

TTAB

Cancellation No. 92042518

TRADEMARK

Docket No. M521:110.2*4

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

CALIFORNIA AUDIO
TECHNOLOGY,
a California corporation,

Petitioner,

vs.

DIETER PLADWIG-GORING,
an individual,

Respondent.

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**MOTION TO COMPEL RESPONSES TO
RESPONDENT'S FIRST SET OF
INTERROGATORIES**

T.M.: DESIGN (CAT LOGO)
R.N.: 2,271,468

T.M.: CAT SOUND COMPANY
R.N.: 2,339,731

T.M.: CAT (STYLIZED & DESIGN)
R.N.: 2,499,598



02-25-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

Respondent Dieter Pladwig-Goring ("Mr. Pladwig-Goring") moves the Board for an order compelling Petitioner California Audio Technology ("CAT"), to provide answers to Mr. Pladwig-Goring's First Set of Interrogatories. Petitioner has refused to participate in the discovery process in good faith, and has refused to answer nearly all Interrogatories from the Respondent's First Set of Interrogatories, citing nearly identical objections in each case, including those Interrogatories directed to the factual bases for Petitioner's own complaint. As such, the motion sought should be granted and answers to each Interrogatory from the First Set should be provided.

After receipt of Petitioner's Responses to Respondent's First Set of Interrogatories, counsel for Respondent Mr. Pladwig-Goring attempted to confer with counsel for Petitioner CAT concerning CAT's failure to adequately respond to Mr. Pladwig-Goring's First Set of Interrogatories. Attached as Exhibit A are Petitioner's

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Responses to Respondent's First Set of Interrogatories. In a letter dated January 22, 2004, Respondent's counsel detailed the relevancy and propriety of each Interrogatory in the Respondent's First Set of Interrogatories and again requested that Petitioner supply the requested information. Respondent has received no response to this letter, nor has Petitioner made any other attempt to participate in the discovery process. This letter is attached as Exhibit B.

Respondent notes that the TTAB has held that blanket objections of the type found in Petitioner's Responses to Respondent's First Set of Interrogatories will not suffice as proper responses to discovery requests because they are vague and conclusionary. See Medtronic Inc., v. Pacesetter Systems, Inc., 222 USPQ 80, 83 (TTAB 1984) (where the TTAB ruled that a blanket objection by one party that the discovery requests of an opponent were too burdensome or numerous was an insufficient response to the discovery requests). Medtronic also obligates each party and its attorney to make a good faith effort to satisfy the discovery needs of its opponent. Id. at 83.

In spite of the general and repetitive nature of Petitioner's objections to the First Set of Interrogatories, the Respondent has endeavored to provide specific reasoning and support for each of its Interrogatories hereinbelow stating why each Interrogatory is both proper and relevant to the specific issues involved in this case. Interrogatories discussed below are numbered to correspond with those enumerated in Petitioner's Responses to Respondent's First Set of Interrogatories.

INTERROGATORY NO. 1:

With respect to each of [the subject marks of the United States Trademark Applications 76/452,595 and 76/452,597], explain in detail how you conceived and arrived at the selection of the marks, including the timing of the process, the

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alternatives considered, and the factors used or considered when selecting the marks.

RESPONSE TO INTERROGATORY NO. 1:

The Petitioner has objected to Interrogatory No. 1 for a multitude of reasons. The Petitioner claims that this Interrogatory seeks to impose upon CAT duties beyond those required by the Federal Rules of Civil Procedure and the TBMP. The Petitioner claims that this Interrogatory seeks irrelevant, inadmissible, privileged, confidential and proprietary information. The Petitioner also claims that the burden of the discovery is not outweighed by its potential usefulness, that the discovery sought is unreasonably cumulative, that the discovery sought is unduly burdensome and that it would cause unwanted annoyance. Lastly, the Petitioner claims that the Interrogatory seeks information not in the Petitioner's control, that it seeks information outside the scope of permissible discovery, that it seeks legal opinions and that the Interrogatory is overly broad and vague.

In addition to the objections above which the Petitioner applies to this Interrogatory, the Petitioner objects to the definitions of "you", "your", "refers and relates" and "referring or relating" as defined by the Respondent Mr. Pladwig-Goring where used in the Interrogatory. The Petitioner objects to these definitions claiming that they are overly broad, that they seek privileged information, and that they seek information irrelevant to the claims on file in this action.

ARGUMENT:

This Interrogatory seeks information regarding the ownership of the "Petitioner's Marks" (the subject marks of the United States Trademark Applications 76/452,595 and 76/452,597), and the validity of the Petitioner's Marks vis-à-vis Mr. Pladwig-Goring's "CAT-based Marks" (the subject marks of United States Trademark Registration Nos. 2,271,468; 2,339,731; and 2,499,598). Respondent may take discovery as to "any matters which might serve as the basis for an affirmative defense

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or for a counterclaim" such as the status of Petitioner's ownership of Petitioner's Marks. Neville Chemical Company v. The Lubrizol Corporation, 183 USPQ 187 (TTAB 1974); see also Johnson & Johnson v. Rexall Drug Co., 186 USPQ 171 (TTAB 1975) (citing Neville Chemical Company, 183 USPQ at 187). Information sought under this Interrogatory may establish the extent that Mr. Pladwig-Goring has rights in the CAT-based Marks, and as such, the Interrogatory is reasonable and the information sought should be put forth.

INTERROGATORY NO. 2:

Identify all persons, including any outside consultants or agencies, who contributed in any way to the origination, selection, and/or adoption of Petitioner's Marks, and describe in reasonable detail the contribution of each such person.

RESPONSE TO INTERROGATORY NO. 2:

The Petitioner has objected to Interrogatory No. 2 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 1.

INTERROGATORY NO. 3:

State whether any trademark search or investigation has ever been conducted for each of Petitioner's Marks, and if so, state the name of the search or report, the person responsible for conducting and preparing such survey or report, and the results obtained.

RESPONSE TO INTERROGATORY NO. 3:

The Petitioner has objected to Interrogatory No. 3 for same reasons given in its rejection of Interrogatory No. 1 above, and further claims that Interrogatory No. 3 is indiscriminant as to time and scope.

ARGUMENT:

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This Interrogatory seeks information pertaining to whether a trademark search has ever been conducted for each of the Petitioner's marks. This is relevant to the issue of whether Petitioner adopted the Petitioner's Marks in good faith. The TTAB has taken the position that while an attorney's opinion as to the legal significance of a search report is privileged, the contents of the report itself are not. Fisons, Ltd. v. Capability Brown, Ltd., 209 USPQ 170 (TTAB 1980); Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc., 185 USPQ 434 (TTAB 1975). Further, in order for Mr. Pladwig-Goring to adequately assess the claim of privilege, the identity of the searcher must be revealed.

INTERROGATORY NO. 4:

Identify with particularity each type of product or service California Audio has sold or intends to sell under each of Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 4:

The Petitioner has objected to Interrogatory No. 4 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information regarding the types of products or services Petitioner has sold or intends to sell under Petitioner's Marks. This is relevant to the likelihood of confusion between the Petitioner's Marks and the CAT-based Marks. Information regarding the proximity of the goods and services offered under current and future uses of the Petitioner's Marks to the goods and services offered under the CAT-based Marks is especially relevant in deciding if there is a likelihood of confusion between these marks. If a party has demonstrated a need for discovery which is reasonably directed to facts essential to a proceeding, such as those facts bearing on the likelihood of confusion, discovery is permissible. Opryland USA Inc. v. Great American Music Show Inc., 970 F.2d 847, 852 (Fed. Cir. 1992) (where the Federal

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Circuit ruled that The TTAB had erred in denying a party the right to obtain evidence on the material facts of public perception and actual confusion in a cancellation proceeding).

INTERROGATORY NO. 5:

With respect to the products and services identified in response to Interrogatory No. 4, provide the date of first use of each of Petitioner's Marks anywhere, the date of first use in commerce, and the factual basis for the date(s).

RESPONSE TO INTERROGATORY NO. 5:

The Petitioner has objected to Interrogatory No. 5 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information pertaining to the date of first use of Petitioner's Marks. This is relevant to the priority of Petitioner's Marks and, like Interrogatory No. 4 above, to the likelihood of confusion between the Petitioner's Marks and the CAT-based Marks. The priority date that Petitioner has in Petitioner's marks is vital to the outcome of this opposition. In Georgia-Pacific Corporation v. Great Plains Bag Co., 190 USPQ 195-196 (TTAB 1976), the Board held "there is no question that [information regarding a party's first use of a mark] may be relevant to the issue of priority of use... and that this information is discoverable." Therefore, an answer to the Interrogatory should be provided.

INTERROGATORY NO. 8:

With respect to each product or service identified in response to Interrogatory No. 4, describe the classes or types of customers to whom California Audio sells or intends to sell each product, and describe the purposes for which such customers typically use or will use California Audio's goods sold under Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 8:

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The Petitioner has objected to Interrogatory No. 8 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information regarding the types of customers sold to by Petitioner under Petitioner's Marks, as well as the purposes for which such customers typically use Petitioner's goods sold under Petitioner's Marks. Information regarding the nature of the purchasers of goods and services sold under Petitioner's Marks is especially relevant to this case. The sophistication of these purchasers is a factor used to determine if there is a likelihood of confusion between Petitioner's Marks and the CAT-based Marks and as such, the Interrogatory should be answered. See Opryland USA, 970 F.2d at 852 (where the Federal Circuit ruled that The TTAB had erred in denying a party the right to obtain evidence bearing on the likelihood of confusion in a cancellation proceeding).

INTERROGATORY NO. 9:

Identify each person who is or has ever been licensed or permitted by you to use the each of Petitioner's Marks, and explain how you control the nature and quality of each such permitted use.

RESPONSE TO INTERROGATORY NO. 9:

The Petitioner has objected to Interrogatory No. 9 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information pertaining to who has been permitted by Petitioner to use Petitioner's Marks, and how such permitted use is controlled. This information is relevant to the ownership and validity of Petitioner's Marks. Marks often go abandoned when they are licensed improperly. If Petitioner, by improperly licensing Petitioner's Marks, has lost rights to the marks, such information would

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certainly be admissible at trial. The TTAB has previously held that information regarding licensing agreements for use of a mark is relevant and discoverable. See Johnston Pump/General Valve Inc. v. Chromalloy American Corp., 10 USPQ2d 1675 (TTAB 1989); Neville Chemical Company, 183 USPQ at 187 (Where the TTAB stated that "applicant is entitled to know the circumstances surrounding the use of opposer's pleaded marks. Moreover, it is adjudged that the information sought may lead to admissible evidence concerning matters constituting grounds, such as abandonment, for a counterclaim for cancellation of opposer's pleaded registrations.") Therefore, the relevant information sought under these Interrogatories should be put forth.

INTERROGATORY NO. 10:

Explain in reasonable detail how, and in which media, each California Audio product is advertised and/or promoted in association with each of Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 10:

The Petitioner has objected to Interrogatory No. 10 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information regarding how Petitioner's products are promoted in association with Petitioner's Marks. As such, it is designed to discover information regarding the strength of the mark, an important factor in the likelihood of confusion test. The TTAB has previously held that information regarding marketing plans for trademarked goods is relevant and discoverable. The TTAB has held that one, "is entitled to know the circumstances surrounding the use of opposer's pleaded marks." Neville Chemical Company, 183 USPQ at 187. The TTAB also held in Neville Chemical Company, 183 USPQ at 190. An full accounting of costs is tantamount to a showing in reasonable detail how, and in which media, products are promoted in

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association with a Mark. See also Johnston Pump, 10 USPQ2d at 1675 (Where the TTAB held that questions concerning the number and location of the sales force who market opposer's products, and the locations of dealers who market the product's bearing opposer's mark are relevant topics for discovery.) As such, an answer to the Interrogatory is warranted.

INTERROGATORY NO. 11

Have you ever received any complaint of any kind relating to any of your products or services offered in association with either of Petitioner's Marks from any person, including but not limited to customers, vendors, distributors, sales representatives, or employees? If so, describe in reasonable detail the circumstances relating to each such complaint, identify all persons having knowledge of such complaint, and identify all documents relating to such complaint.

RESPONSE TO INTERROGATORY NO. 11:

The Petitioner has objected to Interrogatory No. 11 for same reasons given in its rejection of Interrogatory No. 1 above, and further claims that Interrogatory No. 11 is indiscriminant as to time and scope.

ARGUMENT:

This Interrogatory seeks information pertaining to complaints received by users of products offered in association with Petitioner's Marks. It is designed to discover information regarding the strength of the mark, an important factor in the likelihood of confusion test. Federal courts have held that customer complaints regarding the quality of trademarked goods is discoverable for these reasons. See e.g., Nestle Co. v. A. Cherney & Sons, Inc., 1980 U.S. Dist. LEXIS 15865, at 15 (D. Md. 1980) (where the court held that although discovery of defendant's manufacturing, plant, and engineering data was not justified by the contention that customers have complained about the quality of defendant's product; customer complaint information is relevant to

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the issue of damages). Because this information is both discoverable and relevant to the current proceedings, the Interrogatory is reasonable and the information sought should be put forth.

INTERROGATORY NO. 12:

State your sales, if any, in dollars per month or quarter, of each product or service offered in association with Petitioner's Marks in the United States.

RESPONSE TO INTERROGATORY NO. 12:

The Petitioner has objected to Interrogatory No. 12 for same reasons given in its rejection of Interrogatory No. 1 above, and further claims that Interrogatory No. 12 is indiscriminant as to time and scope.

ARGUMENT:

This Interrogatory seeks information regarding sales for products sold under Petitioner's Marks. The sales volume for products sold under Petitioner's Marks is germane to an analysis of the strength of these marks, an important factor in the likelihood of confusion test. The TTAB has held that, "sales and advertising figures of recent years in round numbers for specific goods bearing the involved marks(s) are proper matters for discovery." Sunkist Growers, Inc. v. Benjamin Ansehl Company, 229 USPQ 148 (TTAB 1985). Because this information is both discoverable and relevant to the current proceedings, an answer to the Interrogatory is warranted.

INTERROGATORY NO. 13:

State the amount you have spent, if any, in dollars per month or quarter, on advertising and promoting the goods and services associated with Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 13:

The Petitioner has objected to Interrogatory No. 13 for same reasons given in its rejection of Interrogatory No. 1 above, and further claims that Interrogatory No. 13 is indiscriminant as to time and scope.

ARGUMENT:

This Interrogatory seeks information regarding amounts spent on promoting products offered in association with Petitioner's Marks. The amount spent on promotion for products sold under Petitioner's Marks is germane the strength of these marks, an important factor in the likelihood of confusion test. The TTAB has previously held that information regarding marketing plans for trademarked goods is relevant and discoverable. The TTAB has held that advertising and promotional costs are properly discoverable. Neville Chemical Company, 183 USPQ at 190. The TTAB has also held that, "sales and advertising figures of recent years in round numbers for specific goods bearing the involved marks(s) are proper matters for discovery." Sunkist Growers, 229 USPQ at 148. Because this information is both discoverable and relevant to the current proceedings, an answer to the Interrogatory is warranted.

INTERROGATORY NO. 14:

Have you ever used any mark or name containing the term "cat," other than the Petitioner's Marks? If so, identify each such mark or name, the products or services in connection with which it is or was used, and the dates of such use.

RESPONSE TO INTERROGATORY NO. 14:

The Petitioner has objected to Interrogatory No. 14 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information regarding whether Petitioner has ever used any mark or name containing the term "cat," other than in Petitioner's Marks. Any use of the term "cat" other than in association with Petitioner's Marks may tend to show descriptiveness or genericism of the term, important factors in the likelihood of confusion test and as such, the Interrogatory should be answered. See Opryland USA, 970 F.2d at 852 (where the Federal Circuit ruled that The TTAB had erred in denying

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a party the right to obtain evidence bearing on the likelihood of confusion in a cancellation proceeding).

INTERROGATORY NO. 15:

Describe in reasonable detail each instance of actual or possible confusion you are aware of between you and Respondent including but not limited to any instances where a person has asked whether any of your products or services are sponsored, approved, affiliated, associated, or in any way connected with Respondent or its products or services, or has otherwise indicated curiosity as to any possible relationship. In your description, include at least the date of the instance, the identity of the person(s) involved, how you became aware of the incident, and the identity of all documents referring or relating to the incident.

RESPONSE TO INTERROGATORY NO. 15:

The Petitioner has objected to Interrogatory No. 15 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information pertaining to instances of actual or possible confusion between the Petitioner's Marks and the CAT-based Marks. Evidence of actual confusion caused by the marks is highly indicative of a likelihood of confusion, the proving of which is highly relevant to the current proceedings. Thus, an answer to the Interrogatory should be granted. See Opryland USA, 970 F.2d at 852 (where the Federal Circuit ruled that The TTAB had erred in denying a party the right to obtain evidence bearing on the likelihood of confusion in a cancellation proceeding).

INTERROGATORY NO. 16:

Describe in reasonable detail the date when, and the circumstances under which, you first became aware of Respondent or Respondent's CAT-based Marks, and identify all persons involved and all documents relating to this initial awareness.

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RESPONSE TO INTERROGATORY NO. 16:

The Petitioner has objected to Interrogatory No. 16 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information regarding when and under what circumstances Petitioner first became aware of Mr. Pladwig-Goring or Mr. Pladwig-Goring's CAT-based Marks. This information is relevant to both a determination of good faith on the part of the Petitioner in Petitioner's use of and application for registration of the Petitioner's Marks, as well as the likelihood of confusion between the Petitioner's Marks and the CAT-based Marks. As such, this Interrogatory is proper and a response is warranted. See Opryland USA, 970 F.2d at 852 (where the Federal Circuit ruled that The TTAB had erred in denying a party the right to obtain evidence bearing on the likelihood of confusion in a cancellation proceeding).

INTERROGATORY NO. 17:

If California Audio believes that Respondent's use of the CAT-based Marks is likely to cause confusion with Petitioner's use and/or registration of Petitioner's Marks, then identify all grounds for and facts supporting this belief.

RESPONSE TO INTERROGATORY NO. 17:

The Petitioner has objected to Interrogatory No. 17 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information pertaining to grounds for and facts supporting the contention that use of the CAT-based Marks is likely to cause confusion with Petitioner's use and/or registration of Petitioner's Marks. Because likelihood of confusion is the first ground for opposition, it is critical to the outcome of this dispute. As discussed above, evidence bearing on the likelihood of confusion in a cancellation

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proceeding is properly discoverable subject matter. See Opryland USA, 970 F.2d at 852. Mr. Pladwig-Goring merely requests the factual bases for the Petitioner's own allegation. Thus it is inconsistent to claim, as Petitioner has, that the facts upon which this allegation is based are not relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory is proper and a response is warranted.

INTERROGATORY NO. 19:

Have any surveys, polls, or market research been conducted with respect to Petitioner's Marks, or the goods used in association with Petitioner's Marks? If so, state the name of the survey or report, the person responsible for each such survey, poll, or market research, the date when each such survey, poll, or market research was conducted, and describe the results of each such survey or poll.

RESPONSE TO INTERROGATORY NO. 19:

The Petitioner has objected to Interrogatory No. 19 for same reasons given in its rejection of Interrogatory No. 1 above, and further claims that Interrogatory No. 19 is indiscriminant as to time and scope.

ARGUMENT:

This Interrogatory seeks information regarding any surveys, polls, or market research conducted with respect the goods used in association with Petitioner's Marks. This information that will further aid in establishing whether or not there is a likelihood of confusion between the Petitioner's Marks and the CAT-based Marks, and is relevant to the issue of whether Petitioner adopted the Petitioner's Marks in good faith.

In its General Objections, Petitioner has claimed that this and each Interrogatory in the Respondent's First Set of Interrogatories seeks information protected by the attorney client privilege. Respondent notes that while TTAB has

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taken the position that an attorney's opinion as to the legal significance of a report or survey is privileged, the contents of the report or survey itself are not, nor are the bare facts of the existence of such documents. See Fisons, 209 USPQ at 170; Miles Laboratories, 185 USPQ at 434. Further, in order for Mr. Pladwig-Goring to adequately assess the claim of privilege, the identity of the searcher must be revealed. Respondent also notes that information sought here is reasonably calculated to lead to the discovery of admissible evidence, and as such this Interrogatory is proper and a response is warranted. See Opryland USA, 970 F.2d at 852 (where the Federal Circuit ruled that The TTAB had erred in denying a party the right to obtain evidence bearing on the likelihood of confusion in a cancellation proceeding).

INTERROGATORY NO. 20:

Have you ever made any objection of any kind relating to another person's use or registration of Petitioner's Marks, or any other mark that includes any phonetically similar terms, or any other mark alleged by you to be confusingly similar to Petitioner's Marks? If so, describe in reasonable detail the circumstances relating to each such objection, identify all persons having knowledge of such objection, and identify all documents relating to such objection.

RESPONSE TO INTERROGATORY NO. 20:

The Petitioner has objected to Interrogatory No. 20 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information pertaining disputes between Petitioner and another regarding the use or registration of Petitioner's Marks, or similar marks. This information is relevant to the strength and ownership of Petitioner's Marks. In disputes with other entities relating to the Petitioner's marks, much information was likely generated that would be admissible in the current proceedings. Furthermore,

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this information may indicate a potential dispute of ownership of Petitioner's marks. If Petitioner does not own the marks, or acquired them improperly, this is certainly information crucial to the current dispute. The TTAB has held that interrogatories seeking information pertaining to the opposer's contacts with third parties, as through litigation, should be answered. Johnson & Johnson, 186 USPQ at 171. An Answer to this Interrogatory is therefore warranted.

INTERROGATORY NO. 21:

Have you ever received any objection of any kind relating to your use or registration of Petitioner's Marks, or any other mark that contains any phonetically similar terms? If so, describe in reasonable detail the circumstances relating to each such objection, identify all persons having knowledge of such objection, and identify all documents relating to such objection.

RESPONSE TO INTERROGATORY NO. 21:

The Petitioner has objected to Interrogatory No. 21 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 20.

INTERROGATORY NO. 22:

Identify each of the predecessors-in-interest (if any) to Petitioner's Marks, and explain in reasonable detail the chain of title to these marks, including the date of each assignment or transfer of title.

RESPONSE TO INTERROGATORY NO. 22:

The Petitioner has objected to Interrogatory No. 22 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

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This Interrogatory seeks information pertaining to the predecessors-in-interest to and chain of title of Petitioner's Marks. This information is relevant to the ownership of Petitioner's marks, as well as their validity. If Petitioner does not own the marks, or acquired them improperly, or if they are not valid is crucial to the current dispute. Respondent may take discovery as to "any matters which might serve as the basis for an affirmative defense or for a counterclaim" such as the status of Petitioner's ownership of Petitioner's Marks. Neville Chemical Company, 183 USPQ at 187; see also Johnson & Johnson, 186 USPQ at 171 (citing Neville Chemical Company, 183 USPQ at 187). As such, the Interrogatory is reasonable and the information sought should be put forth.

INTERROGATORY NO. 24:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 1 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 24:

The Petitioner has objected to Interrogatory No. 24 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

This Interrogatory seeks information regarding the facts upon which Petitioner bases the allegations contained in paragraph 1 of the Petition For Cancellation of Three Marks. Mr. Pladwig-Goring emphasizes that what has been requested is merely the factual basis for the Petitioner's own allegation. As enumerated by the Petition For Cancellation of Three Marks, this paragraph is a central issue of this dispute. Thus it is inconsistent to claim, as Petitioner has, that the facts upon which the allegations contained within are based are not relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. If a party has demonstrated a need for discovery which is reasonably

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directed to facts essential to a proceeding, such as those facts bearing on the likelihood of confusion, discovery is permissible. See Opryland USA, 970 F.2d at 852 (where the Federal Circuit ruled that The TTAB had erred in denying a party the right to obtain evidence bearing on the likelihood of confusion in a cancellation proceeding). Nothing could be more relevant to the current dispute than the facts upon which Petitioner bases those paragraphs detailing his complaint. As such, this Interrogatory is proper and a response to each are warranted.

INTERROGATORY NO. 25:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 2 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 25:

The Petitioner has objected to Interrogatory No. 25 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 26:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 3 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 26:

The Petitioner has objected to Interrogatory No. 26 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 27:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 4 of the Petition For Cancellation of Three Marks.

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RESPONSE TO INTERROGATORY NO. 27:

The Petitioner has objected to Interrogatory No. 27 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 28:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 5 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 28:

The Petitioner has objected to Interrogatory No. 28 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 29:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 6 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 29:

The Petitioner has objected to Interrogatory No. 29 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 30:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 7 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 30:

The Petitioner has objected to Interrogatory No. 30 for same reasons given in its

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rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 31:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 8 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 31:

The Petitioner has objected to Interrogatory No. 31 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 32:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 9 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 32:

The Petitioner has objected to Interrogatory No. 32 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 33:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 10 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 33:

The Petitioner has objected to Interrogatory No. 33 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

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See Argument re Interrogatory No. 24.

INTERROGATORY NO. 34:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 11 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 34:

The Petitioner has objected to Interrogatory No. 34 for same reasons given in its rejection of Interrogatory No. 1 above.

ARGUMENT:

See Argument re Interrogatory No. 24.

INTERROGATORY NO. 35:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 12 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 35:

The Petitioner has objected to Interrogatory No. 35 for same reasons given in its rejection of Interrogatory No. 1 above.

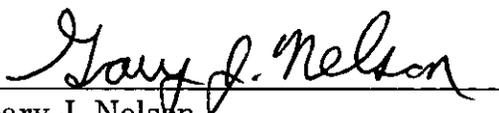
ARGUMENT:

See Argument re Interrogatory No. 24.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

DATED: February 23, 2004

By: 
Gary J. Nelson
Attorney for Respondent,
Dieter Pladwig-Goring

A

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

California Audio Technology,
a California Corporation,
Petitioner,

v.

Dieter Pladwig-Goring
an Individual,
Respondent.

Cancellation No.: 92042518

**PETITIONER'S RESPONSES TO RESPONDENT'S
FIRST SET OF INTERROGATORIES**

PROPOUNDING PARTY: DIETER PLADWIG-GORING
RESPONDING PARTY: CALIFORNIA AUDIO TECHNOLOGY
SET NUMBER: ONE

TO RESPONDENT DIETER PLADWIG-GORING AND ITS COUNSEL OF RECORD:

In accordance with Federal Rule of Civil Procedure Rule 33 and the Trademark Trial and Appeal Board Manual of Procedure (TBMP) Chapter 400, Petitioner California Audio Technology ("CAT"), for itself and for no other party, person or entity, hereby answers, objects, and otherwise responds to the First Set of Interrogatories ("First Set") propounded by Respondent Dieter Pladwig-Goring ("Goring" or "Respondent").

GENERAL OBJECTIONS

1. CAT objects to the purported definition of “you” and “your” on the grounds that it is overly broad, burdensome and harassing, on the further grounds that it purports to seek information that is protected from disclosure by one or more privileges or immunity doctrines, including but not necessarily limited to the attorney client privilege and the attorney work product immunity doctrine, and on the further grounds that it purports to seek information that is neither relevant to the claims or defenses on file in this action nor reasonably calculated to lead to the discovery of admissible evidence.

2. CAT objects to the purported definition of the terms “refers or relates” and “referring or relating” on the grounds that it is overly broad, burdensome and harassing, on the further grounds that it purports to seek information that is protected from disclosure by one or more privileges or immunity doctrines, including but not necessarily limited to the attorney client privilege and the attorney work product immunity doctrine, and on the further grounds that it purports to seek information that is neither relevant to the claims or defenses on file in this action nor reasonably calculated to lead to the discovery of admissible evidence.

3. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent it seeks to impose upon CAT duties beyond those required by the Federal Rules of Civil Procedure and the TBMP.

4. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent it seeks information neither relevant to the claims or defenses on file in the present action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence.

5. CAT objects to the First Set, and to each and every Interrogatory contained therein,

to the extent it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine.

6. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent it seeks information which constitutes trade secrets, proprietary, or other confidential commercial information.

7. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent that the burden, expense or intrusiveness of the discovery is not outweighed by the likelihood that the information sought will lead to the discovery of admissible evidence.

8. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent that the discovery sought is unreasonably cumulative or duplicative of other discovery propounded in this action.

9. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

10. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy.

11. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent that the discovery seeks information that is outside the scope of permissible discovery.

12. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent it may cause unwarranted annoyance, embarrassment, oppression, or undue burden and

expense.

13. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent it seeks legal or expert conclusions or opinions.

14. The inadvertent identification, disclosure, or production of any information protected from discovery by the attorney-client privilege, the attorney work product immunity doctrine, or any other privilege or immunity doctrine applicable under law is not intended to be and shall not be construed as a waiver of any applicable privilege or immunity doctrine. CAT reserves the right to demand the return of any such information so identified, disclosed, or produced, and no affirmative use shall be made by any party of any such information inadvertently identified, disclosed, or produced.

15. CAT objects to the First Set, and to each and every Interrogatory contained therein, to the extent it is overly broad, vague, ambiguous or otherwise unintelligible.

16. CAT's responses and objections asserted herein, including these General Objections, are asserted solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, authenticity, propriety and admissibility, and any and all other objections and grounds that would require the exclusion of any statement or other information produced or provided as a response. All such objections and grounds are reserved and may be interposed at the time of trial, arbitration, hearing, or any other proceeding in this action.

17. Nothing herein shall be construed as an admission regarding the authenticity, admissibility, or relevancy of any information, or of the truth or accuracy of any characterization of any matter contained in the First Set, or any individual Interrogatory contained therein. Also, no incidental or implied admissions are intended or contemplated by CAT's responses. The fact that CAT has answered or objected to any Interrogatory, or any part thereof, should not be construed as

an admission that CAT accepts or admits the existence of any facts set forth or assumed by such Interrogatory, or that such answer or objection, or any information provided in connection therewith, constitutes relevant or admissible evidence. The fact that CAT has answered all or any part of any Interrogatory is not intended and shall not be construed as a waiver of any objection and all such objections are preserved.

18. CAT has not completed its investigation of the facts relating to this case, it has not completed its preparation for the cancellation proceeding, and therefore investigation and discovery are continuing. Consequently, its responses are based only on the information, witnesses, and documents presently available to and known by CAT. Further discovery, independent investigation, legal research, and analysis may give rise to additional contentions, facts, documents, and testimony, as well as establish entirely new facts or conclusions and legal contentions, all of which may lead to substantial additions to, changes in, or variations from these responses. Accordingly, CAT reserves the right to change, modify, supplement, add to, or subtract from its responses, up to the time of trial, as new, different, or additional information, facts, documents, evidence, or witnesses become known to or are recalled by CAT, and as further analyses are made, legal research is compiled, or contentions are made. The following responses are given without prejudice to further discovery, research, or analyses.

19. Unless specifically stated to the contrary in any individual response set forth below, the above Preliminary Statement and General Objections are applicable to and specifically incorporated into each response.

INTERROGATORY NO. 1:

With respect to each of Petitioner's Marks, explain in detail how you conceived and arrived at the selection of the marks, including the timing of the process, the alternatives, considered, and the factors used or considered when selecting the marks.

RESPONSE TO INTERROGATORY NO. 1:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this

Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 2:

Identify all persons, including any outside consultants or agencies, who contributed in any way to the origination, selection, and/or adoption of Petitioner's Marks, and describe in reasonable detail the contribution of each such person.

RESPONSE TO INTERROGATORY NO. 2:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information and documents encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information and documents sought are unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this

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INTERROGATORY NO. 3:

State whether any trademark search or investigation has ever been conducted for each of Petitioner's Marks, and if so, state the name of the search or report, the person responsible for conducting and preparing such surveyor report, and the results obtained.

RESPONSE TO INTERROGATORY NO. 3:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks documents neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information and documents, including but not necessarily limited to information and documents encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information and documents sought are unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information and documents sought are unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information and

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INTERROGATORY NO. 4:

Identify with particularity each type of product or service California Audio has sold or intends to sell under each of Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 4:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further

objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 5:

With respect to the products and services identified in response to Interrogatory No.4, provide the date of first use of each of Petitioner's Marks anywhere, the date of first use in commerce, and the factual basis for the date(s).

RESPONSE TO INTERROGATORY NO. 5:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information and documents sought are unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further

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INTERROGATORY NO. 6:

Identify the person(s) most knowledgeable about your use or proposed use for each of Petitioner's Marks, including use on or in connection with products, services, packaging, advertisements, and promotional materials.

RESPONSE TO INTERROGATORY NO. 6:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. Brian Barr is the person most knowledgeable about use and proposed use.

INTERROGATORY NO. 7:

Identify the person(s) most knowledgeable about the products and services sold under Petitioner's Marks, including their manufacture, marketing, sale, distribution, and channels of trade.

RESPONSE TO INTERROGATORY NO. 7:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. Brian Barr is the person most knowledgeable about products and services sold.

INTERROGATORY NO. 8:

With respect to each product or service identified in response to Interrogatory No.4, describe the classes or types of customers to whom California Audio sells or intends to sell each product, and describe the purposes for which such customers typically use or will use California Audio's goods sold under Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 8:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 9:

Identify each person who is or has ever been licensed or permitted by you to use the each of Petitioner's Marks, and explain how you control the nature and quality of each such permitted use.

RESPONSE TO INTERROGATORY NO. 9:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT further objects to this Interrogatory on the grounds that the burden, expense or

intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information and documents that are outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 10:

Explain in reasonable detail how, and in which media, each California Audio product is advertised and/or promoted in association with each of Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 10:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably

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INTERROGATORY NO. 11:

Have you ever received any complaint of any kind relating to any of your products or services offered in association with either of Petitioner's Marks from any person, including but not limited to customers, vendors, distributors, sales representatives, or employees? If so, describe in reasonable detail the circumstances relating to each such complaint, identify all persons having knowledge of such complaint, and identify all documents relating to such complaint.

RESPONSE TO INTERROGATORY NO. 11:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably

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INTERROGATORY NO. 12:

State your sales, if any, in dollars per month or quarter, of each product or service offered in association with Petitioner's Marks in the United States.

RESPONSE TO INTERROGATORY NO. 12:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light

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INTERROGATORY NO. 13:

State the amount you have spent, if any, in dollars per month or quarter, on advertising and promoting the goods and services associated with Petitioner's Marks.

RESPONSE TO INTERROGATORY NO. 13:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery.

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INTERROGATORY NO. 14:

Have you ever used any mark or name containing the term "cat," other than the Petitioner's Marks? If so, identify each such mark or name, the products or services in connection with which it is or was used, and the dates of such use.

RESPONSE TO INTERROGATORY NO. 14:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance,

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INTERROGATORY NO. 15:

Describe in reasonable detail each instance of actual or possible confusion you are aware of between you and Respondent including but not limited to any instances where a person has asked whether any of your products or services are sponsored, approved, affiliated, associated, or in any way connected with Respondent or its products or services, or has otherwise indicated curiosity as to any possible relationship. In your description, include at least the date of the instance, the identity of the person(s) involved, how you became aware of the incident, and the identity of all documents referring or relating to the incident.

RESPONSE TO INTERROGATORY NO. 15:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light

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INTERROGATORY NO. 16:

Describe in reasonable detail the date when, and the circumstances under which, you first became aware of Respondent or Respondent's CAT-based Marks, and identify all persons involved and all documents relating to this initial awareness.

RESPONSE TO INTERROGATORY NO. 16:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery

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INTERROGATORY NO. 17:

If California Audio believes that Respondent's use of the CAT-based Marks is likely to cause confusion with Petitioner's use and/or registration of Petitioner's Marks, then identify all grounds for and facts supporting this belief.

RESPONSE TO INTERROGATORY NO. 17:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the

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INTERROGATORY NO. 18:

Identify all witnesses you intend to present testimony from in this proceeding.

RESPONSE TO INTERROGATORY NO. 18:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. Without waving any objection, and in the spirit of cooperation, CAT states that, to the best of its present information, knowledge, and recollection, CAT intends to present testimony from the following witnesses: Brian Barr; Michael Barr; and Byron Hu, but that there may be many more witnesses, and if so, counsel for CAT will discuss that with counsel for Respondent.

INTERROGATORY NO. 19:

Have any surveys, polls, or market research been conducted with respect to Petitioner's Marks, or the goods used in association with Petitioner's Marks? If so, state the name of the surveyor report, the person responsible for each such survey, poll, or market research, the date when each such survey, poll, or market research was conducted, and describe the results of each such surveyor poll.

RESPONSE TO INTERROGATORY NO. 19:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that it is indiscriminate in time and scope.

INTERROGATORY NO. 20:

Have you ever made any objection of any kind relating to another person's use or registration of Petitioner's Marks, or any other mark that includes any phonetically similar terms, or any other mark alleged by you to be confusingly similar to Petitioner's Marks? If so, describe in reasonable detail the circumstances relating to each such objection, identify all persons having knowledge of

such objection, and identify all documents relating to such objection.

RESPONSE TO INTERROGATORY NO. 20:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 21:

Have you ever received any objection of any kind relating to your use or registration of Petitioner's Marks, or any other mark that contains any phonetically similar terms? If so, describe in reasonable detail the circumstances relating to each such objection, identify all persons having knowledge of such objection, and identify all documents relating to such objection.

RESPONSE TO INTERROGATORY NO. 21:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds

that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 22:

Identify each of the predecessors-in-interest (if any) to Petitioner's Marks, and explain in reasonable detail the chain of title to these marks," including the date of each assignment or transfer of title.

RESPONSE TO INTERROGATORY NO. 22:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression,

or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 23:

Identify all persons who had more than a clerical role and participated in any way in the preparation of the answers to these Interrogatories or in any search for documents in connection with these Interrogatories or Respondent's First Interrogatory for Production of Documents, and state specifically, with reference to interrogatory and document Interrogatory number, the nature of the participation of each such person.

RESPONSE TO INTERROGATORY NO. 23:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. Without waving any objection, and in the spirit of cooperation, CAT states that, to the best of its present information, knowledge, and recollection, the following persons participated in the preparation of the answers to these Interrogatories: Brian Barr; Michael Barr; and Byron Hu.

INTERROGATORY NO. 24:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 1 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 24:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the

discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 25:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 2 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 25:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the

discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 26:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 3 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 26:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information.

INTERROGATORY NO. 27:

State in reasonable detail, all facts upon which you base the allegations contained in

paragraph 4 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 27:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's

possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 28:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 5 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 28:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds

that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 29:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 6 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 29:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery

seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 30:

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 7 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 30:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the

grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 31: (MISNUMBERED #)

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 8 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 31

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT

further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 32: (MISNUMBERED 31)

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 9 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 32:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to

the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public record or otherwise.

INTERROGATORY NO. 33: (MISNUMBERED 32)

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 10 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 33:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this Interrogatory on the grounds that it seeks information that constitutes trade secrets, proprietary or other confidential information. CAT further objects to this Interrogatory on the grounds that the information sought is (a) in Respondent's possession, custody or control, (b) outside CAT's possession, custody or control, or (c) equally or more accessible to Respondent, as a matter of public

record or otherwise.

INTERROGATORY NO. 34: (MISNUMBERED 33)

State in reasonable detail, all facts upon which you base the allegations contained in paragraph 11 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 34:

CAT refers to and incorporates by reference its General Objections as if set forth in full herein. CAT objects to this Interrogatory on the grounds that it seeks information neither relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that it seeks privileged information, including but not necessarily limited to information encompassed and protected by the attorney-client privilege and/or the attorney work product immunity doctrine. CAT further objects to this Interrogatory on the grounds that the burden, expense or intrusiveness of the subject Interrogatory is not outweighed by the likelihood that the information and documents sought will lead to the discovery of admissible evidence. CAT further objects to this Interrogatory on the grounds that the information sought is unreasonably cumulative or duplicative of other discovery propounded in this action. CAT further objects to this Interrogatory on the grounds that the information sought is unduly burdensome or expensive in light of the needs of the case and the amount in controversy. CAT further objects to the Interrogatory on the grounds that the discovery seeks information that is outside the scope of permissible discovery. CAT further objects to this Interrogatory on the grounds that it causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. CAT further objects to this Interrogatory on the grounds that it seeks legal or expert conclusions or opinions. CAT further objects to this Interrogatory on the grounds that it is overly broad, vague, ambiguous or otherwise unintelligible. CAT further objects to this

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INTERROGATORY NO. 35: (MISNUMBERED 34)

State in reasonable detail, all facts upon which you base the allegations contained in . paragraph 12 of the Petition For Cancellation of Three Marks.

RESPONSE TO INTERROGATORY NO. 35:

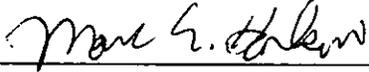
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Respectfully Submitted,

DATED: December 24, 2003

GORDON & REES, LLP

by 
Marc E. Hankin
Attorneys for Petitioner
CALIFORNIA AUDIO TECHNOLOGY INC.

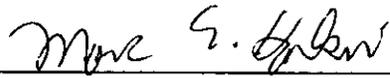
CERTIFICATE OF MAILING AND SERVICE

It is certified that on December 24, 2003, the foregoing **PETITIONER'S RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES** is being served by mailing a copy thereof by prepaid first-class U.S. Priority Mail addressed to:

Gary J. Nelson, Esq.
Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

Respectfully Submitted,

DATED: December 24, 2003

by 

Marc E. Hankin
GORDON & REES, LLP
300 S. Grand Ave., Suite 2075
Los Angeles, CA 90071
Attorneys for Petitioner
CALIFORNIA AUDIO TECHNOLOGY INC.

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BY FEDERAL EXPRESS

January 22, 2004

Marc E. Hankin
 GORDON & REES, LLP
 300 S. Gand Ave., Suite 2075
 Los Angeles, CA 90071

**Re: Petitioner's Responses to Respondent's First Set of Interrogatories
 CPH Ref. M521:110.2*4
 Cancellation No. 92042518**

Dear Mr. Hankin:

This letter is in response to the discovery responses served by your client, California Audio Technology ("CAT"), on December 24, 2003. We find these responses incomplete and request that complete responses be served on or before Monday, January 29, 2004. Should we fail to receive complete responses at that time, we shall file a motion to compel discovery. This letter will serve to satisfy the requirement that the parties "meet and confer" about discovery disputes before filing a motion to compel discovery to the United States Trademark Trial and Appeal Board ("TTAB").

In response to your general objections, we first stress that no information subject to the attorney-client privilege is sought.

We are willing to enter into the standard TTAB protective order for the protection of your confidential and proprietary information. In this regard, please find enclosed a protective order for your client's signature. We look forward to receiving confirmation that this document has been filed with the TTAB.

Regarding the definition of terms in Respondent's first set of interrogatories to Petitioner, Respondent contends that the definitions of "you", "your", "refers or relates" and "referring or relating" are proper. "You" and "your" are defined under letter "C" of the Instruction and Definitions Section as California Audio Technology and any agent acting on behalf thereof. Because the agents of a business entity involved in dispute may, in the course of their agency, come into contact with information otherwise relevant to that dispute, it is proper to require these agents to produce such information in the discovery process. Thus the definition of "You" and "your" are under letter "C" of the Instruction and

James B. Christie (1904-1959)
 Robert L. Parker (1920-1980)

D. Bruce Prout
 Richard J. Ward, Jr.
 Walter G. Maxwell
 William P. Christie
 David A. Dillard
 Thomas J. Daly
 Theodore A. Pianko
 Edward R. Schwartz
 John D. Carpenter
 Wesley W. Monroe
 David A. Plumley
 Gregory S. Lampert
 Mark Garscla
 Syed A. Hasan
 Harold E. Wurst
 Robert A. Green
 Howard A. Kroll
 Richard A. Wallen
 Michael J. MacDermott
 Anne Wang
 Constantine Marantidis
 Daniel M. Cavanagh
 Gary J. Nelson
 Daniel R. Kimbell
 Josephine E. Chang
 Joel A. Kauth
 Charles R. Halloran
 Raymond R. Tabandeh
 Gary S. Dukarich
 Patrick Y. Ikehara
 Cynthia A. Bonner, Ph.D.
 Jun-Young E. Jeon
 Stephen D. Burbach
 Brian K. Brookey
 David J. Steele
 John W. Peck, Ph.D.
 Brian L. Yates
 Tom H. Dao
 Frank L. Cire
 Rodney V. Warfford*
 David J. Bailey**
 Rose A. Hickman
 Ksenya Medvedev
 Oliver S. Bajracharya
 Colin T. Dorrian
 Soomee T. Lee***
 Lauren E. Schneider

Of Counsel
 R. William Johnston
 Hayden A. Carney
 Russell R. Palmer, Jr.
 LeRoy T. Rahn
 Richard D. Seibel
 Vincent G. Gioia
 Richard J. Paculan****

*Admitted only in TX
 **Admitted only in NY
 ***Admitted only in MA, NY
 ****Admitted only in MA

Definitions Section is neither overly broad, nor does it seek information irrelevant to the claims of this action.

Likewise, "refers or relates" and "referring or relating" as defined under letter "N" of the Instruction and Definitions Section merely comprises an assemblage of synonymous terms and phrases essentially meaning that which has any logical or factual connection to the subject matter in question. By this definition, respondent merely asks for discoverable subject matter having a logical or factual connection to key elements of the dispute. The definition is not overly broad or irrelevant to the claims or defenses while standing on its own, neither is it when viewed in the context of any particular interrogatory. For example in interrogatory 15, Respondent requests that Petitioner describe in *reasonable* detail each instance of confusion between the marks of Petitioner and Respondent. Respondent goes on to request that the identity of all documents referring or relating to such an incident be included in the description. Respondent's use of the term "reasonable" modifies the entire request such that it must literally be read as a request for information *reasonably* calculated to lead to the discovery of admissible evidence.

Respondent reiterates that its respect for the attorney client privilege and related doctrines and the provision for their protection set forth in letter "I" under the Instruction and Definitions Section apply as equally to the definitions discussed above as to the remaining sections of the First Set of Interrogatories.

We also stress that no discovery request is contrary to any provision of the Federal Rules of Civil Procedure. All requests are for information within the scope of permissible discovery, and no single request is unreasonably duplicative of other discovery sought. Annoyance or oppression, if any, caused by these discovery requests will not be unwarranted nor will the burden and expense be undue given the importance of the information sought. These requests are "reasonably calculated to lead to the discovery of admissible information" and are relevant to the claims and defenses in the current dispute, as outlined below. See *Fed. R. Civ Proc.* 26(b)(1).

We also stress that the discovery requests are described with sufficient particularity as to be deemed "reasonable." Requests are not barred for being overly broad when the circumstances dictate that the requests be framed broadly. See *Data-Link Sys., Inc. v. Data Line Serv. Co.*, 148 F.R.D. 225, 228 (N.D. Ill. 1992) (holding that requests for "all" documents of a certain category did not violate the particularity requirement). The lack of publicly available information regarding CAT's mark necessitates that discovery be broad so that the dispute may be speedily resolved. Therefore any burden imposed by these requests is outweighed by the likelihood that the information sought will lead to the discovery of admissible evidence, and these requests are not unduly burdensome in light of the needs of the case and the amount in controversy.

Lastly, we do not seek to discover that which calls for a legal conclusion.

Our legal bases for each interrogatory follow. This is not an exhaustive list of the legal bases at our disposal, but should serve to inform you of legitimacy of our discovery efforts.

Your Responses to Interrogatories Nos. 1, 2

These interrogatories seek information regarding the ownership of the "Petitioner's Marks" (the subject marks of the United States Trademark Applications 76/452,595 and 76/452,597), and the validity of the Petitioner's Marks vis-à-vis the Respondent's "CAT-based Marks" (the subject marks of United States Trademark Registration Nos. 2,271,468; 2,339,731; and 2,499,598). Information sought under this interrogatory may establish the extent that MTS has rights in the marks, and as such, the interrogatory is reasonable and the information sought should be put forth.

Your Response to Interrogatory No. 3

This interrogatory seeks information pertaining to whether a trademark search has ever been conducted for each of the Petitioner's marks. This is relevant to the issue of whether Petitioner adopted the Petitioner's Marks in good faith. If a search were conducted by an attorney, while the results of the search and any opinion rendered may be protectable under the attorney-client privilege or work product doctrine, the mere fact of whether the search was conducted and by whom is not privileged. Further, in order for Respondent to adequately assess the claim of privilege, the identity of the searcher must be revealed.

Your Response to Interrogatory No. 4

This interrogatory seeks information regarding the types of products or services Petitioner has sold or intends to sell under Petitioner's Marks. This is relevant to the likelihood of confusion between the Petitioner's Marks and the CAT-based Marks. Information regarding the proximity of the goods and services offered under current and future uses of the Petitioner's Marks to the goods and services offered under the CAT-based Marks is especially relevant in deciding if there is a likelihood of confusion between these marks. As such, the interrogatory should be answered.

Your Response to Interrogatory No. 5

This interrogatory seeks information pertaining to the date of first use of Petitioner's Marks. This is relevant to the priority of Petitioner's Marks and, like interrogatory 4 above, to the likelihood of confusion between the Petitioner's Marks and the CAT-based Marks. The priority date that Petitioner has in Petitioner's marks is vital to the outcome of this opposition. Therefore, an answer to the interrogatory should be provided.

Your Response to Interrogatory No. 8

This interrogatory seeks information regarding the types of customers sold to by Petitioner under Petitioner's Marks, as well as the purposes for which such customers typically use Petitioner's goods sold under Petitioner's Marks. Information regarding the nature of the purchasers of goods and services sold under Petitioner's Marks is especially relevant to this case.

The sophistication of these purchasers is a factor used to decide if there is a likelihood of confusion between Petitioner's Marks and the CAT-based Marks. As such, the interrogatory should be answered.

Your Response to Interrogatory No. 9

This interrogatory seeks information pertaining to who has been permitted by Petitioner to use Petitioner's Marks, and how such permitted use is controlled. This information is relevant to the ownership and validity of Petitioner's Marks. Marks often go abandoned when they are licensed improperly. If Petitioner, by improperly licensing Petitioner's Marks, has lost rights to the marks, such information would certainly be admissible at trial. Therefore, the relevant information sought under these interrogatories should be put forth.

Your Responses to Interrogatories Nos. 10-14

These interrogatories seek information regarding how Petitioner's products are promoted in association with Petitioner's Marks. They also seek information pertaining to complaints received by users of products offered in association with Petitioner's Marks, sales for said products and amounts spent on promoting said products. Lastly they seek information regarding whether Petitioner has ever used any mark or name containing the term "cat," other than in Petitioner's Marks.

These interrogatories are designed to discover information regarding the strength of the mark, an important factor in the likelihood of confusion test. The sales volume, nature of and amount spent on promotion and volume of complaints for products sold under Petitioner's Marks are all germane to an analysis of the strength of these marks. Likewise, any use of the term "cat" other than in association with Petitioner's Marks may tend to show descriptiveness or genericism of the term. Because the preceding information would be relevant to the current proceedings, an answer to the interrogatories is warranted.

Your Response to Interrogatory No. 15

This interrogatory seeks information pertaining to instances of actual or possible confusion between the Petitioner's Marks and the CAT-based Marks. Evidence of actual confusion caused by the marks is highly indicative of a likelihood of confusion, the proving of which is highly relevant to the current proceedings. Thus, an answer to the interrogatory should be granted.

Your Response to Interrogatory No. 16

This interrogatory seeks information regarding when and under what circumstances Petitioner first became aware of Respondent or Respondent's CAT-based Marks. This information is relevant to both the likelihood of confusion between the Petitioner's Marks and the CAT-based Marks, as well as a determination of good faith on the part of the Petitioner in

Petitioner's use of and application for registration of the Petitioner's Marks. As such, this interrogatory is proper and a response is warranted.

Your Response to Interrogatory No. 17

This interrogatory seeks information pertaining to grounds for and facts supporting the contention that use of the CAT-based Marks is likely to cause confusion with Petitioner's use and/or registration of Petitioner's Marks. Because likelihood of confusion is the first ground for opposition, it is critical to the outcome of this dispute. Respondent merely requests the factual bases for the Petitioner's own allegation. Thus it is inconsistent to claim, as Petitioner has, that the facts upon which this allegation is based are not relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is proper and a response is warranted.

Your Response to Interrogatory No. 19

This interrogatory seeks information regarding any surveys, polls, or market research conducted with respect the goods used in association with Petitioner's Marks. This information that will further aid in establishing whether or not there is a likelihood of confusion between the Petitioner's Marks and the CAT-based Marks, the proving of which is highly relevant to the outcome of this proceeding. Thus, an answer to the interrogatory should be granted.

Your Responses to Interrogatories Nos. 20, 21

These interrogatories seek information pertaining to whether Petitioner has ever made or received an objection relating to another person's use or registration of Petitioner's Marks, or similar marks. This information is relevant to the strength and ownership of Petitioner's Marks. In disputes with other entities relating to the Petitioner's marks, much information was likely generated that would be admissible in the current proceedings. Thus, an answer to the interrogatories is warranted. Furthermore, this information may indicate a potential dispute of ownership of Petitioner's marks. If Petitioner does not own the marks, or acquired them improperly, this is certainly information crucial to the current dispute. Answers to these interrogatories are therefore warranted.

Your Response to Interrogatory No. 22

This interrogatory seeks information pertaining to the predecessors-in-interest to and chain of title of Petitioner's Marks. This information, like the that sought in the previous pair of interrogatories, is relevant to the ownership of Petitioner's marks, as well as their validity. If Petitioner does not own the marks, or acquired them improperly, or if they are not valid is crucial to the current dispute. An answer to this interrogatory is therefore warranted.

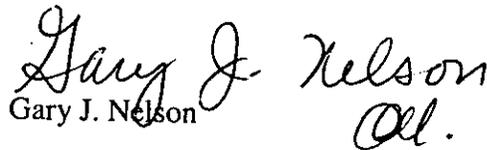
Your Responses to Interrogatories Nos. 24-35

Marc E. Hankin
GORDON & REES, LLP
January 22, 2004
Page 6

These interrogatories seeks information regarding the facts upon which Petitioner bases the allegations contained in paragraphs 1 through 12 of the Petition For Cancellation of Three Marks. For responses to each of the arguments contained in the responses to these interrogatories, please refer again to the portion of this letter above that also addresses the general objections raised in Petitioner's Responses.

In particular, Respondent emphasizes that what has been requested are merely the factual bases for the Petitioner's own allegations. As enumerated by the Petition For Cancellation of Three Marks, these are the central issues of this dispute. Thus it is inconsistent to claim, as Petitioner has, that the facts upon which these allegations are based are not relevant to the claims or defenses on file in this action, nor admissible, nor reasonably calculated to lead to the discovery of admissible evidence. On the contrary, nothing could be more relevant to the current dispute. Thus, these interrogatories are proper and responses to each are warranted.

Very truly yours,


Gary J. Nelson

GJN/ctd
Enclosure
cc: D. Bruce Prout, Esq.

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Cancellation No. 92042518

CERTIFICATE OF MAILING AND SERVICE

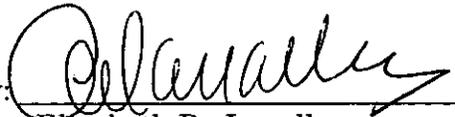
I certify that on February 23, 2004, the foregoing **MOTION TO COMPEL RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES** is being deposited with the United States Postal Service by first-class mail addressed to:

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

It is further certified that on February 23, 2004, the foregoing **MOTION TO COMPEL RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES** is being served by mailing a copy thereof by first-class mail addressed to:

Mark E. Hankin
GORDON & REES LLP
300 S. Grand Ave., Suite 2075
Los Angeles, CA 90071
Attorneys for Petitioner
California Audio Technology Inc.

By:



Elizabeth B. Lavalley
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GJN:bb1

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