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

Proceeding	92049567
Party	Plaintiff Grape Technology Group, Inc.
Correspondence Address	Joseph Sofer Sofer & Haroun, LLP 317 Madison Avenue, Suite 910 New York, NY 10017 UNITED STATES joesofer@soferharoun.com
Submission	Motion for Sanctions
Filer's Name	Andrew Anissi
Filer's e-mail	andrew@soferharoun.com
Signature	/andrew anissi/
Date	12/15/2008
Attachments	Motion.pdf (1 page)(75759 bytes) Memorandum of Law.pdf (9 pages)(771567 bytes) Declaration of Joseph Sofer.pdf (4 pages)(306886 bytes) Exhibits A-E.pdf (13 pages)(221942 bytes)

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

<p>Grape Technology Group, Inc.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>Warwick Mirzikinian,</p> <p style="text-align: center;">Respondent.</p>	<p>In the matter of:</p> <p>MARK: M8 Registration No: 2797481 Issued: December 12, 2003 Cancellation No: 92049567</p>
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MOTION TO COMPEL AND FOR SANCTIONS

COMES NOW, attorneys for Petitioner Grape Technology Group, Inc., and, upon the annexed,

- *Declaration of Joseph Sofer in Support of Petitioner's Motion to Compel and For Sanctions*, with exhibits, and
- *Memorandum of Law in Support of Petitioner's Motion to Compel Disclosure and For Sanctions*,

moves the Board to compel disclosures and institute sanctions, as requested in Petitioner's above-listed *Memorandum of Law*.

Dated: New York, New York
December 15, 2008

Respectfully submitted,



Robert M. Haroun, Esq. (RH-5646)
Joseph Sofer, Esq. (JS-3265)
Sofer & Haroun, LLP
Attorneys For Defendant Aurafin, LLC
317 Madison Avenue, Suite 910
New York, NY 10017
Tel: 212-697-2800

Trademark Office (“USPTO”) on April 12, 2002 and registered the mark in the United States as a foreign company using the mark in a foreign country. The USPTO issued Reg. No. 2797481 for the M8 mark to Respondent. (Declaration of Joseph Sofer, Par. 2 – 6.)

It is now more than six years after Respondent’s registration, and it appears Respondent has never used the mark in the United States, and has abandoned its rights in the M8 mark. We believe Petitioner never had an intent to use the mark in the United States. (Declaration of Joseph Sofer, Par. 7 – 10).

Petitioner filed a Petition to Cancel the M8 mark (Cancellation No. 92049567) on June 25, 2008.

On June 30, the Trademark Trial and Appeal Board sent the parties a letter setting forth the schedule for the Cancellation Action. (Declaration of Joseph Sofer, Exhibit A).

The parties held a Rule 26(f) discovery conference by telephone on September 3, 2008 and discussed discovery and settlement matters. Respondent promised to provide documentary information regarding Respondent’s purported intent to use the mark in commerce in the United States. (Declaration of Joseph Sofer, Par. 13 – 14.)

Petitioner timely served its initial disclosures on October 8 (Declaration of Joseph Sofer, Par. 16), and served Interrogatories and Document Requests to Respondent on October 22, demanding a response within thirty (30) days (Declaration of Joseph Sofer, Par. 19).

Between September and December 2008, Petitioner repeatedly contacted Respondent requesting the information promised by Respondent on September 3, as well as Respondent’s Initial Disclosures and Respondent’s responses to Petitioner’s Interrogatories and Document Requests. (Declaration of Joseph Sofer, Par. 17 – 21, and Exhibits A – D.)

To date, Respondent has not provided any documents or disclosures to Petitioner, and Respondent has not responded to Petitioner's Interrogatories and Document Requests. (Declaration of Joseph Sofer, Par. 22 – 24).

On December 4, 2008, in response to Petitioner's many requests for documents, disclosures, and responses, Respondent's counsel informed Petitioner that he is, "not able to obtain further information or response from [his] client at this time." (Declaration of Joseph Sofer, Par. 21, and Exhibit E).

II. LEGAL STANDARD AND ARGUMENT

Under Section 2.120 of the U.S. Patent and Trademark Office's Rules of Practice, "Wherever appropriate, the Federal Rules of Civil Procedure relating to disclosure and discovery shall apply in opposition, cancellation, interference, and concurrent use registration proceedings except as otherwise provided in this section."

a. Respondent is subject to automatic sanctions for failure to make initial disclosures, under F.R.C.P. Rule 37(c)(1)

The parties held an F.R.C.P. Rule 26(f) conference on September 3 (Declaration of Joseph Sofer, Par. 13). The Trademark Trial and Appeal Board ordered that Initial Disclosures were due on October 8, 2008 (Declaration of Joseph Sofer, Exhibit A). As of the date of this motion, **Respondent still has not served Initial Disclosures**. (Declaration of Joseph Sofer, Par. 22)

The Federal Rules impose mandatory sanctions for a party's failure to make initial disclosures in discovery, including specifically, evidence preclusion. Rules 26(a)(1) and 37(c)(1) govern a party's duty to respond to discovery requests. Under Federal Rules of Civil Procedure, Rule 37(c)(1),

A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1) ... is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed.

To explain the Rule, the Advisory Committee on Rules, stated that "The revision provides a self-executing sanction for failure to make a disclosure required by Rule 26(a), without need for a motion under subdivision (a)(2)(A) [emphasis added]." Adv. Comm. Notes on 1993 Amendments to F.R.C.P. 37(c). That the penalty is harsh is deliberate. "This automatic sanction provides a strong inducement for disclosure of material that the disclosing party would expect to use as evidence." Id; see also *Yeti By Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001); *NutraSweet co. v. X-L Engineering Co.*, 227 F.3d 776, 785-786 (7th Cir. 2000); *Wright v. Aargo Security Services, Inc.*, 2001 U.S. Dist. LEXIS 13891 (S.D.N.Y. 2001).

After Respondent has been long overdue on all outstanding discovery production and responses, Respondent's attorney has told us, "I am not able to obtain further information or response from my client at this time." (Declaration of Joseph Sofer, Par. 21, and Exhibit E). Petitioner's action should not be prejudiced by Respondent's refusal to participate in discovery.

Because of Respondent's failure to make initial disclosures, which are now long overdue, Petitioner does not have the disclosure of information that Petitioner is entitled to, to use in presenting the merits of Petitioner's case to the Trademark Trial and Appeal Board. (Declaration of Joseph Sofer, Par. 25.)

Therefore, Respondent is subject to the automatic sanctions imposed by Rule 37(c)(1), and Respondent may not present any witnesses or information in Respondent's own defense. In light of Respondent's refusal to participate in discovery, Petitioner respectfully requests an Order that Respondent has lost the opportunity to present any witnesses or further information in their defense.

b. Objections to Interrogatories waived

Petitioner served its First Set of Interrogatories on October 22 (Declaration of Joseph Sofer, Par. 19), and Respondent has not served any responses or objections as of the date of this motion.

Under Rule 33(b)(4) of the Federal Rules of Civil Procedure, a party's failure to timely respond to interrogatories constitutes a waiver of any objections thereto. See *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981); *Starlight Int'l, Inc. v. Herlihy*, 181 F.R.D. 494, 497 (D. Ks. 1998). The waiver includes objections based on privilege. *Starlight Int'l*, at 498.

Each of Petitioner's interrogatories are relevant to determining the identities of the parties and witnesses to the acts of infringement, and the existence of documents evidencing the allegations in the Petition to Cancel. Petitioner has propounded a total of thirteen (13) interrogatories, asking the Respondent to:

1. State the exact dates, if any, during which the Respondent or any licensee, agent, or distributor of the Respondent used the M8 mark within the United States in commerce.
2. Identify the persons most knowledgeable about the use and marketing of the M8 mark in Australia.
3. Identify the persons most knowledgeable about the plans to use and/or market of the M8 mark in the United States.
4. Identify any documents evidencing any of the dates you provided in response to Interrogatory No. 1.
5. State the date when Respondent first intended, if ever, to make an actual use of the M8 mark within the United States, in commerce.
6. If Respondent ever had actual intent to use the M8 mark in commerce in the United States, state why such intent was delayed from maturing into actual use in commerce.
7. State whether Respondent has any customers in the United States for products or services sold under the M8 mark. If there are any such customers, identify the customers and identify any financial records relating to such customers.
8. If Respondent or its licensees ever used the M8 mark in commerce, in the United States, describe the nature of such use.
9. Identify any third parties that Respondent has communicated with regarding licensing or assignment of the M8 mark, and state whether any licenses or assignments to such parties have been granted and/or negotiated.
10. Identify the documents evidencing planning or actual use of the M8 mark in the United States.
11. Identify all persons knowledgeable about Respondent's intent to use the M8 mark in commerce in the United States.
12. Identify all persons knowledgeable about Respondent's actual use of the M8 mark in commerce in the United States.
13. Identify the persons most knowledgeable about each of Interrogatories 1-9 above.

Petitioner is entitled to formal responses to each Interrogatory, all of which are relevant to the present action. Respondent has left Petitioner without opportunity for gaining such disclosures, and Petitioner therefore now seeks the Board's assistance in concluding this matter.

Because Respondent has failed to timely respond to Petitioner's Interrogatories, Petitioner respectfully requests an Order compelling Respondent to respond to all of Petitioner's Interrogatories, without objection.

c. Sanctions for complete failure to respond to interrogatories or document requests

Petitioner served its First Set of Interrogatories and First Set of Requests for Documents and Tangible Things on October 22 (Declaration of Joseph Sofer, Par. 19), and Respondent has not served any responses or objections as of the date of this motion.

Under Rule 37(d) of the Federal Rules of Civil Procedure, a party who fails to respond to all interrogatories or a request for inspection is subject to sanctions even in the absence of a prior Order. *Hilao v. Estate of Marcos*, 103 F.3d 762, 764-765 (9th Cir. 1996). Under Rule 37(d), based upon such failure to respond, the court may order any of the sanctions specified under Rule 37 (b)(2), including "An order striking out pleadings or parts thereof," and payment of the other party's reasonable attorneys fees and costs based upon such failure.

In addition to the above listed Interrogatories, Petitioner has propounded only the following four document requests:

1. All documents and things concerning Respondent's use of or plans to use the M8 mark in the United States at any time.
2. All documents and things Respondent is relying upon to show an intent to use the M8 mark in the United States at any time by Respondent or Respondent's corporations, licensees, assignees, partners, parents, subsidiaries, and/or designees.
3. All documents and things concerning any license or assignment of the M8 mark, by or to Respondent, for use in the United States, including but not limited to documents concerning plans to license or assign the M8 mark.

4. Samples of advertising, marketing materials, and/or packaging used or planned to be used in the United States by Respondent or Respondent's corporations, licensees, assignees, partners, parents, subsidiaries, and/or designees, with respect to the M8 mark.

These and other document requests have not been responded to, even though disclosures sought are clearly relevant to the subject matter of Petitioner's Petition to Cancel.

Respondent has stopped Petitioner from discovering the information that Petitioner needs to conclude the present dispute by a complete failure to cooperate with discovery and a complete disregard for mandatory deadlines. Respondent's total failure to respond to any of Petitioner's discovery requests, or otherwise work towards an efficient discovery process that would facilitate trial or settlement has caused an unnecessary burden on the Petitioner, and has hurt Petitioner's ability to present the case on the merits (*See Declaration of Joseph Sofer, Par. 25*).

Therefore, the Board should sanction the Respondent pursuant to F.R.C.P. Rule 37, **including by striking Respondent's defenses.**

III. CONCLUSION

Based upon Respondent's refusal to meet discovery deadlines or otherwise cooperate with Petitioner in resolving this matter, and based upon the approaching end of the discovery period, Petitioner has been prejudiced in its ability to present its case on the merits, because Petitioner has not received the disclosures to which it is entitled.

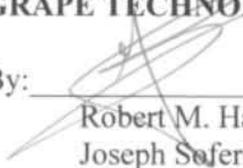
Therefore, the Respondent should be sanctioned, in addition to the automatic penalties already instituted by the Federal Rules.

In accordance with Rule 37, Petitioner respectfully requests that the Board Order sanctions in the forms of:

- 1) An Order that:
 - a. Respondent's defenses be stricken, pursuant to Rule 37(b)(2)(C); and
 - b. Respondent not be allowed to oppose Petitioner's petition, pursuant to Rule 37(b)(2)(B);
- 2) Or else an Order:
 - a. compelling Respondent to respond to all of Petitioner's Interrogatories without objection within 14 days;
 - b. compelling Respondent to respond and produce documents responsive to all of Respondent's Requests For Documents and Tangible Things, without objection within 14 days;
 - c. compelling Respondent to make their Rule 26(a)(1) Initial Disclosures.

Dated: New York, NY
December 15, 2008

GRAPE TECHNOLOGY GROUP, INC.

By: 
Robert M. Haroun (RH 5646)
Joseph Sofer (JS 3265)
Sofer & Haroun, LLP
Attorneys for Petitioner
317 Madison Avenue, Suite 910
New York, NY 10017
Tel: 212-697-2800
Fax: 212-697-3004
E-mail: rharoun2000@yahoo.com

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

<p>Grape Technology Group, Inc.,</p> <p style="text-align:center">Petitioner,</p> <p style="text-align:center">vs.</p> <p>Warwick Mirzikinian,</p> <p style="text-align:center">Respondent.</p>	<p>In the matter of:</p> <p>MARK: M8 Registration No: 2797481 Issued: December 12, 2003 Cancellation No: 92049567</p>
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**DECLARATION OF JOSEPH SOFER IN SUPPORT OF PETITIONER'S
MOTION TO COMPEL DISCLOSURES AND FOR SANCTIONS**

I, Joseph Sofer, declare the following to be true to the best of my knowledge and belief, under penalty of perjury, under the laws of the United States:

1. I am a partner of Sofer & Haroun, LLP, attorneys for Petitioner Grape Technology Group, Inc. ("Grape") in this matter.

2. The above-captioned matter is a trademark cancellation matter on petition before the United States Patent and Trademark Office ("USPTO"), in which Respondent Warwick Mirzikinian ("Respondent") has abandoned its rights in the "M8" trademark in the United States.

3. Upon information and belief, Respondent used the M8 trademark in Australia.

4. Upon information and belief, Respondent registered the M8 trademark with the USPTO as a foreign company using the mark in a foreign country and claiming an intention to use the mark in the United States.

5. According to the records of the USPTO Respondent filed U.S. Trademark Application No. 78121322 for the M8 mark on April 12, 2002.

6. Upon information and belief, the USPTO issued Trademark Registration No. 2797481 to Respondent, in response to Respondent's trademark application.

7. Upon information and belief, **Respondent has never used the mark in the United States, even though more than six years has passed since Respondent filed its trademark application with the USPTO.**

8. Upon information and belief, Respondent never had an intention to use the M8 mark in the United States, but only reserved the mark based on the potential to one day use or license the mark in the United States.

9. Respondent's failure to use the mark in the United States for more than six years proves Respondent's lack of intention to use the M8 mark in the United States.

10. Respondent has long abandoned its U.S. rights in the M8 mark.

11. Petitioner desires to register the M8 mark with the USPTO.

12. Petitioner filed the present Petition to Cancel Respondent's Trademark Registration No. 2797481.

13. On September 3, 2008, the parties held a Rule 26(f) discovery conference via telephone. I spoke with Respondent's attorney regarding discovery and settlement matters.

14. During the September 3 phone call, Bruce Londa, Esq., Respondent's attorney, indicated Respondent would give Petitioner documents evidencing an intent by Respondent to use the M8 mark.

15. As per the Trademark Trial and Appeal Board's letter of June 30, 2008, Initial Disclosures were due to be served on October 8, 2008. A copy of the TTAB's letter is attached hereto as Exhibit A.

16. On October 8, 2008, Petitioner served Respondent with Petitioner's F.R.C.P. Rule 26(a) Initial Disclosures.

17. On October 8, we reminded Mr. Londa by letter to provide the documents promised during the September 3 phone call. A copy of the October 8 letter is attached hereto as Exhibit B.

18. On October 22, we again reminded Respondent by letter to provide the documents promised during the September 3 phone call. A copy of the October 22 letter is attached hereto as Exhibit C.

19. On October 22, 2008, Petitioner served Interrogatories and Document Requests on Respondent, with a demand for responses and documents within thirty (30) days. See the letter at Exhibit C.

20. On October 24, we reminded Respondent by letter that Respondent's Initial Disclosures were due on October 8. A copy of the October 24 letter is attached hereto as Exhibit D.

21. We engaged in further correspondence with Respondent, and on December 4, 2008, Mr. Londa sent us an e-mail saying, "I am not able to obtain further information or response from my client at this time." A copy of the December 4 e-mail from Mr. Londa is attached hereto as Exhibit E.

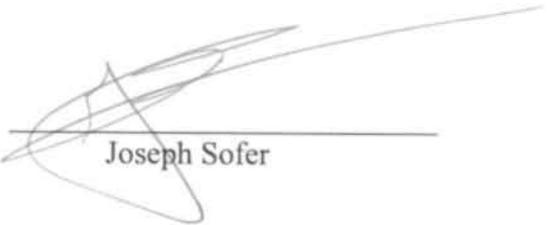
22. As of the filing of this motion, Respondent never served its Initial Disclosures.

23. As of the filing of this motion, Respondent never responded to Petitioner's Interrogatories or Document Requests and never produced any documents for inspection.

24. As of the filing of this motion, Respondent never produced the documents promised during the September 3 phone call.

25. As a result of Respondent's failure to participate in discovery, Petitioner's petition is now threatened by the lack of information that should have been provided by the Respondent.

Dated: New York, NY
December 11, 2008



Joseph Sofer

Sofer & Haroun, LLP
Attorneys for Plaintiff
317 Madison Avenue, Suite 910
New York, NY 10017
Tel: 212-697-2800
E-mail: joesofer@soferharoun.com

Exhibit A

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: June 30, 2008

Cancellation No. 92049567

Registration No. 2797481

Bruce S. Londa
Norris McLaughlin & Marcus, P.A.
875 Third Avenue
New York, NY 10022

Grape Technology Group, Inc.

v.

Warwick Mirzikinian

Joseph Sofer
Sofer & Haroun, LLP
317 Madison Avenue
Suite 910
New York, NY 10017

Vionette Baez, Paralegal

A petition to cancel the above-identified registration has been filed.

A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system:

<http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

In the involved registration, registrant has designated Bruce S. Londa of Norris McLaughlin & Marcus, P.A. as its representative in the United States on whom may be served notices affecting this registration. If the registrant chooses to be represented by counsel in this proceeding, a power of attorney to that effect may be filed, or registrant's chosen counsel may simply make an appearance pursuant to Trademark Rule 2.17. Registrant's copy of any communication from the Board will be sent to

registrant's domestic representative until counsel is appointed or makes an appearance on behalf of registrant. See Trademark Rule 2.119(d).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	8/9/2008
Deadline for Discovery Conference	9/8/2008
Discovery Opens	9/8/2008
Initial Disclosures Due	10/8/2008
Expert Disclosures Due	2/5/2009
Discovery Closes	3/7/2009
Plaintiff's Pretrial Disclosures	4/21/2009
Plaintiff's 30-day Trial Period Ends	6/5/2009
Defendant's Pretrial Disclosures	6/20/2009
Defendant's 30-day Trial Period Ends	8/4/2009
Plaintiff's Rebuttal Disclosures	8/19/2009
Plaintiff's 15-day Rebuttal Period Ends	9/18/2009

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet

been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

Exhibit B

SOFER & HAROUN, LLP
ATTORNEYS AT LAW
PATENTS, TRADEMARKS & COPYRIGHTS
317 MADISON AVENUE
SUITE 910
NEW YORK, N.Y. 10017

ROBERT M. HAROUN
JOSEPH SOFER

GREGORY C. ANTRIM
ANDREW A. ANISSI
ADINA N. LOEWY

FRIEDRICH KUEFFNER
ALAN ROBERTS
OF COUNSEL

TELEPHONE
(212) 697-2800
FACSIMILE
(212) 697-3004

New York, October 8th, 2008

VIA US MAIL

Bruce S. Londa, Esq.
Norris McLaughlin & Marcus, P.A.
875 Third Avenue
New York, NY 10022
Tel: 212-808-0700
Fax: 212-808-0844
E-mail: bslonda@nmmlaw.com

Re: Grape Technology Group, Inc. v. Warwick Mirzikinian
Cancellation No. 92049567

Dear Bruce,

Enclosed please find Petitioner's Initial Disclosures in the above matter, and a Certificate of Service.

Additionally, we have received Respondent's settlement offer, and are awaiting Respondent's evidence of their intent not to abandon the mark in the United States, as we discussed over the phone on September 3.

Very truly yours,


Andrew A. Anissi

ms

Enclosures

Exhibit C

SOFER & HAROUN, LLP
ATTORNEYS AT LAW
PATENTS, TRADEMARKS & COPYRIGHTS
317 MADISON AVENUE
SUITE 910
NEW YORK, N.Y. 10017

ROBERT M. HAROUN
JOSEPH SOFER

GREGORY C. ANTRIM
ANDREW A. ANISSI
ADINA N. LOEWY

FRIEDRICH KUEFFNER
ALAN ROBERTS
OF COUNSEL

TELEPHONE
(212) 697-2800
FACSIMILE
(212) 697-3004

New York, October 22nd, 2008

VIA US MAIL

Bruce S. Londa, Esq.
Norris McLaughlin & Marcus, P.A.
875 Third Avenue
New York, NY 10022
Tel: 212-808-0700
Fax: 212-808-0844
E-mail: bslonda@nmmlaw.com

Re: Grape Technology Group, Inc. v. Warwick Mirzikinian
Cancellation No. 92049567

Dear Bruce,

Enclosed please find Petitioner's First Set of Interrogatories and First Set of Requests for Documents and Things in the above matter, and a Certificate of Service.

As stated in our previous letter, we have received Respondent's settlement offer, and are awaiting Respondent's evidence of their intent not to abandon the mark in the United States, as we discussed over the phone on September 3.

Very truly yours,



Andrew A. Anissi

ms

Enclosures

Exhibit D

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ATTORNEYS AT LAW
PATENTS, TRADEMARKS & COPYRIGHTS
317 MADISON AVENUE
SUITE 910
NEW YORK, N.Y. 10017

ROBERT M. HAROUN
JOSEPH SOFER

—
GREGORY C. ANTRIM
ANDREW A. ANISSI
ADINA N. LOEWY

—
FRIEDRICH KUEFFNER
ALAN ROBERTS
OF COUNSEL

TELEPHONE
(212) 697-2800
FACSIMILE
(212) 697-3004

New York, October 24th, 2008

VIA E-MAIL

Bruce S. Londa, Esq.
Norris McLaughlin & Marcus, P.A.
875 Third Avenue
New York, NY 10022
Tel: 212-808-0700
Fax: 212-808-0844
E-mail: bslonda@nmmlaw.com

Re: Grape Technology Group, Inc. v. Warwick Mirzikinian
Cancellation No. 92049567

Dear Bruce,

In the above matter, we have not yet received the Respondent's Initial Disclosures, which were due on October 8, 2008. Please let us know if you have already sent the Initial Disclosures to us yet.

Very truly yours,

ANDREW A. ANISSI

ms

Exhibit E

Andrew Anissi

From: BSLONDA@nmmlaw.com
Sent: Thursday, December 04, 2008 10:46 PM
To: Andrew Anissi
Subject: Re: Grape Technology Group, Inc. v. Warwick Mirzikinian; Cancellation No. 92049567; Mark: M8

Andrew,

I am not able to obtain further information or response from my client at this time

Bruce S. Londa
Norris, McLaughlin & Marcus, P.A.
875 Third Avenue
New York, NY 10022

phone (212) 808-0700
fax (212) 808-0844
email bslonda@nmmlaw.com

From: "Andrew Anissi" [andrew@soferharoun.com]
Sent: 12/03/2008 02:56 PM EST
To: Bruce LONDA
Cc: "Joe Sofer" <joesofer@soferharoun.com>
Subject: Grape Technology Group, Inc. v. Warwick Mirzikinian; Cancellation No. 92049567; Mark: M8

DEAR BRUCE—Attached is a letter from our office in regard to the above cancellation action.

Regards,

ANDREW A. ANISSI
Sofer & Haroun, LLP
317 Madison Avenue, Suite 910
New York, NY 10017
(w) 212-697-2800
(f) 212-697-3004
andrew@soferharoun.com