

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

In the Matter of Registration No. 1,698,407  
Date of Issue: June 30, 1992

RHINO LININGS USA, INC., )  
  ) Petitioner, )  
  ) )  
  ) vs. )  
  ) )  
RAPID RACK INDUSTRIES, INC., )  
  ) Applicant. )  
  ) )

74/096,229

Cancellation No. 92048271

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**AMENDED**

**MOTION TO COMPEL DISCOVERY RESPONSES, MOTION TO DEEM REQUESTS  
FOR ADMISSIONS ADMITTED, AND MOTION FOR SANCTIONS**

**AND**

**MOTION TO EXTEND THE DISCOVERY DEADLINE TO ALLOW PETITIONER TO  
CONDUCT FOLLOW-UP DISCOVERY**

**(Telephonic Hearing Requested)**

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THIS AMENDED FILING is made to note the redaction of certain Interrogatory Responses designated as protected by the Registrant pursuant to the Board's standard protective order.<sup>1</sup> In all other respects (with the exception of the date of signature), it is identical to the previously filed Motion to Compel Discovery Responses, Motion to Deem Requests for Admissions Admitted, and Motion for Sanctions *and* Motion to Extend Discovery Deadline to

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<sup>1</sup> The un-redacted filing of the original Motions was an oversight by the undersigned counsel. However, Petitioner does not agree with the protected designations made by Registrant and expressly reserves the right to challenge those designations, either as part of the present Motions or during later proceedings in this Cancellation.



09-19-2008

Allow Petitioner to Conduct Follow-Up Discovery. The Board is requested to seal the original filing, and its attachments, and to shield those materials from access by the public.

Pursuant to Rules 36 and 37 of the Federal Rules of Civil Procedure and Chapter 411 of the Trademark Trial and Appeal Board Manual of Procedure (the "TBMP"), Petitioner Rhino Linings USA, Inc. ("Rhino Linings"), by and through the undersigned counsel, respectfully moves the Board for an Order (i) compelling Registrant Rapid Rack Industries, Inc. ("Rapid Rack") to provide proper responses to written discovery requests propounded by Rapid Rack; (ii) deeming certain requests of the First Set of Requests for Admissions admitted; (iii) sanctioning Rapid Rack for its failure to comply with discovery obligations; and (iv) extending the discovery deadline to allow Rhino Linings to conduct follow-up discovery of Rapid Rack, including a Rule 30(b)(6) deposition of Rapid Rack, following the ruling on this Motion. In support of this motion, Rhino Linings shows unto the Board the following:

1. On October 15, 2007, Rhino Linings filed a Petition for Cancellation of the RHINO RACK Mark of Registration No. 1,698,407 ("Registrant's Mark"), on the grounds that Rapid Rack has abandoned Registrant's Mark and that a Declaration of Use filed by Rapid Rack on April 9, 2002 constituted fraud on the Trademark Office.

2. On November 12, 2007, in accordance with the Scheduling Order entered by the Board, Rhino Linings propounded first sets of Interrogatories, Requests for the Production of Documents and Things, and Requests for Admissions to Rapid Rack (Rhino Linings's "written discovery requests"). Each written discovery request propounded by Rhino Linings was

reasonably calculated to lead to the discovery of admissible evidence from Rapid Rack concerning the alleged use of the RHINO RACK Mark.

3. During the next eight months, Rapid Rack repeatedly postponed its deadline to respond to Rhino Rack's discovery requests. Ultimately, Rapid Rack provided deficient responses (Rapid Rack's putative "responses") on June 24, 2008, nearly eight months after the written discovery requests had been served. Rapid Rack's putative responses to Rhino Linings's written discovery requests are attached hereto as Exhibit 1 and are incorporated herein by reference.

4. On July 11, 2008, counsel for Rhino Linings sent a letter (the "July 11, 2008 Letter") to counsel for Rapid Rack, which outlined Rapid Rack's pattern of delay and the serious deficiencies in Rapid Rack's responses. The July 11, 2008 Letter is attached hereto as Exhibit 2 and its contents are incorporated herein by reference.<sup>2</sup>

5. For the reasons set forth in the July 11, 2008 Letter, Rapid Rack's purported responses are deficient and inadequate in almost every conceivable way, notwithstanding that Rapid Rack had eight months to prepare those responses. Specifically, Rapid Rack's putative responses to Interrogatories Nos. 1-13, 15-25, and 27-34, Requests for Production of Documents Nos. 1-32, 34, and 36-40, and Requests for Admission Nos. 4-5, 9-10, 14-15, 19-21, 24-25, 29-30, 34-72, 74-80, 82-844, and 88-91 are defective.

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<sup>2</sup> Counsel for Rhino Linings have redacted those portions of the July 11, 2008 Letter which concern those limited issues that have been resolved or which Rhino Linings is not asking the Board to consider for purposes of ruling on the present Motion.

6. Stated simply, Rhino Linings contends that Rapid Rack has drafted its discovery responses to give the appearance that it has responded to Rhino Linings discovery requests, when in fact Rapid Rack's responses are evasive, incomplete, and otherwise inadequate, and thus violate the Federal Rules of Civil Procedure and the discovery rules of the TBMP.

7. The deficiencies with respect to Rapid Rack's responses to Interrogatories are briefly outlined as follows:

(a.) Interrogatory No. 1 seeks all products which Rapid Rack provides, has provided, or intends to provide under Registrant's Mark and the date(s) of first use in commerce and in interstate commerce for each product identified. Rapid Rack's answer does not purport to identify "all products" as is requested in the interrogatory and instead appears to provide a non-exhaustive list, and the answer lacks dates of first use in commerce and in interstate commerce in connection with Registrant's Mark as is requested in the interrogatory.

(b.) Interrogatory No. 2 requests the identification of all states in which Rapid Rack provides products under Registrant's Mark. Rapid Rack has responded only that "Rapid Rack provides products bearing the mark shown in U.S. Trademark Registration No. 1,698,407 throughout the United States and the world," which answer is incomplete.

(c.) Interrogatory No. 3 seeks the identification of the individuals who are most knowledgeable concerning the use of Registrant's Mark between 2000 and the present and a description of each such individual's involvement with respect to the Mark. Rapid Rack has identified certain individuals, but has not provided a description of their respective involvement concerning the Mark.

(d.) Interrogatory No. 4 asks Rapid Rack to state the number of units in dollar volume of monthly sales from January 2001 to present for each of the products identified in response to Interrogatory No. 1 and the price of the average sale. Rapid Rack has objected on the grounds of relevancy and has incorrectly asserted that "[t]he burden of deriving or ascertaining the answer to this interrogatory to the extent possible is substantially the same for Rhino Linings as it is for Rapid Rack."

(e.) Interrogatory No. 5 asks how Rapid Rack uses its Mark in connection with the products listed in response to Interrogatory No. 1. Rapid Rack has evasively and incompletely answered "as the source of the goods bearing such mark."

(f.) Interrogatory Nos. 6-13 seek the channels of distribution in which Rapid Rack distributed each of the products identified in response to Interrogatory No. 1 and representative outlets through which Rapid Rack sold such products. Rapid Rack has responded to each of these Interrogatories by stating that “much of the requested information is not readily available due to its location in old, possibly corrupt and no longer readily accessible databases” (emphasis added). Rapid Rack has not substantiated this assertion. Further, (i) some of the items listed in Interrogatory No. 1 are not addressed, (ii) the response to Interrogatory No. 1 needs to be brought into compliance with the discovery rules for these related interrogatories to be compliant, and (iii) although it appears that Rapid Rack has made some effort to answer the portion of each interrogatory concerning representative outlets, it has failed to identify the channels of distribution for the products.

(g.) Interrogatory Nos. 15-22 ask for a list of all periodicals, trade journals, radio and/or television advertisements, and Internet websites where Rapid Rack advertised the products identified in response to Interrogatory No. 1 from 2000 through 2007. Rapid Rack has declined to provide an answer to any of these interrogatories on the grounds that its “investigation is continuing” and/or that “some information relevant to this request may have been destroyed during a flood at Rapid Rack’s facilities in 2005” (emphasis added). This assertion also has not been substantiated by Rapid Rack. Further, the alleged flood in 2005 has been offered as an excuse for the failure to provide information concerning use of the mark in advertising in 2006, in response to Interrogatory No. 21. Although it has not alleged flood damage to 2007 advertising materials, Rapid Rack has nonetheless refused to respond to Interrogatory No. 22.

(h.) Interrogatory No. 27 asks whether the manufacturing, advertising, production, and sales of any product identified in Response to Interrogatory No. 1 were discontinued at any time between January 1, 2000 and the present and a statement of the reasons for any such discontinuance. Rapid Rack’s only response is that “the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Rhino Linings as it is for Rapid Rack.” Thus, the answer to Interrogatory No. 27 is not responsive.

(i.) Rapid Rack has provided no answer to Interrogatories Nos. 25 and 28 - 35. There is no basis for the objections interposed by Rapid Rack.

The deficiencies with respect to the responses to the foregoing interrogatories are set forth in more detail in pages 6-10 of the July 11, 2008 letter, which is attached as Exhibit 2. Rhino Linings is entitled to and requires proper responses to the foregoing Interrogatories from Rapid Rack to present its case to the Board. Further, Rapid Rack should be precluded from

presenting any evidence with respect to the subject matter of those Interrogatories to which it has not properly responded.

8. The deficiencies with respect to Rapid Rack's responses to Requests for the Production of Documents and Things are briefly outlined as follows:

(a.) In its written responses to Requests for Production Nos. 1-17 and 25-38, Rapid Rack states that "relevant, non-privileged documents, if any, responsive to [the] request [at issue] will be produced." For many of these requests, it appears that Rapid Rack has produced no documents at all. If Rapid Rack has not produced any documents in response to a particular request, it should so indicate. Additionally, it is unclear, with respect to each such response, whether any documents have been withheld and, if so, why. To the extent that Rapid Rack has withheld documents on the basis of relevancy, Rapid Rack is not entitled to independently determine whether documents are relevant.

(b.) Requests for Production Nos. 17-24 seek the production of specimens of use of Registrant's Mark for each year from 2000 through 2007 that are self authenticating as to the date of use. Rapid Rack has refused to provide responsive documents because it spuriously contends that Requests for Production Nos. 17-24 call for legal conclusions and seek documents protected by privilege.

(c.) Requests for Production Nos. 25-32 seek the production of representative samples of sales, advertising, marketing and promotional materials, or other documents or things displaying Registrant's Mark from 2000 to 2007. Rapid Rack has responded that "some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005," without identifying whether there is any basis to believe that such materials existed in the first place. Further, Rapid Rack has produced few, if any, documents for the requested time period, and it appears that no advertising, marketing, or promotional materials have been produced aside from one un-dated industrial catalog. Finally, Rapid Rack has produced little evidence for the years 2006 and 2007, despite those years being after the alleged flood.

(d.) Rapid Rack also states in response to Request for Production No. 34 that documents concerning its annual advertising, promotion, and marketing expenditures related to Registrant's Mark between January 1, 2000 and the present "may have been destroyed during a flood . . . in 2005" (emphasis added) Rapid rack has not provided any basis for its belief that any such documents existed in the first place, and apparently has not produced responsive documents.

(e.) Request for Production No. 36 seeks representative documents which evidence the geographic extent to which Rapid Rack used Registrant's Mark from January 1, 2000 to the present. Rapid Rack's response indicates that it will produce responsive documents, but it appears that no responsive documents have been produced.

(f.) Request for Production No. 37 seeks all documents which illustrate, describe, discuss, document, chart, or otherwise refer or relate to Rapid Rack using a mark other than Registrant's Mark in connection with the goods identified in Registration No. 1,698,407. Rapid Rack has failed to produce any planning-related documents, internal correspondence, and advertising/marketing materials. These documents (and any other withheld documents) need to be provided.

(g.) Request for Production No. 38 seeks all documents concerning any decision by Rapid Rack to discontinue the manufacturing, advertising, production, or sale of any goods in connection with Registrant's Mark. Rapid Rack has failed to produce any internal communications or other planning/explanatory documents addressing the discontinuance of a product identified as "RINO RACK" (which is noted as discontinued on an order form produced by Rapid Rack). These documents (and any other such documents concerning discontinued products or discontinued use of Registrant's Mark) need to be provided.

(h.) Rapid Rack has refused to produce documents in response to Request for Production No. 39, which seeks all documents to which Rapid Rack referred or upon which it relied when making its Declaration of Use dated April 9, 2002.

(i.) Rapid Rack has refused to produce documents in response to Request for Production No. 40, which asks for documents, not otherwise requested, which were referred to by Rapid Rack in making its responses to written discovery requests.

The deficiencies with respect to the responses to the foregoing requests for production are set forth in more detail in pages 10-11 of the July 11, 2008 letter, which is attached as Exhibit 2. Rhino Linings is entitled to and requires proper responses to the foregoing Requests for Production from Rapid Rack to present its case to the Board. Further, Rapid Rack should be precluded from presenting any evidence with respect to the subject matter of those Requests for Production to which it has not properly responded or produced documents or things.

9. The deficiencies with respect to Rapid Rack's responses to Requests for Admissions are briefly outlined as follows:

(a.) Requests for Admissions 4, 9, 14, 19, 24, 29, and 34 seek admissions that Rapid Rack cannot produce a specimen of use of Registrant's Mark in commerce in each year between 2000 and 2006. Rapid Rack has answered each such request as follows: "[D]espite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable [Rapid Rack] to admit or deny the statement and therefore denies the same." Either Rapid Rack can produce a specimen of use or it cannot. It appears based on the wording of these responses that these Requests for Admissions should have been admitted.

(b.) Requests for Admissions Nos. 5, 10, 15, 20, 25, 30, 35, and 40 seek admissions that Rapid Rack cannot produce a specimen of use of Registrant's Mark in commerce for each calendar year from 2000 through 2006 that is self-authenticating as to the date of use. Rapid Rack has responded to each such request as follows: "Registrant . . . objects to this request to the extent it calls for a legal conclusion regarding 'self-authenticating' and therefore denies the same." Rapid Rack's stated basis for denying the Requests at issue is improper, especially given that counsel for Rhino Linings has provided—in writing—a clarification with respect to the phrase "self-authenticating."

(c.) Rapid Rack has denied or objected to Requests for Admissions Nos. 36-72, 74-80, 82-84, and 88-89, each of which concerns use of Registrant's Mark, on the grounds that self-explanatory terms and phrases are unclear. These denials on the basis of supposed confusion are completely improper, especially given that Rhino Linings' requests for admission explained that the definitions in its interrogatories also applied to its requests for admissions, and given that Rhino Linings' counsel also provided to counsel for Rapid Rack definitions for the terms at issue.

(d.) Request for Admission No. 90 seeks an admission that Registrant's Marks are junior to the senior applications filed by Rhino Linings with respect to Petitioner's Marks. Request for Admission No. 91 seeks an admission that the existence of Registrant's Marks as a possible bar to registration and protection of Petitioner's Marks has damaged and will continue to damage Rhino Linings. Rapid Rack has objected to Request for Admission No. 90—and has denied Request for Admission No. 91—on the grounds that "despite a reasonable inquiry, the information known or reasonably obtainable by [Rapid Rack] is insufficient to enable them [sic] to admit or deny the statement because information relevant to this request is in the possession of [Rhino Linings]." There is no unique knowledge, solely in the possession of Rhino Linings, the lack of which prevents Rapid Rack from responding. Rather, these requests seek only the admission of facts already known to Rapid Rack.

The deficiencies with respect to the responses to the foregoing Requests for Admission are set forth in more detail in pages 11-14 of the July 11, 2008 letter, which is attached as Exhibit 2. Rhino Linings is entitled to and requires proper responses to the foregoing Requests for Admissions from Rapid Rack to present its case to the Board. Specifically, the Requests for Admissions should be deemed admitted, and Rapid Rack should be precluded from presenting any evidence with respect to the subject matter of those Requests for Production to which it has not properly responded.

10. It also appears that Rapid Rack has refused to answer certain discovery requests and/or to provide responsive documents based on assertions of privilege (and possibly other objections), including but not limited to Interrogatories Nos. 23-26, 28, and 30-35 and Requests for Production Nos. 17-24 and 38-40. Despite repeated requests, Rapid Rack has refused to provide a privilege log. Rhino Linings is entitled to and needs a privilege log to assess the completeness of Rapid Rack's responses.

11. Counsel for Rhino Linings has attempted on numerous occasions to confer with counsel for Rapid Rack regarding Rapid Rack's failure to observe its discovery obligations. Those efforts are detailed in letters sent to counsel for Rapid Rack on August 12, 2008 and September 3, 2008. These letters are attached hereto as Exhibit 3 and Exhibit 4, respectively, and the contents thereof are incorporated herein by reference.

12. As of the date of this Motion, Rapid Rack has made no legitimate attempt to bring its responses into compliance with applicable discovery rules. Rapid Rack's limited efforts to resolve this dispute include the following: (a) participation by its counsel in two very

brief telephone calls on July 28, 2008 which were insufficient for a discussion of all of Rapid Rack's deficient responses, (b) the dispatch of an August 14, 2008 letter sent on behalf of Rapid Rack's counsel enclosing a verification for Rapid Rack's Responses to Interrogatories and providing a few supplemental documents; and (c) a handful of non-substantive voice messages left for lead counsel for Rhino Linings, David Harlow. A copy of the August 14, 2008 letter is attached hereto as Exhibit 5. The vast majority of the deficiencies in Rapid Rack's responses to written discovery requests have never been addressed.

13. Counsel for Rhino Linings has attempted in good faith to meet and confer with counsel for Rapid Rack and has been unsuccessful in securing either a substantive response to its concerns or supplemental responses (other than the verification of interrogatories and the handful of documents produced by Rapid Rack on August 14, 2008, which do not address the vast majority of the deficiencies in Rapid Rack's discovery responses). Since July 28, 2008, counsel for Rapid Rack has refused to speak with Rhino Lining's counsel who have been involved in analyzing these discovery issues, and have instead insisted that they speak only with lead counsel for Rhino Linings, David Harlow, who has not been heavily involved in these discovery issues. A Declaration from counsel for Rhino Linings outlining the unsuccessful efforts to confer with counsel for Rapid Rack and to resolve this dispute without burdening the Board is attached hereto as Exhibit 6.

14. Rule 37(a)(3)(B) of the Federal Rules of Civil Procedure provides that

[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection . . . if . . . a party fails to answer an interrogatory submitted under Rule 33, or a party fails to respond that inspection will be permitted — or fails to permit inspection — as requested under Rule 34.

TBMP § 411.01 further provides that,

if any party fails to answer any interrogatory, the party seeking discovery may file a motion with the Board for an order to compel an answer. Similarly, if any party fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion for an order to compel production and an opportunity to inspect and copy.

In accordance with these rules, Rhino Linings is entitled to—and needs—an order compelling Rhino Linings to properly respond to Interrogatories and Requests for the Production of Documents.

15. Rule 36 of the Federal Rules of Civil Procedure provides that the party propounding a request for admission

may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.

This relief also is provided in TBMP §§ 411.02 and 527.01(d). Given the egregious nature of Rapid Rack's failure to properly respond to Requests for Admissions in this case (by couching admissions as denials), the Board should order that the Requests for Admissions be deemed admitted. In the alternative, Rapid Rack should be directed to serve amended answers which conform to the requirements of Rule 36(a)(4).

16. Rapid Rack has acted in bad faith in failing to properly respond to valid discovery requests propounded by Rhino Linings and by failing to comply with the meet-and-confer requirements established by Rule 37 of the Federal Rules of Civil procedure. The

Board has broad discretion to sanction Rapid Rack for its bad faith failure to observe its discovery obligations. Pursuant to TBMP § 411.04,

[i]n inter partes proceedings before the Board, a variety of sanctions may be imposed, in appropriate cases, for failure to provide discovery. The sanctions which may be entered by the Board include, *inter alia*, striking all or part of the pleadings of the disobedient party; refusing to allow the disobedient party to support or oppose designated claims or defenses; drawing adverse inferences against the uncooperative party; prohibiting the disobedient party from introducing designated matters in evidence; and entering judgment against the disobedient party.

As Rapid Rack's putative discovery responses represent an egregious, bad faith violation of the discovery rules, the Board should sanction Rapid Rack with an appropriate sanction provided by TBMP § 411.04. Rhino Linings respectfully submits that Rapid Rack's discovery violations warrant sanctions in the form of the striking of Rapid Rack's Answer and entry of default against Rapid Rack. Alternatively, Rhino Linings respectfully submits that, at minimum, Rapid Rack should be precluded from introducing evidence of use of its RHINO RACK Mark between 2000 and 2002 and should be precluded from opposing Rhino Linings's claim against Rapid Rack for fraud on the Trademark Office.

17. In accordance with TBMP §§ 413 and 502.06, Rhino Linings requests a telephonic hearing before an Interlocutory Attorney. Counsel for Rhino Linings contacted the Interlocutory Attorney to advise her of the request for a telephonic hearing prior to filing this Motion and will attempt to schedule the hearing at a mutually convenient time for opposing counsel and the Interlocutory Attorney, Ms. Mary Catherine Saint, after Rapid Rack has responded in writing to this motion.

18. Under the amended Scheduling Order, the discovery period closes on September 22, 2008. Rhino Linings is entitled to and is in need of appropriate responses to its written discovery requests so that it can conduct follow-up discovery and can be fully prepared to take the Rule 30(b)(6) deposition of Rapid Rack. Given that Rapid Rack's response to this Motion will not be due until September 22, 2008 (the last day of discovery), Rhino Linings respectfully requests that the discovery period be extended by thirty (30) days after the Board issues its ruling for the limited purpose of allowing Rhino Linings to conduct follow-up discovery, including taking the Rule 30(b)(6) deposition of Rapid Rack.

**WHEREFORE**, Petitioner Rhino Linings USA, Inc. respectfully prays that the Board grant it the following relief:

1. Compel full, complete and proper responses to Interrogatories Nos. 1-13, 15-25, and 27-34 and to Requests for Production of Documents Nos. 1-32, 34, and 36-40;
2. Order that Requests for Admission Nos. 4-5, 9-10, 14-15, 19-21, 24-25, 29-30, 34-72, 74-80, 82-844, and 88-91 are deemed admitted, or in the alternative, compel full, complete and proper answers to these requests;
3. Sanction Rapid Rack for its willful failure to comply with its discovery obligations;
4. Extend the discovery period by thirty (30) days after the Board issues its ruling for the limited purpose of allowing Rhino Linings to conduct follow-up discovery, including taking the Rule 30(b)(6) deposition of Rapid Rack; and

5. Grant Rhino Linings such other and further relief as the Board deems just, necessary, and proper.

Respectfully submitted this 17<sup>th</sup> day of September, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day a true and correct copy of the foregoing document has been served this day by electronic mail and by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a first class postage prepaid envelope and properly addressed as follows:

David A. Dillard, Esq.  
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This the 17<sup>th</sup> day of September, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

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

RHINO LININGS USA, INC.  
  
Petitioner,  
  
v.  
  
PATRIARCH PARTNERS AGENCY  
SERVICES, LLC (RAPID RACK  
INDUSTRIES, INC.)  
  
Registrant.

Cancellation No. 92048271

Registration No. 1,698,407

Date of Issue: June 30, 1992

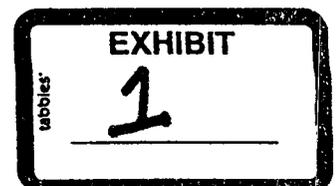
**REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF  
INTERROGATORIES**

Registrant, Rapid Rack Industries, Inc ("Rapid Rack"), based on its current knowledge, understanding and belief of the facts and the information available to it on the date on which these responses are made, hereby responds as follows to the First Set of Interrogatories propounded by Petitioner, Rhino Linings USA, Inc. ("Rhino Linings").

**GENERAL OBJECTIONS**

The following objections are deemed to apply to each of Rhino Linings' Interrogatory Requests:

1. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they are inconsistent with or purport to impose a duty of disclosure that is greater than or different from that required under the applicable Federal Rules of Civil



Procedure, the Trademark Rules of Practice, Title 37 of the Code of Federal Regulations, or the Trademark Trial and Appeal Board Manual of Procedure.

2. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure of information that is protected by attorney-client privilege, work-product doctrine or other applicable privilege or protection from disclosure. Such information shall not be disclosed in response to Rhino Linings' Interrogatories, and any inadvertent disclosure thereof shall not be a waiver of any privilege with respect to such information or of any work product protection which may attach thereto.

3. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure of information that is not relevant to the claim or defense of any party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure of information that constitutes or contains trade secrets or other confidential research, development, proprietary or commercial information of Rapid Rack and/or third parties, or information that Rapid Rack is under an obligation to a third party to not disclose. Any responses containing such information are provided strictly subject to the Standard Protective Order in force pursuant to 37 C.F.R. § 116(g).

5. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure information that does not exist or is not in Rapid Rack's possession, custody or control.

6. Rapid Rack objects to the requests generally, and to each request contained therein, to the extent that they seek legal conclusions or information regarding Rapid Rack's'

legal theories or strategies.

7. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they impose on Rapid Rack an unreasonable burden or expense.

8. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they give meanings to words different than their ordinary English meaning or definitions set forth in applicable statutes or rules.

9. Rapid Rack objects to the definition of "Registrant" as overly broad, overly burdensome, harassing and oppressive to the extent that it encompasses persons or entities over which Rapid Rack has no control.

10. Rapid Rack's responses to these requests, while based on diligent inquiry and investigation by Rapid Rack, necessarily reflect only the current state of Rapid Rack's knowledge, understanding and belief based upon the information reasonably available to it at this time. Discovery is ongoing, and review of further documents or information may change Rapid Rack's legal position and/or its responses to these requests. Without in any way obligating itself to do so, Rapid Rack reserves the right to modify, supplement, revise or amend these responses and to correct any errors or omissions which may be contained herein, in light of information which it may subsequently obtain or discover. Rapid Rack's responses to these requests are provided without prejudice to Rapid Rack's using, relying on at trial or at any hearing, or otherwise relying on subsequently discovered facts or information, or facts or information omitted from these responses as a result of mistake, error or oversight.

Subject to and without waiver of the foregoing general objections, each of which is incorporated into each individual response below, Rapid Rack responds to Rhino Linings' First Set of Interrogatories as follows:

**RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:**

Identify all products which Registrant provides, has provided, or intends to provide under Registrant's Mark, including the date(s) of first use in commerce and in interstate commerce of Registrant's Mark for each product identified.

**RESPONSE TO INTERROGATORY NO. 1:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack also objects to the extent the request seeks information regarding Rapid Rack's future intentions that are not currently known. Rapid Rack further objects to the extent the request is overly broad, unduly burdensome, and harassing. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack has used the mark identified in United States Trademark Registration No. 1,698,407 on the goods identified in that registration since at least as early as January 1991. Part numbers for storage racks bearing the RHINO RACK Mark include at least the following:

GRL-100

GRL-110

GRL-3012-5

RR 2412

RR 4805

RR 301230

RR 301260

RR 361572

RR 361672

RR 361872-1

RR 361872-2

**INTERROGATORY NO. 2:**

Identify all states in which Registrant provides products under Registrant's Mark.

**RESPONSE TO INTERROGATORY NO. 2:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Racks further objects to this request on the basis that the request is overly broad, unduly burdensome and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects on the basis the term "states" is vague and ambiguous because the request does not indicate which country is referenced with respect to the term "states." Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack provides products bearing the mark shown in U.S. Trademark Registration No. 1,698,407 throughout the United States and the world.

**INTERROGATORY NO. 3:**

Identify the individuals who are most knowledgeable concerning the use of Registrant's Mark between 2000 and the present, and describe each such individual's involvement with respect to Registrant's Mark.

**RESPONSE TO INTERROGATORY NO. 3:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Racks further objects to this request on the basis that the request is overly broad, unduly burdensome and harassing. Rapid Rack further objects that this request seeks information neither relevant to

the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Individuals possessing knowledge concerning the use of the mark shown in U.S. Trademark Registration No. 1,698,407 include:

<u>Name</u>	<u>Title</u>
Dana Coelho	Marketing Specialist
Bruce Meredith	VP Sales and Marketing
Brian Eustace	Director of Engineering

**INTERROGATORY NO. 4:**

For each of the products identified in Response to Interrogatory No. 1, state the number of units in dollar volume of monthly sales from January 1, 2000 to the present, and the price of an average sale.

**RESPONSE TO INTERROGATORY NO. 4:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

[REDACTED]

**INTERROGATORY NO. 5:**

For each of the products identified in Response to Interrogatory No. 1, describe in detail how Registrant uses or used Registrant's Mark in connection with the goods.

**RESPONSE TO INTERROGATORY NO. 5:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack at least uses the mark shown in U.S. Trademark Registration No. 1,698,407 to identify Rapid Rack as the source of goods bearing such mark.

**INTERROGATORY NO. 6:**

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2000, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2000.

**RESPONSE TO INTERROGATORY NO. 6:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]



[REDACTED]

**INTERROGATORY NO. 8:**

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2002, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2002.

**RESPONSE TO INTERROGATORY NO. 8:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

[REDACTED]

[REDACTED]

**INTERROGATORY NO. 9:**

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2003, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2003.

**RESPONSE TO INTERROGATORY NO. 9:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack



Registrant sold these products in 2004.

**RESPONSE TO INTERROGATORY NO. 10:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

**INTERROGATORY NO. 11:**

For each of the products listed in Response to Interrogatory No. 1, explain in detail the

channels of distribution in which Registrant distributed such products in 2005, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2005.

**RESPONSE TO INTERROGATORY NO. II:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**INTERROGATORY NO. 12:**

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2006, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2006.

**RESPONSE TO INTERROGATORY NO. 12:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

**INTERROGATORY NO. 13:**

For each of the products listed in Response to Interrogatory No. 1, explain in detail the



[REDACTED]

**INTERROGATORY NO. 14:**

Identify the five (5) largest purchases of Registrant's products provided under Registrant's Mark for each separate year between and including 2000 and 2007, and state the annual dollar amount of products sold to each such purchaser in each such year.

**RESPONSE TO INTERROGATORY NO. 14:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

[REDACTED]

**INTERROGATORY NO. 15:**

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2000 for each of the products identified in Response to

Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 15:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**INTERROGATORY NO. 16:**

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2001 for each of the products identified in Response to Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 16:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response

when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**INTERROGATORY NO. 17:**

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2002 for each of the products identified in Response to Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 17:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**INTERROGATORY NO. 18:**

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2003 for each of the products identified in Response to Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 18:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack

further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**INTERROGATORY NO. 19:**

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2004 for each of the products identified in Response to Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 19:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**INTERROGATORY NO. 20:**

List all periodicals, trade journals, radio and/or television advertisements, and internet

websites where Registrant advertised in 2005 for each of the products identified in Response to Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 20:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**INTERROGATORY NO. 21:**

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2006 for each of the products identified in Response to Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 21:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**INTERROGATORY NO. 22:**

List all periodicals, trade journals, radio and/or television advertisements, and Internet websites where Registrant advertised in 2007 for each of the products identified in Response to Interrogatory No. 1.

**RESPONSE TO INTERROGATORY NO. 22:**

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available.

**INTERROGATORY NO. 23:**

Identify all persons who participated in any way in the preparation of responses to these Interrogatories, specify for each person the specific Interrogatory Responses on which the person participated in preparing a response.

**RESPONSE TO INTERROGATORY NO. 23:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack

further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

Subject to and without waiving these objections, Rapid Rack responds as follows:

<u>Name</u>	<u>Title</u>
Dana Coelho	Marketing Specialist
Dennis Chen	IT Manager
Bruce Meredith	VP Sales and Marketing
Brian Eustace	Director of Engineering

**INTERROGATORY NO. 24:**

Identify all persons who participated in any way in locating or providing documents or things in Response to Petitioner's First Set of Requests for Production of Documents and Things, specify for each person the specific Requests on which the person participated in preparing a response.

**RESPONSE TO INTERROGATORY NO. 24:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Subject to and without waiving these objections, Rapid Rack responds as follows:

<u>Name</u>	<u>Title</u>
Dana Coelho	Marketing Specialist
Dennis Chen	IT Manager
Bruce Meredith	VP Sales and Marketing
Brian Eustace	Director of Engineering

**INTERROGATORY NO. 25:**

Identify all persons having knowledge or information regarding the issues raised in Petitioner's Petition for Cancellation or Registrant's Answer thereto, and provide a summary of the knowledge or information that each such person has.

**RESPONSE TO INTERROGATORY NO. 25:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack additionally objects to the extent this requests seeks information beyond Rapid Rack's possession, custody or control. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

**INTERROGATORY NO. 26:**

Identify each expert that you expect to call as a witness in this proceeding and state with specificity the qualifications of each expert, the subject matter on which each expert is expected to testify, the substance of the experts' opinion, and the grounds of each opinion.

**RESPONSE TO INTERROGATORY NO. 26:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Subject to and without waiving these objections, Rapid Rack responds as follows:

Rapid Rack will supplement the response to this interrogatory if and when Rapid Rack identifies an expert witness.

**INTERROGATORY NO. 27:**

Identify any period(s) of time between January 1, 2000 and the present during which the manufacturing, advertising, production and sales of any of the products identified in Response to Interrogatory No. 1 were discontinued (permanently or temporarily), and specify the nature of and reasons for any such discontinuance.

**RESPONSE TO INTERROGATORY NO. 27:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to multiple interrogatories contained within this request and will count such multiples against the number of interrogatories allowed under Federal Rule of Civil Procedure 33(a).

[REDACTED]

**INTERROGATORY NO. 28:**

Describe in detail all meetings and discussions held by Registrant with respect to whether Registrant would continue to manufacture, advertise, produce, and/or sell any of the products identified in Response to Interrogatory No. 1, stating when such meetings or discussions were held and who was present at each such meeting or discussion.

**RESPONSE TO INTERROGATORY NO. 28:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Rapid Rack also objects to multiple interrogatories contained within this request and will count such multiples against the number of interrogatories allowed under Federal Rule of Civil Procedure 33(a).

**INTERROGATORY NO. 29:**

If Registrant advertises or distributes or has advertised or distributed any work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items under any other mark than Registrant's Mark, identify the other mark(s) under which such goods are or were advertised or distributed and specify the particular products which are or were so advertised and/or distributed and when those products were advertised or distributed.

**RESPONSE TO INTERROGATORY NO. 29:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 30:**

If Registrant advertises or distributes or has advertised or distributed any work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items under any other mark than Registrant's Mark, describe in detail all meetings or discussions held with respect to which mark such goods are or would be advertised or distributed, stating when such meetings or discussions were held and who was present at each meeting or discussion.

**RESPONSE TO INTERROGATORY NO. 30:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any

party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

Rapid Rack also objects to multiple interrogatories contained within this request and will count such multiples against the number of interrogatories allowed under Federal Rule of Civil Procedure 33(a).

**INTERROGATORY NO. 31:**

Identify the individuals who are most knowledgeable concerning Registrant's decision to advertise or distribute any work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items under any other mark than Registrant's Mark.

**RESPONSE TO INTERROGATORY NO. 31:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

**INTERROGATORY NO. 32:**

Describe with specificity any and all proceedings (lawsuits, oppositions, cancellations) between Registrant and any other entity (other than the present Petitioner) which in any way involve Registrant's use of Registrant's Mark between January 1, 2001 and the present.

**RESPONSE TO INTERROGATORY NO. 32:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Rapid Rack also objects to the extent the request seeks information available and accessible to Rhino Linings.

**INTERROGATORY NO. 33:**

Identify the person employed by Registrant who has primary responsibility for maintenance and protection of Registrant's Mark.

**RESPONSE TO INTERROGATORY NO. 33:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

**INTERROGATORY NO. 34:**

Provide the complete factual basis for the averment that Registrant's Mark was in use by Registrant as of March 26, 2002, as set forth and contained in the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant

with the United States Patent and Trademark Office on April 9, 2002.

**RESPONSE TO INTERROGATORY NO. 34:**

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

**INTERROGATORY NO. 35:**

To the extent not previously stated in your responses to the preceding Interrogatories, state all facts underlying or supporting the allegations contained in your Answer to the Petition for Cancellation filed in this matter.

**RESPONSE TO INTERROGATORY NO. 35:**

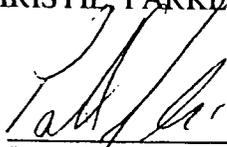
Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

Opposition No. Cancellation No. 92048271

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date 6-24-08

By 

Patrick J. Orme  
David A. Dillard  
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626/795-9900

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TRADEMARK  
Docket No. 110.2\*1/R643  
Cancellation No. 92048271  
Registration No. 1,698,407

**CERTIFICATE OF TRANSMISSION AND SERVICE**

I certify that on June 24, 2008, the foregoing document REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES is being served by mailing a copy thereof by first-class mail addressed to:

David A. Harlow  
Joe Dowdy  
GlenLake One, Suite 200  
NELSON, MULLINS RILEY & SCARBOROUGH LLP  
4140 Parklake Avenue  
Raleigh, North, Carolina 27612

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

  
Roxanne Gaines  
CHRISTIE, PARKER & HALE, LLP  
PO Box 7068  
Pasadena, CA 91109-7068

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

RHINO LININGS, USA, INC.

Petitioner,

v.

PATRIARCH PARTNERS AGENCY  
SERVICES, LLC (RAPID RACK  
INDUSTRIES, INC.)

Respondent.

Cancellation No. 92048271

Registration No. 1,698,407

Date of Issue: June 30, 1992

**REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Registrant, Rapid Rack Industries, Inc. ("Rapid Rack") responds to Petitioner Rhino Linings USA, Inc. ("Petitioner") First Set of Requests for Production of Documents and Things as follows:

**GENERAL OBJECTIONS**

Rapid Rack states the following General Objections and Notes with respect to each request, whether or not restated specifically in each response, and incorporates the objections and notes into each response. The objections to individually numbered requests in the response following each such request are intended to reinforce and/or supplement these General Objections and Notes, and do not limit the applicability of the General Objections and Notes that

are incorporated in each response.

1. Rapid Rack objects to Rhino Linings' definitions, instructions and requests to the extent that they are inconsistent with or purport to impose a duty of disclosure that is greater than or different from that required under the applicable Federal Rules of Civil Procedure, the Trademark Rules of Practice, Title 37 of the Code of Federal Regulations, or the Trademark Trial and Appeal Board Manual of Procedure.

2. Rapid Rack objects to Rhino Linings' definitions, instructions and requests to the extent that they purport to require the disclosure of information that is protected by attorney-client privilege, work-product doctrine or other applicable privilege or protection from disclosure. Such information shall not be disclosed in response to Rhino Linings' Requests, and any inadvertent disclosure thereof shall not be a waiver of any privilege with respect to such information or of any work product protection which may attach thereto.

3. Rapid Rack objects to Rhino Linings' definitions, instructions and requests to the extent that they purport to require the disclosure of information that is not relevant to the claim or defense of any party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Rapid Rack objects to Rhino Linings' definitions, instructions and requests to the extent that they purport to require the disclosure of information that constitutes or contains trade secrets or other confidential research, development, proprietary or commercial information of Rapid Rack and/or third parties, or information that Rapid Rack is under an obligation to a third party to not disclose. Any documents containing such information are provided strictly subject to the Standard Protective Order in force pursuant to 37 C.F.R. § 116(g).

5. Rapid Rack objects to Rhino Linings' definitions, instructions and requests to the

extent that they purport to require the disclosure information that does not exist or is not in Rapid Rack's possession, custody or control.

6. Rapid Rack objects to the requests generally, and to each request contained therein, to the extent that they seek legal conclusions or information regarding Rapid Rack's legal theories or strategies.

7. Rapid Rack objects to Rhino Linings' definitions, instructions and requests to the extent that they impose on Rapid Rack an unreasonable burden or expense.

8. Rapid Rack objects to Rhino Linings' definitions, instructions and requests to the extent that they give meanings to words different than their ordinary English meaning or definitions set forth in applicable statutes or rules.

9. Rapid Rack objects to the definition of "Registrant" as overly broad, overly burdensome, harassing and oppressive to the extent that it encompasses persons or entities over which Rapid Rack has no control.

10. Rapid Rack's responses to these requests, while based on diligent inquiry and investigation by Rapid Rack, necessarily reflect only the current state of Rapid Rack's knowledge, understanding and belief based upon the information reasonably available to it at this time. Discovery is ongoing, and review of further documents or information may change Rapid Rack's legal position and/or its responses to these requests. Without in any way obligating itself to do so, Rapid Rack reserves the right to modify, supplement, revise or amend these responses and to correct any errors or omissions which may be contained herein, in light of information which it may subsequently obtain or discover. Rapid Rack's responses to these requests are provided without prejudice to Rapid Rack's using, relying on at trial or at any hearing, or otherwise relying on subsequently discovered facts or information, or facts or information

omitted from these responses as a result of mistake, error or oversight.

Subject to and without waiving the foregoing objections, each of which is specifically incorporated into each individual response below, Rapid Rack responds to Rhino Lining's First Set of Requests for Production of Documents and Things as follows:

**REQUEST FOR PRODUCTION NO. 1:**

Representative documents, specimens, and things which identify use of Registrant's Mark in 2000.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 2:**

Representative documents, specimens, and things which identify use of Registrant's Mark in 2001

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 3:**

Representative documents, specimens, and things which identify use of Registrant's Mark in 2002.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 4:**

Representative documents, specimens, and things which identify use of Registrant's Mark in 2003.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 5:**

Representative documents, specimens, and things which identify use of Registrant's Mark in 2004.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 6:**

Representative documents, specimens, and things which identify use of Registrant's Mark in 2005.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 7:**

Representative documents, specimens, and things which identify use of Registrant's Mark in 2006.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 8:**

Representative documents, specimens, and things which identify use of Registrant's Mark from January 1, 2007 to the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 9:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark in 2000.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 10:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark in 2001.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 11:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark in 2002.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 12:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark in 2003.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 13:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark in 2004.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 14:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark in 2005.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 15:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark in 2006.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 16:**

Representative documents, specimens, and things which identify use in commerce of Registrant's Mark from January 1, 2007 to the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 17:**

Any specimens of use of Registrant's Mark in commerce in 2000 that are self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 18:**

Any specimens of use of Registrant's Mark in commerce in 2001 that are self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 19:**

Any specimens of use of Registrant's Mark in commerce in 2002 that are self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 20:**

Any specimens of use of Registrant's Mark in commerce in 2003 that are self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 21:**

Any specimens of use of Registrant's Mark in commerce in 2004 that are self-authenticating as to the date of use:

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 22:**

Any specimens of use of Registrant's Mark in commerce in 2005 that are self-

authenticating as to the date of use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 23:**

Any specimens of use of Registrant's Mark in commerce in 2006 that are self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 24:**

Any specimens of use of Registrant's Mark in commerce from January 2, 2007 to the present, that are self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating." Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 25:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way in 2000.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 26:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way in 2001.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 27:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way in 2002.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 28:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements,

brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way in 2003.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 29:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way in 2004.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 30:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way in 2005.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 31:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way in 2006.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 32:**

Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's

Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way from January 1, 2007 to the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 33:**

Representative documents and things identifying the number of units sold per month and dollar volume of annual sales of each product identified in Registrant's Response to Interrogatory No. 1 in each year from January 1, 2000 to the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 34:**

Representative documents and things identifying Registrant's annual advertising, promotion, and marketing expenditures relating to the sale or offering for sale of goods on which Registrant's Mark was used in each year between January 1, 2000 and the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 35:**

Representative documents and things identifying the channels of distribution of the products identified in Response to interrogatory No. 1 in each year between January 1, 2000 and the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 36:**

Representative documents which evidence the geographic extent to which Registrant used its mark in each year between January 1, 2000 and the present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced.

**REQUEST FOR PRODUCTION NO. 37:**

All documents which illustrate, describe, discuss, document, chart, or otherwise refer to or relate to Registrant manufacturing, advertising, producing and/or selling work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items under any other mark that Registrant's Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents

that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 38:**

All documents which illustrate, describe, discuss, document, chart, or otherwise refer to or related to any decision by Registrant to continue or discontinue the manufacturing, advertising, production and/or sale of any goods in connection with Registrant's Mark, including but not limited to the products identified in Response to Interrogatory No. 1.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

Subject to the foregoing objections, Rapid Rack states that relevant, non-privileged documents, if any, responsive to this request will be produced. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

**REQUEST FOR PRODUCTION NO. 39:**

All documents which Registrant relied upon in preparing the document styled

“Combined Declaration of Use in Commerce and Application for Renewal of Trademark” filed by Registrant with the United States Patent and Trademark Office on April 9, 2002.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request as unduly burdensome and harassing. Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

**REQUEST FOR PRODUCTION NO. 40:**

All documents not specified above, but which are identified in Registrant’s responses to Petitioner’s First Set of Interrogatories to Registrant or were referred to in any way in making such responses.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

Rapid Rack incorporates its General Objections herein. Rapid Rack objects to this request on the ground that it is overly broad to the extent it seeks the production of documents that are not relevant to any issue in this litigation nor likely to lead to the discovery of admissible evidence. Rapid Rack also objects to this request as unduly burdensome and harassing. Rapid Rack further objects to the extent this requests seeks documents protected by attorney-client privilege and/or the attorney work product doctrine and/or other privileges.

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Opposition No. Cancellation No. 92048271

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Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date 6-24-08

By

  
Patrick J. Oimé

Attorneys for Applicant

P.O. Box 7068

Pasadena, California 91109-7068

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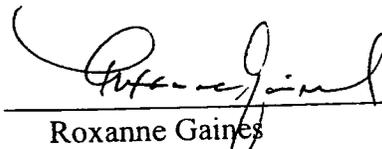
TRADEMARK  
Docket No. 110.2\*1/R643  
Cancellation No. 92048271  
Registration No. 1,698,407

**CERTIFICATE OF TRANSMISSION AND SERVICE**

I certify that on June 24, 2008, the foregoing document REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS is being served by mailing a copy thereof by first-class mail addressed to:

David A. Harlow  
Joe Dowdy  
GlenLake One, Suite 200  
NELSON, MULLINS RILEY & SCARBOROUGH LLP  
4140 Parklake Avenue  
Raleigh, North, Carolina 27612

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



Roxanne Gaines  
CHRISTIE, PARKER & HALE, LLP  
PO Box 7068  
Pasadena, CA 91109-7068

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

RHINO LININGS, USA, INC.

Petitioner,

v.

PATRIARCH PARTNERS AGENCY  
SERVICES, LLC (RAPID RACK  
INDUSTRIES, INC.)

Registrant.

Cancellation No. 92048271

Registration No. 1,698,407

Date of Issue: June 30, 1992

**REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF  
REQUESTS FOR ADMISSION**

Registrant, Rapid Rack Industries, Inc. ("Registrant") hereby serves the following Responses to Petitioner's First Set of Requests for Admission upon the Petitioner Rhino Linings USA, Inc. ("Petitioner").

**REQUEST FOR ADMISSION NO. 1:**

Registrant did not use Registrant's Mark in calendar year 2000.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 2:**

Registrant did not use Registrant's Mark in commerce in calendar year 2000.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 3:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2000.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 4:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2000.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable Registrant to admit or deny the statement and therefore denies

the same.

**REQUEST FOR ADMISSION NO. 5:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2000 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 6:**

Registrant did not use Registrant's Mark in calendar year 2001.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 7:**

Registrant did not use Registrant's Mark in commerce in calendar year 2001.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 8:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of

Registrant's Mark in calendar year 2001.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 9:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2001.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable Registrant to admit or deny the statement and therefore denies the same.

**REQUEST FOR ADMISSION NO. 10:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2001 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 11:**

Registrant did not use Registrant's Mark in calendar year 2002.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 12:**

Registrant did not use Registrant's Mark in commerce in calendar year 2002.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 13:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2002.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 14:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in

calendar year 2002.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable Registrant to admit or deny the statement and therefore denies the same.

**REQUEST FOR ADMISSION NO. 15:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2002 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 16:**

Registrant did not use Registrant's Mark in calendar year 2003.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 17:**

Registrant did not use Registrant's Mark in commerce in calendar year 2003.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 18:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2003.

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 19:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2003.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable Registrant to admit or deny the statement and therefore denies

the same.

**REQUEST FOR ADMISSION NO. 20:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2003 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 21:**

Registrant did not use Registrant's Mark in calendar year 2004.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 22:**

Registrant did not use Registrant's Mark in commerce in calendar year 2004.

**RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 23:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of

Registrant's Mark in calendar year 2004.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 24:**

Registrant cannot produce a specimen of use in commerce in calendar year 2004.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable Registrant to admit or deny the statement and therefore denies the same.

**REQUEST FOR ADMISSION NO. 25:**

Registrant cannot produce a specimen of use in commerce in calendar year 2004 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 26:**

Registrant did not use Registrant's Mark in calendar year 2005.

**RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 27:**

Registrant did not use Registrant's Mark in commerce in calendar year 2005.

**RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 28:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2005.

**RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 29:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2005.

**RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable Registrant to admit or deny the statement and therefore denies the same.

**REQUEST FOR ADMISSION NO. 30:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2005 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 31:**

Registrant did not use Registrant's Mark in calendar year 2006.

**RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 32:**

Registrant did not use Registrant's Mark in commerce in calendar year 2006.

**RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 33:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2006.

**RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 34:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2006.

**RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Notwithstanding the above objections and without waiver thereof, despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable Registrant to admit or deny the statement and therefore denies the same.

**REQUEST FOR ADMISSION NO. 35:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2006 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 36:**

Registrant did not use Registrant's Mark for at least a part of calendar year 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "at least a part of calendar year 2007" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 37:**

Registrant did not use Registrant's Mark in commerce for at least a part of calendar year 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" and "at least a part of calendar year 2007" are undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 38:**

Registrant cannot produce any documentary or demonstrative evidence or proof of use of

Registrant's Mark for all of calendar year 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" and "all of calendar year 2007" are undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 39:**

Registrant cannot produce a specimen of use of Registrant's Mark in commerce for all of calendar year 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" and "all of calendar year 2007" are undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 40:**

Registrant cannot produce a specimen of use in commerce in calendar year 2007 that is self-authenticating as to the date of use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "specimen of use" is undefined and unclear. Registrant also objects to this request to the extent it calls for a legal conclusion regarding "self-authenticating" and therefore denies the same.

**REQUEST FOR ADMISSION NO. 41:**

In 2000, Registrant marketed and/or sold all of its industrial shelving and other industrial

storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "other industrial storage goods" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 42:**

In 2001, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "other industrial storage goods" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 43:**

In 2002, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "other industrial storage goods" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 44:**

In 2003, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 44:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that

“other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 45:**

In 2004, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 45:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 46:**

In 2005, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 46:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 47:**

In 2006, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 47:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 48:**

In 2007, Registrant marketed and/or sold all of its industrial shelving and other industrial

storage goods under the brand name RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 48:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 49:**

In 2000, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 49:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 50:**

In 2001 Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 50:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 51:**

In 2002, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 51:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that

“other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 52:**

In 2003, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 52:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 53:**

In 2004, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 53:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 54:**

In 2005, Registrant marketed and/or sold all of its industrial shelving and other storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 54:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 55:**

In 2006, Registrant marketed and/or sold all of its industrial shelving and other industrial

storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 55:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 56:**

In 2007, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 56:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other industrial storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 57:**

In 2000, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 57:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 58:**

In 2001, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 58:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that

“other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 59:**

In 2002, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 59:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 60:**

In 2003 Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 60:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 61:**

In 2004, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 61:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 62:**

In 2005, Registrant marketed and/or sold all of its consumer shelving and other consumer

storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 62:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 63:**

In 2006, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 63:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 64:**

In 2007, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 64:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 65:**

In 2000, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 65:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that

“other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 66:**

In 2001, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 66:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 67:**

In 2002, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 67:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 68:**

In 2003, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 68:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 69:**

In 2004, Registrant marketed and/or sold all of its consumer shelving and other consumer

storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 69:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 70:**

In 2005, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 70:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 71:**

In 2006, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 71:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 72:**

In 2007, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

**RESPONSE TO REQUEST FOR ADMISSION NO. 72:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that

“other consumer storage goods” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 73:**

Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2000.

**RESPONSE TO REQUEST FOR ADMISSION NO. 73:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “Registrant's Mark” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 74:**

Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2001

**RESPONSE TO REQUEST FOR ADMISSION NO. 74:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “Registrant's Mark” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 75:**

Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2002.

**RESPONSE TO REQUEST FOR ADMISSION NO. 75:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “Registrant's Mark” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 76:**

Registrant had discontinued the marketing and/or sale of any products in connection with

Registrant's Mark as of 2003.

**RESPONSE TO REQUEST FOR ADMISSION NO. 76:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 77:**

Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2004

**RESPONSE TO REQUEST FOR ADMISSION NO. 77:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 78:**

Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2005.

**RESPONSE TO REQUEST FOR ADMISSION NO. 78:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 79:**

Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2006.

**RESPONSE TO REQUEST FOR ADMISSION NO. 79:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that

“Registrant’s Mark” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 80:**

Registrant had discontinued the marketing and/or sale of any products in connection with Registrant’s Mark as of 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 80:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “Registrant’s Mark” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 81:**

Registrant is the owner of the Internet website, [www.rapidrack.com](http://www.rapidrack.com) (the “Rapid Rack website”).

**RESPONSE TO REQUEST FOR ADMISSION NO. 81:**

Admitted.

**REQUEST FOR ADMISSION NO. 82:**

The Rapid Rack website does not indicate that any goods are being marketed under the Registrant’s Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 82:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that “Registrant’s Mark” is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 83:**

The Rapid Rack website does not refer to any goods that are being marketed under the Registrant’s Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 83:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 84:**

The Rapid Rack website has never referred to goods being marketed under the Registrant's Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 84:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 85:**

Registrant resumed sales of products under the RHINO RACK logo in 2007 after several years of not selling products under the RHINO RACK logo.

**RESPONSE TO REQUEST FOR ADMISSION NO. 85:**

Denied.

**REQUEST FOR ADMISSION NO. 86:**

There was no basis in fact for the Declaration of Use in Commerce (the "Declaration of Use") filed by Registrant with respect to Registrant's Mark on April 9, 2002.

**RESPONSE TO REQUEST FOR ADMISSION NO. 86:**

Denied.

**REQUEST FOR ADMISSION NO. 87:**

The Declaration of Use was made by an authorized agent of Registrant who had

knowledge that the Declaration of Use was false.

**RESPONSE TO REQUEST FOR ADMISSION NO. 87:**

Denied.

**REQUEST FOR ADMISSION NO. 88:**

The Declaration of use was intended by registrant to induce the United States Patent and Trademark Office to determine that Registrant's Mark should remain alive for having continued in use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 88:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" is undefined and unclear and therefore denies the same.

**REQUEST FOR ADMISSION NO. 89:**

The Declaration of use did induce the United States Patent and Trademark Office to determine that Registrant's mark should remain alive for having continued in use.

**RESPONSE TO REQUEST FOR ADMISSION NO. 89:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Declaration of use" is undefined and unclear because several such declarations have been filed and therefore denies the same.

**REQUEST FOR ADMISSION NO. 90:**

Registrant's current use of Registrant's Mark, if any, is junior to the senior applications filed by Petitioner with respect to Petitioner's Marks.

**RESPONSE TO REQUEST FOR ADMISSION NO. 90:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" and "Petitioner's Marks" are undefined and unclear. Registrant also objects that despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable them to admit or deny the statement because information relevant to this request is in the possession of Petitioner. Notwithstanding the above objections and without waiver thereof, Registrant denies the request.

**REQUEST FOR ADMISSION NO. 91:**

Petitioner is damaged and will continue to be damaged because the continued Registration of Registrant's Mark stands as a potential bar to Petitioner's ability to federally register and protect the Petitioner's Marks.

**RESPONSE TO REQUEST FOR ADMISSION NO. 91:**

Registrant objects to this request on the grounds that it is vague and ambiguous in that "Registrant's Mark" and "Petitioner's Marks" are undefined and unclear. Registrant also objects that despite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable them to admit or deny the statement because information relevant to this request is in the possession of Petitioner and therefore denies the same.

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Opposition No. Cancellation No. 92048271

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Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date 6-24-08

By 

Patrick J. Orme

Attorneys for Applicant

P.O. Box 7068

Pasadena, California 91109-7068

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TRADEMARK  
Docket No. 110.2\*1/R643  
Cancellation No. 92048271  
Registration No. 1,698,407

**CERTIFICATE OF TRANSMISSION AND SERVICE**

I certify that on June 24, 2008, the foregoing document REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION is being served by mailing a copy thereof by first-class mail addressed to:

David A. Harlow  
Joe Dowdy  
GlenLake One, Suite 200  
NELSON, MULLINS RILEY & SCARBOROUGH LLP  
4140 Parklake Avenue  
Raleigh, North, Carolina 27612

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



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July 11, 2008



Via Electronic Mail and  
First Class Mail

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Re: Rapid Rack's Deficient Discovery Responses  
*Rhino Linings USA, Inc. v. Patriarch Partners Agency Services, LLC (Rapid Rack  
Industries, Inc.)*, Cancellation No. 92048271

Dear Patrick:

We are writing to address the purported discovery responses from Rapid Rack Industries, Inc. ("Rapid Rack" or "Registrant"), which our office received on June 26, 2008. There are a substantial number of material, prejudicial deficiencies with respect to both Rapid Rack's written responses and its document production, notwithstanding that Rapid Rack had nearly eight months to prepare its responses and to gather responsive documents. Below you will find a brief contextual discussion and an outline of these deficiencies. Given the numerous extensions of time it has already received in this case, we ask for your assurance no later than Wednesday, July 16, 2008, that your client will correct its very serious discovery violations immediately.

**BACKGROUND.** In the present cancellation proceeding, our client Rhino Linings, USA Inc. ("Rhino Linings" or "Petitioner"), seeks cancellation of Rapid Rack's RHINO RACK Mark, Registration No. 1,698,407 ("Registrant's Mark"), on the grounds that (1) Rapid Rack has abandoned Registrant's Mark, and (2) a Declaration of Use filed by Rapid Rack on April 9, 2002 constituted fraud on the Trademark Office. The heart of this entire cancellation proceeding is what we believe to be your client's clear abandonment of its Mark.

Long before filing the Petition for Cancellation, we contacted your colleague, David Dillard, to request evidence that Rapid Rack had not abandoned its RHINO RACK Mark.

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July 11, 2008  
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Specifically, On July 23, 2007, I sent a letter to Mr. Dillard asking for evidence that the Mark is, and had been, in use. He failed to respond. I contacted him again on September 11, 2007 and reiterated my request for proof that the RHINO RACK Mark was in use. Further, in my second letter, I specifically informed Mr. Dillard that, if Rapid Rack failed to provide evidence of use, we would assume that the Mark was not in use and would proceed accordingly. In response, Mr. Dillard provided only his unsupported statement that the Mark was and had been in use and two specimens that did not demonstrate that the Mark was in use. Based on several months of non-responsiveness by your client, we were forced to initiate the present action.

Thus, we find ourselves in a cancellation proceeding that itself is the direct result of your client's inability or unwillingness to provide any evidence of use. Your client's utter non-responsiveness—before the filing of the Petition for Cancellation, in its Answer to the Petition for Cancellation, and now in response to discovery requests concerning use of the RHINO RACK Mark—goes directly to the heart of what this cancellation is about.

On October 15, 2007, after months of informal attempts to obtain evidence of use, Rhino Linings finally filed its Petition for Cancellation. On November 8, 2007, Rapid Rack filed its Answer to the Petition for Cancellation. The vast majority of Rapid Rack's responses stated that Rapid Rack was "without sufficient knowledge or information to either admit or deny the allegations contained in . . . the Petition for Cancellation and on that basis, denies the allegations contained therein." It now appears that Rapid Rack did very little to investigate the core allegations set forth in the Petition for Cancellation and, further, that it has done very little investigation regarding the core allegations of the Petition for Cancellation since answering.

On October 19, 2007, the TTAB entered a Scheduling Order. The Scheduling Order provided for the discovery period to open on November 8, 2007. In accordance with the Scheduling Order, on November 12, 2007, Rhino Linings propounded first sets of Interrogatories, Requests for the Production of Documents and Things, and Requests for Admissions to Rapid Rack<sup>1</sup> (the "discovery requests"). As outlined below, Rapid Rack did not answer these requests for more than seven months after receiving them.

On December 12, 2007—the day that Rapid Rack's discovery responses were due—you contacted my colleague, David Harlow, to request a twenty-day extension of time. Mr. Harlow allowed the extension, based on your assurances that Rapid Rack would provide responses by January 4, 2008. Per your request, we thereafter allowed another informal extension, thereby re-setting the deadline for mid-January. On January 15, 2008, you requested an additional one week extension, and provided your assurances that "Rapid Rack

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<sup>1</sup> The original Scheduling Order also provided for the discovery period to close on May 6, 2008. Although the close of discovery has been changed by the Board, it is noteworthy that Rapid Rack did not submit any responses to Rhino Linings's written discovery requests within the original six-month discovery period established by the TTAB.

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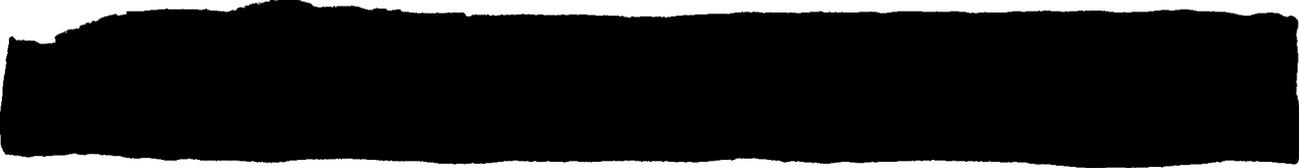
will respond by January 22, 2008.” We agreed to this extension, also, based on your representations that our clients might be able to work out a resolution without further litigation.

Rather than responding to the outstanding discovery requests on January 22, 2008, you sent an e-mail to Mr. Harlow and me in which you asked that we enter into a joint suspension of proceedings to allow “discussions regarding a concurrent use agreement.” Your e-mail represented that Rapid Rack had reviewed the pictures of Rhino Linings products that I had forwarded to you and was willing to have such discussions. Not realizing that your client was only seeking to delay, and in hopes of productive settlement discussions, we agreed to a joint suspension of proceedings. The Board allowed the suspension of the proceedings, and ordered that proceedings resume on May 25, 2008. The suspension proved unproductive, because your client failed to negotiate in good faith towards a concurrent use agreement and instead essentially insisted that Rhino Linings withdraw its pending applications which have been adversely affected by the registration of Registrant’s Marks.

On May 27, 2008, you contacted Mr. Harlow and requested that Rapid Rack be allowed until June 13, 2008 to respond, and you agreed to respond on that date. You thereafter e-mailed Mr. Harlow and indicated that your client would not provide its responses until June 24, 2008, based on the standard language in the Order allowing suspension, which stated that the parties would have thirty days from the resumption of proceedings to respond to outstanding discovery. Although we subsequently agreed to an additional one-day extension pursuant to a request from you in late June, your client finally served what it represented as being discovery responses on June 24, 2008.

Rapid Rack’s discovery responses are inadequate in almost every conceivable way— notwithstanding that Rapid Rack took nearly eight months following service of those discovery requests and more than nine months since the filing of the present cancellation action—to make those responses. As set forth below, Rapid Rack’s evasive, incomplete, and otherwise inadequate responses violate the applicable discovery rules and violate Rule 11’s good faith requirement. It is long past the time within which Rapid Rack reasonably should have responded fully and completely to Rhino Linings’s discovery requests. We demand that Rapid Rack correct all the deficiencies with its discovery requests immediately.

**DISCOVERY VIOLATIONS—GENERAL AND RECURRING PROBLEMS.** As already indicated, Rapid Rack’s discovery responses are deficient in almost every conceivable way. There are a number of improprieties which are common throughout the discovery responses. For organizational purposes, I will address those improprieties before undertaking a more comprehensive review of each separate discovery violation.



***Rapid Rack's Unsupported Contention That Information Exists, But Cannot Be Accessed.*** Rapid Rack has refused to provide a full and complete response to Interrogatories Nos. 6-13 on the grounds that "much of the requested information is not readily available due to its location in old, possibly corrupt and no longer readily accessible databases." Rapid Rack states that it "will continue to attempt to access the requested information and will supplement its response if and when such information becomes available."

Rapid Rack has failed to provide any description of the information which it claims exists but is not readily available or to provide any basis for its contention that the information ever existed in the first place. Rapid Rack likewise has failed to explain its assertion that some of its files are "possibly corrupt," such that they cannot be "readily accessed." Finally, although the interrogatory responses state that Rapid Rack will "continue to attempt to access the requested information," they fail to set forth what efforts, if any, Rapid Rack has made to retrieve the information. The applicable interrogatories need to be supplemented immediately to provide this information. Further, we demand that Rapid Rack provide us with the names of the individuals who searched for information responsive to the discovery requests at issue, and demand that Rapid Rack provide us with copies of the databases so that we may review them.

***Rapid Rack's Failure To Provide Information Based On Its Assertion That Some Information Possibly May Have Been Destroyed By Flood.*** Rapid Rack has refused to provide any answer to Interrogatories Nos. 15-21 on the grounds that it is still looking for the answer (after eight months) and that "some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005." Similarly, Rapid Rack has alleged possible flood damage as a potential reason for withholding documents responsive to Requests for Production Nos. 25-32, 34, 37, and 38. Surprisingly, the alleged flood in 2005 has been offered as an excuse for the failure to provide information concerning use of the mark in advertising in 2006, in response to Interrogatory No. 21 and Request for Production No. 31.

Rapid Rack has failed to provide a factual basis for its apparent belief that there is any evidence which is responsive to the Interrogatories at issue, has failed to explain the nature of the files which "may have been destroyed," and has failed to explain what efforts, if any, Rapid Rack has made to determine whether any responsive information was in fact destroyed. Rapid Rack has had nearly nine months since the filing of the Petition for Cancellation, and nearly eight months since receiving the discovery requests at issue, to make these determinations, yet it apparently has failed to do so. The applicable interrogatory responses and responses to requests to produce need to be supplemented immediately to provide the missing information. Further, we demand that Rapid Rack provide us with the names of the individuals who searched for information responsive to the discovery requests at issue.

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In conjunction with this demand for supplementation also, we request depositions of the records custodian(s) or other Rapid Rack employee(s) with knowledge of the files, if any, destroyed by flood and of the person(s) most knowledgeable about the information requested in Interrogatories Nos. 15-21 and Requests for Production Nos. 25-32, 34, 37, and 38. Examination will be conducted on the complete factual basis for Rapid Rack's assertion, in response to any of these discovery requests, that "Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005." By Wednesday, July 16, 2008, please identify the appropriate individuals and provide me with their availability for the requested deposition(s), which need to go forward on or before July 31, 2008.

***Rapid Rack's Use Of Unfounded Objections To Obstruct Discovery.*** For practically every discovery request propounded, Rapid Rack has objected on the grounds of undue burden, irrelevancy, privilege, and contentions that defined terms or other self-explanatory terms have not been defined. In each instance, this contention is wholly frivolous. These practices are addressed in detail below. However, by way of example only, Rapid Rack has objected to nearly every request for admission—and has denied many of them—on the grounds that the term "Registrant's Mark" is undefined. In fact, the term is defined in the discovery requests themselves as well as in the Petition for Cancellation. Where Rapid Rack has withheld discovery on the basis of its boilerplate objections, it needs to provide the withheld responses in accordance with the discovery rules.

***Rapid Rack's Improper Refusal to Specify Whether There Are Responsive Documents To Particular Discovery Requests.*** In its written responses to Requests for Production Nos. 1-17, 25-38, Rapid Rack states that "relevant, non-privileged documents, if any, responsive to [the] request [at issue] will be produced." This answer is improper. First, Rapid Rack is required to produce all responsive documents, not only those documents it independently deems to be relevant. Second, Rapid Rack must state whether it has actually produced responsive documents and whether it has withheld documents because of an objection, with sufficient particularity to allow the Interlocutory Attorney adjudicate the propriety of the objections. Third, Rapid Rack should identify which documents are responsive to each request.

***Rapid Rack's Failure To Produce A Privilege Log.*** Although not completely clear, it appears that Rapid Rack has refused to answer certain discovery requests based on assertions of privilege. This appears to be the case with respect to Requests for Production Nos. 17-24 and 38-40. Rapid Rack has also objected to responding to numerous interrogatories on the basis of privilege, including Interrogatories Nos. 23-26, 28, and 30-35. To date, however, we have not received a privilege log or been notified that a privilege log is forthcoming. If Rapid Rack has withheld any information on the basis of privilege or work product doctrine, then it needs to provide a privilege log immediately so that the Interlocutory Attorney can rule on the propriety of Rapid Rack's objections.

**SPECIFIC DEFECTS—INTERROGATORY RESPONSES.** In addition to the foregoing general and recurring defects (which require correction in their own right), nearly every interrogatory response submitted by Rapid Rack is incomplete, evasive, not-responsive, or otherwise improper. We will address each problematic response below.

*Interrogatory No. 1.* Interrogatory No. 1 seeks all products which Rapid Rack provides, has provided, or intends to provide under Registrant's Mark and the date(s) of first use in commerce and in interstate commerce for each product identified. Rapid Rack has not answered either portion of this interrogatory. Instead, Rapid Rack has evasively and improperly stated that it has used the mark "on the goods identified in [Registration No. 1,698,407]," without providing the specific products in connection with which it has used the mark. Rapid Rack has likewise stated only that it has used the mark in connection with its generalized description of the goods contained in its registration "since at least as early as 1991."



Whatever the case, answer to Interrogatory No. 1 is non-responsive for three reasons. First, the products being listed are not identified in a clear manner (such as by name or general description). Second, the answer does not purport to identify "all products" as is requested in the interrogatory and instead appears to provide a non-exhaustive list. Third, the answer lacks dates of first use in commerce and in interstate commerce in connection with Registrant's Mark as is requested in the interrogatory.

*Interrogatory No. 2.* Interrogatory No. 2 requests the identification of all states in which Rapid Rack provides products under Registrant's Mark. Contrary to Rapid Rack's boilerplate objection, this interrogatory is reasonably calculated to lead to the discovery of admissible evidence, as the responsive information would permit Rhino Linings to contact retailers in each state to see if products bearing the mark were actually distributed. Rapid Rack's response, namely, that "Rapid Rack provides products bearing the mark shown in U.S. Trademark Registration No. 1,698,407 throughout the United States and the world," is incomplete. This answer needs to be supplemented to provide the level of specificity requested in the interrogatory (namely, the identification of each state in the United States in which Rapid Rack has provided products under Registrant's Mark).

*Interrogatory No. 3.* Interrogatory No. 3 seeks the identification of the individuals who are most knowledgeable concerning the use of Registrant's Mark between 2000 and the present and a description of each such individual's involvement with respect to the Mark. Rapid Rack

has provided neither. Instead, Rapid Rack has provided a list of individuals who are said to have knowledge of use of the Mark, without representing (1) that they are the persons most knowledgeable concerning the use of the mark, or (2) a description of their respective involvement concerning the Mark.

***Interrogatory No. 4.*** Interrogatory No. 4 asks Rapid Rack to state the number of units in dollar volume of monthly sales from January 2001 to present for each of the products identified in response to Interrogatory No. 1 and the price of the average sale. For reasons which are not clear, your client has objected on the grounds of relevancy. The information requested plainly is relevant to show whether the mark was being used in the time period identified. Rather than provide a response as required by the discovery rules, Rapid Rack has produced 515 pieces of paper, which fail to clearly identify the products sold by name or general description, and has incorrectly asserted that “[t]he burden of deriving or ascertaining the answer to this interrogatory to the extent possible is substantially the same for Rhino Linings as it is for Rapid Rack.” If there have in fact been sales of the products bearing Registrant’s Mark, as Rapid Rack contends, then Rapid Rack should be able to provide information regarding the volumes of its sales. This information needs to be provided. Further, to make the documents provided comprehensible, Rapid Rack needs to provide a complete answer to Interrogatory No. 1.

***Interrogatory No. 5.*** Interrogatory No. 5 asks how Rapid Rack uses its Mark *in connection with the products listed in response to Interrogatory No. 1.* Your client has evasively answered “as the source of the goods bearing such mark.” This is not responsive. The answer needs to reflect information concerning how the mark is used, such as whether the Mark is used on packaging or on the products themselves, which (if any) of the products bear the Mark apart from any packaging (and if so where the Mark appears on the products), and whether the mark appears on any advertising or other materials in connection with the products identified. Rapid Rack also needs to bring its response to Interrogatory No. 1 into compliance with the discovery rules, and respond to Interrogatory No. 5 (which refers to the response to Interrogatory No. 1) accordingly.

***Interrogatories Nos. 6-13.*** These interrogatories seek the channels of distribution in which Rapid Rack distributed *each* of the products identified in response to Interrogatory No. 1 and representative outlets through which Rapid Rack sold such products. As set forth in the portion of this letter concerning General and Recurring Problems, each of these interrogatories impermissibly indicates that unspecified information *may* have been withheld because it *may* have been inaccessible. In addition, the information provided is incomplete, for several reasons. First, some of the items listed in Interrogatory No. 1 are not addressed. If these items were not sold in certain years, that information should be provided in response to the appropriate interrogatories. Second, the response to Interrogatory No. 1 needs to be brought into compliance with the discovery rules for these related interrogatories to be compliant. Third, although it appears that Rapid Rack has made some effort to answer the portion of each

interrogatory concerning representative outlets, it has failed to identify the channels of distribution for the products, as is required by the interrogatories.

*Interrogatories Nos. 15-22.* These interrogatories ask for a list of all periodicals, trade journals, radio and/or television advertisements, and Internet websites where Rapid Rack advertised the products identified in response to Interrogatory No. 1 from 2000 through 2007. Rapid Rack has failed to identify a single advertisement of any kind. Instead, Rapid Rack provides its assurances that its "investigation is continuing." Rapid Rack has had more than eight months to investigate, and it needs to respond immediately regarding what it has or has not found. Rapid Rack blames its failure to respond on a 2005 flood that "may have" destroyed responsive information. As set forth above, this answer is completely inadequate. Even if records cannot be found, these interrogatories need to be revised to include information based on the knowledge of Rapid Rack's employees who are or were responsible for advertising the products in question.

*Interrogatories Nos. 23 and 24.* These interrogatories seek the identification of all persons who participated in responding to the interrogatories and document requests propounded to Rapid Rack and the particular responses on which each identified person participated. Rapid Rack has failed to provide information concerning the requests on which each of the identified individuals participated.

*Interrogatory No. 25.* Interrogatory No. 25 seeks the identification of all persons with knowledge of the claims or defenses in the present cancellation proceeding and a summary of each such person's knowledge as it pertains to this case. Rapid Rack has not bothered to answer this interrogatory at all, purportedly on the grounds of relevance and privilege. Obviously, the identification of people with knowledge of the claims and defenses and summaries of their knowledge are reasonably calculated to lead to the discovery of admissible evidence. Further, the interrogatory does not seek communications between Rapid Rack or its counsel and does not seek any work product of counsel. Thus, there is no basis for the complete failure to respond.

*Interrogatory No. 27.* Interrogatory No. 27 asks whether the manufacturing, advertising, production, and sales of any product identified in Response to Interrogatory No. 1 were discontinued at any time between January 1, 2000 and the present and a statement of the reasons for any such discontinuance. Rapid Rack has made no legitimate attempt to respond whatsoever. Instead, Rapid Rack has provided 515 pages of purchase orders and has stated that "the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Rhino Linings as it is for Rapid Rack." Of course, the quoted language is not true because the documents provided (most of which are unclear order forms) certainly do not indicate the reasons for any discontinuances. Thus, the answer to Interrogatory No. 27 is no answer at all. Rapid Rack is in the unique position of knowing whether it has discontinued products—and if so, why—and the discovery rules require that Rapid Rack provide the answer to Interrogatory No. 27.

**Interrogatory No. 28.** Interrogatory No. 28 seeks a detailed description of all meetings concerning whether Rapid Rack would continue to manufacture, advertise, produce, and/or sell the products identified in response to Interrogatory No. 1. Rapid Rack has not even attempted to respond and has instead offered only boilerplate objections. The information is reasonably calculated to lead to the discovery of admissible evidence, namely, evidence concerning whether use of Registrant's Mark was intentionally discontinued and whether Rapid Rack had knowledge of the same when it made contrary representations to the Trademark Office. If you intend to rely on the undue burden objection, we ask that you explain the nature of the burden and identify the individual(s) most knowledgeable of the supposed burden of responding to this interrogatory so that we may depose them on the factual basis for the objection.

**Interrogatory Nos. 29-31.** These interrogatories seek information concerning Rapid Rack's use of other marks under which it has advertised or sold the goods identified in Registration No. 1,698,407. Rapid Rack has refused to provide any response at all on the grounds that the information sought is irrelevant. As you are no doubt aware, Rapid Rack's Internet website tends to indicate that Rapid Rack now sells all of its consumer shelving and storage goods under the Mark GORILLA RACK and that, consequently, it has ceased using the RHINO RACK Mark in connection with such goods. Indeed, this fact is alleged on information and belief in paragraph 9 of the Petition for Cancellation. Thus, the information requested in Interrogatories Nos. 29, 30, and 31 is reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack must respond to these interrogatories.

**Interrogatory No. 32.** Rapid Rack has provided no answer to Interrogatory No. 32, which seeks information concerning other litigation involving Registrant's Mark. Registrant's litigation concerning its mark undoubtedly would be relevant to the present proceedings. We therefore demand that your client respond to this interrogatory.

**Interrogatory No. 33.** Rapid Rack has also failed to respond to Interrogatory No. 33, which seeks the person employed by Rapid Rack who has primary responsibility for maintenance and protection of Registrant's Mark. The apparent bases of the refusal to respond are a number of improper boilerplate objections. The interrogatory needs to be answered.

**Interrogatory No. 34.** Interrogatory No. 34 seeks the complete factual basis for the assertion in a Declaration of Use filed by Rapid Rack on April 9, 2002 that Registrant's Mark was in use by Rapid Rack as of March 26, 2002. Rapid Rack has failed to provide any answer to this interrogatory, other than to reiterate unsubstantiated objections. One of the alleged grounds for cancellation is that Rapid Rack committed fraud on the Trademark Office by making the Declaration of Use referenced in Interrogatory No. 34, a claim which Rapid Rack has denied. Therefore, the interrogatory clearly seeks relevant information. Further, the interrogatory seeks only the factual basis for the statement, it does not seek privileged communications or work product. Rapid Rack must respond to this interrogatory.

Patrick J. Orme  
July 11, 2008  
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***Interrogatory No. 35.*** Interrogatory No. 35 seeks any other facts, not set forth in the preceding interrogatories, which support the statements made in Rapid Rack's Answer. Rapid Rack has impermissibly refused to answer this interrogatory based (again) on boilerplate objections. These objections are unexplained (and unfounded). Rapid Rack must either provide an answer or indicate that it has no additional facts to add.

**SPECIFIC DEFECTS CONCERNING THE RESPONSES TO REQUESTS FOR THE PRODUCTION OF DOCUMENTS.** Rapid Rack similarly has failed to provide adequate responses and responsive documents to the Requests for the Production of Documents and Things, as follows:

***Requests for Production Nos. 1-16.*** Requests for Production Nos. 1-16 seek representative documents, specimens, and things which identify use of Registrant's Mark and use of Registrant's Mark in commerce from 2000 through 2007. Upon review of the documents Rapid Rack has produced, I have been unable to locate any documents responsive to these requests. Please identify a range of Bates numbers which are responsive. Otherwise, the responses to Requests for Production Nos. 1-16 need to be supplemented to note that there are no responsive documents.

***Requests for Production Nos. 17-24.*** Requests for Production Nos. 17-24 seek the production of specimens of use of Registrant's Mark for each year from 2000 through 2007 that are self authenticating as to the date of use. Rapid Rack has refused to provide responsive documents because it contends that Requests for Production Nos. 17-24 call for legal conclusions and seek documents protected by privilege. The objection concerning supposed legal conclusions is unfounded. Rhino Linings seeks the production of documents that meet certain factual criteria, specifically trade inscriptions, signs, tags, or labels affixed in the course of business which contain both the mark and the year of use for years 2000 through 2007. If Rapid Rack has such documents, it should produce them. If it does not, it should say so.

Further, as explained above, no basis has been given for the privilege objection. To the extent any documents have been withheld, we demand a privilege log which will enable the Interlocutory Attorney to determine the propriety of Rapid Rack's decision to withhold documents (if any).

***Requests for Production Nos. 25-32.*** Requests for Production Nos. 25-32 seek the production of representative samples of sales, advertising, marketing and promotional materials, or other documents or things displaying Registrant's Mark from 2000 to 2007. From my review of the production, it appears that Rapid Rack has produced few, if any, documents for the requested time period. The documents produced at RR100505, -512, -528 to 539 are undated. The pictures produced at RR100506 and -507 bear time stamps for May 21, 2008. Further, it appears that no advertising, marketing, or promotional materials have been produced aside from one un-dated industrial catalog (RR100528 to -535). If there are

Patrick J. Orme  
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additional documents, then Rapid Rack needs to produce them immediately. If there are not, then Rapid Rack needs to so indicate.

***Request for Production No. 36.*** Request for Production No. 36 seeks representative documents which evidence the geographic extent to which Rapid Rack used Registrant's Mark from January 1, 2000 to the present. Rapid Rack's response indicates that it will produce responsive documents, but it appears that no responsive documents have been produced.

***Request for Production No. 37.*** Request for Production No. 37 seeks all documents which illustrate, describe, discuss, document, chart, or otherwise refer or relate to Rapid Rack using a mark other than Registrant's Mark in connection with the goods identified in Registration No. 1,698,407. Although Rapid Rack's response indicates that it will produce responsive documents, very few responsive documents have been produced. Noticeably absent are any planning-related documents, internal correspondence, and advertising/marketing materials. These documents (and any other withheld documents) need to be provided.

***Request for Production No. 38.*** Request for Production No. 38 seeks all documents concerning any decision by Rapid Rack to discontinue the manufacturing, advertising, production, or sale of any goods in connection with Registrant's Mark. Rapid Rack's response indicates that it will produce responsive documents; however, our review of the documents actually produced reveals no such documents. Specifically, there are no internal communications or other planning/explanatory documents addressing the discontinuance of a product identified as "RINO RACK" (which is noted at RR100520). These documents (and any other such documents concerning discontinued products or discontinued use of Registrant's Mark) need to be provided.

***Request for Production No. 39.*** Request for Production No. 39 seeks all documents to which Rapid Rack referred or upon which it relied when making its Declaration of Use dated April 9, 2002. Rapid Rack has refused to provide any documents based on relevancy and privilege objections. Obviously, the material is relevant to the claim for fraud on the Trademark Office, and Rapid Rack has not produced a privilege log to support its apparent contention that the documents may be withheld. Responsive documents need to be provided.

***Request for Production No. 40.*** Request for Production No. 40 asks for documents, not otherwise requested, which were referred to by Rapid Rack in making its responses. Rapid Rack has refused to provide such documents. There is no basis for this refusal to produce, and Rapid Rack needs to comply with this request.

**SPECIFIC DEFECTS CONCERNING THE RESPONSES TO REQUESTS FOR ADMISSIONS.**  
Rapid Rack also has failed to provide adequate responses to the Requests for Admissions, as follows:

**Requests for Admissions Nos. 4, 9, 14, 19, 24, 29, and 34.** Requests for Admissions 4, 9, 14, 19, 24, 29, and 34 seek admissions that Rapid Rack cannot produce a specimen of use of Registrant's Mark in commerce in each year between 2000 and 2006. Rapid Rack has answered each such request as follows: "[D]espite a reasonable inquiry, the information known or readily obtainable by Registrant is insufficient to enable [Rapid Rack] to admit or deny the statement and therefore denies the same." This response is manifestly improper. If Rapid Rack does not have a specimen of use that it can produce, then Requests for Admissions Nos. 4, 9, 14, 19, 24, 29, and 34 should be admitted.

**Requests for Admissions Nos. 5, 10, 15, 20, 25, 30, 35, and 40.** Requests for Admissions Nos. 5, 10, 15, 20, 25, 30, 35, and 40 seek admissions that Rapid Rack cannot produce a specimen of use of Registrant's Mark in commerce for each calendar year from 2000 through 2006 that is self-authenticating as to the date of use. Rapid Rack has responded to each such request as follows: "Registrant . . . objects to this request to the extent it calls for a legal conclusion regarding 'self-authenticating' and therefore denies the same." This response is improper, for several reasons. First, the mere fact that the term "self-authenticating," as used in these requests, is defined by Rule 902 of the Federal Rules of Evidence is insufficient to make the requests objectionable. Rule 36(a)(1)(A) of the Federal Rules of Civil procedure expressly provides that a party may seek an admission of "facts, the application of law to fact, or opinions about either." Thus, even assuming, *arguendo*, that the requests at issue seek an admission concerning the application of Rule 902, Rapid Rack nonetheless would be required to answer without objection. Second, Requests for Admissions Nos. 5, 10, 15, 20, 25, 30, 35, and 40 do not seek legal conclusions. Rather, they seek a purely factual admission, namely, that Rapid Rack has no trade inscriptions, signs, tags, or labels affixed in the course of business which contain both the mark and the year of use for years 2000 through 2007. Rapid Rack's failure to respond to these requests constitutes a violation of Rule 36.

**Requests for Admissions Nos. 36-39.** Rapid Rack has denied Requests for Admissions Nos. 36-39, which concern use of Registrant's Mark in 2007, on the grounds that the phrases "at least a part of calendar year 2007" and "all of calendar year 2007" are undefined and unclear. There is nothing confusing or unclear about either phrase, each of which is comprised of ordinary and commonly-used words. Accordingly, Rapid Rack's denials on the basis of supposed confusion are completely improper.

**Requests for Admissions Nos. 40-56.** Requests for Admissions Nos. 40-56 seek admissions that Rapid Rack sold its industrial shelving and other industrial storage goods under its RAPID RACK mark. Rapid Rack has denied Requests for Admissions Nos. 40-56, in their entirety, on the basis that the phrase "other industrial storage goods" is undefined and unclear. There is nothing confusing or unclear about this phrase, which is comprised of ordinary and commonly-used words. Indeed, Rapid Rack's website, [www.rapidrack.com](http://www.rapidrack.com), uses similar language to refer to industrial storage goods which are not shelves. Thus, confusion is not a legitimate basis for the denials in response to Requests for Admissions Nos. 40-56.

**Requests for Admissions Nos. 57-72.** Requests for Admissions Nos. 57-72 seek admissions that Rapid Rack sold its consumer shelving and other consumer storage goods under its GORILLA RACK Mark (instead of its RHINO RACK Mark). Rapid Rack has denied Requests for Admissions Nos. 57-72, in their entirety, on the basis that the phrase “other consumer storage goods” is undefined and unclear. Again, there is nothing confusing or unclear about this phrase. Indeed, the [www.gorillarack.com](http://www.gorillarack.com) website owned by Rapid Rack uses similar language to refer to its consumer storage goods which are not shelves. Thus, confusion also is not a legitimate basis for the denials in response to Requests for Admissions Nos. 57-72.

**Requests for Admissions Nos. 74-80, 82-84, and 88.** Requests for Admissions Nos. 74-80, 82-84, and 88 seek admissions regarding Rapid Rack’s purported use of its RHINO RACK Mark between 2000 and 2007. Rapid Rack has denied each of these requests based on its contentions that the term “‘Registrant’s Mark’ is undefined and unclear.” The term “Registrant’s Mark” is defined in the Definitions section of Petitioner’s First Set of Interrogatories to Registrant, which also expressly provides: “The definitions listed below [including ‘Registrant’s Mark’] are applicable to this First Set of Interrogatories and any other discovery requests served upon Registrant by Petitioner in this action.” In any event, the meaning of the term “Registrant’s Mark” is in no way unclear in the context of the Requests for Admissions propounded to Rapid Rack, and the alleged lack of clarity provides absolutely no basis for Rapid Rack’s outright denials.<sup>2</sup>

**Request for Admission No. 89.** Rapid Rack has objected to—and denied—Requests for Admission No. 89 on the grounds that the term “Declaration of Use” is undefined and unclear. The definition is provided in Request for Admission No. 86, and this is the definition that Rapid Racks should have relied upon in giving its answer. (Your client apparently seeks to make an issue of the fact that “use” is not capitalized in Request for Admission No. 90.) The objection needs to be withdrawn, and the Request answered appropriately.

**Requests for Admissions Nos. 90 and 91.** Request for Admission No. 90 seeks an admission that Registrant’s Marks are junior to the senior applications filed by Rhino Linings with respect to Petitioner’s Marks. Request for Admission No. 90 seeks an admission that the existence of Registrant’s Marks as a possible bar to registration and protection of Petitioner’s Marks has damaged and will continue to damage Rhino Linings. Rapid Rack has objected to

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<sup>2</sup> Tellingly, Rapid Rack also objected to responding to, *inter alia*, Requests for Admissions Nos. 1-39, 90, and 91 on the grounds that the term “‘Registrant’s Mark’ is undefined and unclear,” but Rapid Rack did not deny these Requests for Admissions on the basis of the (conjectural) ambiguity. Like the denials at issue for Requests for Admissions Nos. 74-80, 82-84, and 88, the objections to the remaining requests, which completely ignore the definition given for “Registrant’s Marks,” needs to be withdrawn and the affected discovery requests need to be answered properly.

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both Requests for Admissions on the grounds that the terms "Registrant's Marks" and "Petitioner's Marks" are undefined. These terms are defined (for purposes of all the discovery requests now at issue) in the Interrogatories propounded to Rapid Rack by Rhino Linings. Accordingly, these objections are improper. Rapid Rack also has objected to Request for Admission No. 90—and has denied Request for Admission No 91—on the grounds that "despite a reasonable inquiry, the information known or reasonably obtainable by [Rapid Rack] is insufficient to enable them [sic] to admit or deny the statement because information relevant to this request is in the possession of [Rhino Linings]." This objection is improper. There is no unique knowledge, solely in the possession of Rhino Linings, the lack of which prevents Rapid Rack from responding. Rather, these requests seek only the admission of facts already known to Rapid Rack. We therefore demand that you provide appropriate responses to Requests for Admissions Nos. 90 and 91.

**RHINO LININGS RESERVES THE RIGHT TO RAISE ADDITIONAL CONCERNS.** We have not yet had an opportunity to conduct an exhaustive review of the discovery materials (nor could we, given how incomplete they are). If further review reveals additional discovery violations, Rhino Linings reserves its right to bring those to your attention and to seek appropriate relief from the TTAB.

**DEMAND FOR SUPPLEMENTATION AND FOR A RULE 37 CONFERENCE.** Given the delay that has already resulted from Rapid Rack's failure to diligently respond to discovery, immediate compliance is required. We request an opportunity to speak with you in accordance with Rule 37's meet-and-confer process at your earliest convenience on or before July 16, 2008. If we do not receive your assurances that Rapid Rack will fully, completely, and adequately comply with its discovery obligations, we will proceed to file appropriate motions. If Rapid Rack does not intend to comply with its discovery obligations, then please notify us of your availability for a telephonic hearing before the Interlocutory Attorney assigned to this case.

**REQUEST FOR DEPOSITIONS.** Under the amended Scheduling Order, the discovery period closes on September 22, 2008 (approximately two months from today). In the near future, Rhino Linings will need to conduct a corporate deposition of Rapid Rack and possible several depositions of Rapid Rack employees.

***Rule 30(b)(6) Deposition of Rapid Rack.*** Rhino Linings requests a Rule 30(b)(6) deposition of Rapid Rack. To allow time after the deposition for follow-up discovery, the deposition will need to go forward during the month of August. I will serve a notice of deposition shortly, but wanted to first inquire as to your and your client's availability. Please advise us regarding any dates in August on which you and Rapid Rack would not be available for such a deposition.

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I will need complete discovery responses well prior to the Rule 30(b)(6) deposition of Rapid Rack, and certainly well prior to the close of discovery. Accordingly, I cannot be flexible with respect to any further extensions which Rapid Rack may request.

*Depositions Related To Rapid Rack's Objections And Incomplete Responses To Written Discovery.* If Rapid Rack refuses to bring its responses to Interrogatories Nos. 6-13, and 15-21 and Requests for Production Nos. 25-32, 34, 37, and 38 into compliance with the discovery rules, we reserve the right to request depositions of (1) the records custodian(s) or other person(s) with knowledge of the any specific databases or records which Rapid Rack contends are or may have been compromised, lost, or destroyed, and (2) the person(s) most knowledgeable about the existence of information which Rapid Rack contends is or may have been lost, destroyed, or compromised. Examination would be conducted on the complete factual basis for Rapid Rack's assertions, in response to any discovery request, that (1) responsive information exists or existed in the past, and (2) "the requested information is not readily available due to its location in old, possibly corrupt and no longer readily accessible databases," or "may have been destroyed during a flood of Rapid Rack's facilities in 2005." By Wednesday, July 16, 2008, please identify the appropriate individuals and provide me with their availability for the requested deposition(s), which would need to go forward on or before July 31, 2008.

**CONCLUSION.** This is not a run-of-the mill discovery dispute about peripheral issues. Rather, the core issue is whether your client has abandoned its RHINO RACK Mark, and your client has failed to provide any evidence of use or to properly indicate that it has no such evidence. This letter is our attempt to acquire this very basic information that goes to the core of the present cancellation proceeding—a cancellation proceeding that ensued precisely because of your client's inability or unwillingness to provide any evidence of use of its Mark. Rapid Rack failed to provide any evidence of use prior to the filing of the Petition for Cancellation, failed to unequivocally allege use in its Answer to the Petition for Cancellation, and has now failed to provide evidence of use or non-use in response to discovery requests seeking information concerning use of the RHINO RACK Mark. We must insist that Rapid Rack finally respond on this central issue to the present cancellation.

Thank you for your prompt attention to these issues. Please do not hesitate to contact me with questions.

Regards,



Joseph S. Dowdy

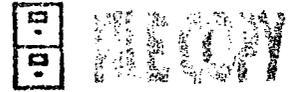
Patrick J. Orme  
July 11, 2008  
Page 16

cc: David Dillard (via e-mail)  
David Harlow (via e-mail)  
Reed Hollander (via e-mail)

# Nelson Mullins

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August 12, 2008

Via Electronic Mail and  
First Class Mail



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Re: Follow-up Concerning Written Discovery to Rapid Rack  
*Rhino Linings USA, Inc. v. Patriarch Partners Agency Services, LLC (Rapid Rack Industries, Inc.)*, Cancellation No. 92048271

Dear Patrick:

Thank you for speaking briefly with Reed Hollander and me Monday, July 28, 2008 regarding Rapid Rack's discovery responses. I trust that the trial that was taking up the bulk of your time has now concluded (hopefully favorably) and that you since have had an opportunity to address our concerns with your client. In hopes of advancing the process of your client responding, this letter will provide follow-up on the items you had time to discuss with us on July 28.

**Defined Terms.** During our telephone conversation, you agreed to revisit the Requests for Admissions which have been denied on the grounds that the term "Registrant's Mark" is undefined, if we would specify that the term "Registrant's Mark" has the same meaning that it is given in the First Set of Interrogatories propounded to Rapid Rack. This letter will confirm (as stated in our First Set of Interrogatories) that the term "Registrant's Mark" as used in the First Set of Requests for Admissions denotes Registrant's RHINO RACK Mark, which is the subject of its U.S. Trademark Registration No. 1,698,407 in International Class 20.

Rapid Rack has objected to Requests for Admissions Nos. 1-39, 74-80, 82-84, 88, and 91-91—and has denied Requests for Admissions Nos. 74-80, 82-84 and 88—on the grounds that the term "Registrant's Mark" is undefined. We ask that you review each of these requests to be sure that no information has been withheld on the basis of the objection. We also ask

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that you reconsider whether Requests for Admissions Nos. 74-80, 82-84 and 88 should be admitted.

Although we did not have time to discuss the following items with you during our telephone conversation (and we continue to believe that there is no ambiguity with respect to the terms used), we submit the following definitions for terms and phrases which Rapid Rack has contended it is unable to understand:

- For Requests for Admissions Nos. 36-39, the phrase "at least a part of calendar year 2007" shall mean "any period of time from and including midnight on January 1, 2007 to and including 11:59 (and 59 seconds) on December 31, 2007." The phrase "all of calendar year 2007" shall mean "continuously from and including midnight on January 1, 2007 through and including 11:59 (and 59 seconds) on December 31, 2007."
- For Requests for Admissions Nos. 40-56, the phrase "other industrial storage goods" means "any storage product(s) which are intended primarily for industrial use and which are not intended for use primarily by individual consumers."
- For Requests for Admissions Nos. 57-72, the phrase "other consumer storage goods" means "any storage product(s) which are intended for use primarily by individual consumers and which are not intended for primarily industrial use."
- For Request for Admission No. 89, the term "Declaration of use" has the same meaning as the term "Declaration of Use," which is defined in Request for Admission No. 86.

***Potentially Inaccessible and/or Potentially Destroyed Information.*** As we mentioned in our previous letter and during our brief July 28 telephone conversation, we are unable to ascertain the status of your client's responses, if any, to Interrogatories Nos. 6-13, 14-21 and Requests for Production Nos. 25-32, 34, 37, and 38. With respect to each such request, Rapid Rack has stated that "much of the requested information is not readily available due to its location in old, possibly corrupt and no longer readily accessible databases" and/or that "some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005."

It is not clear to us from the responses whether your client conducted a full and complete search for the information and materials requested, but could not find responsive items due to the allegedly degraded databases or alleged flood destruction, or whether your client is merely stating that there may be additional information that may be in a corrupt database or may have been destroyed by flood. Similarly, we are uncertain as to whether your client is continuing to look for information or whether it has ceased its efforts, if any, to locate

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information responsive to the requests at issue. In its written responses, Rapid Rack represented that its search for responsive information and materials was ongoing; however, during our telephone conversation, you indicated that you felt that the search had been completed.

We ask that you clarify in writing the status of your client's search of its records and documents. Specifically, we request an unequivocal statement that, to the best of its ability, your client has conducted a full and complete search for information and items responsive to Interrogatories Nos. 6-13, 14-21 and Requests for Production Nos. 25-32, 34, 37, and 38 and that it has provided all information and materials that it found during such investigation. Further, if there are specific databases, files, or other items that your client has been unable to access, then we ask that you unequivocally so state and identify the nature of the databases and files, and that you unequivocally state whether your client is continuing to attempt to recover information or whether it has stopped attempting to do so.

***Verification of Interrogatory Responses.*** As we discussed, Rapid Rack's interrogatory responses were not verified. We have not received Rapid Rack's verification since bringing this issue to your attention. Please either send us a verification or advise us that you have signed as an agent pursuant to TBMP § 405.04(c).

***Privilege/Redaction Log.*** During our July 28 conversation, you indicated that you did not know whether information had been withheld on the basis of privilege or relevancy objections. We assume that you since have had the opportunity to confer with Mr. Dillard (whom you indicated has such knowledge) and/or your client to ascertain the answer to this question. We reiterate our request that Rapid Rack state unequivocally whether it has declined to provide any information based on privilege or relevancy objections (as appears to be the case with respect to Requests for Production Nos. 17-24 and 38-40 and Interrogatories Nos. 23-26, 28, and 30-35). If information has been withheld, then please provide us with a privilege and redaction log immediately, identifying for each withheld document the following information: {1} the name(s) of the person(s) who prepared the document and of the person(s) who received or reviewed the document; {2} the nature of the document (e.g., letter, e-mail, memorandum, etc.), {3} the title, if any, and length of the document, {4} a description of the document, which is sufficient to allow the TTAB to adjudicate a claim of privilege or other objection, and {5} the nature of the privilege being claimed or the objection being made.

***Uncertainty Concerning Whether There Are Responsive Documents to Particular Discovery Requests.*** In its written responses to Requests for Production Nos. 1-17, 25-38, Rapid Rack states that "relevant, non-privileged documents, if any, responsive to [the] request [at issue] will be produced." Based on our review, it appears that there are several Requests for Production, for which no documents or things have been produced, including without limitation, Requests for Admissions Nos. 25-31, possibly 32, and 34. If there are no documents being provided responsive to these or any other requests, we ask that the written response unequivocally so indicate.

Patrick J. Orme  
August 12, 2008  
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***Additional Material to be Produced.*** During our brief telephone conference, Reed and I understood you to say that you will be producing some additional information which Rapid Rack contends will demonstrate that it has used its RHINO RACK Mark in commerce on the packaging or package inserts for products GRL-100 and GRL-110. We have not yet received these materials. Please forward them to us immediately.

***Deposition(s) of Rapid Rack and Its Employees.*** Given that the discovery issues raised in our July 11, 2008 letter remain largely unresolved, we do not believe that we can prepare adequately for depositions of Rapid Rack and, if necessary, the Rapid Rack employees identified in response to written discovery in the month of August. Accordingly, we request that the appropriate representatives and employees of Rapid Rack be available for deposition during the week of September 8, 2008. We will work with you to set the specific day(s) that week on which the deposition(s) will go forward.

***Written Response to the July 11, 2008 Letter.*** It is our understanding that, because a trial prevented you from discussing at length the concerns addressed in our previous letter, you will be making a detailed written response. We look forward to having this response and ask that you send it to us by Friday, August 15, 2008. The present letter is merely our attempt to follow-up on the issues discussed our subsequent conversation. It is not to be construed as a waiver by Rhino Linings with respect to any issue raised in our July 11, 2008 correspondence.

***Renewed Request for Supplementation.*** We send this letter in hopes that your client will supplement its responses (as we requested in our July 11 letter) without the need for involvement by the Board. We look forward to having those supplemental responses in the very near future.

Regards,



Joseph S. Dowdy

cc: David Dillard (via e-mail)  
David Harlow (via e-mail)  
Reed Hollander (via e-mail)

# Nelson Mullins



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September 3, 2008

Via Electronic Mail and  
First Class Mail



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Re: Rapid Rack's Deficient Discovery Responses  
*Rhino Linings USA, Inc. v. Patriarch Partners Agency Services, LLC (Rapid Rack Industries, Inc.)*, Cancellation No. 92048271

Dear Patrick:

We are writing to follow-up with respect to the outstanding discovery issues in *Rhino Linings USA, Inc. v. Patriarch Partners Agency Services, LLC (Rapid Rack Industries, Inc.)*, Cancellation No. 92048271. Below please find a summary of the discovery process and a framework for resolving the outstanding issues prior to the impending close of discovery.

**Summary.** The timeline of significant events concerning Rapid Rack's responses to written discovery requests is as follows:

November 12, 2007	Petitioner Rhino Linings propounded written discovery requests to Rapid Rack.
June 24, 2008	Rapid Rack served its responses.
July 11, 2008	We sent your office a letter detailing our contention that the majority of Rapid Rack's discovery responses were deficient. We requested a written response by July 16, 2008. We also requested a Rule 30(b)(6) deposition of Rapid Rack.

July 16 to 27, 2008	When there was no substantive response to our letter, we attempted to schedule a telephone conference to discuss the issues raised in our July 11 letter.
July 28, 2008	Reed Hollander and I were able to have two very brief telephone calls with you to discuss some of the issues raised in our July 11 letter. Your involvement in a trial prevented us from addressing all of the issues raised in our letter. However, you requested a letter from us clarifying certain items, and you indicated that Rapid Rack would provide a written response to our July 11 letter.
August 12, 2008	After allowing a little breathing room for the trial in which you were participating, we sent a letter providing the clarifications you requested during our July 28, 2008 telephone conversation. We also reiterated our request for a written response to our July 11 letter.
August 14, 2008	An administrative assistant to your colleague, David Dillard, sent us a one page letter informing us that you and Mr. Dillard would be in trial until August 22, 2008. Under cover of the letter, she sent a few additional documents and the verification for Rapid Rack's interrogatory responses. This letter did not address the vast majority of the pending discovery issues initially raised in our July 11, 2008 letter.
August 14, 2008 to present.	We have heard nothing further from Rapid Rack with respect to our concerns that Rapid Rack's discovery responses are deficient. Indeed, we have not heard from you at all, with the exception of two non-substantive after-hours voicemails you left for Mr. Harlow noting the call and stating that you would try again. We still have not received a written response to our July 11, 2008 letter (sent seven weeks ago).
September 22, 2008	Discovery is scheduled to close.

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September 3, 2008  
Page 3

Because Rapid Rack has neither responded in writing to our concerns regarding its deficient discovery responses, nor supplemented its discovery responses in any meaningful way, we must assume that Rapid Rack does not intend to address our concerns.

*Motion to Compel and to Deem Requests for Admissions Admitted.* Given the limited time remaining prior to the close of discovery, we intend to file a motion to compel and to deem requests for admissions admitted. We further intend to request a telephonic hearing before the Interlocutory Attorney during the afternoon (EST) of September 10, 2008, and we will notify you once we have been able to secure a specific hearing time. It is our intention to request that Rapid Rack be ordered to provide supplemental responses and documents no later than September 17, 2008.

*Deposition of Rapid Rack.* Enclosed you will find a Notice of Deposition for the Rule 30(b)(6) deposition of Rapid Rack. We have set the deposition for the last day of discovery, September 22, 2008, which should allow us time to review any supplemental responses. If you or your client are unavailable on September 22, please let us know as soon as possible, as we would be willing to stipulate to a limited extension of time within which to take the deposition of Rapid Rack.

For the convenience of all concerned, we suggest a telephonic deposition, with the deponent(s) appearing at your office, and we request your consent to the same. We ask that you notify us prior to September 10, 2008 if you do not consent to the deposition being conducted telephonically so that we can address the issue with the Interlocutory Attorney.

Thank you for your attention to these issues. Do not hesitate to contact me with questions.

Regards,



Joseph S. Dowdy

cc: David Dillard (via e-mail)  
David Harlow (via e-mail)  
Reed Hollander (via e-mail)



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August 14, 2008

VIA EMAIL & U.S. MAIL

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 Mr. Joe Dowdy  
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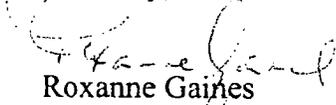
**Re: *Rhino Linings v. Patriarch Partners Agency Services, LLC***  
*(Rapid Rack Industries, Inc.)*  
 CPH Ref. R643:110.2\*1

Dear Mr. Harlow and Mr. Dowdy:

Accompanying this letter please find the verification for Registrant's Responses to Petitioner's First Set of Interrogatories. Also accompanying this letter are Registrant's Supplemental Responses to Petitioner's First Set of Requests for Production of Documents and Things. These documents are also being sent on CD via U.S. Mail.

David Dillard and Patrick Ormé have been in trial for the past two and one-half weeks and most likely will be in trial up to and including next Friday, August 22, 2008. Mr. Ormé has attempted to contact Mr. Harlow regarding this matter during this time, and he again will attempt to do so either this evening or tomorrow.

Sincerely,



Roxanne Gaines  
 Assistant to David A. Dillard

DAD/rg

Enclosures

cc: Mr. Reed Hollander  
 Mr. David A. Dillard  
 Mr. Patrick J. Ormé

RG PAS809131.1-\*08:14 08 2:55 PM

James B. Christie (1904-19)  
 Robert L. Parker (1920-19)  
 C. Russell Hale (1916-200)

D. Bruce Prout  
 Walter G. Maxwell  
 David A. Dillard  
 Thomas J. Daly  
 Edward R. Schwartz  
 John D. Carpenter  
 Wesley W. Monroe  
 David A. Plumley  
 Gregory S. Lampert  
 Mark Garscia  
 Syed A. Hasan  
 Robert A. Green  
 Howard A. Kroll  
 Michael J. MacDermott  
 Anne Wang  
 Constantine Marantidis  
 Gary J. Nelson  
 Raymond R. Tabandeh  
 Josephine E. Chang  
 Jun-Young E. Jeon  
 Brian K. Brookey  
 David J. Steele  
 Gary S. Dukarich  
 Peter C. Hsueh  
 Oliver S. Bajracharya  
 Lauren E. Schneider  
 Saeid Mirsafian, Ph.D.  
 Gabriel Fitch  
 Tiffany A. Parcher  
 Steven E. Lauridsen  
 Patrick J. Orme  
 Nikki M. Dossman  
 Derek W. Yeung  
 G. Warren Bleeker  
 Jason C. Martone  
 Jeffrey T. Burgess  
 Uyen N. Tang  
 Joshua T. Chu  
 Anne F. Bradley  
 Joseph J. Mellema  
 Daniel L. Essig  
 Danielle M. Criona  
 George T. Wu, Ph.D.\*

**Of Counsel**  
 Hayden A. Carney  
 Richard J. Ward, Jr.  
 Richard A. Wallen  
 Daniel R. Kimbell  
 Richard J. Paculan\*\*

\*Admitted in DC, MA, NJ  
 \*\*Admitted only in MA



RG 8/19/08

## DECLARATION OF JOSEPH S. DOWDY

Joseph S. Dowdy, being first duly sworn, deposes and says the following:

1. I am a member of the North Carolina State Bar and an attorney with Nelson Mullins Riley & Scarborough, LLP in Raleigh, North Carolina. I am counsel for the Petitioner, Rhino Linings USA, Inc. ("Rhino Linings"), in Cancellation No. 92048271 currently pending before this Trademark Trial and Appeal Board (the "Board"). In this role, I have knowledge of, and have had responsibility for, the discovery in this case.

2. On or about November 12, 2007, in accordance with the Scheduling Order entered by the Board, Rhino Linings propounded first sets of Interrogatories, Requests for the Production of Documents and Things, and Requests for Admissions to Rapid Rack (Rhino Linings's "written discovery requests"). On or about June 26, 2008, I received Rapid Rack Industries Inc.'s ("Rapid Rack") responses. A true and accurate copy of Rapid Rack's responses are attached as Exhibit 1 to Rhino Linings's Motion to Compel Discovery Responses, Motion to Deem Requests for Admissions Admitted, and Motion to Sanctions (Rhino Linings's "Motions").

3. On July 11, 2006, I sent a letter (the "July 11, 2008 Letter") to Patrick Orme, counsel for Rapid Rack, detailing the numerous deficiencies with respect to Rapid Rack's responses. A true and accurate copy of the July 11, 2008 Letter is attached as Exhibit 2 to Rhino Linings's Motions.

4. The July 11, 2008 Letter requested that counsel for Rapid Rack provide his assurances that he would review the responses and make necessary supplementations on or before July 16, 2008. Counsel for Rapid Rack did not respond at all prior to July 16, 2008.



5. After not hearing anything from counsel for Rapid Rack, I again requested a response to the July 11, 2008 Letter in an e-mail sent to counsel for Rapid Rack on July 18, 2008. On the afternoon of July 21, 2008, counsel for Rapid Rack responded that he did not feel that the suggested response timeline was reasonable and that Rapid Rack "would . . . respond to my letter some time within the next week." Rapid Rack did not respond at any time during the next week. A copy of the e-mail correspondence of July 18 and 21, 2008 is attached to this Declaration as Exhibit A.

6. On July 21, 2008, I wrote another e-mail to counsel for Rapid Rack clarifying that Rhino Linings was only seeking Rapid Rack's assurances that it would comply with its discovery obligations. When there was no response to this e-mail, I drafted another e-mail to counsel for Rapid Rack on July 25, 2008, again requesting an opportunity to discuss Rapid Rack's discovery responses and for Rapid Rack's assurances that it would comply with the discovery rules. Finally, on July 25, 2008, counsel for Rhino Linings responded that he would make himself available for a discussion on July 28, 2008. The e-mail correspondence of July 21 and 25, 2008 is attached hereto as Exhibit B.

7. On July 25, 2008, my colleague, Reed Hollander, and I had two very brief telephone calls with Mr. Orme regarding his client's responses. With respect to many of the matters we discussed, Mr. Orme indicated that his partner, David Dillard, was the person with knowledge concerning the extent of the search for information performed by Rapid Rack, whether materials had been withheld, and whether a privilege log could or would be produced. Because Mr. Orme had an ongoing trial at the time of our brief telephone calls, we were unable to address all of the concerns expressed in the July 11, 2008 Letter.

8. On August 12, 2008, I sent a letter to Mr. Orme summarizing the July 28, 2008 telephone call and providing a few points of clarification requested by Mr. Orme. A copy of the August 12, 2008 letter is attached as Exhibit 3 to Rhino Linings's Motions.

9. On August 14, 2008, an administrative assistant at Mr. Orme's firm sent the short letter attached as Exhibit 5 to Rhino Linings's Motions. This letter enclosed some additional documents, but did not address the vast majority of the concerns expressed in the July 11, 2008 Letter.

10. Sometime after August 14, 2008, Mr. Orme called and asked to speak to my colleague, David Harlow, regarding the present cancellation. Because Mr. Harlow was unavailable, Mr. Hollander and I attempted to return the call. Mr. Orme indicated that he only wanted to discuss the case with Mr. Harlow. Thereafter, Mr. Orme left approximately two after-hours, non-substantive messages for Mr. Harlow, which essentially noted no more than that a call had been placed.

11. As of September 3, 2008, Rapid Rack still had not responded to the July 11, 2008 Letter. Accordingly, on that date, I sent another letter to counsel for Rapid Rack, noting that Rhino Linings would be filing a Motion to Compel. A true and accurate copy of that letter is attached as Exhibit 4 to the Rhino Linings Motions.

12. As of the date of this declaration, there still has been no written response to the July 11, 2008 letter, and Rhino Linings has not made any significant efforts to bring the majority of its putative discovery responses into compliance with the Federal Rules of Civil Procedure and Chapter 400 of the TBMP.

Further, the Declarant sayeth not.

This the 5<sup>th</sup> day of September, 2008.



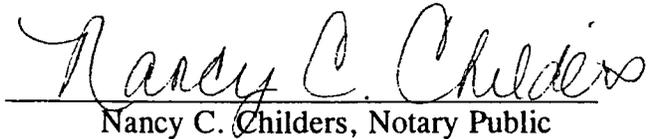
Joseph S. Dowdy  
N.C. State Bar No. 31941

STATE OF NORTH CAROLINA

COUNTY OF WAKE

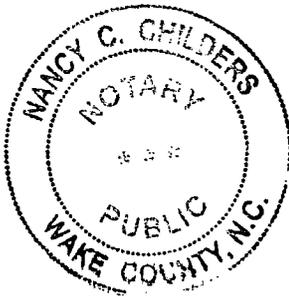
I, Nancy C. Childers, a Notary Public for the county and state set forth, above hereby certify that Joseph S. Dowdy did swear to and subscribe the foregoing document before me and in my presence.

Witness my hand and Notarial Seal, this the 5<sup>th</sup> day of September, 2008.



Nancy C. Childers, Notary Public

My Commission expires March 10, 2009



## Joe Dowdy

**From:** Patrick J. Orme [PJO@cph.com]  
**Sent:** Friday, July 18, 2008 7:07 PM  
**To:** Joe Dowdy  
**Cc:** David Dillard; David Harlow; Reed Hollander  
**Subject:** RE: Rhino Linings v. Rapid Rack--Rapid Rack's Discovery Responses

Dear Joe,

I am quite surprised by the tone of both your letter and email below. Requiring a response from Rapid Rack within a few days of receiving your sixteen page letter of July 11 is unreasonable. This is especially true considering Rhino Linings sent its discovery responses to you on June 24 and you waited until July 11 to communicate regarding Rapid Rack's responses to Rhino Linings' ninety-one requests for admissions, forty requests for production and thirty-five interrogatories. We would will respond to your letter some time within the next week and believe any telephonic hearing with the Interlocutory Attorney premature considering the parties have not attempted to resolve any differences beforehand.

Very truly yours,  
Patrick

-----Original Message-----

**From:** Joe Dowdy [mailto:Joe.Dowdy@nelsonmullins.com]  
**Sent:** Friday, July 18, 2008 12:23 AM  
**To:** Patrick J. Orme  
**Cc:** David Harlow; Reed Hollander  
**Subject:** Re: Rhino Linings v. Rapid Rack--Rapid Rack's Discovery Responses

Patrick:

In my letter of last week, I asked to hear from you by July 16 regarding whether Rapid Rack would address its numerous discovery violations. As of this writing, I still have not heard from you. On Friday, July 18, please either respond to my letter, or provide me with your availability to have a telephonic hearing with the Interlocutory Attorney on Tuesday, July 22.

Thank you.

Joe

-----  
Sent from my BlackBerry Wireless Device

----- Original Message -----

**From:** Joe Dowdy  
**To:** Patrick J. Orme <PJO@cph.com>  
**Cc:** David Dillard <David.Dillard@cph.com>; David Harlow; Reed Hollander  
**Sent:** Fri Jul 11 17:06:55 2008  
**Subject:** Rhino Linings v. Rapid Rack--Rapid Rack's Discovery Responses

Dear Patrick:

Please see the attached letter concerning Rapid Rack's discovery responses. A hard copy is in the mail.

Thanks.

9/5/2008



Joe

Joseph S. Dowdy  
Attorney at Law  
Nelson Mullins Riley & Scarborough LLP  
Raleigh, North Carolina  
Direct Dial: (919) 329-3867  
Cell: (919) 302-7241  
Fax: (919) 877-3799  
joe.dowdy@nelsonmullins.com

=====  
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If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

=====

**Joe Dowdy**

**From:** Patrick J. Orme [PJO@cph.com]  
**Sent:** Friday, July 25, 2008 3:18 PM  
**To:** Joe Dowdy; David Dillard; David Harlow; Reed Hollander  
**Subject:** RE: Rhino Linings v. Rapid Rack--Rapid Rack's Discovery Responses

Dear Joe,

Dave Dillard and I are prepared to have a discussion regarding the substantive responses provided by Rapid Rack to Rhino Linings requests on Monday morning at 8:30 a.m PDT. Given we are preparing for a trial beginning on Tuesday, this is the earliest we can accomodate your request. Prior to our teleconference, I would ask that you please fully review Rapid Rack's responses, as your correspondence appears to indicate you may not have seen the responses and documents produced evidencing continuous use by out client of its mark in addition to the other substantive responses.

Very truly regards,  
Patrick

-----Original Message-----

**From:** Joe Dowdy [mailto:Joe.Dowdy@nelsonmullins.com]  
**Sent:** Friday, July 25, 2008 9:10 AM  
**To:** Patrick J. Orme  
**Cc:** David Dillard; David Harlow; Reed Hollander  
**Subject:** RE: Rhino Linings v. Rapid Rack--Rapid Rack's Discovery Responses

Dear Patrick:

I write again to ask that you respond to our correspondence of July 11, July 17, and July 21 with the yes-or-no answers to two questions: (1) whether Rapid Rack will come into compliance with the discovery rules, or whether it intends to stand by its non-responses, and (2) whether you intend to discuss the pending discovery issues with us by telephone today. We feel strongly that our client continues to be prejudiced by the delay, and we don't understand why your client is so reluctant to respond to our inquiries. Please advise as soon as possible. If we do not hear from you today, we will assume that your client does not intend to respond and will proceed accordingly.

Regards,

Joe

\_\_\_\_\_  
Joseph S. Dowdy  
Attorney at Law  
Nelson Mullins Riley & Scarborough LLP  
Raleigh, North Carolina  
Direct Dial: (919) 329-3867  
Cell: (919) 302-7241  
Fax: (919) 877-3799  
joe.dowdy@nelsonmullins.com

**From:** Joe Dowdy

**EXHIBIT**

**B**

**Sent:** Monday, July 21, 2008 4:38 PM  
**To:** Patrick J. Orme  
**Cc:** David Dillard; David Harlow; Reed Hollander  
**Subject:** RE: Rhino Linings v. Rapid Rack--Rapid Rack's Discovery Responses

Dear Patrick:

In my letter, I asked to know within five days whether you would encourage your client, Rapid Rack, to comply with the discovery rules, or whether your client intended to stand by its non-responses. I did not ask that you have substantive responses to me within the five-day period. I still need to know the answer to my question. If your client intends to stand by its non-responses, then please simply let me know that, and we can proceed to bring this matter before the Interlocutory Attorney.

However, if you intend to comply with your discovery obligations and you need more time to inform us of the scope of additional or amended discovery responses you intend to make, then we are amenable to receiving your response on or before Thursday of this week (July 24) and scheduling a telephonic meeting with you on Friday (July 25). We fail to discern the point of any additional delay beyond that. Your client has already had more than eight (8) months to respond to discovery, and for all practical purposes, it still has not done so. We would appreciate knowing at your earliest convenience whether Rapid Rack's discovery responses will be brought into compliance with the Federal Rules of Civil Procedure and the TBMP. If not, then we need to get this matter before the Interlocutory Attorney sooner rather than later, in light of the depositions that my client has requested.

Regards,

Joe

---

Joseph S. Dowdy  
Attorney at Law  
Nelson Mullins Riley & Scarborough LLP  
Raleigh, North Carolina  
Direct Dial: (919) 329-3867  
Cell: (919) 302-7241  
Fax: (919) 877-3799  
joe.dowdy@nelsonmullins.com

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**Cc:** David Dillard; David Harlow; Reed Hollander  
**Subject:** RE: Rhino Linings v. Rapid Rack--Rapid Rack's Discovery Responses

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Joe

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Sent from my BlackBerry Wireless Device

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=====