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

Proceeding	91217154
Party	Plaintiff Nasty Pig, Inc.
Correspondence Address	JOEL KARNI SCHMIDT COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES spc@cll.com, jks@cll.com, mx@cll.com
Submission	Motion to Compel Discovery
Filer's Name	Joel K. Schmidt
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Signature	/Joel K. Schmidt/
Date	03/23/2015
Attachments	DIRTY PIG - Motion to Compel Applicant's Interrogatory Responses.pdf(26594 bytes ) Motion to Compel - Ceresia Declaration (with exhibits).pdf(1302971 bytes )



Pursuant to 37 C.F.R. § 2.120(e), Opposer also requests that this matter be suspended pending disposition of the instant motion and that the pretrial disclosures, trial and other periods be reset once the Board decides this motion.

### **STATEMENT OF FACTS**

The facts on which this motion is based are set forth more fully in the accompanying declaration of Scott P. Ceresia, Esq. (“Ceresia Decl.”) and are summarized below for the Board’s convenience.

The instant opposition was instituted on July 2, 2014. (Dkt. 1). Discovery in this matter closes on May 8, 2015. (Dkt. 12).

In the fall of 2014, the parties served respective First Set of Interrogatories and Requests for Production of Documents and Things. Ceresia Decl. ¶ 2. Opposer has fully satisfied its discovery obligations in this matter by first serving its written substantive responses to both Applicant’s interrogatories and requests for production on November 14, 2014, and subsequently serving its document production, consisting of over 2,300 pages of documents, by mailing said documents to Applicant’s counsel’s offices in New Jersey on December 4, 2014. *Id.* ¶ 3.

On December 9, 2014, Applicant served its written responses to Opposer’s interrogatories, in which it issued a general objection to Opposer’s interrogatories and refused to provide any substantive responses thereto on the purported ground that the interrogatories exceeded the 75 numerical limitation provided in 37 C.F.R. § 2.120(d). *Id.*, Ex. A.

In a good-faith effort to resolve any discovery disputes without the need for Board intervention, Opposer’s counsel sent an email to Applicant’s counsel on December 17, 2014 seeking to schedule a call to discuss Applicant’s written discovery responses. *Id.*, Ex. B. After this email went unanswered, Opposer’s counsel left a follow-up voicemail for Applicant’s counsel in early January 2015 again requesting a call on the matter. *Id.* ¶ 8. In a telephone

conversation between counsel on January 8<sup>th</sup>, 2015, Opposer's counsel requested that Applicant specifically elucidate how it believed that Opposer's interrogatories exceeded the numerical limitation. *Id.* ¶ 9. Among other things, Applicant's counsel took the position that the presence of related verbs in an interrogatory (*e.g.*, "conception," "selection" and "adoption" of Applicant's Mark) each constituted a separate interrogatory notwithstanding the interrelated subject matter. *Id.* ¶ 10. Applicant's counsel also opined that the presence of related verbs concerning the use in commerce of goods bearing Applicant's Mark (*e.g.*, "marketed," "distributed," and "offered for sale") similarly created separate interrogatories notwithstanding the fact that those verbs also pertained to clearly interrelated subject matter. *Id.* ¶ 11.

While Opposer strongly disagreed with Applicant's count of the number of interrogatories, in an attempt to informally resolve this dispute, Opposer in good faith amended its interrogatories in accordance with the specific objections expressed by Applicant's counsel during the January 8<sup>th</sup> call. *Id.* ¶ 12. As shown in the attached redline, Opposer significantly paired down and otherwise simplified its interrogatories. *Id.*, Ex. D. It did so by, *inter alia*, removing the purportedly excess verbiage (*e.g.*, stating "adoption" only, instead of "conception," "selection" and "adoption"; stating "offered for sale" only, instead of "marketed," "distributed," and "offered for sale"). *Id.* at pp. 6-8, 10. Opposer also substantially revised and shortened certain interrogatories, such as Interrogatory No. 10 concerning any agreements involving Applicant's Mark and Interrogatory No. 16 concerning any known instances of actual confusion. *Id.* at pp. 9-11.

Opposer served its Amended First Set of Interrogatories on January 12, 2015, shortly after the parties' January 8<sup>th</sup> telephone conference. *Id.*, Ex. C. In total, Opposer's Amended First Set of Interrogatories lists 26 interrogatories, nearly 1/3 of which merely seek facts supporting each of Applicant's eight affirmative defenses asserted in its Answer. *See id.*

On February 17, 2015, Applicant served its responses to Opposer's Amended First Set of Interrogatories. *Id.*, Ex. E. To Opposer's great surprise, and notwithstanding Opposer's demonstrable good faith in amending its interrogatories specifically to accommodate Applicant's objections, Applicant once again generally objected to the interrogatories and refused to provide any substantive responses on the same purported ground that the requests exceeded the 75 numerical limitation provided in 37 C.F.R. § 2.120(d). *Id.*

On February 23, 2015, Opposer's counsel emailed Applicant's counsel expressing its dismay that Applicant had once again refused to provide any substantive responses to Opposer's amended interrogatories despite Opposer's concerted effort to amend the requests by taking into account Applicant's stated objections. *Id.*, Ex. F. Opposer thus asked Applicant to specifically elucidate how it believed the amended interrogatories exceeded the 75 numerical limitation. *Id.* On February 24, 2015, Applicant's counsel responded that Applicant stood by its general objection and made the conclusory claim, without any elaboration, that Amended Interrogatory Nos. 3-7 alone constitute 43 different interrogatories. *Id.*

Despite Opposer's good-faith efforts to informally resolve this discovery dispute pursuant to Trademark Rule 2.120(e)(1), such efforts have proven unsuccessful, thus leaving Opposer no choice but to seek relief from the Board.

### **ARGUMENT**

#### **A. The Board Should Grant Opposer's Motion to Compel Interrogatory Responses**

A motion to compel should be granted where, as here, the movant has made a good faith effort to resolve the matter and the opposing party has refused to provide adequate discovery responses, including interrogatory responses. 37 C.F.R. § 2.120(e); T.B.M.P. 523; Envirotech Corp. v. Compagnie Des Lampes, 219 U.S.P.Q. 448 (T.T.A.B. 1979); General Sealer Corp. v. H.H. Robertson Co., 193 U.S.P.Q. 384 (T.T.A.B. 1976). Moreover, under Federal Rule 33, it is

well-settled that the party objecting to discovery bears the burden of persuasion to show that the discovery should not be answered. Volkswagenwerk Aktiengesellschaft v. MTD Prods., 181 U.S.P.Q. 471, 472 (T.T.A.B. 1974).

An order compelling Applicant to respond to discovery is plainly warranted here. Applicant's refusal to provide any substantive responses to Opposer's amended set of interrogatories on the ground that it violates the numerical limitation set forth in Trademark Rule 2.120(d)(1) is wholly without merit and not based on any reasonable count of the propounded interrogatories. Trademark Rule 2.120(d)(1) provides in relevant part:

The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board.

37 C.F.R. § 2.120(d)(1). Federal Rule 33 similarly provides that, “[u]nless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts.” Fed. R. Civ. P. 33(a)(1).

While it is true that subparts of an interrogatory may be counted as separate, such is the case only where the subpart is deemed “discrete.” Thus, “[a]n interrogatory containing subparts directed at eliciting details concerning a ‘common theme’ should generally be considered a single question,” while “an interrogatory which contains subparts that inquire into discrete areas should, in most cases, be counted as more than one interrogatory.” Border Collie Rescue, Inc. v. Ryan, 2005 U.S. Dist. LEXIS 5983, at \*3 (M.D. Fla. Mar. 15, 2005) (compelling interrogatory responses after rejecting claim that interrogatories exceeded numerical limitation). Accord Wright, Miller, & Marcus, Federal Practice and Procedure, § 2168.1, pp. 39-40 (3d ed. 2010). Put another way, “multiple interrelated questions may constitute a single interrogatory even

though it requests that the time, place, persons present, and contents be stated separately.”

Madison v. Nesmith, 2008 U.S. Dist. LEXIS 16130, at \*10 (N.D.N.Y. Mar. 3, 2008) (citation and internal quotations omitted).

Although Opposer strongly disagreed with Applicant’s count of Opposer’s original interrogatories, it expended significant resources to accommodate Applicant’s objections. As shown in the attached exhibits, Opposer substantially simplified and pared down its original interrogatories after incorporating those objections, and served a set of amended interrogatories consisting of 26 numbered interrogatories—of which only 18 are independent interrogatories after one excludes the eight interrogatories necessitated by each of Applicant’s eight affirmative defenses asserted in its Answer. *See* Ceresia Decl., Exs. C & D. Based upon the above legal standards, Opposer respectfully submits that under no reasonable read of Opposer’s set of amended interrogatories does it exceed the 75 numerical limitation, nor has Applicant met its burden to demonstrate otherwise.<sup>2</sup> Applicant’s tortured and unduly narrow interpretation of what constitutes a single interrogatory finds no support in the case law. Because Applicant’s objection under Trademark Rule 2.120(d)(1) is unfounded, Applicant should be ordered to provide substantive interrogatory responses forthwith.

Finally, Opposer emphasizes that this most recent discovery dispute has not arisen in a vacuum. Applicant’s unjustified objections to Opposer’s interrogatories, when coupled with Applicant’s unreasonable refusal to mail its responsive documents to Opposer’s counsel, should be seen for what it is: part of a deliberate attempt to stymie Opposer’s legitimate efforts to obtain discovery of Applicant and, as a result, to cause Opposer to incur needless expense by

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<sup>2</sup> Upon Opposer’s request that Applicant specifically elucidate how it arrived at a count exceeding 75, Applicant responded only by stating that Opposer’s Amended Interrogatory Nos. 3-7 alone constitute 43 separate interrogatories. Ceresia Decl., Ex. F. Such a contention is mystifying. An objective count of those interrogatories produces, at most, a count of 14. *See* Interrogatory No. 3 (3 parts); No. 4 (6 parts); No. 5 (2 parts); No. 6 (1 part); No. 7 (2 parts).

necessitating the instant motion practice. Viewed in this larger context, it is clear that Applicant's continued refusal to respond Opposer's interrogatories represents not a principled stand but yet another example of a concerted effort to impose undue burden on Opposer.

In sum, Opposer is entitled to substantive responses to its discovery requests in order to pursue this opposition and submit appropriate evidence in support of its claims. Opposer respectfully requests that the Board order Applicant to comply with its discovery obligations in this matter by providing substantive responses to Opposer's propounded interrogatories.

**B. Opposer Respectfully Requests that the Board Suspend the Opposition and Reset Pre-Trial and Other Periods**

Under 37 C.F.R. § 2.120(e)(2), “[w]hen a party files a motion for an order to compel . . . discovery, the case will be suspended by the Board with respect to all matters not germane to the motion.” Accordingly, with the filing of the instant motion, Opposer requests that the opposition be suspended pending disposition of the instant motion to compel, and that the pre-trial disclosures, trial and other periods, as set forth in the Board's Order dated February 26, 2015, be reset for an appropriate period after the Board decides the motion. Jain v. Ramparts, 49 U.S.P.Q.2d 1429, 1430 (T.T.A.B. 1998) (suspending proceedings pending disposition of opposer's motions to compel and resetting trial periods). Since Opposer will need sufficient time after receiving Applicant's discovery responses to review the adequacy of those responses before proceeding with pre-trial disclosures, Opposer respectfully submits that the Board reset the pre-trial disclosure, trial and other periods for an appropriate period after the Board decides the instant motion.

**CONCLUSION**

For the foregoing reasons, Opposer respectfully requests that the Board issue an order compelling Applicant to respond to Opposer's First Set of Amended Interrogatories. Opposer

further requests that this matter be suspended pending disposition of the instant motion and that the pre-trial disclosures, trial and other periods be reset once the Board decides this motion.

Dated: New York, New York  
March 23, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.  
Attorneys for Opposer

By: /Joel Karni Schmit/  
Joel Karni Schmidt  
Eric J. Shimanoff  
Scott P. Ceresia  
1133 Avenue of the Americas  
New York, New York 10036  
(212) 790-9200

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing OPPOSER'S MOTION TO COMPEL APPLICANT'S RESPONSES TO OPPOSER'S AMENDED FIRST SET OF INTERROGATORIES to be sent via first class, postage paid mail to Applicant Janoskians LLC's Attorney and Correspondent of Record, Stephen L. Baker, Esq., Baker and Rannells, P.A., 575 Route 28, Raritan, New Jersey 08869-1354.

Dated: New York, New York  
March 23, 2015

/Scott P. Ceresia/  
Scott P. Ceresia



4. On December 9, 2014, Applicant served its written responses to Opposer's interrogatories and requests for production.

5. A true and correct copy of Applicant's written responses to Opposer's First Set of Interrogatories, dated December 9, 2014, is attached hereto as **Exhibit A**.

6. Applicant issued a general objection to Opposer's interrogatories and refused to provide any substantive responses thereto on the purported ground that the interrogatories exceeded the 75 numerical limitation provided in 37 C.F.R. § 2.120(d). *See Exhibit A* hereto.

7. In a good-faith effort to resolve any discovery disputes without the need for Board intervention, on December 17, 2014, I sent an email to Applicant's counsel, Jason DeFrancesco, Esq., seeking to schedule a call to discuss Applicant's written discovery responses. A true and correct copy of the email I sent to Mr. DeFrancesco, dated December 17, 2014, is attached hereto as **Exhibit B**.

8. After this email went unanswered, I left a follow-up voicemail for Mr. DeFrancesco in early January 2015 again requesting a call on the matter.

9. On January 8, 2015, in a telephone conversation between myself and Mr. DeFrancesco, I requested that Applicant specifically elucidate how it believed that Opposer's interrogatories exceeded the numerical limitation.

10. Mr. DeFrancesco took the position that the presence of related verbs in an interrogatory (*e.g.*, "conception," "selection" and "adoption" of Applicant's Mark) each constituted a separate interrogatory notwithstanding the interrelated subject matter.

11. Mr. DeFrancesco also opined that the presence of related verbs concerning the use in commerce of goods bearing Applicant's Mark (*e.g.*, "marketed," "distributed," and "offered

for sale”) similarly created separate interrogatories notwithstanding the fact that the verbs also pertained to clearly interrelated subject matter.

12. While Opposer strongly disagreed with Applicant’s count of the number of interrogatories, in an attempt to informally resolve this dispute, Opposer in good faith amended its interrogatories in accordance with the specific objections expressed by Applicant’s counsel during the January 8<sup>th</sup> call.

13. A true and correct copy of Opposer’s Amended First Set of Interrogatories, dated January 12, 2015, is attached hereto as **Exhibit C**. A redline showing the changes between Opposer’s original and amended interrogatories is attached hereto as **Exhibit D**.

14. In amending its interrogatories, Opposer significantly paired down and otherwise simplified its interrogatories.

15. It did so by removing the purportedly excess verbiage (*e.g.*, stating “adoption” only, instead of “conception,” “selection” and “adoption”; stating “offered for sale” only, instead of “marketed,” “distributed,” and “offered for sale”). *See Exhibit D* hereto at pp. 6-8, 10 (Amended Interrogatory Nos. 1-3, 5, 8, 9, 14 & 15).

16. Opposer also substantially revised and shortened certain interrogatories, such as Interrogatory No. 10 concerning any agreements involving Applicant’s Mark and Interrogatory No. 16 concerning any known instances of actual confusion. *See id.* at pp. 9-11 (Amended Interrogatory Nos. 10 & 16).

17. Opposer served its Amended First Set of Interrogatories on January 12, 2015, shortly after the parties’ January 8<sup>th</sup> telephone conference.

18. In total, Opposer's Amended First Set of Interrogatories lists 26 interrogatories, nearly 1/3 of which merely seek facts supporting each of Applicant's eight affirmative defenses asserted in its Answer. *See Exhibit C* hereto.

19. On February 17, 2015, Applicant served its responses to Opposer's Amended First Set of Interrogatories. A true and correct copy of Applicant's responses to Opposer's Amended First Set of Interrogatories, dated February 17, 2015, is attached hereto as **Exhibit E**.

20. To Opposer's great surprise, and notwithstanding Opposer's demonstrable good faith in amending its interrogatories specifically to accommodate Applicant's objections, Applicant once again generally objected to the interrogatories and refused to provide any substantive responses on the same purported ground that the requests exceeded the 75 numerical limitation provided in 37 C.F.R. § 2.120(d). *See Exhibit E* hereto.

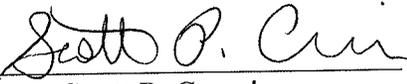
21. A true and correct copy of email correspondence between myself and Mr. DeFrancesco, dated February 23-24, 2015, is attached hereto as **Exhibit F**.

22. On February 23, 2015, I emailed Mr. DeFrancesco expressing my dismay that Applicant had once again refused to provide any substantive responses to Opposer's amended interrogatories despite Opposer's concerted effort to amend the requests by taking into account Applicant's stated objections. I asked Applicant to specifically elucidate how it believed the amended interrogatories exceeded the 75 numerical limitation. *See Exhibit F* hereto.

23. On February 24, 2015, Mr. DeFrancesco responded that Applicant stood by its general objection and made the conclusory claim, without any elaboration, that Amended Interrogatory Nos. 3-7 alone constitute 43 different interrogatories. *See id.*

24. Despite our good-faith efforts to informally resolve this discovery dispute pursuant to Trademark Rule 2.120(e)(1), such efforts have proven unsuccessful, thus leaving Opposer no choice but to seek relief from the Board.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON MARCH 23, 2015 AT NEW YORK, NEW YORK.

  
\_\_\_\_\_  
Scott P. Ceresia



# **EXHIBIT A**

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

In the matter of trademark application Serial Nos. 86/085,785  
For the respective mark: DIRTY PIG  
Published in the Official Gazette March 4, 2014

_____	)	
NASTY PIG, INC.,	)	
	)	
Opposer,	)	Opposition No. 91217154
	)	
vs.	)	
	)	
JANOSKIANS, LLC.,	)	
	)	
Applicant.	)	
_____	)	

**APPLICANT’S OBJECTIONS TO OPPOSER’S FIRST SET OF  
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant Janoskians, LLC, by its counsel Baker and Rannells, P.A. responds as follows to Applicant's First Set of Interrogatories (the "Interrogatories").

**OBJECTION TO OPPOSER'S FIRST SET OF INTERROGATORIES UNDER  
TRADEMARK RULE OF PRACTICE 2.120(d)(1)**

Applicant objects to Opposer’s First Set of Interrogatories on the basis that the same violates 37 CFR Section 2.120(d) as the actual number of interrogatories with subparts exceeds the 75 interrogatory limit. See Kellogg Co. v. Nugget Distributors’ Cooperative of America Inc., 16 USPQ2d 1468 (TTAB) wherein the Board Held at 1469:

In determining whether a set of interrogatories exceeds this limit, each subdivision of separate questions, whether set forth as a numbered or lettered subpart, or as a compound question or a conjunctive question, is counted as a separate interrogatory.

Applicant, in compliance with the Rule, serves only general objections. Applicant's failure to set forth herein its specific objections or specific responses to individual interrogatories is not a waiver and is without prejudice.

#### GENERAL OBJECTIONS TO REGISTRANT'S DEFINITIONS AND INSTRUCTIONS

Applicant objects to the instruction that it respond to the interrogatories "under Oath" as such requirement goes beyond the Federal Rules of Civil Procedure or the Trademark Rules of Practice. Applicant also objects to these Definitions and Instructions on the ground that they are overly broad and unduly burdensome. Applicant further objects to Definition and Instruction to the extent it imposes greater burdens on Applicant than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

#### GENERAL OBJECTIONS

1. Applicant objects to the Interrogatories to the extent they are overly broad or expose Applicant to undue burden or expense in relation to its likely benefit, taking into account the needs of the case, the property in controversy, Applicant's resources, the importance of the issues at stake in the litigation, and the importance of proper discovery in resolving the Issues.

2. Applicant objects to the Interrogatories on the ground of irrelevance to the extent that they (a) seek information concerning any activities of Applicant outside of the United States, (b) seek information on issues not raised in the pleadings, or (c) seek information not reasonably calculated to lead to the discovery of admissible evidence.

3. Applicant objects to the Interrogatories to the extent they are duplicative; unreasonably cumulative; and the information sought can be obtained from sources that are more convenient, less burdensome, or less expensive.

4. Applicant objects to the Interrogatories to the extent they are not particular and seek information merely tangential to the proceeding and are not limited in time.

5. Applicant objects to the Interrogatories to the extent they are vague or ambiguous.

6. Applicant objects to the Interrogatories to the extent that they call for information subject to the attorney-client, attorney work product, or other privilege.

Dated: December 9, 2014

Respectfully submitted,

BAKER AND RANNELLS, P.A.  
*Attorneys for Opposer*

By: Jason DeFrancesco  
Jason DeFrancesco  
575 Rte. 28, Ste. 102  
Raritan, NJ 08869  
(908) 722-5640

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the Applicant's Objections to Opposer's First Set of Interrogatories has been served on Opposer c/o its counsel, by first class mail on this 9th day of December 2014, and to,

Joel Karni Schmidt  
COWAN LIEBOWITZ & LATMAN PC  
1133 Avenue of The Americas  
New York, NY 10036

/Jason DeFrancesco/  
Jason DeFrancesco

## **EXHIBIT B**

**Ceresia, Scott P.**

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**From:** Ceresia, Scott P.  
**Sent:** Wednesday, December 17, 2014 3:24 PM  
**To:** 'jld@br-tmlaw.com'  
**Cc:** 'Steve Baker'; Schmidt, Joel; Shimanoff, Eric J.  
**Subject:** Re: DIRTY PIG - Opposition No. 91217154 - Applicant's discovery responses

Mr. DeFrancesco,

We are in receipt of Applicant's written responses to Opposer's First Set of Interrogatories and First Set of Requests for Production in the above-referenced matter.

We believe it would be helpful to schedule a call regarding Applicant's responses. Are you available this week to discuss?

Regards,  
Scott

**Scott Ceresia, Esq.**  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, New York 10036-6799  
t: (212) 790-9247 | f: (212) 575-0671  
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## **EXHIBIT C**



B. The term “Opposer” means Nasty Pig, Inc., and all parent, subsidiary, affiliated, related, predecessor and/or successor entities, and divisions, and all officers, directors, members, employees, partners, agents and/or representatives thereof.

C. The term “Fitumi” means Fitumi, LLC, and all parent, subsidiary, affiliated, related, predecessor and/or successor entities, and divisions, and all officers, directors, members, employees, partners, agents and/or representatives thereof, including, without limitation, John Putnam and Chris Swanson.

D. The term “Putnam Accessory Group” means Putnam Accessory Group, and all parent, subsidiary, affiliated, related, predecessor and/or successor entities, and divisions, including without limitation, Putnam Sourcing Group, Inc., Snap Straps Inc., Crash The Party, Inc., and California Coast Accessories, and all officers, directors, members, employees, partners, agents and/or representatives thereof, including, without limitation, John Putnam and Chris Swanson.

E. The term “Applicant’s Mark” shall refer to the DIRTY PIG mark as represented in Application Serial No. 86/085,785 and opposed herein and any variations of said mark used or intended to be used by Applicant, alone or in connection with any other words, letters and/or designs.

D. The term “Opposer’s NASTY PIG Mark” shall refer to Opposer’s mark comprising or containing the words “NASTY PIG,” alone or with other word, letter and/or design elements, including, without limitation, the marks covered in the registrations and applications set forth in paragraphs 2 and 3 of the Notice of Opposition in this proceeding.

E. The term “commerce” means commerce subject to regulation by Congress, as defined in 15 U.S.C. §1127.

F. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

G. The term “document” shall be given the broadest possible scope under Fed. R. Civ. P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, flyers, advertisements, web pages, publications, stickers, posters, catalogs, labels, displays, photographs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

H. The term “identify,” when used in connection with a natural person or persons, requires Applicant to state the person’s full name and last known business and residential addresses, telephone number and e-mail address.

I. The term “identify” when used in connection with a document, requires Applicant to:

- (i) Furnish the name or title, date and general description (e.g., letter, memorandum, etc.) of the document, the name and address of the person from whom the document originated, the name and address of the persons to whom the document was

addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Applicant is in possession of the original of the document or a copy thereof and, if Applicant is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy; and

(iii) Furnish a general description of the subject matter to which the document(s) pertains.

J. The term “identify,” when used in connection with a company, organization or other business entity, requires Applicant to state the name, address, and phone number of the company, organization or other business entity.

K. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

L. The term “Agreements” shall mean “licenses, assignments or other written agreements.”

M. The term “Set forth all facts” shall mean “set forth all facts and circumstances and identify all supporting documents.”

N. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

O. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

P. If any information or document called for in any interrogatory is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if Applicant contends that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the State Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory to which the information or document is responsive.

O. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

### **INTERROGATORIES**

#### **Interrogatory No. 1:**

Identify the persons who are most knowledgeable concerning the adoption and/or use of Applicant's Mark.

#### **Interrogatory No. 2:**

Describe in detail the reason(s) for selecting Applicant's Mark, including but not limited to, the reasons for (a) selecting the term DIRTY; (b) selecting the term PIG; and (c) combining

those terms to form Applicant's Mark.

Interrogatory No. 3:

Identify all persons who or entities which participated in the conception and/or adoption of Applicant's Mark, including a description of the nature of their participation.

Interrogatory No. 4:

Identify any trademark searches, opinions or other investigations related to the adoption of Applicant's Mark, including, without limitation, the persons involved, the date(s), and the data or results of those searches, opinions or other investigations.

Interrogatory No. 5:

State whether Applicant was aware of Opposer's NASTY PIG Mark or goods or services offered for sale bearing Opposer's NASTY PIG Mark prior to October 8, 2013, when Applicant filed Application Serial No. 86/085,785.

Interrogatory No. 6:

State whether Applicant has any documentation (e.g., business plans, marketing plans, memos, correspondence or draft proposals of any kind) reflecting Applicant's bona fide intention, prior to or as of October 8, 2013, to use Applicant's Mark in commerce in connection with each and every good identified in International Class 25 in Application Serial No. 86/085,785.

Interrogatory No. 7:

Identify each product or service on or in connection with which Applicant (or any person or entity authorized by Applicant) has made use of Applicant's Mark (hereinafter "Applicant's Products/Services").

Interrogatory No. 8:

For each of Applicant's Products/Services identified in response to Interrogatory No. 7 above, identify:

- (a) The date of first use for each such Product or Service;
- (b) The period of time during which each such Product or Service was or is being offered for sale;
- (c) The geographic area(s) in which each such Product or Service was or is being offered for sale;
- (d) The annual volume of sales for each year from the date of first use to the present, both by dollar amount and unit amount, for each such Product or Service;
- (e) The channels of trade (e.g., types of retail stores, catalogs, mail order, on-line, promotional sales, private sales, etc.) through which each such Product or Service was or is being offered for sale to the ultimate consumer; and
- (f) The type of consumers to whom each such Product or Service is or was offered for sale.

Interrogatory No. 9:

State whether Applicant's Mark has been used in connection with any designs, stylizations (including, without limitation, font styles), or logos, and if so, describe the details of each such use.

Interrogatory No. 10:

Identify all Agreements concerning or relating to Applicant's Mark.

Interrogatory No. 11:

For each such agreement identified in the response to Interrogatory No. 10 above, identify

the date of the agreement and describe the material terms thereof.

Interrogatory No. 12:

Describe the relationship between Applicant and Fitumi, including, but not limited to, (i) identifying all Agreements between Applicant and Fitumi with respect to Applicant's Mark; and (ii) identifying any attempts by Applicant or Fitumi to register any other marks comprising or consisting of the terms "NASTY" or "PIG."

Interrogatory No. 13:

Describe the relationship between Applicant and Putnam Accessory Group, including, but not limited to, (i) identifying all Agreements between Applicant and Putnam Accessory Group with respect to Applicant's Mark; and (ii) identifying any attempts by Applicant or Putnam Accessory Group to register any other marks comprising or consisting of the terms "NASTY" or "PIG."

Interrogatory No. 14:

Identify each web site or web page (whether owned by Applicant or third parties) on or through which Applicant's Mark and/or Applicant's Products/Services have been or are currently being advertised.

Interrogatory No. 15:

Identify each kind of advertising or marketing material (e.g., point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item) that has been used in connection with Applicant's Mark or Applicant's Products/Services.

Interrogatory No. 16:

Identify all known instances of actual confusion between goods or services bearing Opposer's NASTY PIG Mark and goods or services bearing Applicant's Mark.

Interrogatory No. 17:

Identify all persons knowledgeable about any such instances referred to in the response to Interrogatory No. 16 above and describe the nature of their knowledge.

Interrogatory No. 18:

Identify all third party uses, registrations and applications for registration of any marks containing or comprising the term "PIG" in connection with products or services identical or similar to any of Applicant's Products/Services or Opposer's goods or services in the United States.

Interrogatory No. 19:

Set forth all facts that support Applicant's second affirmative defense that "the Notice of Opposition is barred by the [sic] acquiescence and laches."

Interrogatory No. 20:

Set forth all facts that support Applicant's third affirmative defense that "the Notice of Opposition is barred by the doctrine of waiver and estoppel."

Interrogatory No. 21:

Set forth all facts that support Applicant's fourth affirmative defense that "the Notice of Opposition is barred by Opposer's failure to challenge the use of third party marks comprised in whole or in part of the term 'pig' on related goods and services by unrelated third parties."

Interrogatory No. 22:

Set forth all facts that support Applicant's fifth affirmative defense that "Applicant's

mark DIRTY PIG falls far outside the scope of protection to which Opposer's mark may extend."

Interrogatory No. 23:

Set forth all facts that support Applicant's sixth affirmative defense that "there are many 100's of third party 'pig' and 'pig' combination marks of record in the USPTO, thus rendering the 'pig' element of Opposer's mark to be weak."

Interrogatory No. 24:

Set forth all facts that support Applicant's seventh affirmative defense that "there were as many as 185 live third party live [sic] 'pig' and 'pig' combination marks of record in relevant classes in the USPTO at the time Opposer filed the application that resulted in Reg. No. 2800386, which Opposer admitted were not confusingly similar to Opposer's mark when it stated under oath in the application '... to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.'"

Interrogatory No. 25:

Set forth all facts that support Applicant's eighth affirmative defense that "except for the within opposition, Opposer has never challenged a 'pig' or 'pig' combination mark before the TTAB, thus acquiescing in the ongoing and continued weakening of its alleged mark."

Interrogatory No. 26:

Identify all persons who furnished any information used in responding to these Interrogatories and identify the relevant interrogatories to which their response pertain.

Dated: New York, New York  
January 12, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.  
Attorneys for Opposer

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

Joel Karni Schmidt  
Eric J. Shimanoff  
Scott P. Ceresia  
1133 Avenue of the Americas  
New York, NY 10036-6799  
(212) 790-9200

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing OPPOSER'S AMENDED FIRST SET OF INTERROGATORIES TO APPLICANT to be sent via first class, postage paid mail to Applicant's Attorney and Correspondent of Record, Stephen L. Baker, Esq., Baker and Rannells, P.A., 575 Route 28, Raritan, New Jersey 08869-1354.

Dated: New York, New York  
January 12, 2015

  
Scott P. Ceresia

## **EXHIBIT D**

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

In the Matter of Application Serial No. 86/085,785  
Filed: October 8, 2013  
Published in the Official Gazette of March 4, 2014

-----		X	
		:	
NASTY PIG, INC.,		:	Opposition No. 91217154
	Opposer,	:	
		:	
	v.	:	
JANOSKIANS LLC,		:	
	Applicant.	:	
-----		X	

**OPPOSER'S AMENDED FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

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Pursuant to ~~Rules~~Rule 33 ~~and 34~~ of the Federal Rules of Civil Procedure and 37 C.F.R.

§ 2.120, Opposer Nasty Pig, Inc. ("Opposer") requests that Applicant Janoskians, LLC

("Applicant") answer under oath the following interrogatories ~~and produce the following documents and things for inspection and copying at the offices of Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036~~ within 30 days after service hereof. These interrogatories ~~and requests~~ are deemed to be continuing, so as to require prompt supplemental interrogatory answers ~~and production of additional documents~~ should Applicant obtain additional responsive information ~~or documents~~ between the time the answers are served and the time of the final hearing of this opposition proceeding.

|

**DEFINITIONS AND INSTRUCTIONS**

A. The term “Applicant” means Janoskians, LLC, and all parent, subsidiary, affiliated, related, predecessor and/or successor entities, and divisions, and all officers, directors, members, employees, partners, agents and/or representatives thereof.

B. The term “Opposer” means Nasty Pig, Inc., and all parent, subsidiary, affiliated, related, predecessor and/or successor entities, and divisions, and all officers, directors, members, employees, partners, agents and/or representatives thereof.

C. The term “Fitumi” means Fitumi, LLC, and all parent, subsidiary, affiliated, related, predecessor and/or successor entities, and divisions, and all officers, directors, members, employees, partners, agents and/or representatives thereof, including, without limitation, John Putnam and Chris Swanson.

D. The term “Putnam Accessory Group” means Putnam Accessory Group, and all parent, subsidiary, affiliated, related, predecessor and/or successor entities, and divisions, including without limitation, Putnam Sourcing Group, Inc., Snap Straps Inc., Crash The Party, Inc., and California Coast Accessories, and all officers, directors, members, employees, partners, agents and/or representatives thereof, including, without limitation, John Putnam and Chris Swanson.

E. The term “Applicant’s Mark” shall refer to the DIRTY PIG mark as represented in Application Serial No. 86/085,785 and opposed herein and any variations of said mark used or intended to be used by Applicant, alone or in connection with any other words, letters and/or designs.

D. The term “Opposer’s NASTY PIG Mark” shall refer to Opposer’s mark comprising or containing the words “NASTY PIG,” alone or with other word, letter and/or

design elements, including, without limitation, the marks covered in the registrations and applications set forth in paragraphs 2 and 3 of the Notice of Opposition in this proceeding.

E. The term “commerce” means commerce subject to regulation by Congress, as defined in 15 U.S.C. §1127.

F. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

G. The term “document” shall be given the broadest possible scope under Fed. R. Civ. P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, flyers, advertisements, web pages, publications, stickers, posters, catalogs, labels, displays, photographs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

H. The term “identify,” when used in connection with a natural person or persons, requires Applicant to state the person’s full name and last known business and residential addresses, telephone number and e-mail address.

I. The term “identify” when used in connection with a document, requires Applicant to:

(i) Furnish the name or title, date and general description (e.g., letter, memorandum, etc.) of the document, the name and address of the person from whom the document originated, the name and address of the persons to whom the document was addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Applicant is in possession of the original of the document or a copy thereof and, if Applicant is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy; and

(iii) Furnish a general description of the subject matter to which the document(s) pertains.

J. The term “identify,” when used in connection with a company, organization or other business entity, requires Applicant to state the name, address, and phone number of the company, organization or other business entity.

K. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

L. The term “Agreements” shall mean “licenses, assignments or other written agreements.”

M. The term “Set forth all facts” shall mean “set forth all facts and circumstances and identify all supporting documents.”

N. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be

construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

MO. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

NP. If any information or document called for in any interrogatory-~~or request~~ is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if Applicant contends that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the State Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory ~~or request~~ to which the information or document is responsive.

O. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

~~\_\_\_\_\_ P. \_\_\_\_\_ Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.~~

### **INTERROGATORIES**

#### Interrogatory No. 1:

Identify the persons who are most knowledgeable concerning the ~~conception, creation,~~ adoption, ~~selection~~ and/or use of Applicant's Mark.

#### Interrogatory No. 2:

~~\_\_\_\_\_ State the date when Applicant first selected Applicant's Mark for use or intended use in connection with any goods or services.~~

#### Interrogatory No. 3:

Describe in detail the reason(s) for selecting ~~and/or adopting~~ Applicant's Mark, including but not limited to, the reasons for (a) selecting ~~and adopting~~ the term DIRTY; (b) selecting ~~and adopting~~ the term PIG; and (c) combining those terms to form Applicant's Mark.

#### Interrogatory No. 4: Interrogatory No. 3:

Identify all persons who or entities which participated in ~~or were consulted in~~ the conception, ~~creation, design, clearance, selection,~~ and/or adoption of Applicant's Mark, including a description of the nature of their participation ~~or consultation~~.

#### Interrogatory No. 5: Interrogatory No. 4:

Identify any trademark searches, opinions or other ~~searches, opinions,~~ investigations, ~~analyses or studies~~ related to the ~~conception, creation, design, clearance, selection and/or~~ adoption of Applicant's Mark, including, without limitation, the persons involved, the date(s),

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and the data or results of those searches, opinions, ~~or other~~ investigations, ~~analyses or studies~~.

~~Interrogatory No. 6:~~ Interrogatory No. 5:

State whether Applicant was aware of ~~Opposer~~, Opposer's NASTY PIG Mark, ~~and/or~~ goods or services ~~marketed, manufactured, distributed,~~ offered for sale, ~~sold, licensed or rendered by Opposer or under license from Opposer in connection with~~ bearing Opposer's NASTY PIG Mark prior to:

a) October 8, 2013, when Applicant filed Application Serial No. 86/085,785.

~~b) Any use by Applicant of Applicant's Mark in connection with any goods or services.~~

~~Interrogatory No. 7:~~

~~State whether Applicant has ever sought a license or other right to use any marks, logos, designs, stylizations or slogans, including without limitation, Opposer's NASTY PIG Mark, from Opposer.~~

~~Interrogatory No. 8:~~ Interrogatory No. 6:

State whether Applicant has any documentation, ~~including without limitation, (e.g.,~~ business plans, marketing plans, memos, correspondence or draft proposals of any kind, ~~)~~ reflecting Applicant's bona fide intention, prior to or as of October 8, 2013, to use Applicant's Mark in commerce in connection with each and every good identified in International Class 25 in Application Serial No. 86/085,785.

~~Interrogatory No. 9:~~ Interrogatory No. 7:

~~State whether Applicant (or any person or entity authorized by Applicant) has made any use of any marks comprising or containing Applicant's Mark in the United States or in commerce as of the present date, and if so, and for each such mark, identify~~ Identify each product or service on or in connection with which Applicant (or any person or entity authorized

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by Applicant) has made ~~such use of~~ Applicant's Mark (hereinafter "Applicant's Products/Services").

~~Interrogatory No. 10:~~ Interrogatory No. 8:

For each of Applicant's Products/Services identified in response to Interrogatory No. ~~97~~ above, identify:

- (a) The date of first use for each such Product or Service;
- (b) The period of time during which each such Product or Service was or is being ~~distributed,~~ offered for sale, ~~sold or rendered;~~
- (c) The geographic area(s) in which each such Product or Service was or is being ~~distributed,~~ offered for sale, ~~sold or rendered;~~
- (d) The annual volume of sales for each year from the date of first use to the present, both by dollar amount and unit amount, for each such Product or Service;
- (e) The channels of trade (e.g., types of retail stores, catalogs, mail order, on-line, promotional sales, private sales, etc.) through which each such Product or Service was or is being ~~distributed or sold~~ offered for sale to the ultimate  ~~purchaser,~~ consumer  ~~or user;~~ and
- (f) The type of  ~~customers~~ consumers to whom each such Product or Service is or was  ~~marketed, distributed,~~ offered for sale,  ~~sold or rendered.~~

~~Interrogatory No. 11:~~ Interrogatory No. 9:

State whether Applicant's Mark has been used  ~~or is intended to be used~~ in connection with any  ~~indicia,~~ designs, stylizations (including, without limitation, font styles),  ~~terms, imagery,~~ marks, or logos  ~~or themes,~~ and if so, describe the details of each such use  ~~or intended use.~~

~~Interrogatory No. 12:~~ Interrogatory No. 10:

Identify ~~any persons~~ all Agreements concerning or ~~entities that have ever, either orally or in writing, authorized, licensed, assigned, granted, conveyed or otherwise transferred~~ relating to Applicant the right to use Applicant's Mark, and for,

Interrogatory No. 11:

For each such person or entity agreement identified in the response to Interrogatory No. 10 above, identify the date of the agreement and describe the material terms under which such authorization, license, assignment, grant or conveyance or other transfer was made, including, but not limited to, the details of the grant of rights to use Applicant's Mark and financial terms governing such transaction, thereof.

~~Interrogatory No. 13:~~ Interrogatory No. 12:

~~Identify any persons or entities Applicant has authorized, licensed, assigned, granted, conveyed or otherwise transferred the right to use Applicant's Mark, or to sell or distribute Applicant's Products/Services, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant, conveyance or other transfer of right to use was made, including, but not limited to, the details of the grant of rights to use Applicant's Mark and financial terms governing such transaction.~~

Interrogatory No. 14:

Describe the relationship between Applicant and Fitumi, including, but not limited to, (i) identifying all ~~licenses, assignments or other agreements~~ Agreements between Applicant and Fitumi with respect to Applicant's Mark ~~or any other marks comprising or consisting of the terms "NASTY" or "PIG";~~; and (ii) identifying any attempts by Applicant or Fitumi to register any other marks comprising or consisting of the terms "NASTY" or "PIG."

~~Interrogatory No. 15:~~ Interrogatory No. 13:

Describe the relationship between Applicant and Putnam Accessory Group, including, but not limited to, (i) identifying all ~~licenses, assignments or other agreements~~ Agreements between Applicant and Putnam Accessory Group with respect to Applicant's Mark ~~or any other marks comprising or consisting of the terms "NASTY" or "PIG";~~; and (ii) identifying any attempts by Applicant or Putnam Accessory Group to register any other marks comprising or consisting of the terms "NASTY" or "PIG."

~~Interrogatory No. 16:~~ Interrogatory No. 14:

Identify each web site, ~~web auction, web hosting, web posting, web listing,~~ or web page (whether owned by Applicant or third parties, ~~including its Internet address,)~~ on or through which Applicant's Mark and/or Applicant's Products/Services have been, ~~or~~ are currently being ~~or are intended to be promoted,~~ advertised, ~~displayed, sold or otherwise distributed.~~

~~Interrogatory No. 17:~~ Interrogatory No. 15:

Identify each kind of advertising, ~~or~~ marketing ~~and other promotional materials, including, without limitation, material (e.g.,~~ point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, or other advertising material or promotional item) that ~~have~~ has been ~~used or are intended to be~~ used in connection with Applicant's Mark or Applicant's Products/Services.

~~Interrogatory No. 18:~~ Interrogatory No. 16:

~~(a) Describe each instance where any person has by word or deed or otherwise including, but not limited to, by misdirected mail, e-mail, telephone calls, orders or inquiries suggested or reflected a belief that Applicant is licensed, endorsed or sponsored by or is a~~

~~sponsor of, or is associated or related in any way with or to Opposer, or that the products or services sold, offered for sale, or otherwise distributed or intended to be sold, offered for sale, or otherwise distributed by Applicant under Applicant's Mark are licensed, endorsed or sponsored by or associated or related in any way with or to Opposer and/or Opposer's NASTY PIG Mark;~~  
and

~~\_\_\_\_\_ (b) Identify all known instances of actual confusion between goods or services bearing Opposer's NASTY PIG Mark and goods or services bearing Applicant's Mark.~~

Interrogatory No. 17:

Identify all persons knowledgeable about any such instances referred to in ~~18(a)~~the response to Interrogatory No. 16 above and describe the nature of their knowledge.

~~Interrogatory No. 19:~~Interrogatory No. 18:

~~\_\_\_\_\_ If Applicant now has, or ever had, any agreement, either written or oral (including, but not limited to, covenants not to sue or challenge, settlement agreements, co-existence agreements, licenses, buying/selling or agency agreements, distributorship arrangements, endorsement arrangements or joint venture agreements) concerning Applicant's use or non use of Applicant's Mark or third party marks consisting of or incorporating the terms "NASTY" or "PIG," for each such agreement, identify all parties to the agreement, the nature of the agreement, and its material terms.~~

Interrogatory No. 20:

Identify all third party uses, registrations and applications for registration of any ~~marks or purported~~ marks containing or comprising the term "PIG" in connection with products or services identical or similar to any of Applicant's Products/Services or Opposer's goods or services in the United States ~~or U.S. commerce~~.

Interrogatory No. 21: Interrogatory No. 19:

StateSet forth all facts ~~and identify all documents~~ that support Applicant's second affirmative defense that "the Notice of Opposition is barred by the [sic] acquiescence and laches."

Interrogatory No. 22: Interrogatory No. 20:

StateSet forth all facts ~~and identify all documents~~ that support Applicant's third affirmative defense that "the Notice of Opposition is barred by the doctrine of waiver and estoppel."

Interrogatory No. 23: Interrogatory No. 21:

StateSet forth all facts ~~and identify all documents~~ that support Applicant's fourth affirmative defense that "the Notice of Opposition is barred by Opposer's failure to challenge the use of third party marks comprised in whole or in part of the term 'pig' on related goods and services by unrelated third parties."

Interrogatory No. 24: Interrogatory No. 22:

StateSet forth all facts ~~and identify all documents~~ that support Applicant's fifth affirmative defense that "Applicant's mark DIRTY PIG falls far outside the scope of protection to which Opposer's mark may extend."

Interrogatory No. 25: Interrogatory No. 23:

StateSet forth all facts ~~and identify all documents~~ that support Applicant's sixth affirmative defense that "there are many 100's of third party 'pig' and 'pig' combination marks of record in the USPTO, thus rendering the 'pig' element of Opposer's mark to be weak."

Interrogatory No. 26: Interrogatory No. 24:

StateSet forth all facts ~~and identify all documents~~ that support Applicant's seventh affirmative defense that "there were as many as 185 live third party live [sic] 'pig' and 'pig'

combination marks of record in relevant classes in the USPTO at the time Opposer filed the application that resulted in Reg. No. 2800386, which Opposer admitted were not confusingly similar to Opposer's mark when it stated under oath in the application "... to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true."

~~Interrogatory No. 27:~~ Interrogatory No. 25:

~~State~~ Set forth all facts ~~and identify all documents~~ that support Applicant's eighth affirmative defense that "except for the within opposition, Opposer has never challenged a 'pig' or 'pig' combination mark before the TTAB, thus acquiescing in the ongoing and continued weakening of its alleged mark."

~~Interrogatory No. 28:~~ Interrogatory No. 26:

Identify all persons who furnished any information used in responding to these Interrogatories and identify the relevant interrogatories to which their response pertain.

### DOCUMENT REQUESTS

Request No. 1:

~~All documents concerning Applicant's conception, creation, design, clearance, selection, and/or adoption of Applicant's Mark.~~

Request No. 2:

—— All documents concerning the intended meaning or connotation of Applicant's Mark.

Request No. 3:

—— Specimens of each of Applicant's Products/Services bearing or displaying Applicant's Mark.

Request No. 4:

—— Representative samples of labels, hangtags, tags, product packages, package inserts or other devices which bear Applicant's Mark, and which have been used or are intended to be used by Applicant and/or its licensees.

Request No. 5:

—— Representative samples of point of sale materials, circulars, flyers, posters, stickers, sales sheets, leaflets, brochures, catalogs, signs, price lists, on line or email advertisements, print advertisements, radio or television advertisements, or other advertising materials or promotional items which bear Applicant's Mark, and which have been used or are intended to be used by Applicant and/or its licensees.

Request No. 6:

—— All documents concerning any trademark searches or other searches, opinions, investigations, analyses or studies conducted or reviewed by or on behalf of Applicant concerning Applicant's Mark.

Request No. 7:

—— Documents sufficient to identify: (a) the date of first use of Applicant's Mark; (b) the date of first use of Applicant's Mark in commerce in connection with each of Applicant's Products/Services; (c) the geographic area(s) of use of Applicant's Mark in connection with each

of Applicant's Products/Services; (d) the actual or intended channels of trade for goods or services sold or rendered or intended to be sold or rendered in connection with Applicant's Mark; (e) the products or services sold, distributed or rendered under Applicant's Mark; (f) the types or categories of all consumers to whom goods or services have been sold, distributed, offered, or rendered under Applicant's Mark; (g) the annual amount of sales (in dollars and units), if any, made under Applicant's Mark for each year from the date of first use to the present; and (h) the annual amount of revenue, if any, that Applicant has received in connection with Applicant's Products/Services offered in connection with Applicant's Mark, for each year from the date of first use to the present.

Request No. 8:

—— Documents sufficient to identify the total annual gross sales, by units and/or dollars, of Applicant's Products/Services in the United States or in commerce with the United States, from the date of first use of Applicant's Mark to the present.

Request No. 9:

—— Representative samples of advertising, marketing and promotional materials used or intended to be used in connection with Applicant's Mark, including but not limited to, any media plans, public relations materials, press kits and correspondence with advertising agencies, public relations firms, media planners, graphic designers, web site designers or any other such entities in the advertising and promotional field.

Request No. 10:

—— Documents sufficient to identify the amount of money expended by Applicant in advertising and promoting Applicant's Mark and/or Applicant's Products/Services in the United States or in commerce with the United States for each year from the date of first use to the

present.

Request No. 11:

~~Documents sufficient to identify each trade show, convention, exposition or conference at which Applicant's Products/Services bearing Applicant's Mark have been displayed, advertised, promoted, offered for sale or sold.~~

Request No. 12:

~~All documents concerning any authorization, license, assignment, grant, conveyance or other transfer from any third party to Applicant concerning the right to use Applicant's Mark, or to sell Applicant's Products/Services bearing Applicant's Mark.~~

Request No. 13:

~~All documents concerning Applicant's authorization, license, assignment, grant, conveyance or other transfer (or proposed authorization, license, assignment, grant, conveyance or other transfer) relating to Applicant's Mark from or on behalf of Applicant to any third party, including, but not limited to, all license agreements.~~

Request No. 14:

~~All documents concerning the relationship between Applicant and Fitumi, including, but not limited to, (i) all licenses, assignments or other agreements between Applicant and Fitumi with respect to Applicant's Mark or any other marks comprising or consisting of the terms "NASTY" or "PIG"; and (ii) any attempts by Applicant or Fitumi to register any other marks comprising or consisting of the terms "NASTY" or "PIG."~~

Request No. 15:

~~All documents concerning the relationship between Applicant and Putnam Accessory Group, including, but not limited to, (i) all licenses, assignments or other agreements between~~

~~Applicant and Putnam Accessory Group with respect to Applicant's Mark or any other marks comprising or consisting of the terms "NASTY" or "PIG"; and (ii) any attempts by Applicant or Putnam Accessory Group to register any other marks comprising or consisting of the terms "NASTY" or "PIG."~~

Request No. 16:

~~Documents sufficient to identify each web site, web auction, web hosting, web listing, web posting, or web page (whether owned by Applicant or third parties), including its Internet address, on or through which Applicant's Mark and/or Applicant's Product/Services have been, are currently being or are intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.~~

Request No. 17:

~~All documents concerning any objections, claims, demands or actions lodged or filed against the use or proposed use of Applicant's Mark, including without limitation, cease and desist letters, complaints, letters of protest and/or Notices of Opposition.~~

Request No. 18:

~~All documents concerning Opposer, Opposer's NASTY PIG Mark, or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer.~~

Request No. 19:

~~All documents concerning Applicant's knowledge of Opposer, Opposer's NASTY PIG Mark, and/or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's NASTY PIG Mark prior to:~~

a) ~~October 8, 2013, when Applicant filed Application Serial No. 86/085,785.~~

b) ~~Any use by Applicant of Applicant's Mark in connection with any goods or services.~~

Request No. 20:

~~All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Applicant concerning Applicant's Mark, Applicant's Products/Services, Opposer's NASTY PIG Mark, or any goods or services advertised, promoted, offered for sale, sold, licensed or rendered by Opposer.~~

Request No. 21:

~~All documents concerning any instances suggesting or reflecting any confusion on the part of any member of the public between Opposer and Applicant and/or their respective marks and or goods or services, including, without limitation, documents referring to or evidencing misdirected mail, e-mails, telephone calls, orders or inquiries suggesting or reflecting a belief by any person that Applicant is licensed, endorsed or sponsored by, or is a sponsor of, or is associated or related in any way with or to Opposer, or that the products or services sold, offered for sale or otherwise distributed, or intended to be sold, offered for sale or otherwise distributed, by Applicant under Applicant's Mark are licensed, endorsed or sponsored by or associated or related in any way with or to Opposer and/or Opposer's NASTY PIG Mark.~~

Request No. 22:

~~All documents concerning the actual or intended channels of trade for goods or services sold or rendered or intended to be sold or rendered in connection with Applicant's Mark.~~

Request No. 23:

~~All documents, including communications and correspondence, Applicant has received from or transmitted to the United States Patent and Trademark Office and/or any State~~

~~Trademark Office concerning or relating to the application to register or registration of Applicant's Mark.~~

Request No. 24:

~~—— All documents, including without limitation, business plans, marketing plans, memos, correspondence or draft proposals of any kind, concerning Applicant's bona fide intent to use Applicant's Mark in connection with each and every good identified in International Class 25 in Application Serial No. 86/085,785 prior to or as of October 8, 2013.~~

Request No. 25:

~~—— All documents concerning any steps or actions taken by or on behalf of Applicant to use Applicant's Mark in the United States or in commerce with the United States.~~

Request No. 26:

~~All documents concerning any third party uses, registrations or applications for registration of any marks or purported marks containing or comprising the term "PIG" in connection with products or services identical or similar to any of Applicant's Products/Services or Opposer's goods or services in the United States or U.S. commerce.~~

Request No. 27:

~~—— All documents concerning or supporting the second affirmative defense asserted by Applicant in its answer in this proceeding that "the Notice of Opposition is barred by the [sic] acquiescence and laches."~~

Request No. 28:

~~—— All documents concerning or supporting the third affirmative defense asserted by Applicant in its answer in this proceeding that "the Notice of Opposition is barred by the doctrine of waiver and estoppel."~~

Request No. 29:

— All documents concerning or supporting the fourth affirmative defense asserted by Applicant in its answer in this proceeding that “the Notice of Opposition is barred by Opposer’s failure to challenge the use of third party marks comprised in whole or in part of the term ‘pig’ on related goods and services by unrelated third parties.”

Request No. 30:

— All documents concerning or supporting the fifth affirmative defense asserted by Applicant in its answer in this proceeding that “Applicant’s mark DIRTY PIG falls far outside the scope of protection to which Opposer’s mark may extend.”

Request No. 31:

— All documents concerning or supporting the sixth affirmative defense asserted by Applicant in its answer in this proceeding that “there are many 100’s of third party ‘pig’ and ‘pig’ combination marks of record in the USPTO, thus rendering the ‘pig’ element of Opposer’s mark to be weak.”

Request No. 32:

— All documents concerning or supporting the seventh affirmative defense asserted by Applicant in its answer in this proceeding that “there were as many as 185 live third party live [sic] ‘pig’ and ‘pig’ combination marks of record in relevant classes in the USPTO at the time Opposer filed the application that resulted in Reg. No. 2800386, which Opposer admitted were not confusingly similar to Opposer’s mark when it stated under oath in the application ‘... to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of

such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

Request No. 33:

— All documents concerning or supporting the eighth affirmative defense asserted by Applicant in its answer in this proceeding that “except for the within opposition, Opposer has never challenged a ‘pig’ or ‘pig’ combination mark before the TTAB, thus acquiescing in the ongoing and continued weakening of its alleged mark.”

Request No. 34:

— All documents identified or otherwise relied on or referred to by Applicant in answering Opposer’s First Set of Interrogatories above.

Dated: New York, New York

~~October 10, 2014~~ January 12, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.  
Attorneys for Opposer

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

Joel Karni Schmidt  
Eric J. Shimanoff  
Scott P. Ceresia  
1133 Avenue of the Americas  
New York, NY 10036-6799  
(212) 790-9200

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing OPPOSER'S AMENDED FIRST SET OF INTERROGATORIES ~~AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS~~ TO APPLICANT to be sent via first class, postage paid mail to Applicant's Attorney and Correspondent of Record, Stephen L. Baker, Esq., Baker and Rannells, P.A., 575 Route 28, Raritan, New Jersey 08869-1354.

Dated: New York, New York

~~October 10, 2014~~ January 12, 2015

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Scott P. Ceresia

## **EXHIBIT E**

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

In the matter of trademark application Serial Nos. 86/085,785  
For the respective mark: DIRTY PIG  
Published in the Official Gazette March 4, 2014

_____	)	
NASTY PIG, INC.,	)	
	)	
Opposer,	)	Opposition No. 91217154
	)	
vs.	)	
	)	
JANOSKIANS, LLC.,	)	
	)	
Applicant.	)	
_____	)	

**APPLICANT’S OBJECTIONS TO OPPOSER’S AMENDED FIRST SET OF  
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant Janoskians, LLC, by its counsel Baker and Rannells, P.A. responds as follows to Applicant's First Set of Interrogatories (the “Interrogatories”).

**OBJECTION TO OPPOSER'S AMENDED FIRST SET OF INTERROGATORIES UNDER  
TRADEMARK RULE OF PRACTICE 2.120(d)(1)**

Applicant objects to Opposer’s First Set of Interrogatories on the basis that the same violates 37 CFR Section 2.120(d) as the actual number of interrogatories with subparts exceeds the 75 interrogatory limit. See Kellogg Co. v. Nugget Distributors’ Cooperative of America Inc., 16 USPQ2d 1468 (TTAB) wherein the Board Held at 1469:

In determining whether a set of interrogatories exceeds this limit, each subdivision of separate questions, whether set forth as a numbered or lettered subpart, or as a compound question or a conjunctive question, is counted as a separate interrogatory.

Applicant, in compliance with the Rule, serves only general objections. Applicant's failure to set forth herein its specific objections or specific responses to individual interrogatories is not a waiver and is without prejudice.

#### GENERAL OBJECTIONS TO REGISTRANT'S DEFINITIONS AND INSTRUCTIONS

Applicant objects to the instruction that it respond to the interrogatories "under Oath" as such requirement goes beyond the Federal Rules of Civil Procedure or the Trademark Rules of Practice. Applicant also objects to these Definitions and Instructions on the ground that they are overly broad and unduly burdensome. Applicant further objects to Definition and Instruction to the extent it imposes greater burdens on Applicant than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

#### GENERAL OBJECTIONS

1. Applicant objects to the Interrogatories to the extent they are overly broad or expose Applicant to undue burden or expense in relation to its likely benefit, taking into account the needs of the case, the property in controversy, Applicant's resources, the importance of the issues at stake in the litigation, and the importance of proper discovery in resolving the Issues.

2. Applicant objects to the Interrogatories on the ground of irrelevance to the extent that they (a) seek information concerning any activities of Applicant outside of the United States, (b) seek information on issues not raised in the pleadings, or (c) seek information not reasonably calculated to lead to the discovery of admissible evidence.

3. Applicant objects to the Interrogatories to the extent they are duplicative; unreasonably cumulative; and the information sought can be obtained from sources that are more convenient, less burdensome, or less expensive.

4. Applicant objects to the Interrogatories to the extent they are not particular and seek information merely tangential to the proceeding and are not limited in time.

5. Applicant objects to the Interrogatories to the extent they are vague or ambiguous.

6. Applicant objects to the Interrogatories to the extent that they call for information subject to the attorney-client, attorney work product, or other privilege.

Dated: February 17, 2015

Respectfully submitted,

BAKER AND RANNELLS, P.A.  
*Attorneys for Opposer*

By: Jason DeFrancesco  
Jason DeFrancesco  
575 Rte. 28, Ste. 102  
Raritan, NJ 08869  
(908) 722-5640

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the Applicant's Objections to Opposer's Amended First Set of Interrogatories has been served on Opposer c/o its counsel, by first class mail on this 17th day of February 2015, and to,

Joel Karni Schmidt  
COWAN LIEBOWITZ & LATMAN PC  
1133 Avenue of The Americas  
New York, NY 10036

/Jason DeFrancesco/  
Jason DeFrancesco

## **EXHIBIT F**

## Ceresia, Scott P.

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**From:** Ceresia, Scott P.  
**Sent:** Tuesday, February 24, 2015 5:42 PM  
**To:** 'Jason L. DeFrancesco'  
**Cc:** Steve Baker; Schmidt, Joel; Shimanoff, Eric J.; K. Hnasko  
**Subject:** RE: DIRTY PIG - Opposition No. 91217154 - Applicant's Objection to Opposer's Amended Interrogatories

Jason,

We strongly disagree with your count of the number of interrogatories. We would reiterate that we in good faith amended the interrogatories in accordance with the specific objections you expressed during our call. Suffice it to say, we intend to address this issue with the Board.

In the meantime, please confirm whether Applicant consents to the requested 60-day extension of the case deadlines.

Regards,  
Scott

**Scott P. Ceresia, Esq.**

Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, New York 10036-6799  
t: (212) 790-9247 | f: (212) 575-0671  
[www.cll.com](http://www.cll.com) | [spc@cll.com](mailto:spc@cll.com) | [My Profile](#)

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**From:** Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]  
**Sent:** Tuesday, February 24, 2015 2:06 PM  
**To:** Ceresia, Scott P.  
**Cc:** Steve Baker; Schmidt, Joel; Shimanoff, Eric J.; K. Hnasko  
**Subject:** RE: DIRTY PIG - Opposition No. 91217154 - Applicant's Objection to Opposer's Amended Interrogatories

Scott,

The amended interrogatories seem substantially similar to the previous, so I am not certain what you mean by having "carefully pared down the amended interrogatories."

Nevertheless, just as an example of how the count from amended interrogatories 1-26 still exceeds 75, please refer to your amended interrogatories nos. 3-7, which alone add up to 43.

Regards,  
Jason

---

**From:** Ceresia, Scott P. [<mailto:SPC@cll.com>]  
**Sent:** Monday, February 23, 2015 4:01 PM

**To:** Jason L. DeFrancesco

**Cc:** Steve Baker; Schmidt, Joel; Shimanoff, Eric J.

**Subject:** Re: DIRTY PIG - Opposition No. 91217154 - Applicant's Objection to Opposer's Amended Interrogatories

Jason,

As you know, Applicant objected to Opposer's First Set of Interrogatories on the purported basis that they exceeded the 75 subpart limitation under 37 C.F.R. § 2.120(d). Thereafter, we conducted a call on January 8<sup>th</sup> in which we discussed in detail Applicant's objections to the interrogatories. In good faith, after taking into account Applicant's objections, we significantly pared down the interrogatories and served Applicant with Opposer's Amended First Set of Interrogatories on January 12<sup>th</sup>.

We have just received Applicant's response to Opposer's Amended First Set of Interrogatories. It came as a great surprise that Applicant has once again, without elaboration, refused to respond to Opposer's interrogatories on the same basis that they purportedly exceed the 75 subpart limitation.

We would stress that we carefully pared down the amended interrogatories so that there would be no question that they met the subpart limitation. Because we can perceive no ground upon which to find that they fail to meet that limitation, we would request that you specifically elucidate, no later than the close of business this Wednesday, February 25, 2015, how Applicant contends the amended interrogatories fail to satisfy the subpart limitation in 37 C.F.R. § 2.120(d). Absent a satisfactory response, we will be left with no choice but to seek appropriate relief from the Board.

Additionally, as you are aware, the close of discovery in this case is currently set for March 9, 2015. In light of this dispute and the parties' other pending discovery dispute concerning the method of Applicant's document production, we believe it is appropriate to request from the Board a 60-day extension of the deadlines in this case. Please confirm whether you would consent to the extension.

Regards,  
Scott

**Scott P. Ceresia, Esq.**

Cowan, Liebowitz & Latman, P.C.

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New York, New York 10036-6799

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