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

Proceeding	92048879
Party	Plaintiff NOR-CAL BEVERAGE CO., INC.
Correspondence Address	R. MICHAEL WEST THE LAW OFFICES OF R. MICHAEL WEST 1922 21st STREET SACRAMENTO, CA 95811 UNITED STATES mwest@saciplaw.com
Submission	Motion to Compel Discovery
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Signature	/R. Michael West/
Date	01/16/2009
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**IN THE UNITED STATES TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Reg. No. 2,227,005

Trademark: GO GIRL

NOR-CAL BEVERAGE CO., INC.	)	
	)	
Petitioner And Counterclaim Defendant,	)	Cancellation No. 92048879
	)	
v.	)	
	)	
IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR	)	
	)	
Respondent And Counterclaim Plaintiff	)	
	)	

**PETITIONER’S MOTION TO COMPEL DISCOVERY**

PETITIONER NOR-CAL BEVERAGE CO., INC. (hereinafter, “NOR-CAL”), moves the Board for an Order requiring RESPONDENT IRENE J. ORTEGA. (hereinafter, “ORTEGA”) to provide supplemental answers to Petitioner’s First Set Of Interrogatories, Nos. 1(f), 2, 3, 4, 9, 10, 11(b), to withdraw the designation of certain documents as “TRADE SECRET/COMMERCIALY SENSITIVE”, and to produce an electronic copy of, or make available for inspection and copying, documents requested in Petitioner’s First Request For Production Of Documents And Things Under Rule 34.

NOR-CAL simultaneously moves to stay all trial and testimony periods pending a resolution of the instant Motion To Compel.

**PETITIONER'S MEMORANDUM**

**(1) Respondent's Failure To Provide Complete Responses To Interrogatories; (2) Respondent's Overdesignation Of Requested Documents As "TRADE SECRET/COMMERCIALLY SENSITIVE"; And, (3) Respondent's Failure To Provide Electronic Copies Of Requested Documents And/Or Facilitate Their Inspection For Copying**

NOR-CAL initiated the pending Cancellation proceeding on the grounds that Federal Registration No. 2,227,005, for GO GIRL, registered by ORTEGA'S predecessor in interest, is subject to cancellation under 15 U.S.C. § 1064(3). More specifically, the grounds for cancellation, include the facts that the corporate charter of ORTEGA'S predecessor in interest had been revoked and its corporate powers suspended as of the date that an alleged assignment of the '005 Registration was executed, that no right title or interest in the '005 Registration was ever transferred to ORTEGA, that no Section 8 Affidavit of Use was ever filed by the owner of the '005 Registration, that the GO GIRL mark and '005 Registration were effectively abandoned by ORTEGA'S predecessor in interest, and therefor that the '005 Registration was subject to cancellation under the Act.

In an effort to ascertain facts and discover documents relevant to the issues in this proceeding, NOR-CAL timely served<sup>1</sup> ORTEGA with both Interrogatories and Document Requests

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1. Interrogatories and Request For Production Of Documents And Things Under Rule 34 were served on June 30, 2008.

after the discovery period set by the Board had commenced. ORTEGA requested additional time to respond to the discovery, which request was granted. Responses to these discovery requests were received from ORTEGA. Attached hereto, and identified respectively as “Exhibit A” and “Exhibit B” to the West Declaration, are: RESPONDENT IRENE J. ORTEGA, DBA GO GIRL ACTIVEWEAR’S RESPONSE TO PETITIONER’S FIRST SET OF INTERROGATORIES (NOS. 1-12); and RESPONDENT IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR’S RESPONSE TO PETITIONER’S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS UNDER RULE 34 (NOS. 1-38).

If a party fails to answer any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel answers to interrogatories and to compel production and an opportunity to inspect and copy documents. 37 C.F.R. § 2.120(e). *See also, Jain v. Ramparts Inc.*, 49 U.S.P.Q. 2d 1429, at 1432 (TTAB 1998)(five months after Opposer served Applicant with discovery, Applicant still had not responded to discovery requests, and the Board granted Opposer’s Motion To Compel Discovery).

Over six (6) months have elapsed since NOR-CAL served ORTEGA with the discovery. Therefore, NOR-CAL brings the present Motion To Compel, based upon ORTEGA’S failure to provide supplemental responses to the Interrogatories, ORTEGA’S overdesignation of the confidentiality of requested documents, and ORTEGA’S failure to provide copies of requested documents which have long been promised by ORTEGA. NOR-CAL seeks an Order from the Board compelling supplemental responses, a withdrawal of the overdesignation of confidential status of many documents, and document production by ORTEGA by a date certain.

**A. The Interrogatory Responses**

Many of the issues regarding ORTEGA’S failure to provide adequate responses surrounds the repeated response: “See attached documents responsive to Request For Production”. This response was given as an answer to: Interrogatories 1(f), 3(f), and 4. A version of this response was given as an answer to Interrogatory 11(b): “See responses to Interrogatories herein and responses to Requests For Production”. Petitioner’s discussion regarding each of these issues is contained in Exhibit C to the West Declaration, to which Respondent has never replied.

First of all, there were no “attached documents responsive to [any] Request For Production” of Documents provided by Respondent, only the written responses (Exhibit B). No documents whatsoever have been produced by Respondent to date.

Moreover, such a general reference does not comply with the provisions of FRCP Rule 33(d), if that was Respondent’s intent. Under Rule 33(d), a party may exercise its option to respond to an Interrogatory by producing business records from which the answer may be obtained. However, the identification of the documents must specified “in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could”. [FRCP 33(d)(1); Cambridge Electronics Corp. v. MGA Electronics, Inc. (CD CA 2004); 227 FRD 313, 323].

Lastly, it is not sufficient simply to state “See responses to Interrogatories herein and responses to Requests For Production”, as Respondent has answered to Interrogatory 11(b). Such a response is simply non-responsive and evasive, providing no answer at all.

Interrogatory No. 2 is directed toward the identification of persons “most knowledgeable regarding such contentions, facts, and documents”. Respondent simply identified

herself and “others familiar with Ortega’s brand and business”. This answer is inadequate and evasive. If such persons are known, they must be identified, as they may be material witnesses. See, West Declaration, Exhibit C, Par. C.

Interrogatory 9 requested the identification of persons most knowledgeable regarding instances of actual confusion alleged by Respondent. Only the name of a person was provided, without the information sufficient to allow NOR-CAL to subpoena a witness. Another part of the answer made references to “customers and prospective customers”. If they are not known, it is not responsive to allege that they exist without any basis for such a contention. See, West Declaration, Exhibit C, Par. E.

Interrogatory 10 requests the identification of persons who are most knowledgeable regarding certain affirmative answers alleged by Respondent to have a basis in fact. However, no persons were identified who have knowledge regarding these contentions. It is not an answer to state that “Discovery is continuing” as Respondent is under an obligation to provide an answer one way or the other when the Interrogatories are responded to. If they are known, ORTEGA is under an obligation to make a reasonable investigation to ascertain the current address and contact information for fact witnesses. If they are not known, ORTEGA should state all information which she does know, whatever that may be.

In summary, NOR-CAL seeks supplemental answers to Petitioner’s First Set Of Interrogatories, Nos. 1(f), 2, 3, 4, 9, 10, 11(b), for the reasons stated above.

## **B. The Responses To The Document Requests**

On June 30, 2008 NOR-CAL served ORTEGA with a REQUEST FOR

PRODUCTION OF DOCUMENTS AND THINGS UNDER RULE 34 (NOS. 1-38). On August 18, 2008, ORTEGA served RESPONSES to the Document Request. See, West Declaration, Exhibit B. In her RESPONSES, ORTEGA stated, with respect to every category of document requested, that she “will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled “TRADE SECRET/COMMERCIALY SENSITIVE”.

The first issue about ORTEGA’S responses, is her overly inclusive designation of each and every requested document as “TRADE SECRET/COMMERCIALY SENSITIVE”. As noted in Exhibit D to the West Declaration, ORTEGA has designated requested documents as “TRADE SECRET/COMMERCIALY SENSITIVE”, for which no claim of confidentiality, much less trade secret status can reasonably be made. This includes Requests Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38. NOR-CAL submits ORTEGA’S should be required to withdraw these qualifications on the manner of production of the documents.

ORTEGA agreed to produce the documents almost five (5) months ago. Subsequent demands have been made on ORTEGA to produce the documents, and further promises of production of an electronic copy of same have been made by ORTEGA. Notwithstanding the foregoing, not a single document has been produced to date.

In addition, a Stipulated Protective Order was executed by Petitioner and Respondent, and their respective legal counsel. The Stipulated Protective Order was filed with, and has been entered by, the Board.

ORTEGA should be required to produce the long-promised electronic copy of the requested documents. Alternatively, ORTEGA should be ordered to make the requested documents

available for inspection and copying at a reasonable time and place, as originally requested by NOR-CAL in Exhibit D, paragraph 3, to the West Declaration.

**C. Attempts To Resolve Dispute**

On September 13, 2008, NOR-CAL'S counsel sent a letter to ORTEGA'S counsel, specifically discussing each discovery issue that existed with respect to the Interrogatory responses of ORTEGA. A true and accurate photocopy of that letter, identified as "Exhibit C", is appended to the accompanying Declaration Of R. Michael West Regarding Attempts To Resolve Issues.

On September 13, 2008, NOR-CAL'S counsel sent a letter to ORTEGA'S counsel, specifically discussing each discovery issue that existed with respect to ORTEGA'S responses to NOR-CAL'S document requests. A true and accurate photocopy of that letter, identified as "Exhibit D", is appended to the accompanying Declaration Of R. Michael West Regarding Attempts To Resolve Issues.

On November 28, 2008, NOR-CAL'S counsel sent a letter to ORTEGA'S counsel, noting that no responses had been received, regarding the issues raised in the above-referenced September 13<sup>th</sup> letters. A true and accurate photocopy of that letter, identified as "Exhibit E", is appended to the accompanying Declaration Of R. Michael West Regarding Attempts To Resolve Issues.

On December 8, 2008, ORTEGA'S counsel sent a letter to NOR-CAL'S counsel, acknowledging receipt of the aforementioned letters, and indicating that electronic copies of the documents would be provided along with a signed Stipulated Protective Order. A true and accurate photocopy of that e-mail, identified as "Exhibit F", is appended to the accompanying Declaration

Of R. Michael West Regarding Attempts To Resolve Issues.

On January 8, 2009, NOR-CAL'S counsel sent a letter to ORTEGA'S counsel, noting that the Protective Order had been entered by the TTAB, that no copies of the requested documents had been provided, and that no responses had been provided to the issues respecting ORTEGA'S: (1) Responses To Petitioner's First Set Of Interrogatories; and, (2) Responses To Petitioner's First Set Of Requests For Production Of Documents. A true and accurate photocopy of that letter, identified as "Exhibit G", is appended to the accompanying Declaration Of R. Michael West Regarding Attempts To Resolve Issues.

### **CONCLUSION AND ORDER REQUESTED**

NOR-CAL believes that discovery Motions should be reserved for situations where the legal process has unnecessarily and intentionally be thwarted by the party resisting discovery. NOR-CAL submits that the instant circumstance calls for such a Motion to be brought. NOR-CAL is entitled to pursue discovery regarding the issues and contentions formulated by the pleadings in this case. It is apparent that without the intervention of the Board, NOR-CAL'S right to conduct and complete discovery will be denied and its legal rights will be compromised. In light of the foregoing, NOR-CAL urges the Board to order that:

1. Supplemental Answers be provided to Interrogatories 1(f), 2, 3, 4, 9, 10, 11(b), by a date certain, in full compliance with FRCP 33(a), including a Verification for the Supplemental Answers.

2. The designation of the documents made the subject of Requests Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and

38 as "TRADE SECRET/COMMERCIALY SENSITIVE" be withdrawn.

3. The electronic copy of the documents requested in Petitioner's First Request For Production Of Documents And Things Under Rule 34 be produced by a date certain, or alternatively, those documents themselves be produced for inspection and copying where the documents are maintained by ORTEGA in the normal course of business, or at ORTEGA'S counsel's office.

4. All existing trial deadlines, including Testimony Periods be stayed, pending a resolution of this Motion.

Respectfully submitted,

Dated: January 16, 2009  
Sacramento, California

  
\_\_\_\_\_  
R. Michael West  
Attorney For Petitioner

Enclosures: Declaration Of R. Michael West,  
Including Exhibits A-G

The correspondence address, and  
the telephone and facsimile numbers  
for this communication are:

R. Michael West  
The Law Offices Of  
R. Michael West  
1922 21<sup>st</sup> Street  
Sacramento, California 95811  
Telephone: (916)-444-5444  
Facsimile: (916)-444-5441

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PETITIONER'S MOTION TO COMPEL DISCOVERY, along with the DECLARATION OF R. MICHAEL WEST REGARDING ATTEMPTS TO RESOLVE DISCOVERY ISSUES, and EXHIBITS A, B, C, D, E, F, and G, were mailed on the date set forth opposite my signature, by First Class Mail, postage prepaid, and addressed as follows:

Barry F. Soalt, Esq.  
Procopio, Cory, Hargreaves & Savitch, LLP  
530 B Street, Suite 2100  
San Diego, California 92101

Dated: January 16, 2009

  
Catherine A. Straight

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

In re Reg. No. 2,227,005

Trademark: GO GIRL

NOR-CAL BEVERAGE CO., INC.	)	
	)	
Petitioner And Counterclaim Defendant,	)	Cancellation No. 92048879
	)	
v.	)	
	)	
IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR	)	
	)	
Respondent And Counterclaim Plaintiff.	)	
	)	

**DECLARATION OF R. MICHAEL WEST**  
**REGARDING ATTEMPTS TO RESOLVE DISCOVERY ISSUES**

I, R. Michael West, declare and state as follows:

1. I am an attorney at law, and am Petitioner’s counsel of record in connection with this Cancellation proceeding. I have personal knowledge of the facts contained in this Declaration, and I could and would testify competently to these facts if call as a witness.

2. This Declaration is made under 37 C.F.R. § 2.120(e), and includes statements of counsel for Petitioner, regarding the good faith efforts made to resolve with opposing counsel, the issues presented in the accompanying Motion To Compel Discovery.

3. Attached hereto, and identified as “**Exhibit A**,” is a true and accurate photocopy of RESPONDENT IRENE J. ORTEGA, DBA GO GIRL ACTIVEWEAR’S RESPONSE TO PETITIONER’S FIRST SET OF INTERROGATORIES (NOS. 1-12).

4. Attached hereto, and identified as “**Exhibit B**,” is a true and accurate photocopy of RESPONDENT IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR’S RESPONSE TO PETITIONER’S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS UNDER RULE 34 (NOS. 1-38).

5. Attached hereto, and identified as “**Exhibit C**,” is a true and accurate photocopy of my three (3) page letter dated September 13, 2008, sent via facsimile on that date to Respondent’s Counsel, Barry F. Soalt, regarding his client’s responses to Petitioner’s First Set Of Interrogatories.

6. Attached hereto, and identified as “**Exhibit D**,” is a true and accurate photocopy of my two (2) page letter dated September 13, 2008, sent via facsimile on that date to Respondent’s Counsel, Barry F. Soalt, regarding his client’s responses to Petitioner’s First Set Of Requests For Production Of Documents.

7. Attached hereto, and identified as “**Exhibit E**,” is a true and accurate photocopy of my letter dated November 28, 2008, sent via facsimile on that date to Respondent’s Counsel, Barry F. Soalt, as a follow-up to my letters dated September 13, 2008 (**Exhibit C and Exhibit D**).

8. Attached hereto, and identified as “**Exhibit F**”, is a true and accurate printout of Mr. Soalt’s e-mail, dated December 8, 2008, regarding the outstanding discovery disputes.

9. Attached hereto, and identified as “**Exhibit G**”, is a true and accurate photocopy of my letter dated January 8, 2009, sent via facsimile on that date to Respondent’s Counsel, Barry F. Soalt, regarding the still outstanding discovery disputes and a request for an extension of the

discovery cutoff date.

10. I hereby state that I have been unable to reach agreement or otherwise resolve, with opposing counsel, the discovery dispute which has arisen.

I declare under penalty of perjury, under the laws of the United States, that the facts set forth in this Declaration are true, that all statements made of my own knowledge are true, and that all statements made on information and belief are believed to be true.

Dated: January 16, 2009

  
R. Michael West

Attachments: Exhibits A-G, inclusive



will add meaning to the known facts as well as establish entirely new factual contentions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the facts, contentions and documents identified herein. The Responses set forth herein are given without prejudice to Respondent's right to produce evidence of any subsequently discovered facts or documents or interpretations thereof, and/or to add to, modify or otherwise amend the Responses set forth herein.

Respondent accordingly reserves the right to change any and all responses as additional facts are ascertained, analyses are made, legal research is completed, contentions are framed and documents or facts are discovered. The Responses contained herein are made in a good faith effort to supply as much factual information in as much specificity as possible, but should in no way prejudice Respondent, in relation to further discovery, investigation, research, and/or analysis.

This Preliminary Statement shall apply to each and every Response given herein and is incorporated by reference as though set forth in each of the Responses appearing on the following pages.

### **GENERAL OBJECTIONS**

The following general objections apply to each of Petitioner's Interrogatories and are incorporated by reference to each of Respondent's specific responses thereto:

1. Respondent has not completed discovery nor has it completed preparation for trial. All of the responses contained herein are based upon such information and documents as are presently available and are specifically known to Respondent and discloses only those facts and contentions and identifies only those documents that presently occurred to or are presently in

the possession of this responding party. Therefore, the following responses are given without prejudice to its right to produce evidence of any subsequently discovered documents.

2. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts and documentation, and will add meaning to the known facts as well as establish entirely new factual contentions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the facts, contentions and documents identified herein. The following responses are given without prejudice to the rights of Respondent to produce evidence of subsequent documents and/or tangible things that may later be discovered and/or located.

3. Respondent accordingly reserves the right to change any and all responses as additional facts are ascertained, analyses are made, legal research is completed, contentions of frame, and documents or facts are discovered. The responses contained herein are made in a good faith effort to supply as much factual information in as much specificity as possible, but should in no way prejudice Respondent in relation to further discovery, investigation, research and/or analysis.

4. Respondent objects to every interrogatory which purports to impose obligations on Respondent beyond the requirements of the Federal Rules of Civil Procedure, which govern Respondent's responses.

5. Respondent objects to Petitioner's Interrogatories to the extent they seek material prepared in anticipation of litigation, or which contain or reflect or call for the disclosure of mental impressions, conclusions, opinions and legal theories of any attorney for Respondent, trade secrets or matters within Respondent's right to privacy, or any other information protected from discovery under the Federal Rules of Civil Procedure, because Respondent asserts and

relies on these privileges and protections to the fullest extent possible. Any disclosure by Respondent or any information that is within these categories is inadvertent, is not intended to be a waiver, and when Respondent becomes aware of it Respondent will seek an Order of the TTAB permitting it to withdraw the inadvertent disclosure and prohibiting any use, disclosure or reference to the information.

6. Respondent objects to Petitioner's Interrogatories to the extent they seek information protected from discovery under the attorney-client privilege, or the work-product doctrine, or any other privilege recognized under the law.

7. No incidental or implied admissions are intended by any objection or response herein. The fact that Respondent has objected or responded to any interrogatory in support thereof shall not be deemed an admission that Respondent accepts or admits the existence of any facts set forth or assumed by each interrogatory or that such objection or response constitutes admissible evidence. The fact that Respondent has answered part or all of any demand is not intended to and shall not be construed as a waiver by Respondent of any part of any objection to any interrogatory.

8. Each response and objection herein is made without waiver of any objections as to competence, relevance, materiality, proprietary and admissibility and to any and all other objections on any grounds which would require the exclusion from evidence at trial of any statement herein, or any demands asked of, or any statements contained herein or marked by the witness while present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at trial

9. Respondent objects to any demand or part thereof which purports to require it to provide information that is equally available to Petitioner. Furthermore, Respondent objects to

any demand which purports to require it to provide information that is in the exclusive control of Petitioner or third parties.

These statements and objections shall apply for each and every response given herein, and is incorporated by reference as those set forth in each of the responses appearing on the following pages.

## **RESPONSES TO INTERROGATORIES**

### **INTERROGATORY NO. 1**

Do YOU use the term GO GIRL or any variants thereof as a trademark? If so, with respect to such use:

- a. State the date such use commenced;
- b. State whether such use has been continuous from the date of such first use to the present;
- c. State the geographic areas where GO GIRL has been used by YOU as a trademark;
- d. Identify the specific names, as used in the trade, of all goods in connection with which YOU have used GO GIRL as a trademark;
- e. Identify representative labels, tags, containers of goods, or other printed material which would evidence such trademark usage; and,
- f. Identify representative documents which support, evidence, reflect, or explain YOUR answers to subsections a-e, supra.

### **RESPONSE TO INTERROGATORY NO. 1**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

a. GO GIRL – used since June 21, 1996 by Applicant’s predecessor-in-interest acquired by assignment on June 22, 2001; first use by Applicant since October 1, 1998.

GO GIRL ACTIVEWEAR – used since October 1, 1998.

GO GIRL SPORTSWEAR – used since October 1, 1998.

b. Applicant’s use of GO GIRL and GO GIRL ACTIVEWEAR has been continuous since first use.

c. United States, Canada, Asia, Europe, Australia.

d. Women’s and girls clothing, including without limitation: Jerseys, bike shorts, shorts, t-shirts, tank tops, sweat shirts, sweat pants, socks, hats, caps, leggings, knee warmers, arm warmers, vests. Water bottles, hydration packs, chain guards, lip chap, decals.

e. Hangtags, sewn in labels, transfers, decals, embroidery on the goods, packaging for the goods, printed material and advertisements.

f. See attached documents responsive to Request for Production.

Respondent reserves the right to amend this Response. Discovery is continuing.

## **INTERROGATORY NO. 2**

If you contend that there is a likelihood of confusion which exists as a consequence of NOR-CAL’S use of the mark “GO GIRL” and YOUR use of the mark GO GIRL, set forth in detail the basis for such a contention, identifying all supportive facts and documents, and identifying the persons most knowledgeable regarding such contentions, facts and documents.

## **RESPONSE TO INTERROGATORY NO. 2**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

Nor-Cal's GO GIRL energy drinks and clothing products are marketed to women geared toward health, nutrition and an active lifestyle; the products are advertised as being targeted to athletic women; the marketing and channels of trade include Internet sales and sales of product at sporting events and competitions, such as the L.A. Marathon, Sea Otter Classic, the Norba Nationals, triathlon events aimed at running and biking which are the same marketing channels of trade as Ortega's goods. Nor-Cal endeavors to sell its goods in non-traditional outlets for soft drinks and women-only fitness centers which overlap with the sporting channels of trade used by Ortega. Nor-Cal's sales of clothing and drinks to this market segment will create a likelihood of confusion with Ortega's sales of GO GIRL clothing. Nor-Cal sells clothing goods on line in its electronic store, and elsewhere, which goods are the same colors and produced by some of the same manufacturers as Ortega's goods and look like Ortega's goods to the average consumer. Witnesses include Irene Ortega and others familiar with Ortega's brand and business; see also documents produced in response to Request for Production.

Respondent reserves the right to amend this Response. Discovery is continuing.

### **INTERROGATORY NO. 3**

With respect to YOUR business activities in the United States:

- a. List the specific states where YOU have sold and/or distributed goods under the GO GIRL mark;
- b. Set forth the dates of YOUR first sales or distribution of goods under the GO GIRL mark, for each such state.

- c. Describe the kinds, types, or classes of persons to whom YOU sell goods under the GO GIRL mark;
- d. Describe the trade or distribution channels through which YOU sell or distribute any goods, under the GO GIRL mark;
- e. State both a range and an average price, for all goods sold by YOU under the GO GIRL mark;
- f. Identify representative documents which would support, evidence, reflect, or explain those answers given to subsections a-e, supra.

### **RESPONSE TO INTERROGATORY NO. 3**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- a. Nationally throughout the United States.
- b. See response to Interrogatory No. 1. The information is not compiled state by state.
- c. Health and nutritionally conscious women who have active lifestyles, including bikers, surfers, wake boarders, runners, and tri-athletes; and women who wear casual active wear.
- d. On-line Internet retail store sales, wholesale sales, retail sales and distributor/licensee sales to retail trade, direct sales at athletic events.
- e. \$0.50 - \$75.00 retail.
- f. See responses to Requests for Production.

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 4**

State whether any trademark, service mark, or tradename search was ever conducted by or on behalf of YOU concerning uses and/or registrations relating to the term GO GIRL. If the answer to this is other than a categorical, unqualified negative:

- a. Identify the person responsible for initiating each search;
- b. Identify the person who conducted each search;
- c. Identify all documents and oral communications relating to each search.

**RESPONSE TO INTERROGATORY NO. 4**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- a. Irene Ortega.
- b. Irene Ortega and/or my attorney, Barry Soalt.
- c. See responses to Requests for Production.

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 5**

Identify any authorizations or licenses to use the GO GIRL mark, or to sell or distribute GO GIRL goods or products, which have been granted by YOU or received by YOU.

**RESPONSE TO INTERROGATORY NO. 5**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

Licenses have been granted to:

1. STcyclewear and World Jersey (ongoing);
2. GO FISH (one year, no longer ongoing).

Respondent reserves the right to amend this Response. Discovery is continuing.

#### **INTERROGATORY NO. 6**

For each calendar year since YOUR commencement of use of the GO GIRL mark, in connection with the sale and/or distribution the goods recited in Registration No. 2,227,005, set forth the approximate dollar amount for your annual sales thereof in the United States.

#### **RESPONSE TO INTERROGATORY NO. 6**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- 1998 – approximately \$2,000
- 1999 – approximately \$3,000
- 2000 – approximately \$4,000
- 2001 – approximately \$12,000

- 2002 – approximately \$10,000
- 2003 – approximately \$8,000 - 9,000
- 2004 – approximately \$12,000
- 2005 – approximately \$9,000
- 2006 – approximately \$12,000
- 2007 – approximately \$21,000

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 7**

For each calendar year since YOUR commencement of use of the GO GIRL mark, in connection with the sale and/or distribution of goods recited in Registration No. 2,227,005, set forth the approximate dollar amount of YOUR annual expenditures in the United States, on advertising, publicity or promotion of such goods under the GO GIRL mark.

**RESPONSE TO INTERROGATORY NO. 7**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, unduly burdensome, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

Ortega has not compiled annual totals of these categories and has not tracked costs of promotional giveaways and trades in advertising, costs involved in internet advertising, and costs incurred by Licensee.

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 8**

Identify any applications for trademark and/or service mark registration owned or filed by YOU including, consisting of, or comprising the GO GIRL mark.

**RESPONSE TO INTERROGATORY NO. 8**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

USPTO Application Serial No. 75/955,601

USPTO Registration No. 2,227,005

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 9**

Identify any instances or occurrences of actual confusion of which you are aware, arising from NOR-CAL' S use of the GO GIRL mark and YOUR use of the GO GIRL mark, by setting forth in detail such instance(s), identifying all supportive facts and documents, and identifying the persons most knowledgeable regarding such instances, facts and documents.

**RESPONSE TO INTERROGATORY NO. 9**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated

to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

At sporting events, my customers and prospective customers are confused by Nor-Cal energy drink and clothing items, believing them to be my beverage and my clothing, and buying Nor-Cal products under the assumption that they are my products.

New customers of Ortega, having observed the Nor-Cal energy drink and/or clothing line, have been confused about similar items on the Nor-Cal website, or otherwise confused by the Nor-Cal GO GIRL clothing line in which GO GIRL dominates.

Person most knowledgeable is as follows:

Steven Johnson of Cowboy Fuzzyduds, a supplier of goods sold by Ortega, saw the Nor-Cal GO GIRL products at a sporting event and called Ortega.

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 10**

With respect to the Assignment executed in part by YOU on or about June 22, 2001, for Registration No. 2,227,005:

- a. Do you contend that said Assignment is valid and legally enforceable?
- b. Do you contend that on June 22, 2001, the corporate charter of Girl World Sports, Inc. was valid and subsisting in the State of Texas?
- c. Do you contend that on June 22, 2001, Girl World Sports, Inc. was in "good standing" as a corporation in the State of Texas?
- d. Do you contend that on June 22, 2001, Girl World Sports, Inc. had the legal capacity to enter into a contract of any type, including said Assignment?
- e. If any of your answers to subsections a-d was in the affirmative, for each such answer, set forth in detail the basis for such a contention, identifying all

supportive facts and documents, and identifying the persons most knowledgeable regarding such contentions, facts and documents.

**RESPONSE TO INTERROGATORY NO. 10**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

a. Yes.

b,c. Yes, the Assignment contained representations and warranties signed by Assignor to the effect that Assignor “covenants that it has all rights, title and interest in the registration of the mark, and warrants and represents that it has the power and authority to enter into this Assignment Agreement.” The Purchase Agreement had similar and further representations and warranties. Ortega has no factual information to believe otherwise.

c. Yes.

e. See response above.

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 11**

With respect to the Section 8 Affidavit of Use, filed by YOU on or about November 30, 2004 for Registration No. 2,227,005:

a. Are all statements in said Affidavit of Use true?

- b. Identify all documents which support or substantiate the claims of use of the GO GIRL mark, in connection with each of the goods recited in Registration No. 2,227,005;
- c. Were YOU acting as an agent or representative of Girl World Sports, Inc., at the time said Affidavit of Use was filed?

**RESPONSE TO INTERROGATORY NO. 11**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- a. Yes.
- b. See responses to Interrogatories herein and responses to Requests for Production.
- c. No.

Respondent reserves the right to amend this Response. Discovery is continuing.

**INTERROGATORY NO. 12**

Identify any and all persons who participated in any way in the preparation of responses to the Interrogatory questions set forth above.

**RESPONSE TO INTERROGATORY NO. 12**

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is vague, irrelevant, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated

to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

Irene Ortega-Eldon with assistance of counsel, Barry F. Soalt, where appropriate and with respect to objections.

Respondent reserves the right to amend this Response. Discovery is continuing.

PROCOPIO CORY HARGREAVES  
& SAVITCH LLP

Dated: August 18, 2008

By: 

Barry F. Soalt  
530 B Street, Suite 2100  
San Diego, CA 92101  
Telephone: (619) 525-3865  
Facsimile: (619) 235-0398

Attorneys for Respondent and Counterclaim  
Plaintiff IRENE J. ORTEGA-ELDON  
dba GOGIRL ACTIVEWEAR

VERIFICATION

I have read the foregoing RESPONDENT IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR'S RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES (NOS. 1 - 12) and know its contents.

I am the owner of GOGIRL ACTIVEWEAR, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for this reason. I have read the foregoing document and know its contents. I am informed and believe that the matters stated therein are true and correct and on that ground declare under penalty of perjury, under the laws of the State of California, that the same are true and correct.

Executed on August 18 2008, at San Diego, California.

Signature: Irene Ortega-Eldon  
Name: Irene Ortega-Eldon

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On August 18, 2008, I served the within documents:

**RESPONDENT IRENE J. ORTEGA, DBA GOGIRL  
ACTIVEWEAR'S RESPONSE TO PETITIONER'S FIRST  
SET OF INTERROGATORIES (NOS. 1 – 12)**

by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.

by having Knox Services personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

**SEE ATTACHED SERVICE LIST**

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 18, 2008, at San Diego, California.

  
\_\_\_\_\_  
Alejandra Gutierrez Casey

**SERVICE LIST**

R. Michael West, Esq.  
Law Offices Of R. Michael West  
1922 21st Street  
Sacramento, California 95811  
Tel: (916)-444-5444  
Fax: (916)-444-5441

Attorney For Petitioner  
NOR-CAL BEVERAGE CO., INC.



lead to substantial additions to, changes in, and variations from the facts, contentions and documents identified herein. The Responses set forth herein are given without prejudice to Respondent's right to produce evidence of any subsequently discovered facts or documents or interpretations thereof, and/or to add to, modify or otherwise amend the Responses set forth herein.

Respondent accordingly reserves the right to change any and all responses as additional facts are ascertained, analyses are made, legal research is completed, contentions are framed and documents or facts are discovered. The Responses contained herein are made in a good faith effort to supply as much factual information in as much specificity as possible, but should in no way prejudice Respondent, in relation to further discovery, investigation, research, and/or analysis.

This Preliminary Statement shall apply to each and every Response given herein and is incorporated by reference as though set forth in each of the Responses appearing on the following pages.

#### **GENERAL OBJECTIONS**

The following general objections apply to each of Petitioner's Requests and are incorporated by reference to each of Responding Party's specific responses thereto:

1. Respondent has not completed discovery nor has it completed preparation for trial. All of the responses contained herein are based upon such information and documents as are presently available and are specifically known to Respondent and discloses only those facts and contentions and identifies only those documents that presently occurred to or are presently in the possession of this responding party. Therefore, the following responses are given without prejudice to its right to produce evidence of any subsequently discovered documents.

2. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts and documentation, and will add meaning to the known facts as well as establish entirely new factual contentions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the facts, contentions and documents identified herein. The following responses are given without prejudice to the rights of Responding Party to produce evidence of subsequent documents and/or tangible things that may later be discovered and/or located.

3. Respondent accordingly reserves the right to change any and all responses as additional facts are ascertained, analyses are made, legal research is completed, contentions of frame, and documents or facts are discovered. The responses contained herein are made in a good faith effort to supply as much factual information in as much specificity as possible, but should in no way prejudice Responding Party in relation to further discovery, investigation, research and/or analysis.

4. Respondent objects to every interrogatory which purports to impose obligations on Responding Party beyond the requirements of the Federal Rules of Civil Procedure, which govern Responding Party's responses.

5. Respondent objects to Petitioner's Requests to the extent they seek material prepared in anticipation of litigation, or which contain or reflect or call for the disclosure of mental impressions, conclusions, opinions and legal theories of any attorney for Responding Party, trade secrets or matters within Responding Party's right to privacy, or any other information protected from discovery under the Federal Rules of Civil Procedure, because Responding Party asserts and relies on these privileges and protections to the fullest extent possible. Any disclosure by Responding Party or any information that is within these categories

is inadvertent, is not intended to be a waiver, and when Responding Party becomes aware of it Responding Party will seek an Order of the TTAB permitting it to withdraw the inadvertent disclosure and prohibiting any use, disclosure or reference to the information.

6. Respondent objects to Petitioner's Requests to the extent they seek information protected from discovery under the attorney-client privilege, or the work-product doctrine, or any other privilege recognized under the law.

7. No incidental or implied admissions are intended by any objection or response herein. The fact that Responding Party has objected or responded to any request or interrogatory in support thereof shall not be deemed an admission that Responding Party accepts or admits the existence of any facts set forth or assumed by each interrogatory or that such objection or response constitutes admissible evidence. The fact that Responding Party has answered part or all of any demand is not intended to and shall not be construed as a waiver by Responding Party of any part of any objection to any interrogatory.

8. Each response and objection herein is made without waiver of any objections as to competence, relevance, materiality, proprietary and admissibility and to any and all other objections on any grounds which would require the exclusion from evidence at trial of any statement herein, or any demands asked of, or any statements contained herein or marked by the witness while present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at trial

9. Responding Party objects to any demand or part thereof which purports to require it to provide information that is equally available to Petitioner. Furthermore, Responding Party objects to any demand which purports to require it to provide information that is in the exclusive control of Petitioner or third parties.

10. These statements and objections shall apply for each and every response given herein, and is incorporated by reference as though set forth in each of the responses appearing on the following pages.

### **RESPONSES TO REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1**

All documents and things requested to be identified in response to PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, calls for a legal conclusion and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

#### **REQUEST FOR PRODUCTION NO. 2**

All documents and things relating to YOUR conception, adoption, and initial use of the term GO GIRL in the United States, as a tradename, service mark, or trademark.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, calls for a legal conclusion and requests documents under attorney-client and/or attorney work product privilege.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 3**

All documents and things, including sales receipts, shipping invoices, and the like, which substantiate or relate to YOUR first use of the term GO GIRL: (a) anywhere in the United States; and, (b) in commerce.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, calls for a legal conclusion and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 4**

All documents and things, including sales receipts, shipping invoices, and the like, which substantiate or relate to YOUR first use of the term GO GIRL claimed in Application Serial No. 75/137827.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, calls for a legal conclusion and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 5**

All documents and things, including sales summaries, advertising expenditure summaries, surveys, printed publications, letters, or any other form of evidence which substantiate or relate to any claim by YOU that the term GO GIRL has acquired Secondary Meaning in the relevant class of consumers.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, calls for a legal conclusion, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 6**

All documents and things in YOUR possession or control which illustrate, show, or substantiate any third-party uses of the term GO GIRL in connection with any beverage.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, calls for a legal conclusion, seeks information equally available to Petitioner and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 7**

All documents and things in YOUR possession or control which illustrate, show, or substantiate any third-party uses of the term GO GIRL in connection with any items of clothing or sportswear.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, calls for a legal conclusion, seeks information equally available to Petitioner and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 8**

All documents and things in YOUR possession or control which refer or relate to NOR-CAL.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, harassing, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 9**

All documents and things in YOUR possession or control which refer or relate to NOR-CAL'S use of GO GIRL.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, harassing, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 10**

All documents and things which refer to, relate to, or establish any period of YOUR non-use or cessation of use of the mark GO GIRL, during the period extending from 1996 to the present.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, harassing, seeks information equally available to Petitioner, calls for a legal

conclusion, requests documents under attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

#### **REQUEST FOR PRODUCTION NO. 11**

All documents and things, including publicity, advertising and promotional literature, relating to YOUR first promotion and advertising of the mark GO GIRL: (a) anywhere in the United States; and, (b) in commerce.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, calls for a legal conclusion and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

#### **REQUEST FOR PRODUCTION NO. 12**

Representative specimens of all advertising documents and promotional materials, including catalogs, brochures, literature, circulars, leaflets, press releases, direct mail pieces, newspaper advertisements, magazine advertisements, telephone book advertisements, radio commercials, television commercials, Internet Web Pages, pricing sheets and any other materials and documents used by or for YOU bearing or using the mark GO GIRL.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 13**

All documents and things which refer or relate to any trademark, service mark, tradename, or name search or searching of the mark GO GIRL by or for YOU, including any search reports.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 14**

All assignments, licenses, and other documents by which YOU have either acquired or transferred any right, title, or interest in or to the mark GO GIRL or any Registrations therefor.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 15**

Summaries and tabulations of records identifying the publications and media in which YOU have advertised or are advertising products or services in the United States, using the mark GO GIRL, from the date of first sale of YOUR GO GIRL products to the present. If summaries or tabulations are unavailable, produce all records from which such information may be ascertained.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, harassing, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 16**

Summaries and tabulations of records and documents showing YOUR gross income in the United States from sales of products and services which use or include the mark GO GIRL, from the date of first sale of YOUR GO GIRL products to the present. If such summaries or tabulations are unavailable, produce all records from which such income can be ascertained.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 17**

Summaries and tabulations of the records and documents showing YOUR advertising and promotional costs in the United States in connection with products and services which use or include the mark GO GIRL, from the date of first sale of YOUR GO GIRL products to the present. If such summaries or tabulations are unavailable, produce all records from which such costs can be ascertained.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, requests documents under attorney-client and/or attorney work

product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

#### **REQUEST FOR PRODUCTION NO. 18**

All YOUR instructions, directions, memoranda, correspondence and other documents relating to any plan or method of marketing or advertising services or products in the United States which use or include the mark GO GIRL.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

#### **REQUEST FOR PRODUCTION NO. 19**

All letters and other documents sent by or on behalf of YOU charging or suggesting that NOR-CAL and/or a third party, was infringing any rights YOU claim in the mark GO GIRL, or any State or Federal Registration thereof.

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

This Request for Production is objected to on the basis that it is overbroad, vague, compound, unduly burdensome, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 20**

All documents and things in YOUR possession or control which refer or relate to Girl World Sports, Inc.

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

This Request for Production is objected to on the basis that it is overbroad, vague, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 21**

All documents and things in YOUR possession or control which refer or relate to the corporate status and/or standing of Girl World Sports, Inc., at any time from 1995 to the present.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 22**

All documents and things in YOUR possession or control which refer or relate to use of the mark GO GIRL, by Girl World Sports, Inc.

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

This Request for Production is objected to on the basis that it is overbroad, vague, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 23**

All documents and things in YOUR possession or control which refer or relate to any common law rights YOU are claiming in the mark GO GIRL, which were established by Girl World Sports, Inc.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, compound, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 24**

All documents and things which refer or relate to any common law rights YOU are claiming in the mark GO GIRL.

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

This Request for Production is objected to on the basis that it is overbroad, vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 25**

All documents and things which substantiate the statements of fact made by YOU which were set forth in the Section 8 Affidavit of Use respecting Registration No. 2,227,005.

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

This Request for Production is objected to on the basis that it is overbroad, vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 26**

All documents and things which support or substantiate YOUR claim that PETITIONER'S claims are barred by the doctrine of waiver.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 27**

All documents and things which support or substantiate YOUR claim that PETITIONER'S claims are barred by the doctrine of estoppel.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 28**

All documents and things which support or substantiate YOUR claim that PETITIONER'S claims are barred by the doctrine of acquiescence.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 29**

All documents and things which support or substantiate YOUR claim that PETITIONER'S claims are barred by the doctrine of unclean hands.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 30**

All documents and things which support or substantiate YOUR claim that PETITIONER'S claims are barred by the doctrine of latches.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 31**

All documents and things which support or substantiate YOUR claim that energy drinks and clothing are related.

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

This Request for Production is objected to on the basis that it is overbroad, vague, unduly burdensome, harassing, unintelligible and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 32**

All documents and things which support or substantiate YOUR claim that NOR-CAL'S use of GO GIRL in connection with energy drinks creates a likelihood of consumer confusion with respect to YOUR use of GO GIRL in connection with clothing.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 33**

All documents and things in YOUR possession or control which establish any instances of actual confusion, between NOR-CAL'S GO GIRL products, and YOUR GO GIRL products.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 34**

All documents and things which establish YOUR information and belief that at the time NOR-CAL "adopted its GO GIRL mark and acquired its GO GIRL registration that the mark was conceived of and used by GGA prior to NOR-CAL'S first use thereof."

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 35**

All documents and things which support or substantiate YOUR claim that GO GIRL energy drink products and GO GIRL clothing products, are sold through similar channels of trade.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 36**

All documents and things which support or substantiate YOUR claim that GO GIRL energy drink products and GO GIRL clothing products, are sold to the same potential customers.

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

This Request for Production is objected to on the basis that it is vague, calls for a legal conclusion, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 37**

All documents and things in YOUR possession or control which refer or relate to YOUR Internet Web Site and/or YOUR on-line store, since the time the domain name for that Web Site or on-line store was registered until the present.

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

This Request for Production is objected to on the basis that it is overbroad, vague, seeks information equally available to Petitioner, requests documents under attorney-client and/or attorney work product privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

**REQUEST FOR PRODUCTION NO. 38**

All documents and things which refer or relate to YOUR claim that YOU have been damaged and will continue to be damaged by the continuing existence of Registration No. 3,235,947.

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

This Request for Production is objected to on the basis that it is overbroad, vague, calls for a legal conclusion, requests documents under attorney-client and/or attorney work product

privilege, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

PROCOPIO CORY HARGREAVES  
& SAVITCH LLP

Dated: 8/18, 2008

By: 

Barry F. Soalt  
530 B Street, Suite 2100  
San Diego, CA 92101  
Telephone: (619) 525-3865  
Facsimile: (619) 235-0398

Attorneys for Respondent and Counterclaim  
Plaintiff IRENE J. ORTEGA-ELDON  
dba GOGIRL ACTIVEWEAR

**VERIFICATION**

I have read the foregoing RESPONDENT IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR'S RESPONSE TO PETITIONER'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS UNDER RULE 34 (NOS. 1 – 38) and know its contents.

I am the owner of GOGIRL ACTIVEWEAR, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for this reason. I have read the foregoing document and know its contents. I am informed and believe that the matters stated therein are true and correct and on that ground declare under penalty of perjury, under the laws of the State of California, that the same are true and correct.

Executed on \_\_\_\_\_ 2008, at San Diego, California.

Signature: \_\_\_\_\_  
Name: Irene Ortega-Eldon

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On August 18, 2008, I served the within documents:

**RESPONDENT IRENE J. ORTEGA, DBA GOGIRL  
ACTIVEWEAR'S RESPONSE TO PETITIONER'S FIRST  
SET OF REQUEST FOR PRODUCTION OF DOCUMENTS  
AND THINGS UNDER RULE 34 (NOS. 1 – 38)**

by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.

- X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.

by having Knox Services personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

**SEE ATTACHED SERVICE LIST**

- X *(State)* I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 18, 2008, at San Diego, California.

  
\_\_\_\_\_  
Alejandra Gutiérrez Casey

**SERVICE LIST**

R. Michael West, Esq.  
Law Offices Of R. Michael West  
1922 21st Street  
Sacramento, California 95811  
Tel: (916)-444-5444  
Fax: (916)-444-5441

Attorney For Petitioner  
NOR-CAL BEVERAGE CO., INC.

LAW OFFICES OF  
**R. MICHAEL WEST**  
A Professional Corporation

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INTELLECTUAL PROPERTY LAW  
PATENTS TRADEMARKS COPYRIGHTS  
TRADE SECRETS AND UNFAIR COMPETITION

R. MICHAEL WEST  
ALSO MEMBER OF ARIZONA BAR

September 13, 2008

File 10761-Cancel

**Via Facsimile**

Barry F. Soalt, Esq.  
Procopio, Cory, Hargreaves  
& Savitch LLP  
530 B Street  
San Diego, California 92101-4469

**Re: Nor-Cal Beverage Co., Inc. v. Irene J. Ortega - Cancellation No. 92048879**  
**Responses To Petitioner's First Set Of Interrogatories - Good Faith Effort To Resolve**

Dear Barry:

This letter is written in response to your client's Responses To Petitioner's First Set Of Interrogatories. Our issues with your client's responses are set forth below.

A. The responses are required to be Verified by your client, and no Verification has been received to date. In addition, if there are Supplemental Responses, we will expect their Verification at the time the responses are served on us, not later.

B. Interrogatory 1(f) requires the identification of documents which support, evidence, reflect or explain your client's answers to subsections a-e. Your client provided no identification of any documents, only stating: "See attached documents responsive to Request For Production." Supplementation is required.

C. Interrogatory 2 requests, inter alia, the identification of "the persons most knowledgeable regarding such contentions, facts and documents." Your client identified herself and "others familiar with Ortega's brand and business". If such persons exist, you have an obligation to identify them by name, and address, and contact information, as they are material witnesses. This obligation exists not only for a complete response to this Interrogatory, but also as part of your client's continuing obligation under the TTAB rules to disclose persons who have or who are believed to have, knowledge about the facts, contentions, and defenses of the parties. Failure to make a timely disclosure may have serious consequences. Supplementation is required.

D. Interrogatory 3 requests the dates of first sales or distribution of goods under the GO GIRL mark, for each state in the United States. Your client is claiming common law rights in the GO GIRL mark, as part of her Answer and Counterclaim. Common law rights naturally depend on establishing dates of first use, wherever those rights are claimed. If your client's answer is that she cannot establish a date of first use in each state, because that information and substantiating documents are not available, I will accept that clarification. However, in response to subpart (a), your client claims use "Nationally throughout the United States". If there is factual substantiation for this answer, then there must be information and/or supporting documents, otherwise the statement cannot be made. In that regard, subsection (f) requests the identification of representative documents which would support, evidence, reflect, or explain those answers give to subsections a-e, supra. It is completely non-responsive to state, as your client has done: "See responses to Requests For Production". Supplementation is required.

E. Interrogatory 4 likewise requested the identification of all documents and oral communications relating to each search. Since your client has admitted that such search(es) occurred, there must be documents and/or oral communications relating to them. It is completely non-responsive to state, as your client has done: "See responses to Requests For Production". Supplementation is required.

F. Interrogatory 9 requests the identification of persons most knowledgeable regarding instances, facts and documents pertaining to instances of actual confusion. There is an identification of "Steve Johnson of Cowboy Fuzzyduds, a supplier of goods sold by Ortega....". However, this is not a sufficient identification of this person either under your client's obligation to respond fully to this Interrogatory, or to comply with the aforementioned TTAB discovery/disclosure rules. In addition, there are vague references to "customers and prospective customers" and "new customers" who are or have been confused by my client's product. There is no identification of these persons. Supplementation is required.

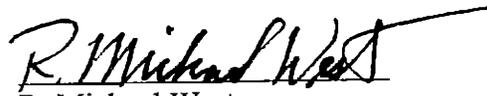
G. Interrogatory 10 requests the identification of persons who are most knowledgeable regarding any affirmative answers to subparts a-d. Since you did give affirmative answers to those subparts, and the Assignment was signed not only by your client, but by a representative of Girl World Sports, that person would presumably be knowledgeable regarding the execution of the document, and the legal status of Girl World Sports at the time the document was signed. Yet, there is no identification of that person(s). Supplementation is required.

H. Interrogatory 11 subpart (b), requests the identification of all documents which support or substantiate the claims of use of the GO GIRL mark, in connection with each of the goods recited in Registration No. 2,227,005. It is completely non-responsive to state, as your client has done: "See responses to Interrogatories herein and responses to Requests For Production". Supplementation is required.

Barry F. Soalt, Esq.  
September 13, 2008  
Page 3

This letter also represents our Good Faith Effort to resolve this matter, prior to bringing a Motion To Compel under the TTAB rules.

Sincerely yours,

  
R. Michael West

cc. Nor-Cal Beverage Co., Inc.

R. MICHAEL WEST  
ALSO MEMBER OF ARIZONA BAR

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INTELLECTUAL PROPERTY LAW  
PATENTS TRADEMARKS COPYRIGHTS  
TRADE SECRETS AND UNFAIR COMPETITION

---

September 13, 2008

File 10761-Cancel

**Via Facsimile**

Barry F. Soalt, Esq.  
Procopio, Cory, Hargreaves  
& Savitch LLP  
530 B Street  
San Diego, California 92101-4469

**Re: Nor-Cal Beverage Co., Inc. v. Irene J. Ortega - Cancellation No. 92048879**  
**Responses To Petitioner's First Set Of Requests For Production Of Documents**

Dear Barry:

This letter is written in response to your client's Responses To Petitioner's First Set Of Requests For Production Of Documents.

In response to virtually each request, your client stated: "Notwithstanding the foregoing objections, Respondent will produce responsive documents in the manner that they are kept in the ordinary course of business and labeled "TRADE SECRET/COMMERCIALY SENSITIVE".

If your client intends to produce those documents for inspection and copying by me or a representative from my office, please let me know in writing, what days and times are available in the next three weeks for this to take place, and where the documents will be made available.

As to the labeling all of the documents as "TRADE SECRET/COMMERCIALY SENSITIVE", I would object to this conduct as a gross overdesignaion of confidentiality/trade secret material. Certainly, there are many documents which have been requested for which no claim of confidentiality, much less trade secret status, can reasonably be made. Those documents would include, in whole or in part, those produced in response to Requests Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38. I request that you withdraw these qualifications on the manner of production.

In addition, entry of the proposed Stipulated Protective Order, would provide a mechanism for the designation of those documents which are truly sensitive and confidential, so that the other party

Barry F. Soalt, Esq.  
September 13, 2008  
Page 2

cannot review these documents or otherwise be exposed to their contents. Thus, your prompt action on that Protective Order will also facilitate the discovery of all of the requested documents, including those which may properly be designated as confidential, attorney's eyes only.

I have docketed Monday, **September 22, 2008**, for receipt of your response to the foregoing.

Sincerely yours,

  
R. Michael West

cc. Nor-Cal Beverage Co., Inc.

Ang... 2008

LAW OFFICES OF  
**R. MICHAEL WEST**  
A Professional Corporation

R. MICHAEL WEST  
ALSO MEMBER OF ARIZONA BAR

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INTELLECTUAL PROPERTY LAW  
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November 28, 2008

File 10761-Cancel

**Via Facsimile**

Barry F. Soalt, Esq.  
Procopio, Cory, Hargreaves  
& Savitch LLP  
530 B Street  
San Diego, California 92101-4469

**Re: Discovery Issues - Nor-Cal Beverage Co., Inc. v. Irene J. Ortega**  
**Cancellation No. 92048879**

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Dear Barry:

This letter is written as a follow up to my three letters dated September 13, 2008. These letters addressed the following issues: (1) (Proposed) Stipulated Protective Order; (2) Responses To Petitioner's First Set Of Interrogatories; and, (3) Responses To Petitioner's First Set Of Requests For Production Of Documents.

To date, no responses to any of these letters or the issues raised therein have been received, yet over two months have passed.

Will you kindly respond to the issues raised in these letters, so that discovery can proceed in this case without resort to TTAB intervention to resolve our discovery disputes?

Sincerely yours,

  
R. Michael West

cc. Nor-Cal Beverage Co., Inc.

**From:** Soalt, Barry F. <bfs@procopio.com>  
**To:** mwest@saciplaw.com  
**Cc:**  
**Date:** Monday, December 08, 2008 06:33 pm  
**Subject:** Discovery Issues: Nor-Cal / Ortega - Go GIRL Activewear

Michael:  
This will acknowledge receipt of your recent letters re discovery disputes. I am tending to these matters and will respond to your issues by this Friday. Will provide electronic copies of documents and will return a signed Stip Protective Order.  
Regards,  
Barry

Barry F. Soalt  
Partner  
*Intellectual Property Law*  
*Patents, Trademarks and Copyrights*

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12/08/08, 18:33:09

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.  
=====

Attachments:

R. MICHAEL WEST  
ALSO MEMBER OF ARIZONA BAR

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INTELLECTUAL PROPERTY LAW  
PATENTS TRADEMARKS COPYRIGHTS  
TRADE SECRETS AND UNFAIR COMPETITION

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January 8, 2009

File 10761-Cancel

**Via Facsimile**

Barry F. Soalt, Esq.  
Procopio, Cory, Hargreaves  
& Savitch LLP  
530 B Street  
San Diego, California 92101-4469

**Re: Discovery Issues - Nor-Cal Beverage Co., Inc. v. Irene J. Ortega  
Cancellation No. 92048879**

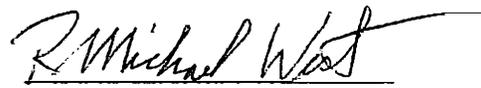
Dear Barry:

Since my last letter to you dated November 28, 2009, we have executed and filed the Stipulated Protective Order, which has now been entered by the TTAB. However, the promised copies of requested documents, in electronic form, have yet to be produced by your client.

In addition, previous correspondence raised issues regarding supplemental responses to your client's: (1) Responses To Petitioner's First Set Of Interrogatories; and, (2) Responses To Petitioner's First Set Of Requests For Production Of Documents.

Again, I ask that you kindly respond to the issues raised above, so that discovery can proceed in this case. We are again running out of time to complete our discovery and I expect that the discovery cutoff date will have to be extended once again. Please advise regarding your willingness or position on a further extension.

Sincerely yours,



R. Michael West

cc. Nor-Cal Beverage Co., Inc.