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Filing date: **06/07/2016**

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

Proceeding	91225481
Party	Plaintiff Alfred Club, Inc.
Correspondence Address	Judd D. Lauter Cooley LLP 1299 Pennsylvania Ave. NW, Suite 700 Washington, DC 20004 UNITED STATES jlauter@cooley.com, jcullum@cooley.com, trademarks@cooley.com, gthunell@cooley.com
Submission	Motion to Compel Discovery
Filer's Name	Judd D. Lauter
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Signature	/Judd D. Lauter/
Date	06/07/2016
Attachments	Alfred Club v. Alfred Inc. -- Motion to Compel.pdf(228574 bytes ) Exhibit A.pdf(101480 bytes ) Exhibit B.pdf(150273 bytes ) Exhibit C.pdf(224064 bytes ) Exhibit D.pdf(212618 bytes ) Exhibit E.pdf(149658 bytes ) Exhibit H.pdf(50638 bytes ) Exhibit K.pdf(86215 bytes ) Exhibit F.pdf(46527 bytes ) Exhibit I.pdf(62669 bytes ) Exhibit J.pdf(66254 bytes ) Exhibit G.pdf(52373 bytes ) Alfred Club -- Declaration of Judd Lauter ISO MTC.pdf(199004 bytes )

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

In the matter of application Serial No. 86/395,092  
For the Trademark ALFRED (*stylized*)  
Published in the Official Gazette on August 25, 2015

ALFRED CLUB, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91225481
v.	)	
	)	
ALFRED, INC.,	)	
	)	
Applicant.	)	
<hr/>		

**MOTION TO COMPEL DISCOVERY AND FOR AN EXTENSION OF DEADLINES**

Pursuant to 37 CFR § 2.120(e)(1), Opposer Alfred Club, Inc. (“Alfred Club”) moves the Board to compel Applicant Alfred, Inc. (“Applicant”) to respond to Alfred Club’s Requests for Production and Interrogatories and to serve Initial Disclosures. As set forth in detail below and in the accompanying Declaration of Judd D. Lauter (“Lauter Decl.”), Alfred Club has made a concerted good faith effort to resolve this discovery dispute, to no avail.

Alfred Club further respectfully requests that the Board suspend the proceeding and reset all deadlines by 90 days upon disposition of this motion, so Alfred Club may review any discovery Applicant is compelled to produce and use such discovery to prepare for the deposition of Applicant. *See* 37 C.F.R. § 2.120(e)(2).

**I. INTRODUCTION**

Applicant has prejudiced Alfred Club’s ability to prosecute this opposition by failing to satisfy its discovery obligations. Alfred Club served its first sets of Requests for Production and Interrogatories on Applicant on March 11, 2016. As set forth below, since that time Alfred Club

has expended substantial effort to obtain Initial Disclosures and complete responses and responsive documents from Applicant with no success. Because Applicant's counsel has, time and again, failed to respond to communications from counsel for Alfred Club, Alfred Club is left with no choice but to move this Board to compel Applicant to fully satisfy its obligations with respect to the Requests for Production and Interrogatories and Initial Disclosures that are the subject of this motion. Alfred Club cannot effectively prosecute this opposition without such discovery.

## **II. PROCEDURAL AND FACTUAL BACKGROUND**

On September 15, 2014, Applicant filed its application to register the mark ALFRED (*stylized*). Alfred Club became aware of Applicant's application shortly thereafter and immediately attempted to engage Applicant and Applicant's counsel in an effort to resolve Alfred Club's concerns informally. (Lauter Decl. ¶ 2.) For months Alfred Club's counsel attempted to contact Applicant's counsel by letter, email, and telephone, but received no reply. Alfred Club timely filed an extension of time to oppose on September 3, 2015. (*Id.* at ¶¶ 2-7.) Despite further attempt to contact Applicant's counsel, Alfred Club again received no response. (*Id.*) The parties were therefore unable to resolve their dispute prior to the deadline to oppose. (*Id.* at ¶ 8.)

On December 22, 2015, Alfred Club timely filed a Notice of Opposition to Applicant's mark on the grounds of a likelihood of confusion with the marks ALFRED and HELLO ALFRED. (Dkt. No. 1.) Applicant filed its Answer on January 15, 2016. (Dkt. No. 4.)

Alfred Club timely served its Initial Disclosures on March 31, 2016. Applicant has never served its Initial Disclosures. (Lauter Decl. at ¶ 11.) Alfred Club also served its first sets of Requests for Production and Interrogatories on Applicant on March 11, 2016. (*Id.* at ¶¶ 9-10.) Alfred Club served these via U.S. Mail. (*Id.*) Alfred Club inadvertently served discovery prior

to serving its Initial Disclosures. (*Id.* at ¶ 12.) Alfred Club was notified of this error in an email from Applicant's counsel dated April 14, 2016, over one month following Alfred Club's service of discovery, at which time Applicant requested an extension of time to respond to the discovery until May 5. (*Id.* at ¶ 14.) Alfred Club consented to this request by email on April 25 and requested Applicant's delinquent Initial Disclosures. (*Id.* at ¶ 15.)

Notwithstanding the agreed upon May 5, 2016, deadline, Applicant did not serve any response to Alfred Club's discovery nor did it serve its Initial Disclosures. (*Id.* at ¶¶ 13, 16.) On May 9, four days after the mutually agreed upon deadline for Applicant's discovery responses, Alfred Club attempted to contact Applicant's counsel by telephone. (*Id.* at ¶ 17.) Applicant's counsel agreed to schedule a telephone call on May 10, 2016 to discuss Applicant's outstanding discovery responses and Initial Disclosures. (*Id.*) Applicant's counsel, however, did not participate in such a call. Instead Alfred Club received an email indicating that Applicant's counsel would provide a "status update" regarding Applicant's outstanding discovery "soon." (*Id.* at ¶ 18.) To date, no such status update and no responses or Initial Disclosures have been received. (*Id.*)

In emails dated May 10, 2016 and May 13, 2016, counsel for Alfred Club again contacted Applicant's counsel asking to schedule a telephone call to meet and confer on Applicant's failure to meet its discovery obligations in this case. (*Id.* at ¶ 19.) On May 27, 2016, Applicant's counsel emailed counsel for Alfred Club to discuss settlement. (*Id.* at ¶ 20) Alfred Club responded on June 1, 2016, stating that it would be willing to discuss settlement provided that Applicant uphold its discovery obligations and, in light of Applicant's delay, consent to an extension of all relevant deadlines. (*Id.*) Alfred Club has not received a reply. (*Id.*)

### **III. ARGUMENT**

#### **A. Alfred Club's Motion to Compel is Timely and Well-Supported.**

Trademark Rule § 2.120(e)(1) provides, in relevant part, that “[i]f a party...fails to answer...any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party...seeking discovery may file a motion to compel...an answer or production....” 37 C.F.R. § 2.120(e)(1); *see also* TBMP § 523. The moving party must (1) support its motion with a written statement showing a good faith effort to resolve the issues presented in the motion, (2) include with its motion a copy of any interrogatory or document request which is the subject of the motion as well as any answer or proffer of production or objection made in response, and (3) file its motion prior to the close of discovery and the commencement of the first testimony period. 37 C.F.R. § 2.120(e)(1).

##### **1. Alfred Club Has Made a Good Faith Effort to Resolve This Dispute.**

In support of a motion to compel, the movant must provide a written statement “showing that it has made a good faith effort, by conference or correspondence, to resolve the issues with the other party, but that the parties were unable to resolve their differences.” *Hot Tamale Mama ... and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080, 1081 (TTAB 2014) (*citing* 37 C.F.R. § 2.120(e)(1); TBMP § 523.02). When a party attempts to fulfill this obligation, the other party “is under an equal obligation to participate in good faith” in such efforts to resolve the dispute. *Amazon Tech. Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009). “[F]ollowing such contact, if the party seeking discovery is dissatisfied with the adverse party’s answer, it may file a motion to compel.” *Hot Tamale Mama ... and More, LLC*, 110 USPQ2d. at 1080-81; *see also Pioneer Kabushiki Kaisha v. Hitachi High Tech. America Inc.*, 74 USPQ2d 1672, 1679 (TTAB 2005) (two letters requesting documents prior to moving to compel “demonstrate[d] a good faith effort to resolve the discovery dispute at issue.”).

As detailed above, Alfred Club has repeatedly sought Initial Disclosures from Applicant as well as responses to Alfred Club's Requests for Production and Interrogatories. (Lauter Decl., at ¶¶ 9-20.) Alfred Club even contacted Applicant's counsel and scheduled a telephone call which Applicant's counsel unilaterally abrogated, and later failed to follow through on his own promise that responses would be forthcoming. (*Id.* at ¶¶ 17-18.) Since then, Alfred Club has repeatedly attempted to meet and confer with opposing counsel regarding Applicant's complete derogation of its discovery obligations. (*Id.* at ¶¶ 19-20.) Alfred Club has therefore more than met its obligation to engage in a good faith effort to resolve this dispute. Applicant's continued failure to meet its obligations thus requires the Board's intervention.

**2. Alfred Club's Motion Is Accompanied by the Discovery Requests in Dispute**

A motion to compel shall be accompanied by the discovery requests in dispute and any responses or proffers of production thereto. 37 C.F.R. § 2.120 (e)(1); TBMP § 523.02. The Requests for Production and Interrogatories at issue are attached as Exhibits to this motion. *See* Lauter Decl., ¶¶ 6-9; Exs. A-B (Alfred Club's Requests for Production and Interrogatories). Accordingly, Alfred Club has satisfied this requirement.

**3. Alfred Club's Motion Is Timely Filed.**

A party seeking an order compelling discovery must file a motion to compel prior to the close of discovery. 37 C.F.R. § 2.120(e)(1). Discovery closes in this proceeding on August 28, 2016. Alfred Club's motion therefore is timely filed.

**B. The Board Should Issue an Order Compelling Applicant to Search for and Produce, Without Objection, Documents Responsive to Alfred Club's Requests for Production of Documents; to Serve, Without Objection, Complete Responses to Alfred Club's Interrogatories; and to Serve Applicant's Initial Disclosures.**

"Each party has a duty to make a good faith effort to satisfy the reasonable and appropriate needs of its adversary." *Panda Travel Inc. v. Resort Option Enterprises, Inc.* 94

USPQ2d 1789, 1791 (TTAB 2009). Moreover, “[a] party which fails to respond to interrogatories or document requests during the time allowed for, and which is unable to show excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits.” TBMP § 403.03; *see also Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448, 449 (TTAB 1979).

The Interrogatories and Requests for Production that are the subject of this motion seek documents and information that are reasonable and appropriate subjects for discovery in this dispute. (*See* Lauter Decl., at ¶¶ 9-10.) Applicant has utterly failed to respond. (*Id.* at ¶¶ 11-20.) Further, because Applicant has offered no explanation for dereliction of its discovery obligations, it should be compelled to provide the requested discovery without objection. (*Id.*) In addition, Applicant should be compelled to serve its Initial Disclosures, which are now over two months overdue.

**C. The Board Should Suspend the Proceeding and Reset Deadlines Upon Disposition of This Motion.**

Pursuant to 37 CFR § 2.120(e)(2), “[w]hen a party files a motion for an order to compel...the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion.” Further, the Board may extend deadlines upon a showing of good cause. *See* Fed. R. Civ. P. 6(b); TBMP § 509.01. “The Board is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.” *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008).

As described above, Alfred Club has made a good faith effort to obtain needed discovery from Applicant, but Applicant is not cooperating. (*See* Lauter Decl., at ¶¶ 9-20.) Following the disposition of this motion, Alfred Club will need adequate time to evaluate any discovery

Applicant is compelled to produce, prepare to take Applicant's deposition, and, if necessary, serve additional discovery requests. Thus, Alfred Club has shown good cause for an extension of all deadlines by 90 days.

#### **IV. CONCLUSION**

For the foregoing reasons, Alfred Club respectfully requests that the Board enter an order: (a) compelling Applicant to search for thoroughly and produce, without objection, documents responsive to Alfred Club's Requests for Production, to serve, without objection, complete responses to Alfred Club's Interrogatories, and to serve Applicant's Initial Disclosures; and (b) extending all deadlines in this proceeding by 90 days.

Date: June 7, 2016

COOLEY LLP

/Judd D. Lauter/

Janet L. Cullum

Judd D. Lauter

COOLEY LLP

1299 Pennsylvania Ave., NW

Suite 700

Washington, D.C. 20004

Tel: (202) 842-7800

*Counsel for Opposer Alfred Club, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION TO COMPEL AND FOR AN EXTENSION OF DEADLINES** has been served on Applicant Alfred, Inc. by mailing said copy on June 7, 2016, via First Class Mail, postage prepaid to Applicant's counsel of record:

Matthew H. Swyers  
344 Maple Ave., West, Suite 151  
Vienna, VA 22180-5612

An electronic courtesy copy has also been sent by email to Applicant's counsel email address at [mswers@thetrademarkcompany.com](mailto:mswers@thetrademarkcompany.com).

Date: June 7, 2016

/Judd D. Lauter/  
\_\_\_\_\_  
Judd D. Lauter

# **EXHIBIT A**



Judd D. Lauter  
T: +1 202 728 7052  
jlauter@cooley.com

FOR SETTLEMENT PURPOSES ONLY  
VIA EMAIL AND FEDERAL EXPRESS  
MSWYERS@THETRADEMARKCOMPANY.COM

October 17, 2014

Matthew H. Swyers  
The Trademark Company  
344 Maple Ave W, Suite 151  
Vienna, VA 22180-5612

**RE: U.S. Trademark Application Serial No. 86/395,092 in Connection With the ALFRED MARK**

Dear Mr. Swyers:

Our firm represents Alfred Club, Inc. (the "Alfred Club") in connection with trademark matters. I write regarding U.S. Trademark Application Serial No. 86/395,092 for the mark ALFRED (stylized) (the "Application"), which you recently filed on behalf of your client Alfred, Inc. ("AI").

As your client is likely aware, for over a year, Alfred Club has offered on-demand housekeeping, personal shopping, errand, and concierge services under its ALFRED mark (the "ALFRED Mark"). Alfred Club has invested substantial effort and resources in developing, marketing, and providing high quality services under the ALFRED Mark. As a result of these efforts, the ALFRED Mark embodies the substantial and valuable goodwill of the company.

Given this background, our client was surprised to see that AI filed the Application for the mark ALFRED (the "Inc. Mark") in connection with "dry cleaning; shoe repair; shoe shining" in Class 37, "delivery of goods, delivery of goods by mail order" in Class 39, and "concierge services for others comprising making requested personal arrangements and reservations and providing customer-specific information to meet individual needs rendered together in a online and public environment; personal concierge services for others comprising making requested personal arrangements and reservations and providing customer-specific information to meet individual needs" in Class 45.

Alfred Club has superior rights in the mark ALFRED in the United States in the relevant field of use. Our client began using the ALFRED Mark in commerce prior to the December 2013 first use date claimed in the Application. Moreover, contrary to AI's representation to the United States Patent and Trademark Office that it has been using ALFRED in the U.S. since December 2013, our research reveals no such use. Both the AI website and the AI mobile application confirm that AI provides services only in Canada. Moreover, public statements by AI's principal Matt Young as recently as September 2014, acknowledge that AI operates only in Canada. Andrew la Fleur, *What to Look for in a Condo Investment with Matt Young of CD Capital*, True Condos Podcast (Sep. 9, 2014), <http://www.truecondos.com/matt-young-cd-capital-freed-developments-interview>.

As you know, AI's use in Canada is insufficient to satisfy the "use in commerce" requirement under U.S. trademark law.

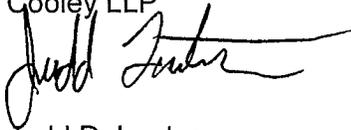
Alfred, Inc.  
October 17, 2014  
Page Two

Alfred Club would prefer to resolve this matter amicably. However, we require your client's agreement to (i) immediately withdraw the Application; and (ii) confirm in writing that it will refrain from any use of the Inc. Mark, or confusingly similar variations thereof, in the United States in our client's field of use or related fields of use which would give rise to confusion. We require a response no later than October 24, 2014.

Nothing stated herein shall be construed as a waiver of any rights or remedies of Alfred Club, all of which are expressly reserved.

Sincerely,

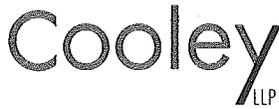
Cooley LLP



Judd D. Lauter

cc: Janet Cullum, Esq.  
Alfred Club, Inc.

# **EXHIBIT B**



Judd D. Lauter  
T: +1 202 728 7052  
jjauter@cooley.com

**FOR SETTLEMENT PURPOSES ONLY**  
VIA EMAIL AND FEDERAL EXPRESS  
MSWYERS@THETRADEMARKCOMPANY.COM

March 27, 2015

Matthew H. Swyers  
The Trademark Company  
344 Maple Ave W, Suite 151  
Vienna, VA 22180-5612

**RE: U.S. Trademark Application Serial No. 86/395,092 in Connection With the ALFRED Mark**

Dear Mr. Swyers:

As you know, our firm represents Alfred Club, Inc. (the "Alfred Club") in connection with trademark matters. We attach a copy of our letter of October 17, 2014 written to you as attorney for Alfred, Inc. ("AI"). Despite our letter and our subsequent numerous attempts to contact you by telephone, as well as our further attempts to obtain a response to our letter by contacting AI's Canadian trademark counsel, we have not yet received any response from either you or AI.

As we have previously explained, Alfred Club is deeply concerned regarding AI's filing of U.S. Trademark Application Serial No. 86/395,092 for the mark ALFRED (stylized) (the "Application") in connection with services which overlap with the services offered by our client under its ALFRED mark. Our clients are certain to experience confusion among consumers if AI proceeds with use of this mark in the U.S.

Alfred Club has no desire to engage in costly legal proceedings but this is obviously a serious matter and AI's failure to respond to our letter under these circumstances is, at best, mystifying. Our respective clients would be best served by addressing this matter promptly. Alfred Club reiterates its demand that AI agree to (i) immediately withdraw the Application; and (ii) confirm in writing that it will refrain from any use of the ALFRED mark, or confusingly similar variations thereof, in the United States in our client's field of use or related fields of use which would give rise to confusion.

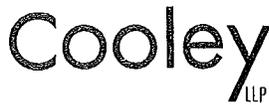
Please call or write in response by no later than April 6, 2015. Alfred Club reserves all of its legal remedies and rights.

Sincerely,

Cooley LLP

Judd D. Lauter

cc: Janet Cullum, Esq.  
Alfred Club, Inc.



Judd D. Lauter  
T: +1 202 728 7052  
jlauter@cooley.com

FOR SETTLEMENT PURPOSES ONLY  
VIA EMAIL AND FEDERAL EXPRESS  
MSWYERS@THETRADEMARKCOMPANY.COM

October 17, 2014

Matthew H. Swyers  
The Trademark Company  
344 Maple Ave W, Suite 151  
Vienna, VA 22180-5612

**RE: U.S. Trademark Application Serial No. 86/395,092 in Connection With the ALFRED MARK**

Dear Mr. Swyers:

Our firm represents Alfred Club, Inc. (the "Alfred Club") in connection with trademark matters. I write regarding U.S. Trademark Application Serial No. 86/395,092 for the mark ALFRED (stylized) (the "Application"), which you recently filed on behalf of your client Alfred, Inc. ("AI").

As your client is likely aware, for over a year, Alfred Club has offered on-demand housekeeping, personal shopping, errand, and concierge services under its ALFRED mark (the "ALFRED Mark"). Alfred Club has invested substantial effort and resources in developing, marketing, and providing high quality services under the ALFRED Mark. As a result of these efforts, the ALFRED Mark embodies the substantial and valuable goodwill of the company.

Given this background, our client was surprised to see that AI filed the Application for the mark ALFRED (the "Inc. Mark") in connection with "dry cleaning; shoe repair; shoe shining" in Class 37, "delivery of goods, delivery of goods by mail order" in Class 39, and "concierge services for others comprising making requested personal arrangements and reservations and providing customer-specific information to meet individual needs rendered together in a online and public environment; personal concierge services for others comprising making requested personal arrangements and reservations and providing customer-specific information to meet individual needs" in Class 45.

Alfred Club has superior rights in the mark ALFRED in the United States in the relevant field of use. Our client began using the ALFRED Mark in commerce prior to the December 2013 first use date claimed in the Application. Moreover, contrary to AI's representation to the United States Patent and Trademark Office that it has been using ALFRED in the U.S. since December 2013, our research reveals no such use. Both the AI website and the AI mobile application confirm that AI provides services only in Canada. Moreover, public statements by AI's principal Matt Young as recently as September 2014, acknowledge that AI operates only in Canada. Andrew la Fleur, *What to Look for in a Condo Investment with Matt Young of CD Capital*, True Condos Podcast (Sep. 9, 2014), <http://www.truecondos.com/matt-young-cd-capital-freed-developments-interview>.

As you know, AI's use in Canada is insufficient to satisfy the "use in commerce" requirement under U.S. trademark law.



FOR SETTLEMENT PURPOSES ONLY

Alfred, Inc.  
October 17, 2014  
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Alfred Club would prefer to resolve this matter amicably. However, we require your client's agreement to (i) immediately withdraw the Application; and (ii) confirm in writing that it will refrain from any use of the Inc. Mark, or confusingly similar variations thereof, in the United States in our client's field of use or related fields of use which would give rise to confusion. We require a response no later than October 24, 2014.

Nothing stated herein shall be construed as a waiver of any rights or remedies of Alfred Club, all of which are expressly reserved.

Sincerely,

Cooley LLP

A handwritten signature in black ink, appearing to read "Judd D. Lauter".

Judd D. Lauter

cc: Janet Cullum, Esq.  
Alfred Club, Inc.

# **EXHIBIT C**

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

In the matter of application Serial No. 86/395,092  
For the Trademark ALFRED (*stylized*)  
Published in the Official Gazette  
on September 15, 2014

ALFRED CLUB, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91225481
v.	)	
	)	
ALFRED, INC.,	)	
	)	
Applicant.	)	
_____	)	

**OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS AND THINGS TO APPLICANT**

**PROPOUNDING PARTY:**        **OPPOSER ALFRED CLUB, INC.**  
**RESPONDING PARTY:**        **APPLICANT ALFRED, INC.**  
**SET NUMBER:**                **ONE**

Pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 34, Opposer Alfred Club, Inc. (“Alfred Club”) hereby requests that Applicant Alfred, Inc. (“Applicant”) respond to this First Set of Requests for Production of Documents and Things (“Requests”) within thirty (30) days of service hereof and in accordance with the Definitions and Instructions set forth below.

**I.        DEFINITIONS**

Notwithstanding any Definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in these Requests, words in capital letters are defined as follows:

1.        YOU, YOUR, or YOURS refer to Applicant and anyone acting on its behalf,

including without limitation its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, licensees, and consultants, as well as any business entity owned or operated by Applicant, including any such business entity's officers, directors, corporate parent, subsidiaries, and affiliates.

2. COMMUNICATION is used in its broadest sense, and means any transmission of information from one PERSON to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.

3. CONCERN or CONCERNING means constituting, relating to, reflecting, regarding, memorializing, identifying, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, connected to, indicating, evidencing, supporting, or refuting.

4. DOCUMENT or DOCUMENTS shall have the broadest meaning ascribed to those terms by Federal Rule of Civil Procedure 34, and include electronically-stored information and tangible things, whose discovery is permitted under Rule 34(a)(1), and writings as defined by Rule 1001(1) of the Federal Rules of Evidence. A draft or non-identical copy is a separate "document" within the meaning of this term.

5. PERSON means any natural person, business, or other legal entity.

6. OPPOSITION refers to Opposition No. 91225481, filed by Alfred Club on December 22, 2015.

7. YOUR ANSWER refers to the Answer YOU filed in the OPPOSITION on January 15, 2016.

8. APPLICANT'S MARK refers to the trademark reflected in Application Serial No. 86/395,092.

9. ALFRED MARKS refer collectively to all of Alfred Club's marks that consist of or incorporate the terms ALFRED, including without limitation the ALFRED and HELLO ALFRED marks identified in Alfred Club's Notice of Opposition filed on December 22, 2015.

## II. INSTRUCTIONS

1. YOU shall produce all non-privileged DOCUMENTS or tangible things in YOUR possession, custody, or control that are responsive to these Requests. If YOU object to part of a Request and refuse to respond to that part, YOU shall produce all DOCUMENTS called for which are not subject to that objection. If YOU object to the scope or time period of a Request, YOU shall state YOUR objection and produce all documents responsive to the Request that are not covered by YOUR objection.

2. If, in responding to these Requests, YOU encounter any ambiguities when construing a Request or Definition, YOU shall set forth in YOUR written response to the Request the matter deemed ambiguous and the construction used in responding.

3. Each DOCUMENT or tangible thing produced in response to these Requests shall be produced as it is kept in the usual course of business, including file folders, binders, notebooks, and other devices by which such papers or things may be organized or separated, or it shall be organized and labeled to correspond with the Requests to which it is responsive. All DOCUMENTS that are physically or electronically attached to each other shall be produced in that form and designated accordingly in an electronic production.

4. DOCUMENTS should be produced in a form pursuant to a production protocol to be agreed upon by the parties, in a form in which they are ordinarily maintained (*e.g.*, native form), or in a reasonably usable form (*e.g.*, TIFF images with Concordance-compatible load files).

5. If there are no DOCUMENTS or things responsive to any particular Request, YOU are requested to indicate the same in writing. If any responsive DOCUMENT is no longer in existence, cannot be located or is not in YOUR possession, custody, or control, identify it, describe its subject matter and describe its disposition, including without limitation identifying the PERSON having knowledge of the disposition.

6. These Requests are continuing so as to require prompt supplemental responses as required under Federal Rule of Civil Procedure 26(e) up to and including the time of trial of the OPPOSITION. If YOU come into possession, custody, or control of responsive DOCUMENTS or

things after the initial production, YOU shall supplement the production by promptly producing such DOCUMENTS or things.

7. If YOU believe that any Request calls for the disclosure of privileged information, YOU must comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT for which a claim of privilege or protection from discovery is made.

8. When a DOCUMENT contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a DOCUMENT, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a DOCUMENT has been redacted or altered in any fashion, YOU shall identify as to each DOCUMENT the reason for the redaction or alteration, the date of the redaction or alteration, and the individual performing the redaction or alteration. Any redaction must be clearly visible on the redacted DOCUMENT.

9. Whenever used herein, the present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompasses both "and" and "or." Words in the masculine, feminine, or neutral form shall include each of the other genders.

### **III. REQUESTS FOR PRODUCTION**

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

DOCUMENTS sufficient to show YOUR use of APPLICANT'S MARK in U.S. commerce in connection with the services identified in Application Serial No. 86/395,092, including the first instances of such use(s) and the date(s) associated therewith.

#### **REQUEST FOR PRODUCTION NO. 2:**

DOCUMENTS sufficient to show YOUR use of APPLICANT'S MARK in U.S. commerce in connection with any goods or services, including the first instances of such use(s) and the date(s)

associated therewith.

**REQUEST FOR PRODUCTION No. 3:**

DOCUMENTS sufficient to show the prices or fees YOU charge or intend to charge in the United States for each good or service that YOU have offered, currently offer, or intend to offer in connection with APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 4:**

All DOCUMENTS CONCERNING YOUR use of APPLICANT'S MARK in connection with YOUR plans or preparations to develop a good and/or service offered or to be offered in the United States.

**REQUEST FOR PRODUCTION No. 5:**

DOCUMENTS sufficient to reflect all use YOU have made of APPLICANT'S MARK in connection with the sale, advertising, or promotion of a good or service in the United States.

**REQUEST FOR PRODUCTION No. 6:**

DOCUMENTS sufficient to show the target market in the United States for the services identified in Application Serial No. 86/395,092.

**REQUEST FOR PRODUCTION No. 7:**

DOCUMENTS sufficient to show all advertising and promotion disseminated by YOU in the United States in connection with APPLICANT'S MARK, including without limitation business plans, pitches, or proposals to and COMMUNICATIONS with potential business partners, investors, advertisers, or customers.

**REQUEST FOR PRODUCTION No. 8:**

All DOCUMENTS reflecting or referring to any business plan, forecast, vision, or objective of YOUR company with respect to any goods or services offered or to be offered under APPLICANT'S MARK in the United States.

**REQUEST FOR PRODUCTION No. 9:**

All marketing plans, market surveys, forecasts, projections, and other DOCUMENTS CONCERNING YOUR marketing and sales plans associated with any good or service offered or

sold to persons in the United States in connection with APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 10:**

DOCUMENTS sufficient to identify the channels of trade through which YOU sell, plan to sell, advertise, or plan to advertise each good or service offered or intended to be offered in connection with APPLICANT'S MARK in the United States.

**REQUEST FOR PRODUCTION No. 11:**

All DOCUMENTS CONCERNING any instances of confusion, mistake, deception, or association of any kind between APPLICANT'S MARK, YOU, or any of YOUR goods or services and Alfred Club, the ALFRED MARKS, or any of Alfred Club's goods or services.

**REQUEST FOR PRODUCTION No. 12:**

DOCUMENTS sufficient to show the identities of any PERSONS who have ever been associated with the marketing of any goods or services offered or intended to be offered in connection with APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 13:**

DOCUMENTS sufficient to show all expenses incurred to advertise, market, or promote the goods and services offered or intended to be offered in connection with APPLICANT'S MARK in the United States.

**REQUEST FOR PRODUCTION No. 14:**

For each month that YOU have offered goods or services under APPLICANT'S MARK in the United States, DOCUMENTS sufficient to show the number of consumers for each such good or service.

**REQUEST FOR PRODUCTION No. 15:**

DOCUMENTS sufficient to identify all consumers of YOUR goods and services offered under APPLICANT'S MARK in the United States to date.

**REQUEST FOR PRODUCTION No. 16:**

For each month that YOU have offered goods or services under APPLICANT'S MARK in the United States, DOCUMENTS sufficient to show the total number of visitors from the United States

to any website YOU own or control displaying APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 17:**

For each month that YOU have offered goods or services under APPLICANT'S MARK in the United States, DOCUMENTS sufficient to show the total number of downloads in the United States of any mobile application software YOU own or control displaying APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 18:**

For each month that YOU have offered goods or services under APPLICANT'S MARK in the United States, DOCUMENTS sufficient to show the total number of active users in the United States of any mobile application YOU own or control displaying APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 19:**

DOCUMENTS sufficient to reflect the content of any website YOU own or control displaying APPLICANT'S MARK, from inception of the website to date.

**REQUEST FOR PRODUCTION No. 20:**

All DOCUMENTS CONCERNING COMMUNICATIONS between YOU and Alfred Club or any current or former Alfred Club agent, employee, developer, consultant, licensee, affiliate, vendor, partner, or service provider referring to APPLICANT'S MARK or the ALFRED MARKS.

**REQUEST FOR PRODUCTION No. 21:**

All DOCUMENTS CONCERNING Alfred Club or the ALFRED MARKS, including without limitation all COMMUNICATIONS CONCERNING the trademark rights of Alfred Club in any of the ALFRED MARKS.

**REQUEST FOR PRODUCTION No. 22:**

Any trademark clearance search conducted by YOU or on YOUR behalf in connection with APPLICANT'S MARK or any variation thereof.

**REQUEST FOR PRODUCTION No. 23:**

DOCUMENTS sufficient to show any trademark YOU have considered using as an alternative to APPLICANT'S MARK in the United States.

**REQUEST FOR PRODUCTION No. 24:**

All DOCUMENTS reflecting or referring to any COMMUNICATIONS between YOU and any PERSON CONCERNING YOUR plans to offer any goods or services in the United States under APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 25:**

All DOCUMENTS reflecting or referring to any agreement or draft agreement between YOU and any PERSON CONCERNING any goods or services offered or intended to be offered by YOU in the United States under APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 26:**

All DOCUMENTS reflecting or referring to any license or draft license between YOU and any PERSON CONCERNING use of APPLICANT'S MARK in connection with any goods or services in the United States.

**REQUEST FOR PRODUCTION No. 27:**

DOCUMENTS sufficient to reflect YOUR organizational structure including without limitation all officers and directors.

**REQUEST FOR PRODUCTION No. 28:**

DOCUMENTS sufficient to identify all physical locations in the United States from which YOU offer or render or have at any time offered or rendered goods or services under APPLICANT'S MARK.

**REQUEST FOR PRODUCTION No. 29:**

All DOCUMENTS reflecting or referring to any business plan, forecast, vision, or objective of YOUR company with respect to goods or services offered or to be offered under APPLICANT'S MARK in the United States.

**REQUEST FOR PRODUCTION No. 30:**

All DOCUMENTS CONCERNING any facts that form the basis of any allegation or defense asserted by YOU in YOUR ANSWER.

**REQUEST FOR PRODUCTION NO. 31:**

All DOCUMENTS YOU used, identified, relied upon, or referred to when answering Alfred Club's First Set of Interrogatories or any other discovery requests propounded by Alfred Club.

**REQUEST FOR PRODUCTION NO. 32:**

All DOCUMENTS YOU intend to rely on in this OPPOSITION.

Date: March 11, 2016

COOLEY LLP

*/Judd D. Lauter/*

Janet L. Cullum

Judd D. Lauter

COOLEY LLP

1299 Pennsylvania Ave., NW

Suite 700

Washington, D.C. 20004

Tel: (202) 728-7052

Email: [jcullum@cooley.com](mailto:jcullum@cooley.com)

[jlauter@cooley.com](mailto:jlauter@cooley.com)

*Counsel for Opposer Alfred Club, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT** was served on Applicant Alfred, Inc. on the date set forth below by mailing said copy via First Class Mail, postage prepaid to Applicant's counsel of record at the following address:

Matthew H. Swyers  
The Trademark Company PLLC  
344 Maple Ave W, Ste 151  
Vienna, VA 22180-5612

Date: March 11, 2016

*/Judd D. Lauter/*

Judd D. Lauter

# **EXHIBIT D**

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

In the matter of application Serial No. 86/395,092  
For the Trademark ALFRED (*stylized*)  
Published in the Official Gazette  
on September 15, 2014

ALFRED CLUB, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91225481
v.	)	
	)	
ALFRED, INC.,	)	
	)	
Applicant.	)	
_____	)	

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

**PROPOUNDING PARTY:**        **OPPOSER ALFRED CLUB, INC.**  
**RESPONDING PARTY:**        **APPLICANT ALFRED, INC.**  
**SET NUMBER:**                **ONE**

Pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 33, Opposer Alfred Club, Inc. (“Alfred Club”) hereby requests that Applicant Alfred, Inc. (“Applicant”) respond to this First Set of Interrogatories (“Interrogatories”) by answering each Interrogatory separately and completely in writing under oath within thirty (30) days from the date of service in accordance with the Definitions and Instructions set forth below.

**I.        DEFINITIONS**

Notwithstanding any Definition below, each word, term, or phrase used in these Interrogatories is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in these Interrogatories, words in capital letters are defined as follows:

**1.**        YOU, YOUR, or YOURS refer to Applicant and anyone acting on its behalf, including without limitation its officers, directors, employees, partners, corporate parent,

subsidiaries, affiliates, attorneys, accountants, licensees, and consultants, as well as any business entity owned or operated by Applicant, including any such business entity's officers, directors, corporate parent, subsidiaries, and affiliates.

2. COMMUNICATION is used in its broadest sense, and means any transmission of information from one PERSON to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.

3. CONCERN or CONCERNING means constituting, relating to, reflecting, regarding, memorializing, identifying, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, connected to, indicating, evidencing, supporting, or refuting.

4. DOCUMENT or DOCUMENTS shall have the broadest meaning ascribed to those terms by Federal Rule of Civil Procedure 34, and include electronically-stored information and tangible things, whose discovery is permitted under Rule 34(a)(1), and writings as defined by Rule 1001(1) of the Federal Rules of Evidence. A draft or non-identical copy is a separate "document" within the meaning of this term.

5. IDENTIFY means to describe with particularity in full detail all relevant facts about the subject matter, including but not limited to names, relationships, functions, addresses, telephone number(s), purposes, objectives, results, and any other information which is relevant or could lead to the discovery of admissible evidence.

(a) When used with respect to an individual, the term means to state the individual's (i) full name, (ii) title, (iii) employer or business affiliation, (iv) present address, or if unknown, last known address, and (v) telephone number.

(b) When used with respect to a corporation or other form of business organization, the term means to state (i) the name and form of such corporation or business organization, (ii) the address of its principal place of business, (iii) its state of incorporation or formation, and (iv) the identity of all individuals who acted on its behalf in connection with the

matter alleged in the OPPOSITION.

(c) When used with respect to a DOCUMENT, the term means to state (i) the identity of the PERSONS (s) who authored the DOCUMENT, (ii) the identity of the sender(s) of the DOCUMENT, if any, (iii) its title or a description of the general nature of its subject matter, (iv) the identity of all actual or intended recipients, if any, (v) the date when the DOCUMENT was created and last modified, and (vi) the location of each copy of the DOCUMENT and the identity of the present custodian.

6. PERSON means any natural person, business, or other legal entity.

7. OPPOSITION refers to Opposition No. 91225481, filed by Alfred Club on December 22, 2015.

8. YOUR ANSWER refers to the Answer YOU filed in the OPPOSITION on January 15, 2016.

9. APPLICANT'S MARK refers to the trademark reflected in Application Serial No. 86/395,092.

10. ALFRED MARKS refer collectively to all of Alfred Club's marks that consist of or incorporate the terms ALFRED, including without limitation the ALFRED and HELLO ALFRED marks identified in Alfred Club's Notice of Opposition filed on December 22, 2015.

## **II. INSTRUCTIONS**

1. YOU are requested to answer each Interrogatory set forth below separately and completely in writing under oath. YOUR response hereto is to be signed and verified by the PERSON making it, and the objections signed by the attorney making them, as required by Federal Rule of Civil Procedure 33(b).

2. Each Interrogatory shall be answered fully unless it is objected to in good faith, in which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase, or clause contained within it, YOU are required to state YOUR objection to that portion only and to respond to the remainder of the Interrogatory, using YOUR best efforts to do so.

3. If YOU answer any of the Interrogatories by reference to records from which the answer may be derived or ascertained, YOU are required to comply with the requirements of Federal Rule of Civil Procedure 33 and Section 405.04(b) of the Trademark Trial and Appeal Board Manual of Procedure. YOU are requested to comply with the Instructions set forth in Alfred Club's First Set of Requests for the Production of Documents and Things with respect to any such records produced.

4. If, in answering these Interrogatories, YOU encounter any ambiguities when construing an Interrogatory, Instruction, or Definition, YOU shall set forth in YOUR answer the matter deemed ambiguous and the construction used in answering.

5. If YOU believe that any information responsive to any Interrogatory is privileged or otherwise protected from discovery, YOU shall comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to the information for which a claim of privilege or protection from discovery is made.

6. These Interrogatories are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).

7. Wherever used herein, the present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all." "Any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine, or neuter form shall include each of the other genders.

### **III. INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

IDENTIFY each PERSON who supplied information in response to these Interrogatories or who was consulted or whose DOCUMENTS or files were consulted in connection with the

preparation of responses to these Interrogatories.

**INTERROGATORY NO. 2:**

IDENTIFY and describe in detail each good or service in connection with which YOU currently use or intend to use APPLICANT'S MARK in the United States.

**INTERROGATORY NO. 3:**

For each good and service identified in response to Interrogatory No. 2, IDENTIFY the date(s) when YOU first used APPLICANT'S MARK in United States commerce.

**INTERROGATORY NO. 4:**

Describe the target market(s) for the goods and services identified in response to Interrogatory No. 2, including without limitation the type of consumer targeted, the demographic of the consumer targeted, and the geographic scope of the target market.

**INTERROGATORY NO. 5:**

IDENTIFY all channels of trade for the goods and services identified in response to Interrogatory No. 2.

**INTERROGATORY NO. 6:**

IDENTIFY the price of each good and service identified in response to Interrogatory No. 2.

**INTERROGATORY NO. 7:**

IDENTIFY any agreement, contract, or license YOU have entered into with any PERSON relating to the use of APPLICANT'S MARK in the United States.

**INTERROGATORY NO. 8:**

IDENTIFY any existing or potential business partners or investors in the goods and/or services described in response to Interrogatory No. 2.

**INTERROGATORY NO. 9:**

Describe the facts and circumstances surrounding YOUR selection and adoption of APPLICANT'S MARK.

**INTERROGATORY NO. 10:**

Describe the facts and circumstances regarding any actual or anticipated plans that YOU

have to expand the types of goods and services offered by YOU in connection with APPLICANT'S MARK in the United States.

**INTERROGATORY NO. 11:**

IDENTIFY each PERSON with knowledge of YOUR selection and adoption of APPLICANT'S MARK.

**INTERROGATORY NO. 12:**

IDENTIFY each PERSON who had any involvement with YOUR efforts to register APPLICANT'S MARK with the United States Patent and Trademark Office.

**INTERROGATORY NO. 13:**

Describe the facts and circumstances surrounding YOUR decision to register APPLICANT'S MARK with the United States Patent and Trademark Office.

**INTERROGATORY NO. 14:**

Describe the facts and circumstances regarding any instances in which any PERSON associated or confused APPLICANT'S MARK, YOU, or any of YOUR goods or services with the ALFRED MARKS, Alfred Club, or any of Alfred Club's goods or services, or suggested or inquired about any affiliation, sponsorship, or endorsement of YOU or YOUR goods or services by Alfred Club.

**INTERROGATORY NO. 15:**

Describe the facts and circumstances regarding any plans, intentions, preparations, or efforts to make any of the goods or services identified in response to Interrogatory No. 2 competitive with any Alfred Club's goods or services.

**INTERROGATORY NO. 16:**

IDENTIFY each PERSON who has served as an officer or director of Alfred, Inc. from the inception of the company to the present.

**INTERROGATORY NO. 17:**

IDENTIFY all facts YOU intend to rely upon in support of YOUR claims or defenses in this OPPOSITION, including without limitations all facts YOU relied upon in support of YOUR

ANSWER.

Date: March 11, 2016

COOLEY LLP

/Judd D. Lauter/

Janet L. Cullum

Judd D. Lauter

COOLEY LLP

1299 Pennsylvania Ave., NW

Suite 700

Washington, D.C. 20004

Tel: (202) 728-7052

Email: [jcullum@cooley.com](mailto:jcullum@cooley.com)

[jlauter@cooley.com](mailto:jlauter@cooley.com)

*Counsel for Opposer Alfred Club, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S FIRST SET INTERROGATORIES TO APPLICANT** was served on Applicant Alfred, Inc. on the date set forth below by mailing said copy via First Class Mail, postage prepaid to Applicant's counsel of record at the following address:

Matthew H. Swyers  
The Trademark Company PLLC  
344 Maple Ave W, Ste 151  
Vienna, VA 22180-5612

Date: March 11, 2016

*/Judd D. Lauter/*  
\_\_\_\_\_  
Judd D. Lauter

# **EXHIBIT E**

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

In the matter of application Serial No. 86/395,092  
For the Trademark ALFRED (*stylized*)  
Published in the Official Gazette  
on September 15, 2014

ALFRED CLUB, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91225481
v.	)	
	)	
ALFRED, INC.,	)	
	)	
Applicant.	)	
_____	)	

**INITIAL DISCLOSURES OF OPPOSER ALFRED CLUB, INC.**

Opposer Alfred Club, Inc. (“Opposer”), through its counsel, hereby provides the following initial disclosures under Federal Rule of Civil Procedure 26(a)(1) of the Federal Rules of Civil Procedure, 37 CFR § 2.120, and this Board’s December 22, 2015 Order. These initial disclosures are based on information reasonably available to Opposer as of the date below. Fed. R. Civ. P. 26(a)(1). Opposer reserves the right to supplement, alter, or amend these disclosures as discovery progresses and as further information becomes available through its ongoing investigation or discovery. Opposer also reserves the right to further supplement, alter, or amend these initial disclosures at appropriate intervals as provided for in Federal Rule of Civil Procedure 26(e)(1). Supplemental disclosures will be made to the extent that they are not mooted by future discovery responses or have not otherwise been made known to Alfred, Inc. (“Applicant”) during the discovery process or in writing.

By making these initial disclosures, Opposer is not waiving its right to object to the production of such documents, or testimony of such witnesses, on any ground, including, without limitation: (1) on the basis of privilege or work product protection; (2) on the ground that the information sought is not relevant to the subject matter of Opposition No. 91225481 (the “Opposition”) involving the ALFRED (*stylized*) mark set forth in United States Trademark Application Serial No. 86/395,092 (the “AI Mark”), and is not reasonably calculated to lead to the discovery of admissible evidence; and (3) on the ground that the information sought is not sufficiently relevant to justify the burden or expense of production. Further, Opposer is not making a representation that it has identified every document, tangible thing, or witness that may possibly be relevant to this proceeding. These disclosures represent a good faith effort to identify information that Opposer reasonably believes Federal Rule of Civil Procedure 26(a)(1) calls for.

**I. KNOWLEDGEABLE INDIVIDUALS (FED. R. CIV. P. 26(a)(1)(A)(i)).**

As required by Fed. R. Civ. P. 26(a), Opposer hereby identifies the following persons who are likely to have discoverable information that Opposer may use to support its claims. Opposer is informed and believes there are potentially other persons who may possess discoverable information that Opposer may use to support its claims. Discovery is continuing and Opposer reserves the right to designate such persons as witnesses as such witnesses become known to Opposer.

Individual/Entity	Subject(s) of Information
Marcela Sapone, CEO Opposer Alfred Club, Inc.  To be contacted through counsel for Opposer, Cooley LLP	Opposer’s first use of the ALFRED and HELLO ALFRED marks (the “ALFRED Marks”); nature and scope of Opposer’s offerings under the ALFRED Marks including those offerings referenced in Opposer’s applications serving as the basis for the Opposition; use, management, and consumer recognition of the ALFRED Marks; Opposer’s marketing and communications; Opposer’s

Individual/Entity	Subject(s) of Information
	target markets and trade channels for products and services offered under the ALFRED Marks.
Matt Young Founder  Applicant Alfred, Inc.	Adoption of the AI Mark; Applicant's knowledge of the ALFRED Marks; Applicant's knowledge of the goods and services offered in connection with the ALFRED Marks; the products and/or services offered, or to be offered, in connection with the AI Mark; manner and use, or planned use, of the AI Mark by Applicant and/or its customers, partners and licensees; marketing and/or advertising of products and/or services offered, or to be offered, in connection with the AI Mark; customers for the products and/or services offered, or to be offered, in connection with the AI Mark; instances of actual confusion between Applicant's AI Mark and Opposer's ALFRED Marks.

**II. RELEVANT NON-PRIVILEGED DOCUMENTS (FED. R. CIV. P. 26(a)(1)(A)(ii)).**

Subject to the qualifications set forth above, Opposer discloses the following categories of documents, data compilations, and tangible things that are in its possession, custody, or control and that it may use to support its claims. The documents are located with Applicant or at the offices of Opposer, 55 West 19th St, 4th Fl, New York, NY 10011.

1. Copies of Opposer's United States trademark filings and submissions to the United States Patent & Trademark Office ("USPTO"), publically available, located with Opposer, and/or located with Applicant;
2. Copies of Applicant's United States trademark filings and submissions to the USPTO, publicly available, located with Opposer, and/or located with Applicant;
3. Documents relating to Opposer's first use of the ALFRED Marks in U.S. interstate commerce, located with Opposer;
4. Documents relating to the adoption, clearance, use and/or intended use of the AI Mark in the United States, located with Applicant;

5. Documents relating to the marketing, promotion, and advertising of the AI Mark in the United States, located with Applicant;
6. Documents relating to Applicant's rendering of services under the AI Mark in the United States, located with Applicant;
7. Documents identifying the organizational structure of Applicant including its officers and directors and shareholders, located with Applicant;
8. Correspondence between Opposer and Applicant relating to the claims asserted in this action, located with Opposer and Applicant;
9. Documents relating to the use of the ALFRED Marks, located with Opposer;
10. Documents relating to consumer recognition of the ALFRED Marks, located with Opposer;
11. Documents relating to potential or actual confusion between the AI Mark and the ALFRED Marks, publically available and/or located with Opposer.

To the extent that any of these documents are proprietary, trade secret, or confidential, Opposer will make them available only after the entry of an appropriate protective order.

Opposer notes that the initial disclosures required by Fed. R. Civ. P. 26(a)(1)(A)(iii) (relating to computation of damages) and Fed. R. Civ. P. 26(a)(1)(A)(iv) (relating to insurance agreements) are not applicable to this proceeding.

Date: March 31, 2016

COOLEY LLP

/Judd D. Lauter/

Janet L. Cullum

Judd D. Lauter

COOLEY LLP

1299 Pennsylvania Ave., NW

Suite 700

Washington, D.C. 20004

Tel: (202) 728-7052

Email: jcullum@cooley.com

jlauter@cooley.com

*Counsel for Opposer Alfred Club, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **INITIAL DISCLOSURES OF OPPOSER ALFRED CLUB, INC.** was served on Applicant Alfred, Inc. on the date set forth below by mailing said copy via First Class Mail, postage prepaid to Applicant's counsel of record at the following address:

Matthew H. Swyers  
The Trademark Company PLLC  
344 Maple Ave W, Ste 151  
Vienna, VA 22180-5612

Date: March 31, 2016

*/Judd D. Lauter/*

\_\_\_\_\_  
Judd D. Lauter

# **EXHIBIT H**

## Lauter, Judd

---

**From:** Shannon Strayhorn <sstrayhorn@thetrademarkcompany.com>  
**Sent:** Tuesday, May 10, 2016 10:57 AM  
**To:** Lauter, Judd  
**Subject:** Alfred Club, Inc. v. Alfred Inc.

Judd,

Sorry for the last minute notice but Matt is now unavailable at this time due to an unexpected meeting however he did relay that he will be sending a status update to you soon.

Best regards,

### ***Shannon Strayhorn***

Trademark Specialist  
The Trademark Company, PLLC  
2703 Jones Franklin Road, Suite 206  
Cary, NC 27518  
Phone (800) 906-8626 x111  
Fax (919) 861-5278  
[www.TheTrademarkCompany.com](http://www.TheTrademarkCompany.com)

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*The Trademark Company PLLC is a Virginia Professional Limited Liability Company, Matthew H. Swyers, Esq. principal. Principal admitted to practice law in the Commonwealth of Virginia and the District of Columbia. Practice limited to the federal protection of trademarks and copyrights.*

# **EXHIBIT K**

## Lauter, Judd

---

**From:** Lauter, Judd <jlauter@cooley.com>  
**Sent:** Wednesday, June 01, 2016 11:04 PM  
**To:** Matthew H. Swyers; Cullum, Janet  
**Cc:** z/IP Trademark Mailbox Docketing; Thunell, Gary; sstrayhorn@thetrademarkcompany.com  
**Subject:** RE: Alfred Club, Inc. v. Alfred Inc.

Matt,

In light of your client's total failure to participate in discovery, and as we have previously represented to you, we will be seeking a motion to compel Alfred Inc.'s Initial Disclosures and responses to Alfred Club's first sets of Requests for Production and Interrogatories. Alfred Club may be willing to forgo filing the motion if Alfred Inc. remedies its discovery deficiencies by June 6, 2016 and consents to a 90 day extension of all deadlines.

As far as settlement is concerned, we will relate your offer to Alfred Club. That said, I am confident that a modification to the description of services covered by your client's application is unlikely to allay Alfred Club's concerns.

If you would like to discuss these issues further, I am happy to schedule a call.

Sincerely,  
Judd Lauter

**Judd D. Lauter**

Cooley LLP  
Direct: +1 202 728 7052 • Fax: +1 202 842 7899

---

**From:** Matthew H. Swyers [<mailto:mswers@thetrademarkcompany.com>]  
**Sent:** Friday, May 27, 2016 3:11 PM  
**To:** Cullum, Janet  
**Cc:** Lauter, Judd; z/IP Trademark Mailbox Docketing; Thunell, Gary; [sstrayhorn@thetrademarkcompany.com](mailto:ssrayhorn@thetrademarkcompany.com)  
**Subject:** Alfred Club, Inc. v. Alfred Inc.

**FRE 408 Applies**

[REDACTED]

**Matthew H. Swyers**  
The Trademark Company, PLLC  
344 Maple Avenue West, PBM 151  
Vienna, VA 22180 USA  
Phone (800) 906-8626 x100  
[www.TheTrademarkCompany.com](http://www.TheTrademarkCompany.com)

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# **EXHIBIT F**

## Lauter, Judd

---

**From:** Shannon Strayhorn <sstrayhorn@thetrademarkcompany.com>  
**Sent:** Thursday, April 14, 2016 4:39 PM  
**To:** Lauter, Judd  
**Subject:** Alfred Club, Inc. v. Alfred Inc.

Judd,

We noticed that you served Interrogatories and Request for Production of Documents on March 11<sup>th</sup> and subsequently served your Initial Disclosures on March 31<sup>st</sup>. As you are aware, per the Board's procedures Initial Disclosures must be served with or before Discovery Requests. As such, we would like to consider your Discovery Requests as being served on March 31<sup>st</sup> and our deadline to respond to the same as May 5<sup>th</sup>. Please let us know if you object to the same.

Thank you,

### **Shannon Strayhorn**

Trademark Specialist  
The Trademark Company, PLLC  
2703 Jones Franklin Road, Suite 206  
Cary, NC 27518  
Phone (800) 906-8626 x111  
Fax (919) 861-5278  
[www.TheTrademarkCompany.com](http://www.TheTrademarkCompany.com)

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# **EXHIBIT I**

## Lauter, Judd

---

**From:** Lauter, Judd  
**Sent:** Tuesday, May 10, 2016 12:29 PM  
**To:** 'Shannon Strayhorn'  
**Cc:** Thunell, Gary; Cullum, Janet; 'mswyers@thetrademarkcompany.com'  
**Subject:** RE: Alfred Club, Inc. v. Alfred Inc. - FRE 408

Shannon,

In follow-up to my call yesterday, and the voicemail I left today, we still have not received Alfred, Inc.'s Initial Disclosures, responses to Alfred Club's discovery requests, or a response to my prior correspondence, below. Furthermore, although you had scheduled a time for me to speak with Mr. Swyers this morning regarding these issues, I did not hear from him.

In light of the foregoing, please provide me with dates and times that Mr. Swyers can be available for a telephone call this week to resolve these issues. Otherwise, we will have no choice but to seek a motion to compel service of Alfred Inc.'s Initial Disclosures and responses to Alfred Club's discovery request.

Sincerely,  
Judd Lauter

**Judd D. Lauter**

Cooley LLP  
Direct: +1 202 728 7052 • Fax: +1 202 842 7899

---

**From:** Lauter, Judd  
**Sent:** Monday, April 25, 2016 3:57 PM  
**To:** 'Shannon Strayhorn'  
**Cc:** Thunell, Gary; Cullum, Janet  
**Subject:** RE: Alfred Club, Inc. v. Alfred Inc. - FRE 408

Shannon,

Please accept my apologies as it appears that your emails have been going to our SPAM folder. We are now in receipt of your emails dated April 5<sup>th</sup> (which includes a copy of Matt's email dated March 23<sup>rd</sup>) and April 14<sup>th</sup>. If there is additional correspondence that we may have missed, please let me know. We will take steps to make sure that this does not happen in the future.

With respect to Matt's email, can you please elaborate regarding what it purports to show? We understand that your client may have been rendering services under the ALFRED mark in Canada as early as May 2014. As you know, however, what matters for our purposes is the rendering of services in U.S. commerce. I am happy to schedule a call with you for some time this week if you would like to discuss the matter further.

Finally, as to the discovery requests that we propounded on March 11<sup>th</sup>, we will not object to your responses being due by May 5<sup>th</sup>. In addition, please advise as to when we can expect your client's Initial Disclosures, which were due March 31<sup>st</sup>.

Best regards,  
Judd

**Judd D. Lauter**

Cooley LLP

---

**From:** Shannon Strayhorn [<mailto:sstrayhorn@thetrademarkcompany.com>]  
**Sent:** Tuesday, April 05, 2016 5:01 PM  
**To:** Cullum, Janet  
**Cc:** Lauter, Judd; z/IP Trademark Mailbox Docketing; Thunell, Gary  
**Subject:** Alfred Club, Inc. v. Alfred Inc. - FRE 408

Janet,

I just wanted to send you a quick follow up regarding Matt's email attached hereto for your reference. [REDACTED]

Best regards,

## **Shannon Strayhorn**

Trademark Specialist  
The Trademark Company, PLLC  
2703 Jones Franklin Road, Suite 206  
Cary, NC 27518  
Phone (800) 906-8626 x111  
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# **EXHIBIT J**

## Lauter, Judd

---

**From:** Lauter, Judd  
**Sent:** Friday, May 13, 2016 1:37 PM  
**To:** 'mswyers@thetrademarkcompany.com'  
**Cc:** 'Thunell, Gary'; 'Cullum, Janet'; 'Shannon Strayhorn'  
**Subject:** RE: Alfred Club, Inc. v. Alfred Inc. - FRE 408

**Importance:** High

Matt and Shannon,

I have still not received any response from you regarding Alfred, Inc.'s failure to uphold its discovery obligations. Please contact me immediately to address these issues. You are giving our client no choice but to move to compel.

Sincerely,  
Judd Lauter

**Judd D. Lauter**

Cooley LLP  
Direct: +1 202 728 7052 • Fax: +1 202 842 7899

---

**From:** Lauter, Judd [mailto:jlauter@cooley.com]  
**Sent:** Tuesday, May 10, 2016 12:29 PM  
**To:** Shannon Strayhorn  
**Cc:** Thunell, Gary; Cullum, Janet; mswyers@thetrademarkcompany.com  
**Subject:** RE: Alfred Club, Inc. v. Alfred Inc. - FRE 408

Shannon,

In follow-up to my call yesterday, and the voicemail I left today, we still have not received Alfred, Inc.'s Initial Disclosures, responses to Alfred Club's discovery requests, or a response to my prior correspondence, below. Furthermore, although you had scheduled a time for me to speak with Mr. Swyers this morning regarding these issues, I did not hear from him.

In light of the foregoing, please provide me with dates and times that Mr. Swyers can be available for a telephone call this week to resolve these issues. Otherwise, we will have no choice but to seek a motion to compel service of Alfred Inc.'s Initial Disclosures and responses to Alfred Club's discovery request.

Sincerely,  
Judd Lauter

**Judd D. Lauter**

Cooley LLP  
Direct: +1 202 728 7052 • Fax: +1 202 842 7899

---

**From:** Lauter, Judd  
**Sent:** Monday, April 25, 2016 3:57 PM  
**To:** 'Shannon Strayhorn'  
**Cc:** Thunell, Gary; Cullum, Janet  
**Subject:** RE: Alfred Club, Inc. v. Alfred Inc. - FRE 408

Shannon,

Please accept my apologies as it appears that your emails have been going to our SPAM folder. We are now in receipt of your emails dated April 5<sup>th</sup> (which includes a copy of Matt's email dated March 23<sup>rd</sup>) and April 14<sup>th</sup>. If there is additional correspondence that we may have missed, please let me know. We will take steps to make sure that this does not happen in the future.

With respect to Matt's email, can you please elaborate regarding what it purports to show? We understand that your client may have been rendering services under the ALFRED mark in Canada as early as May 2014. As you know, however, what matters for our purposes is the rendering of services in U.S. commerce. I am happy to schedule a call with you for some time this week if you would like to discuss the matter further.

Finally, as to the discovery requests that we propounded on March 11<sup>th</sup>, we will not object to your responses being due by May 5<sup>th</sup>. In addition, please advise as to when we can expect your client's Initial Disclosures, which were due March 31<sup>st</sup>.

Best regards,  
Judd

**Judd D. Lauter**

Cooley LLP

Direct: +1 202 728 7052 • Fax: +1 202 842 7899

---

**From:** Shannon Strayhorn [<mailto:sstrayhorn@thetrademarkcompany.com>]

**Sent:** Tuesday, April 05, 2016 5:01 PM

**To:** Cullum, Janet

**Cc:** Lauter, Judd; z/IP Trademark Mailbox Docketing; Thunell, Gary

**Subject:** Alfred Club, Inc. v. Alfred Inc. - FRE 408

Janet,

I just wanted to send you a quick follow up regarding Matt's email attached hereto for your reference. [REDACTED]

Best regards,

***Shannon Strayhorn***

Trademark Specialist

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# **EXHIBIT G**

**From:** Lauter, Judd  
**To:** ["Shannon Strayhorn"](#)  
**Cc:** [Thunell, Gary](#); [Cullum, Janet](#)  
**Bcc:** ["Alfred Club Inc 322682 20003 Opposition No 91225481 Alfred Club Inc v Alfred Inc ALFRED 86395092 US Communications To From Opposing Counsel Adverse or Third Parties"](#)  
**Subject:** RE: Alfred Club, Inc. v. Alfred Inc. - FRE 408  
**Date:** Monday, April 25, 2016 3:56:58 PM

---

Shannon,

Please accept my apologies as it appears that your emails have been going to our SPAM folder. We are now in receipt of your emails dated April 5<sup>th</sup> (which includes a copy of Matt's email dated March 23<sup>rd</sup>) and April 14<sup>th</sup>. If there is additional correspondence that we may have missed, please let me know. We will take steps to make sure that this does not happen in the future.

With respect to Matt's email, can you please elaborate regarding what it purports to show? We understand that your client may have been rendering services under the ALFRED mark in Canada as early as May 2014. As you know, however, what matters for our purposes is the rendering of services in U.S. commerce. I am happy to schedule a call with you for some time this week if you would like to discuss the matter further.

Finally, as to the discovery requests that we propounded on March 11<sup>th</sup>, we will not object to your responses being due by May 5<sup>th</sup>. In addition, please advise as to when we can expect your client's Initial Disclosures, which were due March 31<sup>st</sup>.

Best regards,  
Judd

**Judd D. Lauter**  
Cooley LLP  
Direct: +1 202 728 7052 • Fax: +1 202 842 7899

---

**From:** Shannon Strayhorn [mailto:[ssstrayhorn@thetrademarkcompany.com](mailto:ssstrayhorn@thetrademarkcompany.com)]  
**Sent:** Tuesday, April 05, 2016 5:01 PM  
**To:** Cullum, Janet  
**Cc:** Lauter, Judd; z/IP Trademark Mailbox Docketing; Thunell, Gary  
**Subject:** Alfred Club, Inc. v. Alfred Inc. - FRE 408

Janet,

I just wanted to send you a quick follow up regarding Matt's email attached hereto for your reference.   


Best regards,

***Shannon Strayhorn***  
Trademark Specialist

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

In the matter of application Serial No. 86/395,092  
For the Trademark ALFRED (*stylized*)  
Published in the Official Gazette on August 25, 2015

ALFRED CLUB, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91225481
v.	)	
	)	
ALFRED, INC.,	)	
	)	
Applicant.	)	
<hr/>		

**DECLARATION OF JUDD D. LAUTER IN SUPPORT OF OPPOSER’S MOTION TO  
COMPEL DISCOVERY AND FOR AN EXTENSION OF DEADLINES**

Judd D. Lauter, a U.S. citizen over the age of 18, hereby declares that:

1. I am an associate with the law firm Cooley LLP, counsel for Opposer Alfred Club, Inc. (“Opposer”) in connection with the above-captioned proceeding. I submit this declaration in support of Opposer’s Opposition to the Motion to Compel Discovery and For an Extension of Deadlines. I make this declaration upon personal knowledge and, if called and sworn as a witness, I could and would testify as to the matters set forth herein.

2. On October 17, 2014, in regard to Application Serial No. 86/395,092 (the “Application”), I sent a letter to counsel for applicant Alfred Inc. (“Applicant”), Matthew Swyers, by email and Federal Express. A true and correct copy of the letter is attached hereto as Exhibit A. The letter requested a response by October 24, 2014 but no response was received.

*Id.*

3. Between September 15, 2014 and October 24, 2014, I attempted to contact Mr. Swyers by telephone on at least two occasions. In both instances I left voicemail messages for Mr. Swyers which advised of the purpose of my call, but neither of my calls was returned.

4. Unable to reach Applicant's U.S. trademark counsel, on October 24, 2014 I contacted Applicant's Canadian trademark counsel, Shelagh Carnegie of Gowlings Lafleur Henderson LLP. Ms. Carnegie advised that communications regarding the subject mark would need to be handled by Mr. Swyers.

5. Between October 24, 2014 and March 27, 2014, I again attempted to contact Mr. Swyers by telephone. My call was not returned.

6. On March 27, 2014, I sent another letter to Mr. Swyers by email and Federal Express. A true and correct copy of that letter is attached hereto as Exhibit B. I received no reply in response to the letter.

7. Between March 27, 2014 and September 3, 2015, I attempted to contact Mr. Swyers by telephone on multiple occasions. My calls were never returned.

8. Unable to communicate with Applicant or Mr. Swyers, Opposer filed an extension of time to oppose the Application on September 3, 2015.

9. Attached hereto as Exhibit C is a true and correct copy of Opposer's First Set of Requests for Production of Documents, which was served on Applicant on March 11, 2016.

10. Attached hereto as Exhibit D is a true and correct copy of Opposer's First Set of Interrogatories, which was served on Applicant on March 11, 2016.

11. Attached hereto as Exhibit E is a true and correct copy of Alfred Club's Initial Disclosures, which were served in a timely manner on March 31, 2016.

12. Due to an inadvertent error, Opposer's discovery requests were served prior to Opposer's service of Initial Disclosures.

13. Opposer has not received Initial Disclosures from Applicant despite the March 31, 2016 deadline for the same.

14. In an email dated April 14, 2016, a true and correct copy of which is attached hereto as Exhibit F, I was notified of this error by Mr. Swyers' assistant. In the same email Applicant requested an extension of time to respond to the discovery until May 5, 2016.

15. In an email dated April 25, 2016, a true and correct copy of which is attached hereto as Exhibit G with minor redactions made for the purpose of Federal Rule of Evidence 408, I consented to Applicant's request and asked for Applicant's delinquent Initial Disclosures.

16. As of May 5, 2016, Applicant had not served any responses to Alfred Club's discovery nor did it serve its Initial Disclosures.

17. On May 9, 2016, I attempted to contact Mr. Swyers by telephone. Applicant's assistant scheduled a telephone call between me and Mr. Swyers for May 10, 2016 to discuss Applicant's outstanding discovery responses and Initial Disclosures.

18. On May 10, 2016 I was unable to reach Mr. Swyers by telephone for our scheduled call. I later received an email, a true and correct copy of which is attached hereto as Exhibit H, indicating that Mr. Swyers' would provide a "status update" regarding Applicant's outstanding discovery "soon." To date, no such status update and no responses or Initial Disclosures have been received.

19. In emails dated May 10, 2016 and May 13, 2016, I once again contacted Mr. Swyers asking to schedule a telephone call to meet and confer on Applicant's failure to meet its

discovery obligations in this case. True and correct copies of these emails are attached hereto as Exhibits I and J with minor redactions made for the purpose of Federal Rule of Evidence 408.

20. Subsequently, on May 27, 2016, Mr. Swyers sent me an email concerning settlement but which did not mention the outstanding discovery. On June 1, 2016, I responded indicating that Opposer required that Applicant meet its outstanding discovery obligations prior to further discussions and in light of Applicant's delay, consent to an extension of all relevant deadlines. A true and correct copy of this email is attached hereto as Exhibit K. To date I have not received any response from Mr. Swyers, nor has Opposer received Applicant's delinquent discovery responses.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed in Washington, D.C. this 7th day of June, 2016.

/Judd D. Lauter/  
Janet L. Cullum  
Judd D. Lauter  
COOLEY LLP  
1299 Pennsylvania Ave., NW  
Suite 700  
Washington, D.C. 20004  
Tel: (202) 842-7800

*Counsel for Opposer Alfred Club, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **DECLARATION OF JUDD D. LAUTER IN SUPPORT OF OPPOSER'S MOTION TO COMPEL AND FOR AN EXTENSION OF DEADLINES** has been served on Applicant Alfred, Inc. by mailing said copy on June 7, 2016, via First Class Mail, postage prepaid to Applicant's counsel of record:

Matthew H. Swyers  
344 Maple Ave., West, Suite 151  
Vienna, VA 22180-5612

An electronic courtesy copy has also been sent by email to Applicant's counsel email address at [mswyers@thetrademarkcompany.com](mailto:mswyers@thetrademarkcompany.com).

Date: June 7, 2016

/Judd D. Lauter/  
\_\_\_\_\_  
Judd D. Lauter