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Filing date: **12/12/2014**

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

Proceeding	91217656
Party	Defendant Salt Armour, Inc.
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Submission	Other Motions/Papers
Filer's Name	Kraig S. Weiss, Esq.
Filer's e-mail	Notices@pkslegal.com
Signature	/s/ Kraig S. Weiss
Date	12/12/2014
Attachments	1st RFP to Opposer 12-12-14s.pdf(130259 bytes ) 1st Roggs to Opposer 12-12-14s.pdf(168159 bytes ) RFA to Opposer 12-12-14s.pdf(133912 bytes )

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

UNDER ARMOUR, INC.,

Opposition No.: 91217656

Opposer,

Application No.: 86187021

v.

Mark: SALT ARMOUR

Filing Date: February 6, 2014

SALT ARMOUR, INC.,

Application No.: 86262258

Applicant.

Mark: DEFENSE ARMOUR

Filing Date: April 26, 2014

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**APPLICANT'S FIRST REQUEST FOR PRODUCTION  
TO OPPOSER, UNDER ARMOUR, INC.**

Applicant, SALT ARMOUR, INC., through undersigned counsel and pursuant to Rule 1.350, Florida Rules of Civil Procedure, hereby requests that Opposer, UNDER ARMOUR, INC., produce for inspection and copying the following documents within the time specified by the Florida Rules of Civil Procedure:

**I. DEFINITIONS**

1. "Document" means any document in your custody, possession or control, including, but not limited to, any printed, written, recorded, taped, electronic, graphic, or other tangible matter from whatever source, however produced or reproduced, whether in draft or otherwise, whether sent or received or neither, including the original, all amendments and addenda and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, telegrams, telex communications, cables, notes, notations, papers, newsletters, memoranda, inter-office communications, releases, agreements, contracts, books, pamphlets, studies, minutes of meetings, recordings or other memorials of any type of personal or telephone conversations, meetings or conferences (including, but not limited to, telephone bills and long distance charge

slips), reports analyses, evaluations, estimates, projections, forecasts, receipts, statements, accounts, books of account, diaries, calendars, desk pads, appointment books, stenographer's notebooks, transcripts, ledgers, registers, worksheets, journals, statistical records, cost sheets, summaries, lists, tabulations, digests, cancelled or unconcealed checks or drafts, vouchers, charge slips, invoices, purchase orders, hotel charges, accountant's reports, financial statements, newspapers, periodical or magazine materials, and any material underlying, supporting or used in the preparation of any documents.

2. "Applicant" or "Salt Armour" means the Applicant, Salt Armour, and any employee, agent or attorney for Applicant and any other person acting for, or on behalf of Applicant, or under Applicant's authority or control.

3. "Opposer", "Under Armour", "you" or "your" means Opposer, Under Armour, Inc. and any agent or attorney for Opposer, and any other person acting for or on behalf of Opposer's authority and control.

**II. INSTRUCTIONS**

1. If you believe that any of the following discovery requests calls for information or documents subject to a claim of privilege, answer or produce so much as is not objected to, state that part of each discovery request as to which you raise objection and set forth the basis for your claim of privilege with respect to such information as you refuse to give, including a statement identifying the nature of the information withheld; for each document as to which you claim privilege, state the date and subject matter of the document, the name(s) of the person(s) who prepared the document and the name(s) of the person(s) for whom the document was intended.

2. If it is maintained that any document which is requested has been destroyed, set forth the contents of the document, the date of such destruction and the name of the person who authorized or directed such destruction.

3. If any of the documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder.

4. The time period for this document request shall be from five years prior to the filing of this lawsuit to the date of production, unless specifically stated below.

5. This request is a continuing one. If after producing documents, you become aware of any further documents responsive to this request, you are required to produce such additional documents.

**III. DOCUMENT REQUESTS**

1. Any and all documents relating to communication between you and Opposer.
2. Copies of any and all Applications for Registration of Trademark relating to the complaint.
3. All documents to which Applicant intends to rely in at trial or at any hearing connected with this matter.
4. All correspondence or documents sent to any third party relating to the Opposer's alleged violation of Applicant's Under Armour trademark.
5. Any and all expert reports procured by the Applicant.
6. Documents and business records that relate to the use, promotion and consumer records or Under Armour marks.
7. State and describe in detail all evidence including documents, affidavits and/or statements upon which you intend to rely, or submit at any hearing.
8. Any and all expert reports prepared relating to the instant litigation or documents that reflect or evidence in any way the opinion of all experts consulted or retained regarding the instant litigation.
9. Produce a copy of all documents, data compilations, and tangible things that are in the possession, custody or control of Applicants that may be used to support their claims or defenses.
10. Produce all Documents mentioning, discussing, or referencing: (a) this lawsuit; (b) the claims alleged by you in this lawsuit; (c) the articles that are at issue in this lawsuit; and/or (d) the statements at issue in this lawsuit.
11. Produce all Documents in your possession, custody, or control relating to, referring to or mentioning Salt Armour and Defense Armour.
12. Produce all Documents relating to, showing, and/or demonstrating any lost business or business opportunity you allege are a result of, caused by, and/or attributable to Salt Armour and Defense Armour.
13. Produce all Documents relating to any alleged trademark law violation you contend Salt Armour and Defense Armour committed.

*Respectfully submitted,*

SILVERBERG & WEISS, P.A.  
*Attorney for Applicant*  
1290 Weston Road, Suite 218  
Weston, Florida 33326  
Primary e-mail: [Notice@pkslegal.com](mailto:Notice@pkslegal.com)  
Secondary e-mail: [Secretary@pkslegal.com](mailto:Secretary@pkslegal.com)  
Tel: (954) 384-0998  
Fax: (954) 384-5390

By: /s/ Kraig S. Weiss  
Paul K. Silverberg, Esq.  
Fla. Bar No. 147877  
Kraig S. Weiss, Esq.  
Fla. Bar No. 676764

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Applicant's First Request for Production to Opposer, Under Armour, Inc., has been served on Douglas A. Rettew, Esq., by mailing a copy on December 12, 2014, via First Class Mail, postage prepaid to Douglas A. Rettew, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Avenue, N.W., Washington, D.C. 20001-4413, via fax to 202-408-4400 and email to [Doug.Rettew@finnegan.com](mailto:Doug.Rettew@finnegan.com) and [joyce.delaney@finnegan.com](mailto:joyce.delaney@finnegan.com).

By: /s/ Kraig S. Weiss  
Kraig S. Weiss, Esq.

Date: December 12, 2014

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

UNDER ARMOUR, INC.,

Opposition No.: 91217656

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Applicant.

Mark: DEFENSE ARMOUR

Filing Date: April 26, 2014

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**FIRST SET OF INTERROGATORIES TO OPPOSER**

The Applicant, SALT ARMOUR, INC., by and through their undersigned counsel and pursuant to Rule 1.340, Florida Rules of Civil Procedure, hereby propounds its First Set of Interrogatories to Opposer, UNDER ARMOUR, INC., to be answered under oath in accordance with the attached definitions.

THE FOLLOWING INTERROGATORIES are to be answered by the Opposer separately and under oath within the time permitted by law. The requested information must be provided regardless of whether it is possessed by the Opposer personally or by agents, employees, representatives or persons acting on behalf of the Opposer. If you (Opposer) or anyone acting on your behalf should discover any new information or should change a position, you are obligated to supplement your answers within the time permitted by law.

*Respectfully submitted,*

SILVERBERG & WEISS, P.A.

*Attorney for Applicant*

1290 Weston Road, Suite 218

Weston, Florida 33326

Primary e-mail: [Notice@pkslegal.com](mailto:Notice@pkslegal.com)

Tel: (954) 384-0998

Fax: (954) 384-5390

By: /s/ Kraig S. Weiss

Paul K. Silverberg, Esq.

Fla. Bar No. 147877

Kraig S. Weiss, Esq.

Fla. Bar No. 676764

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I hereby certify that a true and correct copy of the foregoing Applicant's First Interrogatories to Opposer, Under Armour, Inc., has been served on Douglas A. Rettew, Esq., by mailing a copy on December 12, 2014, via First Class Mail, postage prepaid to Douglas A. Rettew, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Avenue, N.W., Washington, D.C. 20001-4413, via fax to 202-408-4400 and email to [Doug.Rettew@finnegan.com](mailto:Doug.Rettew@finnegan.com) and [joyce.delaney@finnegan.com](mailto:joyce.delaney@finnegan.com).

By: /s/ Kraig S. Weiss  
Kraig S. Weiss, Esq.

Date: December 12, 2014

## I. DEFINITIONS

1. “Document” means any document in your custody, possession or control, including, but not limited to, any printed, written, recorded, taped, electronic, graphic, or other tangible matter from whatever source, however produced or reproduced, whether in draft or otherwise, whether sent or received or neither, including the original, all amendments and addenda and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, telegrams, telex communications, cables, notes, notations, papers, newsletters, memoranda, inter-office communications, releases, agreements, contracts, books, pamphlets, studies, minutes of meetings, recordings or other memorials of any type of personal or telephone conversations, meetings or conferences (including, but not limited to, telephone bills and long distance charge slips), reports analyses, evaluations, estimates, projections, forecasts, receipts, statements, accounts, books of account, diaries, calendars, desk pads, appointment books, stenographer’s notebooks, transcripts, ledgers, registers, worksheets, journals, statistical records, cost sheets, summaries, lists, tabulations, digests, cancelled or unconcealed checks or drafts, vouchers, charge slips, invoices, purchase orders, hotel charges, accountant’s reports, financial statements, newspapers, periodical or magazine materials, and any material underlying, supporting or used in the preparation of any documents.

2. “Opposer”, means UNDER ARMOUR, INC., and any representative, assignor, assignee, agent, employee, officer, director or attorney for Opposer and any other person acting for, or on behalf of Opposer, or under Opposer’s authority or control.

3. “Applicant”, “you” or “your” means SALT ARMOUR, INC., and any representative, agent or attorney for Applicant, and any other person acting for, or on behalf of Applicant or under Applicant’s authority or control.

4. “Relating to” means concerning, respecting, referring to, summarizing, digesting, embodying, reflecting, establishing, tending to establish, delegating from, tending not to establish, evidencing, not evidencing, comprising, connected with, commenting on, responding to, disagreeing with, showing, describing, analyzing, representing, constituting, constituting, or including.

5. “Communication” means any statement, contact, discussion, spoken or written words or exchange between any two or more person or entities, to include all documents reflecting any exchange, telephone conversations or face-to-face conversations, meetings or conferences.

## II. INSTRUCTIONS

7. Please provide separate answers to all the interrogatories

8. With respect to those documents or communications to which you may claim privilege, attorneys' work product, or trial preparation materials, you are requested to identify each such document or communication, in writing, on or before the due date of the answers to the interrogatories herein, together with the following information: the nature or description, date, subject matter and author of the document or communication, as well as the identity of all persons to whom the document or communication was directed, addressed or received, and the interrogatory to which the document or communication corresponds. For each such document or communication you are further required to state the basis for your claim of privilege, attorneys' work-product, or trial preparation materials.

9. If you assert that any document that is requested has been destroyed or lost, set forth in writing the contents of the document, the date the document was destroyed or lost and the name of the person who authorized or directed the destruction of the document or was last in possession of the document.

10. If you cannot respond to any of the interrogatories in full, answer to the extent possible, and specify in writing the reasons for your inability to provide a complete answer to the interrogatory.

### **III. INTERROGATORIES**

1. State the name, address, and telephone number of each person who supplied the information used in answering these interrogatories, and, if applicable, each person's official position or relationship with the parties to whom the interrogatories are directed.

2. Please identify all persons, by name, title, entity name, address and telephone number, who have knowledge of the claims, counterclaims, allegations, events or transactions that are the subject of this action, including a detailed description of their particular knowledge and basis for such knowledge and the relationship or affiliation each person has with you.

3. Please state with particularity how the applicant has utilized the proposed marks, Salt Armour and Defense Armour, in a manner that is likely to cause confusion among customers, or potential customers of Under Armour?

4. Please state with particularity, the name, address, and phone numbers of any individual, or individuals, who have expressed confusion between the marks Salt Armour/Defense Armour and Under Armour.

5. Describe in detail the circumstances through which you first became aware of Salt Armour and Defense Armour and its use of the Salt Armour and Defense Armour mark.

6. Identify every product and service in connection with which you have used or are using the Under Armour mark.

7. For each product and service identified in Interrogatory Number 6, identify the person or persons most knowledgeable about each product or service.

8. For each product and service identified in Interrogatory Number 6, state the facts that support the exact date, upon which you intend to rely, of first use of the Under Armour mark to identify that product or service.

9. For each product and service identified in Interrogatory Number 6, describe the target markets and characteristics of the targeted consumers.

10. For each product and service identified in Interrogatory Number 6, identify your major competitors and their competing products and services.

11. For each product and service identified in Interrogatory Number 6, identify the geographic area in which the product or service is offered.

12. Describe with specificity any studies, tests, ratings, or surveys related to consumer recognition of the Under Armour mark.

13. Describe in detail each incident, known to you, of actual confusion between any of your products and services and the Under Armour mark, and the products and services offered by Salt Armour and Defense Armour and its proposed mark. For each incident, identify the persons with knowledge thereof.

14. Identify any communications received by you that were addressed to or intended for Salt Armour and Defense Armour.

15. Identify and describe any agreements in which you have licensed Under Armour mark for use by any other party.

16. Identify any steps you have taken to exercise quality control in connection with the licenses identified in your response to Interrogatory Number 6.

17. Identify each expert witness that you intent to call in this proceeding and the subject matter about which they are expected to testify.

18. Describe in detail any plans for future expansion of your use of the Under Armour mark to products and services in connection with which the mark is not already in use.

19. Identify all documents supporting all of your allegation in Paragraph 18 of the Consolidated Notice of Opposition. (Paragraph 18 states: “As a result of its distinctive nature, and thus inherent strength; widespread advertising, publicity, promotion, and sales; and longstanding and extensive use and recognition, the UNDER ARMOUR mark has been well known and famous for years.)

20. Identify all documents supporting every allegation made in Paragraph 27 of the Notice of Opposition. (Paragraph 27 states: “Applicant’s SALT ARMOUR and DEFENSE ARMOUR makes so resemble Under Armour’s prior used, filed, and/or registered ARMOUR Marks, as to be likely, when applied to Applicant’s goods, to cause confusion, to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. §1052(d).)

21. Identify all documents supporting every allegation made in Paragraph 31 of the Notice of Opposition. (Paragraph 31 states: “Applicant’s SALT ARMOUR and DEFENSE ARMOUR marks so resemble Under Armour’s famous UNDER ARMOUR mark that they are likely to dilute the distinctive quality of Under Armour’s UNDER ARMOUR mark under Section 43(c) of the Lanham Act, as amended 15 U.S.C. §1125(c).)

22. Identify all facts, as well as all documents supporting these facts, supporting your contentions regarding the fame, secondary meaning and/or strength of the Under Armour mark.

23. Describe in detail all efforts you have made to enforce against third parties, other than Salt Armour and Defense Armour, the rights you claim in the Under Armour mark.

24. Describe in detail, for every response given in Interrogatory 20, how many have resulted in the filing of an Opposition, and the outcome of each of those Opposition litigation.

25. Describe in detail all investigations made on behalf of Under Armour prior to filing of the Opposition regarding whether any claim of Under Armour has been infringed by Salt Armour and Defense Armour, including naming each individual involved in the investigation, the person to whom the reports were made, the person or persons involved in the approval of the Opposition, and all conclusions reached by the investigations, and all documents to or describing such investigations.

26. Describe in detail any and all information you have gathered that states that the word "Armour" continues to be an original phrase in the marketplace to which the consumer can be confused.

The attached Interrogatories have been answered by me and are true and correct to the best of my knowledge.

Dated at \_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of January, 2015

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

STATE OF FLORIDA )

COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_ as identification and pursuant to F.S. §117.05(13)(A) who, after being first duly sworn, stated that he/she has answered all of the interrogatories fully and to the best of his/her knowledge, information and belief.

SWORN TO and subscribed before me this \_\_\_\_\_ day of January, 2015.

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

Notary Public  
My Commission Expires:  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Mark: DEFENSE ARMOUR

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**REQUEST FOR ADMISSIONS ON OPPOSER, UNDER ARMOUR, INC.**

Applicant, SALT ARMOUR, INC., ("Salt Armour"), by and through undersigned counsel and in accordance with Rule 1.370, Florida Rule of Civil Procedure, hereby propounds the following Request for Admissions to Opposer, UNDER ARMOUR, INC. ("Under Armour").

1. Admit or deny that Under Armour 's CEO was Kevin Plank.
  
2. Admit or deny that Kevin Plank, CEO of Under Armour, has stated, under oath, that the word "Armor/ Armour" in statements will not cause confusion in in the marketplace.
  
3. Admit or deny that Under Armour has entered into a "co-existence" Agreement with other entities utilizing the word "Armor/ Armour" including Liquid Armour.
  
4. Amit or deny that Under Armour does no know one instance of customer confusion between the mark "Under Armour" and Salt Armour."

*Respectfully submitted,*

SILVERBERG & WEISS, P.A.  
*Attorney for Applicant*  
1290 Weston Road, Suite 218  
Weston, Florida 33326  
Primary e-mail: [Notice@pkslegal.com](mailto:Notice@pkslegal.com)  
Tel: (954) 384-0998  
Fax: (954) 384-5390

By: /s/ Kraig S. Weiss  
Paul K. Silverberg, Esq.  
Fla. Bar No. 147877  
Kraig S. Weiss, Esq.  
Fla. Bar No. 676764

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Applicant's First Request for Admissions to Opposer, Under Armour, Inc., has been served on Douglas A. Rettew, Esq., by mailing a copy on December 12, 2014, via First Class Mail, postage prepaid to Douglas A. Rettew, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Avenue, N.W., Washington, D.C. 20001-4413, via fax to 202-408-4400 and email to [Doug.Rettew@finnegan.com](mailto:Doug.Rettew@finnegan.com) and [joyce.delaney@finnegan.com](mailto:joyce.delaney@finnegan.com).

By: /s/ Kraig S. Weiss  
Kraig S. Weiss, Esq.

Date: December 12, 2014