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

Proceeding	92047433
Party	Plaintiff Gado S.A.R.L.
Correspondence Address	John C. Holman Jacobson Holman PLLC 400 7th St NW Washington, DC 20004 UNITED STATES mlerner@ssbb.com,pcarey@ssbb.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Robert Carrillo, Esq.
Filer's e-mail	mlerner@ssbb.com, rcarrillo@ssbb.com, dgerard@ssbb.com
Signature	/rcarrillo/
Date	11/16/2009
Attachments	09 11 16 Supplemental and Corrected Notice of Reliance.pdf (2 pages)(47130 bytes) Exhibit 77.pdf (21 pages)(2014617 bytes)

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that a copy of the foregoing **PETITIONER'S SUPPLEMENTAL AND CORRECTED NOTICE OF RELIANCE with EXHIBIT** was served on this 16th day of November 2009, by Federal Express Overnight Mail, addressed to Kenneth L. Wilton, Seyfarth Shaw LLP, 2029 Century Park East, Suite 3300, Los Angeles, California 20067-3063, Attorney for the Respondent.



Robert Carrillo

CERTIFICATE OF ESTTA FILING

I hereby certify, under penalty of perjury, that this SUPPLEMENTAL AND CORRECTED NOTICE OF RELIANCE, WITH EXHIBITS is being filed on November 16, 2009, by way of the USPTO'S ESTTA ONLINE FILING SYSTEM.



Robert C. Carrillo

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

GADO S.A.R.L.)	
)	
Petitioner,)	
)	Cancellation No. 92047433
v.)	
)	
JAY-Y ENTERPRISES CO., INC.,)	
)	
Respondent.)	

PETITIONER'S EXHIBIT 77 TO NOTICE OF RELIANCE

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

GADO S.A.R.L.,

Petitioner,

v.

JAY-Y ENTERPRISE CO., INC.,

Respondent.

Cancellation No. 92047433

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

Respondent Jay-Y Enterprise Co., Inc. ("Respondent") hereby responds to the first set of interrogatories propounded by Petitioner Gado S.A.R.L. ("Petitioner") as follows:

Respondent's responses are based upon information currently available to it. Respondent's investigation and discovery in this action are ongoing and Respondent reserves the right to supplement these responses in the event that additional information is obtained through such investigation or discovery.

Nothing contained in these responses is intended to be or should be construed to be an admission by Respondent of the relevance or admissibility at trial or on any motion of any information contained in these responses.

GENERAL OBJECTIONS

Respondent objects generally to all of Petitioner's interrogatories on the following grounds:

1. Respondent objects generally to all of Petitioner's interrogatories, and the definitions and instructions contained therein, to the extent that they seek to impose upon Respondent discovery obligations beyond those contained in the Federal Rules of Civil Procedure and the Trademark Rules of Practice.
2. Respondent objects generally to all of Petitioner's interrogatories to the extent that they seek information that is confidential or proprietary to Respondent.
3. Respondent objects generally to all of Petitioner's interrogatories to the extent that they seek information that is protected from disclosure by the attorney-client privilege or the attorney work product doctrine.
4. Respondent objects generally to all of Petitioner's interrogatories to the extent that they seek information related to activities outside of the United States and its territories.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

For the types of goods identified in the United States trademark registration for Respondent's Mark(s), describe in detail the actual and proposed channels of trade and geographic area of distribution of said types of goods in the United States from Respondent to end users, by identifying each class of purchasers or customers (e.g., wholesaler, retailer, end user, etc.), the geographic area of each class of purchaser or customer, and the method of purchasing (e.g., mail order, online, retail stores, etc.) for each class of purchaser or customer for each type of goods.

RESPONSE TO INTERROGATORY NO. 1:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it is vague and ambiguous.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent considers men and women of all ages throughout the entire United States to be potential purchasers of its products sold under Respondent's Marks. Said products are available online, through retail stores, and through Respondent's catalogs. Respondent's customers consists of wholesalers, distributors, retailers, street vendors, online E-tailers, and "eBayers" who purchase Respondent's products through Respondent's website or catalog, and at tradeshow. Respondent's customers, in turn, offer Respondent's products to their respective customers, the end user.

INTERROGATORY NO. 2:

For the types of goods identified in the United States trademark registration for Respondent's Mark(s), describe in detail any actual and proposed efforts to advertise, promote, or otherwise market goods using the Respondent's Mark(s) including the

specific means used for such efforts.

RESPONSE TO INTERROGATORY NO. 2:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it is vague and ambiguous in its use of the phrase “specific means used.”

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has advertised its products sold under Respondent’s Marks via Respondent’s Internet website, in magazines, at tradeshow and in tradeshow advertisements, and catalog distribution to existing customers.

INTERROGATORY NO. 3:

Describe in detail any efforts by the Respondent to challenge the validity of the Petitioner's Mark(s) anywhere in the world including any communication between Respondent and Petitioner regarding the validity.

RESPONSE TO INTERROGATORY NO. 3:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the grounds that it is burdensome, harassing, and overly broad in that it seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has never before objected to or challenged the validity of Petitioner’s Marks.

INTERROGATORY NO. 4:

Describe in detail any communications between Respondent and Petitioner

disputing, challenging, or otherwise discussing the validity of Petitioner's Mark(s) in the United States.

RESPONSE TO INTERROGATORY NO. 4:

Respondent interposes its General Objections. Respondent further objects to this interrogatory on the ground that it is unduly burdensome in that it is duplicative of Interrogatory No. 3. Respondent further objects to this Interrogatory on the grounds that it is burdensome, harassing, and overly broad in that it seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent is not aware of any communications responsive to this Interrogatory.

INTERROGATORY NO. 5:

Identify each wholesaler, retailer, distributor, or supplier that has sold goods identified by or bearing Respondent's Mark(s) within the United States.

RESPONSE TO INTERROGATORY NO. 5:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground it seeks information that is confidential and proprietary to Respondent.

Without waiving the foregoing objections, Respondent responds as follows:

Pursuant to Fed.R.Civ.P., Rule 33(d), Respondent will produce copies of its invoices for sales of goods sold in connection with Respondent's Marks. Said documents will identify the wholesaler, retailer, distributor, or supplier that has sold goods identified by or bearing Respondent's Mark(s)

INTERROGATORY NO. 6:

Identify representative samples of advertisements, promotions, or proposed advertisements or promotions concerning or relating to the sale of products or services on or in connection with which Respondent has used Respondent's Mark(s) in the United States or in commerce within the United States by specifically describing the medium (i.e., newspapers, consumer magazines, trade publications, trade shows, catalogues, or other means--and specifically describe such other means) in which said advertisement or promotion appeared, date of the advertisement or promotion, and identity of the person(s) employed or associated with Respondent who was responsible for each such instance of advertisement or promotion during the period December 1, 1999 through the present.

RESPONSE TO INTERROGATORY NO. 6:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground it seeks information that is confidential and proprietary to Respondent.

Without waiving the foregoing objections, Respondent responds as follows:

Pursuant to Fed.R.Civ.P., Rule 33(d), Respondent will produce representative samples of advertising materials for products sold under Respondent's Marks.

Advertisements for products bearing Respondent's Marks have appeared in East Coast Merchandiser, West Coast Merchandiser, Midwest Merchandiser and Cover Magazine. East Coast Merchandiser is a swapmeet/flea market publication serving the East Coast; West Coast Merchandiser is a swapmeet/flea market publication serving the West Coast; Midwest Merchandiser is a swapmeet/flea market publication serving the Midwest; and Cover Magazine is a retail trade publication featuring merchandise offerings from

wholesalers, importers and manufacturers. Respondent's products are also advertised for sale by Wholesale Central and Wholesale 411, two online advertising companies.

Ward Chen, Purchasing Director of Respondent, is the person responsible for advertising and promoting the goods sold bearing Respondent's Marks.

INTERROGATORY NO. 7:

State Respondent's total advertising and promotional expenditures (in U.S. dollars) made toward sales in the United States of the goods with which Respondent's Mark(s) has been used or associated by quarter for the period December 1, 1999 through the present.

RESPONSE TO INTERROGATORY NO. 7:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground it seeks information that is confidential and proprietary to Respondent.

Without waiving the foregoing objections, Respondent responds as follows:

Since 1999, Respondent has spent in excess of \$26,000 annually to advertise and promote all of its goods, which include those sold bearing Respondent's Marks.

INTERROGATORY NO. 8:

Identify each person whose testimony Respondent intends to offer as evidence during this proceeding either at trial or by deposition.

RESPONSE TO INTERROGATORY NO. 8:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine.

Without waiving the foregoing objections, Respondent responds as follows:

Ward Chen, Purchasing Director of Respondent. Respondent has not yet determined all of the persons whose testimony it will offer during this proceeding. Respondent reserves its right to call whatever witness(es) it deems appropriate during its testimony period.

INTERROGATORY NO. 9:

Identify each person who has knowledge relevant to this proceeding as defined in Fed.R.Civ.P. 26(b)(1).

RESPONSE TO INTERROGATORY NO. 9:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

Ward Chen, Purchasing Director of Respondent; Teresa Chen, General Manager of Respondent.

INTERROGATORY NO. 10:

Identify each person or concern who participated in the decision to register Respondent's Mark(s) in the United States, and the duties or services performed by such persons.

RESPONSE TO INTERROGATORY NO. 10:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "concern." Respondent further objects to this Interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine.

Without waiving the foregoing objections, Respondent responds as follows:

Ward Chen, Purchasing Director of Respondent; Teresa Chen, General Manager of Respondent and attorneys representing Respondent.

INTERROGATORY NO. 11:

Identify all, if any, past and present officers, directors, and managers of Respondent.

RESPONSE TO INTERROGATORY NO. 11:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the grounds that it is burdensome, harassing, and overly broad in that it seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the foregoing objections, and assuming Petitioner seeks the identity of officers, directors, and managers with knowledge about Respondent's Marks, Respondent responds as follows:

James Chen, President of Respondent; Teresa Chen, General Manager of Respondent; Ward Chen, Purchasing Director of Respondent; and Becky Ha, Sales Director of Respondent.

INTERROGATORY NO. 12:

Identify all persons or concerns who participated in the decision to file and the actual filing of the application, Ser. No. 78/026,522, on or about September 19, 2000.

RESPONSE TO INTERROGATORY NO. 12:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it is unduly burdensome in that it is duplicative of

Interrogatory No. 10. Respondent further objects to this Interrogatory on the ground that it is vague and ambiguous as to the term “or concern.” Respondent further objects to this Interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine.

Without waiving the foregoing objections, Respondent responds as follows:

See response to Interrogatory No. 10.

INTERROGATORY NO. 13:

Identify all persons or concerns who participated in the decision to file and the actual filing of the application, Ser.No. 78/091,621, on or about November 4, 2001.

RESPONSE TO INTERROGATORY NO. 13:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it is unduly burdensome in that it is duplicative of Interrogatory No. 10. Respondent further objects to this Interrogatory on the ground that it is vague and ambiguous as to the term “or concern.” Respondent further objects to this Interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine.

Without waiving the foregoing objections, Respondent responds as follows:

See response to Interrogatory No. 10.

INTERROGATORY NO. 14:

Identify any places of business Respondent maintains in the United States.

RESPONSE TO INTERROGATORY NO. 14:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the grounds that it is burdensome, harassing, and overly broad in that it

seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the foregoing objections, Respondent responds as follows:

632 New York Drive, Pomona, CA 91768.

INTERROGATORY NO. 15:

Describe any and all persons or entities Respondent has authorized, licensed, or otherwise granted the right to use Respondent's Mark(s) in the United States or in commerce within the United States; and for each such person or entity, identify the date of commencement and termination of each such authorization, license or grant, and identify any written license agreements or franchise agreements granting rights to use Respondent's Mark(s) in the United States.

RESPONSE TO INTERROGATORY NO. 15:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground it seeks information that is confidential and proprietary to Respondent.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has not authorized, licensed, or otherwise granted the right to use Respondent's Marks to any third party.

INTERROGATORY NO. 16:

State inclusive dates, if any, during which Respondent has sold or offered for sale each and every product bearing Respondent's Mark(s) in the United States.

RESPONSE TO INTERROGATORY NO. 16:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has sold sunglasses bearing Respondent's Marks continuously since December, 1999.

INTERROGATORY NO. 17:

Identify the basis for Respondent's first affirmative defense of its Answer served on June 6, 2007 (the "Answer").

RESPONSE TO INTERROGATORY NO. 17:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine. Respondent further objects to this Interrogatory on the ground that it is an improper Interrogatory as it is directed solely to an issue of law.

INTERROGATORY NO. 18:

Identify the basis for Respondent's second affirmative defense of its Answer.

RESPONSE TO INTERROGATORY NO. 18:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has been using Respondent's Marks since December 1999 on and in connection with the goods identified in U.S. Trademark Registration Nos. 2,582,314 and 2,663,337 without any objection from Petitioner.

INTERROGATORY NO. 19:

Identify the basis for Respondent's third affirmative defense of its Answer.

RESPONSE TO INTERROGATORY NO. 19:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has been using Respondent's Marks since December 1999 on and in connection with the goods identified in U.S. Trademark Registration Nos. 2,582,314 and 2,663,337 without any objection from Petitioner.

INTERROGATORY NO. 20:

Identify the types of documents that exist (i.e., labels, hang tags, invoices or such other documents) relating to sales of products in the United States with which Respondent's Mark(s) has been used since December 1, 1999.

RESPONSE TO INTERROGATORY NO. 20:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

Hangtags, product packaging, lens static stickers, resealable bags, invoices, and catalogs.

INTERROGATORY NO. 21:

Identify each expert witness you expect to examine during the testimony phase of this proceeding, and for each such expert witness state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

RESPONSE TO INTERROGATORY NO. 21:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has not yet retained a testifying expert in this matter. Respondent reserves its right to designate an expert at a later date and to call that person to testify and provide an expert opinion at trial.

INTERROGATORY NO. 22:

Identify all persons who have participated in any way in the preparation of the answers or responses to these Interrogatories. If more than one individual is identified, state specifically, with reference to Interrogatory numbers, the areas of participation of each such person.

RESPONSE TO INTERROGATORY NO. 22:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

Ward Chen, Purchasing Director of Respondent; Teresa Chen, General Manager of Respondent.

INTERROGATORY NO. 23:

Identify and explain the reasons for Respondent's choice of the letters DG.

RESPONSE TO INTERROGATORY NO. 23:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

The letters DG were chosen as an acronym for and to indicate "designer glasses." Respondent recognized that companies like Calvin Klein, Giorgio Armani, and Armani Exchange had had success in putting two letters together to create their respective logos. As a result of these successes, Respondent adopted the concept of putting two letters together to create its logos, designing an interlocking logo and a back to back logo.

INTERROGATORY NO. 24:

Identify all documents evidencing Respondent's ownership of and right to use the marks DG.

RESPONSE TO INTERROGATORY NO. 24:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

U.S. Trademark Registrations Nos. 2,582,314 and 2,663,337 and California Registration Nos. 106784, 107836, and 109179.

INTERROGATORY NO. 25:

Identify all documents that you expect to introduce into evidence at the trial of this matter by stating the date of the document, the title or general nature of the document, and identify the person having custody, possession, or control of the documents.

RESPONSE TO INTERROGATORY NO. 25:

Respondent interposes its General Objections. Respondent further objects to this Interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine.

Without waiving the foregoing objections, Respondent responds as follows:

Respondent has not yet determined what documents it will introduce at trial in this matter. Respondent reserves its right to introduce whatever documents it deems appropriate.

INTERROGATORY NO. 26:

(a) Is Respondent aware of any instance of confusion or mistake regarding it and Petitioner, their respective goods, services, or businesses, and/or Respondent's Mark(s) and Petitioner's Mark(s)?

(b) Has Respondent received any communication addressed or directed to, or which mentions, refers or relates in any way to, Petitioner, Petitioner's Mark(s), and/or Petitioner's products/services?

(c) Is Respondent aware of any instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Respondent

and Petitioner, Respondent's Mark(s) and Petitioner's Mark(s), and/or the respective products or services or businesses of Respondent and Petitioner?

RESPONSE TO INTERROGATORY NO. 26:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

(a)-(c) Yes.

INTERROGATORY NO. 27:

(a) If the answer to Interrogatory No. 26(a), above, is other than an unqualified negative, identify each instance of confusion or mistake.

(b) If the answer to Interrogatory No. 26(b), above, is other than an unqualified negative, identify each such communication to which that interrogatory refers.

(c) If the answer to Interrogatory No. 26(c), above, is other than an unqualified negative, identify each such instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Respondent and Petitioner and/or their respective products, services or businesses.

RESPONSE TO INTERROGATORY NO. 27:

Respondent interposes its General Objections.

Without waiving the foregoing objections, Respondent responds as follows:

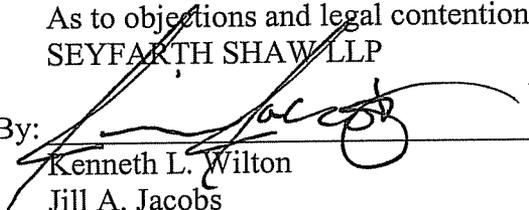
(a)-(c) Between the years 1999 and 2005, Respondent had no knowledge of any incidents of confusion between it and its goods sold under Respondent's Marks and Petitioner or any of Petitioner's goods. Sometime between 2005 and 2006, when Petitioner began using as its logo the letters "DG" in an interlocking manner similar to

Respondent's Marks, Respondent's customers began asking Respondent whether Respondent's products sold under Respondent's Marks were Petitioner's. Because Respondent did not keep logs or records of these incidents, Respondent does not have more specific information to provide in response to this Interrogatory.

As to objections and legal contentions:
SEYFARTH SHAW LLP

Dated: November 30, 2007

By:


Kenneth L. Wilton

Jill A. Jacobs

Attorneys for Respondent

JAY-Y ENTERPRISE CO., INC.

2029 Century Park East, Suite 3300

Los Angeles, CA 90067-3063

Telephone: (310) 201-5246

Facsimile: (310) 201-5219

VERIFICATION

I, Ward Chen, declare:

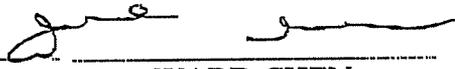
1. I am Purchasing Director of Respondent Jay-Y Enterprise Co., Inc. ("Respondent"), and I have been authorized to execute this verification on behalf of Respondent.

2. I have read the document encaptioned RESPONDENT'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES and know the contents thereof. I am informed and believe these responses are true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 29 day of November, 2007, at Pomona, California.

Dated: November 29, 2007

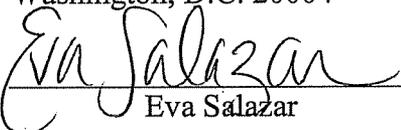


WARD CHEN

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2007, I served the foregoing
RESPONDENT'S RESPONSES TO PETITIONER'S FIRST SET OF
INTERROGATORIES on the Petitioner by depositing a true copy thereof in a sealed
envelope, postage prepaid, in First Class U.S. mail addressed to Petitioner's counsel as
follows:

John Clarke Holman
Robert S. Pierce.
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004


Eva Salazar