s trial period to be untimely. *Panda Travel, Inc. v. Resort Option Enters., Inc.*, 94 U.S.P.Q.2d 1789, 1792 (T.T.A.B. 2009). A party that fails to timely supplement its discovery responses may be precluded from using that evidence at trial. F.R.C.P. § 37(c)(1); T.B.M.P. § 527.07(e); *Great Seats Inc. v. Great Seats Ltd.*, 100 U.S.P.Q.2d 1323, 1326–27 (T.T.A.B. 2011); *Nat’l. Aeronautics and Space Admin. v. Bully Hill Vineyards Inc.*, 3 U.S.P.Q.2d 1671, 1672 n. 3 (T.T.A.B. 1987) (excluding from consideration documents requested by a party but not produced during discovery).

Applicant supplemented its responses on July 6, 2015. *Sitzmann Decl. Ex. C.* By this time, Opposers’ trial period had closed two months earlier on May 6, 2015. [Dkt. No. 2.] By this time, discovery had been closed for seventh months. [*Id.*] By this time, nearly a full year had passed since the Applicant initially responded to Opposers’ requests on July 24, 2014. Applicant’s supplemental response came not only after the close of discovery, but after the close of Opposers’ trial period. Accordingly, there is no question that Applicant’s supplemental response was untimely. *Panda Travel, Inc.*, 94 U.S.P.Q.2d at 1792.

Applicant’s untimely delay prejudiced Opposers. Opposers were denied the opportunity to take follow-up discovery regarding these issues because discovery closed on December 7, 2014. [Dkt. No. 10.] Opposers were denied the opportunity to address the issue and evidence during the deposition of Karen Passafaro, Opposers’ Vice-President of marketing, which occurred on April 9, 2015. [Dkt. No. 24.] Opposers were denied the opportunity to address the issue and evidence during Opposers’ trial period, which ended May 6, 2015. [Dkt. No. 10.] Such delay constitutes severe prejudice, without a valid reason for the delay, as none of the

documents constitute newly discovered evidence, and all such documents were preexisting and known to Applicant nevertheless withheld from Opposers until after the close of its testimony period.

Accordingly, Applicant failed to comply with its duty to timely supplement its Response to Opposers' Request for Production No. 25. The failure to timely supplement its response inhibited Opposers' ability to support its legal claims with respect to this issue, causing prejudice to Opposers. Therefore, the evidence may be excluded by the Board. T.B.M.P. § 527.07(e).

B. The Evidence of Third-Party Use and Registration Is Irrelevant.

Notwithstanding the untimely nature of Applicant's supplemental response, the evidence of third-party use and registration included as Exhibits 1–76 of the Notice of Reliance, along with the trademark search report included as Ex. 97, are inadmissible because these exhibits are irrelevant. [Dkt. Nos. 15-16, Exs. 1–76; Dkt. No. 20, Ex. 97.] Federal Rule of Evidence 401 provides that evidence is relevant if it “has any tendency to make a fact more or less probable than it would be without the evidence.” If evidence cannot make a fact more or less probable then it is irrelevant and inadmissible. FRE 402.

Applicant identified the evidence of third-party use and registration as relevant to the *du Pont* factor regarding the strength of Opposers' mark and number and nature of similar marks in use on similar goods. [Dkt. No. 15.] Evidence of third-party use and registration must consist of marks that are similar to the senior user's mark, used in connection with similar goods, and must be used in commerce. *See Midwestern Pet Foods, Inc. v. Societe des Produits Nestle SA.*, 103 U.S.P.Q.2d 1435, 1440-41 (Fed. Cir. 2012) (requiring third-party evidence to show similar marks used in commerce in connection with similar goods). Any evidence of third-party marks that are not in use, involve different marks, or involve different goods has no effect on the strength of the Opposers' mark. Therefore, evidence that does not meet all three requirements

cannot make it more or less probable that Opposers' ALAIR[®] mark is weak, and accordingly, such evidence is irrelevant.

First, many of the third-party registrations submitted by Applicant are registered under Sections 44 or 66. [Dkt. No. 15, Exs. 25, 38, 39, 40, 41.] Marks registered under these sections are not based on use in commerce. *In re USA Realty Prof'ls. Inc.*, 84 U.S.P.Q.2d 1581, 1583 (T.T.A.B. 2007). Additionally, the Board "do[es] not consider a copy of a search report to be credible evidence of the existence of the registrations and uses listed therein." *In re Hub Distrib., Inc.*, 218 U.S.P.Q. 284, 285 (T.T.A.B. 1983). Accordingly, the search report is irrelevant because it cannot make it more or less probable that the marks identified in the evidence are "in use," and cannot have an effect on the strength of Opposers' mark. [Dkt. No. 20, Ex. 97.]

Second, marks that are "substantially different . . . are not relevant." *Midwestern Pet Foods, Inc.*, 103 U.S.P.Q.2d at 1440–41; *see also Nat'l Cable Television Assoc., Inc. v. Am. Cinema Editors, Inc.*, 19 U.S.P.Q.2d 1424, 1430 (Fed. Cir. 1991) (evaluation of whether a mark is weak is limited to third-party uses of a "common mark"). Here, very few of these third-party marks share the common LAIR feature as do Opposers' ALAIR[®] mark and Applicant's HOLAIRA mark. *Nat'l Cable Television Assoc., Inc.*, 19 U.S.P.Q.2d at 1430. Further, none of the third-party marks identified in the Applicant's Notice of Reliance are as similar to Opposers' ALAIR[®] mark as Applicant's HOLAIRA mark. For example, Applicant's Notice of Reliance includes third-party marks such as AIR GUARD, AIRWATCH, CAIRE, HUMIDAIRE, MAXAIR, and others. [Dkt. No. 15, Exs. 4, 13, 16, 17, 29, 21, 22.] Accordingly, even if Applicant can establish that these marks are in use, this evidence cannot make it more or less likely that Opposers' ALAIR[®] mark is weak because none of these third-party marks are sufficiently similar to Opposers' ALAIR[®] mark.

Third, none of Applicant's claimed evidence of third-party use or registration involves goods or services that are identified in Opposers' registrations. Third-party marks that are used or registered in connection with goods or services other than the senior user's goods or services are "irrelevant." *Tisch Hotels, Inc. v. Americana Inn, Inc.*, 146 U.S.P.Q. 566, 571 (7th Cir. 1965); *see also Charrette Corp. v. Bowater Commc'n Papers Inc.*, 13 U.S.P.Q.2d 2040, 2043 (T.T.A.B. 1989). The goods identified in the third-party registrations include respiratory masks for medical and non-medical purposes, seals for sleep apnea masks, oxygen reservoirs and concentrators, humidifiers, air compressors, pharmaceutical preparations, and others. [Dkt. No. 15, Exs. 4, 10, 16, 20, 37.] Accordingly, even if Applicant could establish that its evidence of third-party marks are used in commerce (it hasn't done so), the evidence has no bearing on the strength of the ALAIR[®] mark in connection with the goods and services identified in Opposers' registrations.

Finally, a number of the exhibits included in the Notice of Reliance do not show use as a mark. Applicant included printouts of Google search results, which provide no context or information as to what actually appeared on the website. [Dkt. No. 16, Exs. 47, 55, 61.] Another website printout appears to be a portfolio page for a product design firm, rather than any use of a mark to sell or advertise any goods. [*Id.* Ex. 72.] This evidence does not demonstrate use as a mark in commerce and is therefore irrelevant.

The evidence of third-party use and registration and the trademark search report do not identify marks that are similar to Opposers' ALAIR[®] mark, used in commerce, or used in connection with the relevant goods or services. Accordingly, this evidence fails to provide support for the *du Pont* factors regarding strength of Opposers' mark and the number and nature

of similar marks in use on similar goods. Accordingly, this evidence is irrelevant and inadmissible under Federal Rule of Evidence 402.

C. The Third-Party Documents Constitute Hearsay.

Applicant has submitted a copy of a trademark search report, claiming that the evidence shows that Opposers' ALAIR[®] mark is weak. [Dkt. No. 20, Ex. 97.] Federal Rule 802 precludes the admission of out-of-court statements as inadmissible hearsay. Trademark search reports constitute out of court statements and are therefore "hearsay and incompetent to prove the registration, let alone the use, of any third-party mark." *St. Louis Janitor Supply Co. v. Abso-Clean Chem. Co.*, 196 U.S.P.Q. 778, 781 (T.T.A.B. 1977). Accordingly, the search report submitted by Applicant is inadmissible hearsay.

Applicant also submitted a copy of a branding presentation created by Stratagem Healthcare Communications, also to establish that Opposers' ALAIR[®] mark is weak. [Dkt. No. 20, Ex. 96.] The statements contained in this report are also hearsay. Accordingly, the document is also inadmissible under Federal Rule of Evidence 802.

Neither the search report nor the Stratagem Healthcare Communications document fall under a hearsay exception. The Parties stipulated that some documents would be considered business records for purposes of Rule 803(6)(B), this stipulation was limited to "documents produced during the discovery period that were created by a party or Six Degrees[.]" [Dkt. No. 14, Ex. 26.] These documents were not created by a Party—Asthmatx, Boston Scientific, Holaira—or Six Degrees, but instead by Stratagem Healthcare Communications. Accordingly, the document is not included within the hearsay exception set forth in the stipulation.

CONCLUSION

Because Applicant failed to timely supplement its discovery responses, Opposers respectfully request that the Board exclude Applicant's evidence of third-party use and

registration set forth in Applicant's Notice of Reliance, Exhibits 1-76. [Dkt. Nos. 15, 16.] T.B.M.P. § 527.07(e). In addition to the untimely supplemental response, Opposers respectfully request that the Board exclude this evidence as irrelevant because the evidence fails to (1) identify any mark that is as similar to Opposers' ALAIR[®] mark as Applicant's HOLAIRA mark; (2) includes evidence that fails to establish that the marks are used in commerce; and (3) fails to identify any mark used or registered in connection with the goods or services identified in Opposers' registrations.

Opposers further request that the Board exclude Exhibits 96 and 97 submitted through the affidavit of Applicant's counsel because both contain inadmissible hearsay. Further, the search report cannot be relied upon to establish that any of the marks contained therein are either registered or in use and therefore the search report is also irrelevant.

Respectfully submitted,

WINTHROP & WEINSTINE, P.A.



Stephen R. Baird
Bradley J. Walz
Timothy D. Sitzmann

3500 Capella Tower
225 South Sixth Street
Minneapolis, MN 55402
(612) 604-6400 (Telephone)
(612) 604-6800 (Facsimile)

ATTORNEYS FOR OPPOSERS
BOSTON SCIENTIFIC CORP. AND
ASTHMATX, INC.

Dated: 19-OCTOBER 2015

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

In the matter of Application Serial No.: 85/806,379

Filed: December 19, 2012

For the mark: HOLAIRA

Published in the Trademark Official Gazette on December 3, 2013

Boston Scientific Corp. and
Asthmatx, Inc.

Opposers,

v.

Opposition No. 91215699

Holaira, Inc.

Applicant.

DECLARATION OF TIMOTHY D. SITZMANN

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that:

1. I am an attorney participating in the representation of Opposers Boston Scientific Corp. and Asthmatx, Inc. (“Opposers”) in the above-captioned matter (the “Opposition”).
2. The information contained in this Declaration is based upon my personal knowledge.
3. Attached as Exhibit A is a true and correct copy of the relevant portion of Opposers’ First Set of Requests for Production of Documents along with the Certificate of Service.

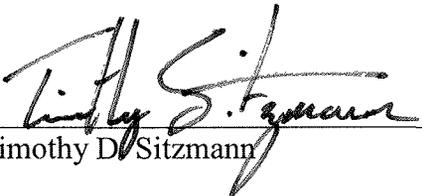
4. Attached as Exhibit B is a true and correct copy of the relevant portion of Applicant's Responses to Opposers' First Set of Requests for Production of Documents, along with the Certificate of Service.

5. Opposers did not receive from Applicant any documents responsive to Opposers' Request for Production No. 25 until July 6, 2015.

6. Attached as Exhibit C is a true and correct copy of correspondence dated July 6, 2015 from Applicant's counsel regarding Applicant's supplemental response to Opposers' Requests for Production of Documents, along with the Certificate of Service for this supplemental production.

FURTHER YOUR DECLARANT SAYETH NOT

Date: 19 OCTOBER 2015



Timothy D. Sitzmann

Exhibit A

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
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Boston Scientific Corporation and
Asthmatx, Inc.

Opposers,

v.

Opposition No. 91215699

Holaira, Inc.

Applicant.

OPPOSERS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

TO: Holaira, Inc., through its attorney Barbara J. Grahn, 200 Campbell Mithun Tower, 222 South Ninth Street, Minneapolis, MN 55402-3338.

Boston Scientific Corporation and Asthmatx, Inc. (collectively "Opposers"), in accordance with Rule 34 and Rules 2.116 and 2.120 of the Trademark Rules of Practice, requests that Holaira, Inc. ("Applicant") produce for inspection and copying the following documents and other tangible things within the possession, custody, or control of Applicant. These documents and things (or copies of them) should be made available at the offices of Winthrop & Weinstine, P.A., 3500 Capella Tower, 225 South Sixth Street, Minneapolis, MN 55402, within 30 days after service of this request, or at such other time and place as may be mutually agreed upon by the parties. For purposes of Opposers' First Set of Requests for Production of Documents, Opposers adopt and expressly incorporate by reference the Instructions and Definitions in Opposers' First Set of Interrogatories to Applicant.

The document requests are continuing, consistent with the Federal Rules and Trademark Rules of Practice, so that Applicant shall furnish Opposers with any additional documents relating in any way to the subject matter of these requests which Applicant acquires or become known to Applicant up to and including the time of trial. Applicant shall furnish these documents to Opposers immediately after such documents are acquired or become known to Applicant.

For the convenience of the Board and the parties, Opposers request that Applicant quote each document request in full immediately preceding the response.

If the response to any document request is believed by Applicant to call for confidential information or trade secrets, it should be so designated and access thereto will be confined to Opposers' counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Trademark Trial and Appeal Board.

In response to any document request, if Applicant asserts that the document is privileged, Opposers request that for each privileged document Applicant provide a statement setting forth the grounds upon which such claimed privilege rests and to identify the document by specifying:

1. The type of document (e.g., letter, memorandum, or photographs);
2. The date the document was prepared;
3. The title of the document;
4. The person who prepared the document;
5. The person to whom the document was originally sent, if appropriate;
6. The present location of the document;
7. The present location of all copies of the document; and

8. The persons or persons having possession, custody, or control of the documents and any copies of it.

If any document requested below has been destroyed or discarded, Opposers request that Applicant identify the destroyed or discarded document in the same manner of identification as requested above for documents Applicant claims are privileged.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1: All documents that evidence, refer to, or relate to the selection, clearance, or adoption of Applicant's Mark.

REQUEST NO. 2: All documents and things concerning, involving, or otherwise relating to the decision making process undertaken by Applicant to adopt Applicant's Mark, including documents sufficient to show the timing of the process, the alternatives considered, the factors used or considered in selecting Applicant's Mark, all steps taken to determine the availability Applicant's Mark, and why Applicant chose Applicant's Mark.

REQUEST NO. 3: All documents sufficient to identify the persons involved in the conception, evaluation, clearance, development, or selection of Applicant's Mark.

REQUEST NO. 4: All documents concerning, involving, or otherwise relating to the meaning of Applicant's Mark.

REQUEST NO. 5: All documents concerning, involving, or otherwise relating to the pronunciation of Applicant's Mark.

REQUEST NO. 6: All documents that evidence, refer, or relate to any application to register Applicant's Mark with the United States Patent and Trademark Office or with any state agency or office.

REQUEST NO. 16: All documents that describe, discuss, or relate to any license of Applicant's Mark.

REQUEST NO. 17: All documents that evidence, reflect, refer, relate to instructions given to or received from employees, agents, customers, licensees, a licensor, or any other third party relating to the use of Applicant's Mark.

REQUEST NO. 18: All documents concerning the strength and fame of Opposers' Mark.

REQUEST NO. 19: All documents that relate to any incidence of actual or possible confusion between Opposers and Applicant, as to source, sponsorship, connection, affiliation, or approval.

REQUEST NO. 20: All documents that evidence, refer, or relate to Applicant's first awareness of Opposers' use of Opposers' Mark.

REQUEST NO. 21: All documents, other than those documents created for purposes of this proceeding, that concern or include mention Opposers' Mark.

REQUEST NO. 22: All documents and things provided to Applicant or relied upon by any expert witness who has been retained as a testifying expert in connection with this proceeding.

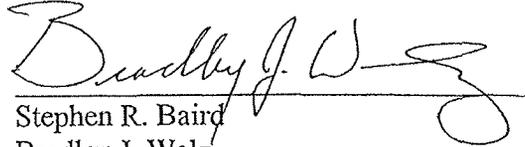
REQUEST NO. 23: All documents identified or relied upon by Applicant in any responses to Opposers' First Set of Interrogatories.

REQUEST NO. 24: All documents referred to or relied upon by Applicant in preparing any of the responses to Opposers' First Set of Requests for Admission.

REQUEST NO. 25: All documents, other than those produced in response to any of the foregoing requests, upon which Applicant intends to rely in connection with this proceeding.

Respectfully submitted,

WINTHROP & WEINSTINE, P.A.

A handwritten signature in black ink, appearing to read "Bradley J. Walz", written over a horizontal line.

Stephen R. Baird
Bradley J. Walz
Timothy D. Sitzmann

Dated: June 10, 2014

3500 Capella Tower
225 South Sixth Street
Minneapolis, MN 55402
Phone: 612-604-6400
Fax: 612-604-6800

*Attorneys for Opposers Boston Scientific
Corporation and Asthmatx, Inc.*

9151383v1

Exhibit B

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
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Opposition No. 91215699

Opposers,

v.

**HOLAIRA, INC.'S RESPONSES TO
OPPOSERS' FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Holaira, Inc.

Applicant.

TO: Boston Scientific Corporation and Asthmatx, Inc., above named, and Stephen R. Baird, Bradley, J. Walz and Timothy D. Sitzmann of Winthrop & Weinstine, P.A., 3500 Capella Tower, 225 South Sixth Street, Minneapolis, Minnesota 55402, their attorneys.

Holaira, Inc. ("Holaira") for its responses to Opposers' First Set of Requests for Production of Documents, served on June 10, 2014, states:

GENERAL OBJECTIONS

1. The following responses are made without in any way waiving or intending to waive:
 - a. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, of the responses or subject matter thereof, in any subsequent proceeding in, or the trial of, this or any other action.
 - b. The right at any time to the use of any of said responses, or their subject matter, in any subsequent proceeding in this or in any other action;
 - c. The right to object on any ground at any time to a demand for further response to this or any other request for production of documents and statements or other discovery procedures involving or relating to the subject matter of this Request for Production of Documents; and,

- d. The right at any time to revise, correct, add to, or clarify any of the responses herein.
2. Holaira objects to each and every request to the extent it seeks to discover information protected by work product or privilege, as defined by statute, rule or common law.
3. Holaira objects to the extent any request seeks production of documents not in the custody, possession or control of Holaira.
4. Holaira objects to the extent any request seeks to impose an obligation to respond beyond that required by Federal Rules of Civil Procedure or applicable rules.
5. Holaira objects to the extent any request seeks to discover documents used in preparing these responses on the grounds that such request is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks work product and privileged information or information prepared in anticipation of litigation.

Subject to and without waiver of the foregoing General Objections, Holaira responds and asserts specific objections in response to Opposers' Requests for Production of Documents, Set One:

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: All documents that evidence, refer to, or relate to the selection, clearance, or adoption of Applicant's Mark.

RESPONSE: Holaira objects to this request as vague, ambiguous, and overly broad as to the terms "all documents," "involved in," "selection," "clearance," and "adoption." Holaira also objects to the extent this request seeks information or documents protected from disclosure by the Attorney-Client Privilege and/or Work Product Doctrine. Subject to and without waiving the foregoing general and specific objections, Holaira will produce responsive, relevant, non-privileged documents located after a reasonably diligent search, if any exist.

REQUEST NO. 2: All documents and things concerning, involving, or otherwise relating to the decision making process undertaken by Applicant to adopt Applicant's Mark, including documents sufficient to show the timing of the process, the alternatives considered, the factors used or considered in selecting Applicant's Mark, all steps taken to determine the availability Applicant's Mark, and why Applicant chose Applicant's Mark.

RESPONSE: Holaira objects to this request as overly broad and unduly burdensome with respect to the request for "all documents." Holaira also objects to the extent this request seeks information or documents protected from disclosure by the Attorney-Client Privilege and/or Work Product Doctrine. Subject to and without waiving the foregoing general and specific objections, see Holaira's answer to Interrogatory No. 6.

REQUEST NO. 21: All documents, other than those documents created for purposes of this proceeding, that concern or include mention Opposers' Mark.

RESPONSE: Holaira objects to this request as overly broad and unduly burdensome with respect to the request for "all documents." Holaira also objects to this request as vague and ambiguous with respect to the phrase "concern or include mention." Holaira also objects to this request as seeking information not relevant to any claim or defense and not reasonably calculated to lead to the discovery of admissible evidence. Holaira also objects to the extent this request seeks information or documents protected from disclosure by the Attorney-Client Privilege and/or Work Product Doctrine.

REQUEST NO. 22: All documents and things provided to Applicant or relied upon by any expert witness who has been retained as a testifying expert in connection with this proceeding.

RESPONSE: Holaira objects to this request as premature. Holaira further objects as vague and ambiguous with respect to the request for documents "provided to Applicant or relied upon by any expert witness." Subject to and without waiving the foregoing general or specific objections, Holaira will produce documents and things provided to its testifying expert(s).

REQUEST NO. 23: All documents identified or relied upon by Applicant in any responses to Opposers' First Set of Interrogatories.

RESPONSE: Holaira objects to the extent this request seeks information or documents protected from disclosure by the Attorney-Client Privilege and/or Work Product Doctrine. Subject to and without waiving the foregoing general and specific objections, Holaira will produce responsive, non-privileged documents.

REQUEST NO. 24: All documents referred to or relied upon by Applicant in preparing any of the responses to Opposers' First Set of Requests for Admission.

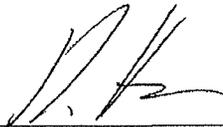
RESPONSE: Holaira objects to the extent this request seeks information or documents protected from disclosure by the Attorney-Client Privilege and/or Work Product Doctrine. Subject to and without waiving the foregoing general and specific objections, Holaira will produce responsive, non-privileged documents.

REQUEST NO. 25: All documents, other than those produced in response to any of the foregoing requests, upon which Applicant intends to rely in connection with this proceeding.

RESPONSE: Subject to and without waiving the foregoing general objections, Holaira will produce responsive, non-privileged documents.

Dated: July 24, 2014

OPPENHEIMER WOLFF & DONNELLY LLP

By: 

Barbara J. Grahn
Dennis E. Hansen

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222 South Ninth Street
Suite 2000
Minneapolis, MN 55402-3338
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**ATTORNEYS FOR APPLICANT
HOLAIRA, INC.**

1. United States Mail, using envelopes addressed as set forth below, with postage prepaid, depositing the same in the United States Mail at Minneapolis, Minnesota; and
2. Transmission via electronic mail to the e-mail addresses referenced below.

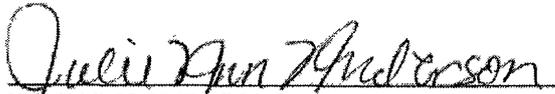
Timothy D. Sitzmann, Esq.
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Email: tsitzmann@winthrop.com
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Email: bwalz@winthrop.com

Attorneys for Opposers


DEBRA PETERFESO

Subscribed and sworn to before
this 24th day of July, 2014.


NOTARY PUBLIC

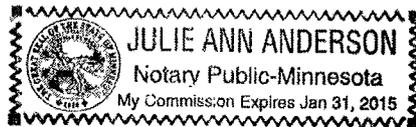


Exhibit C

OPPENHEIMER

OPPENHEIMER WOLFF & DONNELLY LLP

Campbell Mithun Tower - Suite 2000
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Received
JUL 07 2015
Timothy D. Sitzmann

July 6, 2015

Via US Mail and Electronic Mail

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**Re: Opposition No. 91215699
HOLAIRA**

Dear Counsel:

Enclosed and served upon you by U.S. mail and electronic mail, please find the following documents:

1. Applicant's Notice of Reliance (with Exhibits);
2. Affidavit of Dennis Hansen (with Exhibits);
3. Holaira, Inc.'s supplemental production of documents bates labeled Holaira001453-
Holaira001743, which documents are responsive to Opposer's Document Request No. 25;
and
4. Affidavits of Service.

Sincerely,


Dennis E. Hansen

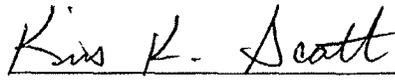
DEH/kp
Enclosures

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Attorneys for Opposers


KATHLEEN PETERSON

Subscribed and sworn to before
this 6th day of July, 2015


Notary Public – State of Minnesota



