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Filing date: **10/22/2008**

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

|                        |                                                                                                                                                                                   |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding             | 92048271                                                                                                                                                                          |
| Party                  | Plaintiff<br>Rhino Linings USA, Inc.                                                                                                                                              |
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| Submission             | Other Motions/Papers                                                                                                                                                              |
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| Signature              | /Joseph S. Dowdy/                                                                                                                                                                 |
| Date                   | 10/22/2008                                                                                                                                                                        |
| Attachments            | Submission 5.pdf ( 62 pages )(2680140 bytes )                                                                                                                                     |

**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.                          | ) | Cancellation No. 92048271 |
|                              | ) |                           |
| RAPID RACK INDUSTRIES, INC., | ) |                           |
| Registrant.                  | ) |                           |
|                              | ) |                           |

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**PETITIONER'S BRIEF IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT**

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**EXHIBITS TO BRIEF IN SUPPORT OF PETITIONER'S MOTION  
FOR SUMMARY JUDGMENT CONTINUED**

Exhibits H and I

## EXHIBIT H

(to Petitioner's Brief in Support of its Motion for  
Summary Judgment)

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 request 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. Orme

Attorneys for Applicant

P.O. Box 7068

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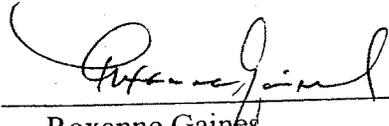
TRADEMARK  
Docket No. 110.2\*1/R643  
Cancellation No. 92048271  
Registration No. 1,698,407

**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

## EXHIBIT I

(to Petitioner's Brief in Support of its Motion for  
Summary Judgment)

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 

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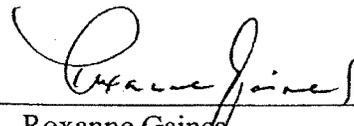
TRADEMARK  
Docket No. 110.2\*1/R643  
Cancellation No. 92048271  
Registration No. 1,698,407

**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  
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