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Filing date: **10/12/2015**

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

Proceeding	91217154
Party	Defendant Janoskians LLC
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Submission	Motion to Compel Discovery
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Signature	/Jason DeFrancesco/
Date	10/12/2015
Attachments	Applicants Motion to Compel.pdf(5673141 bytes )

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

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

**MOTION TO COMPEL DISCOVERY**

Applicant, Janoskians, LLC. (“Janoskains”) pursuant to 37 CFR 2.120(e) hereby moves the Board to enter an order compelling discovery against Opposer, Nasty Pig, Inc. As it stands, Opposer’s pretrial disclosures are currently due October 13, 2015 (October 12, 2015 being federal holiday). Because the date of filing this motion is 15 days before the opening of Opposer’s testimony period, the motion is timely. See 37 § CFR 2.120(e). In support of this motion, the Applicant files the Declaration of Jason DeFrancesco (“Decl. DeFrancesco”). Additionally, concurrently filed with this motion is Applicant’s motion for leave, which is incorporated herein.

**BACKGROUND**

On July 2, 2014, Opposer filed its Notice of Opposition, requesting that the USPTO deny registration of the mark DIRTY PIG to Applicant based on a likelihood of confusion with its purported mark NASTY PIG for retail services and related goods that include jockstraps, gauntlets, bed sheets, rubber goods and leather harnesses (see generally, Dkt. #1). According to Opposer, the “commercial impression and connotation” of DIRTY PIG is “strikingly similar” to NASTY PIG ((Dkt. #1, ¶10). It has since come to the attention of the Applicant that the

commercial impression of “Nasty Pig” is consistent with Applicant’s mark, as it has a particular meaning in the relevant trade.

On September 18, 2015, the undersigned sent a deficiency letter to counsel for Opposer that identified matters which needed to be resolved that concerned discovery, including the fact that Opposer withheld material information regarding the meaning of the term “nasty pig.” (Decl. DeFrancesco, Exh. E.)

On October 6, 2015 (eighteen days after receipt of the above deficiency letter) Opposer responded to the deficiency letter, first taking issue with Applicant’s alleged delay and denying any issues with its discovery responses. (Decl. DeFrancesco, Exh. F.) Applicant states that its letter is a response “in detail” to the deficiency, thus mooted any further communications. Nevertheless, to date, Applicant has failed and or refused to supplement its discovery, requiring this motion to be filed.

**OPPOSER’S DEFICIENT ANSWERS TO INTERROGATORIES**

Attached as Decl. DeFrancesco, Exh. H is Opposer’s answer to Applicant’s interrogatories. In answering Nos. 1, 2, 6, 7, 8, 9, 10, 11, 15, 16, 17 and 18 Opposer repeats that it will produce documents pursuant to Fed. R. Civ. P. 33(d). (Decl. DeFrancesco, Exh. H.) Alleging it will produce documents however is not a responsive answer, because it does not properly invoke Rule 33. *See No Fear, Inc. v. Rule*, 54 USPQ 2d (BNA) 1551 (TTAB 2000),

A party responding to an interrogatory by producing business records [or, as in this case, by agreeing to produce them] must identify documents which the responding party knows to contain the responsive information, and may not merely agree to provide access to a voluminous collection of records which may contain the responsive information. See Baicker-McKee, Janssen & Corr, Federal Civil Rules Handbook (1997) at 442-443. In addition, a party may not rely on the option to produce business records unless it can establish that providing written responses would impose a significant burden on the party. Further, even if the responding party can meet this test and can identify particular documents in which the inquiring party [\*9] will find its answers, the inquiring party must not be left

with any greater burden than the responding party when searching through and inspecting the records. Often, this requirement will not be met, because the responding party will have greater familiarity with its own records and will generally have a lesser burden than the inquiring party when searching through the relevant records. See, generally, in regard to these propositions, 8A Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2178 (2d ed. 1994). Reference also is made to the Board's thorough discussion of the issues involved in application of Fed. R.Civ. P. 33(d) in D.K. Jain d/b/a Luxor Pen Company v. Ramparts, Inc., 49 USPQ2d 1429 (TTAB 1998).

While Applicant has notified Opposer of the fact that the answer and or reference to documents is rejected (Decl. DeFrancesco, Exh. E), Opposer argues that the amount of documents is relatively small (Decl. DeFrancesco, Exh. F) inferring that there is no burden. *It should be noted that the total amount of pages in Opposer's document production is just under 4,000.* It is improper for Opposer to not have to answer the interrogatories, but rather refer to pages out of 4,000. Applicant never agreed on any waiver of the rules and Opposer's rationale is not consistent with Rule 33. Opposer should be compelled to answer all interrogatories properly.

In addition to properly answering the interrogatories, Applicant identifies the following which have been attended to but remain unresolved, namely,

No. 12, whereby Applicant requested Opposer identify Watch Notices that reference the NASTY PIG mark (and variations), and identify actions taken thereof. In response, Opposer argues that the information is not relevant, unduly burdensome or privileged, which Applicant finds to be far-fetched. Opposer has a duty to police, and if not, it loses right to do so. And, seeing as the other parties Opposer would have taken action on are adverse, there is no privilege. If Applicant still believes the interrogatory is unduly burdensome, then it should have to at least provide the number of actions it has taken and then the Board can decide if it is a burden.

No. 14, Applicant requests the identification of individuals that participated in searches regarding Opposer's Mark. The answer that "there are no individuals responsive to this

interrogatory as reasonably construed” is not responsive. If Opposer did not attend to any search then it should have to simply state so.

#### **OPPOSER’S DEFICIENT RESPONSE TO DOCUMENT REQUESTS**

In response to request Nos. 1-9, 13-22, 25-29, and 33-41 Opposer stated that it will produce non-privileged documents responsive to this request “as reasonably construed.” (See Decl. DeFrancesco, Exh. D). According to Opposer, “as reasonably construed” means “documents that are material to this proceeding.” (See Decl. DeFrancesco, Exh. F, p. 2).

As provided for in the concurrent motion for leave, Applicant has uncovered material information that provides a basis for amending the instant Answer and further asserting grounds for cancellation of Opposer’s marks. As it turns out, “Nasty Pig” has meaning, which Opposer failed to tell the Applicant or notify the USPTO. Thus, documents material to this proceeding include those that concern and or relate to meaning of the term “Nasty Pig,” the subject of which is found in Request Nos. 2, 5, 9, 16 and 18, wherefore:

No. 2, which requests, “[a]ll documents concerning Opposer’s investigation, selection, adoption, creation and development of Opposer’s Mark.”

No. 5, which requests, “[a]ll documents documents that supports the claims made by Opposer in the Notice of Opposition.” Which include but are not limited to Opposer’s allegations in Dkt. #1, which Opposer asserts entitlement and right to “Nasty Pig” (Dkt. #1, ¶¶ 10, 11) over Applicant, and that Opposer has built goodwill that uniquely identifies it with “Nasty Pig” for related goods and services that identify jockstraps, gauntlets, bed sheets, rubber goods and leather harnesses (Dkt. #1, ¶ 6).

No. 9, which requests, “[a]ll United States Patent and Trademark Office trademark search citations and common law search citations discovered during Opposer’s investigations into the availability of Opposer’s Mark.”

No. 16, which requests, “[a]ll All documents which record, refer to, or relate to Opposer’s knowledge and/or awareness of the use and/or registration of third party Variations of Opposer’s Mark for any goods or services in the United States.”

No. 18, which requests, “[a]ll documents concerning any survey, test survey, informal survey, consumer questionnaire, consumer study questionnaire, market analysis, market research, investigation or other inquiry conducted by or on behalf of Opposer or of which Opposer has become aware that refers or relates to Opposer, Opposer’s Marks, Applicant or Applicant’s Mark.”

Opposer has produced no documents that bring to light the fact that “Nasty Pig” is a term with meaning as provided for in Decl. DeFrancesco, Exhs. A and B. Accordingly, Opposer should be compelled to update its production in this regards because it is “material to this proceeding.” (See Decl. DeFrancesco, Exh. F, p. 2.) Documents are considered in the “possession, custody, or control” of Opposer if it has actual possession, custody, or control, or has the legal right to obtain the documents on demand. *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984). Therefore, while Opposer may not want to provide information regarding the actual meaning of “Nasty Pig” it has an obligation to conduct a reasonable inquiry into the factual basis of its responses to the request to produce documents. Fed.R.Civ.P. 34. If after a reasonable inquiry is made, and if no responsive documents exist, then Opposer should so state with sufficient specificity to allow the Board to determine whether it made a reasonable inquiry

and exercised due diligence, or suppressed information thereof. See for e.g., *Rogers v. Giurbino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012).

Furthermore, to the extent that Opposer asserts “attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity” it should be required to provide a privilege log as to at least Request No. 5 (above).

### CONCLUSION

WHEREFORE, Applicant, Janoskians, LLC. requests the Board issue an order compelling Opposer, Nasty Pig, Inc., to Answer completely all interrogatories; and supplement documents responsive to Request Nos. 2, 5, 9, 16 and 18; and award other relief under the circumstances.

Dated: October 12, 2015

Respectfully submitted,  
Baker and Rannells, PA

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

Attorneys for the Applicant,  
Janoskians, LLC.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to compel and Declaration of Jason DeFrancesco in support thereof were served by first class mail, on counsel for Opposer, Nasty Pig, Inc., on this 12th day of October, 2015 at,

Joel Karni Schmidt  
Cowan Liebowitz & Latman, PC  
1133 Avenue of the Americas  
New York, NY 10036

/Jason DeFrancesco/  
Jason DeFrancesco

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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v.	:	
	:	
JANOSKIANS, LLC.,	:	
	:	
Applicant.	:	

**DECLARATION OF JASON DEFRANCESCO IN SUPPORT OF  
OPPOSER'S MOTION TO COMPEL**

Jason DeFrancesco, declares as follows:

1. I am an attorney at law admitted to practice before the courts of the States of New York and Florida and Washington, D.C. My practice is generally limited to intellectual property with emphasis on trademark law and patents.

2. I am an associate of the firm of Baker and Rannells PA. We maintain offices at 575 Route 28, Suite 102, Raritan, New Jersey 08869. The firm represents the Applicant, Janoskians, LLC., in this proceeding and currently moves the Board to grant its motion for leave.

3. I make this declaration in support of Applicant's motion for leave to amend. I have personal knowledge of the facts set forth herein, and if called to testify, could and would testify competently thereto.

Wherefore, I verify the following Exhibits, that,

Exhibit A is a true and correct copy of an excerpt from the website address <<http://lovemygays.com/category/homosociology/>> that I accessed on September 16, 2015. The referenced website provides definitions and or explanations of meaning of terms, under the

reference “Homosociology” identified as the “appreciation and preservation of gay struggles and sensibilityes” (p. 1 of 10). In addition to the several terms provided therefor, p. 5 of 10 provides reference to “The Nasty Pig” as a man who “pushes physical pleasures limits of human possibilities. He ‘literally stretches’ the boundaries and always wants to do the next step...There’s a good chance he has rubber underwear on....” (emphasis added by internal quotes).

Exhibit B is a true and correct copy of an excerpt from the website <<http://www.urbandictionary.com>> that I accessed on September 16, 2015. As provide for on p. 3 of 6, the term “Nasty Pig” is defined as “a gay male who seeks out/participates in ‘out of the norm’ homosexual experiences that usually involve one or a variety of the following acts: Multiple sex partners, unprotected sex, cum dropping, anonymous partners, pissing in orifices...to name a few. You’re a nasty pig Evan, you slept with five guys in one night and let them all cum & piss in your hole! And still wanted more....”

Exhibit C is a true and correct copy of Applicant’s First Request for Production of Documents served on Opposer September 10, 2014.

Exhibit D is a true and correct copy of Opposer’s objections and responses to Applicant’s First Request for Production of Documents dated November 14, 2015.

Exhibit E is a true and correct copy of a deficiency letter sent by the undersigned to counsel for Opposer on September 18, 2015 bring to the attention of Opposer Applicant’s recent discovery as to the meaning of “nasty pig” and requesting discovery be supplemented thereof.

Exhibit F is a true and correct copy of the response to Exh. E, whereby on October 6, 2015 (eighteen days after receipt of Exh. E) counsel for Opposer took issue with the timing of Applicant’s deficiency letter and denied its discovery is deficient. In particular, counsel notes

that “[s]imply because Applicant believes that the term ‘nasty pig’ has a specific meaning does not mean that Opposer has any documents in its possession regarding that alleged meaning.”

In its letter, Opposer states that its response is “in detail to the issues raised” in Exh. E.

Exhibit G is a true and correct copy of Applicant’s Set of Interrogatories directed to Opposer, served on Opposer September 10, 2014.

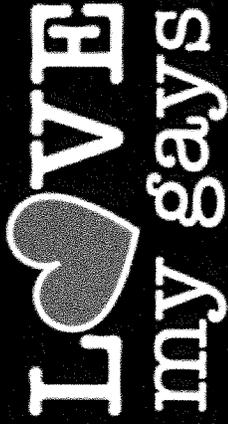
Exhibit H is a true and correct copy of Opposer’s objections and responses to Applicant’s First set of interrogatories dated November 14, 2015.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed at Raritan, New Jersey  
on October 12, 2015.

/Jason DeFrancesco/  
Jason DeFrancesco

Decl. DeFrancesco,  
Exh. A



[\(HTTP://LOVEMYGAYS.COM/\)](http://LOVEMYGAYS.COM/)

[HOME \(HTTP://LOVEMYGAYS.COM/\)](http://LOVEMYGAYS.COM/)

[EYE CANDY \(HTTP://LOVEMYGAYS.COM/CATEGORY/EYE-CANDY/\)](http://LOVEMYGAYS.COM/CATEGORY/EYE-CANDY/)

[ABOUT \(HTTP://LOVEMYGAYS.COM/ABOUT-LOVE-MY-GAYS/\)](http://LOVEMYGAYS.COM/ABOUT-LOVE-MY-GAYS/)

[ARTICLES \(HTTP://LOVEMYGAYS.COM/CATEGORY/ARTICLES/\)](http://LOVEMYGAYS.COM/CATEGORY/ARTICLES/)

[HOMOSOCIOLOGY \(HTTP://LOVEMYGAYS.COM/CATEGORY/HOMOSOCIOLOGY/\)](http://LOVEMYGAYS.COM/CATEGORY/HOMOSOCIOLOGY/)

## HOMOSOCIOLOGY

Search

Homosociology is the appreciation and preservation of gay struggles and sensibilities.

### Tales of the City

(<http://lovelygays.com/2012/11/glbt-historical-society/>)



[\(http://lovelygays.com/2012/11/glbt-historical-society/\)](http://lovelygays.com/2012/11/glbt-historical-society/)

If Manhattan is the city that never sleeps, San Francisco is the city that never ceases to inspire. Just when I think I can't be surprised, or that I couldn't possibly be any more addicted to San Francisco, a new discovery unfolds and my rainbow heart beats faster. Like when I recently happened upon the [...]

### RECENT POSTS

[Chasing Summer on the Circuit](http://lovelygays.com/2013/08/chasing-summer-on-the-circuit/)

> (<http://lovelygays.com/2013/08/chasing-summer-on-the-circuit/>)

[Keepin' it Real in the Alley](http://lovelygays.com/2013/07/keepin-it-real-in-the-alley/)

> (<http://lovelygays.com/2013/07/keepin-it-real-in-the-alley/>)

[Eye of the Rainbow Tiger](http://lovelygays.com/2013/06/eye-of-the-rainbow-tiger/)

> (<http://lovelygays.com/2013/06/eye-of-the-rainbow-tiger/>)

[BeatBox: Pride of SF Parties Turns 2!](http://lovelygays.com/2013/06/beatbox-pride-of-sf-parties-turns-2/)

> (<http://lovelygays.com/2013/06/beatbox-pride-of-sf-parties-turns-2/>)

[REAL BAD: 25 Years of Being Bad and Doing Good](http://lovelygays.com/2013/05/real-bad-xxv/)

> (<http://lovelygays.com/2013/05/real-bad-xxv/>)

## The Queen's English

(<http://lovemygays.com/2012/07/the-queens-english/>)



(<http://lovemygays.com/2012/07/the-queens-english/>)

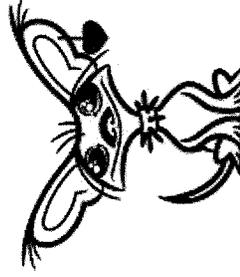
I love the way my gays can turn a phrase. That I speak gay fluently is one of my favorite bragging rights as a self-described homosociologist. My cultural immersion is so complete, I get lost in translation whenever people "give it to me straight," so to speak. Situations that require me to use "proper" parlance [...]

## The Tiny Dog

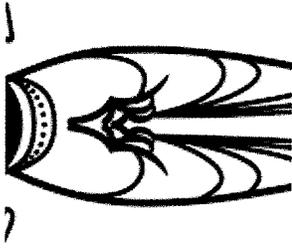
(<http://lovemygays.com/2011/12/the-tiny-dog/>)

(<http://lovemygays.com/2011/12/the-tiny-dog/>)

Of course every good gay has a tiny dog!



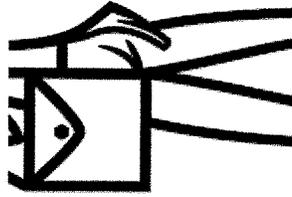
## The Sister of Perpetual Indulgence (<http://lovemygays.com/2011/12/the-sister-of-perpetual-indulgence/>)



(<http://lovemygays.com/2011/12/the-sister-of-perpetual-indulgence/>)

The Sisters are in a class of there own. Through drag and Catholic imagery they call attention to sexual intolerance and satirize issues of gender and morality – and raise tons of money for worthy causes along the way.

## The Twink (<http://lovemygays.com/2011/12/the-twink-2/>)

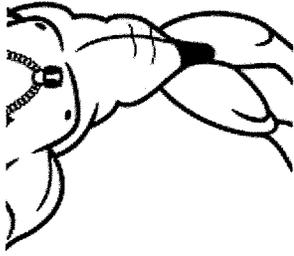


(<http://lovemygays.com/2011/12/the-twink-2/>)

The Twink, or as we like to call him, the baby gay. Always in something labelled, he is always 'fashion-forward' and fierce. Around every Twink is typically a gaggle of women who would KILL for a straight man to have even an ounce of his looks, wit, and personality.

## The Muscle Pig

(<http://lovemygays.com/2011/12/the-muscle-pig/>)

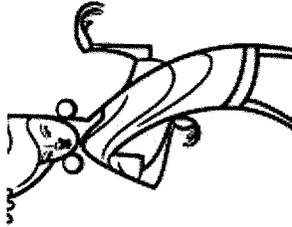


(<http://lovemygays.com/2011/12/the-muscle-pig/>)

The muscle pig achieves levels of physical masculinity that few men, gay or straight, could ever dream of. Yet, they still twirl and giggle and swish just like a proper gay should. It's that juxtaposition that we love about our muscle pigs – that and the fact that you often see them wearing someone's collar-lock.

## The Drag Queen

(<http://lovemygays.com/2011/12/the-drag-queen/>)

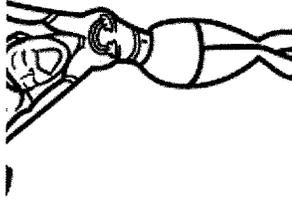


(<http://lovemygays.com/2011/12/the-drag-queen/>)

She elevates 'fabulous' to a level of futuristic grandeur, genderless opulence and sexual bluntness. She creates a new identity through outrageous costumes, heightened attitude and deconstructs gender roles and fashion cliches that the rest of us accept so easily.

## The Fag Hag

(<http://lovemygays.com/2011/12/the-fag-hag/>)

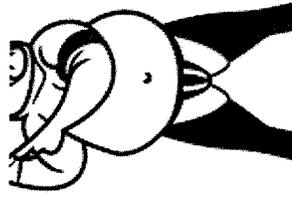


(<http://lovemygays.com/2011/12/the-fag-hag/>)

Artist's Notes: The Fag Hag is a straight girl who loves the gay-community for its openness and sexual playfulness; its compassion and 'let-live' sensibility. Her female perspective enriches the community's direction and opens it up to the rest of society – as her desire is to have a community beyond sexual orientation and gender-rules.

## The Nasty Pig

(<http://lovemygays.com/2011/12/the-nasty-pig/>)

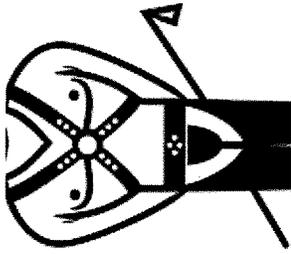


(<http://lovemygays.com/2011/12/the-nasty-pig/>)

Artist's Note: He pushes physical pleasures limits of human possibilities. He literally stretches the boundaries and always wants to do the next step to reach yet another level of sexual bliss. There's a good chance he has rubber underwear on underneath his work clothes.

## Leather Daddy

(<http://lovemygays.com/2011/11/leather-daddy/>)

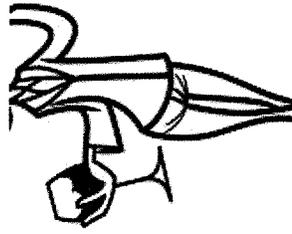


(<http://lovemygays.com/2011/11/leather-daddy/>)

The leather community refers to practices and styles of dress organized around 'kink,' specifically, a homoerotic aesthetic that draws from post World War II biker culture as well as military and police uniform. Leathermen represent a culture within the overall gay community, defined by its history, driven by code, seeking the hypermasculine ideal. Suzan attends Mr. International [...]

## The A-Gay

(<http://lovemygays.com/2011/11/the-a-gay/>)



(<http://lovemygays.com/2011/11/the-a-gay/>)

Artist's Note: The A-Gay is successful, fabulous and very particular. He knows what he wants and usually gets it. His success in life connected with his joie-de-vivre is a combination that makes him a social elite with biting wit and divine etiquette.

## Trans

(<http://lovemygays.com/2011/11/trans/>)



(<http://lovemygays.com/2011/11/trans/>)

\*Artist's comments: She is very comfortable with who she is and creates a gender between male and female that shows courage and reflection on gender specifics that the rest of us indulge in so much. Her behavior shows that it's us who dress and behave like a gender cliché and her who does the next [...]

## The Circuit Queen

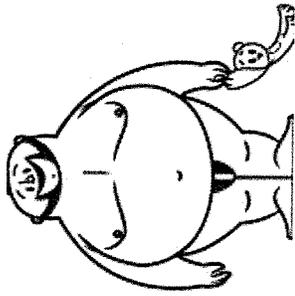
(<http://lovemygays.com/2011/11/the-circuit-boy/>)



(<http://lovemygays.com/2011/11/the-circuit-boy/>)

The circuit has a long history of making room in our busy, stressful lives for full self-expression and total freedom. As silly and shallow as it might seem to the uninitiated, the community of acceptance and belonging that releases itself under the disco ball refreshes and recharges. Read about Suzan's addiction to 'the circuit.' A [...]

The Bear  
(<http://lovemygays.com/2011/11/the-bear/>)



(<http://lovemygays.com/2011/11/the-bear/>)

Artist's notes: Being physically on the larger side of life and being equipped with a furry shell, he makes his imposing physicality into a life-style. He is the one that shows us all that being yourself is perfect exactly the way you are. Accepting yourself and loving it! His self-confidence is often enticing and people [...]

Loving Your Gays: Are You an Addict?  
(<http://lovemygays.com/2011/05/loving-your-gays-are-you-an-addict/>)



(<http://lovemygays.com/2011/05/loving-your-gays-are-you-an-addict/>)

Are you addicted to Loving Your Gays? Are you gay even when no one is watching? If you've completely lost touch with all things straight (not that there's anything wrong with that!), here's 12 tried-and-true steps to recovery: 1) Admit that you are powerless over your addiction – that your glittery life has become unmanageable [...]

## Signs & Symbols

(<http://loveygays.com/2011/05/signs-symbols/>)

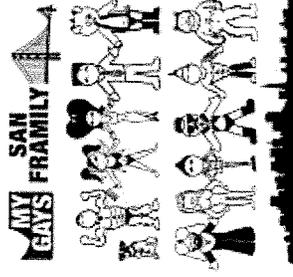


(<http://loveygays.com/2011/05/signs-symbols/>)

As gay culture evolves and become ever more mainstream, it's easy to lose perspective. Modern gay culture is evolving so quickly and (natch) so dramatically, we sometimes overlook the homo history in the making. While today there's a broad (and fabulous!) gay lexicon of nonstandard terms and references, there was a time when [...]

## San Framily

(<http://loveygays.com/2011/05/san-framily/>)



(<http://loveygays.com/2011/05/san-framily/>)

Variation/combination of "San Francisco" and "family" Refers to the family one chooses for one's self, a common phenomenon experienced by residents of San Francisco, the freedom capital of the world, where self-expression and hedonism rule the land. Also refers to the gayborhood of San Francisco.

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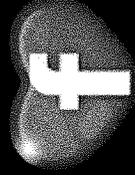
RAINBOW CONNECTIONS

email address:

[AIDS Emergency Fund \(http://www.aef.org\)](http://www.aef.org)



<http://twitter.com/SuzanRevah>



<https://www.facebook.com/groups/112727305424582/>

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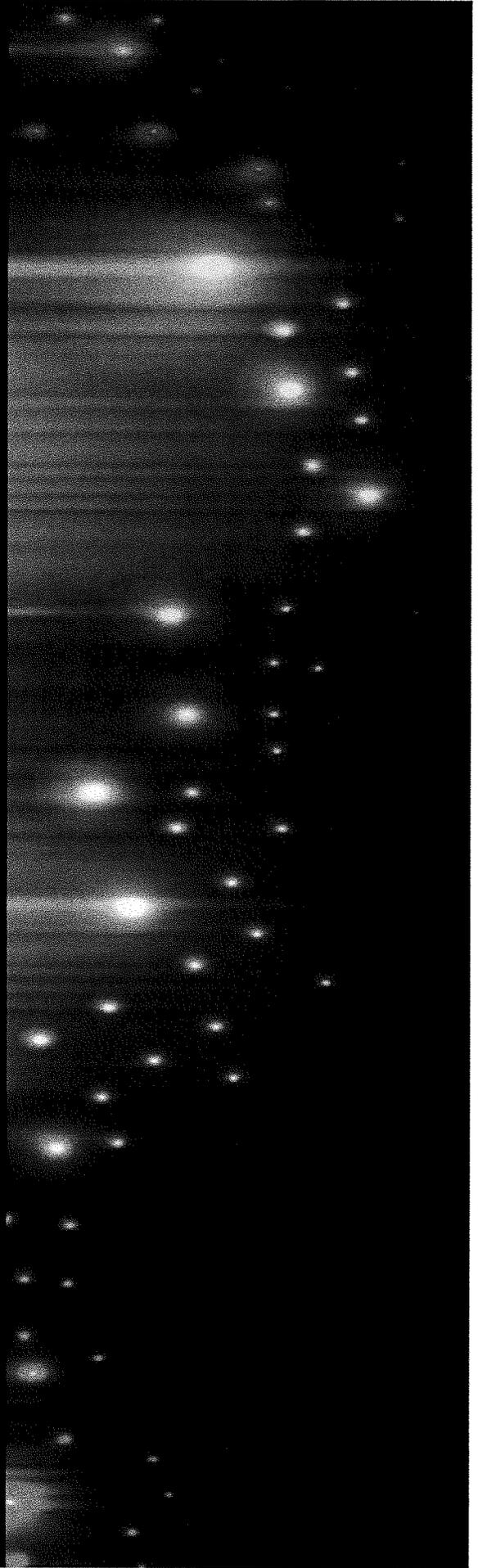
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Decl. DeFrancesco,  
Exh. B

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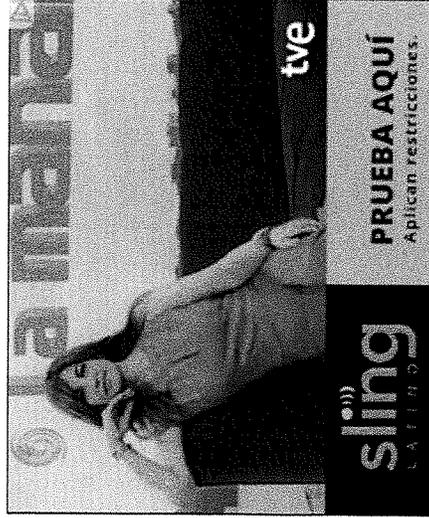
Urban Dictionary: nasty pig  
 a gay male who seeks out/participates in "out of the norm" homosexual sexual experiences that usually involve one or a variety of the following acts: Multiple sex partners, unprotected sex, cum dumping, anonymous partners, peeing in orifices...to name a few  
 You're a nasty pig Evan, you slept with five guys in one night and let them all cum & piss in your hole! And still wanted more...  
 by Sully88 January 03, 2009  
 278

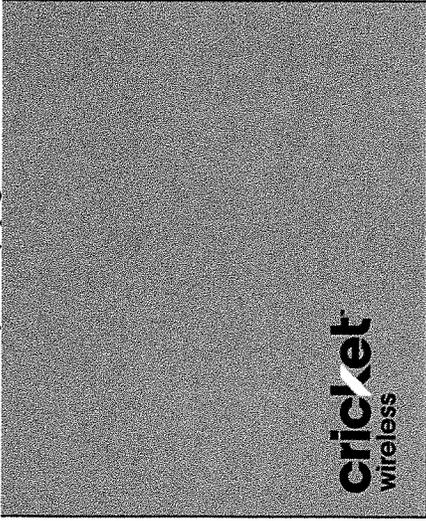
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10 Words related to nasty pig

- cochinadas
- dirt
- filth
- gay
- homosexual
- mess
- nasty
- orgy
- pig
- sexually loose





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- netflix and chill
- bae
- bye felicia
- on fleek
- senpai
- trap queen
- cunt
- pegging
- 1738
- ratchet

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- [Nasty Pasty](#)
- [nasty patch](#)
- [Nasty Pet](#)
- [Nasty Phat](#)
- [nasty pig](#)
- [nasty pinata](#)
- [Nasty Pirate](#)
- [Nasty Pistachio](#)
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Decl. DeFrancesco,  
Exh. C

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

In re: Serial No. 86/085,785  
Filing Date: October 8, 2013  
Mark: DIRTY PIG

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

**APPLICANT'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Applicant, JANOSKIANS LLC (“Applicant”), pursuant to Rule 2.120 of the Trademark Rules of Practice, and Rule 34 of the Federal Rules of Civil Procedure, hereby requests NASTY PIG, INC. (“Opposer”) to produce and permit Applicant to inspect and copy the following documents and things, at the offices of Baker and Rannells, PA, 575 Route 28, Suite 102, Raritan, NJ 08869, or at some other location mutually agreed upon, within (30) thirty days after receipt hereof, as identified according to following definitions and instructions.

**DEFINITIONS AND INSTRUCTIONS**

1. As used herein, the term “Opposer” means and refers to Opposer herein, each of its predecessors, subsidiaries, licensees, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on its behalf or under its control.

2. As used herein, the term "Applicant" means and shall refer to Applicant herein, each of its predecessors, subsidiaries, licensees, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on its behalf or under its control.

3. As used herein, the term "Person" as well as pronouns referring thereto shall include any business, legal or governmental entity or association, as well as natural persons.

4. As used herein, the term "Document" includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means, regardless of technology or form.

5. With respect to each Document to which an objection as to production is made, state:

- a. The nature of the Document;
- b. The date of the Document;
- c. The name of the person(s) to whom the Document was addressed;
- d. The name of the person(s) who received such Document;
- e. The name of the person(s) who prepared or sent the Document;
- f. The general subject matter of the Document; and
- g. The specific grounds upon which the objection is made.

6. As used herein, the term "date" means the exact date, if known, and, if not known, the approximate date.

7. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate a response to a request for production of a document or thing.

8. As used herein, the term “all” and “each” shall be construed as all and each to bring within the scope of the discovery request all documents and things that might otherwise be construed to be outside of its scope.

9. As used herein, the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all documents and things that might otherwise be construed to be outside of its scope.

10. “Refer,” “relate” or “relating,” “regarding,” “concerning,” “reflecting” or “containing” shall mean directly or indirectly, in whole or in part, referring to, relating to, connected with, commenting on, discussing, impacting upon, affecting, responding to, explaining, showing, indicating, describing, analyzing, reflecting, evidencing or constituting.

11. As used herein, the term “Applicant’s Mark” means and shall refer to the Applicant’s mark DIRTY PIG, Application Serial No. 86085785.

12. As used herein, “Applicant’s Goods” shall mean the goods identified in application Ser. No. 86085785

13. As used herein, the term “Opposer’s Mark” means and shall refer to NASTY PIG, the mark which is the subject of Registration No. 2800386 and pending application Ser. No.: 86114145.

14. As used herein, “Opposer’s Goods” shall mean the goods set forth in Registration No. 2800386 and pending application Ser. No.: 86114145.

15. As used herein, Variations of Opposer’s Mark shall mean any third party mark comprised in whole or in part of “NASTY” or “PIG” or any of the following:

SOW  
SWINE  
BOAR  
RAUNCHY  
PIG PEN  
BAD  
ANGRY  
PHILTHY  
TRAIFF  
CHEATING  
STINKY  
STY  
SLOPPY  
WILD

**REQUESTED DOCUMENTS AND THINGS**

1. All documents identified in response to Applicant's First Set of Interrogatories.
2. All documents concerning Opposer's investigation, selection, adoption, creation and development of Opposer's Mark.
3. All documents concerning the prosecution, maintenance and assignment of Opposer's Mark, the subject of Registration No. 2800386, and any goodwill associated therewith.

4. All documents tending to demonstrate Opposer's bona fide intent to use Opposer's Mark on the goods which are identified pending application Ser. No.: 86114145.

5. All documents that supports the claims made by Opposer in the Notice of Opposition.

6. All documents which evidence Opposer's continued use of Opposer's Mark on Opposer's Goods in the United States from Opposer's first use date through the present in the United States.

7. All documents evidencing Opposer's date of first actual use of Opposer's Mark on Opposer's Goods.

8. A specimen or photograph of each of Opposer's Goods, including the packaging for the same, that has been, is being, or will be sold or offered using Opposer Mark from Opposer's first use date through the present in the United States.

9. All United States Patent and Trademark Office trademark search citations and common law search citations discovered during Opposer's investigations into the availability of Opposer's Mark.

10. All invoices, contracts, agreements, purchase orders, and/or purchase receipts which reflect or evidence Opposer's offering of Opposer's Goods featuring Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

11. All sales reports which record, refer to, or relate to, Opposer's sales of Opposer's Goods under Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

12. All documents which record, refer to, or relate to Opposer's advertising and/or promotional expenditures for Opposer's Goods under Opposer's Mark from Opposer's first use date through the present in the United States. including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with such advertisements and/or promotions.

13. All promotional materials, media plans, marketing plans and advertisements evidencing Opposer's use of Opposer's Mark on or in association with Opposer's Goods from Opposer's first use date through the present in the United States.

14. All documents concerning business plans for Opposer's Goods associated with Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

15. All documents which refer to, or relate to, Opposer's knowledge and/or awareness of the use by Applicant of Applicant's Mark on or in connection with Applicant's Goods.

16. All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services in the United States.

17. All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services which have priority over Opposer's Mark in the United States.

18. All documents concerning any survey, test survey, informal survey, consumer questionnaire, consumer study questionnaire, market analysis, market research, investigation or other inquiry conducted by or on behalf of Opposer or of which Opposer

has become aware that refers or relates to Opposer, Opposer's Marks, Applicant or Applicant's Mark.

19. All documents concerning the geographic areas in which Opposer's Goods featuring Opposer's Marks are offered for sale or sold, or intended to be offered for sale or sold in the United States.

20. All agreements, licenses, contracts, consents to use, correspondence or other documents concerning or authorizing use of Opposer's Marks or Variations of Opposer's Marks by a third party.

21. All documents concerning or identifying the customers to whom Opposer's Goods are promoted or to whom Opposer intends to promote Opposer's Services.

22. All documents concerning purchasers or intended purchasers or users of Opposer's Goods offered in association with Opposer's Marks.

23. All documents concerning Opposer's total sales on an annual basis since 2010 of Opposer's Goods featuring Opposer's Marks in the United States.

24. All documents concerning Opposer's gross income derived on an annual basis since 2010 from the sale of Opposer's Goods featuring Opposer's Mark in the United States.

25. Copies of all newspaper, magazine, newsletters, trade journal and other articles concerning Opposer's Goods.

26. Copies of all advertisements, press releases, brochures, catalogs, newspapers, magazine and trade articles, and other promotional materials or drafts thereof containing or bearing Opposer's Marks or used or intended to be used to promote Opposer's Goods in the United States.

27. All documents referring to any trade shows in which Opposer's Goods featuring Opposer's Marks were advertised and promoted.

28. All documents concerning any demand letters, administrative proceeding, or civil actions in the U.S. involving Opposer's Marks and/or Variations of Opposer's Mark.

29. All documents in Opposer's possession or control that refer or relate to Applicant or Applicant's Mark.

30. Each document which concerns any experts who has been retained or specially employed by Opposer and any facts known or opinions held by any such experts regarding any aspect of this proceeding.

31. All statements, opinions and/or reports of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

32. For each expert whose opinion may be relied upon in this proceeding, produce each document which concerns: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid to the witness, and (vi) any cases which the witness has testified at trial or by deposition.

33. All documents concerning each instance in which any person has been in any way confused, mistaken or deceived as to the origin or sponsorship of any product or service which is sold or offered for sale by or on behalf of Opposer using Opposer's Marks.

34. All documents concerning any communications between Opposer, on the one hand, and any individual or entity, on the other hand, concerning Applicant, Applicant's Mark, and/or Opposer's Marks.

35. All documents that refer or relate to correspondence between Opposer and Applicant without limitation.

36. All documents that refer or relate to the management and protection of the Opposer's Marks, including watch notices received by Opposer.

37. All documents that refer or relate to efforts and investment in the growth of consumer recognition of the Opposer's Marks.

38. All documents that refer or relate to the typical consumers of goods offered under the Opposer's Mark.

39. All documents that refer or relate to the meaning of NASTY.

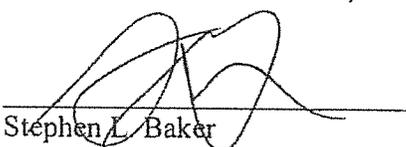
40. All documents that refer or relate to the meaning of DIRTY.

41. All documents, other than those produced to any of the foregoing requests, upon which Opposer intends to rely in connection with this opposition proceeding.

Dated: September 10, 2014

BAKER AND RANNELLS, PA

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

  
Stephen L. Baker  
John M. Rannells  
Attorneys for Applicant  
575 Route 28, Suite 102  
Raritan, New Jersey 08869  
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served on Opposer by first class mail this 10<sup>th</sup> day of September 2014:

Joel Kami Schmidt  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, NY 10036

  
\_\_\_\_\_  
Kelly Hnasko

Decl. DeFrancesco,  
Exh. 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  
For Mark: DIRTY PIG  
Published in the Official Gazette of March 4, 2014

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

**OPPOSER’S OBJECTIONS AND RESPONSES TO APPLICANT’S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120,  
Opposer Nasty Pig, Inc. (“Opposer”) hereby responds to Applicant Janoskians, LLC’s  
 (“Applicant”) First Request for Production of Documents as follows:

**GENERAL OBJECTIONS TO ALL REQUESTS**

A. Opposer objects to the definition of “Opposer” on the ground that it improperly encompasses Opposer’s attorneys.

B. Opposer objects to all requests to the extent they purport to require the production of documents that are subject to the attorney-client privilege, the attorney’s work product privilege or any other applicable privilege or immunity on the ground that such discovery is impermissible under Rule 26(b) of the Federal Rules of Civil Procedure. None of Opposer’s specific responses shall be construed to mean that Opposer intends to produce privileged

documents in the absence of an intentional waiver. Any inadvertent production of privileged documents shall not constitute a waiver of an otherwise valid claim of privilege, and any failure to assert a privilege as to certain documents shall not be deemed to constitute a waiver of the privilege as to any other documents so protected.

C. Opposer objects to all requests to the extent they seek disclosure of confidential or proprietary technical, commercial, financial/economic or business information or trade secrets. Such information or documents containing or comprising such information will only be provided in accordance with the terms of the Board's standard protective order applicable to this case.

D. Opposer objects to all requests insofar as they purport to require the production of documents outside its possession, custody or control.

E. Where Opposer's responses indicate that it will produce documents responsive to a particular request, such documents will only be produced to the extent there are in fact responsive documents in Opposer's possession, custody or control. Nothing in any of Opposer's responses to specific document requests shall be construed to make any representation or statement as to the existence of any documents responsive to any particular request.

F. Opposer states that it has made a good faith effort to respond to the requests, but reserves the right to produce any additional documents that might be located at any future time.

G. Without waiving these general objections and the additional objections set forth below in response to specific requests, Opposer responds, subject to these objections, as set forth below.

### **RESPONSES TO REQUESTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

All documents identified in response to Applicant's First Set of Interrogatories.

**RESPONSE TO REQUEST NO. 1:**

Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 2:**

All documents concerning Opposer's investigation, selection, adoption, creation and development of Opposer's Mark.

**RESPONSE TO REQUEST NO. 2:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed, to the extent such documents are available.

**REQUEST FOR PRODUCTION NO. 3:**

All documents concerning the prosecution, maintenance and assignment of Opposer's Mark, the subject of Registration No. 2800386, and any goodwill associated therewith.

**RESPONSE TO REQUEST NO. 3:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks documents which are publicly available. Opposer also objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege

or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 4:**

All documents tending to demonstrate Opposer's bona fide intent to use Opposer's Mark on the goods which are identified [in?] pending application Ser. No.: 86114145.

**RESPONSE TO REQUEST NO. 4:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request on the ground that only the Class 18 goods subject to Opposer's Application Ser. No. 86/114,145 were filed on an intent-to-use basis. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 5:**

All documents that supports the claims made by Opposer in the Notice of Opposition.

**RESPONSE TO REQUEST NO. 5:**

Opposer objects to this request to the extent it calls for a legal conclusion. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Opposer also objects to this request as premature since this proceeding is in its infancy and discovery is ongoing. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing

objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 6:**

All documents which evidence Opposer's continued use of Opposer's Mark on Opposer's Goods in the United States from Opposer's first use date through the present in the United States.

**RESPONSE TO REQUEST NO. 6:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed, to the extent such documents are available.

**REQUEST FOR PRODUCTION NO. 7:**

All documents evidencing Opposer's date of first actual use of Opposer's Mark on Opposer's Goods.

**RESPONSE TO REQUEST NO. 7:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed, to the extent such documents are available.

**REQUEST FOR PRODUCTION NO. 8:**

A specimen or photograph of each of Opposer's Goods, including the packaging for the same, that has been, is being, or will be sold or offered using Opposer Mark from Opposer's first use date through the present in the United States.

**RESPONSE TO REQUEST NO. 8:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 9:**

All United States Patent and Trademark Office trademark search citations and common law search citations discovered during Opposer's investigations into the availability of Opposer's Mark.

**RESPONSE TO REQUEST NO. 9:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Opposer further objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer states that there are no documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 10:**

All invoices, contracts, agreements, purchase orders, and/or purchase receipts which reflect or evidence Opposer's offering of Opposer's Goods featuring Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

**RESPONSE TO REQUEST NO. 10:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago.

**REQUEST FOR PRODUCTION NO. 11:**

All sales reports which record, refer to, or relate to, Opposer's sales of Opposer's Goods under Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

**RESPONSE TO REQUEST NO. 11:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual sales of its goods bearing the NASTY PIG mark from 2010 through the present.

**REQUEST FOR PRODUCTION NO. 12:**

All documents which record, refer to, or relate to Opposer's advertising and/or promotional expenditures for Opposer's Goods under Opposer's Mark from Opposer's first use date through the present in the United States, including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with such advertisements and/or promotions.

**RESPONSE TO REQUEST NO. 12:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual advertising and/or promotional expenditures incurred in connection with the sale of Opposer's goods bearing the NASTY PIG mark from 2010 through the present.

**REQUEST FOR PRODUCTION NO. 13:**

All promotional materials, media plans, marketing plans and advertisements evidencing Opposer's use of Opposer's Mark on or in association with Opposer's Goods from Opposer's first use date through the present in the United States.

**RESPONSE TO REQUEST NO. 13:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce representative documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 14:**

All documents concerning business plans for Opposer's Goods associated with Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

**RESPONSE TO REQUEST NO. 14:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 15:**

All documents which refer to, or relate to, Opposer's knowledge and/or awareness of the use by Applicant of Applicant's Mark on or in connection with Applicant's Goods.

**RESPONSE TO REQUEST NO. 15:**

Opposer objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 16:**

All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services in the United States.

**RESPONSE TO REQUEST NO. 16:**

Opposer objects to this request on the grounds that it seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer further objects to this request to the extent it

seeks production of documents that are publicly available and/or equally accessible to Applicant. Opposer also objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 17:**

All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services which have priority over Opposer's Mark in the United States.

**RESPONSE TO REQUEST NO. 17:**

Opposer objects to this request on the grounds that it seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Opposer also objects to this request as duplicative of Request No. 16. Opposer further objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer states that it has no documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 18:**

All documents concerning any survey, test survey, informal survey, consumer questionnaire, consumer study questionnaire, market analysis, market research, investigation or other inquiry conducted by or on behalf of Opposer or of which Opposer has become aware that refers or relates to Opposer, Opposer's Marks, Applicant or Applicant's Mark.

**RESPONSE TO REQUEST NO. 18:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request on the ground that it improperly seeks documents that are the subject of expert disclosures. Subject to and without waiving the foregoing objections, Opposer states that it has no documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 19:**

All documents concerning the geographic areas in which Opposer's Goods featuring Opposer's Marks are offered for sale or sold, or intended to be offered for sale or sold in the United States.

**RESPONSE TO REQUEST NO. 19:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 20:**

All agreements, licenses, contracts, consents to use, correspondence or other documents concerning or authorizing use of Opposer's Marks or Variations of Opposer's Marks by a third party.

**RESPONSE TO REQUEST NO. 20:**

Opposer objects to this request as overly broad and unduly burdensome. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or

any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 21:**

All documents concerning or identifying the customers to whom Opposer's Goods are promoted or to whom Opposer intends to promote Opposer's Services.

**RESPONSE TO REQUEST NO. 21:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 22:**

All documents concerning purchasers or intended purchasers or users of Opposer's Goods offered in association with Opposer's Marks.

**RESPONSE TO REQUEST NO. 22:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request No. 21. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 23:**

All documents concerning Opposer's total sales on an annual basis since 2010 of Opposer's Goods featuring Opposer's Marks in the United States.

**RESPONSE TO REQUEST NO. 23:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request No. 11. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual sales of its goods bearing the NASTY PIG mark from 2010 through the present.

**REQUEST FOR PRODUCTION NO. 24:**

All documents concerning Opposer's gross income derived on an annual basis since 2010 from the sale of Opposer's Goods featuring Opposer's Mark in the United States.

**RESPONSE TO REQUEST NO. 24:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request Nos. 11 and 23. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual sales of its goods bearing the NASTY PIG mark from 2010 through the present.

**REQUEST FOR PRODUCTION NO. 25:**

Copies of all newspaper, magazine, newsletters, trade journal and other articles concerning Opposer's Goods.

**RESPONSE TO REQUEST NO. 25:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce representative documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 26:**

Copies of all advertisements, press releases, brochures, catalogs, newspapers, magazine and trade articles, and other promotional materials or drafts thereof containing or bearing Opposer's Marks or used or intended to be used to promote Opposer's Goods in the United States.

**RESPONSE TO REQUEST NO. 26:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Opposer further objects to this request as duplicative of Request No. 25. Subject to and without waiving the foregoing objections, Opposer will produce representative documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 27:**

All documents referring to any trade shows in which Opposer's Goods featuring Opposer's Marks were advertised and promoted.

**RESPONSE TO REQUEST NO. 27:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer states that it has no documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 28:**

All documents concerning any demand letters, administrative proceeding, or civil actions in the U.S. involving Opposer's Marks and/or Variations of Opposer's Mark.

**RESPONSE TO REQUEST NO. 28:**

Opposer objects to this request as overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 29:**

All documents in Opposer's possession or control that refer or relate to Applicant or Applicant's Mark.

**RESPONSE TO REQUEST NO. 29:**

Opposer objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense

privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 30:**

Each document which concerns any experts who has been retained or specially employed by Opposer and any facts known or opinions held by any such experts regarding any aspect of this proceeding.

**RESPONSE TO REQUEST NO. 30:**

Opposer objects to this request on the ground that it is premature and improper under the Board's rules. *See, e.g.,* TBMP § 401.03; *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 U.S.P.Q.2d 1890, 1893 (T.T.A.B. 2011). Subject to and without waiving the foregoing objections, Opposer states that it has not made any determination as of this time as to the expert witnesses, if any, from whom it will elicit expert testimony. Opposer will provide disclosures regarding potential expert witnesses in accordance with Federal Rule 26 and the Board's rules governing expert disclosures.

**REQUEST FOR PRODUCTION NO. 31:**

All statements, opinions and/or reports of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

**RESPONSE TO REQUEST NO. 31:**

Opposer objects to this request on the ground that it is premature and improper under the Board's rules. *See, e.g.,* TBMP § 401.03; *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 U.S.P.Q.2d 1890, 1893 (T.T.A.B. 2011). Opposer further objects to this request to the extent it seeks documents and/or information protected from discovery under

Federal Rule 26. Subject to and without waiving the foregoing objections, Opposer states that it has not made any determination as of this time as to the expert witnesses, if any, from whom it will elicit expert testimony. Opposer will provide disclosures regarding potential expert witnesses in accordance with Federal Rule 26 and the Board's rules governing expert disclosures.

**REQUEST FOR PRODUCTION NO. 32:**

For each expert whose opinion may be relied upon in this proceeding, produce each document which concerns: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid to the witness, and (vi) any cases which the witness has testified at trial or by deposition.

**RESPONSE TO REQUEST NO. 32:**

Opposer objects to this request on the ground that it is premature and improper under the Board's rules. *See, e.g.,* TBMP § 401.03; *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 U.S.P.Q.2d 1890, 1893 (T.T.A.B. 2011). Subject to and without waiving the foregoing objections, Opposer states that it has not made any determination as of this time as to the expert witnesses, if any, from whom it will elicit expert testimony. Opposer will provide disclosures regarding potential expert witnesses in accordance with Federal Rule 26 and the Board's rules governing expert disclosures.

**REQUEST FOR PRODUCTION NO. 33:**

All documents concerning each instance in which any person has been in any way confused, mistaken or deceived as to the origin or sponsorship of any product or service which is sold or offered for sale by or on behalf of Opposer using Opposer's Marks.

**RESPONSE TO REQUEST NO. 33:**

Opposer objects to this request to the extent it calls for a legal conclusion. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 34:**

All documents concerning any communications between Opposer, on the one hand, and any individual or entity, on the other hand, concerning Applicant, Applicant's Mark, and/or Opposer's Marks.

**RESPONSE TO REQUEST NO. 34:**

Opposer objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer states that it has no non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 35:**

All documents that refer or relate to correspondence between Opposer and Applicant without limitation.

**RESPONSE TO REQUEST NO. 35:**

Opposer objects to this request on the grounds that it is vague and ambiguous. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense

privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 36:**

All documents that refer or relate to the management and protection of the Opposer's Marks, including watch notices received by Opposer.

**RESPONSE TO REQUEST NO. 36:**

Opposer objects to this request as overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 37:**

All documents that refer or relate to efforts and investment in the growth of consumer recognition of the Opposer's Marks.

**RESPONSE TO REQUEST NO. 37:**

Opposer objects to this request as overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as vague and ambiguous. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 38:**

All documents that refer or relate to the typical consumers of goods offered under the Opposer's Mark.

**RESPONSE TO REQUEST NO. 38:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request Nos. 21 and 22. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 39:**

All documents that refer or relate to the meaning of NASTY.

**RESPONSE TO REQUEST NO. 39:**

Opposer objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer also objects to this request as vague and ambiguous. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 40:**

All documents that refer or relate to the meaning of DIRTY.

**RESPONSE TO REQUEST NO. 40:**

Opposer objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer also objects to this request as vague and ambiguous. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

**REQUEST FOR PRODUCTION NO. 41:**

All documents, other than those produced to any of the foregoing requests, upon which Opposer intends to rely in connection with this opposition proceeding.

**RESPONSE TO REQUEST NO. 41:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request No. 5. Opposer also objects to this request on the ground that this proceeding is in its infancy and discovery is ongoing. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Opposer also objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

Dated: New York, New York  
November 14, 2014

Respectfully submitted,

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

By: Scott P. Ceresia

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 OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS 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  
November 14, 2014

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

Decl. DeFrancesco,  
Exh. E



JASON DEFRANCESCO, ESQ.  
575 ROUTE 28  
RARITAN, NJ 08869  
(908) 722-5640  
JLD@BR-TMLAW.COM

September 18, 2015

VIA E-MAIL ONLY:

Ceresia, Scott P. <SPC@cll.com>  
Schmidt, Joel <JKS@cll.com>  
Cowan Liebowitz & Latman PC  
1133 Avenue of the Americas  
New York, NY 10036

Re: Deficiency letter and **FRE 408 COMMUNICATION**  
Opposition No. 91217154; *Nasty Pig, Inc. v Janoskians, LLC.*

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Dear Scott,

This letter is to notify you of deficiencies in your discovery responses to Applicant's Interrogatory Nos. 1-20 and Request for Production Nos. 1-41.

INTERROGATORIES

In answering Nos. 1, 2, 6, 7, 8, 9, 10, 11, 15, 16, 17 and 18 you repeat that *Opposer will produce documents pursuant to Fed. R. Civ. P. 33(d)* and with exception to nos. 1, 2, 6 and 7 condition this on a *reasonable construction*. Seeing as you have not defined the construction, any reasonableness is rejected. Further, all answers are not responsive because you have not properly invoked Rule 33. See *No Fear, Inc. v. Rule*, 2000 TTAB LEXIS 217, 8-9 (Trademark Trial & App. Bd. Mar. 30, 2000)

A party responding to an interrogatory by producing business records [or, as in this case, by agreeing to produce them] must identify documents which the responding party knows to contain the responsive information, and may not merely agree to provide access to a voluminous collection of records which may contain the responsive information. See Baicker-Mckee, Janssen & Corr, Federal Civil Rules Handbook (1997) at 442-443. In addition, a party may not rely on the option to produce business records unless it can establish that providing written responses would impose a significant burden on the party. Further, even if the responding party can meet this test and can identify particular documents in which the inquiring party [\*9] will find its answers, the inquiring party must not be left with any greater burden than the responding party when searching through and inspecting the records. Often, this requirement will not be met, because the responding party will have greater familiarity with its own records and will generally have a lesser burden than the inquiring party when searching

through the relevant records. See, generally, in regard to these propositions, 8A Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2178 (2d ed. 1994). Reference also is made to the Board's thorough discussion of the issues involved in application of Fed. R.Civ. P. 33(d) in D.K. Jain d/b/a Luxor Pen Company v. Ramparts, Inc., 49 USPQ2d 1429 (TTAB 1998).

Please update *all* answers accordingly.

With specific regards to Interrogatory No. 5, you were asked to specify each Media. Please refer to the definition at paragraph no. 18 in the propounded interrogatories and provide a proper answer. (The notion that the interrogatory is not relevant is ignored.)

Regarding No. 12, Applicant requests you identify Watch Notices that reference your client's mark and variations, and identify actions taken by your client. The answer that the information is not relevant, unduly burdensome or privileged is far-fetched. The information is not overly broad or not relevant because this concerns your clients asserted mark, which your client has a duty to police, and if not, it loses right to do so. And, seeing as the other parties your client would have taken action on are adverse, there is no privilege. If you believe privilege exists, please provide a privilege log. If the request is unduly burdensome, please at least provide the number of actions your client has taken and we can ask the Board to decide if it is a burden.

Regarding No. 14, Applicant requests you identify individuals that participated in searches for Opposer's Mark. The answer that "there are no individuals responsive to this interrogatory as reasonably construed" is not responsive. Without explaining how you "construed" the interrogatory, it is denied that it was reasonable. If your client did not attend to any search then state so. Otherwise explain your construction.

Furthermore, you asserted privilege in response to Nos. 10, 12, 15, 16 and 17 but have not provided a privilege log. Kindly identify the documents subject to privilege.

#### PRODUCTION REQUESTS

In response to request Nos. 1-9, 13-22, 25-29, and 33-41 you stated that *Opposer will produce non-privileged documents responsive to this request as reasonably construed*. As previously noted above, without any explanation as to your construction, the suggestion that it is "reasonable" is without merit. Please explain how you have construed the request, and because you assert privilege, please identify those documents in a privilege log.

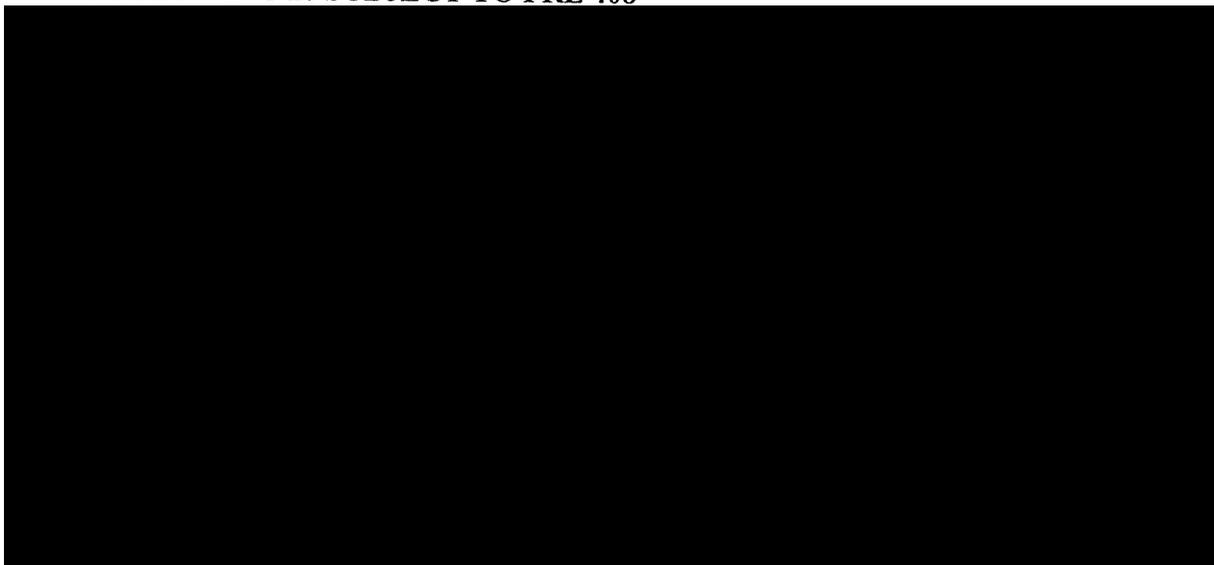
With specific regards to request no. 1, your response is incomplete and evasive as it uses the same answer that was used in the answer to interrogatory nos. 8, 9, 10, 11, 15, 16, 17 and 18. Furthermore, it is unknown how you have construed interrogatory nos. 1-20. Considering that this is your response, you are required to explain your construction of every interrogatory.

Regarding No. 2, you were asked for materials regarding the selection, adoption and creation of Opposer's mark NASTY PIG. It is not believed that documents have been provided. In particular, it has recently come to our attention that there is meaning in the term "nasty pig" that is rather specific to your client's market. Your client would have had knowledge of "nasty pig" twenty years ago, so its inability to use reasonable efforts to get responsive documents is not believable. This requested information is likewise responsive to request no. 5.

Regarding Nos. 8, 10, 11, 12, 13, 14, 25, 26, 27 you were asked to provide information that includes proof of your client's first use of goods under its mark. The statement that the Opposer first adopted its mark nearly 20 years ago is not responsive. Based on Reg. No. 2800386 your client alleges to have begun use as late as 2001. Reg. No. alleges use as late as 2012. If you are unable to provide proof of first use (that has remained continuous) for certain goods in your asserted marks, please state so and identify the mark and goods.

In light of the fact that your pretrial disclosures are due in less than a month, we would like to have these issues resolved well before then. While I generally think a phone call is appropriate, I would first ask that you respond in writing to first advise of your intentions, for example, if you agree to attend to the deficiencies as listed.

**THE FOLLOWING IS SUBJECT TO FRE 408**



Very truly yours,

A handwritten signature in cursive script, appearing to read "JDC", is written in black ink. The signature is fluid and somewhat stylized, with the letters "J", "D", and "C" being the most prominent.

Jason DeFrancesco

Decl. DeFrancesco,  
Exh. F



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Scott P. Ceresia  
(212) 790-9247  
[spc@cll.com](mailto:spc@cll.com)

October 6, 2015

**Via Email (JLD@br-tmlaw.com)**

Jason DeFrancesco, Esq.  
Baker and Rannells, P.A.  
575 Route 28  
Raritan, New Jersey 08869-1354

Re: DIRTY PIG (Opp. No. 91217154)

Dear Jason:

We write in response to your letter, dated September 18, 2015, regarding Opposer Nasty Pig, Inc.'s ("Opposer") responses to Applicant Janoskians LLC's ("Applicant") First Set of Interrogatories and First Set of Requests for Production. We also address separately Applicant's settlement offer made pursuant to Federal Rule of Evidence 408.

At the outset, we note that despite the parties' attempts to reach an agreement concerning testimony in this matter, we never received a response to our September 16<sup>th</sup> email on the subject. As stated in that email, please confirm whether you intend to take Applicant's testimony and, if so, whether you intend to do so by declaration. Because the trial periods are quickly approaching, please let us know this information by the close of business on **Thursday, October 8, 2015**.

With respect to your letter, as you are aware, we served Opposer's written discovery responses over ten months ago on November 14, 2014, and served Opposer's document production shortly thereafter on December 4, 2014. We thus were surprised to receive your letter in which you raise discovery-related issues for the very first time even though discovery in this matter has already closed and the trial periods are set to commence in just a few weeks. Such substantial and unexplained delay calls into question the sincerity of your objections. With good reason, the TBMP expressly instructs that any motion to compel discovery responses "should be filed *within a reasonable time* after the failure to respond to a request for discovery or after service of the response believed to be inadequate." TBMP § 523.03 (emphasis added). Waiting over ten months to raise these issues is far from a reasonable time.

On the merits, we find your objections to Opposer's discovery responses unfounded, particularly since many of the objections you raise apply with equal force to Applicant's

responses to Opposer's discovery requests. Nonetheless, as a measure of good faith and to avoid any unnecessary motion practice, we respond in detail to the issues raised in your letter.

### **Opposer's Responses to Applicant's Discovery Requests**

As a general matter, Applicant's patently overbroad and unduly burdensome requests seeking "all documents" effectively asked for every paper maintained by Opposer regarding Opposer's NASTY PIG mark which has been in use for 20 years. In a good-faith effort to respond to these requests, Opposer reasonably construed the requests in order to produce all documents that are material to this proceeding. Not only was this fully permissible, but Applicant responded to Opposer's requests in precisely the same way, namely, by also qualifying that it would produce only documents responsive to Opposer's requests "as reasonably construed," without any explanation as to how Applicant construed those requests. (*See* Applicant's responses to Opposer's Requests for Production Nos. 1-34.) To the extent Applicant believes that any specific documents are missing from Opposer's production, please identify such documents and we will take action to supplement our production where appropriate.

We find baseless your objection to Opposer's response to Interrogatory No. 5. The response specifically identifies the types of media used in the advertising and sale of Opposer's goods and Opposer has also produced documents showing examples of such media. Likewise, Opposer's response to Interrogatory No. 14 stating that there are no individuals responsive to that interrogatory is fully responsive to the interrogatory as posed.

With respect to Interrogatory No. 12, we propose amending our response to include reference to the instant opposition proceeding. We have no further non-privileged information responsive to this interrogatory. Any communications between our firm and Opposer regarding watch notices are privileged and protected from disclosure.

With respect to Opposer's responses to Interrogatories Nos. 10, 12, 15, 16 and 17 and Requests for Production Nos. 1, 3, 5, 15, 16, 20, 28, 29, and 33-36, Opposer objected to those discovery requests only "to the extent" they sought information or documents protected by the attorney-client privilege, work product doctrine or other applicable privilege or immunity. As you are well aware, Applicant asserted a virtually identical privilege objection in its responses to Opposer's discovery requests. (*See* Applicant's responses to Opposer's Requests for Production Nos. 1, 6, 9, 13, 19-22 and 24-33.) To confirm, we did not withhold any privileged documents responsive to Applicant's requests, apart from internal privileged communications between our client and our law firm regarding, among other things, registration of Opposer's NASTY PIG mark, enforcement of Opposer's NASTY PIG mark and the instant opposition proceeding. Although we believe that producing a privilege log would be unnecessary in these circumstances, we are willing to prepare a privilege log with bulk entries encompassing our communications with our client, provided that Applicant agrees to likewise produce a privilege log encompassing communications between your firm, Applicant and/or any related or affiliated entities including Fitumi LLC and Putnam Accessory Group, Inc.

**Cowan, Liebowitz & Latman, P.C.**

Jason DeFrancesco, Esq.

October 6, 2015

Page 3

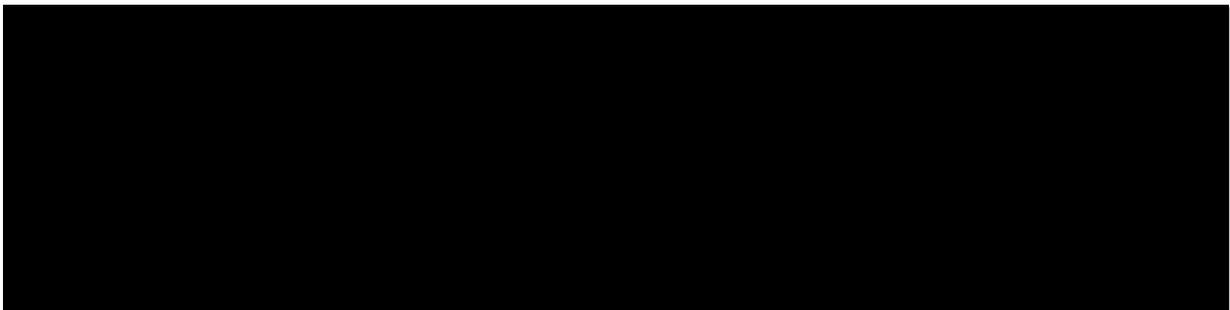
We have produced all documents in Opposer's possession, custody or control that are responsive to Request No. 2 regarding Opposer's selection, adoption and creation of Opposer's NASTY PIG mark. Simply because Applicant believes that the term "nasty pig" has a specific meaning does not mean that Opposer has any documents in its possession regarding that alleged meaning. Contrary to your contention, there is nothing in the Federal Rules requiring a party to take efforts to obtain responsive documents that are not currently in its possession.

For the record, Applicant's Requests Nos. 8 and 10-14 seek various advertising, marketing and sales documents dating back to Opposer's first use of Opposer's NASTY PIG mark, to which Opposer has produced responsive documents. By stating that such requests seek "proof of [Opposer's] first use of goods under its mark," you are conflating Opposer's obligation to produce responsive documents with the evidentiary matter of establishing priority. In any event, there can be no conceivable dispute that Opposer, who has been selling goods under Opposer's NASTY PIG mark since 1995, has priority over a company whose intent-to-use application to register its mark was filed less than two years ago on October 8, 2013. Opposer has provided more than sufficient documentation of historical use of Opposer's NASTY PIG mark and will also be supplementing the record with Opposer's testimony on this subject in due course.

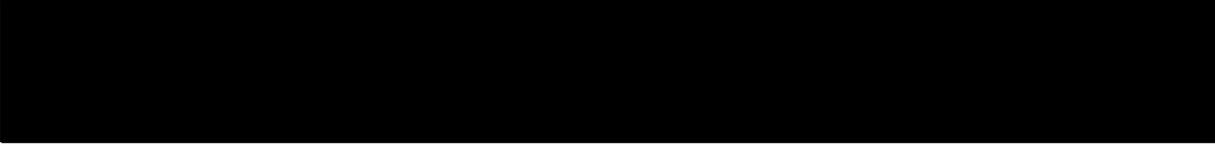
Finally, with respect to Opposer's citation to Federal Rule 33(d), given the relatively small universe of documents produced in this case, we find incredulous any claim that determining which documents were responsive to particular interrogatories would have been arduous or unduly burdensome for Applicant. Nonetheless, as a measure of good faith, we propose supplementing Opposer's interrogatory responses citing Federal Rule 33(d) with the specific Bates ranges of documents from which information responsive to those interrogatories may be derived.

Opposer is willing in good faith to supplement its discovery responses in accordance with the above, provided Applicant agrees that such supplementation will resolve all of the issues raised in its letter and Applicant complies with any reciprocal obligations referenced above.

**FOR SETTLEMENT PURPOSES ONLY – FRE 408**



Cowan, Liebowitz & Latman, P.C.  
Jason DeFrancesco, Esq.  
October 6, 2015  
Page 4



In the event you wish to discuss any of the issues addressed in this letter, please do not hesitate to contact me by telephone at (212) 790-9247 or by email at [spc@cll.com](mailto:spc@cll.com).

Sincerely,

/s/ Scott P. Ceresia

Scott P. Ceresia

cc (via email): Stephen L. Baker, Esq.  
Joel Karni Schmidt, Esq.  
Eric J. Shimanoff, Esq.

Decl. DeFrancesco,  
Exh. G

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

In re: Serial No. 86/085,785  
Filing Date: October 8, 2013  
Mark: DIRTY PIG

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

**APPLICANT'S FIRST SET OF  
INTERROGATORIES DIRECTED TO OPPOSER**

Applicant, JANOSKIANS LLC, ("Applicant"), pursuant to Rule 2.120 of the Trademark Rules of Practice, and Rule 33 of the Federal Rules of Civil Procedure, hereby requests NASTY PIG, INC. ("Opposer") answer separately and fully, in writing under oath, the following Interrogatories within thirty (30) days after service of this request.

**DEFINITIONS AND INSTRUCTIONS**

1. As used herein, the term "Opposer" means and refers to Opposer herein, each of its predecessors, subsidiaries, licensees, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on its behalf or under its control.
2. As used herein, the term "Applicant" means and shall refer to Applicant herein, each of its predecessors, subsidiaries, licensees, divisions, affiliates, directors,

officers, employees, agents and attorneys and each person acting on its behalf or under its control.

3. As used herein, the term "Person" as well as pronouns referring thereto shall include any business, legal or government entity or association, as well as natural persons.

4. As used herein, the term "identify" or the phrase "give the identity of" shall mean:

a. In the case of a natural person: (1) his or her full name; (2) his or her present or last known address and telephone number; (3) his or her present or last known employer or business affiliation and business telephone number; and (4) the title(s) or position(s) held at any time by such person with respect to such employer or business affiliation;

b. In the case of a corporation, business entity, or organization: (1) its full name; (2) the address of its principal place of business; (3) the identity of any and all of its officers, directors, and managing agents; and (4) if unincorporated, the nature of the entity or organization, i.e. sole proprietorship, partnership, etc.;

c. In the case of a document: (1) the author(s) of the document; (2) any and all persons who received such document (including copies); (3) the date of such document; and (4) the general subject matter of such document;

d. In the case of a product: (1) the generic name of the product; (2) the function of the product; and (3) the inclusive dates during which the product has been sold or offered for sale in the United States;

e. In the case of an instance or incident: (1) the identity of each person who participated in or who has knowledge of the instance or incident; (2) the circumstances surrounding the instance or incident; and (3) the date or the inclusive dates during which the instance or incident occurred.

5. As used herein, the term “document” includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means, regardless of technology or form.

6. As used herein, the term “date” means the exact date, if known, and, if not known, the approximate date.

7. With respect to each interrogatory to which an objection is made, state the specific grounds of the objection and answer any portion of the interrogatory which does not fall within the stated objection.

8. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate the answer to the interrogatory.

9. As used herein, the term “all” and “each” shall be construed as all and each to bring within the scope of the discovery request all responses that might be construed to be outside of its scope.

10. As used herein, the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of its scope.

11. As used herein, the term “Applicant’s Mark” means and shall refer to the Applicant’s mark DIRTY PIG, Application Serial No. 86085785.

12. As used herein, “Applicant’s Goods” shall mean the goods identified in application Ser. No. 86085785

13. As used herein, the term “Opposer’s Mark” means and shall refer to NASTY PIG, the mark which is the subject of Registration No. 2800386 and pending application Ser. No.: 86114145.

14. As used herein, “Opposer’s Goods” shall mean the goods set forth in Registration No. 2800386 and pending application Ser. No.: 86114145.

15. As used in the interrogatories below, “Identify” shall mean “identify and describe.”

16. As used in the interrogatories below, “Set Forth All Facts” shall “mean set forth all facts and circumstances and Identify all supporting documents.”

17. As used in the interrogatories below, “Advertising” shall mean “advertising, promotion(al).”

18. As used in the interrogatories below, “Media” shall mean “publication, periodical, newspaper, radio station, television station, Internet website, or other advertising medium.”

19. As used in the interrogatories below, “Agreement” shall mean “licenses, assignments or other agreements.”

## INTERROGATORIES

**Interrogatory No. 1:** Identify each product currently offered for sale under Opposer's Mark in the United States.

Response:

**Interrogatory No. 2:** For each product identified in response to Interrogatory No. 1 above, state the volume of sales in units (for example, the number of each of Opposer's Goods, for example, the actual number of "HARNESSES" and "BED SHEETS," etc.) annually since 2010.

Response:

**Interrogatory No. 3:** Identify fully the manner in which Opposer's Mark has been displayed on Opposer's Goods.

Response:

**Interrogatory No. 4:** Identify the persons who have been or will be principally responsible for the advertising and/or sale of Opposer's Goods featuring Opposer's Mark in the United States from 2010 through the present.

Response:

**Interrogatory No. 5:** Identify all advertising methods and types of media used in advertising and sale of Opposer's Goods under Opposer's Mark, specifying each Media used in connection with such advertising or promotion.

Response:

**Interrogatory No. 6:** For each product identified in response to Interrogatory No. 1 above, Identify on an annual basis, broken down by specific product, the amounts spent by Opposer in advertising Opposer's Mark in the United States from 2010 to the present.

Response:

**Interrogatory No. 7:** For each product identified in response to Interrogatory No. 1 above, Identify on an annual basis, broken down by specific product, gross revenues received by Opposer from the sale of Opposer's Goods under Opposer's Mark in the United States since 2010.

Response:

**Interrogatory No. 8:** Identify all Agreements concerning or relating to Opposer's Mark.

Response:

**Interrogatory No. 9:** Identify the range of prices at which Opposer's Goods are sold under Opposer's Mark.

Response:

**Interrogatory No. 10:** Identify all known instances of actual confusion between Opposer's Goods and Applicant's Goods.

Response:

**Interrogatory No. 11:** Identify all documents evidencing objections or actions taken by Opposer against any third party's use or registration of any mark that Opposer believed to be similar to Opposer's Mark.

Response:

**Interrogatory No. 12:** Identify all Watch Notices received by Opposer since 2010 that reference Opposer's Mark or variations of Opposer's Mark and Identify all actions taken by Opposer in response thereto.

Response:

**Interrogatory No. 13:** Identify all expert witnesses expected to be called to testify on Opposer's behalf in this proceeding, including the subject area on which each expert will testify, the substance of any facts and opinions to which each expert is expected to testify, a summary of the grounds for each opinion, and the facts showing the qualification of each expert.

Response:

**Interrogatory No. 14:** Identify each person who assisted, advised or otherwise participated in conducting trademark searches or any other search for the Opposer's Mark prior to Opposer's filing of its trademark applications.

Response:

**Interrogatory No. 15:** Set Forth All Facts upon which Opposer intends to rely regarding the allegations of Paragraph 1 of the Notice of Opposition.

Response:

**Interrogatory No. 16:** Set Forth All Facts upon which Opposer intends to rely regarding the allegations of Paragraph 5 of the Notice of Opposition.

Response:

**Interrogatory No. 17:** Set Forth All Facts upon which Opposer intends to rely regarding the allegations of Paragraph 10 of the Notice of Opposition.

Response:

**Interrogatory No. 18:** Set Forth All Facts that demonstrate Opposer bona fide intent to use the goods identified in pending application Ser. No.: 86114145.

Response:

**Interrogatory No. 19:** Identify all witnesses upon whose testimony Opposer intends to present and rely in proof of any issue in this proceeding.

Response:

**Interrogatory No. 20:** Identify each person who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories, specifying the information that he or she provided.

Response:

Dated: September 10, 2014

BAKER AND RANNELLS, PA

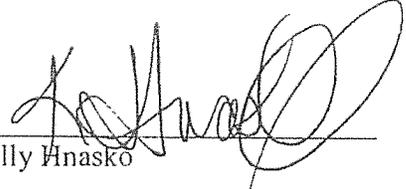
By: \_\_\_\_\_

  
Stephen L. Baker  
John M. Rannells  
Attorneys for Applicant  
575 Route 28, Suite 102  
Raritan, New Jersey 08869  
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served on Opposer by first class mail this 10<sup>th</sup> day of September 2014:

Joel Kami Schmidt  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, NY 10036

  
\_\_\_\_\_  
Kelly Hnasko

Decl. DeFrancesco,  
Exh. H

**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  
For Mark: DIRTY PIG  
Published in the Official Gazette of March 4, 2014

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

**OPPOSER’S OBJECTIONS AND RESPONSES TO APPLICANT’S  
FIRST SET OF INTERROGATORIES DIRECTED TO OPPOSER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120, Opposer Nasty Pig, Inc. (“Opposer”) hereby responds to Applicant Janoskians, LLC’s (“Applicant”) First Set of Interrogatories Directed to Opposer as follows:

**GENERAL OBJECTIONS TO ALL INTERROGATORIES**

- A. Opposer objects to the definition of “Opposer” to the extent it improperly encompasses Opposer’s attorneys.
- B. Opposer objects to all interrogatories to the extent they purport to require the disclosure of information that is subject to the attorney-client privilege, the attorney’s work product privilege or any other applicable privilege or immunity on the ground that such discovery is impermissible under Rule 26(b) of the Federal Rules of Civil Procedure. None of Opposer’s specific responses shall be construed to mean that Opposer intends to produce

privileged information or produce privileged documents in the absence of an intentional waiver. Any inadvertent disclosure of privileged information or production of privileged documents shall not constitute a waiver of an otherwise valid claim of privilege, and any failure to assert a privilege as to certain information or documents shall not be deemed to constitute a waiver of the privilege as to any other information or documents so protected.

C. Opposer objects to all interrogatories to the extent they seek disclosure of confidential or proprietary technical, commercial, financial/economic or business information or trade secrets. Such information or documents containing or comprising such information will only be provided in accordance with the terms of the Board's standard protective order applicable to this case.

D. Opposer objects to all interrogatories insofar as they purport to require the disclosure of information outside its possession, custody or control.

E. Opposer states that it has made a good faith effort to respond to the interrogatories, but reserves the right to produce any additional documents that might be located at any future time.

F. Without waiving these general objections and the additional objections set forth below in response to specific requests, Opposer responds, subject to these objections, as set forth below.

## **RESPONSES TO INTERROGATORIES**

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

Identify each product currently offered for sale under Opposer's Mark in the United States.

### **Response to Interrogatory No. 1:**

Opposer will produce documents, pursuant to Fed. R. Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 2:**

For each product identified in response to Interrogatory No. 1 above, state the volume of sales in units (for example, the number of each of Opposer's Goods, for example, the actual number of "HARNESSES" and "BED SHEETS," etc.) annually since 2010.

**Response to Interrogatory No. 2:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, pursuant to Fed. R. Civ. P. 33(d), Opposer will produce documents sufficient to show Opposer's annual unit sales of Opposer's goods bearing the NASTY PIG mark from 2010 through the present.

**Interrogatory No. 3:**

Identify fully the manner in which Opposer's Mark has been displayed on Opposer's Goods.

**Response to Interrogatory No. 3:**

Opposer objects to this request on the grounds that it is vague and ambiguous, overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Opposer states that Opposer's NASTY PIG mark has been displayed on the goods' hangtags, labels and packaging (*e.g.*, cardboard sleeves).

**Interrogatory No. 4:**

Identify the persons who have been or will be principally responsible for the advertising and/or sale of Opposer's Goods featuring Opposer's Mark in the United States from 2010 through the present.

**Response to Interrogatory No. 4:**

Opposer objects to this interrogatory on the grounds that it seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, in response to the interrogatory as reasonably construed, Opposer identifies David Lauterstein, CEO of Nasty Pig, Inc., as the individual principally responsible for the advertising and sale of Opposer's goods bearing Opposer's NASTY PIG mark.

**Interrogatory No. 5:**

Identify all advertising methods and types of media used in advertising and sale of Opposer's Goods under Opposer's Mark, specifying each Media used in connection with such advertising or promotion.

**Response to Interrogatory No. 5:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Opposer states that it advertises its goods bearing Opposer's NASTY PIG mark through various media, including, without limitation, online advertisements (*e.g.*, banner ads), its own website, print advertisements, outdoor phone booths, and television commercials.

**Interrogatory No. 6:**

For each product identified in response to Interrogatory No. 1 above, Identify on an annual basis, broken down by specific product, the amounts spent by Opposer in advertising Opposer's Mark in the United States from 2010 to the present.

**Response to Interrogatory No. 6:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, pursuant to Fed. R. Civ. P. 33(d), Opposer will produce documents sufficient to show Opposer's annual advertising and/or promotional expenditures incurred in connection with the sale of Opposer's goods bearing the NASTY PIG mark from 2010 through the present.

**Interrogatory No. 7:**

For each product identified in response to Interrogatory No. 1 above, Identify on an annual basis, broken down by specific product, gross revenues received by Opposer from the sale of Opposer's Goods under Opposer's Mark in the United States since 2010.

**Response to Interrogatory No. 7:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, pursuant to Fed. R. Civ. P. 33(d), Opposer will produce documents sufficient to show Opposer's annual dollar sales of Opposer's goods bearing the NASTY PIG mark from 2010 through the present.

**Interrogatory No. 8:**

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

**Response to Interrogatory No. 8:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Opposer will produce documents, pursuant to Fed. R. Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 9:**

Identify the range of prices at which Opposer's Goods are sold under Opposer's Mark.

**Response to Interrogatory No. 9:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Opposer will produce documents, pursuant to Fed. R. Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 10:**

Identify all known instances of actual confusion between Opposer's Goods and Applicant's Goods.

**Response to Interrogatory No. 10:**

Opposer objects to this request to the extent it calls for a legal conclusion. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer states that: (1) on November 6, 2014, Opposer received a phone call from Dyllan Smith from Tennessee looking for Applicant's DIRTY PIG merchandise;

(2) on approximately November 8, 2014, an Instagram user by the name of “bwfern” posted an image of Applicant’s DIRTY PIG logo alongside the hashtags “#nastypig #dirtypig”; and (3) on February 17, 2014, a Twitter user by the name of “Georgie” posted an image of Opposer’s website alongside the message, “Is this a joke? Nasty pig Ft. Dirty pig!” Further, pursuant to Fed. R. Civ. P. 33(d), Opposer will produce non-privileged document from which information responsive to this interrogatory as reasonably construed can be derived. Opposer reserves the right to supplement the response to this interrogatory as appropriate.

**Interrogatory No. 11:**

Identify all documents evidencing objections or actions taken by Opposer against any third party’s use or registration of any mark that Opposer believed to be similar to Opposer’s Mark.

**Response to Interrogatory No. 11:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Opposer will produce documents, pursuant to Fed. R. Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 12:**

Identify all Watch Notices received by Opposer since 2010 that reference Opposer’s Mark or variations of Opposer’s Mark and Identify all actions taken by Opposer in response thereto.

**Response to Interrogatory No. 12:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this interrogatory on the ground that it seeks information which is protected by the attorney-client privilege and/or attorney work product privilege.

**Interrogatory No. 13:**

Identify all expert witnesses expected to be called to testify on Opposer's behalf in this proceeding, including the subject area on which each expert will testify, the substance of any facts and opinions to which each expert is expected to testify, a summary of the grounds for each opinion, and the facts showing the qualification of each expert.

**Response to Interrogatory No. 13:**

Opposer objects to this interrogatory on the ground that it is premature and improper under the Board's rules. *See, e.g.,* TBMP § 401.03; *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 U.S.P.Q.2d 1890, 1893 (T.T.A.B. 2011). Subject to and without waiving those objections, Opposer states that it has not made any determination as of this time as to the expert witnesses, if any, from whom it will elicit expert testimony. Opposer will provide disclosures regarding potential expert witnesses in accordance with Federal Rule 26 and the Board's rules governing expert disclosures.

**Interrogatory No. 14:**

Identify each person who assisted, advised or otherwise participated in conducting trademark searches or any other search for the Opposer's Mark prior to Opposer's filing of its trademark applications.

**Response to Interrogatory No. 14:**

Opposer objects to this interrogatory on the grounds that it seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject

to and without waiving those objections, Opposer states that there are no individuals responsive to this interrogatory as reasonably construed.

**Interrogatory No. 15:**

Set forth all facts upon which Opposer intends to rely regarding the allegations of Paragraph 1 of the Notice of Opposition.

**Response to Interrogatory No. 15:**

Opposer objects to this interrogatory to the extent it calls for a legal conclusion. Opposer further objects to this interrogatory to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents, pursuant to Fed. R. Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 16:**

Set forth all facts upon which Opposer intends to rely regarding the allegations of Paragraph 5 of the Notice of Opposition.

**Response to Interrogatory No. 16:**

Opposer objects to this interrogatory to the extent it calls for a legal conclusion. Opposer further objects to this interrogatory to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents, pursuant to Fed. R.

Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 17:**

Set forth all facts upon which Opposer intends to rely regarding the allegations of Paragraph 10 of the Notice of Opposition.

**Response to Interrogatory No. 17:**

Opposer objects to this interrogatory to the extent it calls for a legal conclusion. Opposer further objects to this interrogatory to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents, pursuant to Fed. R. Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 18:**

Set forth all facts that demonstrate Opposer bona fide intent to use the goods identified in pending application Ser. No.: 86114145.

**Response to Interrogatory No. 18:**

Opposer objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this interrogatory on the ground that only the Class 18 goods subject to Opposer's Application Ser. No. 86/114,145 were filed on an intent-to-use basis. Subject to and without waiving those objections, Opposer will produce documents, pursuant to Fed. R. Civ. P. 33(d), from which information responsive to this interrogatory as reasonably construed can be derived.

**Interrogatory No. 19:**

Identify all witnesses upon whose testimony Opposer intends to present and rely in proof of any issue in this proceeding.

**Response to Interrogatory No. 19:**

Opposer objects to this interrogatory on the ground that it is premature and improper under the Board's rules. *See, e.g.*, TBMP § 414(7). Subject to and without waiving those objections, Opposer states that it has not made any determination as of this time as to what witnesses it intends to rely upon in this proceeding. Opposer will provide disclosures regarding the witnesses it intends to rely upon at trial in accordance with Federal Rule 26 and the Board's rules regarding pretrial disclosures.

**Interrogatory No. 20:**

Identify each person who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories, specifying the information that he or she provided.

**Response to Interrogatory No. 20:**

Opposer objects to this interrogatory on the grounds that it seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, in response to the interrogatory as reasonably construed, Opposer identifies David Lauterstein, CEO of Nasty Pig, Inc., as the individual who assisted in the preparation of the answers to the foregoing interrogatories.

Dated: New York, New York  
November 14, 2014

Respectfully submitted,

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

By: Scott P. Ceresia

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

VERIFICATION

On behalf of Opposer, David Lauterstein declares as follows:

I am CEO of Opposer Nasty Pig, Inc. ("Nasty Pig"); I am authorized to make this verification on behalf of Nasty Pig; I have read the foregoing **Opposer's Objections and Responses to Applicant's First Set Of Interrogatories Directed to Opposer** and know the responses set forth therein to be true and accurate to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and accurate.

Dated: New York, New York  
November 4, 2014

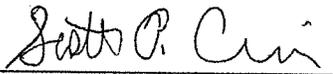


David Lauterstein

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES DIRECTED TO OPPOSER 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  
November 14, 2014

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