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

Proceeding	91219179
Party	Defendant United Yacht Transport LLC dba United Yacht Transport
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Submission	Motion to Compel Discovery
Filer's Name	Bryan D. Hull
Filer's e-mail	bhull@bushross.com
Signature	/s/ Bryan D. Hull
Date	11/04/2015
Attachments	Motion_to_compel_(w_o_exhibits).PDF(122041 bytes ) Exhibit 1 - Applicant's second request for production.PDF(98875 bytes ) Exhibit 2 - Opposer's Response to Second Request for Production.pdf(44906 bytes ) Exhibit 3 - Applicant's first request for production pdf.PDF(104184 bytes ) Exhibit 4 - Opposer's Response to First Request for Production.pdf(60043 bytes ) Exhibit 5 - Sevenstar Subpoena.pdf(683265 bytes ) Exhibit 6 - Opposer and Sevenstar Objections and Responses to subpoena to Sevenstar Yacht Transport USA .pdf(28049 bytes ) Exhibit 7 - Subpoena to Clemens_van_der_Werf.pdf(729683 bytes ) Exhibit 8 - Van Der Werf Objs and Responses to subpoena.pdf(1380411 bytes )

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

**SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,**

**Opposer,**

**vs.**

**Opposition No. 91219179  
Serial No. 86031633**

**UNITED YACHT TRANSPORT LLC,**

**Applicant.**

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**MOTION TO COMPEL**

Applicant, United Yacht Transport LLC (“**Applicant**” or “**United**”), moves pursuant to 37 C.F.R. § 2.120(e) for entry of an order (1) compelling Opposer, Spliethoff's Bevrachtingskantoor B.V. (“**Opposer**” or “**Spliethoff**”), to comply with Applicant's Second Request for Production served July 22, 2015, (2) declaring that documents requested from Spliethoff's subsidiary, Sevenstar Yacht Transport USA Agencies, LLC, are relevant to this action and must be produced, and (3) declaring that documents requested from Clemens Van der Werf, the former CEO of Spliethoff's predecessor, Dockwise Yacht Transport LLC, are relevant to this action and, in any event, must be produced for failure to raise a timely objection.

**Background**

United has applied to register the mark “United Yacht Transport” for “Transport of Yachts by Boat” in International Class 039. Spliethoff has opposed registration, purporting to hold superior rights to the mark. Spliethoff traces its claimed rights to the company Dockwise Shipping B.V. which held a federal registration for the mark “United Yacht Transport,” No. 2405244, that was cancelled in 2007.

Dockwise Shipping B.V. (and its predecessor Dockwise N.V.) previously used the United Yacht Transport mark through an affiliate, United Yacht Transport (USA), Inc. However, United Yacht Transport (USA), Inc. changed its name to Dockwise Yacht Transport (USA), Inc. in 2000, and several years later, became Dockwise Yacht Transport LLC (collectively, “**Dockwise**”). Following the name change, Dockwise began doing all business under the name Dockwise Yacht Transport, displayed the Dockwise Yacht Transport mark in all of its business activities, and obtained a federal registration for the mark “Dockwise Yacht Transport.”

Meanwhile, Dockwise ceased all meaningful commercial use of the United Yacht Transport mark. On August 25, 2007, the United States Patent and Trademark Office cancelled the registration of the United Yacht Transport mark. Since 2000, Dockwise failed to make bona fide use of the mark, engaging only in exceedingly limited use outside the ordinary course of business.

In 2011, Dockwise’s parent company entered into negotiations to sell Dockwise to a group led by Dockwise’s CEO, Clemens Van der Werf. Van der Werf’s group planned to call the new company “United Yacht Transport.” Even before his group signed a letter of intent, Van der Werf personally registered the domain name [unitedyachttransport.com](http://unitedyachttransport.com). After entering into a letter of intent to acquire Dockwise, Van der Werf created United Yacht Transport stationary and marketing materials and had “United Yacht Transport” painted on the side of certain vessels that his group would acquire in the transaction.

Ultimately, the transaction failed, and Dockwise terminated Van der Werf. United has been informed and believes that Van der Werf was terminated for, among other things, attempting to change the Dockwise Yacht Transport branding before the transaction closed, and using Dockwise funds in the rebranding, rather than funds from his new group. The stationary

and marketing materials bearing the United Yacht Transport name were never used, and eventually, “United Yacht Transport” was removed from the sides of the vessels, not having been needed or used for the new company.

United applied to register the United Yacht Transport mark on August 7, 2013. Shortly thereafter, Dockwise engaged in what appears to be an extensive smear campaign associated with the United Yacht Transport name. Among other things, United determined that Dockwise posted statements on the Internet and sent several emails to third parties (including existing and potential customers and vendors) which denigrated the United Yacht Transport name and affirmatively distanced Dockwise from the United Yacht Transport mark. The statements even went so far as to associate the United Yacht Transport name with a criminal enterprise. After one internet posting by Dockwise, a viewer posted the comment, “Thanks Cat for the heads up! I know where I will NOT be sending my clients.”

Notwithstanding Dockwise’s attempt to place the United Yacht Transport name in a negative light, in late August or early September of 2013, Dockwise altered its website and changed its name to United Yacht Transport on several webpages. Dockwise even altered “customer testimonials” to change the company’s name from Dockwise to United Yacht Transport. But shortly thereafter, Dockwise changed the webpages again, altering its name back to Dockwise.

On October 15, 2013, Spliethoff acquired Dockwise’s assets. Spliethoff now offers yacht transportation services through its subsidiary, Sevenstar Yacht Transport USA Agencies, LLC (“**Sevenstar**”), under the Sevenstar name and the fictitious name DYT Yacht Transport (“**DYT**”).<sup>1</sup> After the acquisition, many former Dockwise employees began to work for

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<sup>1</sup> On information and belief, the parent company, Spliethoff, does not ship any yachts. All yacht transportation services are provided by Sevenstar/DYT, which is Spliethoff’s yacht transportation division.

Sevenstar/DYT. Sevenstar/DYT continued to smear the United Yacht Transport mark through Internet postings and defamatory emails to third parties, in a consistent attack on any goodwill associated with the United Yacht Transport mark. Unsurprisingly, the defamatory statements led to a separate lawsuit between the parties, which is pending in Broward County, Florida.

On November 4, 2014, Spliethoff commenced this proceeding in opposition to United's application to register the United Yacht Transport mark. United filed an answer, raising abandonment as its primary defense. To support its defense, United served several rounds of written discovery.

**A. The second request for production**

United served a second request for production on Spliethoff, a copy of which is attached hereto as **Exhibit 1**. Among other documents, United requested:

10. All emails, correspondence and other documents between 2011 and 2013 which discuss or relate to repainting the sidewall of any vessel to change the name from Dockwise Yacht Transport to United Yacht Transport.

...

24. All emails, correspondence, and other documents between Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) and any customers, potential customers, vendors, or potential vendors related to United Yacht Transport.

25. All Facebook and internet postings by Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) related to United Yacht Transport.

Spliethoff served its Responses and Objections to Applicant's Second Request for Production, a copy of which is attached hereto as **Exhibit 2**, and produced certain responsive documents. With respect to documents related to changing the name on the sidewall of the vessels (request number 10), Spliethoff stated that it has produced all documents, but the production was limited to minimal correspondence and documents, and none related to the

decision or reasons for repainting the vessel. As for request numbers 24 and 25, Spliethoff refused to produce any responsive documents:

General Objections

...

C. Spliethoff objects to all Requests which seek documents which are not relevant to this trademark proceeding but instead are an effort to obtain discovery to use in Applicant's pending lawsuit against Spliethoff's subsidiary Sevenstar Yacht Transport USA Agencies, LLC in which Applicant has asserted claims for various business torts: CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida. These Requests seek documents which are not relevant to the subject matter or issues in this trademark proceeding. Applicant's allegation in its Second Affirmative Defense that SPLIETHOFF is purportedly "denigrating" the UNITED YACHT TRANSPORT name fails to state a proper affirmative defense.

...

Response/Objection to Request 24: Objection: relevancy. See General Objection C.

...

Response/Objection to Request 25: Objection: relevancy. See General Objection C.

Prior to serving the second request for production, United served Applicant's First Request for Production, a copy of which is attached hereto as **Exhibit 3**. The first request included:

55. All emails, correspondence or other documents related to removing or altering the name United Yacht Transport on any internet website owned or operated by Opposer.

In its response, a copy of which is attached hereto as **Exhibit 4**, Spliethoff agreed to produce the documents to the extent they existed:

Response to Request 55: On information and belief, no such documents exist; however inquiry is being made. If any such documents are located, Spliethoff will produce such documents.

Although Spliethoff's predecessor altered its website to display the United Yacht Transport name for a brief two-week period of time before removing the name, Spliethoff has not produced any documents responsive to request number 55.

**B. The requests to Sevenstar Yacht Transport**

United served a subpoena duces tecum on Sevenstar, a copy of which is attached hereto as **Exhibit 5**. Among other documents, United requested:

(1) All communications and documents with any third parties, including but not limited to vendors, customers and potential vendors and customers, which refer to United Yacht Transport, UYT, or United.

Sevenstar objected to producing the requested documents:

Objection to Request (1):

Objection: relevancy. Communications by SEVENSTAR with "any third parties.... which refer to United Yacht Transport, UYT or United" have no relevance to the subject matter and issues in this trademark proceeding. Applicant's allegation in its Second Affirmative Defense that SPLIETHOFF is purportedly "denigrating" the UNITED YACHT TRANSPORT name fails to state a proper affirmative defense.

This Request is an improper effort by Applicant to obtain documents irrelevant herein for Applicant to use in Applicant's pending lawsuit against SEVENSTAR involving claims for various business torts which SEVENSTAR is vigorously defending. See CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida.

A copy of Sevenstar's objection is attached hereto as **Exhibit 6**.

United acknowledges that this request is contained in a document subpoena issued to a third party. However, Sevenstar (which is represented by the same counsel as Spliethoff) and United believe that the TTAB is in the best position to determine which documents are or are not relevant to the proceedings before it, particularly where the TTAB has been presented with the same relevancy question for discovery to Sevenstar's parent, Spliethoff. Accordingly, even though the parties acknowledge that the TTAB does not have authority to enforce the subpoena,

they have agreed to submit this matter to the TTAB and to comply with the TTAB's determination of whether the requested materials are relevant and must be produced for use in this proceeding.

### C. The requests to Clemens Van der Werf

United served a subpoena duces tecum on Clemens Van der Werf, a copy of which is attached hereto as **Exhibit 7**. Among other documents, United requested:

(4) All communications and documents related to painting the name "United Yacht Transport" on the side of any vessel or the initials "UYT" on the funnel of any vessel.

...

(6) All communications and documents related to your Dockwise Yacht Transport LLC job responsibilities and any potential conflicts as they relate to the Coby Enterprises LLC acquisition, or any related group attempting to buyout Dockwise Yacht Transport LLC between 2011 and 2013.

(7) All communications and documents related to your separation from Dockwise Yacht Transport LLC, including any communications after your departure.

(8) All communications and documents regarding the Unitedyachttransport.com domain name, including attempts made to purchase the name/or acquire the name from you.

Van der Werf produced a limited set of documents responsive to number 8, which did not include any documents or communications related to his original registration of the domain name or any maintenance until it was sold to Spliethoff in 2014. Van der Werf did not produce any documents responsive to request numbers 4, 6, or 7, and he did not raise any objection before the September 8, 2015 subpoena return date. On September 14, 2015, nearly a week after the return date had passed, Van der Werf's counsel stated that she would object to requests 6 and 7. Yet, Van der Werf did not serve a response until October 22, 2015—some six weeks after the September 8, 2015 subpoena return date.

In his response, Van der Werf objected to producing the documents requested in numbers 6 and 7:

B. Van der Werf objects to Requests 6 and 7 on the grounds that such documents are outside the scope of allowable discovery. Requests 6 and 7 – which seek documents relating to Mr. Van der Werf’s “job responsibilities” in his former employment with Dockwise Yacht Transport LLC and his separation from said employer – seek documents which are not relevant to any of the claims or defenses in this proceeding. [footnote omitted] It is well settled that the scope of discovery sought under a Rule [45] subpoena duces tecum is the same as the scope of discovery under Fed. R. Civ. P. 26(b).

A copy of Van der Werf’s objection is attached hereto as **Exhibit 8**.

Apart from his objection, Van der Werf claimed to have produced all emails responsive to certain requests. However, the production was incomplete as it failed to include numerous emails to or from Van der Werf that United is either aware of or has.

As with Sevenstar, United acknowledges that this request was issued in a third party subpoena. However, Van der Werf (who is represented by the same counsel as Spliethoff) and United believe that the TTAB is in the best position to determine which documents are or are not relevant to the proceedings before it and whether documents should be produced where a timely objection was not made. Accordingly, even though the parties acknowledge that the TTAB does not have authority to enforce the subpoena, they have agreed to comply with the TTAB’s determination of whether the requested materials must be produced in this proceeding.

### **Argument**

Parties are entitled to discovery “regarding any nonprivileged matter that is relevant to any party’s claim or defense.” TBMP 402.01; Fed. R. Civ. P. 26(b). “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

The key defense in this action is abandonment of the mark, which occurs “When its use has been discontinued with intent not to resume such use.” 15 U.S.C. § 1127. Thus a critical element is whether Spliethoff and its predecessors harbored the “intent not to resume use.”

Before this action was filed, United learned that Spliethoff’s predecessor and its subsidiary engaged in an extensive smear campaign associated with the United Yacht Transport name. As discussed, United determined that Dockwise and Sevenstar/DYT posted statements on the Internet and sent several emails to third parties disparaging the United Yacht Transport name. Such statements even rose to the level of attempting to associate the name with a criminal enterprise. Evidence that Spliethoff, its predecessor Dockwise, and its subsidiary Sevenstar/DYT have distanced themselves from the mark and even publicly placed the mark in a negative light “has [a] tendency” to make it “more or less probable” that they had the intent not to resume use. Fed. R. Evid. 401. The evidence is relevant and therefore well within the permissible scope of discovery.

Spliethoff and Sevenstar are correct that such statements are also the subject of a defamation action that United filed in Florida state court. But the fact that the statements may also be relevant to an ongoing tort action does not make them any less relevant to one of the key issues in this case—whether there was the intent not to resume use.

Documents and communications related to changes to Dockwise’s website show that Dockwise manipulated its webpages and falsely claimed to have used the United Yacht Transport name. Spliethoff, which has represented that it has access to the Dockwise computer servers following its acquisition, has not provided copies of such records, and their production should be compelled.

Documents related to repainting the vessel sidewalls are relevant to show whether the name was changed for the benefit of, or on behalf of, the proposed acquiring company led by Van der Werf, as opposed to a bona fide attempt by Dockwise to use the name. And the limited documents produced to date show that the ship was painted for the benefit of the proposed acquiring company. Spliethoff has provided copies of some, but not all, responsive documents, and should be compelled to produce all responsive documents.

Van der Werf's job responsibilities and potential conflicts of interest while he was both CEO of Dockwise and negotiating to acquire Dockwise, and his subsequent termination, are relevant for the same reasons. As discussed, United has been informed and believes that Van der Werf was terminated for improper actions during the negotiation period, including rebranding Dockwise to the company name he intended to use following the acquisition. Such information is relevant to the reason Van der Werf had "United Yacht Transport" painted on the sidewall of the Dockwise vessels that his new company planned to acquire, including whether Dockwise ever intended to use the mark for its own services, and whether Dockwise intended for the public to associate the mark with Dockwise's services.

Regardless, Van der Werf did not interpose a timely objection as required by Fed. R. Civ. P. 45(d)(2)(B). Any objections were therefore waived under Rule 45, and Van der Werf must produce the responsive documents notwithstanding any untimely objections he may now assert.

Further, United has already located or is aware of several emails to or from Van der Werf that were not included in his production. Van der Werf should be compelled to produce all email communications and records responsive to each of the document requests, not the limited set he produced to date.

In sum, all of the requested documents are highly relevant to the issues in this case, including United's abandonment defense, and their production should be compelled.

**Certificate of Good Faith Conferences**

Pursuant to 37 CFR § 2.120(e), the undersigned conferred with Spliethoff's counsel by telephone on November 4, 2015 and October 6, 2015, in which the parties discussed their respective positions in a good-faith effort to resolve the foregoing issues. Before the October 6, 2015 conference, the parties also exchanged emails related to these issues. In addition, counsel previously attempted to resolve certain of these issues in a June 23, 2015 telephone conference.

**Conclusion**

For the foregoing reasons, United respectfully requests entry of an order compelling Spliethoff to produce all documents responsive to Numbers 10, 24 and 25 of Applicant's Second Request for Production and all documents responsive to Number 55 of Applicant's First Request for Production; declaring that the documents requested from Sevenstar are relevant to this action and must be produced; and declaring that the documents requested from Clemens Van der Werf are relevant to this action and must be produced.

Respectfully submitted,

BUSH ROSS, P.A.

Dated: November 4, 2015

By: /s/ Bryan D. Hull  
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*Attorneys for United Yacht Transport, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer has been served on J. Michael Pennekamp and Sandra I. Tart by mailing said copy on November 4, 2015, via First Class Mail, postage prepaid to: J. Michael Pennekamp and Sandra I. Tart, FOWLER WHITE BURNETT, P.A., Espirito Santo Plaza, Fourteenth Floor, 1395 Brickell Avenue, Miami, Florida 33131, and by email to: [jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com) and [start@fowler-white.com](mailto:start@fowler-white.com).

Signature: /s/ Bryan D. Hull  
Date: November 4, 2015

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

**SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,**

**Opposer,**

vs.

**Opposition No. 91219179  
Serial No. 86031633**

**UNITED YACHT TRANSPORT LLC,**

**Applicant.**

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**APPLICANT'S SECOND REQUEST FOR PRODUCTION**

Applicant, UNITED YACHT TRANSPORT LLC, by and through undersigned counsel, pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests the Opposer, SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V., to produce the following items for review and/or copying in accordance with said Rule:

**DEFINITIONS AND INSTRUCTIONS**

- A. The term "emails" as used herein means each and every email responsive to the Requests herein and all attachments to such emails. Emails shall be produced in native format.
- B. "Opposer" as used herein means Opposer, Spliethoff's Bevrachtingskantoor B.V., and all of its subsidiaries, as well as any officers, directors, employees, agents, and any other persons acting on behalf of Opposer or any subsidiaries.
- C. The term "document" as used herein includes documents existing only in digital or electronic form, as well as documents which exist in physical, i.e. paper form and shall include all types of information described in Fed. R. Civ. P. 34(a) (1).
- D. Unless otherwise stated, the time period for each Request herein is January 1998 to present.

## **DOCUMENTS TO BE PRODUCED**

1. All documents that Opposer may use to support its claims in this proceeding.
2. The most recent organizational chart showing the structure of Opposer and all related entities.
3. All emails, correspondence, and other documents related to the decision to amend the name of United Yacht Transport (USA) Inc. to Dockwise Yacht Transport (USA) Inc.
4. All emails, correspondence, and other documents related to rebranding from United Yacht Transport to Dockwise Yacht Transport.
5. All emails, correspondence, and other documents related any plans to use the United Yacht Transport mark following the name change from United Yacht Transport (USA) Inc. to Dockwise Yacht Transport (USA) Inc.
6. All contracts for yacht transportation services provided under the name “United Yacht Transport” by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. The time period for this request is June 13, 2000 to the present.
7. All invoices sent to clients for yacht transportation services provided under the name “United Yacht Transport” by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. The time period for this request is June 13, 2000 to the present.
8. All emails, correspondence and other documents which discuss or relate to the United Yacht Transport mark.
9. All emails, correspondence and other documents which discuss or relate to any decision to use the United Yacht Transport mark.
10. All emails, correspondence and other documents between 2011 and 2013 which discuss or relate to repainting the sidewall of any vessel to change the name from Dockwise Yacht Transport to United Yacht Transport.
11. All emails, correspondence and other documents which discuss or relate to any dry-docking of the M/V Yacht Express, M/V Super Servant 3 or M/V Super Servant 4 between 2011 and 2013.
12. All invoices, receipts, and payment records related to repainting the sidewall of any vessel to change the name from Dockwise Yacht Transport to United Yacht Transport.
13. All emails, correspondence and other documents which discuss or relate to removing the United Yacht Transport mark from any physical location, document, or media.
14. All emails, correspondence and other documents which discuss or relate to any decision to use a different mark instead of United Yacht Transport.

15. All emails, correspondence and other documents which discuss or relate to replacing the United Yacht Transport mark with any other mark.
16. All emails, correspondence, and other documents which discuss or relate to the cancellation of the United Yacht Transport mark by the United States Patent and Trademark Office on or about August 25, 2007.
17. All emails, correspondence, and other documents by or between Opposer and Dockwise Yacht Transport LLC related to the United Yacht Transport mark.
18. All emails, correspondence, and other documents by or between Opposer and Dockwise Shipping B.V. related to the United Yacht Transport mark.
19. Copies of the Port Everglades Guide dated 2000, 2002, and 2004.
20. All emails, correspondence and other documents related to any listing or advertisement in the Port Everglades Guide which included the mark "United Yacht Transport".
21. All documents, including contracts, invoices, and payment records, which relate to services performed by any individual or entity (including but not limited to KEY Agency) related to the re-branding of Dockwise Yacht Transport LLC to United Yacht Transport.
22. All emails, correspondence and other documents by or between Spliethoff's Bevrachtingskantoor B.V. and any of its related entities which relate to the mark United Yacht Transport.
23. All emails, correspondence and other documents by or between Spliethoff's Bevrachtingskantoor B.V. and any of its related entities which relate to the use of the mark United Yacht Transport.
24. All emails, correspondence, and other documents between Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) and any customers, potential customers, vendors, or potential vendors related to United Yacht Transport.
25. All Facebook and internet postings by Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) related to United Yacht Transport.
26. All emails between Coby Enterprises LLC and Dockwise Yacht Transport LLC (or any related entities) regarding Coby Enterprises LLC and the proposed management buyout transaction.
27. All emails, correspondence and other documents between Clemens van der Werf and Dockwise Yacht Transport LLC (or any related entities) regarding Coby Enterprises LLC and the proposed management buyout transaction.
28. All emails, correspondence and other documents regarding Clemens van der Werf's involvement with Coby Enterprises LLC or any other potential buyout partners.

29. All emails, correspondence and other documents regarding Clemens van der Werf's roles and duties after the Letter of Intent was signed with Coby Enterprises LLC.
30. All emails, correspondence and other documents related to Clemens van der Werf's employment with Dockwise Yacht Transport LLC (and any related entities). The time period for this request is August 2011 to the present.
31. All emails, correspondence, and other documents related to Clemens van der Werf's separation from Dockwise Yacht Transport LLC (and any related entities). The time period for this request is August 2011 to the present.
32. All emails, correspondence and other documents related to the registration of the [www.unitedyachttransport.com](http://www.unitedyachttransport.com) domain.

Dated: July 22, 2015

By: /s/ Bryan D. Hull

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Applicant's Second Request for Production has been served on J. Michael Pennekamp and Sandra I. Tart by mailing said copy, via First Class Mail, postage prepaid to: J. Michael Pennekamp and Sandra I. Tart, FOWLER WHITE BURNETT, P.A., Espirito Santo Plaza, Fourteenth Floor, 1395 Brickell Avenue, Miami, Florida 33131, and by email to: [jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com) and [start@fowler-white.com](mailto:start@fowler-white.com).

Signature: /s/ Bryan D. Hull

Date: July 22, 2015

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

Opposition No. 91219179

Serial No. 86031633

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,

Opposer,

v.

UNITED YACHT TRANSPORT LLC.,

Applicant.

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**OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S  
SECOND REQUEST FOR PRODUCTION**

Opposer SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V. ("Spliethoff"), by and through its undersigned counsel, hereby responds to Applicant's Second Request for Production as follows:

**GENERAL OBJECTIONS**

A. Spliethoff objects to all Requests which, as written, appear to ask Spliethoff to produce "all documents" of its predecessors, including but not limited to Dockwise Yacht Transport. Spliethoff only has possession of the documents of its predecessors which were present at the Fort Lauderdale office of its predecessors following the closing of the business transaction reflected in the Asset Purchase Agreement dated October 15, 2013.

B. Spliethoff objects to the production of all privileged documents. This objection includes Requests which seek production of documents reflecting work product of counsel as well as Requests, such as Document Request 1, which ask Opposer's counsel to disclose its work product

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Opposer's Response to Applicant's  
Second Request for Production of Documents

and mental processes and analysis by producing in a group the specifically selected documents which "Opposer may use to support its claims in this proceeding."

C. Spliethoff objects to all Requests which seek documents which are not relevant to this trademark proceeding but instead are an effort to obtain discovery to use in Applicant's pending lawsuit against Spliethoff's subsidiary Sevenstar Yacht Transport USA Agencies, LLC in which Applicant has asserted claims for various business torts: CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida. These Requests seek documents which are not relevant to the subject matter or issues in this trademark proceeding. Applicant's allegation in its Second Affirmative Defense that SPLIETHOFF is purportedly "denigrating" the UNITED YACHT TRANSPORT name fails to state a proper affirmative defense.

D. Spliethoff objects to Applicant's Requests as burdensome on the ground that many Requests merely restate prior Requests made in Applicant's First Request for Production, to which Opposer has already responded and produced over 1723 pages of documents and photographs to date.

**RESPONSES AND OBJECTIONS**<sup>1</sup>

1. All documents that Opposer may use to support its claims in this proceeding.

**Response/Objection to Request 1:** Objection: work product. Notwithstanding the foregoing Objection, Opposer generally states that to support its claims in this proceeding, it may rely upon the documents attached to the Notice of Opposition, documents identified in its Rule 26 disclosure, photographs and videos showing the display of the mark UNITED YACHT TRANSPORT and the logo UYT on the vessels Yacht Express and Super Servant 4 prior to Applicant's alleged first use of

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<sup>1</sup> Each of Spliethoff's Responses and Objections to the 32 Requests in Applicant's Second Request for Production are subject to the Spliethoff's General Objections.

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the mark, trade secrets documents of Spliethoff reflecting Opposer's internal marketing discussions and budget regarding proposed future use of the mark, re-branding documents (including brochures, stationery and logo mock-ups) of Dockwise, the Asset Purchase Agreement dated October 15, 2013, and the assignment of rights in the mark from Dockwise to Spliethoff. To support its claim that Applicant did not use the mark in commerce prior to Applicant's filing of its registration application and opposition to Applicant's motion to amend its application, Opposer generally states that it may rely upon Applicant's discovery responses and documents produced by Applicant, and Applicant's Response to the USPTO's Office Action.

2. The most recent organizational chart showing the structure of Opposer and all related entities.

**Response/Objection to Request 2:** Objection: relevancy.

3. All emails, correspondence, and other documents related to the decision to amend the name of United Yacht Transport (USA) Inc. to Dockwise Yacht Transport (USA) Inc.

**Response to Request 3:** None. The request seeks documents regarding a corporate event involving United Yacht Transport (USA) Inc. and Dockwise Yacht Transport (USA) Inc. which predated the October 15, 2013 Asset Purchase Agreement.

4. All emails, correspondence, and other documents related to rebranding from United Yacht Transport to Dockwise Yacht Transport.

**Response/Objection to Request 4:**

Objection: Opposer objects to the Request as phrased with "rebranding" as same is an assumption without evidentiary foundation. In Response, none. The Request seeks documents

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Second Request for Production of Documents

relating to United Yacht Transport and Dockwise Yacht Transport which are not within Opposer's possession, custody or control.

5. All emails, correspondence, and other documents related to any plans to use the United Yacht Transport mark following the name change from United Yacht Transport (USA) Inc. to Dockwise Yacht Transport (USA) Inc.

**Response to Request 5:** None located to date in Opposer's possession, custody or control. See General Objection A.

6. All contracts for yacht transportation services provided under the name "United Yacht Transport" by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. The time period for this request is June 13, 2000 to the present.

**Response to Request 6:** As to Opposer, none. As to Opposer's predecessors, no such documents have been located by Opposer. See General Objection A.

7. All invoices sent to clients for yacht transportation services provided under the name "United Yacht Transport" by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. The time period for this request is June 13, 2000 to the present.

**Response to Request 7:** As to Opposer, none. As to Opposer's predecessors, no such documents have been located by Opposer. See General Objection A.

8. All emails, correspondence and other documents which discuss or relate to the United Yacht Transport mark.

**Response to Request 8:** Opposer has already produced all documents located within its possession, custody or control which are responsive to this Request.

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9. All emails, correspondence and other documents which discuss or relate to any decision to use the United Yacht Transport mark.

**Response to Request 9:** Opposer has already produced all documents located within its possession, custody or control which are responsive to this Request.

10. All emails, correspondence and other documents between 2011 and 2013 which discuss or relate to repainting the sidewall of any vessel to change the name from Dockwise Yacht Transport to United Yacht Transport.

**Response to Request 10:** Opposer already has produced all documents located to date within its possession, custody or control which are responsive to this Request.

11. All emails, correspondence and other documents which discuss or relate to any dry-docking of the M/V Yacht Express, M/V Super Servant 3 or M/V Super Servant 4 between 2011 and 2013.

**Response to Request 11:** Opposer has not located any documents responsive to this Request relating to the M/V Super Servant 3. Opposer already has produced all documents located to date within its possession, custody or control relating to the M/V Yacht Express and the M/V Super Servant 4 which are responsive to this Request.

12. All invoices, receipts, and payment records related to repainting the sidewall of any vessel to change the name from Dockwise Yacht Transport to United Yacht Transport.

**Response to Request 12:** None located to date in Opposer's possession, custody or control. This Request seeks documents relating actions taken by Dockwise Yacht Transport in 2011 and 2012 which likely are within the possession, custody or control of Dockwise. The Request seeks information which pre-dates the October 15, 2013 Asset Purchase Agreement.

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13. All emails, correspondence and other documents which discuss or relate to removing the United Yacht Transport mark from any physical location, document, or media.

**Response to Request 13:** Opposer already has produced all documents located within its possession, custody or control which are responsive to this Request.

14. All emails, correspondence and other documents which discuss or relate to any decision to use a different mark instead of United Yacht Transport.

**Response/Objection to Request 14:** Objection: vague as the Request fails to identify the decision maker being inquired of, whether Dockwise or Opposer. Notwithstanding this objection, Opposer already has produced all documents located within its possession, custody or control which relate to use of the mark that are responsive to this Request, including all documents located by Opposer relating to use of the mark and logo UYT (installation or removal of same) on the M/V Yacht Express and the M/V Super Servant 4.

15. All emails, correspondence and other documents which discuss or relate to replacing the United Yacht Transport mark with any other mark.

**Response to Request 15:** Opposer already has produced all documents located within its possession, custody or control which discuss or relate to replacing the United Yacht Transport mark with any other mark, including trade secrets/confidential documents reflecting internal Spliethoff marketing discussions and documents relating to use of the mark and logo UYT (installation or removal of same) on the M/V Yacht Express and the M/V Super Servant 4.

16. All emails, correspondence, and other documents which discuss or relate to the cancellation of the United Yacht Transport mark by the United States Patent and Trademark Office on or about August 25, 2007.

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**Response to Request 16:** None in Opposer's possession, custody or control.

17. All emails, correspondence, and other documents by or between Opposer and Dockwise Yacht Transport LLC related to the United Yacht Transport mark.

**Response/Objection to Request 17:** Objection: Request seeks work product documents. See General Objection B. Notwithstanding the foregoing objection, no responsive documents have been located to date.

18. All emails, correspondence, and other documents by or between Opposer and Dockwise Shipping B.V. related to United Yacht Transport mark.

**Response/Objection to Request 18:**

Objection: Request seeks work product documents. Notwithstanding the foregoing Objection, Opposer has produced the only responsive document not subject to work product privilege located: the assignment of rights from Dockwise Shipping B.V. to Opposer relating to the mark United Yacht Transport.

19. Copies of the Port Everglades Guide dated 2000, 2002 and 2004.

**Response to Request 19:** Spliethoff has produced all copies of the annual Port Everglades Facilities Guide and Directory within its possession, custody or control.

20. All emails, correspondence and other documents related to any listing or advertisement in the Port Everglades Guide which included the mark "United Yacht Transport".

**Response to Request 20:** Opposer will produce all responsive documents located, if any such documents exist.

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21. All documents, including contracts, invoices, and payment records, which relate to services performed by any individual or entity (including but not limited to KEY Agency) related to the re-branding of Dockwise Yacht Transport LLC to United Yacht Transport.

**Response to Request 21:** No contracts, invoices or other types of payment records requested have been located by Opposer. This Request seeks documents involving Dockwise for a time period which pre-dates the October 15, 2013 Asset Purchase Agreement.

22. All emails, correspondence and other documents by or between Spliethoff's Bevrachtingskantoor B.V. and any of its related entities which relate to the mark United Yacht Transport.

**Response to Request 22:** Opposer has already produced all documents located which are responsive to this request.

23. All emails, correspondence and other documents by or between Spliethoff's Bevrachtingskantoor B.V. and any of its related entities which relate to the use of the mark United Yacht Transport.

**Response to Request 23:** Opposer has already produced all documents located which are responsive to this request.

24. All emails, correspondence, and other documents between Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) and any customers, potential customers, vendors, or potential vendors related to United Yacht Transport.

**Response/Objection to Request 24:** Objection: relevancy. *See* General Objection C.

25. All Facebook and internet postings by Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) related to United Yacht Transport.

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**Response/Objection to Request 25:** Objection: relevancy. *See* General Objection C.

26. All emails between Coby Enterprises LLC and Dockwise Yacht Transport LLC (or any related entities) regarding Coby Enterprises LLC and the proposed management buyout transaction.

**Response to Request 26:** None. This Request seeks documents involving Dockwise which pre-date the October 15, 2013 Asset Purchase Agreement. Opposer already has produced all documents which came into its possession, custody or control following its acquisition which relate to the proposed management buyout of Dockwise's yacht transport business which involved Coby Enterprises.

27. All emails, correspondence and other documents between Clemens Van der Werf and Dockwise Yacht Transport LLC (or any related entities) regarding Coby Enterprises LLC and the proposed management buyout transaction.

**Response to Request 27:** Opposer already has produced all documents which came into its possession, custody and control following its October 15, 2013 acquisition which relate to the proposed management buyout of Dockwise's yacht transport business and/or Coby Enterprises.

28. All emails, correspondence and other documents regarding Clemens Van Der Werf's involvement with Coby Enterprises LLC or any other potential buyout partners.

**Response to Request 28:** Opposer already has produced all documents which came into its possession, custody and control following its October 15, 2013 acquisition which relate to the proposed management buyout, Coby Enterprises, and potential buyout partners for the yacht transport business of Dockwise.

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29. All emails, correspondence and other documents regarding Clemens Van Der Werf's roles and duties after the Letter of Intent was signed with Coby Enterprises LLC.

**Response/Objection to Request 29:** Objection: relevancy. Notwithstanding the foregoing Objection, none.

30. All emails, correspondence and other documents related to Clemens Van Der Werf's employment with Dockwise Yacht Transport LLC (and any related entities). The time period for this request is August 2011 to present.

**Response/Objection to Request 30:** Objection: relevancy. Notwithstanding the foregoing Objection, none.

31. All emails, correspondence, and other documents related to Clemens Van Der Werf's separation from Dockwise Yacht Transport LLC (and any related entities). The time period for this request is August 2011 to the present.

**Response/Objection to Request 31:** Objection: relevancy. Notwithstanding the foregoing Objection, none.

32. All emails, correspondence and other documents related to the registration of the [www.unitedyachttransport.com](http://www.unitedyachttransport.com) domain.

**Response to Request 32:** Opposer will produce the requested documents when located, if such documents exist.

**Opposition No. 91219179**  
Opposer's Response to Applicant's  
Second Request for Production of Documents

Respectfully submitted,

/s/Sandra I. Tart

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*Counsel for Opposer*

I hereby certify that a true and correct copy of the foregoing Opposer's Responses to Applicant's Second Request for Production has been served upon Bryan D. Hull, Esquire, counsel for Applicant United Yacht Transport, LLC, this 11<sup>th</sup> day of September, 2015, by email to [bhull@bushross.com](mailto:bhull@bushross.com).

/s/Sandra I. Tart

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Sandra I. Tart

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

**SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,**

**Opposer,**

vs.

**Opposition No. 91219179  
Serial No. 86031633**

**UNITED YACHT TRANSPORT LLC,**

**Applicant.**

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**APPLICANT'S FIRST REQUEST FOR PRODUCTION**

Applicant, UNITED YACHT TRANSPORT LLC, by and through undersigned counsel, pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests the Opposer, SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V., to produce the following items for review and/or copying in accordance with said Rule:

**DEFINITIONS AND INSTRUCTIONS**

- A. The term "emails" as used herein means each and every email responsive to the Requests herein and all attachments to such emails. Emails shall be produced in native format.
- B. "Opposer" as used herein means Opposer, Spliethoff's Bevrachtingskantoor B.V., and all of its subsidiaries (including but not limited to Sevenstar), as well as any officers, directors, employees, agents, and any other persons acting on behalf of Opposer or any subsidiaries.
- C. The term "document" as used herein includes documents existing only in digital or electronic form, as well as documents which exist in physical, i.e. paper form.
- D. The term "document" as used herein includes paper or digital photographs.
- E. Unless otherwise stated, the time period for each Request herein is January 1998 to present.

## **DOCUMENTS TO BE PRODUCED**

1. The Asset Purchase Agreement dated October 15, 2013 referenced in paragraph 6 of the Notice of Opposition. (Purchase price may be redacted).
2. The Assignment referenced in paragraph 9 of the Notice of Opposition.
3. The Assignment referenced in paragraph 10 of the Notice of Opposition.
4. All emails, correspondence, or other documents supporting the allegations in paragraph 17 of the Notice of Opposition that after the corporate changes by which United Yacht Transport (USA) Inc. evolved into Dockwise Yacht Transport (USA) Inc. and to Dockwise Yacht Transport LLC (collectively “Dockwise Yacht Transport”), Dockwise Yacht Transport continued to advertise and use the mark “UNITED YACHT TRANSPORT” in U.S. commerce in connection with providing the service of transport of yachts by boat.
5. All emails, correspondence, or other documents supporting the allegations in paragraph 22 of the Notice of Opposition that since October 2013, Opposer has used and currently is using the “UNITED YACHT TRANSPORT” mark in U.S. commerce to advertise and sell the services of transport of yachts by boat and has plans to expand its use of the mark and name in U.S. commerce.
6. All emails, correspondence, or other documents evidencing that Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition have used the “UNITED YACHT TRANSPORT” mark in U.S. commerce to advertise and sell the services of transport of yachts by boat.
7. All marketing and advertising materials distributed in any print or online media related to the transportation of yachts by boat under any name or mark by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.
8. All marketing and advertising materials distributed in any print or online media related to the use of the mark United Yacht Transport in connection with the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.
9. All marketing and advertising materials distributed in any print or online media related to the use of the mark Dockwise Yacht Transport in connection with the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.
10. All marketing and advertising materials distributed in any print or online media related to the use of the mark Sevenstar in connection with the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

11. All trade show materials related to the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.
12. All contracts for the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. (Information identifying the yacht, client name and purchase price may be redacted).
13. All invoices sent to clients for the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. (Information identifying the yacht, client name and purchase price may be redacted).
14. All emails, correspondence or other documents which reflect or evidence any sales under the mark United Yacht Transport by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.
15. All emails, correspondence or other documents referencing United Yacht Transport.
16. All emails, correspondence or other documents referencing UYT.
17. All emails, correspondence or other documents referencing Yacht Path since July 2013.
18. All emails, correspondence or other documents referencing Dennis Cummings since July 2013.
19. All emails, correspondence or other documents referencing Kevin Cummings since July 2013.
20. All emails and correspondence with Clemens Van der Werf related to United Yacht Transport.
21. All emails and correspondence with Coby Enterprises related to United Yacht Transport.
22. All emails, correspondence or other documents related to any decision to rebrand Dockwise Yacht Transport LLC as “United Yacht Transport” and “UYT” in connection with a proposed buyout transaction.
23. All emails, correspondence or other documents related to any actions taken in 2011 and 2012 to rebrand Dockwise Yacht Transport LLC as “United Yacht Transport” and “UYT” in connection with a proposed buyout transaction.
24. All emails, correspondence or other documents related to changing the name shown on any vessel to United Yacht Transport.
25. All emails, correspondence or other documents related to changing the logo on any vessel to UYT.
26. All photographs reflecting any use of the mark United Yacht Transport in U.S. commerce by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

27. All print articles (including online media) reflecting any use of the mark United Yacht Transport in U.S. commerce by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.
28. All documents related to the contention that Opposer and Applicant compete “head to head,” referenced in paragraph 28 of the Notice of Opposition.
29. All documents relating to Opposer’s pending Trademark Application U.S. Appl. Serial No. 86041056 which Opposer intends to use to support its claims.
30. All emails, correspondence, or other documents related to any marketing plans of Opposer related to United Yacht Transport.
31. All emails, correspondence, or other documents related to any business plans of Opposer related to United Yacht Transport.
32. All emails, correspondence, or other documents related to any marketing plans of Opposer related to UYT.
33. All emails, correspondence, or other documents related to any business plans of Opposer related to UYT.
34. All emails, correspondence, or other documents relating to a proposed merger between Dockwise Yacht Transport LLC and Yacht Path International.
35. All emails, correspondence, or other documents relating to a proposed sale in 2012 of Dockwise Yacht Transport LLC to Coby Enterprises.
36. All emails, correspondence, or other documents related to the KEY Agency which relate to the re-branding of Dockwise Yacht Transport LLC to United Yacht Transport.
37. The CNBC video entitled *Secret Lives of the Super Rich*, filmed in 2013.
38. All emails, correspondence, or other documents related to any domain name registration for any variation of the name “United Yacht.”
39. All emails, correspondence, or other documents reflecting ownership of any domain name registration for any variation of the name “United Yacht.”
40. All emails, correspondence, or other documents related to the transfer or assignment of any domain name registration for any variation of the name “United Yacht.”
41. All schematic drawings related to hull and/or funnel markings for any vessels changing the name shown from “Dockwise Yacht Transport” to “United Yacht Transport.”
42. All photographs of M/V Yacht Express and M/V Super Servant 4 displaying the name “United Yacht Transport” on sidewalls and/or “UYT” on funnels.

43. The sailing schedule for 2011, 2012, and 2013 for the M/V Yacht Express and M/V Super Servant 4.
44. All emails, correspondence or other documents related to the decision to change the name shown on any vessels from United Yacht Transport to any other name.
45. All emails, correspondence or other documents related to the decision to change the name in any marketing or advertising from United Yacht Transport to any other name.
46. All emails, correspondence or other documents related to the adoption of the name Yacht-Transport.com.
47. All emails, correspondence or other documents related to the use of the name Yacht-Transport.com.
48. All emails, correspondence, or other documents related to the KEY Agency which relate to re-branding to Yacht-Transport.com.
49. All emails, correspondence, or other documents related to re-branding to Yacht-Transport.com.
50. All schematic drawings related to hull and/or funnel markings for any vessels changing the name shown from "United Yacht Transport" to any other name.
51. All emails, correspondence or other documents related to removing United Yacht Transport from the sidewall of any vessel.
52. All emails, correspondence or other documents related to removing UYT from the funnel of any vessel.
53. All emails, correspondence or other documents related to changing the name on the sidewall of any vessel from United Yacht Transport to any other name.
54. All emails, correspondence or other documents related to changing the logo UYT on the funnel of any vessel to any other name or logo.
55. All emails, correspondence or other documents related to removing or altering the name United Yacht Transport on any internet website owned or operated by Opposer.
56. All emails, correspondence or other documents related to removing or altering the name United Yacht Transport in any marketing or advertising by Opposer.

Dated: March 18, 2015

By: /s/ Bryan D. Hull  
Bryan D. Hull  
Florida Bar No. 20969  
[bhull@bushross.com](mailto:bhull@bushross.com)  
P. O. Box 3913  
Tampa, FL 33602  
(813) 224-9255  
(813) 223-9620 (fax)  
*Attorneys for United Yacht Transport, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Applicant's First Request for Production has been served on J. Michael Pennekamp and Sandra I. Tart by mailing said copy on March 18 2015, via First Class Mail, postage prepaid to: J. Michael Pennekamp and Sandra I. Tart, FOWLER WHITE BURNETT, P.A., Espirito Santo Plaza, Fourteenth Floor, 1395 Brickell Avenue, Miami, Florida 33131, and by email to: [jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com) and [start@fowler-white.com](mailto:start@fowler-white.com).

Signature: /s/ Bryan D. Hull

Date: March 18, 2015

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

Opposition No. 91219179

Serial No. 86031633

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,

Opposer,

v.

UNITED YACHT TRANSPORT LLC.,

Applicant.

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**OPPOSER'S RESPONSES AND OBJECTIONS TO  
APPLICANT'S FIRST REQUEST FOR PRODUCTION**

Opposer SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V. ("Spliethoff"), by and through its undersigned counsel, hereby responds to Applicant's First Request for Production as follows:

**GENERAL OBJECTIONS**

A. Spliethoff objects to producing confidential documents in this Board proceeding until after the entry of an appropriate protective order.

B. Spliethoff objects to the 17-year time period specified (January 1998 to present) for each of the 56 Requests in Applicant's First Request for Production of Documents, as unduly burdensome and overbroad. Applicant filed its trademark registration application on August 7, 2013. Applicant commenced its business operations in 2013. Opposer will produce documents supporting the allegations in its Notice of Opposition that its predecessors used the mark at issue in commerce for many years prior to Applicant's first use of the mark. However, the Requests for "all" documents for the specified 17-year period is unduly burdensome.

C. Spliethoff objects to all Requests which, as written, appear to ask Spliethoff to produce "all documents" of its predecessors. Spliethoff only has possession of the documents of its predecessors which were present at the Fort Lauderdale office of its predecessors following the closing of the business transaction reflected in the Asset Purchase Agreement dated October 15, 2013.

D. Spliethoff objects to the production of all privileged documents.

**RESPONSES AND OBJECTIONS**<sup>1</sup>

1. The Asset Purchase Agreement dated October 15, 2013 referenced in paragraph 6 of the Notice of Opposition. (Purchase price may be redacted).

**Response to Request 1:** The terms of the requested Agreement are confidential. Spliethoff will produce the October 15, 2013 Agreement upon the entry of a protective order.

2. The Assignment referenced in paragraph 9 of the Notice of Opposition.

**Response to Request 2:** Spliethoff will produce the Assignment document requested.

3. The Assignment referenced in paragraph 10 of the Notice of Opposition.

**Response to Request 3:** Spliethoff will produce the Assignment document requested.

4. All emails, correspondence, or other documents supporting the allegations in paragraph 17 of the Notice of Opposition that after the corporate changes by which United Yacht Transport (USA) Inc. evolved into Dockwise Yacht Transport (USA) Inc. and to Dockwise Yacht Transport LLC (collectively "Dockwise Yacht Transport"), Dockwise Yacht Transport continued to advertise and use the mark "UNITED YACHT TRANSPORT" in U.S. commerce in connection with providing the service of transport of yachts by boat.

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<sup>1</sup> Each of Spliethoff's Responses and Objections to the 56 Requests are subject to the Spliethoff's General Objections.

**Response to Request 4:** Spliethoff will produce the documents requested.

5. All emails, correspondence, or other documents supporting the allegations in paragraph 22 of the Notice of Opposition that since October 2013, Opposer has used and currently is using the "UNITED YACHT TRANSPORT" mark in U.S. commerce to advertise and sell the services of transport of yachts by boat and has plans to expand its use of the mark and name in U.S. commerce.

**Response/Objection to Request 5:** Spliethoff will produce emails, correspondence, or other documents supporting the allegations in paragraph 22 of the Notice of Opposition that since October 2013, Opposer has used and currently is using the "UNITED YACHT TRANSPORT" mark in commerce to advertise and sell the services of transport of yachts by boat.

With regard to Opposer's "plans to expand its use of the mark and name in U.S. commerce," objection is raised on relevance grounds. In addition, objection is raised on confidentiality grounds and Spliethoff objects to producing its business plans for use of the mark to Applicant, a direct competitor in the business of yacht transport services.

6. All emails, correspondence, or other documents evidencing that Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition have used the "UNITED YACHT TRANSPORT" mark in U.S. commerce to advertise and sell the services of transport of yachts by boat.

**Response to Request 6:** Spliethoff will produce the documents requested.

7. All marketing and advertising materials distributed in any print or online media related to the transportation of yachts by boat under any name or mark by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Objection to Request 7:** Objections: relevance, undue burden and overbreadth. The use of "any name or mark" by Opposer or its predecessors listed in Paragraph 12 of the Notice of

Opposition is not relevant to this proceeding. The relevant issue is whether Opposer or its predecessors used the mark UNITED YACHT TRANSPORT in commerce prior to Applicant's use of the subject mark in commerce.

8. All marketing and advertising materials distributed in any print or online media related to the use of the mark United Yacht Transport in connection with the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Response to Request 8:** Spliethoff will produce the documents requested.

9. All marketing and advertising materials distributed in any print or online media related to the use of the mark Dockwise Yacht Transport in connection with the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Objection to Request 9:** Objection: relevance. The use of the mark "Dockwise Yacht Transport" in connection with the transportation of yachts by boat by Opposer or any predecessors listed Paragraph 12 of the Notice of Opposition is not relevant to this proceeding. The relevant issue is whether Opposer or its predecessors used the mark UNITED YACHT TRANSPORT in commerce prior to Applicant's use of the subject mark in commerce.

10. All marketing and advertising materials distributed in any print or online media related to the use of the mark Sevenstar in connection with the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Response/Objection to Request 10:** Relevancy objection. The use of the mark "Sevenstar" in connection with the transportation of yachts by boat by Opposer or any predecessors listed Paragraph 12 of the Notice of Opposition is not relevant to this proceeding. The relevant issue is whether Opposer or its predecessors used the mark UNITED YACHT TRANSPORT in commerce prior to Applicant's use in commerce of the subject mark.

11. All trade show materials related to the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Objection to Request 11:** Objections: relevance, undue burden and overbreadth. The request for all trade show materials related to the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition is unduly burdensome, overbroad and its scope is well beyond any documents conceivably relevant to the disputed matters in the instant Board proceeding. The relevant issue is whether Opposer or its predecessors used the mark UNITED YACHT TRANSPORT in commerce prior to Applicant's use of the mark in commerce.

12. All contracts for the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. (Information identifying the yacht, client name and purchase price may be redacted).

**Response/Objection to Request 12:** Objections: relevance, undue burden, overbreadth and confidentiality. The request for "all contracts for the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition" for the 17-year period specified in the Request seeks information not relevant to this proceeding, is unduly burdensome, and overbroad. In addition, the terms of the requested contracts are confidential.

13. All invoices sent to clients for the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition. (Information identifying the yacht, client name and purchase price may be redacted).

**Response/Objection to Request 13:** Objections: relevance, undue burden, confidentiality and overbreadth. The request for all invoices sent to clients for the transportation of yachts by boat by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition – for the 17-year period specified of January 1998 to date is unduly burdensome, overbroad and irrelevant, and seeks

confidential information. The relevant issue is whether Opposer or its predecessors used the mark UNITED YACHT TRANSPORT in commerce prior to Applicant's use in commerce of the subject mark.

14. All emails, correspondence or other documents which reflect or evidence any sales under the mark United Yacht Transport by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Response to Request 14:** Spliethoff will produce the requested documents.

15. All emails, correspondence or other documents referencing United Yacht Transport.

**Objection to Request 15:** Objections: relevance, undue burden, vagueness and overbreadth. Request 15 is vague as written. It is unclear whether the Request refers to Applicant United Yacht Transport or to the mark United Yacht Transport. If the Request refers to the mark United Yacht Transport, then objection is made based on relevance, undue burden and overbreadth. This Request seeking all documents "referencing United Yacht Transport" for the specified 17-year period (January 1998 to present) is overbroad, seeks information not relevant to the issues in this Board proceeding and is unduly burdensome. If the Request refers to the Applicant United Yacht Transport then objection is made based on relevance and overbreadth.

16. All emails, correspondence or other documents referencing UYT.

**Objection to Request 16:** Objection: relevance, undue burden and overbreadth. Documents referencing UYT are not relevant to this Board proceeding. In addition, this Request seeking all documents "referencing UYT" for the specified 17-year period (January 1998 to present) is overbroad and unduly burdensome.

17. All emails, correspondence or other documents referencing Yacht Path since July 2013.

**Objection to Request 17:** Objection: relevance.

18. All emails, correspondence or other documents referencing Dennis Cummings since July 2013.

**Objection to Request 18:** Objection: relevance.

19. All emails, correspondence or other documents referencing Kevin Cummings since July 2013.

**Objection to Request 19:** Objection: relevance.

20. All emails and correspondence with Clemens Van der Werf related to United Yacht Transport.

**Response/Objection to Request 20:** Objection: Request 20 is vague as written. It is unclear whether the Request refers to Applicant United Yacht Transport or to the mark United Yacht Transport. If the Request refers to the mark United Yacht Transport, then objection is made based on relevance, undue burden and overbreadth. Spliethoff will produce the requested documents related to Applicant United Yacht Transport.

21. All emails and correspondence with Coby Enterprises related to United Yacht Transport.

**Response/Objection to Request 21:** Objections: Request 21 is vague as written and confidentiality. It is unclear whether the Request refers to Applicant United Yacht Transport or to the mark United Yacht Transport. Spliethoff will produce the requested documents related to the mark United Yacht Transport after entry of a protective order.

22. All emails, correspondence or other documents related to any decision to rebrand Dockwise Yacht Transport LLC as “United Yacht Transport” and “UYT” in connection with a proposed buyout transaction.

**Response to Request 22:** Spliethoff will produce the requested documents.

23. All emails, correspondence or other documents related to any actions taken in 2011 and 2012 to rebrand Dockwise Yacht Transport LLC as “United Yacht Transport” and “UYT” in connection with a proposed buyout transaction.

**Response to Request 23:** Spliethoff will produce the requested documents.

24. All emails, correspondence or other documents related to changing the name shown on any vessel to United Yacht Transport.

**Response to Request 24:** Spliethoff will produce the requested documents.

25. All emails, correspondence or other documents related to changing the logo on any vessel to UYT.

**Response to Request 25:** Spliethoff will produce the requested documents.

26. All photographs reflecting any use of the mark United Yacht Transport in U.S. commerce by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Response to Request 26:** Spliethoff will produce photographs reflecting use of the mark United Yacht Transport in commerce by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

27. All print articles (including online media) reflecting any use of the mark United Yacht Transport in U.S. commerce by Opposer or any predecessors listed in Paragraph 12 of the Notice of Opposition.

**Response to Request 27:** Spliethoff will produce the requested documents.

28. All documents related to the contention that Opposer and Applicant compete “head to head,” referenced in paragraph 28 of the Notice of Opposition.

**Response to Request 28:** Spliethoff will produce the requested documents.

29. All documents relating to Opposer's pending Trademark Application U.S. Appl. Serial No. 86041056 which Opposer intends to use to support its claims.

**Objection to Request 29:** Objection: work product privilege. See General Objection D. Spliethoff will make its pretrial disclosures at the appropriate time. This Request seeking documents which "Opposer intends to use to support its claims" is premature and seeks to invade work product of counsel for Spliethoff.

30. All emails, correspondence, or other documents related to any marketing plans of Opposer related to United Yacht Transport.

**Objection to Request 30:** Objection: relevance and confidentiality. Spliethoff and Applicant are direct competitors in the business of the transportation of yachts by boat. The requested "business plans of Opposer related to United Yacht Transport" are not relevant to this proceeding.

31. All emails, correspondence, or other documents related to any business plans of Opposer related to United Yacht Transport.

**Response/Objection to Request 31:** Relevancy and confidentiality objection. Spliethoff and Applicant are direct competitors in the business of the transportation of yachts by boat. The requested "business plans of Opposer related to United Yacht Transport" are not relevant to this proceeding.

32. All emails, correspondence, or other documents related to any marketing plans of Opposer related to UYT.

**Response/Objection to Request 32:** Relevancy and confidentiality objection. Spliethoff and Applicant are direct competitors in the business of the transportation of yachts by boat. The requested "marketing plans of Opposer related to UYT" are not relevant to this proceeding.

33. All emails, correspondence, or other documents related to any business plans of Opposer related to UYT.

**Response/Objection to Request 33:** Relevancy and confidentiality objection. Spliethoff and Applicant are direct competitors in the business of the transportation of yachts by boat. The requested "business plans of Opposer related to UYT" are not relevant to this proceeding.

34. All emails, correspondence, or other documents relating to a proposed merger between Dockwise Yacht Transport LLC and Yacht Path International.

**Response/Objection to Request 34:** Objection: confidentiality. Spliethoff will produce the requested documents which relate to predecessor Dockwise Yacht Transport LLC subject to General Objections A and C.

35. All emails, correspondence, or other documents relating to a proposed sale in 2012 of Dockwise Yacht Transport LLC to Coby Enterprises.

**Response/Objection to Request 35:** Objection: confidentiality. Spliethoff will produce the requested documents for predecessor Dockwise Yacht Transport LLC subject to General Objections A and C.

36. All emails, correspondence, or other documents related to the KEY Agency which relate to the re-branding of Dockwise Yacht Transport LLC to United Yacht Transport.

**Objection to Request 36:** Objection: vague and unintelligible as written.

37. The CNBC video entitled *Secret Lives of the Super Rich*, filmed in 2013.

**Response to Request 37:** Spliethoff will produce the requested video.

38. All emails, correspondence, or other documents related to any domain name registration for any variation of the name "United Yacht."

**Response to Request 38:** Spliethoff will produce the requested documents.

39. All emails, correspondence, or other documents reflecting ownership of any domain name registration for any variation of the name “United Yacht.”

**Response to Request 39:** Spliethoff will produce the requested documents.

40. All emails, correspondence, or other documents related to the transfer or assignment of any domain name registration for any variation of the name “United Yacht.”

**Objection to Request 40:** Objection: relevance.

41. All schematic drawings related to hull and/or funnel markings for any vessels changing the name shown from “Dockwise Yacht Transport” to “United Yacht Transport.”

**Response to Request 41:** Spliethoff will produce the requested documents.

42. All photographs of M/V Yacht Express and M/V Super Servant 4 displaying the name “United Yacht Transport” on sidewalls and/or “UYT” on funnels.

**Response to Request 42:** Spliethoff will produce the requested photographs.

43. The sailing schedule for 2011, 2012, and 2013 for the M/V Yacht Express and M/V Super Servant 4.

**Response to Request 43:** Spliethoff will produce the requested documents.

44. All emails, correspondence or other documents related to the decision to change the name shown on any vessels from United Yacht Transport to any other name.

**Response to Request 44:** Spliethoff will produce the requested documents.

45. All emails, correspondence or other documents related to the decision to change the name in any marketing or advertising from United Yacht Transport to any other name.

**Response to Request 45:** Spliethoff will produce the requested documents.

46. All emails, correspondence or other documents related to the adoption of the name Yacht-Transport.com.

**Objection to Request 46:** Objection: relevance.

47. All emails, correspondence or other documents related to the use of the name Yacht-Transport.com.

**Objection to Request 47:** Objection: relevance.

48. All emails, correspondence, or other documents related to the KEY Agency which relate to re-branding to Yacht-Transport.com.

**Objection to Request 48:** Objections: vague and unintelligible as written and relevance.

49. All emails, correspondence, or other documents related to re-branding to Yacht-Transport.com.

**Objection to Request 49:** Objection: vague as written and relevance.

50. All schematic drawings related to hull and/or funnel markings for any vessels changing the name shown from “United Yacht Transport” to any other name.

**Response to Request 50:** Spliethoff will produce the requested documents

51. All emails, correspondence or other documents related to removing United Yacht Transport from the sidewall of any vessel.

**Response to Request 51:** Spliethoff will produce the requested documents

52. All emails, correspondence or other documents related to removing UYT from the funnel of any vessel.

**Objection/Response to Request 52:** Objection: relevance. Notwithstanding the foregoing objection, Spliethoff will produce the requested documents.

53. All emails, correspondence or other documents related to changing the name on the sidewall of any vessel from United Yacht Transport to any other name.

**Response to Request 53:** Spliethoff will produce the requested documents

54. All emails, correspondence or other documents related to changing the logo UYT on the funnel of any vessel to any other name or logo.

**Objection/Response to Request 54:** Objection: relevance. Notwithstanding the forgoing objection, Spliethoff will produce the requested documents.

55. All emails, correspondence or other documents related to removing or altering the name United Yacht Transport on any internet website owned or operated by Opposer.

**Response to Request 55:** On information and belief, no such documents exist; however inquiry is being made. If any such documents are located, Spliethoff will produce such documents.

56. All emails, correspondence or other documents related to removing or altering the name United Yacht Transport in any marketing or advertising by Opposer.

**Response to Request 56:** Spliethoff will produce the requested documents.

Dated: April 22, 2015

Respectfully submitted,

/s/ Sandra I. Tart

J. Michael Pennekamp

Fla. Bar No. 983454

Email: [jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com)

Sandra I. Tart

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FOWLER WHITE BURNETT, P.A.  
Espirito Santo Plaza, Fourteenth Floor  
1395 Brickell Avenue  
Miami, Florida 33131  
Telephone: (305) 789-9200  
Facsimile: (305) 789-9201

*Counsel for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Opposer's Responses and Objections to Applicant's First Request for Production has been served upon Bryan D. Hull, Esquire, counsel for Applicant United Yacht Transport, LLC, this 22nd day of April 2015, by email to [bhull@bushross.com](mailto:bhull@bushross.com).

/s/ Sandra I. Tart  
\_\_\_\_\_  
Sandra I. Tart

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UNITED STATES DISTRICT COURT

For The

SOUTHERN DISTRICT OF FLORIDA

**SPLIETHÖFF'S  
BEVRACHTINGSKANTOOR B.V.,**

Civil Action No.: USPTO/TTAB Opp. 91219179

Opposer,

vs.

**UNITED YACHT TRANSPORT LLC,**

Applicant.

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**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: SEVENSTAR YACHT TRANSPORT USA AGENCIES LLC  
c/o MICHEAL J. PENNEKAMP, ESQ., as Registered Agent  
1395 Brickell Ave., 14<sup>th</sup> Floor  
Miami, FL 33131

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*(Name of person to whom this subpoena is directed)*

**Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

**SEE EXHIBIT A, ATTACHED HERETO**

<p>Place:</p> <p>First Choice Reporting 401 E. Las Olas Blvd., Suite 1400 Ft. Lauderdale, FL 33301 954-607-2572 (Telephone)</p>	<p>Date and Time:</p> <p>August 27, 2015 at 10:00 a.m.</p> <p><b>PLEASE MAIL RECORDS IN LIEU OF APPEARANCE TO:</b></p> <p>Bryan D. Hull, Esq. 1801 North Highland Avenue Tampa, FL 33602 813-224-9255 bhull@bushross.com</p>
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**Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: August 7, 2015

CLERK OF COURT

OR 

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*): *United Yacht Transport, LLC*, who issues or requests this subpoena, are: Bryan D. Hull, Esq., Bush Ross, P.A., 1801 North Highland Avenue, Tampa, FL 33602; 813-224-9255; bhull@bushross.com.

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

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## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**EXHIBIT "A" TO SUBPOENA TO  
SEVENSTAR YACHT TRANSPORT USA AGENCIES LLC**

**DEFINITIONS:**

1. The term "document" is used in its customary broad sense and includes all written, typed, printed, electronically stored, recorded or graphic statements, communications or other matter in your possession, custody or control, including but not limited to: All writings; emails; instant messages; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; communications, including intra-company communications; letters or other correspondence; telegrams; telexes; cables; memoranda; records; reports; summaries; sound recordings or transcripts of personal or telephone conversations; meetings; conferences or interviews; telephone call records; diaries; desk calendars; appointment books; forecasts, accountants' work papers; drawings; graphs; spreadsheets; predictions; charts; maps; diagrams; blueprints; tables; indexes; pictures; photographs; films; phonographs records; reports; monthly account activity reports; mailgrams; financial statements or reports; statistical or analytical records; minutes or records of board of directors, committees or other meetings or conferences; reports or summaries of investigations; opinions or reports of consultants; appraisals; reports or summaries of negotiations; books; brochures; pamphlets; circulars; trade letters; press releases; newspaper and magazine clippings; stenographic, handwritten or any other notes; notebooks; projections; working papers; checks, front and back; check stubs or receipts; invoice vouchers; tape data sheets or data processing cards or disks or any other written, digital, electronic, recorded, transcribed, punched, taped, filed or graphic matter, however stored, produced or reproduced; and any other document, writing or other data compilation of whatever description including, but not limited to, any information containing such data from which information can be obtained or translated into usable form.

2. The term "communication" shall mean the transmittal of information in the form of facts, ideas, inquiries or any other form, including, without limitation, agreements and other understandings between or among two or more people, consultations, conversations, correspondence, electronic mail, dialogues, discussion, interviews, meetings, telegrams, telephone calls, text messages, instant messages, and facsimile communications.

3. The terms "relate to" and "relating to" shall have their natural meaning, including, without limitation – concerning, pertaining to, referring to, describing, evidencing or constituting, or that were or are believed by you to support, contradict or be relevant in any way to the matters addressed by each of the following document requests.

4. "You" or "your" means Sevenstar Yacht Transport USA Agencies LLC and all its subsidiaries, affiliates, divisions, and operating units.

**INSTRUCTIONS:**

A. The preceding definitions and the rules of construction set forth in Federal Rule of Civil Procedure 34 shall apply to these instructions and each of the succeeding requests.

B. The requests apply to all information in your possession, custody or control.

C. Each paragraph and subparagraph herein shall be construed independently and not with reference to any other paragraph or subparagraph for the purposes of limitation.

D. Reference to any business entity or association shall be deemed reference to any and all of its predecessors, successors, affiliates and subsidiaries, as well as any and all of its past or present officers, directors, partners, members, managers, employees, representatives, and agents, and any other persons acting or purporting to act on its behalf.

E. Any document requested herein shall be produced as it is kept in the ordinary course of business. The name of the file from which it was produced, the identity of the person from whose file it was produced and the identity of the present custodian of that file shall each be set forth.

F. Documents shall be produced in the order in which they are found in a person's files and shall not be rearranged. Documents that are found stapled, clipped or otherwise fastened together shall be produced in such form. Moreover, if the documents are kept in a file with a file label, a copy of that label shall be produced together with the documents in the file.

G. If any document is withheld or not identified under a claim of privilege, immunity or otherwise, you shall furnish a list identifying each such document and stating the following information with respect to each document:

1. the nature of the document and a summary of its contents;
2. the date of the document, its author and addressee;
3. each person to whom copies of the document were furnished or to whom the contents thereof were communicated;
4. the basis upon which the asserted privilege, immunity or other reason for non-disclosure is claimed; and
5. the request(s) to which the document(s) is responsive.

K. If any portion of any document is responsive, the entire document shall be produced. If only part of a document is protected by a privilege or immunity, the document shall be produced with only the privileged matter redacted.

**DOCUMENT REQUESTS:**

(1) All communications and documents with any third parties, including but not limited to vendors, customers, and potential vendors and customers, which refer to United Yacht Transport, UYT, or United.

(2) All communications and documents referring to both Yacht Path and United Yacht Transport, UYT, or United.

(3) All communications and documents referring to both Dennis Cummings and United Yacht Transport, UYT, or United.

(4) All communications and documents referring to both Kevin Cummings and United Yacht Transport, UYT, or United.

(5) All communications and documents with Spliethoff's Bevrachtingskantoor B.V., or anyone acting on its behalf related to United Yacht Transport, UYT, or United.

(6) All communications and documents related to the use of the name United Yacht Transport.

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

Opposition No. 91219179

Serial No. 86031633

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,

Opposer,

v.

UNITED YACHT TRANSPORT LLC.,

Applicant.

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**OPPOSER AND SEVENSTAR'S OBJECTIONS AND RESPONSE TO RULE 45  
SUBPOENA DUCES TECUM TO  
SEVENSTAR YACHT TRANSPORT USA AGENCIES LLC**

Opposer SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V. ("SPLIETHOFF"), and Sevenstar Yacht Transport USA Agencies, LLC ("SEVENSTAR"), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 45, hereby serve their objections and response to the Rule 45 subpoena *duces tecum* served upon SEVENSTAR on August 10, 2015, with a return date of August 27, 2015.<sup>1</sup>

**Document Request (1):**

All communications and documents with any third parties, including but not limited to vendors, customers and potential vendors and customers, which refer to United Yacht Transport, UYT, or United.

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<sup>1</sup> On August 25, 2015, counsel for Applicant agreed to an extension of time through September 11, 2015 for Sevenstar and Opposer to serve responses/objections to the subpoena.

**Objection to Request (1):**

Objection: relevancy. Communications by SEVENSTAR with "any third parties.... which refer to United Yacht Transport, UYT or United" have no relevance to the subject matter and issues in this trademark proceeding. Applicant's allegation in its Second Affirmative Defense that SPLIETHOFF is purportedly "denigrating" the UNITED YACHT TRANSPORT name fails to state a proper affirmative defense.

This Request is an improper effort by Applicant to obtain documents irrelevant herein for Applicant to use in Applicant's pending lawsuit against SEVENSTAR involving claims for various business torts which SEVENSTAR is vigorously defending. *See* CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida.

**Document Request (2):**

All communications and documents referring to both Yacht Path and United Yacht Transport, UYT, or United.

**Objection/Response to Request (2):**

Objection: relevancy. This request seeks information which is not relevant to the subject matter and issues in this trademark proceeding. Moreover, this Request is an improper effort by Applicant to obtain documents irrelevant herein for Applicant to use in Applicant's pending lawsuit against SEVENSTAR involving claims for various business torts which SEVENSTAR is vigorously defending. *See* CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida.

Notwithstanding the foregoing objection, SPLIETHOFF has already produced all SEVENSTAR documents located to date which refer to Yacht Path, Dennis Cummings and/or Kevin Cummings.

**Document Request (3):**

All communications and documents referring to both Dennis Cummings and United Yacht Transport, UYT, or United.

**Objection/Response to Request (3):**

Objection: relevancy. This request seeks information which is not relevant to the subject matter and issues in this trademark proceeding. Moreover, this Request is an improper effort by Applicant to obtain documents irrelevant herein for Applicant to use in Applicant's pending lawsuit against SEVENSTAR involving claims for various business torts which SEVENSTAR is vigorously defending. *See* CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida.

Notwithstanding the foregoing objection, SPLIETHOFF has already produced all SEVENSTAR documents located to date which refer to Yacht Path, Dennis Cummings and/or Kevin Cummings.

**Document Request (4):**

All communications and documents referring to both Kevin Cummings and United Yacht Transport, UYT, or United.

**Objection/Response to Request (4):**

Objection: relevancy. This request seeks information which is not relevant to the subject matter and issues in this trademark proceeding. Moreover, this Request is an improper effort by

Applicant to obtain documents irrelevant herein for Applicant to use in Applicant's pending lawsuit against SEVENSTAR involving claims for various business torts which SEVENSTAR is vigorously defending. *See* CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida.

Notwithstanding the foregoing objection, SPLIETHOFF has already produced all SEVENSTAR located to date which refer to Yacht Path, Dennis Cummings and/or Kevin Cummings.

**Document Request (5):**

All communications and documents with Spliethoff's Bevrachtingskantoor B.V., or anyone acting on its behalf related to United Yacht Transport, UYT, or United.

**Objection/Response to Request (5):**

Objection: relevancy and vagueness. Applicant, United Yacht Transport, is a business entity operating in competition with SEVENSTAR. The internal communications of SEVENSTAR with its parent entity, Opposer SPLIETHOFF, relating to Applicant United Yacht Transport, or this business name in its shortened form "UYT" or "UNITED" are not relevant to any issues, claims or defenses in this trademark proceeding.

Notwithstanding the foregoing objection, SPLIETHOFF already has produced all SEVENSTAR documents located to date which relate to use of the mark UNITED YACHT TRANSPORT.

**Document Request (6):**

All communications and documents related to the use of the name United Yacht Transport.

**Response to Request (6):**

SPLIETHOFF already has produced all SEVENSTAR documents located to date which relate to use of the mark UNITED YACHT TRANSPORT.

Respectfully submitted,

/s/ Sandra I. Tart

\_\_\_\_\_  
J. Michael Pennekamp

Fla. Bar No. 983454

Email: [jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com)

Sandra I. Tart

Fla. Bar No. 358134

Email: [start@fowler-white.com](mailto:start@fowler-white.com)

FOWLER WHITE BURNETT, P.A.  
Espirito Santo Plaza, Fourteenth Floor  
1395 Brickell Avenue  
Miami, Florida 33131  
Telephone: (305) 789-9200  
Facsimile: (305) 789-9201

*Counsel for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Opposer and Sevenstar's Objections and Response to Rule 45 Subpoena Duces Tecum to Sevenstar Yacht Transport USA Agencies LLC has been served upon Bryan D. Hull, Esquire, counsel for Applicant United Yacht Transport, LLC, this 11<sup>th</sup> day of September 2015, by email to [bhull@bushross.com](mailto:bhull@bushross.com).

/s/ Sandra I. Tart

\_\_\_\_\_  
Sandra I. Tart

Opposition No. 91219179  
Opposer and Sevenstar's Objections  
and Response to Rule 45 Subpoena  
Duces Tecum to Sevenstar

4834-7441-3096, v. 1

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UNITED STATES DISTRICT COURT

For The

SOUTHERN DISTRICT OF FLORIDA

**SPLIETHOFF'S  
BEVRACHTINGSKANTOOR B.V.,**

Civil Action No.: USPTO/TTAB Opp. 91219179

Opposer,

vs.

**UNITED YACHT TRANSPORT LLC,**

Applicant.

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**AMENDED SUBPOENA TO PRODUCE DOCUMENTS,  
INFORMATION, OR OBJECTS OR TO  
PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: CLEMENS VAN DER WERF  
5302 Northwest 21<sup>st</sup> Terr.  
Ft. Lauderdale, FL 33309

or at:

912 Southeast 6<sup>th</sup> Court  
Ft. Lauderdale, FL 33301-3018

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*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

**SEE EXHIBIT A, ATTACHED HERETO**

<p>Place:</p> <p>First Choice Reporting 401 E. Las Olas Blvd., Suite 1400 Ft. Lauderdale, FL 33301 954-607-2572 (Telephone)</p>	<p>Date and Time:</p> <p>September 8, 2015 at 10:00 a.m.</p> <p><b>IN LIEU OF APPEARANCE, PLEASE MAIL RECORDS TO:</b></p> <p>Bryan D. Hull, Esq. 1801 North Highland Avenue Tampa, FL 33602 813-224-9255 bhull@bushross.com</p>
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**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: August 14, 2015

CLERK OF COURT

OR



\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

---

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*): *United Yacht Transport, LLC*, who issues or requests this subpoena, are: Bryan D. Hull, Esq., Bush Ross, P.A., 1801 North Highland Avenue, Tampa, FL 33602; 813-224-9255; bhull@bushross.com.

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**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

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## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things; or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## EXHIBIT "A" TO SUBPOENA TO CLEMENS VAN DER WERF

### DEFINITIONS:

1. The term "document" is used in its customary broad sense and includes all written, typed, printed, electronically stored, recorded or graphic statements, communications or other matter in your possession, custody or control, including but not limited to: All writings; emails; instant messages; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; communications, including intra-company communications; letters or other correspondence; telegrams; telexes; cables; memoranda; records; reports; summaries; sound recordings or transcripts of personal or telephone conversations; meetings; conferences or interviews; telephone call records; diaries; desk calendars; appointment books; forecasts, accountants' work papers; drawings; graphs; spreadsheets; predictions; charts; maps; diagrams; blueprints; tables; indexes; pictures; photographs; films; phonographs records; reports; monthly account activity reports; mailgrams; financial statements or reports; statistical or analytical records; minutes or records of board of directors, committees or other meetings or conferences; reports or summaries of investigations; opinions or reports of consultants; appraisals; reports or summaries of negotiations; books; brochures; pamphlets; circulars; trade letters; press releases; newspaper and magazine clippings; stenographic, handwritten or any other notes; notebooks; projections; working papers; checks, front and back; check stubs or receipts; invoice vouchers; tape data sheets or data processing cards or disks or any other written, digital, electronic, recorded, transcribed, punched, taped, filed or graphic matter, however stored, produced or reproduced; and any other document, writing or other data compilation of whatever description including, but not limited to, any information containing such data from which information can be obtained or translated into usable form.

2. The term "communication" shall mean the transmittal of information in the form of facts, ideas, inquiries or any other form, including, without limitation, agreements and other understandings between or among two or more people, consultations, conversations, correspondence, electronic mail, dialogues, discussion, interviews, meetings, telegrams, telephone calls, text messages, instant messages, and facsimile communications. Any electronic mail responsive to these requests shall be produced, including accounts for "@me.com," "@mac.com", "@dockwise-yt.com", and "@skylimoaircharter.com," as well as any other accounts that have been used.

3. The terms "relate to" and "relating to" shall have their natural meaning, including, without limitation – concerning, pertaining to, referring to, describing, evidencing or constituting, or that were or are believed by you to support, contradict or be relevant in any way to the matters addressed by each of the following document requests.

4. "You" or "your" means Clemens van der Werf.

### INSTRUCTIONS:

A. The preceding definitions and the rules of construction set forth in Federal Rule of Civil Procedure 34 shall apply to these instructions and each of the succeeding requests.

B. The requests apply to all information in your possession, custody or control.

C. Each paragraph and subparagraph herein shall be construed independently and not with reference to any other paragraph or subparagraph for the purposes of limitation.

D. Reference to any business entity or association shall be deemed reference to any and all of its predecessors, successors, affiliates and subsidiaries, as well as any and all of its past or present officers, directors, partners, members, managers, employees, representatives, and agents, and any other persons acting or purporting to act on its behalf.

E. Any document requested herein shall be produced as it is kept in the ordinary course of business. The name of the file from which it was produced, the identity of the person from whose file it was produced and the identity of the present custodian of that file shall each be set forth.

F. Documents shall be produced in the order in which they are found in a person's files and shall not be rearranged. Documents that are found stapled, clipped or otherwise fastened together shall be produced in such form. Moreover, if the documents are kept in a file with a file label, a copy of that label shall be produced together with the documents in the file.

G. If any document is withheld or not identified under a claim of privilege, immunity or otherwise, you shall furnish a list identifying each such document and stating the following information with respect to each document:

1. the nature of the document and a summary of its contents;
2. the date of the document, its author and addressee;
3. each person to whom copies of the document were furnished or to whom the contents thereof were communicated;
4. the basis upon which the asserted privilege, immunity or other reason for non-disclosure is claimed; and
5. the request(s) to which the document(s) is responsive.

K. If any portion of any document is responsive, the entire document shall be produced. If only part of a document is protected by a privilege or immunity, the document shall be produced with only the privileged matter redacted.

**DOCUMENT REQUESTS:**

(1) All communications and documents related to the use of the name “United Yacht Transport” in the proposed management buyout of Dockwise Yacht Transport LLC between 2011 and 2013.

(2) All communications and documents related to rebranding to “United Yacht Transport” between 2011 and 2013.

(3) All communications and documents related to the payment of costs for rebranding to “United Yacht Transport.”

(4) All communications and documents related to painting the name “United Yacht Transport” on the side of any vessel or the initials “UYT” on the funnel of any vessel.

(5) All communications and documents related to branding and/or transitioning with respect to any proposed buyout of Dockwise Yacht Transport LLC from 2011 to 2013. This includes the authorization of expenses related to the transition.

(6) All communications and documents related to your Dockwise Yacht Transport LLC job responsibilities and any potential conflicts as they relate to the Coby Enterprises LLC acquisition, or any related group attempting to buyout Dockwise Yacht Transport LLC between 2011 and 2013.

(7) All communications and documents related to your separation from Dockwise Yacht Transport LLC, including any communications after your departure.

(8) All communications and documents regarding the Unitedyachttransport.com domain name, including attempts made to purchase the name/or acquire the name from you.

(9) All documents and communications with Spliethoff's Bevrachtingskantoor B.V., or anyone acting on its behalf, related to United Yacht Transport.

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

Opposition No. 91219179

Serial No. 86031633

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,

Opposer,

v.

UNITED YACHT TRANSPORT LLC.,

Applicant.

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**VAN DER WERF'S OBJECTIONS AND RESPONSES TO  
RULE 45 SUBPOENA DUCES TECUM**

Non-party Clemens Van der Werf, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 45, hereby serves his objections and responses to the Rule 45 subpoena *duces tecum* served upon him by Applicant, and states as follows:

A. Van der Werf has produced all documents located in his possession, custody or control which are responsive to Requests 1, 2, 3, 4, 5, 8 and 9 of the subpoena.

B. Van der Werf objects to Requests 6 and 7 on the grounds that such documents are outside the scope of allowable discovery. Requests 6 and 7—which seek documents relating to Mr. Van der Werf's "job responsibilities" in his former employment with Dockwise Yacht Transport LLC and his separation from said employer—seek documents which are not relevant to any of the claims or defenses in this proceeding.<sup>1</sup> It is well settled that the scope of discovery sought under a Rule subpoena *duces tecum* is the same as the scope of discovery under Fed. R. Civ. P. 26(b).

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<sup>1</sup> Applicant requested similar documents relating to Van der Werf's former employment with Dockwise Yacht Transport LLC in Requests 29, 30 and 31 of its Second Request for Production of Documents to Opposer. On September 11, 2015, Opposer served its Response to Applicant's Second

Although the subpoena *duces tecum* was served on August 25, 2015 and had a September 8, 2015 return date, non-party Van der Werf acted with diligence and in good faith in producing documents responsive to Requests 1, 2, 3, 4, 5, 8 and 9 of the subpoena on September 23, 2015 and September 30, 2015. In addition, after being advised by Applicant's counsel on September 11, 2015 of service of the subpoena on the non-party and lack of production on the return date, undersigned counsel for Van der Werf on September 14, 2015 advised Applicant's counsel via email that non-party Van der Werf objected to Requests 6 and 7 and requested Applicant's counsel to state the grounds upon which Applicant believed the documents sought in Requests 6 and 7 to be relevant. (see email exchange attached as Exhibit "A" hereto). Counsel did not communicate further regarding the relevancy issue raised with regard to Requests 6 and 7 of the subpoena until the subject was addressed in counsel's October 6, 2015 telephonic discovery conference.

On October 6, 2015 counsel for the parties had a discovery conference, which included a discussion of Requests 6 and 7 of the Van der Werf subpoena. In that call, counsel determined that Requests 6 and 7 presented a discovery dispute which would not be resolved through compromise. Accordingly, a formal written objection to Requests 6 and 7 is hereby served.

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Request for Production of Documents and objected to Requests 29, 30 and 31 on grounds of relevancy.

Respectfully submitted,

/s/ Sandra I. Tart

J. Michael Pennekamp

Fla. Bar No. 983454

Email: [jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com)

Sandra I. Tart

Fla. Bar No. 358134

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FOWLER WHITE BURNETT, P.A.  
Espirito Santo Plaza, Fourteenth Floor  
1395 Brickell Avenue  
Miami, Florida 33131  
Telephone: (305) 789-9200  
Facsimile: (305) 789-9201

*Counsel for Clemens Van der Werf*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Van der Werf's Objections and Responses to Rule 45 Subpoena Duces Tecum has been served upon Bryan D. Hull, Esquire, counsel for Applicant United Yacht Transport, LLC, this 22nd day of October 2015, by email to [bhull@bushross.com](mailto:bhull@bushross.com).

/s/ Sandra I. Tart  
\_\_\_\_\_  
Sandra I. Tart

## Sandra I. Tart

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**From:** Sandra I. Tart  
**Sent:** Monday, September 14, 2015 9:06 AM  
**To:** bhull@bushross.com  
**Subject:** UYT/Spliethoff Opposition Proceeding: Subpoena Mr. Van der Werf and Deposition Scheduling

Bryan,

The week of 10/5 is open on my schedule so I'm blocking it out now for depositions in this case and will inquire of the 4 persons you wish to depose whether they can sit for deposition that week.

For purposes of future planning, I'm NOT available for depositions the week of October 12. Please let me know your availability for depositions the week of October 19 and whether Mr. Haber is available for deposition on October 20, 21 or 22. Perhaps we can fit in the depositions of Dennis and Kevin Cummings that week as well.

It will not be necessary for you to file an action to enforce the subpoena served on Mr. Van der Werf. I will follow-up with him regarding production of documents by him and Coby Enterprises. I will however be filing an Objection to Requests 6 and 7 of both subpoenas, on relevancy grounds. Perhaps you can explain to me why you believe the subjects in these categories are relevant b/c I'm not seeing it.

Thanks.

Sandra

Fowler White Burnett, P.A.

Sandra I. Tart  
Attorney at Law

Northbridge Centre  
515 North Flagler Drive  
Suite 2100  
West Palm Beach, Florida 33401

direct 561.839.2471  
main 561.802.9044  
fax 561.839.2472

[STart@fowler-white.com](mailto:STart@fowler-white.com)

-----Original Message-----

From: Bryan D. Hull [mailto:bhull@bushross.com]  
Sent: Friday, September 11, 2015 4:14 PM  
To: Sandra I. Tart  
Subject: Clemens van der Werf



Sandra,

Mr. Van der Werf did not respond to our document subpoena, and we intend to file a case to enforce it shortly. If this will not be necessary, please let us know as soon as possible.

Also, we would like to take the following depositions during the week of October 5: Clemens van der Werf, Catalina Bujor, Jeff Last, and Gina Last. Please advise of your clients' availability. There are a few others we will need to take, but let's get these four set first.

Thanks,

Bryan D. Hull

Bryan D. Hull, Esq.  
1801 North Highland Avenue  
Tampa, Florida 33602-2656  
(813) 224-9255 [Phone]  
(813) 223-9620 [Fax]  
(813) 204-6491 [Direct Line]  
[BHull@bushross.com](mailto:BHull@bushross.com)  
[www.bushross.com](http://www.bushross.com)  
Mailing Address:  
Post Office Box 3913  
Tampa, Florida 33601-3913

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