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

Proceeding	91235560
Party	Plaintiff Target Brands, Inc.
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Signature	/s Peter M. Routhier/
Date	11/06/2018
Attachments	Joint Motion to Enter Redacted Document.pdf(907194 bytes )

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

In the Matter of Serial No. 87291418  
For the Mark: CADDY JACK  
Filed: January 6, 2017  
Published: May 9, 2017

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TARGET BRANDS, INC.,

Opposition No. 91235560

Opposer,

v.

**JOINT MOTION TO ENTER A  
REDACTED DOCUMENT**

JACKDADDY, INC.,

Applicant.

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Opposer Target Brands, Inc.'s Motion for Summary Judgment was initially submitted publicly at TTABVUE # 12 and has since been placed under seal. Opposer and Applicant jointly request that TTABVUE # 12 remain under seal and that the attached redacted Motion for Summary Judgment replace it as the public record of the filing.

Dated: November 2, 2018

By: /s Peter M. Routhier/

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Dated: November 2, 2018

By: /KevinKeener/

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**CERTIFICATE OF SERVICE**

I do hereby certify that on this 6th day of November, 2018 a true and correct copy of the above and foregoing ***Joint Motion for Redacted Exhibit to Summary Judgment Motion*** has been served via electronic mail to counsel for the applicant at [kevin.keener@keenerlegal.com](mailto:kevin.keener@keenerlegal.com).

/s/ Peter M. Routhier

US.120590607.01

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

In the Matter of Serial No. 87291418  
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TARGET BRANDS, INC.,

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Opposition No. 91235560

**OPPOSER’S MOTION FOR  
SUMMARY JUDGMENT**

Opposer Target Brands, Inc. (“Opposer” or “TBI”) hereby moves for summary judgment on grounds that Lanham Act Section 15 U.S. C. 1051(b) precludes registration of Applicant’s mark. The undisputed facts show that Applicant JackDaddy, Inc. (“Applicant”) has never had a *bona fide* intent to use the applied-for mark in commerce. TBI therefore requests an order sustaining this Opposition against United States Trademark Application Serial No. 87291418 for the mark CADDY JACK (the “Mark”).

## ARGUMENT

Summary judgment is appropriate where there is no genuine issue of material fact, and the undisputed facts warrant judgment for the moving party as a matter of law. *See* Fed. R. Civ. P. 56(c); TBMP § 528.01. The moving party bears the initial burden of demonstrating to the Board that the pleadings and evidence, taken together, reveal no disputed material facts. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party properly supports the motion for summary judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific genuinely disputed facts that must be resolved at trial. *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 16 U.S.P.Q.2d 1783, 1786 (Fed. Cir. 1990). In response, the nonmoving party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine issue of material fact for trial. *Id.* To establish the existence of disputed facts requiring trial, the nonmoving party “must point to an evidentiary conflict created on the record.” *Id.* A dispute as to a material fact is genuine only if a reasonable factfinder viewing the entire record could resolve the dispute in favor of the nonmoving party. *Olde Tyme Foods Inc. v. Roundy’s, Inc.*, 22 U.S.P.Q.2d 1542, 1544 (Fed. Cir. 1992). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it would have the burden of proof at trial, judgment as a matter of law may be entered in favor of the moving party. *Celotex Corp.*, 477 U.S. at 322-323.

In this case, Applicant cannot show a genuine issue of material fact as to its bona fide intent to use the mark in commerce in compliance with Section 1(b) of the Lanham Act. To

comply with Section 1(b)(1) of the Lanham Act, an intent-to-use applicant must have “a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce.” 15 U.S.C. § 1051(b)(1). “Circumstances showing good faith” require that applicant’s intent be “demonstrable and more than a mere subjective belief.” *MZ Berger & Co., Inc. v. Swatch AG*, 787 F.3d 1368, 1375 (Fed. Cir. 2015). Put another way, there must be “objective evidence of intent”—mere statements of intent from the applicant are not sufficient. *See id.*, 1375-76. Instead, there must be objective evidence which shows that “applicant’s intent to use the mark was firm and not merely intent to reserve a right in the mark.” *Id.* Moreover, it is not enough for applicant to offer “some objective evidence in support of its position”—instead, the evidence is viewed “as a whole,” to make a common sense determination whether the applicant in fact has the requisite intent. *See id.*, 1376-77.

"Opposer has the initial burden of demonstrating by a preponderance of the evidence that applicant lacked on the filing date of application, or now lacks, a bona fide intent to use the mark on the identified goods." *Spirits International B.V v. S. S. Taris Zeytin Ve Zeytinyagi Tarim Satis Kooperatifleri Birliđi*, 99 U.S.P.Q.2d 1545 (TTAB 2011); *see also Boston Red Sox Baseball Club LP v. Sherman*, 88 U.S.P.Q.2d 1581, 1587 (TTAB 2008). While Opposer can prove a lack of a bona fide intent to use in a number of ways, "[t]he absence of any documentary evidence on the part of an applicant regarding such intent constitutes object proof sufficient to establish that the applicant lacks a bona fide intention to use the mark in commerce." *Id. see also Diageo North America, Inc. v. Captain Russell Corp.*, Opposition No. 91203745 at 5 (TTAB June 12, 2013) ("The absence of any documentary evidence or adequate explanatory evidence on the part of an applicant

regarding such intent constitutes objective proof sufficient to demonstrate that applicant lacks a bona fide intention to use its mark in commerce." ). In this case, Applicant's application must be rejected, and this opposition must be sustained, because Applicant's discovery responses show that Applicant does not have a bona fide intention to use the mark in commerce, and Applicant does not have objective proof sufficient to establish that it has a bona fide intention to use the mark in commerce.

To begin with, in response to Opposer's Interrogatory No. 13, by which Opposer asked Applicant to identify all objective evidence of its bona fide intent to use the Subject Mark in commerce, Applicant only identified two kinds of documents: domain name registrations, and what it calls its "initial business and marketing plan." (See Ex. A).

As to the first kind of document, the mere registration of a domain name is not objective evidence of a bona fide intent to use a mark in connection with some separate good or service, such as an apparel business. *See, e.g., Kelly Services, Inc. v. Creative Harbor LLC*, 846 F.3d 857, 868-70 (6th Cir. 2017). In fact, there is no website today at the relevant domain name—it is simply a placeholder webpage. (See Ex. B.) This kind of placeholder webpage is the online equivalent of merely reserving rights in a mark—it is not objective evidence of a bona fide intent to use.

As to the second kind of document, what Applicant calls [REDACTED] [REDACTED] (See Ex. C.) This [REDACTED] is, according to Applicant, the "result of a brainstorming session by Mr. Gavin of the structure and operation of Applicant after five years." (See Ex. A.) But [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Yet Applicant claims that it began preparation to use the mark “at some point in time prior to 2007.” (*See Ex. D.*) This [REDACTED] therefore does not establish a bona fide intent to use the mark in commerce in connection with the applied-for goods.

Applicant also appears to claim that its mere application to register the mark show a bona fide intent to use. But documentary evidence which “relate[s] only to the prosecution of the trademark application” does not amount to objective evidence of a bona fide intent to use. *See Berger & Co.*, 787 F.3d at 1377. Materials that are “created with an intention to advance the prosecution of the trademark application rather than an intention to move forward on an actual product in commerce” do not satisfy the objective evidence requirement. *See id.*

Finally, applicant’s lack of capacity to produce to the product in question supports a lack of intent. *See Berger & Co.*, 787 F.3d at 1378. To be sure, there is no requirement that the applicant have in fact manufactured and marketed products under the mark. *See id.* But there must be something more than a mere desire to use the mark in order to establish a bona fide intent to use. Applicant has provided no such evidence here.

"In determining whether an applicant possesses a bona fide intent, the Board focuses on the entirety of the circumstances, as revealed by the evidence of record." *Lane Ltd. v. Jackson International Trading Co.*, 33 U.S.P.Q.2d 1351, 1355 (TTAB 1994). There is no documentary evidence in the record of Applicant's bona fide intent to use the Subject Mark



in commerce to identify its goods, and Applicant cannot offer any evidence to explain or outweigh its lack of documentary evidence. Applicant, therefore, cannot establish the existence of a genuine dispute as to its lack of a bona fide intent to use the Subject Mark on the Filing Date. *See, e.g., Diageo North America, Inc. v. Captain Russell Corp.*

### CONCLUSION

For the foregoing reasons, TBI respectfully requests that the Board grant this motion, and that summary judgment be entered in TBI's favor, sustaining TBI's opposition against Application Serial No. 87291418.

Dated: October 12, 2018

FAEGRE BAKER DANIELS LLP

By: /s/ Peter M. Routhier

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**Attorney for Opposer  
Target Brands, Inc.**

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 12th day of October, 2018 a true and correct copy of the above and foregoing *Opposer's Motion for Summary Judgment* has been served via electronic mail to counsel for the applicant at kevin.keener@keenerlegal.com.

/s/ Peter M. Routhier

US.120320205.02

# **Exhibit A**

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

In the Matter of Serial No. 87291418  
For the Mark: CADDY JACK  
Filed: January 6, 2017  
Published: May 9, 2017

Target Brands, Inc.,

Opposer,

v.

Jackdaddy Inc.,

Applicant.

Opposition No. 91235560

**APPLICANT’S ANSWERS TO OPPOSER’S SECOND SET OF INTERROGATORIES**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and § 405 of the Trademark Trial and Appeal Board Manual of Procedure, Jackdaddy, Inc., (hereinafter “Applicant”) Responds to the Second Set Interrogatories propounded on it on April 13, 2018 by Opposer, Target Brands, Inc., in the above-captioned proceeding, as follows:

**PRELIMINARY STATEMENT**

Applicant has not yet completed its investigation of the facts pertaining to this action and discovery is ongoing. All responses to the following Interrogatories (“Requests”) are based on information currently known to Applicant after a reasonable effort to locate information called for by these Interrogatories. Accordingly, all responses are given without prejudice to Applicant’s right to produce evidence based on any additional information that may develop or come to Applicant’s attention at a later time. In addition, Applicant’s objections are made without prejudice to Applicant’s right to assert any

additional or supplemental objections should Applicant discover additional grounds for such objections. Finally, Applicant's agreement to produce documents in response to any Interrogatory does not constitute an admission that any such documents in fact exist or are in Applicant's possession, custody, or control.

Applicant makes its objections and responses without in any manner waiving: (1) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (2) the right to object to any other discovery involving or relating to the subject matter of the responses herein; and (3) the right to revise, correct, supplement, or clarify any of the responses provided below at any time. Applicant expressly reserves the right to further supplement its responses.

### **GENERAL OBJECTIONS**

1. These General Objections are incorporated into each of the specific responses that follow. Notwithstanding those responses, Applicant does not waive any of these General Objections.
2. To the extent that the Interrogatories call for information or documents covered by the attorney-client privilege, work product doctrine, or any other applicable privilege or doctrine, Applicant objects to each such request, and states that no such information or documents will be produced. By providing information in response to the Interrogatories, or by stating that they will produce responsive documents in response to the request, Applicant does not intend to imply that it will produce any privileged documents. By producing documents or stating that it will produce documents, Applicant does not waive, intentionally or otherwise, its attorney-client privilege, work product protection, joint defense privilege or any other privilege protecting its documents or information, and any

production of documents or information inconsistent with the foregoing is wholly inadvertent and does not constitute a waiver of any such privilege or protection.

3. Applicant objects to the Interrogatories to the extent they seek information, documents, or communications between Applicant's agents, representatives, or employees or any information, documents, or communications between Applicant and their agents, representatives, or employees, when made subsequent to the occurrences or transactions upon which the proceeding is based, and in anticipation of the proceeding, because such are protected from disclosure under the attorney-client privilege, the work product exemption from discovery, or both.

4. Applicant objects to the Interrogatories to the extent they seek information, documents, or communications that are the work product of Applicant's lawyers or legal representatives, because such are privileged and therefore protected from disclosure.

5. Applicant objects to the Interrogatories to the extent that any Interrogatory seeks information that is not in the possession, custody, or control of Applicant, to the extent that it purports to require Applicant to speculate about the identity of persons who might have responsive information, and to the extent that it purports to call for any accounting of information that Applicant no longer possesses and/or was under no obligation to maintain. Applicant will produce non-privileged relevant documents in the possession, custody, or control of Applicant, as required by the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedure, or by any applicable order.

6. Applicant objects to each and every Interrogatory to the extent it seeks information that is already in the possession of Opposer or that could more easily be obtained from other sources. Without limitation, Applicant specifically objects to each and every request to the extent that the information sought is publicly available and/or has been submitted

or will be submitted to Opposer in disclosures mandated by the Federal Rules of Civil Procedure, or the Trademark Trial and Appeal Board Manual of Procedure, or by any applicable order.

7. Applicant objects to the Interrogatories to the extent that any request contains any factual or legal misrepresentations. Applicant's response that it will produce documents in response to an Interrogatory does not necessarily mean that responsive documents exist, but instead that Applicant will produce documents if such documents are located. Any statement made herein of an intent to produce documents is not, and shall not be deemed, an admission of any factual or legal contention contained in any individual Interrogatory.

8. Applicant objects to the Interrogatories to the extent they seek information, documents, or communications that are or were made for the purpose of facilitating the rendition of legal services to Applicant and are or were made: (1) between Applicant or its representatives and Applicant's lawyer(s), (2) between Applicant's lawyer(s) and the lawyer's representative(s), (3) between Applicant and its representative(s), or (4) between lawyers when representing Applicant, because such are protected from disclosure by the attorney-client privilege and the work product exemption from discovery.

9. Applicant generally objects to the Interrogatories to the extent they seek the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Documents resulting from investigations of facts related to the trademark and applications are protected by the attorney-client privilege, the work-product immunity, and related privileges or

immunities. Applicant therefore objects to the Interrogatories to the extent that they seek documents that contain privileged information, or are protected by the work-product immunity, or both. No privileged information, communication, or document will be provided in response to the Interrogatories. By responding to any particular Interrogatory, Applicant does not intend nor does it waive any applicable privilege that it may have, and Applicant specifically intends to assert the same.

10. By responding to the Interrogatories or providing any information herewith, Applicant does not waive and expressly preserves the objections set forth herein and does not concede the relevance or admissibility of the responses.

11. Applicant objects to the Interrogatories to the extent that they call for Applicant and/or its attorneys to categorize documents on a claim-by-claim basis or require Applicant and/or its attorneys to reveal their mental impressions as to whether a particular document supports a particular claim.

12. Applicant objects to any and all Interrogatories to the extent they require the production of confidential, proprietary, and/or trade secret information without adequate protection.

13. Applicant objects to each of the Interrogatories to the extent that the documents and/or information requested constitutes confidential and/or proprietary information belonging to third parties with whom Applicant have entered into non-disclosure or confidentiality agreements that prohibit the disclosure by Applicant of the third-party signatories' confidential and/or proprietary information. To the extent that any such information is requested, it will only be provided subject to an agreeable and effective protective order covering such disclosure, and will not be provided unless and until Applicant have given notice to or obtained permission from the relevant third parties.



14. Applicant construes the Interrogatories as not seeking identification of or information regarding the contents of legal memoranda, drafts of pleadings, attorney notes, letters exchanged between counsel for Applicant, or letters and communications between Applicant and its counsel. To the extent such Interrogatories might be construed to seek such information, documents, communications, or lists thereof, Applicant objects on the grounds of the attorney-client privilege, the work product exemption from discovery, the party communications exemption from discovery, and rules of confidentiality.

15. Applicant objects to each of Opposer's requests and each of Opposer's Definitions and Instructions to the extent that they seek electronically stored information that is not reasonably accessible because of the undue burden or cost associated with retrieving and producing such information, or that otherwise exceeds the requirements of the any standard for electronic discovery or any applicable court order.

16. Applicant objects to each request that is unlimited in time as overly broad, unduly burdensome, and neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence.

17. Applicant objects to the Interrogatories to the extent that any Interrogatory seeks information outside the temporal and geographic scope of the proceeding on the grounds that any such Interrogatory is overbroad, oppressive, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. Applicant objects to the Interrogatories to the extent that they seek information that is entirely irrelevant to the present proceedings.

19. In light of the premature and overly burdensome nature of Opposer's Interrogatories, as well as the expense of producing redundant documents and materials, Applicant makes no representation that documents produced in response to a particular Interrogatory constitute all documents responsive to such Interrogatory. Instead, documents produced will be sufficient to illustrate the requested subject matter or topic.

### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Applicant objects to the definition of "Applicant" as being overly broad, unduly burdensome, vague, and ambiguous. Applicant also objects to the definition to the extent it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Applicant also objects to the definition to the extent that it includes any entities other than Jackdaddy Inc..

2. Applicant objects to the definitions of "you" and "your" as being overly broad, unduly burdensome, vague, and ambiguous. Applicant also objects to the definitions of "you" and "your" to the extent they seek the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Applicant also objects to the definitions to the extent that they include any entities other than Jackdaddy, Inc.

3. Applicant objects to the definition of “person” as being overly broad, unduly burdensome, and as inquiring into matters that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Applicant also objects to the definition of “person” to the extent that it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege.

4. Applicant objects to the definition of “document” to the extent it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege.

Applicant further objects to the definition of the term “document” to the extent that it purports to impose conditions, obligations, or duties beyond those required by Rules 26, 33(d), and 34 of the Federal Rules of Civil Procedure, or the Trademark Trial and Appeal Board Manual of Procedure. For purposes of responding to these Interrogatories, Applicant interprets the term “document” in accordance with its ordinary meaning found in the Federal Rules of Civil Procedure, and the Trademark Trial and Appeal Board Manual of Procedure.

5. Applicant objects to each Interrogatory that seeks “all” information as overly broad and unduly burdensome. In response to such Interrogatories, and assuming no other

objections or privileges apply, Applicant will provide representative information located after a reasonable search.

6. Applicant generally objects to the Definitions and Instructions contained in the Interrogatories to the extent such Definitions and Instructions differ from or purport to expand the requirements of the Trademark Trial and Appeal Board, any applicable order, and/or the Federal Rules of Civil Procedure (the “Federal Rules”), including but not limited by purporting to supplement or enlarge terms that the Federal Rules and/or the Trademark Trial and Appeal Board Manual of Procedure define or describe. Applicant will disclose information and supplement its responses as required by the Federal Rules, the Trademark Trial and Appeal Board Manual of Procedure, and any applicable order.

### Interrogatories

10. Describe in detail your plans for the development of (a) each of the goods listed in International Class 25 for the Subject Mark; and (b) each of the services listed in International Class 41 for the Subject Mark.

**OBJECTIONS:** Applicant hereby incorporates the general objections above. Furthermore, Applicant objects to the phrase “plans for development” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, with respect to Class 25, Applicant has the plan to develop clothing and sell clothing products online. Applicant registered the domain name caddyjack.com for the purpose of selling clothing bearing the mark CADDY JACK. Applicant intends to utilize the domain to sell clothing products similar to how the domain www.lifeisgood.com sells clothing products. With respect to Class 41, Applicant intends to create and compile educational materials and provide information and guidance

regarding career transitions for professionals.

11. Describe in detail your plans for the promotion of (a) each of the goods listed in International Class 25 for the Subject Mark; and (b) each of the services listed in International Class 41 for the Subject Mark.

**OBJECTIONS:** Applicant hereby incorporates the general objections above. Furthermore, Applicant objects to the phrase “plans for the promotion” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, Applicant’s current plans for promoting products and services are to engage in promoting its products and services through websites it has registered.

12. Describe in detail your plans for the marketing of (a) each of the goods listed in International Class 25 for the Subject Mark; and (b) each of the services listed in International Class 41 for the Subject Mark.

**OBJECTIONS:** Applicant hereby incorporates the general objection above. Furthermore, Applicant objects to the phrase “plans for the marketing” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, Applicant’s current plans for marketing products and services are to engage in promoting its products and services through websites it has registered.

13. Separately for each of the goods listed in International Class 25 and each of the services listed in International Class 41, identify all objective evidence of your bona fide intent to use the Subject Mark in commerce.

**OBJECTIONS:** Applicant incorporates the general objections above. Applicant further objects to the request to the extent that it seeks a legal conclusion.

**RESPONSE:** Notwithstanding, for each of the goods in Class 25 and each of the services in Class 41, Applicant identifies at least the evidence illustrating its registration of the domains [www.caddyjack.com](http://www.caddyjack.com) and [www.caddiejack.com](http://www.caddiejack.com) at JACK\_00139-00142 and its initial business and marketing plan at JACK\_00200-00202.

14. Separately for each of the goods listed in International Class 25 and each of the services listed in International Class 41, describe in detail the basis for your contention that you had a bona fide intent to use the Subject Mark in commerce at the time the application was filed.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding the objections, Applicant has a bona fide intent to use the CADDY JACK mark with each of the goods listed in Class 25 and each of the services listed in Class 41. Applicant's registration of the domains [www.caddyjack.com](http://www.caddyjack.com) and [www.caddiejack.com](http://www.caddiejack.com) supports its bona fide intent to use the CADDY JACK mark as the dates it registered these domains was prior to the date it filed the trademark application.

15. Separately for each of the goods listed in International Class 25 and each of the services listed in International Class 41, describe in detail the basis for your contention that the application to register the Subject Mark was not made merely to reserve a right in a mark.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant objects to the phrase "merely to reserve a right" as ambiguous and undefined.

In addition, Applicant objects on the basis that the interrogatory seeks a legal conclusion.

**RESPONSE:** Notwithstanding the objections, Applicant incorporates its answer to Interrogatory 14.

16. Separately for each of the goods listed in International Class 25 and each of the services listed in International Class 41, describe in detail the basis for your contention that the application to register the Subject Mark was made in circumstances showing good faith.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant's research and investigation is ongoing and Applicant's theory of the case is evolving. In addition, Applicant objects on the basis that the interrogatory seeks a legal conclusion.

**RESPONSE:** Notwithstanding the objections, Applicant incorporates its answer to Interrogatory 14.

17. Identify and describe in detail each of the circumstances that you contend are relevant to showing your claimed bona fide intent to use the Subject Mark in commerce.

**OBJECTIONS:** Applicant incorporates the general objections above. In addition, Applicant objects on the basis that the interrogatory seeks a legal conclusion.

**RESPONSE:** Notwithstanding, Applicant incorporates its answer to Interrogatory 14.

18. Identify and describe in detail each step you have taken, since the "Masters tournament at some point in time prior to 2007" identified in your answer

to Interrogatory No. 1, in furtherance of your intent to use the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant objects to the phrase “step you have taken” as ambiguous and undefined.

**RESPONSE:** Notwithstanding, Applicant identifies the following steps that it has taken-

- Registering the following domain names:

- Advisorpreferred.com
- Babiejack.com
- Caddiejack.com
- Caddyjack.com
- Daddiejack.com
- Gavinwealth.com
- Jackdad.com
- Jackdaddie.com
- Jackdaddy.org
- Jackdaddyenterprises.com
- Johntgavin.com
- Jtgavin.com
- Kiddiejack.com
- Kiddyjack.com
- Thegavingroup.com
- Thejackdaddy.com
- vincentjgavin.com

- Developing a marketing and business plan produced at JACK\_00200-00202.
- Filing the trademark application which is the subject of this proceeding.
- Filing trademark applications for the term JACKDADDY.
- Communicating with graphic designer regarding creation of logo for CADDY JACK.
- Creating a facebook page for Caddyjack
- Creating Instagram profiles for TheCaddyjack, CaddyjackCareer, and CaddyjackConsulting.
- Creating Twitter profiles for TheCaddyjack and Caddyjack Career



19. Identify and describe in detail every document that has been created, since the “Masters tournament at some point in time prior to 2007” identified in your answer to Interrogatory No. 1, in furtherance of your intent to use the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant objects to the phrase “step you have taken” as ambiguous and undefined.

**RESPONSE:** Notwithstanding, Applicant identifies the following documents:

- JACK\_00139-00140
- JACK\_00141-00142
- JACK\_00200-00202
- JACK\_00203-00220.

20. Identify and describe in detail any communications you have had, since the “Masters tournament at some point in time prior to 2007” identified in your answer to Interrogatory No. 1, in furtherance of your intent to use the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant objects to the phrase “step you have taken” as ambiguous and undefined.

**RESPONSE:** Notwithstanding, Applicant identifies the following communications-

- John Gavin spoke in person with his friend and mentor Jim Sullivan regarding the use of CADDY JACK in or about 2016.
- John Gavin spoke in person with his spouse regarding the use of CADDY JACK.
- In December 2016 and January 2017 John Gavin emailed Howie Vitek of Vitek design regarding designing a logo for the term CADDY JACK. See JACK\_00213-00214; JACK\_00217-220.
- On April 11, 2007, a Jared Tanner contacted John Gavin and sought to purchase

the domain caddyjack.com from him. See JACK\_00215.

- On November 3, 2013, a Kirk Derby contacted John Gavin and sought to purchase the domain caddyjack.com from him. See JACK\_00216.

21. Identify and describe in detail the process by which you will produce the goods listed in International Class 25 for the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant objects to the term “process” as ambiguous and undefined.

**RESPONSE:** Notwithstanding, Applicant intends to have clothing products from Class 25 manufactured overseas under the mark CADDY JACK and imported into the U.S. Applicant has not yet taken any actions to contact or enter into any agreements with any manufacturers.

22. Identify and describe in detail the third party manufacturers, in any, with whom you will produce the goods listed in International Class 25 for the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding, Applicant incorporates its answer to Interrogatory 21.

23. Describe in detail the nature of the document produced at Bates Nos. JACK200-JACK202, including (a) the date the document was created, (b) the author of the document, (c) any third parties with whom the document was shared, and (d) the meaning of the document itself.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore,

Applicant objects to the term “nature” as ambiguous and undefined.

**RESPONSE:** Notwithstanding, the document produced at JACK\_00200-00202 was created in or about August 2017 by John Gavin. The document is a result of a brainstorming session by Mr. Gavin of the structure and operation of Applicant after five years. Mr. Gavin shared the document in person with Jim Sullivan and Mr. Gavin’s spouse to obtain input. Mr. Sullivan is a friend and business mentor of Mr. Gavin.

24. Identify and describe in detail all acts taken by the corporation Jackdaddy Inc. since its incorporation in 2007.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant objects to the phrase “all acts taken” as ambiguous and undefined. Applicant objects to the request overly broad and burdensome in that it seeks information outside the scope of the current proceeding.

**RESPONSE:** Notwithstanding, Applicant incorporates its answer to Interrogatory 18.

Date: May 14, 2018

Respectfully Submitted,

/Kevin J. Keener/

Kevin J. Keener

Rishi Nair

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Attorneys for Applicant, Jackdaddy, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing document was served upon Opposer by email, on May 14, 2018 at the following email addresses:

Faegre Baker Daniels LLP  
Peter M. Routhier  
2200 Wells Fargo Center 90 South Seventh Street  
Minneapolis, Minnesota 55402  
peter.routhier@faegrebd.com

/Kevin J. Keener/

Kevin J. Keener

# **Exhibit B**

# Welcome to caddyjack.com

This Web page is parked for FREE, courtesy of [GoDaddy.com](#).

or domains similar to  
caddyjack.com

[Get Started](#)

 Is this your domain?  
Let's turn it into a website! [Get Started](#)

 Would you like to buy this domain? [Learn More](#)



**\$0.99\* .COM**

THE domain at THE price.

[GET YOURS](#)

dy  
axi

# **Exhibit C**

**Redacted - Confidential**



# **Exhibit D**

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

In the Matter of Serial No. 87291418  
For the Mark: CADDY JACK  
Filed: January 6, 2017  
Published: May 9, 2017

Target Brands, Inc.,

Opposer,

v.

Jackdaddy Inc.,

Applicant.

Opposition No. 91235560

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

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and § 405 of the Trademark Trial and Appeal Board Manual of Procedure, Jackdaddy, Inc., (hereinafter “Applicant”) Responds to the Interrogatories propounded on it on December 6, 2017 by Opposer, Target Brands, Inc., in the above-captioned proceeding, as follows:

**PRELIMINARY STATEMENT**

Applicant has not yet completed its investigation of the facts pertaining to this action and discovery is ongoing. All responses to the following Interrogatories (“Requests”) are based on information currently known to Applicant after a reasonable effort to locate information called for by these Interrogatories. Accordingly, all responses are given without prejudice to Applicant’s right to produce evidence based on any additional information that may develop or come to Applicant’s attention at a later time. In addition, Applicant’s objections are made without prejudice to Applicant’s right to assert any additional or supplemental objections should Applicant discover additional grounds for

such objections. Finally, Applicant's agreement to produce documents in response to any Interrogatory does not constitute an admission that any such documents in fact exist or are in Applicant's possession, custody, or control.

Applicant makes its objections and responses without in any manner waiving: (1) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (2) the right to object to any other discovery involving or relating to the subject matter of the responses herein; and (3) the right to revise, correct, supplement, or clarify any of the responses provided below at any time. Applicant expressly reserves the right to further supplement its responses.

### **GENERAL OBJECTIONS**

1. These General Objections are incorporated into each of the specific responses that follow. Notwithstanding those responses, Applicant does not waive any of these General Objections.
2. To the extent that the Interrogatories call for information or documents covered by the attorney-client privilege, work product doctrine, or any other applicable privilege or doctrine, Applicant objects to each such request, and states that no such information or documents will be produced. By providing information in response to the Interrogatories, or by stating that they will produce responsive documents in response to the request, Applicant does not intend to imply that it will produce any privileged documents. By producing documents or stating that it will produce documents, Applicant does not waive, intentionally or otherwise, its attorney-client privilege, work product protection, joint defense privilege or any other privilege protecting its documents or information, and any

production of documents or information inconsistent with the foregoing is wholly inadvertent and does not constitute a waiver of any such privilege or protection.

3. Applicant objects to the Interrogatories to the extent they seek information, documents, or communications between Applicant's agents, representatives, or employees or any information, documents, or communications between Applicant and their agents, representatives, or employees, when made subsequent to the occurrences or transactions upon which the proceeding is based, and in anticipation of the proceeding, because such are protected from disclosure under the attorney-client privilege, the work product exemption from discovery, or both.

4. Applicant objects to the Interrogatories to the extent they seek information, documents, or communications that are the work product of Applicant's lawyers or legal representatives, because such are privileged and therefore protected from disclosure.

5. Applicant objects to the Interrogatories to the extent that any Interrogatory seeks information that is not in the possession, custody, or control of Applicant, to the extent that it purports to require Applicant to speculate about the identity of persons who might have responsive information, and to the extent that it purports to call for any accounting of information that Applicant no longer possesses and/or was under no obligation to maintain. Applicant will produce non-privileged relevant documents in the possession, custody, or control of Applicant, as required by the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedure, or by any applicable order.

6. Applicant objects to each and every Interrogatory to the extent it seeks information that is already in the possession of Opposer or that could more easily be obtained from other sources. Without limitation, Applicant specifically objects to each and every request to the extent that the information sought is publicly available and/or has been submitted

or will be submitted to Opposer in disclosures mandated by the Federal Rules of Civil Procedure, or the Trademark Trial and Appeal Board Manual of Procedure, or by any applicable order.

7. Applicant objects to the Interrogatories to the extent that any request contains any factual or legal misrepresentations. Applicant's response that it will produce documents in response to an Interrogatory does not necessarily mean that responsive documents exist, but instead that Applicant will produce documents if such documents are located. Any statement made herein of an intent to produce documents is not, and shall not be deemed, an admission of any factual or legal contention contained in any individual Interrogatory.

8. Applicant objects to the Interrogatories to the extent they seek information, documents, or communications that are or were made for the purpose of facilitating the rendition of legal services to Applicant and are or were made: (1) between Applicant or its representatives and Applicant's lawyer(s), (2) between Applicant's lawyer(s) and the lawyer's representative(s), (3) between Applicant and its representative(s), or (4) between lawyers when representing Applicant, because such are protected from disclosure by the attorney-client privilege and the work product exemption from discovery.

9. Applicant generally objects to the Interrogatories to the extent they seek the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Documents resulting from investigations of facts related to the trademark and applications are protected by the attorney-client privilege, the work-product immunity, and related privileges or

immunities. Applicant therefore objects to the Interrogatories to the extent that they seek documents that contain privileged information, or are protected by the work-product immunity, or both. No privileged information, communication, or document will be provided in response to the Interrogatories. By responding to any particular Interrogatory, Applicant does not intend nor does it waive any applicable privilege that it may have, and Applicant specifically intends to assert the same.

10. By responding to the Interrogatories or providing any information herewith, Applicant does not waive and expressly preserves the objections set forth herein and does not concede the relevance or admissibility of the responses.

11. Applicant objects to the Interrogatories to the extent that they call for Applicant and/or its attorneys to categorize documents on a claim-by-claim basis or require Applicant and/or its attorneys to reveal their mental impressions as to whether a particular document supports a particular claim.

12. Applicant objects to any and all Interrogatories to the extent they require the production of confidential, proprietary, and/or trade secret information without adequate protection.

13. Applicant objects to each of the Interrogatories to the extent that the documents and/or information requested constitutes confidential and/or proprietary information belonging to third parties with whom Applicant have entered into non-disclosure or confidentiality agreements that prohibit the disclosure by Applicant of the third-party signatories' confidential and/or proprietary information. To the extent that any such information is requested, it will only be provided subject to an agreeable and effective protective order covering such disclosure, and will not be provided unless and until Applicant have given notice to or obtained permission from the relevant third parties.

14. Applicant construes the Interrogatories as not seeking identification of or information regarding the contents of legal memoranda, drafts of pleadings, attorney notes, letters exchanged between counsel for Applicant, or letters and communications between Applicant and its counsel. To the extent such Interrogatories might be construed to seek such information, documents, communications, or lists thereof, Applicant objects on the grounds of the attorney-client privilege, the work product exemption from discovery, the party communications exemption from discovery, and rules of confidentiality.

15. Applicant objects to each of Opposer's requests and each of Opposer's Definitions and Instructions to the extent that they seek electronically stored information that is not reasonably accessible because of the undue burden or cost associated with retrieving and producing such information, or that otherwise exceeds the requirements of the any standard for electronic discovery or any applicable court order.

16. Applicant objects to each request that is unlimited in time as overly broad, unduly burdensome, and neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence.

17. Applicant objects to the Interrogatories to the extent that any Interrogatory seeks information outside the temporal and geographic scope of the proceeding on the grounds that any such Interrogatory is overbroad, oppressive, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. Applicant objects to the Interrogatories to the extent that they seek information that is entirely irrelevant to the present proceedings.

19. In light of the premature and overly burdensome nature of Opposer's Interrogatories, as well as the expense of producing redundant documents and materials, Applicant makes no representation that documents produced in response to a particular Interrogatory constitute all documents responsive to such Interrogatory. Instead, documents produced will be sufficient to illustrate the requested subject matter or topic.

### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Applicant objects to the definition of "Applicant" as being overly broad, unduly burdensome, vague, and ambiguous. Applicant also objects to the definition to the extent it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Applicant also objects to the definition to the extent that it includes any entities other than Jackdaddy Inc..

2. Applicant objects to the definitions of "you" and "your" as being overly broad, unduly burdensome, vague, and ambiguous. Applicant also objects to the definitions of "you" and "your" to the extent they seek the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Applicant also objects to the definitions to the extent that they include any entities other than Jackdaddy, Inc.



3. Applicant objects to the definition of “person” as being overly broad, unduly burdensome, and as inquiring into matters that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Applicant also objects to the definition of “person” to the extent that it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege.

4. Applicant objects to the definition of “document” to the extent it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege.

Applicant further objects to the definition of the term “document” to the extent that it purports to impose conditions, obligations, or duties beyond those required by Rules 26, 33(d), and 34 of the Federal Rules of Civil Procedure, or the Trademark Trial and Appeal Board Manual of Procedure. For purposes of responding to these Interrogatories, Applicant interprets the term “document” in accordance with its ordinary meaning found in the Federal Rules of Civil Procedure, and the Trademark Trial and Appeal Board Manual of Procedure.

5. Applicant objects to each Interrogatory that seeks “all” information as overly broad and unduly burdensome. In response to such Interrogatories, and assuming no other

objections or privileges apply, Applicant will provide representative information located after a reasonable search.

6. Applicant generally objects to the Definitions and Instructions contained in the Interrogatories to the extent such Definitions and Instructions differ from or purport to expand the requirements of the Trademark Trial and Appeal Board, any applicable order, and/or the Federal Rules of Civil Procedure (the “Federal Rules”), including but not limited by purporting to supplement or enlarge terms that the Federal Rules and/or the Trademark Trial and Appeal Board Manual of Procedure define or describe. Applicant will disclose information and supplement its responses as required by the Federal Rules, the Trademark Trial and Appeal Board Manual of Procedure, and any applicable order.

### **Interrogatories**

1. Describe in detail the process by which the Subject Mark was chosen for use, including a description of any other marks considered as part of the process and the reasons that the Subject Mark was chosen.

**OBJECTIONS:** Applicant hereby incorporates the general objections above. Furthermore, Applicant objects to the phrase “chosen for use” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, founder of Applicant, John Gavin, has been a fan of golfing for nearly his entire life. Mr. Gavin has personally attended dozens of golf tournaments over the years. Mr. Gavin believes in the synergistic opportunities created by partnerships between people. An example of just such a partnership is exemplified in the sport of golf in the relationship between a caddy and a golfer.

Mr. Gavin attended a Masters tournament at some point in time prior to 2007.

While there he was sitting in the bleachers of the 15<sup>th</sup> hole. Mr. Gavin watched the interaction between professional golfer Phil Mickelson and his caddy Jim “Bones” Mackay. Mr. Gavin instantly thought of the word CADDY as part of a brand offering dedicated toward synergistic opportunities. Mr. Gavin had already started operating his company Jackdaddy, Inc. at that time. Mr. Gavin knew that the nickname of “John” is “Jack” and thus had named Jackdaddy, Inc. as a nickname of his own first name. Mr. Gavin thus incorporated the idea of CADDY with a version of his own name JACK to obtain the mark CADDY JACK. The formation of the brand name occurred practically instantaneously while he was sitting in the bleachers of the Masters.

2. Describe in detail any trademark investigation or search undertaken by you or on your behalf in connection with the adoption of the Subject Mark of the application to register the Subject Mark with the U.S. Patent & Trademark Office.

**OBJECTIONS:** Applicant hereby incorporates the general objections above.

**RESPONSE:** Notwithstanding the objections, Applicant states that it retained a trademark research firm to conduct a trademark search for the term CADDY JACK. A copy of the resulting search report is produced at JACK\_00143-199.

3. For each good and/or service you currently offer under the Subject Mark, describe the good and/or service in detail, state the date of first use by you of the Subject Mark in connection with that good and/or service, and state your reason for fixing the date of first use on that date.

**OBJECTIONS:** Applicant hereby incorporates the general objection above.

**RESPONSE:** Notwithstanding the objections, Applicant is not currently offering any goods or services under the mark CADDY JACK and has not yet used CADDY JACK in

commerce.)

4. For each good and/or service you intend to offer under the Subject Mark, describe the good and/or service in detail, state the anticipated date of first use by you of the Subject Mark in connection with that good and/or service, and state your reason for fixing the date of first use on that date.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding, Applicant intends to launch its use of CADDY JACK with the goods and services listed in Application Serial No. 87291418 by Labor Day 2018. However, Applicant's plans are flexible and changing and this date may change. Applicant has no specific reason for this date.

5. Identify all demographic information known to you about customers or potential customers for goods and/or services you offer or intend to offer under the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above. In addition, Applicant objects to the phrase "demographic information" as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, Applicant intends to sell its products and services to (1) men and women in the age range of 32-45 who are seeking professional development; (2) college graduates; (3) individuals who are looking to improve their employment standing and opportunities; (4) professionals.

6. Describe in detail any instance in which any individual has stated or implied that there is a connection, affiliation, or other relationship between you and/or your services and Opposer and/or its services, or in which any individual has inquired as to whether there is a connection, affiliation,

or other relationship between you and/or your services and Opposer and/or its services.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant objects to the phrase “connection, affiliation, or other relationship” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, Applicant is not aware any such instance.

7. Describe in detail the basis for your contention that the Subject Mark and Opposer’s Mark are not confusingly similar and that there is no likelihood of confusion, mistake, or deception.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant’s research and investigation is ongoing and Applicant’s theory of the case is evolving. In addition, Applicant objects on the basis that the interrogatory seeks a legal conclusion or information protected by the Attorney-Client privilege.

**RESPONSE:** Notwithstanding the objections, Applicant asserts that there is no likelihood of confusion between the Subject Mark and Opposer’s Mark because (1) the marks differ in appearance and connotation and (2) Applicant’s customer base is separate and distinct from Opposer’s customer base.

8. Identify each person you intend or expect to call as a witness during the testimony period in this proceeding, and describe in detail the substance of each such person’s expected testimony.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant’s research is ongoing and Applicant reserves the right to name individuals as witnesses in its pretrial disclosures.

**RESPONSE:** Notwithstanding, Applicant identifies John Gavin.

9. Identify each document or thing you intend or expect to offer into evidence during the testimony period in this proceeding.

**OBJECTIONS:** Applicant incorporates the general objections above. Furthermore, Applicant's investigation is ongoing and Applicant has not yet obtained all evidence which it intends to introduce into evidence. Applicant reserves the right to identify documents which it intends to introduce into evidence in its pretrial disclosures.

**RESPONSE:** Notwithstanding, Applicant identifies its document production of JACK\_00001-206.

Date: January 22, 2018

Respectfully Submitted,

/Kevin J. Keener/

Kevin J. Keener

Rishi Nair

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Chicago, IL 60601

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Attorneys for Applicant, Jackdaddy, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing document was served upon Opposer by email, on January 22, 2018 at the following email addresses:

Faegre Baker Daniels LLP  
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2200 Wells Fargo Center 90 South Seventh Street  
Minneapolis, Minnesota 55402  
peter.routhier@faegrebd.com

/Kevin J. Keener/  
Kevin J. Keener

# **Exhibit E**



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

In the Matter of Serial No. 87291418  
For the Mark: CADDY JACK  
Filed: January 6, 2017

Target Brands, Inc.,

Opposer,

v.

Jackdaddy Inc.,

Applicant.

Opposition No. 91235560

**APPLICANT’S ANSWERS TO OPPOSER’S FIRST SET OF REQUESTS FOR  
PRODUCTION**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and § 405 of the Trademark Trial and Appeal Board Manual of Procedure, Jackdaddy, Inc., (hereinafter “Applicant”) Responds to the Requests for Production propounded on it on December 6, 2017 by Opposer, Target Brands, Inc., in the above-captioned proceeding, as follows:

**PRELIMINARY STATEMENT**

Applicant has not yet completed its investigation of the facts pertaining to this action and discovery is ongoing. All responses to the following Requests for Production (“Requests”) are based on information currently known to Applicant after a reasonable effort to locate information called for by these Requests for Production. Accordingly, all responses are given without prejudice to Applicant’s right to produce evidence based on any additional information that may develop or come to Applicant’s attention at a later time. In addition, Applicant’s objections are made without prejudice to Applicant’s right

to assert any additional or supplemental objections should Applicant discover additional grounds for such objections. Finally, Applicant's agreement to produce documents in response to any Interrogatory does not constitute an admission that any such documents in fact exist or are in Applicant's possession, custody, or control.

Applicant makes its objections and responses without in any manner waiving: (1) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (2) the right to object to any other discovery involving or relating to the subject matter of the responses herein; and (3) the right to revise, correct, supplement, or clarify any of the responses provided below at any time. Applicant expressly reserves the right to further supplement its responses.

### **GENERAL OBJECTIONS**

1. These General Objections are incorporated into each of the specific responses that follow. Notwithstanding those responses, Applicant does not waive any of these General Objections.
2. To the extent that the Requests for Production call for information or documents covered by the attorney-client privilege, work product doctrine, or any other applicable privilege or doctrine, Applicant objects to each such request, and states that no such information or documents will be produced. By providing information in response to the Requests for Production, or by stating that they will produce responsive documents in response to the request, Applicant does not intend to imply that it will produce any privileged documents. By producing documents or stating that it will produce documents, Applicant does not waive, intentionally or otherwise, its attorney-client privilege, work product protection, joint defense privilege or any other privilege

protecting its documents or information, and any production of documents or information inconsistent with the foregoing is wholly inadvertent and does not constitute a waiver of any such privilege or protection.

3. Applicant objects to the Requests for Production to the extent they seek information, documents, or communications between Applicant's agents, representatives, or employees or any information, documents, or communications between Applicant and their agents, representatives, or employees, when made subsequent to the occurrences or transactions upon which the proceeding is based, and in anticipation of the proceeding, because such are protected from disclosure under the attorney-client privilege, the work product exemption from discovery, or both.

4. Applicant objects to the Requests for Production to the extent they seek information, documents, or communications that are the work product of Applicant's lawyers or legal representatives, because such are privileged and therefore protected from disclosure.

5. Applicant objects to the Requests for Production to the extent that any Interrogatory seeks information that is not in the possession, custody, or control of Applicant, to the extent that it purports to require Applicant to speculate about the identity of persons who might have responsive information, and to the extent that it purports to call for any accounting of information that Applicant no longer possesses and/or was under no obligation to maintain. Applicant will produce non-privileged relevant documents in the possession, custody, or control of Applicant, as required by the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedure, or by any applicable order.

6. Applicant objects to each and every Interrogatory to the extent it seeks information that is already in the possession of Opposer or that could more easily be obtained from other sources. Without limitation, Applicant specifically objects to each and every request to the extent that the information sought is publicly available and/or has been submitted or will be submitted to Opposer in disclosures mandated by the Federal Rules of Civil Procedure, or the Trademark Trial and Appeal Board Manual of Procedure, or by any applicable order.

7. Applicant objects to the Requests for Production to the extent that any request contains any factual or legal misrepresentations. Applicant's response that it will produce documents in response to an request does not necessarily mean that responsive documents exist, but instead that Applicant will produce documents if such documents are located. Any statement made herein of an intent to produce documents is not, and shall not be deemed, an admission of any factual or legal contention contained in any individual request.

8. Applicant objects to the Requests for Production to the extent they seek information, documents, or communications that are or were made for the purpose of facilitating the rendition of legal services to Applicant and are or were made: (1) between Applicant or its representatives and Applicant's lawyer(s), (2) between Applicant's lawyer(s) and the lawyer's representative(s), (3) between Applicant and its representative(s), or (4) between lawyers when representing Applicant, because such are protected from disclosure by the attorney-client privilege and the work product exemption from discovery.

9. Applicant generally objects to the Requests for Production to the extent they seek the disclosure of information, documents, or communications protected by the attorney-

client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Documents resulting from investigations of facts related to the trademark and applications are protected by the attorney-client privilege, the work-product immunity, and related privileges or immunities. Applicant therefore objects to the Requests for Production to the extent that they seek documents that contain privileged information, or are protected by the work-product immunity, or both. No privileged information, communication, or document will be provided in response to the Requests for Production. By responding to any particular Interrogatory, Applicant does not intend nor does it waive any applicable privilege that it may have, and Applicant specifically intends to assert the same.

10. By responding to the Requests for Production or providing any information herewith, Applicant does not waive and expressly preserves the objections set forth herein and does not concede the relevance or admissibility of the responses.

11. Applicant objects to the Requests for Production to the extent that they call for Applicant and/or its attorneys to categorize documents on a claim-by-claim basis or require Applicant and/or its attorneys to reveal their mental impressions as to whether a particular document supports a particular claim.

12. Applicant objects to any and all Requests for Production to the extent they require the production of confidential, proprietary, and/or trade secret information without adequate protection.

13. Applicant objects to each of the Requests for Production to the extent that the documents and/or information requested constitutes confidential and/or proprietary

information belonging to third parties with whom Applicant have entered into non-disclosure or confidentiality agreements that prohibit the disclosure by Applicant of the third-party signatories' confidential and/or proprietary information. To the extent that any such information is requested, it will only be provided subject to an agreeable and effective protective order covering such disclosure, and will not be provided unless and until Applicant have given notice to or obtained permission from the relevant third parties.

14. Applicant construes the Requests for Production as not seeking identification of or information regarding the contents of legal memoranda, drafts of pleadings, attorney notes, letters exchanged between counsel for Applicant, or letters and communications between Applicant and its counsel. To the extent such Requests for Production might be construed to seek such information, documents, communications, or lists thereof, Applicant object on the grounds of the attorney-client privilege, the work product exemption from discovery, the party communications exemption from discovery, and rules of confidentiality.

15. Applicant objects to each of Opposer's requests and each of Opposer's Definitions and Instructions to the extent that they seek electronically stored information that is not reasonably accessible because of the undue burden or cost associated with retrieving and producing such information, or that otherwise exceeds the requirements of the any standard for electronic discovery or any applicable court order.

16. Applicant objects to each request that is unlimited in time as overly broad, unduly burdensome, and neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence.

17. Applicant objects to the Requests for Production to the extent that any request seeks information outside the temporal and geographic scope of the proceeding on the grounds that any such Interrogatory is overbroad, oppressive, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. Applicant objects to the Requests for Production to the extent that they seek information that is entirely irrelevant to the present proceedings.

19. In light of the premature and overly burdensome nature of Opposer's Requests for Production, as well as the expense of producing redundant documents and materials, Applicant makes no representation that documents produced in response to a particular Interrogatory constitute all documents responsive to such Interrogatory. Instead, documents produced will be sufficient to illustrate the requested subject matter or topic.

#### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Applicant objects to the definition of "Applicant" as being overly broad, unduly burdensome, vague, and ambiguous. Applicant also objects to the definition to the extent it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Applicant also objects to the definition to the extent that it includes any entities other than Jackdaddy, Inc.

2. Applicant objects to the definitions of "you" and "your" as being overly broad, unduly burdensome, vague, and ambiguous. Applicant also objects to the definitions of

“you” and “your” to the extent they seek the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege. Applicant also objects to the definitions to the extent that they include any entities other than Jackdaddy, Inc.

3. Applicant objects to the definition of “person” as being overly broad, unduly burdensome, and as inquiring into matters that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Applicant also objects to the definition of “person” to the extent that it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege.

4. Applicant objects to the definition of “document” to the extent it seeks the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, the consulting expert exemption from discovery, the witness statement exemption from discovery, the party communications exemption from discovery, the investigative privilege, and/or any other applicable constitutional, statutory, or common law privilege.

Applicant further objects to the definition of the term “document” to the extent that it purports to impose conditions, obligations, or duties beyond those required by Rules



26, 33(d), and 34 of the Federal Rules of Civil Procedure, or the Trademark Trial and Appeal Board Manual of Procedure. For purposes of responding to these Requests for Production, Applicant interprets the term “document” in accordance with its ordinary meaning found in the Federal Rules of Civil Procedure, and the Trademark Trial and Appeal Board Manual of Procedure.

5. Applicant objects to each request that seeks “all” documents as overly broad and unduly burdensome. In response to such Requests for Production, and assuming no other objections or privileges apply, Applicant will produce responsive documents located after a reasonable search.

6. Applicant generally objects to the Definitions and Instructions contained in the Requests for Production to the extent such Definitions and Instructions differ from or purport to expand the requirements of the Trademark Trial and Appeal Board, any applicable order, and/or the Federal Rules of Civil Procedure (the “Federal Rules”), including but not limited by purporting to supplement or enlarge terms that the Federal Rules and/or the Trademark Trial and Appeal Board Manual of Procedure define or describe. Applicant will disclose information and supplement its responses as required by the Federal Rules, the Trademark Trial and Appeal Board Manual of Procedure, and any applicable order.

### **Requests for Production**

1. All documents regarding the creation, selection, and/or adoption of the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above. Applicant further objects to the phrase “creation, selection, and/or adoption” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

2. Documents sufficient to show the date on which you first used the Subject Mark, including any documents you intend to rely on as proof of the date of first use of the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding the objections, Applicant has no responsive documents in its possession. Applicant reserves the right to amend or supplement this response should Applicant begin using the Subject Mark in commerce.

3. Documents sufficient to show each good and/or service with which you have used the Subject Mark, and each good and/or service with which you plan to or have planned to use the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

4. All documents relating to your application to register the Subject Mark with the United States Patent & Trademark Office.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

5. All documents relating to or constituting any investigation, search, survey or study ever conducted by you or on your behalf relating to the availability for use or registration, selection, approval, adoption and/or use of the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

6. A sample of each advertisement, sales, marketing, or other promotional material in which the Subject Mark appears.

**OBJECTIONS:** Applicant incorporates the general objections above. Applicant further objects to the phrase “advertisement, sales, marketing, or other promotional material” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, after a reasonable search, Applicant has no responsive documents in its possession or control.

7. All documents regarding Opposer and/or Opposer’s Mark, including without limitation, any inquiries by anyone concerning Opposer or whether there is any affiliation or other relationship between Applicant and Opposer or their respective services.

**OBJECTIONS:** Applicant incorporates the general objections above. Applicant further objects to the phrase “affiliation or other relationship” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, after a reasonable search, Applicant has no responsive documents in its possession or control.

8. All documents evidencing any instance of confusion, mistake or deception with respect to the origin, sponsorship or ownership of the Subject Mark or your services.

**OBJECTIONS:** Applicant incorporates the general objections above. Applicant further objects to the phrase “confusion, mistake or deception” and the phrase “origin, sponsorship or ownership” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, after a reasonable search, Applicant has no responsive documents in its possession or control.

9. Documents sufficient to identify the type(s) of customers for your services offered under the Subject Mark.

**OBJECTIONS:** Applicant incorporates the general objections above. Applicant further objects to the term “customers” as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

10. All documents, writings or things which you expect to introduce as evidence in these proceedings.

**OBJECTIONS:** Applicant incorporates the general objections above.

Furthermore, Applicant has not finalized its research and reserves the right to amend and supplement this response when new information or documents are located and obtained.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

11. All documents you consulted in connection with preparing your responses to Opposer's First Set of Requests for Production.

**OBJECTIONS:** Applicant incorporates the general objections above.

Applicant further objects to the term "consulted" as ambiguous and undefined.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

12. Documents sufficient to show your corporate structure, including any parent or subsidiary entities.

**OBJECTIONS:** Applicant incorporates the general objections above.

**RESPONSE:** Notwithstanding the objections, all responsive non-privileged documents have been produced.

Date: January 22, 2018

Respectfully Submitted,

/Kevin J. Keener/

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing document was served upon Opposer by email, on January 22, 2018 at the following email addresses:

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/Kevin J. Keener/  
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