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

Proceeding	91217589
Party	Plaintiff Rhythm Holding Limited
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Submission	Other Motions/Papers
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Date	11/03/2015
Attachments	Supplement to Opposer's Opposition to Applicants Request for Reconsideration.PDF(652188 bytes)

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

RHYTHM HOLDING LIMITED, Opposer, v. J & N SALES, LLC, Applicant.	)	Opposition No. 91217589

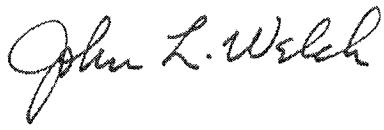
SUPPLEMENT TO OPPOSER'S OPPOSITION TO
APPLICANT'S REQUEST FOR RECONSIDERATION

In an effort to resolve this discovery dispute, on October 30, 2015, Opposer RHYTHM HOLDING LIMITED served upon Applicant counsel, OPPOSER'S REVISED RESPONSES TO APPLICANT INTERROGATORIES, which responses are signed by Opposer's Director. A copy thereof is attached as Exhibit 2 hereto.

The undersigned has also provided to Applicant's counsel a new link to production documents Nos. 2446-2891.

Opposer believes all discovery matters have been addressed and resolved, with the exception of Applicant's Interrogatory No. 7, which remains incomprehensible.

RHYTHM HOLDING LIMITED



John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
617-646-8000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Applicant this 3rd day of November, 2015, by mailing a copy thereof via first-class mail, postage pre-paid, to its attorney, James A. Power, Jr., Esq., Power Del Valle LLP, 233 West 72nd Street, New York, NY 10023.

John L. Welch

EXHIBIT 2

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

RHYTHM HOLDING LIMITED, Opposer, v. J & N SALES, LLC, Applicant.	)	Opposition No. 91217589

OPPOSER'S REVISED RESPONSES TO APPLICANT'S INTERROGATORIES

Opposer RHYTHM HOLDING LIMITED responds as follows to Applicant's Interrogatories. Opposer maintains its objection that the number of Applicant's interrogatories, including subparts, exceeds the limit of seventy-five set by Rule 2.120(d) of the Trademark Rules of Practice.

GENERAL OBJECTIONS

A. Opposer objects to these Interrogatories to the extent they seek information not relevant to the claims and issues raised in this opposition proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, and without limitation of the foregoing objection, Opposer objects to the revelation of information relating to jurisdictions other than the United States.

B. Opposer objects to the Interrogatories to the extent they seek to impose burdens or obligations upon Opposer that are broader than, inconsistent with, or not authorized under the Federal Rules of Civil Procedure, the Trademark

Rules of Practice, or any other applicable rules or laws.

C. Opposer objects to these Interrogatories to the extent that they are vague and ambiguous, overly broad, unduly burdensome, lacking in particularity, duplicative, cumulative, redundant, incomprehensible, and/or unreasonable, as well as to the extent that they are unduly burdensome because they impose a significant and unjustifiable expense and inconvenience on Opposer.

D. Opposer objects to the Interrogatories to the extent that they purport to require unreasonably costly and/or time-consuming measures to locate and produce responsive information. Opposer objects to any interpretation of the Interrogatories that would require Opposer to produce any information that cannot be located by means of a reasonably diligent, good faith review of its files.

E. Opposer objects to the Interrogatories to the extent they seek privileged information not subject to discovery, including information that constitutes or relates to attorney- client communications, attorney work product, or materials subject to the common interest privilege or joint defense privilege. In responding to the Interrogatories, Opposer will not undertake to provide information that is privileged or otherwise protected from discovery by law.

F. Opposer objects to the Interrogatories to the extent that they seek information that is not in Opposer's possession, custody or control or is equally available to and/or in the possession, custody or control of Applicant.

G. Opposer objects to the Interrogatories to the extent the information sought thereby is publicly available or obtainable by Applicant from other sources that can provide the requested information more conveniently, more easily

and/or less expensively than can Opposer.

H. Opposer objects to the Interrogatories to the extent that they are phrased in absolute terms, to the extent that such interrogatories are overly broad and burdensome. If a request asks for *all* facts on a particular subject, Opposer, in responding to such request, will undertake to supply such information as may be reasonably accumulated at the time of the response.

I. Opposer objects to the Interrogatories to the extent that they purport to impose an obligation to preserve and/or produce any information that was newly created or received after the receipt of the Interrogatories, because efforts to preserve and/or produce such documents or information would be unduly burdensome and require unreasonable expense.

J. Opposer objects to the Interrogatories to the extent that they contain inaccurate, incomplete or misleading descriptions of the facts, persons, relationships, and/or events underlying this proceeding Action. Opposer further object to the Interrogatories to the extent that they assume the existence of facts that did or do not exist or the occurrence of events that did not take place. Opposer further objects to the Interrogatories to the extent that they state, imply or assume any legal conclusion. Any response or provision of information in response to the Interrogatories is not intended to provide, and shall not constitute or be construed as providing, an admission that any factual or legal predicates stated in the Interrogatories are accurate.

K. Opposer objects to the Interrogatories to the extent they are duplicative (in whole or in part) of other Interrogatories and/or seek the same information.

RESERVATION OF RIGHTS

Opposer provides its Responses without waiver of, and subject to:

1. The reservation of all questions and/or objections as to competency, relevancy, materiality, privilege and admissibility of the responses hereto and the subject matter thereof as evidence for any purpose in any further proceedings herein (including the trial period in this proceeding) and in any other action or proceeding;

2. The right to object to the use of any such response, or the subject matter thereof, on any grounds in any further proceedings herein (including the trial period in this proceeding) and in any other action or proceeding;

3. The right to object on any ground at any time to a demand or request for further response to these or any other discovery request involving or relating to the subject matter of the items herein responded to;

4. The right at any time to revise, correct, add to, supplement or clarify any of the responses contained herein; and

5. Any applicable privilege, immunity, or protection, including but not limited to the attorney/client privilege and the work product exemption.

Each of the above General Objections and Reservation of Rights is by this reference incorporated fully in each individual response below, and each individual response is made subject to and without waiver of such General

Objections and Reservation of Rights.

RESPONSES

INTERROGATORY NO. 1:

Identify each person who participated in the consideration, deliberation, selection, adoption and/or approval by Opposer a word or phrase comprising the word "rhythm" as a trademark for the marketing and sale of wearing apparel, and identify each document concerning such participation and the nature and extent thereof.

RESPONSE NO. 1:

Opposer objects to this interrogatory on the ground that it seeks information that is neither relevant to the issues of this proceeding, nor likely to lead to the discovery of admissible evidence.

Further responding, Opposer states the following:

The application underlying pleaded Registration No. 2094048 for the mark RHYTHM was filed in 1995 by a company called Planet Earth Skateboards, Inc., claiming a first use date in 1994. The registration was subsequently assigned three times, in 2004, 2007, and in 2009. The second assignment identifies Jeff Larsen as Vice-President of Earth Products, Inc. The third assignment identifies Alan Charles Murray and Peter Scott Grey of Grey/Murray Partnership, and Hung Ho Wong (aka Maurice Wong) as Director of Rhythm Holding Limited. These assignment documents are publicly available in the USPTO assignment records. Opposer does not know who participated in the "consideration, deliberation, selection, adoption and/or approval" of the mark in or about 1994, and has no related documents.

Registration No. 3610417 for the mark RHYTHM issued from an application filed in 2006 by Earth Products, Inc. It has been twice assigned. The first assignment identifies Jeff Larsen as Vice-President of Earth Products, Inc. The second assignment identifies Peter Scott Grey and Jamahl S. Grey of Grey/Murray Partnership, and Hung Ho Wong as Director of Rhythm Holding Limited. These assignment documents are publicly available in the USPTO assignment records. Opposer does not know who participated in the "consideration, deliberation, selection, adoption and/or approval" of the mark in or about 2006, and has no related documents.

Registration No. 3884199 for the mark RHYTHM issued from an application filed in 2009 by Opposer, at the direction of Maurice Wong. Opposer has no documents related to the "consideration, deliberation, selection, adoption and/or approval" of the mark at this time.

Registration No. 3890579 for the mark RHYTHM LIVIN issued from an application filed in 2006 by R.G.I. Limited, and was assigned to Opposer in 2009. The assignment document identifies two individuals: Alan Charles Murray as Director of the assignor, and Hung Ho Wong as Director of the assignee. The assignment document is publicly available in the USPTO assignment records. Opposer does not know who participated in the "consideration, deliberation, selection, adoption and/or approval" of the mark, and has no related documents.

INTERROGATORY NO. 2:

Identify each document concerning consideration by Opposer of the use or

registration of any phrase comprising the word "rhythm" as a trademark for wearing apparel.

RESPONSE NO. 2:

Opposer purchased the mark RHYTHM from a predecessor-in-interest, as is reflected in the assignment records of the USPTO in connection with Registration No. 3,610,417. Consequently, the Opposer does not have the information sought by this interrogatory. In any event, Opposer objects to this interrogatory on the ground that it seeks information that is neither relevant to the issues of this proceeding, nor likely to lead to the discovery of admissible evidence.

Nonetheless, Opposer states the following: Opposer has no documents relating to consideration of any phrase comprising the word "rhythm."

INTERROGATORY NO. 3:

Identify each person who participated in the design, selection, placement, and/or content of advertisements, labels, packaging, social media or other uses by Opposer of a trademark comprised of the word "rhythm" in connection with the marketing, advertising, promotion or sale of wearing apparel, and identify each document concerning each subject.

RESPONSE NO. 3:

Opposer objects to this interrogatory on the ground that it seeks information that is neither relevant to the issues of this proceeding, nor likely to lead to the discovery of admissible evidence. Opposer further object to the identification of "all" documents on the ground that such request is overly-broad and burdensome. Further responding, and

without waiver of said objections, Opposer responds as follows: Josh Barrett and Eileen Hoffman.

INTERROGATORY NO. 4:

Identify each person who participated in, reviewed, directed, solicited or was aware of any search or opinion concerning Opposer's use or registration of a trademark comprising the word "rhythm" in connection with the marketing and sale of wearing apparel, and identify each document concerning such search or opinion.

RESPONSE NO. 4:

Opposer acquired the mark RHYTHM by assignment, and it has no knowledge regarding any searches performed by or opinions held by its predecessors-in-interest. Daniel Wordsworth may have been involved on behalf of the predecessors-in-interest. Subsequently, Maurice Wong and Eileen Hoffman were involved on behalf of Opposer. Also, see Interrogatory Response No. 1, above. Further responding, Opposer states that it has no such documents at this time.

INTERROGATORY NO. 5:

Identify and describe each garment or item of wearing apparel in connection with which Opposer has used a trademark comprising the word "rhythm" and, for each garment or item for each trademark, state the dates during which each garment or item was sold.

RESPONSE NO. 5:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome in seeking every document relating to each of the many items of apparel sold by Opposer under the pleaded marks. Further responding, and without waiver of said objections, see the documents produced to Applicant.

INTERROGATORY NO. 6:

Identify each store, web site, vendor or other retail establishment at or on which garments or items of wearing apparel originating with Opposer have been sold or offered for sale in connection with a trademark comprising the word "rhythm."

RESPONSE NO. 6:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome in seeking the identification of every customer of Opposer. Further responding, and without waiver of any of its objections, Opposer states: see the documents produced for identification of various customers of Opposer.

INTERROGATORY NO. 7:

Identify each document concerning, by demographics, behavior, lifestyle, interests, price point, income, geographic location, or other characteristic or category deemed by Opposer to affect purchasing behavior of consumers that purchase or that Opposer has intended or expected to purchase garments or items of wearing apparel originating with Opposer and sold in connection with a trademark comprising the word "rhythm."

RESPONSE NO. 7:

Opposer objects to this interrogatory on the ground that it is incomprehensible.

INTERROGATORY NO. 8:

State the value and volume of Opposer's annual sales of each garment or item of wearing apparel sold by Opposer in connection with a trademark comprising the word "rhythm," the identity of each customer to whom each value and volume of sale was made, and identify each document concerning such trade channels.

RESPONSE NO. 8:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, and without waiver of that objection, see the documents produced.

INTERROGATORY NO. 9:

State the suggested and actual retail price of each garment or item of wearing apparel sold or marketed by Opposer since January 1, 2014 in connection with a trademark comprising the word "rhythm," and identify each document concerning such prices.

RESPONSE NO. 9:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible

evidence. Further responding, and without waiver of that objection, see the documents produced.

INTERROGATORY NO. 10:

Identify the persons most knowledgeable regarding Opposer's first and subsequent awareness of Applicant's trademark RHYTHM IN BLUES or application to register that mark and identify each document concerning such awareness.

RESPONSE NO. 10:

Opposer objects to this interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence. Nonetheless, Opposer states the following: The person "most knowledgeable" as to Opposer's first and subsequent awareness is William Maguire. He became aware of the opposed application and the mark when he received the Trademark Watch Notice produced as Rhythm Production Document No. 2624. The documents filed in this proceeding reflect his subsequent and continuing awareness of the mark.

INTERROGATORY NO. 11:

Identify each incident of or statement, comment or inquiry concerning, confusion or a cross-reference in the trade or by a consumer between any use by another of a mark, designation or phrase comprising the word "rhythm" including, but not limited to, Applicant's RHYTHM IN BLUES trademark, and any trademark of Opposer comprising the word "rhythm" or product of Opposer marketed, advertised, labeled, or sold in

connection with such a mark, including any return to Opposer of a product not originating with Opposer, identify each person having knowledge of or who participated in, and each document concerning, each such matter.

RESPONSE NO. 11:

Opposer objects to this interrogatory on the ground that is compound, vague, and incomprehensible. To the extent the interrogatory is understood, Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, and without waiver of that objection, Opposer states that it is not aware of any incident of actual confusion vis-à-vis the opposed mark.

INTERROGATORY NO. 12:

Identify each person having knowledge of the events and circumstances under which Opposer has objected or considered objecting to the use or registration by another of a mark comprising the word "rhythm" and identify each document concerning each objection. The documents to be identified in response to this interrogatory include but are not limited to correspondence between Opposer or its counsel and the person or entity to whom the objection was directed or its counsel, internal e-mails, documents or notes of Opposer, pleadings, papers, discovery requests and responses in any legal proceeding and any correspondence therein, and any public or private comment.

RESPONSE NO. 12:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible

evidence. Further responding, and without waiver of that objection, see the documents produced.

INTERROGATORY NO. 13:

Identify each investigation, search, study, or analysis conducted by or on behalf of Opposer concerning its use or registration of a trademark comprising the word "rhythm" and identify each document concerning such matters.

RESPONSE NO. 13

Opposer objects to this interrogatory on the ground that it seeks information that is neither relevant to the issues of this proceeding, nor likely to lead to the discovery of admissible evidence. Further responding, and without waiver of any objection, Opposer states the following: None.

INTERROGATORY NO. 14:

Identify each investigation, search, study, or analysis conducted by or on behalf of Opposer concerning likelihood of confusion between a trademark used by Opposer comprising the word "rhythm" and the mark of another comprising the word 'rhythm" and identify each document concerning such matters.

RESPONSE NO. 14:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, and without waiver of that objection, see the documents produced.

INTERROGATORY NO. 15:

Identify each investigation, search, study, or analysis conducted by or on behalf of Opposer concerning use or registration by another of a trademark comprising the word "rhythm" and identify each document concerning such matters.

RESPONSE NO. 15:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, and without waiver of that objection, see the documents produced.

INTERROGATORY NO. 16:

Identify each person who participated in, reviewed, directed, or was familiar with Opposer's applications to register a trademark comprising the word "rhythm" and identify each document concerning such applications.

RESPONSE NO. 16:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, and without waiver of that objection, see the applications underlying the pleaded registrations for the identities of the attorneys who filed the applications. As to who reviewed the first, second, and fourth applications, Opposer has no knowledge at this time. As to the third, William Maguire and Maurice Wong of Rhythm Holding Limited. Additional individuals, including those affiliated with

Opposer's predecessors in interest, who may have been familiar with Opposer's applications to register a trademark comprising the word "rhythm" include Robert Murray, Peter Grey, Jamahl Grey, Daniel Wordsworth, and Eileen Hoffman. Opposer has no documents at this time, other than the documents already produced.

INTERROGATORY NO. 17:

Identify each person or entity to which Opposer has granted any right or permission to use a trademark of Opposer comprising the word "rhythm" and identify each document concerning such rights and permissions.

RESPONSE NO. 17:

Opposer objects to this interrogatory on the ground that it seeks information that is neither relevant to the issues of this proceeding, nor likely to lead to the discovery of admissible evidence. Further responding, and without waiver of any objection, Opposer states the following: None.

INTERROGATORY NO. 18:

Identify the media through which Opposer has advertised and promoted goods in connection with a trademark comprising the word "rhythm" and identify each document concerning the content and extent of such advertising and promotion.

RESPONSE NO. 18:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible

evidence. Further responding, and without waiver of that objection, see the documents produced.

INTERROGATORY NO. 19:

Identify each use or registration by another of a mark or trade designation comprising the word "rhythm" in connection with wearing apparel known to Opposer and identify each document concerning such use or registration.

RESPONSE NO. 19:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, and without waiver of that objection, see the documents produced, if any.

INTERROGATORY NO. 20:

Identify each trade show in which Opposer showed goods bearing a mark comprising the word "rhythm" and each document concerning the presentation of such goods.

RESPONSE NO. 20:

Rhythm has exhibited at Agenda Long Beach for the past 4 years each January and July – 8 shows total; Rhythm has exhibited at Surf Expo Florida for the past 4 years each January and September (except January 2015) – 7 shows total. Rhythm has also exhibited at 2-3 regional shows each year such as the Gather in San Diego. Opposer

objects to this interrogatory to the extent it calls for the identification of "each document" on the ground that this demand is overly broad and burdensome.

INTERROGATORY NO. 21:

Identify each person who participated in the preparation of, or supplied information for, Opposer's answers to these interrogatories and indicate the specific responses or portions thereof to which each person contributed.

RESPONSE NO. 21:

Opposer objects to this interrogatory on the ground that it is overly-broad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, and without waiver of that objection, Opposer states: Opposer's counsel and Mr. Barrett.

RHYTHM HOLDING LIMITED

By: MAURICE WONG
Title: DIRECTOR

As to objections:

John L. Welch

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
617-646-8000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Applicant this 30th day of October, 2015, by mailing a copy thereof via first-class mail, postage pre-paid, to James A. Power, Jr., Esq., Power Del Valle LLP, 233 West 72nd Street, New York, NY 10023.

John L. Welch

John L. Welch