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

Hardcore Enterprises Pty Ltd.,

Petitioner,

v.

RCN-Companhia de Importacao e Exportacao de  
Texteis, Limitada,

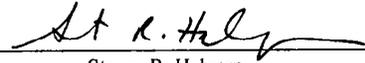
Respondent.

Cancellation No.: 92031118

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on

August 20, 2003

(Date)



Stacey R. Halpern

**PETITIONER'S MOTION TO COMPEL DISCOVERY RESPONSES AND REQUEST  
TO SUSPEND COMMENCEMENT OF TESTIMONY PERIOD**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

ATT: BOX TTAB NO FEE

08-22-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #78

Dear Sir:

Pursuant to 37 C.F.R. §§2.120(e)(1) and (h), and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §§ 415.01, 523 and 527, Hardcore Enterprises Pty Ltd., ("Petitioner") respectfully requests that the Trademark Trial and Appeal Board (the "Board") enter an Order compelling RCN-Companhia de Importacao e Exportacao de Texteis, Limitada, ("Respondent") to provide written responses and produce all documents and things responsive to Petitioner's First Requests for Production of Documents and Things Nos. 1-61 ("Petitioner's Document Requests"), to provide all information requested in Petitioner's First Set of Interrogatories Nos. 1-36 ("Petitioner's Interrogatories"), and to provide responses to Petitioner's





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Confer Letter indicated that if Petitioner did not receive responses to Petitioner's Discovery Requests and responsive documents by August 13, 2003 (seven weeks after the initial deadline), Petitioner would be forced to file a Motion to Compel; and (9) To date, not only has Respondent still failed to provide responses to Petitioner's Discovery Requests, but has also failed to respond to any of the Meet and Confer Letters or counsel for Petitioner's voice-mail message.

Petitioner's need for discovery responses and documents is urgent. As set forth in the Order, Petitioner's Testimony Period is scheduled to begin on September 8, 2003. Accordingly, Petitioner respectfully requests that the Board suspend the opening of Petitioner's Testimony Period and order Respondent to immediately provide all information sought in Petitioner's Discovery Requests and all documents and things sought in Petitioner's Document Requests.

This motion is based on the memorandum of law set forth below, the Declaration of Stacey R. Halpern and the Exhibits attached thereto.

**MEMORANDUM OF LAW**

**I. STATEMENT OF FACTS**

This Motion arises out of a Cancellation action brought by Petitioner against Respondent. The registration at issue is U.S. Trademark Registration No. 2,359,181 for the mark GLOBELINE and Design ("Respondent's Registration") in connection with "trunks and valises; umbrellas and parasols; saddlery; leather shopping bags; leather bags, namely, envelopes and pouches; satchels; wallets; briefcases; suitcases; backpacks; chain mesh purses; garment bags for travel" ("Respondent's Goods").

On April 10, 2003, the Board issued the Order lifting the suspension and resuming the

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R. Halpern in Support of Petitioner's Motion to Compel ("Halpern Declaration").

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Cancellation proceedings. Halpern Declaration at ¶ 2. The Order also reset the close of the discovery period and the opening and closing of the testimony periods. Specifically, the Order indicated that the discovery period was opened and that it would close on July 10, 2003. Id.

Thereafter, on May 20, 2003, Petitioner timely served Petitioner's Discovery Requests on counsel for Respondent. Halpern Declaration at ¶ 3. Accordingly, the deadline for Respondent to respond to Petitioner's Discovery Requests was June 24, 2003. Halpern Declaration at ¶ 3.

As Petitioner did not receive responses to Petitioner's Discovery Requests, in an effort to resolve this matter amicably, on June 30, 2003, counsel for Petitioner sent the First Meet and Confer Letter. Halpern Declaration at ¶ 4. The First Meet and Confer Letter indicated that if Petitioner did not receive responses to Petitioner's Discovery Requests and responsive documents by July 7, 2003, it would be forced to file a Motion to Compel. Id.

In another attempt to resolve this matter amicably, on July 15, 2003, counsel for Petitioner sent the Second Meet and Confer Letter inquiring as to why counsel for Respondent failed to provide any responses to Petitioner's Discovery Requests and failed to contact counsel for Petitioner in response to the First Meet and Confer Letter. Halpern Declaration at ¶ 5. Further, the Second Meet and Confer Letter indicated that if Petitioner did not receive responses to Petitioner's Discovery Requests and responsive documents by July 24, 2003, it would be forced to file a Motion to Compel. Id.

In still a further attempt to resolve this matter amicably, on July 23, 2003, counsel for Petitioner telephoned counsel for Respondent and left a voice-mail message requesting the status of Respondent's responses to Petitioner's Discovery Requests. Halpern Declaration at ¶ 6. To date, counsel for Respondent has failed to respond. Id.

In another effort to resolve this matter without the Board's involvement, on July 25, 2003,



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**II. ARGUMENT**

**A. The Board Should Compel Respondent to Respond to the Outstanding Discovery**

None of the relevant circumstances are subject to dispute: (1) Petitioner timely served Petitioner's Discovery Requests; (2) Respondent's responses to Petitioner's Discovery Requests were due on June 24, 2003; (3) Respondent did not provide responses to Petitioner's Discovery Requests; (4) After Respondent failed to timely respond to Petitioner's Discovery Requests, Petitioner sent the four Meet and Confer Letters and left a voice-mail message for counsel for the Respondent; and (4) Respondent did response to any of the Meet and Confer Letters or counsel for Petitioner's voice-mail message. Accordingly, Petitioner is entitled to an Order compelling Respondent to provide responses to Petitioner's Discovery Requests without objection and compelling Respondent to produce all documents and things requested in Petitioner's Document Requests (without objection). Furthermore, Petitioner is entitled to an Order deeming Petitioner's Admission Requests admitted.

**B. Motion to Compel Standard**

A motion to compel discovery should be granted where, as here, (1) Respondent failed to provide responses to properly served Discovery Requests; (2) Petitioner made a good faith attempt to provide Respondent with ample time to serve its responses to Petitioner's Discovery Requests; and (3) To date, Respondent has not provided documents or information responsive to Petitioner's Discovery Requests. See 37 C.F.R. § 2.120(e); TBMP §523.01.

There is no dispute that Respondent has failed to respond to Petitioner's properly served Discovery Requests. Indeed, Respondent has forfeited its right to object to the discovery requests on their merits. Moreover, Petitioner's Admission Requests are now deemed admitted.

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See TMEP § 411.01; Fed. R. Civ. P. 36(b). Bison Corp. v. Perfecta Chemie B.V., 4 U.S.P.Q.2d 1718 (TTAB 1987); Luehrmann v. Kwik Kopy Corp., 2 U.S.P.Q.2d 1303 (TTAB 1987).

Furthermore, under 37 C.F.R. § 2.120(g)(2), a party refusing to take part in discovery may be subject to sanctions, including the entry of judgment against it. Here, as is evidenced by the failure to respond to Petitioner's Discovery Requests and Respondent's failure to respond to any of the Meet and Confer Letters or counsel for Petitioner's voice-mail message, Respondent is apparently unwilling to cooperate with the timelines set by the Board and the Federal Rules of Civil Procedure.

Although Cancellation proceedings are necessarily adversarial, they are not intended as a forum for the Respondent to inflict obstruction, delay and unnecessary expense on the Petitioner. In this case, the Board must penalize Respondent's tactics. Respondent simply cannot ignore the timelines set by the Board without providing justification.

Accordingly, Petitioner respectfully submits that Respondent's delay constitutes good cause for either the suspension of Petitioner's testimony period pending Respondent's responses to Petitioner's Motion to Compel and Petitioner's Discovery Requests, as well as providing Petitioner with additional time to prepare and propound additional discovery requests once Respondent provides complete responses to Petitioner's Discovery Requests and responsive documents, or the granting of judgment against Respondent.

### **III. CONCLUSION**

For the reasons indicated above, Petitioner respectfully requests the Board to: (1) suspend the commencement of Petitioner's testimony period pending the Board's decision on Petitioner's Motion to Compel; (2) order Respondent to provide complete (without objection) responses to

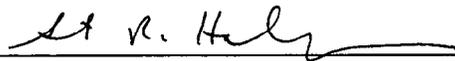
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Petitioner's Discovery Requests; (3) order Respondent to produce all documents requested (without objection); (4) deem Petitioner's Admission Requests admitted; (5) provide Petitioner with additional time to serve follow-up discovery once Respondent fully and completely responds to Petitioner's Discovery Requests (without objection) and produces all responsive documents (without objection); (6) sanction Respondent by dismissing its application and granting the Cancellation in favor of Petitioner unless Respondent complies with the Board's order to respond to Petitioner's Discovery Requests by a certain date; and (7) grant such further relief as the Board deems just and proper.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 20, 2003

By: 

Stacey R. Halpern  
2040 Main Street, Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404  
Attorneys for Petitioner,  
Hardcore Enterprises Pty Ltd.

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

Hardcore Enterprises Pty Ltd.,

Petitioner,

v.

RCN-Companhia de Importacao e Exportacao de  
Texteis, Limitada,

Respondent.

Cancellation No.: 92031118

**DECLARATION OF STACEY R. HALPERN IN SUPPORT OF  
PETITIONER'S MOTION TO COMPEL**

1. I am a partner with Knobbe, Martens, Olson & Bear, LLP (the "Knobbe Firm"), intellectual property counsel for the Petitioner in the above-identified Cancellation proceeding. I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.

2. On April 10, 2003, the Board issued the Order lifting the suspension of the above-identified proceeding. The Order included a new schedule for the close of the discovery period and the opening of the testimony periods. Specifically, the Order indicated that the discovery period closed on July 10, 2003. A true and correct copy of the Order is attached hereto as Exhibit 1.

3. On May 20, 2003 Petitioner timely served Petitioner's Discovery Requests. Accordingly, the deadline for Respondent to respond to Petitioner's Discovery Requests was June 24, 2003. True and correct copies of Petitioner's Discovery Requests are attached hereto as



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Moreover, the letter indicated that despite counsel for Petitioner's prior two letters and voice-mail message, Respondent neither provided responses to Petitioner's Discovery Requests, nor contacted counsel for Petitioner. As such, the Third Meet and Confer Letter indicated that if Petitioner did not receive responses to Petitioner's Discovery Requests and responsive documents by August 1, 2003 (over a month after the initial deadline), Petitioner would be forced to file a Motion to Compel. A true and correct copy of the Third Meet and Confer Letter is attached hereto as Exhibit 5.

8. In a final attempt to resolve this matter without the Board's assistance, on August 7, 2003, counsel for Petitioner sent the Fourth Meet and Confer Letter advising counsel for Respondent that responses to Petitioner's Discovery Requests were due on June 24, 2003. Moreover, the letter indicated that despite counsel for Petitioner's three prior letters or counsel for Petitioner's voice-mail message, Respondent had not provided responses to Petitioner's Discovery Requests. Furthermore, neither Respondent nor its counsel had contacted counsel for Petitioner. The Fourth Meet and Confer Letter indicated that if Petitioner did not receive responses to Petitioner's Discovery Requests and responsive documents by August 13, 2003 (seven weeks after the initial deadline), Petitioner would be forced to file a Motion to Compel. A true and correct copy of the Fourth Meet and Confer Letter is attached hereto as Exhibit 6.

9. To date, not only has Respondent still failed to provide responses to Petitioner's Discovery Requests, but has also failed to respond to any of the Meet and Confer Letters or counsel for Petitioner's voice-mail message.

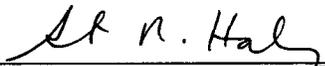
I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by

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fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Dated: August 20, 2003

By:

  
\_\_\_\_\_  
Stacey R. Halpern

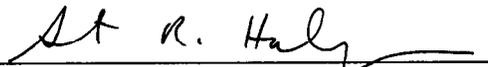
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**I. CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing **PETITIONER'S MOTION TO COMPEL DISCOVERY RESPONSES AND REQUEST TO SUSPEND COMMENCEMENT OF TESTIMONY PERIOD; and DECLARATION OF STACEY R. HALPERN IN SUPPORT OF PETITIONER'S MOTION TO COMPEL** upon Respondent's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on August 20, 2003 addressed as follows:

Julie A. Greenberg  
GIFFORD DRASS GROH SPRINKLE ANDERSON & CITKOWSKI PC  
280 N. Old Woodward, Suite 400  
Birmingham, MI 48009

  
\_\_\_\_\_  
Stacey R. Halpern

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UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Baez

Mailed: April 10, 2003

Cancellation No. 92031118

HARDCORE ENTERPRISES PTY.  
LTD.

v.

RCN - COMPANHIA DE  
IMPORTACAO E EXPORTAC

**Vionette Baez, Paralegal**

The suspension period having expired with no word from either party concerning the status of their negotiations, it is concluded that efforts to reach an amicable settlement in this case have been unsuccessful.

Accordingly, proceedings herein are resumed and trial dates, including the close of discovery, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	July 10, 2003
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	October 8, 2003
Testimony period for party in position of defendant to close: (opening thirty days prior thereto)	December 7, 2003





DEFINITIONS

A. The term "Respondent" shall refer to RCN - Companhia de Importacao e Exportacao de Texteis, Limitada and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on behalf of it, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

B. The term "Petitioner" shall refer to Hardcore Enterprises Pty Ltd. and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

C. The term "you" shall mean the party or person to whom the Request is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons ~~over whom the person or party to whom the Request is propounded has the right to or does~~ control or direct any activities.

D. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals or instruction bulletins, voice recording, cables or telegrams, maps, charts, surveys, test data,

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HTML code, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody or control of Respondent, and every copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear on the original.

E. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

F. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

G. A document or thing "relating or referring" or which "relates" to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

H. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

I. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Respondent, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

J. The terms "trademark" or "mark" shall include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

K. The terms "all" and "each" shall be construed to include all and each.

L. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."



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**REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1:**

Respondent did not sell any bags in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 2:**

Respondent did not sell any luggage in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 3:**

Respondent did not sell any backpacks in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 4:**

Respondent did not sell any bags in association with Respondent's Mark in the U.S. prior to 1997.

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**REQUEST FOR ADMISSION NO. 5:**

Respondent did not sell any luggage in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 6:**

Respondent did not sell any backpacks in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 7:**

Respondent did not sell any goods classified in International Class 18 in association with Respondent's Mark in the U.S. prior to 1996.

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**REQUEST FOR ADMISSION NO. 8:**

Respondent did not sell any goods classified in International Class 18 in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 9:**

Respondent did not sell Respondent's Good in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 10:**

Respondent did not sell Respondent's Good in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 11:**

Respondent did not sell Respondent's Goods in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 12:**

~~Respondent did not advertise, promote or market any bags in association with~~  
Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 13:**

Respondent did not advertise, promote or market any luggage in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 14:**

Respondent did not advertise, promote or market any backpacks in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 15:**

Respondent did not advertise, promote or market any bags in association with

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Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 16:**

Respondent did not advertise, promote or market any luggage in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 17:**

Respondent did not advertise, promote or market any backpacks in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 18:**

Respondent did not advertise, promote or market any goods classified in International Class 18 association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 19:**

Respondent did not advertise, promote or market Respondent's Goods in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 20:**

Respondent did not advertise, promote or market any goods classified in International Class 18 association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 21:**

Respondent did not advertise, promote or market Respondent's Goods in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 22:**

Respondent did not offer for sale any bags in association with Respondent's Mark in the U.S. prior to 1996.

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**REQUEST FOR ADMISSION NO. 23:**

Respondent did not offer for sale any luggage in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 24:**

Respondent did not offer for sale any backpacks in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 25:**

Respondent did not offer for sale any bags in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 26:**

Respondent did not offer for sale any luggage in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 27:**

~~Respondent did not offer for sale any backpacks in association with Respondent's Mark~~  
in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 28:**

Respondent did not offer for sale any goods classified in International Class 18 in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 29:**

Respondent did not offer for sale Respondent's Goods in association with Respondent's Mark in the U.S. prior to 1996.

**REQUEST FOR ADMISSION NO. 30:**

Respondent did not offer for sale any goods classified in International Class 18 in

association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 31:**

Respondent did not offer for sale Respondent's Goods in association with Respondent's Mark in the U.S. prior to 1997.

**REQUEST FOR ADMISSION NO. 32:**

Petitioner's date of first use of the mark GLOBE AUSTRALIA, as set forth in U.S. Trademark Registration No. 2,194,182 (the "'182 Registration"), is prior to Respondent's first use of the mark GLOBELINE in the U.S. commerce in connection with Respondent's Goods. A true and correct copy of the '182 Registration is attached hereto as Exhibit 1.

**REQUEST FOR ADMISSION NO. 33:**

Petitioner's date of first use of the mark GLOBE AUSTRALIA, as set forth in the '182 Registration, is prior to the date Respondent filed U.S. Trademark Application Serial No. 75/476,655 (the "'655 Application"), which matured into U.S. Trademark Registration No. 2359,181 (the "'181 Registration").

**REQUEST FOR ADMISSION NO. 34:**

Petitioner's date of first use of the mark GLOBE, AUSTRALIA as set forth in the '182 Registration is prior to Respondent's date of first use of the mark GLOBELINE in the U.S.

**REQUEST FOR ADMISSION NO. 35:**

Respondent was aware of Petitioner's use of the mark GLOBE in the U.S. prior to filing the '655 Application.

**REQUEST FOR ADMISSION NO. 36:**

Respondent was aware of Petitioner's use of the mark GLOBE AUSTRALIA in the U.S. prior to filing the '655 Application.

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**REQUEST FOR ADMISSION NO. 37:**

Petitioner's first use of the mark GLOBE in the U.S. is prior to Respondent's date of first use of the mark GLOBELINE in the U.S. in connection with Respondent's Goods.

**REQUEST FOR ADMISSION NO. 38:**

Petitioner's first use of the mark GLOBE AUSTRALIA in the U.S. is prior to Respondent's date of first use of the mark GLOBELINE in the U.S. in connection with Respondent's Goods.

**REQUEST FOR ADMISSION NO. 39:**

Petitioner's date of first use of the mark GLOBE AUSTRALIA in the U.S., as set forth in U.S. Trademark Registration No. 2,601,308 (the "'308 Registration"), is prior to Respondent's first use of the mark GLOBELINE in U.S. commerce in connection with Respondent's Goods. A true and correct copy of the '308 Registration is attached hereto as Exhibit 2.

**REQUEST FOR ADMISSION NO. 40:**

~~Petitioner's date of first use of the mark GLOBE AUSTRALIA in the U.S., as set forth in~~  
the '308 Registration, is prior to the date Respondent filed the '655 Application.

**REQUEST FOR ADMISSION NO. 41:**

Petitioner's date of first use of the mark GLOBE in the U.S., as set forth in U.S. Trademark Registration No. 1,991,488 (the "'488 Registration") is prior to Respondent's first use of the mark GLOBELINE in U.S. commerce in connection with Respondent's Goods. A true and correct copy of the '488 Registration is attached hereto as Exhibit 3.

**REQUEST FOR ADMISSION NO. 42:**

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Petitioner's date of first use of the mark GLOBE AUSTRALIA in the U.S., as set forth in the '488 Registration, is prior to the date Respondent filed the '655 Application.

**REQUEST FOR ADMISSION NO. 43:**

Respondent was aware of Petitioner's use of the mark GLOBE AUSTRALIA prior to filing the '655 Application.

**REQUEST FOR ADMISSION NO. 44:**

Respondent was aware of Petitioner's use of the mark GLOBE prior to filing the '655 Application.

**REQUEST FOR ADMISSION NO. 45:**

Petitioner's first use of the mark GLOBE AUSTRALIA in the U.S. is prior to Respondent's date of first use of the mark GLOBELINE in the U.S. in connection with Respondent's Goods.

**REQUEST FOR ADMISSION NO. 46:**

~~Petitioner's first use of the mark GLOBE in the U.S. is prior to Respondent's date of first use of the mark GLOBELINE in the U.S. in connection with Respondent's Goods.~~

**REQUEST FOR ADMISSION NO. 47:**

Respondent is not currently using Respondent's Mark in connection with Respondent's Goods in the U.S.

**REQUEST FOR ADMISSION NO. 48:**

Respondent is not currently advertising, promoting, or marketing Respondent's Goods in connection with Respondent's Mark in the U.S.

**REQUEST FOR ADMISSION NO. 49:**

Respondent is not currently offering for sale any Respondent's Goods in connection with

Page 2 of 11 49

Respondent's Mark in the U.S.

**REQUEST FOR ADMISSION NO. 50:**

Prior to adopting Respondent's Mark, Respondent conducted a trademark search for marks including the term "GLOBE."

**REQUEST FOR ADMISSION NO. 51:**

The word mark shown in the '181 Registration is GLOBELINE.

**REQUEST FOR ADMISSION NO. 52:**

The word mark shown in the '488 Registration is GLOBE.

**REQUEST FOR ADMISSION NO. 53:**

The "GLOBE" portion of the mark shown in the '181 Registration is identical in spelling to the "GLOBE" mark shown in the '488 Registration.

**REQUEST FOR ADMISSION NO. 54:**

Respondent's Mark is similar in commercial impression to that of the mark shown in the '488 Registration.

**REQUEST FOR ADMISSION NO. 55:**

Exhibit 4 is a true and correct copy of the cover of one of Respondent's catalogs.

**REQUEST FOR ADMISSION NO. 56:**

The mark shown in Exhibit 4 is "GLOBELINE."

**REQUEST FOR ADMISSION NO. 57:**

The "GLOBE" portion of the mark shown in Exhibit 4 is identical in spelling to the mark GLOBE shown in the '488 Registration.

**REQUEST FOR ADMISSION NO. 58:**

The word "GLOBE," as shown in Exhibit 4, is identical in commercial impression to the

mark "GLOBE" in the '488 Registration.

**REQUEST FOR ADMISSION NO. 59:**

The word "GLOBE," as shown in Exhibit 4, is similar in commercial impression to the "GLOBE" portion of the mark in the '182 Registration.

**REQUEST FOR ADMISSION NO. 60:**

The use of the mark shown in Exhibit 4 is likely to cause confusion with the mark shown in the '488 Registration.

**REQUEST FOR ADMISSION NO. 61:**

The use of the mark shown in Exhibit 4 is likely to cause confusion with the mark shown in the '308 Registration.

**REQUEST FOR ADMISSION NO. 62:**

The use of the mark shown in Exhibit 4 is likely to cause confusion with the mark shown in the '182 Registration.

**REQUEST FOR ADMISSION NO. 63:**

The word mark shown in the '308 Registration is GLOBE AUSTRALIA.

**REQUEST FOR ADMISSION NO. 64:**

The "GLOBE" portion of the mark in the '181 Registration is identical in spelling to the "GLOBE" portion of the mark in the '308 Registration.

**REQUEST FOR ADMISSION NO. 65:**

Respondent's Mark is similar in commercial impression to that of the mark shown in the '308 Registration.

**REQUEST FOR ADMISSION NO. 66:**

The word mark shown in the '182 Registration is GLOBE AUSTRALIA.

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**REQUEST FOR ADMISSION NO. 67:**

The "GLOBE" portion of the mark in the '181 Registration is identical in spelling to the "GLOBE" portion of the mark shown in the '182 Registration.

**REQUEST FOR ADMISSION NO. 68:**

Respondent's Mark is similar in commercial impression to that of the mark shown in the '182 Registration.

**REQUEST FOR ADMISSION NO. 69:**

Consumers and potential consumers are likely to confuse Respondent's GLOBELINE mark with Petitioner's GLOBE mark.

**REQUEST FOR ADMISSION NO. 70:**

Consumers and potential consumers are likely to confuse Respondent's GLOBELINE mark with Petitioner's GLOBE AUSTRALIA mark.

**REQUEST FOR ADMISSION NO. 71:**

~~Consumers and potential consumers are likely to assume that Respondent's Goods~~  
offered in connection with Respondent's Mark originate from Petitioner.

**REQUEST FOR ADMISSION NO. 72:**

Consumers and potential consumers are likely to assume that Respondent's use of Respondent's Mark is licensed by Petitioner.

**REQUEST FOR ADMISSION NO. 73:**

Petitioner's GLOBE Mark is well known.

**REQUEST FOR ADMISSION NO. 74:**

Petitioner's GLOBE AUSTRALIA Mark is well known

2 2004-04-19

**REQUEST FOR ADMISSION NO. 75:**

Respondent does not have a sales office in the U.S.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 20, 2003

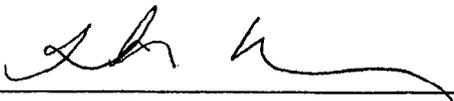
By: 

Stacey R. Halpern  
2040 Main Street, 14<sup>th</sup> Floor  
Irvine, CA 92660  
(949) 760-0404  
Attorneys for Petitioner,  
Hardcore Enterprises Pty Ltd.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing Petitioner's First Set of Requests for Admissions Nos. 1 - 75 upon Respondent's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on May 20, 2003 addressed as follows:

Julie A. Greenberg  
GIFFORD DRASS GROH SPRINKLE ANDERSON & CITKOWSKI PC  
280 N. Old Woodward, Suite 400  
Birmingham, MI 48009

  
Stacey R. Halpern

Int. Cl.: 18

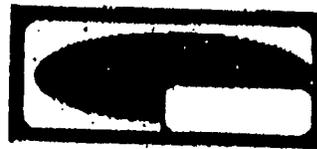
Prior U.S. Cls.: 1, 2, 3, 22, and 41

**United States Patent and Trademark Office**

**Reg. No. 2,194,18**

Registered Oct. 6, 199

**TRADEMARK  
PRINCIPAL REGISTER**



**GLOBE  
AUSTRALIA**

**HARDCORE ENTERPRISES PTY LTD (AUSTRALIA CORPORATION)  
30-40 FLOCKHART STREET  
ABBOTSFORD, VIC 3067, AUSTRALIA**

**BAGS FOR TRAVEL, SUITCASES, LUGGAGE, WAIST PACKS, BACKPACKS AND WALLETS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).**

**FIRST USE 10-15-1996; IN COMMERCE 10-15-1996.**

**FOR: BAGS AND LUGGAGE, NAMELY, ALL PURPOSE ATHLETIC BAGS, BEACH BAGS, BOOK BAGS, CARRY-ON BAGS, CLUTCH BAGS AND PURSES, DUFFLE BAGS, GYM BAGS, LEATHER AND/OR MESH SHOPPING BAGS, OVERNIGHT BAGS, SCHOOL BAGS, SHOULDER BAGS, TOTE BAGS, TRAVEL BAGS, GARMENT BAGS FOR TRAVEL, SHOE**

**NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AUSTRALIA", APART FROM THE MARK AS SHOWN.**

**SN 75-211,676, FILED 12-11-1996.**

**LESLEY LAMOTHE, EXAMINING ATTORNEY**

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,601,308

Registered July 30, 2002

TRADEMARK  
PRINCIPAL REGISTER



GLOBE  
AUSTRALIA

HARDCORE ENTERPRISES PTY LTD (AUSTRALIA CORPORATION)  
30-40 FLOCKHART STREET  
ABBOTSFORD VIC 3067, AUSTRALIA

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AUSTRALIA", APART FROM THE MARK AS SHOWN.

FOR: FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).

SN 75-071,025, FILED 3-12-1996.

FIRST USE 5-0-1996; IN COMMERCE 6-0-1996

LESLEY LAMOTHE, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

**United States Patent and Trademark Office**

Reg. No. 1,991,488

Registered Aug. 6, 1996

**TRADEMARK  
PRINCIPAL REGISTER**

**GLOBE**

JUDY ANN OF CALIFORNIA (CALIFORNIA  
CORPORATION)  
1936 MATEO STREET  
LOS ANGELES, CA 90021

FIRST USE 2-5-1996; IN COMMERCE  
2-5-1996.

SN 74-346,627, FILED 1-8-1993.

FOR: CLOTHING; NAMELY, TOPS, SHIRTS,  
PANTS, SKIRTS, SHORTS, SWEATERS AND  
JACKETS, IN CLASS 25 (U.S. CLS. 22 AND 39).

CHARLES WEIGELL, EXAMINING ATTOR-  
NEY

0011300701/00

# GLOBE

LINE

SPRING / SUMMER 2001



or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

C. The term "you" shall mean the party or person to whom the Interrogatory is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.

D. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals or instruction bulletins, voice recording, cables or telegrams, maps, charts, surveys, test data, HTML code, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody or control of Respondent, and every copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear on the original.

E. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

F. The term "concerning" means relating to, referring to, describing, evidencing or

constituting.

G. A document or thing "relating or referring" or which "relates" to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

H. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

I. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Respondent, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

J. The terms "trademark" or "mark" shall include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

K. The terms "all" and "each" shall be construed to include all and each.

L. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."

M. The use of the singular form of any word also includes the plural and *vice versa*.

N. The terms "Respondent's Mark" shall mean the mark shown in U.S. Trademark Registration No. 2,359,181, and any other marks used by Respondent that include the term "GLOBE."

O. The terms "Petitioner's Marks" shall mean the marks shown in U.S. Trademark Registration Nos. 1,991,488; 2,601,308; 2,194,182; and U.S. Trademark Application Serial No. 76/287,245.

2 Feb 22 49

P. "Respondent's Goods in Class 18" shall mean the goods identified in U.S. Trademark Registration No. 2,359,181.

**GENERAL INSTRUCTIONS**

1. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in context of the entire Interrogatory, but each part is to be answered separately.

2. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:

- a. full name;
- b. current business and residence addresses, including telephone numbers;
- c. present employer, occupation, and position;
- d. a brief description of the job responsibilities of such person; and
- e. a brief description of the responsibilities of such person with the pertinent organization.

If other than a natural person, state:

- a. its full name or designation;
- b. the legal classification of the entity (e.g., corporation, partnership, etc.), giving the state of incorporation where appropriate;
- c. the principal place of business;
- d. the current or last known address and telephone number of the organization; and

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- e. any other information reasonably necessary to permit efficient contact with the organization.

3. All requests contained in the following Interrogatories to identify a document means to provide a description in terms sufficient that the document can be readily and unambiguously sought in a Request for Production of Documents under FRCP 34 and shall include:

- a. a statement of the general nature and contents of the document (e.g., whether the document is a letter, memorandum, notebook, pamphlet, report, email, etc.);
- b. the date;
- c. the author;
- d. all addresses and copy recipients; and
- e. the person who has custody of the document.

In lieu of such identification, Petitioner will accept a clear and legible copy of the document at the time Respondent answers this set of Interrogatories with a correlation of the produced document to the Interrogatory number.

4. The term "date" means the exact day, month, and year, if ascertainable and, if not, the best approximation thereof.

5. If you claim that any information requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;

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- b. the author of the document, if applicable;
- c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed;
- d. the date of the information or document;
- e. the type of information or document (e.g., letter, memorandum, etc.); and
- f. the general subject matter of the information or document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

6. Respondent's responses to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the FRCP.

**INTERROGATORIES**

**INTERROGATORY NO. 1:**

State the nature of the business conducted by Respondent, a brief business history of Respondent, and of all companies related to Respondent.

**INTERROGATORY NO. 2:**

Identify each person who has knowledge of Respondent's use of Respondent's Mark.

**INTERROGATORY NO. 3:**

Describe how Respondent created, conceived, selected, cleared, adopted, acquired, or otherwise made the decision to use Respondent's Mark and identify all persons with knowledge thereof and all documents related thereto.

**INTERROGATORY NO. 4:**

Identify each person, including, but not limited to, any attorney or trademark specialist, who has been involved in the creation, selection, clearance, adoption or acquisition of Respondent's Mark.

**INTERROGATORY NO. 5:**

Identify each trademark, service mark, trade name, name, word, design, term, phrase or variation thereto, currently or previously used by Respondent and/or any authorized user in the U.S., which incorporates the term "GLOBE."

**INTERROGATORY NO. 6:**

Describe in detail all goods and services in conjunction with which Respondent's Mark, or any variation thereof, have been or are currently being used, or are contemplated to be used, by Respondent or other authorized users of Respondent's Mark in the U.S.

**INTERROGATORY NO. 7:**

Describe all plans made or steps taken by Respondent to alter or expand the goods or services in connection with which Respondent's Mark is used in the U.S., including an identification of such goods and/or services.

**INTERROGATORY NO. 8:**

With respect to Respondent's Goods in Class 18 and each of the goods and services identified in response to Interrogatory No. 6, state the average retail price every year from the year each such good or service was first offered in the U.S. under Respondent's Mark to the present.

**INTERROGATORY NO. 9:**

Identify and describe Respondent's first use in commerce in the U.S. of Respondent's

Mark or any trademark, service mark, trade name, name, word, design, term or phrase that includes the term "GLOBE," including but not limited to, the dates of first use, first use in intrastate commerce, and first use in interstate commerce; all persons with knowledge of the same, and all documents relating thereto.

**INTERROGATORY NO. 10:**

With respect to Respondent's Goods in Class 18 and each of the goods and/or services identified in response to Interrogatory No. 6, state the total number of sales by Respondent, in units and dollars, from inception, on an annual basis in connection with such goods in the U.S.

**INTERROGATORY NO. 11:**

With respect to Respondent's Goods in Class 18 and each of the goods and/or services identified in response to Interrogatory No. 6, describe any period of time since inception of Respondent's Mark when Respondent discontinued use of Respondent's Mark in the U.S. in connection with such goods and/or services, provide the reasons for such discontinuation, and, if applicable, provide the date and location of any resumption of use and the reason for such resumption of use.

**INTERROGATORY NO. 12:**

With respect to Respondent's Goods in Class 18 and each of the goods and/or services identified in response to Interrogatory No. 6, identify the date Respondent's Mark was first exposed to a third party in the U.S., whether or not such exposure constitutes a date of first use of the mark in commerce.

**INTERROGATORY NO. 13:**

Describe in detail the manner in which Respondent's Mark is promoted and/or advertised in the U.S. in connection with Respondent's Goods in Class 18 or any other goods and/or

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services identified in response to Interrogatory No. 6, including but not limited to, dates, issues and titles of any magazines, flyers, pamphlets or other printed or electronic publications and domain names or websites where advertisements or information appears for goods and/or services provided under Respondent's Mark.

**INTERROGATORY NO. 14:**

For each promotional, informational or advertising medium identified in the preceding Interrogatory, state the annual expenditure for advertising and promotion and the provision of information during each year since inception in the U.S.

**INTERROGATORY NO. 15:**

Identify any person who has publicly endorsed the goods and/or services provided under Respondent's Mark in the U.S.

**INTERROGATORY NO. 16:**

Describe in detail any advertising or promotion conducted by authorized users of Respondent's Mark in the U.S.

**INTERROGATORY NO. 17:**

Identify all trade shows in the U.S. attended by Respondent, including the date and where the goods provided under Respondent's Mark were sold, advertised or promoted.

**INTERROGATORY NO. 18:**

Describe in detail the channels of distribution by which Respondent's Goods in Class 18 or any other goods and/or services identified in response to Interrogatory No. 6, reach the ultimate user or consumer, including, without limitation, the types of persons or entities who are purchasers or users of Respondent's Goods in Class 18 or any other goods and/or services identified in response to Interrogatory No. 6.

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**INTERROGATORY NO. 19:**

Describe in detail all plans made or steps taken by Respondent to alter or expand the channels of distribution mentioned in the answer to the preceding Interrogatory.

**INTERROGATORY NO. 20:**

State the average age of purchasers and users of the goods and/or services offered, offered for sale, sold, promoted, or advertised in connection with Respondent's Mark in the U.S.

**INTERROGATORY NO. 21:**

Identify the name and location where any goods offered in connection with Respondent's Mark are made or manufactured.

**INTERROGATORY NO. 22:**

Identify each geographic area by region or state in which Respondent has used Respondent's Mark.

**INTERROGATORY NO. 23:**

With respect to each region or state identified in the preceding Interrogatory, state the period of time during which such use, if any has occurred. If no use has occurred, please state so.

**INTERROGATORY NO. 24:**

Identify all licensed users in the U.S. of Respondent's Mark.

**INTERROGATORY NO. 25:**

Describe in detail all agreements you have entered into that relate to the sale of Respondent's Goods in the U.S. in connection with Respondent's Mark, including all license agreements.

**INTERROGATORY NO. 26:**

If Respondent claims the benefit of any use of Respondent's Mark by any predecessor-in-

2 Paragraph 49

title, identify the predecessor-in-title, and describe in detail the nature and extent of the predecessor's use of the mark.

**INTERROGATORY NO. 27:**

Describe in detail the circumstances under which Respondent first became aware of Petitioner and/or Petitioner's Marks and use of the word "GLOBE," including, but not limited to, the date, all persons with knowledge thereof and all documents related thereto.

**INTERROGATORY NO. 28:**

Describe in detail any adversarial proceeding involving Respondent's Mark, or any variation thereof, before the Trademark Trial and Appeal Board, Bureau of Customs, Federal Trade Commission, or any court.

**INTERROGATORY NO. 29:**

Describe in detail the circumstances under which Respondent has sought to register Respondent's Mark, or any variation thereof, under the laws of any state of the United States or before the PTO including the date of filing and any applicable registration or serial number pertaining thereto.

**INTERROGATORY NO. 30:**

Describe in detail any objection received by Respondent to its use or registration of Respondent's Mark.

**INTERROGATORY NO. 31:**

Describe in detail every objection made by Respondent to the use by others of any trademark or service mark believed by Respondent to be confusingly similar to Respondent's Mark.

**INTERROGATORY NO. 32:**

Identify and describe all instances of actual or possible confusion, or any reports of such confusion known to Respondent between Respondent's goods and/or services offered in connection with Respondent's Mark and Petitioner's goods and/or services offered in connection with Petitioner's Marks, including but not limited to, misdirected communications and inquiries as to affiliation, all persons with knowledge thereof and all documents related thereto.

**INTERROGATORY NO. 33:**

Describe in detail every instance in which Respondent has ever disclaimed any association with Petitioner or Petitioner's Mark.

**INTERROGATORY NO. 34:**

Identify and describe any instances where Respondent has received any communication, documents or things concerning Petitioner, all persons with knowledge thereof and all documents related thereto.

**INTERROGATORY NO. 35:**

Describe in detail every objection made by Respondent to the use by others of any trademark or service mark believed by Petitioner to be confusingly similar to Respondent's Mark, including, without limitation, the mark objected to, the goods or services with which the mark is or was used, the date of the objection and the identity of the person to whom the objection was made.

**INTERROGATORY NO. 36:**

Does Respondent have a sales office in the U.S.?

**INTERROGATORY NO. 37:**

When does Respondent plan on using Respondent's Mark in the U.S. in connection with Respondent's Goods in Class 18 or any other goods and/or services identified in response to

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Interrogatory No. 6?

**INTERROGATORY NO. 38:**

Identify all individuals who were consulted or participated in the preparation of the answers to the preceding Interrogatories.

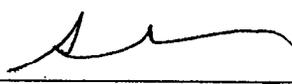
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: \_\_\_\_\_

5/20/07

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

  
Stacey R. Halpern  
2040 Main Street  
Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404  
Attorneys for Petitioner,  
Hardcore Enterprises Pty Ltd.

05/20/2003 11:00 AM

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing Petitioner's First Set of Interrogatories Nos. 1 - 38 upon Respondent's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on May 20, 2003 addressed as follows:

Julie A. Greenberg  
GIFFORD DRASS GROH SPRINKLE ANDERSON & CITKOWSKI PC  
280 N. Old Woodward, Suite 400  
Birmingham, MI 48009



---

Stacey R. Halpern

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

HARDCORE ENTERPRISES PTY LTD.,

Petitioner,

v.

RCN - COMPANHIA DE IMPORTACAO E  
EXPORTACAO DE TEXTEIS, LIMITADA,

Respondent.

) Cancellation No.: 92,031,118

) Mark: GLOBELINE

) Registration No.: 2,359,181

**PETITIONER'S FIRST REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND THINGS NOS. 1 - 63**

Pursuant to Rule 2.120(d) of the U.S. Patent and Trademark Office's ("PTO") Trademark Rules of Practice, 37 C.F.R. Section 2.120(d), and Rule 34 of the Federal Rules of Civil Procedure ("FRCP"), Petitioner, Hardcore Enterprises Pty Ltd. ("Petitioner") hereby requests that Respondent, RCN-Companhia de Importacao e Exportacao de Texteis, Limitada ("Respondent"), produce the following documents and things for inspection and copying at the offices of Knobbe, Martens, Olson & Bear, located at 2040 Main Street, Fourteenth Floor, Irvine, California 92614, or such other place as may be agreed between the parties, within thirty (30) days of service hereof in accordance with Rule 2.120(a) of the Trademark Rules of Practice and FRCP 34. Alternatively, Respondent may fulfill its obligation to produce the requested documents by attaching complete and legible copies of the original documents to its written responses to Petitioner's First Requests for Production of Documents and Things Nos. 1-61 ("Document Requests") prior to the service of the same upon Petitioner. Respondent may be

requested to supplement its responses from time to time as appropriate in accordance with FRCP 26(e).

### DEFINITIONS

A. The term "Respondent" shall refer to Respondent and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on behalf of it, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

B. The term "Petitioner" shall refer to Petitioner and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

C. The term "you" shall mean the party or person to whom the Document Request is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Document Request is propounded has the right to or does control or direct any activities.

D. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals or

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instruction bulletins, voice recording, cables or telegrams, maps, charts, surveys, test data, HTML code, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody or control of Respondent, and every copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear on the original.

E. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

F. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

G. A document or thing "relating or referring" or which "relates" to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

H. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

I. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Respondent, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

J. The terms "trademark" or "mark" shall include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

K. The terms "all" and "each" shall be construed to include all and each.

L. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."

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- M. The use of the singular form of any word also includes the plural and *vice versa*.
- N. The terms "Respondent's Mark" shall mean the mark shown in U.S. Trademark Registration No. 2,359,181, and any other marks used by Respondent that include the term "GLOBE."
- O. The terms "Petitioner's Marks" shall mean the marks shown in U.S. Trademark Registration Nos. 1,991,488; 2,601,308; 2,194,182; and U.S. Trademark Application Serial No. 76/287,245.
- P. "Respondent's Goods in Class 18" shall mean the goods identified in U.S. Trademark Registration No. 2,359,181.

#### GENERAL INSTRUCTIONS

1. If you claim that any Document Requested is privileged, please provide all information falling within the scope of the Document Request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel each item, document or thing, separately, with respect to which you claim a privilege, and state:
- a. the basis on which the privilege is claimed;
  - b. the author of the document, if applicable;
  - c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed;
  - d. the date of the document;
  - e. the type of document (e.g., letter, memorandum, etc.) and;
  - f. the general subject matter of the document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

2 Page 37 of 49



**REQUEST FOR PRODUCTION NO. 2:**

Representative samples of all documents and things relating or referring to the selection, adoption, or first use of Respondent's Mark in the U.S. in connection with Respondent's Goods in Class 18.

**REQUEST FOR PRODUCTION NO. 3:**

Representative samples of all documents and things relating or referring to any variation of Respondent's Mark used by Respondent in the U.S. on the goods or services upon which such variation(s) were used, including, but not limited to, invoices, advertisements, promotional materials, brochures, labels, tags, packaging, containers, point of sale displays, trademark searches, surveys and studies.

**REQUEST FOR PRODUCTION NO. 4:**

Representative samples of all documents referring or relating to Respondent's current use of Respondent's Mark in connection with Respondent's Goods in Class 18 in the U.S.

**REQUEST FOR PRODUCTION NO. 5:**

Representative samples of all documents and things concerning the past use, present use, or plans for the future use of Respondent's Mark in connection with any goods or services in the U.S.

**REQUEST FOR PRODUCTION NO. 6:**

Representative samples of all documents relating or referring to or tending to show annual sales of Respondent's goods on which Respondent's Mark has been used in association with Respondent's Goods in Class 18 in the U.S., in both units and dollars from the date of first use of Respondent's Mark to the present.

**REQUEST FOR PRODUCTION NO. 7:**

Representative samples of all documents and things relating or referring to, or showing annual sales of any goods or services on which Respondent's Mark has been used in the U.S., in

both units and dollars, from the date of first use of Respondent's Mark to the present.

**REQUEST FOR PRODUCTION NO. 8:**

Representative samples of all documents and things relating or referring to, or showing how Respondent's Mark has been and is being advertised or promoted in the U.S. since the date of its initial adoption to the present, including brochures, newspaper articles, advertisements (both print and electronic versions), internal company memorandums, magazine or trade journal articles, and radio and television ads.

**REQUEST FOR PRODUCTION NO. 9:**

Representative samples of advertisements, brochures, flyers, newspaper articles, magazine or trade journal articles showing Respondent's current use of Respondent's Mark in association with Respondent's Goods in Class 18 in the U.S.

**REQUEST FOR PRODUCTION NO. 10:**

Representative samples of documents referring or relating to or tending to show any current or anticipated advertisements or promotions in the U.S. of goods or services bearing Respondent's Mark or in association with Respondent's Mark, including brochures, newspaper articles, advertisements, magazine or trade journal articles, and radio or television advertisements.

**REQUEST FOR PRODUCTION NO. 11:**

Representative samples of documents referring or relating to or tending to show any current or anticipated advertisements or promotions in the U.S. of Respondent's Goods in Class 18 bearing Respondent's Mark or in association with Respondent's Mark, including brochures, newspaper articles, advertisements, magazine or trade journal articles, and radio or television advertisements.

**REQUEST FOR PRODUCTION NO. 12:**

A sample of each product, label, tag, packaging, or container showing Respondent's use of Respondent's Mark in the U.S. since its initial adoption.

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**REQUEST FOR PRODUCTION NO. 13:**

Representative samples of all documents and things relating or referring to, or showing advertising expenditures incurred by Respondent in connection with Respondent's Mark in the U.S. since inception.

**REQUEST FOR PRODUCTION NO. 14:**

Representative samples of all documents and things evidencing, relating or referring to, authorizations or agreements with third parties involving Respondent's Mark in the U.S., including, but not limited to, all licenses, franchise agreements, or manufacturing agreements.

**REQUEST FOR PRODUCTION NO. 15:**

Representative samples of all documents and things relating or referring to advertising conducted by authorized users of Respondent's Mark in the U.S.

**REQUEST FOR PRODUCTION NO. 16:**

Representative samples of all documents and things relating or referring to, or tending to show, the amount of money spent by any authorized user of Respondent's Mark for promotional activities or advertisements for Respondent's Mark in the U.S.

**REQUEST FOR PRODUCTION NO. 17:**

Representative samples of all documents and things relating or referring to Respondent's channels of distribution or intended channels of distribution to ultimate consumers for all goods bearing Respondent's Mark in the U.S.

**REQUEST FOR PRODUCTION NO. 18:**

Representative samples of all documents and things relating or referring to, or showing market research conducted by Respondent in connection with Respondent's Mark, including, but not limited to, surveys or statistics showing Respondent's target audience of consumers.

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**REQUEST FOR PRODUCTION NO. 19:**

Representative samples of all documents and things relating or referring to plans for steps toward expansion by Respondent of the number of products or services under which Respondent's Mark is used in the U.S., or to alter the present channels of distribution, or to sell to persons other than Respondent's present purchasers or consumers.

**REQUEST FOR PRODUCTION NO. 20:**

Documents evidencing Respondent's first use in the U.S. of Respondent's Mark in connection with Respondent's Goods in Class 18.

**REQUEST FOR PRODUCTION NO. 21:**

Documents evidencing Respondent's first use of Respondent's Mark in the U.S. in connection with any goods identified in response to Interrogatory No. 6 of Petitioner's First Set of Interrogatories Nos. 1-38.

**REQUEST FOR PRODUCTION NO. 22:**

Representative samples of documents relating or referring to the first interstate sale or transport of any goods in connection with Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 23:**

Representative samples of documents relating or referring to the first interstate sale or transport of Respondent's Goods in Class 18 in connection with Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 24:**

All magazine, newspaper, trade journal articles and other publications in the U.S. in any medium that concern or reference Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 25:**

All documents and things concerning the number of units and dollar value of the Respondent's Goods in Class 18 identified by Respondent's Mark sold each month and each year

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in the U.S. since the date of first use of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 26:**

All documents and things concerning studies, tests, ratings or surveys in connection with the quality of the Respondent's Goods in Class 18.

**REQUEST FOR PRODUCTION NO. 27:**

All documents and things concerning business plans, including but not limited to marketing plans, advertising plans, and business forecasts, for the Respondent's Goods in Class 18 in the U.S. identified by Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 28:**

All documents and things concerning your policies regarding retention, storage, filing and destruction of documents and things.

**REQUEST FOR PRODUCTION NO. 29:**

All documents and things concerning any efforts to enforce the rights in Respondent's Mark against any third persons in the U.S.

**REQUEST FOR PRODUCTION NO. 30:**

All documents and things relating or referring to any search or investigation of records of the PTO or any other records or publications in connection with the decision to adopt, the adoption, use or application for registration of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 31:**

All documents and things relating or referring to any search, analysis or investigation in connection with Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 32:**

All documents and things relating or referring to or showing ownership of any claimed predecessor-in-title to Respondent's Mark.

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**REQUEST FOR PRODUCTION NO. 33:**

All documents and things relating or referring to or showing any claim of ownership by Respondent of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 34:**

All documents and things relating or referring to any attempt by Respondent to register Respondent's Mark under the laws of any state or before the PTO.

**REQUEST FOR PRODUCTION NO. 35:**

All documents and things relating or referring to Respondent's first knowledge of Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 36:**

All documents and things relating or referring to Respondent's first knowledge of Petitioner.

**REQUEST FOR PRODUCTION NO. 37:**

All documents and things relating or referring to Petitioner's use of Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 38:**

All documents and things relating or referring to, or showing or tending to show, any possible or actual confusion between Respondent's Mark and Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 39:**

All documents and things relating or referring to, or tending to show, any possible or actual confusion or likelihood of confusion between Respondent's goods and services offered in connection with Respondent's Mark and Petitioner's goods offered in connection with Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 40:**

All documents and things relating or referring to, or tending to show, any possible or

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actual confusion or likelihood of confusion between Respondent and Petitioner.

**REQUEST FOR PRODUCTION NO. 41:**

All documents and things relating or referring to, or tending to show, any possible or actual confusion or likelihood of confusion between Respondent's goods and Petitioner's goods.

**REQUEST FOR PRODUCTION NO. 42:**

All documents and things relating or referring to any communication received by Respondent which was intended for Petitioner.

**REQUEST FOR PRODUCTION NO. 43:**

All documents and things relating or referring to or showing a disclaimer made by Respondent as to an association with Petitioner.

**REQUEST FOR PRODUCTION NO. 44:**

All documents and things which support Respondent's position that there is no likelihood of confusion between Respondent's Mark and Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 45:**

All documents and things relating or referring to any adversarial proceeding involving Respondent's Mark before the Trademark Trial and Appeal Board, Bureau of Customs, Federal Trade Commission or any court in the U.S. or other tribunal or agency.

**REQUEST FOR PRODUCTION NO. 46:**

All documents and things relating or referring to any objection raised to Respondent's use or registration of Respondent's Mark by any third party apart from the present proceeding.

**REQUEST FOR PRODUCTION NO. 47:**

All documents and things relating or referring to any objections made by Respondent to the use by others of marks believed by Respondent to be confusingly similar to Respondent's Mark.

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**REQUEST FOR PRODUCTION NO. 48:**

All documents and things relating or referring to, or identifying, any trademarks or service marks known by Respondent which employ the term GLOBE.

**REQUEST FOR PRODUCTION NO. 49:**

All documents and things relating or referring to, or comprising, any analysis or investigation conducted on behalf of Respondent in connection with Respondent's Mark and Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 50:**

All documents and things relating or referring to any survey conducted by Respondent or on Respondent's behalf relating to Respondent's Mark or Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 51:**

All documents and things identified in, reviewed, or relied upon in the preparation of Respondent's Responses to Petitioner's First Set of Interrogatories Nos. 1-38.

**REQUEST FOR PRODUCTION NO. 52:**

All documents and things evidencing, or relating or referring to transactions or communications between Petitioner, Respondent, or any of Respondent's current or former agents or employees concerning Petitioner's Marks or Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 53:**

All documents and things evidencing, or relating or referring to transactions or communications between Respondent and third parties which refer to Petitioner's Marks or Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 54:**

All filings with public agencies relating to Respondent's Mark.







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09/16/03 10:01 AM

# Knobbe Martens Olson & Bear LLP

Intellectual Property Law

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Stacey R. Halpern  
949-721-6301  
shalpern@kmob.com

June 30, 2003

**VIA FACSIMILE AND CERTIFIED MAIL**

Julie A. Greenberg  
Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C.  
280 N. Old Woodward Avenue, Suite 400  
Birmingham, Michigan 48009-5394

Re: U.S. Trademark Cancellation Proceeding No.: 92,031,118  
Mark: GLOBELINE  
Class: 18  
Registration No.: 2,359,181  
Your Client: RCN Companhia de Importacao e Exportacao de Texteis Limitada  
Our Reference No.: HRDCORE.025CN

Dear Ms. Greenberg:

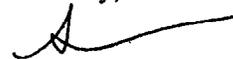
I am writing regarding Hardcore Enterprises Pty Ltd.'s ("Hardcore") First Set of Requests for Admission Nos. 1-75, First Set of Interrogatories Nos. 1-38, and First Requests for Production of Documents and Things Nos. 1-63 (collectively, "Hardcore's Discovery Requests"), which were served upon you on behalf of your client, RCN Companhia de Importacao e Exportacao de Texteis Limitada ("RCN"), on May 20, 2003.

As you are aware, RCN's responses to Hardcore's Discovery Requests were due on or before **June 24, 2003**. However, to date, RCN has totally and completely failed to respond to Hardcore's Discovery Requests. Accordingly, RCN has forfeited its right to object to Hardcore's Discovery Requests on their merits. T.B.M.P. §§ 403.03 and 407.01.

Please note that while Hardcore would like to resolve this matter amicably, if we do not receive complete responses (without objections) to Hardcore's Discovery Requests and all documents responsive to Hardcore's Discovery Requests by **July 7, 2003**, we will be forced to file a Motion to Compel responses with the Trademark Trial and Appeal Board.

Should you have any questions or require additional information, please contact us.

Sincerely,



Stacey R. Halpern

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San Diego  
619-235-8550

San Francisco  
415-454-4114

Los Angeles  
310-551-3450

Riverside  
951-781-0224

San Luis Obispo  
805-547-5500

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Stacey R. Halpern  
949-721-6301  
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July 15, 2003

## VIA FACSIMILE AND CERTIFIED MAIL

Julie A. Greenberg  
Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C.  
280 N. Old Woodward Avenue, Suite 400  
Birmingham, Michigan 48009-5394

FILE COPY

Re: U.S. Trademark Cancellation Proceeding No.: 92,031,118  
Mark: GLOBELINE  
Class: 18  
Registration No.: 2,359,181  
Your Client: RCN Companhia de Importacao e Exportacao de Texteis Limitada  
Our Reference No.: HRDCORE.025CN

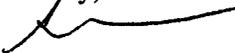
Dear Ms. Greenberg:

I note that you have not yet responded to our letter of June 30, 2003 regarding Hardcore Enterprises Pty Ltd.'s ("Hardcore") First Set of Requests for Admission Nos. 1-75, First Set of Interrogatories Nos. 1-38, and First Requests for Production of Documents and Things Nos. 1-63 (collectively, "Hardcore's Discovery Requests"), which were served upon you on behalf of your client, RCN Companhia de Importacao e Exportacao de Texteis Limitada ("RCN"), on May 20, 2003.

As you are aware, RCN's responses to Hardcore's Discovery Requests were due on or before June 24, 2003. Moreover, although our June 30, 2003 letter provided you with an additional week to respond to Hardcore's Discovery Requests, to date we have not received any written responses or responsive documents. In light of the foregoing, we expect to receive complete written responses to Hardcore's Discovery Requests, as well as all documents responsive to the Document Requests by July 24, 2003. If we do not receive such written responses and documents by this date, we will have no choice but to file a Motion to Compel such written responses and documents with the Trademark Trial and Appeal Board.

I look forward to receiving RCN's written responses to Hardcore's Discovery Requests and RCN's responsive documents prior to July 24, 2003. Should you have any questions or require additional information, please contact us.

Sincerely,

  
Stacey R. Halpern

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# Knobbe Martens Olson & Bear LLP

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Stacey R. Halpern  
949-721-6301  
shalpern@kmob.com

July 25, 2003

VIA FACSIMILE AND CERTIFIED MAIL

Julie A. Greenberg  
Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C.  
280 N. Old Woodward Avenue, Suite 400  
Birmingham, Michigan 48009-5394

FILE COPY

Re: U.S. Trademark Cancellation Proceeding No.: 92,031,118  
Mark: GLOBELINE  
Class: 18  
Registration No.: 2,359,181  
Your Client: RCN Companhia de Importacao e Exportacao de Texteis Limitada  
Our Reference No.: HRDCORE.025CN

Dear Ms. Greenberg:

As indicated in our letters dated June 30 and July 15, 2003, as well as my voice-mail message of July 23, 2003, I note that we have not yet received RCN Companhia de Importacao e Exportacao de Texteis Limitada's ("RCN") responses to Hardcore Enterprises Pty Ltd.'s ("Hardcore") First Set of Requests for Admission Nos. 1-50, First Set of Interrogatories Nos. 1-22, and First Requests for Production of Documents and Things Nos. 1-65 (collectively, "Hardcore's Discovery Requests"), which were served upon you on behalf of RCN on May 20, 2003. Furthermore, I note that you have not responded to any of our letters.

Unfortunately, as RCN's responses to Hardcore's Discovery Requests and responsive documents were due on or before **June 24, 2003**, and as neither RCN nor you have provided responses to Hardcore's Discovery Requests, our letters, or my voice-mail message, we will have no choice but to file a Motion to Compel such written responses and documents with the Trademark Trial and Appeal Board.

Accordingly, if we do not receive RCN's responses to Hardcore's Discovery Requests, as well as responsive documents by **August 1, 2003**, we shall proceed with the filing of a Motion to Compel with the Trademark Trial and Appeal Board.

Should you have any questions or require additional information, please contact us.

Sincerely,



Stacey R. Halpern

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5 Page 1 of 1

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shalpern@kmob.com

August 7, 2003

**VIA FACSIMILE AND CERTIFIED MAIL**

Julie A. Greenberg  
Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C.  
280 N. Old Woodward Avenue, Suite 400  
Birmingham, Michigan 48009-5394

FILE COPY

Re: U.S. Trademark Cancellation Proceeding No.: 92,031,118  
Mark: GLOBELINE  
Class: 18  
Registration No.: 2,359,181  
Your Client: RCN Companhia de Importacao e Exportacao de Texteis Limitada  
Our Reference No.: HRDCORE.025CN

Dear Ms. Greenberg:

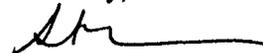
As indicated in our letter of June 30, 2003 as well as our letters July 15 and 25, 2003 and my voice-mail message of July 23, 2003, I note that we have not yet received RCN Companhia de Importacao e Exportacao de Texteis Limitada's ("RCN") responses to Hardcore Enterprises Pty Ltd.'s ("Hardcore") First Set of Requests for Admission Nos. 1-50, First Set of Interrogatories Nos. 1-22, and First Requests for Production of Documents and Things Nos. 1-65 (collectively, "Hardcore's Discovery Requests"), which were served upon you on behalf of RCN on May 20, 2003. Furthermore, I note that you have not responded to any of our letters.

We note that RCN's responses to Hardcore's Discovery Requests and responsive documents were due on or before **June 24, 2003**. However, as neither RCN nor you have provided responses to Hardcore's Discovery Requests, our letters, or my voice-mail message, in order to obtain the necessary information to proceed with this cancellation action, we have no choice but to file a Motion to Compel such written responses and documents with the Trademark Trial and Appeal Board.

As such, if we do not receive RCN's responses to Hardcore's Discovery Requests, as well as responsive documents by **August 13, 2003**, we shall proceed with the filing of a Motion to Compel with the Trademark Trial and Appeal Board.

Should you have any questions or require additional information, please contact us.

Sincerely,



Stacey R. Halpern

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