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

Proceeding	92051140
Party	Plaintiff Leonid Nahshin
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Date	03/30/2011
Attachments	Response to Motion to Strike March 28, 2011.pdf ( 12 pages )(672519 bytes ) Exhibit A Notice of Reliance.pdf ( 7 pages )(419974 bytes ) Exhibit B Ps Answers to Ds First Set of Interrogatories.pdf ( 12 pages )(745637 bytes ) Exhibit C Ps Answers to Ds 2nd Set of Interrogatories.pdf ( 16 pages )(1328500 bytes ) Exhibit D Pre-trial Disclosures.pdf ( 8 pages )(461374 bytes ) Exhibit F Initial Disclosures.pdf ( 4 pages )(87628 bytes )

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

**Leonid Nahshin,**  
153/36 Beer – Sheva  
Beer-sheva, 84746  
ISRAEL

Petitioner-Petitioner

vs.

**Product Source International, LLC**

13 Coleman road  
Berlin, NJ 08009  
UNITED STATES

Defendant-Respondent

**Opposition No.:** 92/051,140

**Registration No.:** 3,350,041

**Mark:** NIC-OUT

**Interlocutory Attorney:**

Ann Linnehan, Esq.

**PETITIONER’S RESPONSE TO THE DEFENDANT’S  
MOTION TO STRIKE THE TESTIMONY OF YEAL MENKIN**

COMES NOW **Leonid Nahshin** (hereinafter “the Plaintiff - Petitioner”) herein submits its response to Motion to Strike to **Product Source International, LLC** (hereinafter “the Defendant – Respondent) its Complaints. The Petitioner opposes Defendants Motion to Strike on the grounds that Defendant Motion to Strike is based on extrinsic facts outside of the pleadings and without any consideration to the relevant documents and records of substance filed in these proceedings by the Petitioner and therefore, the Motion to Strike filed by the Defendant should be denied without merit.

**I**

**STATEMENT OF FACTS**

This case arises out of the following facts:

1. The Petitioner is the owner of the business “P-Service” engaged in the business of manufacturing and selling disposable mouthpieces for use in connection with cigarettes which filters out the harmful chemicals and smoker inhales while

smoking. Petitioner has been working in the said line on business since 1999; he started selling the said mouthpieces in the name of "NIC-OUT" for cigarettes for which the goods in interstate commerce started since October 1, 2000.

2. It is submitted, that the Petitioner is the owner of the mark NIC-OUT used on or in connection with the cigarette filter holder to reduce the inhalation of tar and nicotine. The use of the mark NIC-OUT in connection with the above identified services has been continuous since on or about October 1, 2000.
3. The Petitioner filed USPTO Trademark Application No. 78206651 on January 23, 2003 with USPTO Word Mark: "NIC-OUT" for International Class "034", Goods & Services described as "G&S; cigarette filter holder to reduce the inhalation of tar and nicotine; cigarette filter holder to reduce the inhalation of tar and nicotine". Also, the result of his work was filed in the Israel Patent Office under the number 151387 on August 21, 2002. After that, the number of patent application was published on almost all packs entering the United States.
4. It is further submitted that, the Petitioner had his first shipment of the products to Yael Menkin, who acknowledged of receipt in New York, US of the product using the trademark name NIC-OUT in the year 2000 and knowledge that this transaction was intended by the Petitioner as first introduction of his product under the trademark NIC-OUT in United States. This is to prove that the Petitioner has prior date of use of his trademark NIC-OUT in United States.
5. It is further submitted that, all sale transactions, advertising, promotions, marketing and business relations of the Petitioner's trademark NIC-OUT since the year 2000. The first shipment being forwarded to Yael Menkin in the year 2000. There exist a registered domain called nic-out.com and website www.nic-out.com. Direct sales of goods in the trade name NIC-OUT has been taking place since 2000, all articles on the website were written by the petitioner. Sending of the shipments in the early April 2002, were major industrial cargo of "NIC-OUT"

to United States for "Safety Aid Supplies, Inc." In October 2002, "Safety Aid Supplies Inc." ordered its barcode for packs made by Petitioner's company for the United States.

6. The Defendant's complaint alleges that, upon the above mentioned facts, that the Petitioner's products trademark NIC-OUT has have a prior user date since 2000, and that Yeal Menkin's who acknowledges the receipt through the first shipment in New York, United States, the Defendant intends this Motion to Strike Mrs. Menkin's Testimony. The Petitioner states that Defendants Motion to Strike is based on extrinsic evidence outside of the pleadings, and also alleges a higher pleading standard for punitive damage claims that is not longer recognized by case law. Therefore the Motion to Strike should be denied.

## II

### ARGUMENT

#### **A. Mrs. Menkin's Testimony should not be stricken because Petitioner did not fail to identify Mrs. Menkin in Petitioner's initial disclosure.**

1. With response to the allegation that the Petitioner not introducing Mrs. Menkin in the Initial Disclosure, it is humbly submitted that the Initial Disclosure, disclosed only the details of the Petitioner himself and none else. Further, it is clearly mentioned that the Copies or description of all documents electronically stored information, and tangible things that the Petitioner has in his possession, custody, or control and may be used to support his claim or defense would be submitted in future course. Also it is clearly mentioned that the petitioner retains business records, trademark applications and other pertinent documents which it may use to support his claim in this instant matter. The Petitioner's business records also deal with the business dealing with the individual/persons/or company with whom the Petitioner first started business out of which Mrs. Menkin is one

2. Further, in Petitioner's Answers to Registrant's First Set of Interrogatories submitted to Defendant on June 23, 2010 (please see attached documents "Petitioner's Answers to Registrant's First Set of Interrogatories" questions and answers #1) Petitioner first informed Respondent that Mrs. Yael Menkin was the recipient of Petitioner's first shipment to United States, which information is one of the most important facts to this case and therefore it was reasonable to anticipate at that time that the Petitioner would rely on Mrs. Menkin as a witness. In Respondent's Answers to Registrant's Second Set of Interrogatories submitted to Defendant on December 15, 2010 (please see attached documents "Petitioner's Answers to Registrant's Second Set of Interrogatories" questions and answers #39, 40, 41, 42, 43) Petitioner informed Respondent that Mrs. Yael Menkin personally filed USPTO Trademark Application on behalf of Petitioner and was the recipient of Petitioner's first shipment to United States and therefore it was reasonable to anticipate at that time that the Petitioner would rely on her as a witness.
3. Therefore, it is inequitable to target the Petitioner that he for the first time intended to rely on the testimony from Mrs. Menkin, for the reasons, as mentioned above that it was with Mrs. Menkin that the Petitioner first introduced his product in New York, United State and that Mrs. Menkin personally filed USPTO Trademark Application on behalf of Petitioner.
4. With response to the allegation of the Defendant in Paragraph 6 of His Affidavit of March 16, 2011 that the Petitioner provided no explanation why Petitioner's Pretrial Disclosures were filed later than it was due. In its defense Petitioner stating that he fully relied on Notice of Reliance, for which the Defendant had no objection, provide to Respondent all information which should be provided in Pretrial Disclosure. About at the same time as Pretrial Disclosures were due Petitioner submitted to Respondent Notice of Reliance, which listed all intended witness, further, Notice of Reliance stated in details scope of the intended testimony of Mrs. Menkin and reasons why her testimony is important to this case (Please see attached documents "Notice of Reliance").

**B. Mrs. Menkin's Testimony should not be stricken because Mrs. Menkin permissibly testified by Written Affidavit.**

1. With response to the allegation of the Defendant that, the Petitioner give no brass-ring or opportunity to the Defendant to cross examine the witness until after the close of discovery that has seriously prejudiced the Defendant's defense of this action. The reply to this statement is clearly declared in the Defendant claim that the counsel for the Defendant had received a phone call from the Counsel of the Petitioner that she advised the Counsel for the Defendant to take the deposition of Yeal Menkin as the first witness for the Petitioner.
2. With response to the allegations made by the Defendant that, the Petitioner in his disclosure has not mentioned the name(s) and address(s) of each individual likely have testify as witness and to have discoverable information and along with the subject(s) of that information that may be used to support the claim. The Petitioner humbly submits that it has stated the name(s) along with the address(s) of the witness in his Pre-trial disclosure and also in the Notice of Reliance for which the Defendant had no objection. And the Defendant himself has given a clear explanation that he prepared for deposing Mrs. Menkin and travelled to the location of the witness. If these details were not disclosed the question surely arise as to how would any one know a person as witness and prepare to cross-examine until and unless he/she accepts her to be the witness and how would he put in words that he spent his valuable time in travelling to the location of the deposition.
3. Further to submit, a written Affidavit is allowed when it is duly signed and sworn and subscribed before an authorized person such as an Officer/ Attorney at Law within United States. The Defendant intends to deny the testimony of Mrs. Menkin only for the reason that the Petitioner claim of he being the real owner of the trademark "NIC – OUT" and has a prior user status / concurrent user.

4. Due to the facts that witness Yael Menkin reside in New Jersey, United States, just gave birth to her baby and Counsel for the Defendant, Mr. DiMarino has his office in New Jersey, but counsel for the Plaintiff, Mrs. Chernobylsky has her office and reside in California, United States, counsel for the Plaintiff scheduled testimony to be taken in the State convenient to witness Mrs. Menkin and to counsel for the Defendant, Mr. DiMarino. New Jersey attorney Peter Allegra, Esq. where testimony of Mrs. Menkin was taking place was not familiar with all details in the case and therefore had to be provided by Petitioner's counsel with the questions to Mrs. Menkin. However, regardless that the questions were submitted to Mr. Peter Allegra in writing he was instructed by counsel for the Plaintiff to state the questions orally to Mrs. Menkin in front of the counsel for the Defendant, Mr. DiMarino; questions were orally asked. Mrs. Menkin was answering the questions orally as well, giving Mr. DiMarino, counsel for the Defendant full opportunity to cross-examine the witness Mrs. Menkin. However, Mr. DiMarino did not object to the form of the testimony at the time when testimony was taking place.

5. It cannot be denied that the Notice was given to the Defendant Product Source International that the Petitioner intends to take testimony of Leonid Nahshin, Yael Menkin, Alexander Slobidker and Nicholas Maslov and would rely on such testimony at trial. At Page 3 of the Notice of Reliance dated January 12, 2011 it was evidently declared to the Defendant that "Yael Menkin testimony is relevant to this case due to her personal knowledge of receipt in New York, U.S., the first shipment of the product from Leonid Nahshin using his trademark name NIC-OUT in year 2000 and knowledge that this transaction was intended by the Petitioner as first introduction of his product under trademark NIC-OUT in United States. Written testimony of Yael Menkin is intended to show date of priority of the use in United States Petitioner's Trademark name "NIC-OUT"."

6. It is evident from the Petitioner's Response to the Defendant's Interrogatories

filed and declared to the Defendant on December 15, 2010 that in early November 2000, petitioner posted a few blocks of “NIC-OUT” in the United States for Yael Menkin, who lived in the U.S. and for the reason that she began to look for potential buyers in the United States and also verify the price levels. See: Petitioner’s Response to Defendant’s Interrogatories No. 39, 40, 41, 42 and 43 dated December 15, 2010.

7. It is further stated that the Defendant has been in full knowledge of the fact and the role of Mrs. Yael Menkin on behalf of the Petitioner Leonid Nahshin and to that extent his evidence was crucial under all circumstances. It is a matter of record that during the Office Action Proceedings before the United States Patent and Trademark Office, Yael Menkin has been acting on behalf of the Petitioner Leonid Nahshin, as his address and mail ID mentioned as the correspondent address on the documents. See: Document filed by the Petitioner in response to the Interrogatories dated December 15, 2010 (USPTO Office Correspondence dated July 7, 2003 to the Petitioner (ECom 105) at page 000123). It has been all through evident and known to the Defendant that Yael Menkin was the domestic representative of the Petitioner Leonid Nahshin in the United States. See: Document filed by the Petitioner in response to the Interrogatories dated December 15, 2010 (Response generated by TARR/USPTO dated December 14, 2010 at page 000128).

8. It is further stated that the Defendant has been in full knowledge of the fact and the role of Mrs. Yael Menkin on behalf of the Petitioner Leonid Nahshin. Petitioner recounts at least four instances which demonstrate that Respondent was aware of Mrs. Menkin, including the first time when respondent received “Petitioner’s Answers to Registrant’s First Set of Interrogatories” on June 23, 2010 (please see attached documents “Petitioner’s Answers to Registrant’s First Set of Interrogatories” questions and answers #1); and another instance when respondent received Petitioner’s Answers to Registrant’s Second Set of Interrogatories” on December 15, 2010 where Defendant was asking Petitioner

particular questions about Mrs. Menkin involvement in this case (please see attached documents “Petitioner’s Answers to Registrant’s Second Set of Interrogatories” questions and answers #39, 40, 41, 42, 43); another instance was Petitioner’s Notice of Reliance on January 12, 2011 (please see attached documents “Notice of Reliance”); another time was Petitioner’s Pre-trial Disclosure.

9. Mrs. Menkin’s testimony is critical to Petitioner’s case; despite the fact that Petitioner did not identify Mrs. Menkin as potential witness in its Initial Disclosure, Defendant had adequate notice of Mrs. Menkin being potential witness from Notice of Reliance given to Defendant on January 12, 2011, which fully disclosed Mrs. Menkin’s as a potential witness, stated in details scope of the intended testimony of Mrs. Menkin and reasons why her testimony is important to this case (Please see attached documents “Notice of Reliance”). Further, Defendant was given an opportunity to cross-examine Mrs. Menkin during her testimony deposition and the scope of such cross-examination covered both topics on which Mrs. Menkin was testifying: 1. Her personal knowledge of receipt of the first shipment into United States in year 2000 and 2. Her personal filing U.S.P.T.O. Trademark Application for Trademark NIC-OUT on behalf of Petitioner. Respondent was aware of the existence of Mrs. Menkin prior to the testimonial deposition of February 16, 2011 but he never once inquired about her availability for deposition and Respondent had full knowledge of the high likelihood that Mrs. Menkin would testify for the Petitioner. Finally, in Defendant’s Second Set of Interrogatories Defendant’s questions about Mrs. Menkin’s involvement in this case showed his understanding that Mrs. Menkin is important and is a potential witness to this case. It also showed that Defendant had his opportunity to do deposition on Mrs. Menkin before Discovery closes, but chooses not to. In question No. 39 of the “Respondent’s Second Set of Interrogatories” Respondent asked Petitioner: “Please clarify what You mean by “shortly thereafter” by providing a detailed account of the events leading up to and including the shipment being forwarded to Yael Menkin”; on December 15,

2010 petitioner answered Defendants question stating: "In early November 2000, I forwarded a few blocks of "NIC-OUT" in the U.S. for Yael Menkin, who lived in the U.S., so that she could start looking for the potential buyers in the U.S."; in question No. 40 of the same document Respondent asked Petitioner: "When precisely was the shipment forwarded to Yael Menkin?"; on December 15, 2010 petitioner answered Defendants question stating: "In early November 2000, petitioner posted a few blocks of "NIC-OUT" in the U.S. for Yael Menkin, who lived in the U.S., so that she began to look for the potential buyers in the U.S., check out the market mouthpieces in America and the price level"; in question No. 41 of same document Respondent asked Petitioner: "Did You take possession of the shipment forwarded to Yael Menkin or was it sent directly to him from the manufacturing facility? Please produce all documents that support your answer"; on December 15, 2010 petitioner answered Defendants question stating: "It was not industrial cargo. These were samples of mouthpieces "NIC-OUT". About 4 blocks, this included 80 packs. The parcel weight was 3.5 kg. It was sent by speed post. The samples were taken from cargo that I got to Israel and was personally located in my warehouse before departure"; in question No. 42 of same document Respondent asked Petitioner: "What role, if any, did You play in controlling the use of the NIC-OUT logo on the shipment forwarded to Yael Menkin?"; in question No. 43 of same document Respondent asked Petitioner: "Did you sign any contract or other agreements with Yael Menkin?..." The questions stated above showed Respondent's full understanding of the Yael Menkin as a potential witness and opportunity to do deposition on Yael Menkin before Discovery was closed (please see attached documents "Petitioner's Answers to Registrant's Second Set of Interrogatories" questions and answers #39, 40, 41, 42, 43).

10. It is further stated that in Defendant's Motion to Strike testimony of Yael Menkin Mr. DiMarino incorrectly stated facts of the telephone conversation between Mrs. Chernobylsky and itself about schedule of the Testimony of Mrs. Menkin. Mrs. Chernobylsky called Mr. DiMarino on February 8, 2011 with intent to set the date for Mrs. Menkin testimony and offered Mr. DiMarino February 10, 2011.

February 10, 2011 was only date Mrs. Menkin agreed to take testimony at; it took counsel for Plaintiff two weeks to find the date of which Mrs. Menkin would agree. Only on February 8 Mrs. Menkin notified counsel for Plaintiff about February 10 being acceptable date. Mr. DiMarino flatly refused the date. Counsel for Plaintiff informed Mr. DiMarino that Mrs. Menkin just gave birth to a child and was breastfeeding her baby. However, Mr. DiMarino was taking advantage of difficulty Petitioner had with Mrs. Menkin's limited free time and offered Mrs. Chernobylsky choice of two days: February 15 or February 16, 2011. Mrs. Chernobylsky in courtesy to Mr. DiMarino accepted February 16 and had very difficult time to convince Mrs. Menkin to give her testimony at that particular time.

11. Attached to this pleading as Exhibit "A" is the true and correct copy of the Notice of Reliance which was sent via first class mail to Mr. DiMarino on January 12, 2011.
12. Attached to this pleading as Exhibit "B" is the true and correct copy of Petitioner's Answer to Registrant's First Set of Interrogatories which was sent via first class mail to Mr. DiMarino on June 23, 2010.
13. Attached to this pleading as Exhibit "C" is the true and correct copy of Petitioner's Answer to Registrant's Second Set of Interrogatories which was sent via first class mail to Mr. DiMarino on December 15, 2010.
14. Attached to this pleading as Exhibit "D" is the true and correct copy of Petitioner's Pretrial Disclosure sent via first class mail to Mr. DiMarino on February 9, 2011.
15. Attached to this pleading as Exhibit "F" is the true and correct copy of Petitioner's Initial Disclosure sent via first class mail to Mr. DiMarino on October 19, 2010.

III

CONCLUSION

For the reasons set forth above, the Petitioner respectfully request that the Board deny the Respondent's Motion to Strike Mrs. Menkin's testimony and accept it in its entirety.

Respectfully submitted this the 28 day of March 2011

A handwritten signature in black ink, appearing to read 'V. Chernobylsky', written over a horizontal line.

Vera Chernobylsky, Attorney At Law  
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E-mail: [Vchernob@yahoo.com](mailto:Vchernob@yahoo.com)  
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4623 Dunman Avenue  
Woodland Hills, California, 91364.

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

**Leonid Nahshin,**  
153/36 Beer – Sheva  
Beer-sheva, 84746  
ISRAEL.

Petitioner-Petitioner

vs.

**Product Source International, LLC**  
13 Coleman road  
Berlin, NJ 08009  
UNITED STATES

Defendant – Respondent

**Opposition No.:** 92/051,140

**Registration No.:** 3,350,041

**Mark:** NIC-OUT

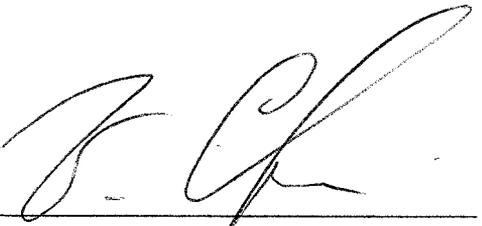
**Interlocutory Attorney:**

Ann Linnehan, Esq.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of the Response to Defendant's Motion to Strike with Exhibits A, B, C, D, and F was submitted, this 28 day of March, 2011, to the following via first class US Mail, postage pre-paid:

**Jay DiMilano**  
**A.J. DiMilano PC**  
**57 Euclid Street, Suite A**  
**Woodbury, NJ 08096**  
**Fax: (856) 853-2866**



Vera Chernobylsky, Esq.

# EXHIBIT "A"

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

**Leonid Nahshin,**  
Plaintiff-Petitioner

v.  
**Product Source International, LLC**  
Defendant-Respondent

**Petition No.:** 92/051,140  
**Registration No.:** 3,350,041  
**Mark:** NIC-OUT  
**Interlocutory Attorney:**  
Ann Linnechan, Esq.

**PLAINTIFF-PETITIONER, LEONID NAHSHIN'S,**  
**NOTICE OF RELIANCE Part D**

**To: Product Source International, LLC – Defendant-Respondent**

Notice is given to Defendant-Respondent, Product Source International (hereafter “Respondent”), that Plaintiff-Petitioner, Leonid Nahshin (“thereafter “Petitioner”), hereby notices its intent to take the testimony of Leonid Nahshin, Yael Menkin, Aleander Slobidker and Nicholas Maslov and would rely on such testimony at trial.

**Relevant Facts**

- I. Petitioner’s Testimony is relevant to this case due to Petitioner’s personal knowledge of the following facts:
  1. Petitioner is the owner of the mark NIC-OUT used on or in connection with a cigarette filter holder to reduce the inhalation of tar and nicotine.
  2. Petitioner first used the mark NIC-OUT in connection with the above-identified goods in interstate commerce at least as early as October 1, 2000.

3. Petitioner's use of the mark NIC-OUT in connection with the above-identified services has been continuous since on or about October 1, 2000.

4. Petitioner has invested significant sums of money in the promotion of the mark NIC-OUT and the Petitioner's goods in the United States.

5. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in its NIC-OUT mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Defendant – Respondent, Product Source International's, LLC (hereinafter "Respondent") mark NIC OUT identified more fully in U.S. Registration No. 3,350,041.

6. Petitioner filed USPTO Trademark Application Serial Number 78206651 on January 23, 2003 with USPTO Word Mark: "NIC-OUT" for International Class "034", Goods & Services described as "G & S: cigarette filter holder to reduce the inhalation of tar and nicotine.; cigarette filter holder to reduce the inhalation of tar and nicotine."

7. Petitioner was barred by the Respondent, to deliver and sell in United States Petitioner's product under Petitioner's Trademark NIC-OUT.

8. Petitioner's consumers confronted with the Respondent's mark NIC OUT will inevitably be confused and deceived into the mistaken belief that the Respondent's goods have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with his NIC-OUT mark.

9. Petitioner will be seriously damaged by the continued registration of Registrant's mark NIC OUT.

II. Yael Menkin testimony is relevant to this case due to her personal knowledge of receipt in New York, US the first shipment of the product from Leonid Nahshin using his trademark name NIC-OUT in year 2000 and knowledge that this transaction was intended by the Petitioner as first introduction of his product under trademark NIC-OUT in United States. Written testimony of Yael Menkin is intended to show date of priority of the use in United States Petitioner's Trademark name "NIC-OUT".

III. Alexander Slobidker is manager of the Petitioner's Company P. Service and has a personal knowledge NIC-OUT product sales, promotions, advertizing and contacts. Alexander Slobidker's testimony is relevant to this case due to Alexander Slobidker's position as the manager of the Petitioner's company "P. Service", solely engaged in business of selling, promoting and advertising Petitioner's Trademark NIC-OUT.

Alexander Slobidker as the manager has personal knowledge of the following

facts:

1. All sale transactions, advertising, promotions, marketing and business relations of the Petitioner's Trademark NIC-OUT since year 2000.
2. First shipment being forwarded to Yael Menkin in year 2000.
3. Registration of the domain nic-out.com and website www.nic-out.com.
4. Direct sales of "NIC-OUT" in the United States.
5. All articles on the website were written by Petitioner.
6. Sending of the Shipments in early April 2002, as major industrial cargo of "NIC-OUT" to United States for "Safety Aid Supplies, Inc."
7. Major shipment sent to United States in September 2002.
8. In October 2002, "Safety Aid Supplies Inc." ordered its barcode for packs made by Petitioner's company for the United States.

9. Agreement with Mr. Maslov, owner of "Safety Aid Supplies, Inc".
10. Petitioner first use of the mark NIC-OUT in connection with the above-identified goods in interstate commerce at least as early as October 1, 2000.
11. Petitioner's use of the mark NIC-OUT in connection with the above-identified services has been continuous since on or about October 1, 2000.
12. Petitioner has invested significant sums of money in the promotion of the mark NIC-OUT and the Petitioner's goods in the United States.
13. Petitioner was barred by the Defendant – Respondent, Product Source International, LLC (hereinafter "Respondent") to deliver and sell in United States Petitioner's product under Petitioner's Trademark NIC-OUT.
14. Petitioner has developed a valuable reputation and goodwill in its NIC-OUT mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's mark NIC OUT identified more fully in U.S. Registration No. 3,350,041.
15. Petitioner's consumers confronted with the Respondent's mark NIC OUT will inevitably be confused and deceived into the mistaken belief that the Respondent's goods have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with his NIC-OUT mark.

IV. Intended testimony by Nicholas Maslov is relevant to the case as that he was, since 2003, Nahshin's representative and partner in the United States. Mr. Maslov had received in New York, U.S. multiple shipments of the NIC-OUT product from Petitioner, Leonid Nahshin, using Petitioner's Trademark name NIC-OUT. Mr. Maslov was responsible for promoting, advertizing and sale of the product NIC-OUT in the United States at that time.

Written testimony of Nicholas Maslov is relevant to the case as showing that Mr. Maslov was Petitioner's partner and representative in the United States starting year 2003.

Attached to this notice and forming part hereof is the Witnesses names, addresses and contact information, (a true and correct copy is annexed here as "Exhibit H.").

DATED: January 12, 2011

Respectfully submitted,



By:

**Vera Chernobylsky, Esq.**

*Attorney of Record for Leonid Nahshin*  
**LAW OFFICES OF VERA CHERNOBYLSKY**

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*4623 Dunman Avenue*

*Woodland Hills, California, 91364*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,350,041,  
For the mark NIC OUT,  
Registered on the Principal Register on December 4, 2007.

Leonid Nahshin,

Petitioner,

vs.

Petition No. 92051140

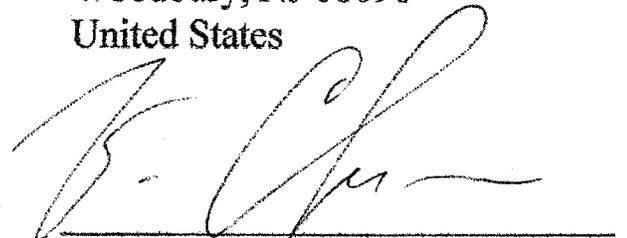
Product Source International, LLC,

Registrant.

**CERTIFICATE OF SERVICE**

I HERBEY CERTIFY that a true and accurate copy of the foregoing Plaintiff-Applicant's First Set of Interrogatories was submitted, this 12 day of January, 2011, to the following via first-class U.S. Mail, postage pre-paid:

Anthony J. DiMarino  
A.J. DiMarino P.C.  
Fax: 856.853.0055  
57 Euclid Street, Suite A  
Woodbury, NJ 08096  
United States



Vera Chernobylsky, Esq.

EXHIBIT 'C' 'B'



Petitioner, in conjunction with his English-speaking wife, wanted to develop a brand name which would sound well across multiple languages and would suggest the purpose of the product. As a result, he developed the name NIC-OUT which combines the first three letters of the term nicotine with the term OUT, a common word used to suggest the elimination of a substance. The naming of the product occurred in early 2000.

The next phase of the project was to locate a manufacturer thereof. As such, a manufacturer was located in 2000 in Istanbul, Turkey. The name of the manufacturer is Burda Ticaret. By August of 2000 an agreement had been reached so that Burda Ticaret would manufacture the NIC-OUT product for Petitioner.

By October of 2000 the first shipment of the NIC-OUT product was received from the manufacturer in Israel and shortly thereafter a shipment was forwarded to Yael Menkin, a U.S. resident in the U.S. to begin the search for buyers and distributors of the product in the U.S.

In the beginning of 2002 Safety Aid Supplies Inc. located in New York, USA became the U.S. distributor of our NIC-OUT product. The owner of Safety Aid Supplies Inc. is Nicolas Maslov. Thereafter, in April of 2002 Safety Aid Supplies Inc. received their first large shipment of the NIC-OUT product for distribution and sale in the U.S.

**INTERROGATORY NO. 2:** Explain how it is that you came up with the words "Nic" and "Out" both singly and in combination, as used in the Mark, and identify all documents, individuals, and physical evidence used in the creation, development, and eventual selection of the Mark, whether those documents, individuals, or physical evidence was used exclusively for internal purposes within your business enterprise or was shown to third parties independent of your business enterprise.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Please see answer to Interrogatory No. 1.

**INTERROGATORY NO. 3:** Identify by ship date, Product quantity, total invoice price, recipient name, recipient address, mode of shipment, and receipt date, all shipments of product

bearing the Mark that came from or went to you or any individual or organization under your control or authority, whether to or from the United States or elsewhere, and identify all individuals, documents, and physical evidence that supports said shipments of Product.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, please see responsive documents produced in connection with Petitioner's Responses to Registrant's Requests for Production of Documents.

**INTERROGATORY NO. 4:** Identify all advertising, promotion, or other marketing of Product that involved or involves use of the Mark, by date, media type (e.g. radio, television, Internet, print, etc.); owner of media used; any third parties involved with the advertising, promotion, or other marketing; all expenditures made in connection with the advertising, promotion, or other marketing; any measured changes in sales volume as a result of the advertising; and the amount of said measured change in sales volume.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner uses the web site nic-out.com as well as in-store displays which house the product which are distributed by and through Petitioner's U.S. distributor(s). Examples of both the web site as well as the in-store displays housing the products (pictures on the web site) are attached in connection with Petitioner's Responses to Registrant's Requests for Production of Documents.

**INTERROGATORY NO. 5:** Identify all documents, individuals, and other physical evidence demonstrating that you have developed an alleged "valuable reputation and goodwill" in the Mark and have "achieved a following amount the relevant consuming public" at any time, but especially although not limited to the "filing, registrations, and/or priority date" of U.S.

*AMENDED PETITION TO CANCEL* filed February 11, 2010.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, please see responsive documents produced in connection with Petitioner's Responses to Registrant's Requests for Production of Documents.

**INTERROGATORY NO. 6:** Identify all documents, individuals, and other physical evidence demonstrating that you have "priority of use of Registrant's rights in the Mark" or that "Petitioner commenced its use of the Mark in connection with its services in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registration of the Mark," in accordance with paragraph No. 10 of the *AMENDED PETITION TO CANCEL* filed February 11, 2010.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, the following individuals retain information relevant to Petitioner's priority of use over Registrant in the U.S.:

Leonid Nashin  
Petitioner

Alex Slobidker  
Nic-Out

Mr. Nicolas Maslov  
Safety Aid Supplies Inc.  
New York, USA

Eugene Huggins  
Product Source International, LLC

In addition, please see responsive documents produced in connection with Petitioner's Responses to Registrant's Requests for Production of Documents.

**INTERROGATORY NO. 7:** Identify all documents, individuals, or other physical evidence demonstrating that consumers are confused or "will inevitably be confused and deceived into the mistaken belief that the Registrant's goods have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with the Mark," in accordance with paragraph No. 11 of the *AMENDED PETITION TO CANCEL* filed February 11, 2010.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, Petitioner retains no documents demonstrating actual confusion in the marketplace.

**INTERROGATORY NO. 8:** Identify all documents, individuals, or other physical evidence demonstrating that you have been, are, or will be damaged, especially but not limited to demonstrating that you have been, are, or will be "seriously damaged" by our continued registration of the Mark, in accordance with paragraph No. 13 of the *AMENDED PETITION TO CANCEL* filed February 11, 2010.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, Petitioner has been damaged to the extent that by and through the Registrant's registered mark Petitioner's products are being precluded from entry into the U.S. Please see responsive documents produced in connection with Petitioner's Responses to Registrant's Requests for Production of Documents.

**INTERROGATORY NO. 9:** Identify all documents that may relate to this action, and attach copies of each document.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome, vague as to the terms "may relate", and accordingly is not reasonably calculated to lead to the discovery of admissible evidence at trial. Moreover the interrogatory requests information that may be protected by the attorney-client privilege and/or work product doctrines.

**INTERROGATORY NO. 10:** State the names and address of all parties having any knowledge regarding the facts pertaining to this dispute.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, Petitioner responds as follows:

Leonid Nashin  
Petitioner

Alex Slobidker  
Nic-Out

Mr. Nicolas Maslov  
Safety Aid Supplies Inc.  
New York, USA

Eugene Huggins  
Product Source International, LLC

**INTERROGATORY NO. 11:** If any photographs, videotapes, audio tapes or other forms of electronic recording, sketches, reproductions, charts or maps were made with respect to anything that is relevant to the subject matter of the complaint, describe: (a) the number of each; (b) what each shows or contains; (c) the date taken or made; (d) the names and addresses of the persons who made them; (e) in whose possession they are at present; and (f) if in your possession,

attach a copy, or if not subject to convenient copying, state the location where inspection and copying may take place.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, aside from those documents produced in response to the requests for production of documents, none.

**INTERROGATORY NO. 12:** If you claim that the defendant made any admissions as to the subject matter of this lawsuit, state: (a) the date made; (b) the name of the person by whom made; (c) the name and address of the person to whom made; (d) where made; (e) the name and address of each person at present at the time the admission was made; (f) the contents of the admission; and (g) if in writing, attach a copy.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, please see copies of electronic mail correspondence to and from the Registrant which may be deemed admissions against the interests of the Registrant.

**INTERROGATORY NO. 13:** If you or your representative and the defendant have had any oral communication concerning the subject matter of this lawsuit, state: (a) the date of the communication; (b) the name and address of each participant; (c) the name and address of each person present at the time of such communication; (d) where such communication took place; and (e) a summary of what was said by each party participating in the communication.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, none.

**INTERROGATORY NO. 14:** If you have obtained a statement from any person not a party to this action, state: (a) the name and present address of the person who gave the statement; (b) whether the statement was oral or in writing and if in writing, attach a copy; (c) the date the statement was obtained; (d) if such statement was oral, whether a recording was made, and if so, the nature of the recording and the name and present address of the person who has custody of it; (e) if the statement was written, whether it was signed by the person making it; (f) the name and address of the person who obtained the statement; and (g) if the statement was oral, a detailed summary of its contents.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, none.

**INTERROGATORY NO. 15:** State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current resume. Also attach true copies of all written reports provided to you by any such proposed expert witnesses. With respect to all expert witnesses, including treating physicians, who are expected to testify at trial and with respect to any person who has conducted an examination pursuant to Rule 4:19, who may testify, state each such witness's name, address and area of expertise and attach a true copy of all written reports provided to you. State the subject matter on which your experts are expected to testify. State the substance of the facts and opinions to which your experts are expected to testify and a summary of the grounds for each opinion.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections, Petitioner has yet to determine whether it will name any experts in this matter. If they are so named they will be identified as permitted under the applicable rules.

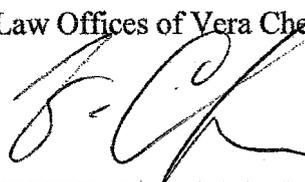
**INTERROGATORY NO. 16:**

State whether you have ever been convicted of a crime.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence at trial in a TTAB matter. Subject to said objection, no.

Respectfully submitted this 23 day of June, 2010.

Law Offices of Vera Chernobylsky



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Vera Chernobylsky, Esq.  
4623 Dunman Avenue  
Woodland Hills, CA 91364  
Attorney for the Petitioner

LEONID NAHSHIN

ISRAEL [Country]

BEFORE ME, the undersigned authority, this 23 day of June 2010, personally appeared Mr. Leonid Nahshin, who after being first duly sworn, states that he is the person who assisted and provided the answers to Petitioner's Answers to Registrant's First Set Of Interrogatories and that the answers provided therein are true and correct, and who is personally known to me or who has produced ID 304601651 as identification and who did take an oath.

  
Leonid Nahshin

23/06/2010

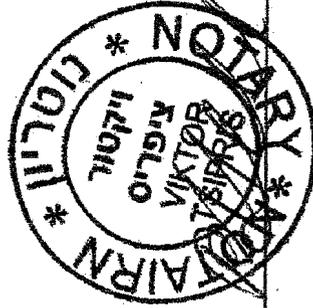
Date

Notary Public: \_\_\_\_\_ (signature)

Notary Public: Thipris Viktor (Typed/Printed name of Notary Public)

Commission No. 18463

My Commission Expires: UNLIMITED



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 3,350,041,  
For the mark NIC OUT,  
Registered on the Principal Register on December 4, 2007.

Leonid Nahshin,

Petitioner,

vs.

Petition No. 92051140

Product Source International, LLC,

Registrant.

**CERTIFICATE OF SERVICE**

I HERBEY CERTIFY that a true and accurate copy of the foregoing pleading was submitted, this 23 day of June, 2010, to the following via first-class U.S. Mail, postage pre-paid:

Jay DiMarino  
A.J. DiMarino PC  
57 Euclid Street, Suite A  
Woodbury, NJ 08096



\_\_\_\_\_  
Vera Chernobytsky, Esq.

# EXHIBIT "C"



Petitioner is a business owner of "P. Service" company. Petitioner is managing this business. In this business, the only one line of work is selling mouthpieces "Nic-Out" for cigarettes. Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 19:** How long have been You been engaged in this line of work?

**RESPONSE:** Petitioner has been working in this line of work since 1999.

**INTERROGATORY NO. 20:** What other lines of work or occupations have You been engaged in and for how long? (Please provide dates.)

**RESPONSE:** Petitioner's only and main occupation is the management of "P. Service" company. Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 21:** Would You agree with the statement that You are currently engaged in the business of brokering deals between manufacturers of consumer products and distributors of those products? If You do not agree with the statement, please explain in detail why You disagree.

**RESPONSE:** Petitioner disagrees to the statement. Petitioner receives orders from customers for the supply of mouthpieces for cigarettes "Nic-Out", places orders for production and follows the manufacture and shipment of finished products. Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 22:** Are You currently engaged in any other lines of work than brokering deals between manufacturers of consumers products and distributors for those products? If so, please describe the general nature of those other lines of work or occupations.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is not relevant to the case. See answers to the Interrogatory 21.

**INTERROGATORY NO. 23:** Does Your current line of work or occupation – or any of Your other lines of work or occupations – involve the importation of goods into United States? If so, please provide details of those lines of work or occupations as they related to the importation of goods into the United States, specifically including at least the following:

- a. The nature of the goods imported,
- b. Their country of origin, the location of their manufacture,
- c. The individuals or companies who receive the goods on the United States,
- d. The channels of trade or distribution the goods are sold within,
- e. The dates of such distribution within the United States,
- f. The approximate volume of sales for these goods, and
- g. The approximate amount of investment You have made in the importation, marketing, and distribution of these goods in order to avail Yourself commercially of the United States market.

**RESPONSE:** Petitioner objects to the instant interrogatory on the grounds that it is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner starts selling mouthpieces “Nic-Out” for cigarettes to United States in 2002. Currently Petitioner is barred by the Respondent from importing this product into United States. Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 24:** Please describe in detail the events surrounding Your decision in 1999 “to engage in the business of manufacturing and selling disposable mouthpieces for use in connection with cigarettes which filter out the harmful chemicals a smoker inhales

while smoking,” as stated in Your answers to PSI’s Interrogatory No. 1. Specifically, please explain to motivation You had engage in this business.

**RESPONSE:** Petitioner has been smoking since age 18. He understood that smoking was a very bad habit, but he could not quit. In 1999, he tried to smoke through a disposable mouthpiece made in Japan, purchased in Israel. He saw that these mouthpieces were very effective in cleaning up hazardous substances from cigarettes. Petitioner decided to do this business.

**INTERROGATORY NO. 25:** How did You come up with the idea to produce a disposable mouthpieces?

**RESPONSE:** Petitioner objects in that this interrogatory is vague and incoherent. Petitioner further objects as this interrogatory stated word “produce”. Subject to these objections Petitioner responds as follows:

Petitioner engages in the business of selling and distributing of “Nic-Out” mouthpieces. Petitioner receives orders from customers for the supply of mouthpieces for cigarettes “Nic-Out”, places orders for production and follows the manufacture and shipment of finished products. Please see answer to Interrogatory No. 21. Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 26:** How did You come up with the name NIC OUT?

**RESPONSE:** Please see answer to Interrogatory No. 1.

**INTERROGATORY NO. 27:** Prior to Your decision to use NIC OUT as the name of the disposable mouthpiece, had You ever heard of anyone else using the name “nic out” for other devices? If so, describe these other devices in detail and state when, where and how You first become aware of these devices.

**RESPONSE:** Before Petitioner decided to use the name "NIC-OUT" as the title of disposable mouthpieces, he has not heard anyone else use the name "NIC OUT" for other devices.

**INTERROGATORY NO. 28:** Had You ever bought, sold, used designed, or modified any other devices that were called “nic out” other than the disposable mouthpieces You claim to have designed or manufactured Yourself? If so, please explain.

**RESPONSE:** Petitioner objects that this interrogatory is vague, incoherent, irrelevant and overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

No other devices, which are called "NIC OUT", other than disposable mouthpieces, Petitioner sell, use, develop or modify. Petitioner participated in the development of a disposable mouthpiece "NIC OUT". Constant improvements were made with a mouthpiece since 1999 to 2002.

The results of this work were filed in the Israeli Patent Office under the number 151387 on August 21, 2002. The application for a patent under Petitioner's name described a disposable mouthpiece and its effect on the filtration of cigarette smoke. After that, the number of patent application was published on almost all packs entering the United States. Please see attached documents in addition to any relevant documents produced previously.

Petitioner was not planning to produce mouthpieces. He was planning to place an order for production of mouthpieces under the original name "NIC OUT" in the manufacture, acting in the field of plastic. That was done.

**INTERROGATORY NO. 29:** How did You choose Burda Ticaret as the company to manufacture Your disposable mouthpieces?

**RESPONSE:** Petitioner Stated: "There was no one who was engaged in such a production in Israel. "BURDA TICARET" was found by me in Istanbul, Turkey. I flew to Istanbul. I started looking for various plastic products in the shops in order to find the name and contact of the manufacturer on the packs. I found the manufacturer of mouthpieces similar to the "NIC OUT". This manufacturer was "BURDA TICARET". He had the entire necessary industrial base. In August 2000, we agreed that they will produce for me the mouthpieces for cigarettes under my trademark "NIC-OUT".

**INTERROGATORY NO. 30:** Please describe in detail the nature of Your business arrangement with Burda Ticaret and provide all documents that support your explanation of that arrangement.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner Stated: "It was the relationship between the product manufacturer and the owner of the trademark "NIC-OUT". I have been taking orders and money from the customers and placing the orders for the production for the required number of disposable mouthpieces for my brand "NIC-

OUT" in BURDA TICARET. BURDA TICARET was producing goods, than goods were shipped according to my instructions. I was paying for their work.”

**INTERROGATORY NO. 31:** Do You own all or any interest in Burda Ticaret? If So, please give the particulars.

**RESPONSE:** Petitioner does not own any interest in Burda Ticaret.

**INTERROGATORY NO. 32:** Do You control the manufacturing process of Your disposable mouthpieces or any other products manufactured by Burda Ticaret? If so, please give the particulars.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner sometimes was coming to Turkey to monitor the quality of disposable mouthpieces for his brand "NIC-OUT". He had always received samples of products so that he could assess the quality.

**INTERROGATORY NO. 33:** Did You provide Burda Ticaret with any engineering or technical drawings of how to manufacture the disposable mouthpieces? If so, please produce the drawings and explain how you developed them.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner stated: “No, I didn’t. I gave recommendations only in oral form to improve the quality of mouthpieces.”

**INTERROGATORY NO. 34:** Have you suggested any modifications or changes to Burda Ticaret for the manufacturing of the disposable mouthpieces? If so, please provide the pictures.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner stated: "Yes, I have."

**INTERROGATORY NO. 35:** What quality-control measures, if any, do you take to assure that the disposable mouthpieces manufactured by Burda Ticaret meet Your brand standards and quality for the NIC OUT mark? Please provide all documents that support Your answer.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner stated: "I was traveling to Turkey to monitor the quality of disposable mouthpieces for my brand "NIC-OUT". In addition, I had always received samples of products so that I could assess the quality."

In November 2002, I found a new manufacturer "ATAS", Istanbul for the mouthpieces "Nic-Out". I signed a contract with him and until today they have been my producers. I gave them all the technical drawings for the production of disposable mouthpieces "NIC-OUT".

Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 36:** Do you have any written agreements with Burda Ticaret? If so, please identify each such agreement and produce a copy.

**RESPONSE:** Petitioner stated: "At that time when I worked with "BURDA TICARET", we had an agreement, which was signed on January 1, 2001."

Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 37:** Have you ever rejected any manufacturing lots of disposable mouthpieces manufactured by NIC OUT for failure to meet your brand standards for the NIC OUT mark? If so, please provide all relevant details, such as the date of rejection, reason for rejection, and quantity rejected. Please also identify and produce any documents related to any such rejection.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner stated: "I stopped working with a "BURDA TICARET", because they did not want to make further improvements of mouthpieces "NIC-OUT". The company "ATAS", Istanbul has taken into account and considers all our wishes and norms for mouthpieces "NIC-OUT"."

**INTERROGATORY NO. 38:** Have you ever considered any other manufacturing companies for the manufacture of any products to be sold under the NIC OUT brand, and if so, which ones?

**RESPONSE:** Please see answer to Interrogatory No. 35.

**INTERROGATORY NO. 39:** In response to PSI's Interrogatory No.1, You state that "By October of 2000 the first shipment of the NIC-OUT product was received from the manufacturer in Israel and shortly thereafter a shipment was forwarded to Yael Menkin, a U.S. resident in the U.S to begin the search for buyers and distributors of the product in the U.S". Please clarify what You mean by "shortly thereafter" by providing a detailed account of the events leading up to and including the shipment being forwarded to Yael Menkin.

**RESPONSE:**

Petitioner stated: "On October 16, 2000 the first shipment of the "NIC-OUT" was sent to Israel Please see attached documents evidencing, referring or relating to goods or services by Petitioner under or pursuant Petitioner's trademark rights.

In early November 2000, I forwarded a few blocks of "NIC-OUT" in the U.S. for Yael Menkin, who lived in the U.S., so that she could start looking for the potential buyers in the U.S. "

**INTERROGATORY NO. 40:** When precisely was the shipment forwarded to Yael Menkin?

Please produce all documents that support Your answer.

**RESPONSE:** In early November 2000, petitioner posted a few blocks of "NIC-OUT" in the U.S. for Yael Menkin, who lived in the U.S., so that she began to look for to potential buyers in the U.S., check out the market mouthpieces in America and the price levels.

It was not industrial cargo. It was samples of mouthpieces "NIC-OUT". About 4 blocks, this included 80 packs. The parcels weight was 3.5 kg. Parcels were sent by speed post.

**INTERROGATORY NO. 41:** Did You take possession of the shipment forwarded to Yael Menkin or was it sent directly to him from the manufacturing facility? Please produce all documents that support your answer.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner stated: "It was not industrial cargo. These were samples of mouthpieces "NIC-OUT". About 4 blocks, this included 80 packs. The parcels weight was 3.5 kg. It was sent by speed post. The samples were taken from the cargo that I got to Israel and was personally located in my warehouse before departure."

**INTERROGATORY NO. 42:** What role, if any, did You play in controlling the use of the NIC OUT logo on the shipment forwarded to Yael Menkin? Specifically, did you require any form of brand standards, as to product quality, and, if so, what were they?

**RESPONSE:** Please see answer to Interrogatory No. 41.

**INTERROGATORY NO. 43:** Did you sign any contracts or other agreements with Yael Menkin? If so, please produce copies of all such contracts or other agreements or account for your inability to produce them.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines.

**INTERROGATORY NO. 44:** Did you enter into any contracts or other agreements with Nicolas Maslov, including but not limited to distribution agreements, marketing agreements, employment agreements, trademark licence agreements, website development or hosting agreements, domain name registration agreements, or any other contracts or agreements that might evidence Your control over the specifics of how Nikolas Maslov may have used the Mark? If so, please produce them.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

**Petitioner did entered into written agreement with Nikolas Maslov.** Please see attached documents evidencing, referring or relating to agreement entered into by Petitioner and N.Maslov.

**INTERROGATORY NO. 45:** Did you exert any control over brand standards or quality control of Nicolas Maslov's activities within the United States? If so, please explain what they are and produce any documents or other evidence supporting Your account.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner stated: "Sure, I am. I have been controlling over not only brand standards, but also quality control of Nicolas Maslov's activities within the United States.

At first I inspected brand standard of "Nic-Out" filters that I was sending to United States. A part of goods produced for United States was delivered to me, in Israel, for sale here. That's why I saw and inspected quality of the goods by myself. On packs, which were going to be shipped to U.S.A, I checked my filters brand name NIC OUT; also I checked appearance of my business label "P. Service", Israel and also my website address [www.nic-out.com](http://www.nic-out.com). This way I controlled my business in U.S.A. Furthermore, Mr. N. Maslov has been informing me about each and all his activity in sales of "Nic-Out" on U.S.A market. Additionally, I was checking the internet about any forgery of original "Nic-Out".

Please see attached documents evidencing, referring or relating to goods or services by Petitioner under or pursuant Petitioner's trademark rights.

**INTERROGATORY NO. 46:** Identify all contracts and/or agreements with any person or business entity for the sale of NIC OUT products in the United States. Produce copies of every such agreement and/or contract.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines.

Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 47:** Please explain the nature of Your involvement in the selection and registration of the domain name "nic-out.com" for the website you reference in your answer to PSI's Interrogatory No. 4.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner Stated: "Domain name "nic-out.com" was chosen by me personally according to the name of mouthpieces "Nic-Out".

Following my direction, in September 12, 2002, the manager of my company "P. Service" Alex Slobidker registered the domain nic-out.com.

Please see attached documents evidencing, referring or relating to registering Petitioner's domain nic-out.com.

Also, at the same moment the site www.nic-out.com was opened. The site is working today and is being actively promoted. The site is also an online store.

Since 2005, direct sales of "NIC-OUT" from the site began, including the sales in the United States. The site and the product were known in the U.S., so customers have started to buy directly from the site.

Please see attached documents evidencing, referring or relating to goods or services by Petitioner under or pursuant Petitioner's trademark rights.

**INTERROGATORY NO. 48:** What involvement did you have in the website's design, layout, content, advertising strategies, or other operations generally? Please produce all documents used in connection with these efforts.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner Stated: "All articles on the site were written by me, based on personal knowledge, that information may be confirmed by sales manager, Alexander Slobidker."

**INTERROGATORY NO. 49:** Identify, with precision, each and every instance of your use of the NIC OUT trademark in the United States since 2000.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Petitioner further objects as this interrogatory calls for identification of clients of Petitioner, which is confidential and trade secret.

Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 50:** For each such use of the NIC OUT trademark identified in the answer to the previous question, identify (1) the date of use, (2) the product associated (or sold) in connection with the NIC OUT trademark, (3) the location of the use within the United States, and (4) the volume of sales of the product using the NIC OUT trademark, both in terms of units and gross revenue.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Petitioner further objects as this interrogatory calls for identification of clients of Petitioner, which is confidential and trade secret.  
Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 51:** Identify all advertising for NIC OUT that has occurred in the United States since 2000.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines. Subject to these objections Petitioner responds as follows:

Petitioner Stated: "Beginning in 2002, "Safety Aid Supplies Inc." according to the agreement between its owner Mr. Maslov and me, owner of "P. Service" led a very active work in the introduction and sale of "NIC-OUT" in the United States, including participation in trade fairs. Mr. Maslov was keeping me informed about it. (Doc 1 2)

During period of our business relationships with "Safety Aid Supplies Inc.", we agreed that they will do advertizing and promotions of the product in the U.S. on behalf of the promoting my brand "NIC OUT". For this "P. Service" promised not to sell "NIC-OUT" to other representatives in the U.S. territory."

Please see attached documents in addition to any relevant documents produced previously.

**INTERROGATORY NO. 52:** For each such instance of advertising identified in the answer to the previous question, (1) state exactly where in the United States the advertising occurred, (2) state in what medium (i.e. print, radio, television, bill board, etc) the advertisements ran, (3) how state many times the advertisement ran, (4) identify and produce any documents, such as the actual advertisements, invoices, etc., related to those advertisements and (5) identify the amount of money spent, on a yearly basis, since 2000 on these advertisements in the United States.

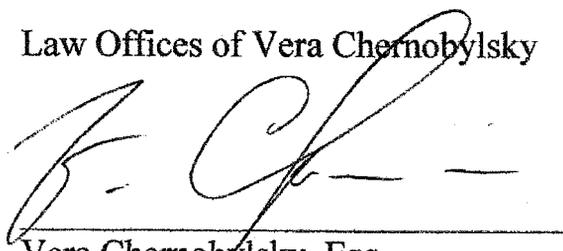
Please produce copies of all documents that are identified in your answer as well as all documents that support Your answer.

**RESPONSE:** Petitioner objects that this interrogatory is overly broad and burdensome and requests information that may be protected by the attorney-client privilege and/or work product doctrines.

Please see attached documents in addition to any relevant documents produced previously.

Respectfully submitted this \_\_15\_\_ day of December, 2010.

Law Offices of Vera Chernobylsky



Vera Chernobylsky, Esq.  
4623 Dunman Avenue  
Woodland Hills, CA 91364  
Attorney for the Petitioner





EXPERIMENTAL GIGIDS;

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,350,041,  
For the mark NIC OUT,  
Registered on the Principal Register on December 4, 2007.

Leonid Nahshin,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Petition No. 92051140
	:	
Product Source International, LLC,	:	
	:	
Registrant.	:	

**PRETRIAL DISCLOSURES**

COMES NOW the Petitioner, Leonid Nahshin (hereinafter "Petitioner"), and pursuant to the scheduling order entered in this matter provides the following Pretrial initial disclosures as required by the applicable rules of the Board.

**Disclosures**

1. The name(s) and address(s) of each individual likely have testify as witness and to have discoverable information and along with the subject(s) of that information that may be used to support Petitioner's claims:

Leonid Nahshin  
ISRAEL HAZVI 153/36  
Beer-Sheva ISRAEL 84746

Leonid Nahshin (thereafter "Petitioner") retains information concerning all aspects of the instant matter including, but not limited to, his rights in the mark at issue, dates of use thereof, marketing and other stream of commerce matters, as well as other information pertinent to the instant claims. Petitioner's testimony is relevant to this case due to Petitioner's personal knowledge of the following facts:

1. Relationship in 2003 between Eugene Higgins, owner of Product Source International, and Nickolas Maslov, at that time, representative and partner of Leonid Nahshin, Petitioner, in the United States.
2. Contractual relationship between Mr. Maslov and Petitioner.
3. Petitioner's intent to protect his Intellectual Property Rights, his Trademark NIC-OUT, in the United States.
4. Petitioner's continuous use of its Trademark NIC-OUT in the United States.
5. Petitioner is the owner of the mark NIC-OUT used on or in connection with a cigarette filter holder to reduce the inhalation of tar and nicotine.
6. Petitioner first use of the mark NIC-OUT in connection with the above-identified goods in interstate commerce in United States least as early as October 1, 2000.
7. Petitioner's use of the mark NIC-OUT in connection with the above-identified services has been continuous since on or about October 1, 2000.
8. Petitioner has invested significant sums of money in the promotion of the mark NIC-OUT and the Petitioner's goods in the United States.
9. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in its NIC-OUT mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Defendant – Respondent, Product Source International's, LLC (hereinafter "Respondent") mark NIC OUT identified more fully in U.S. Registration No. 3,350,041.
10. Petitioner filed USPTO Trademark Application Serial Number 78206651 on January 23, 2003 with USPTO Word Mark: "NIC-OUT" for International Class "034" , Goods & Services described as "G & S: cigarette filter holder to reduce the inhalation of tar and nicotine.; cigarette filter holder to reduce the inhalation of tar and nicotine."

11. Petitioner was barred by the Respondent, to deliver and sell in United States Petitioner's product under Petitioner's Trademark NIC-OUT.
12. Petitioner's consumers confronted with the Respondent's mark NIC OUT will inevitably be confused and deceived into the mistaken belief that the Respondent's goods have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with his NIC-OUT mark.
13. Petitioner will be seriously damaged by the continued registration of Registrant's mark NIC OUT.

Copies or descriptions of all documents, electronically stored information, and tangible things that Petitioner has in his possession, custody, or control and may be used to support its claims or defenses:

Petitioner retains business records, trademark applications and other pertinent documents which it may use to support his claim in this instant matter.

**Yael Menkin:**  
14 Duke Pass,  
Colts Neck, NJ 07722  
TEL: 1-(732) 252-6393  
1-(267)408-4990

Yael Menkin testimony is relevant to this case due to her personal knowledge of receipt in New York, US the first shipment of the product from Leonid Nahshin using his trademark name NIC-OUT in year 2000 and knowledge that this transaction was intended by the Petitioner as first introduction of his product under trademark NIC-OUT in United States. Written testimony of Yael Menkin is intended to show date of priority of the use in United States Petitioner's

Trademark name "NIC-OUT". Further Yael Menkin personally filed Trademark Application in USPTO for NIC-OUT on behalf of Petitioner on January 23, 2003.

Copies or descriptions of all documents, electronically stored information, and tangible things that Yael Menkin has in her possession, custody, or control and may be used to support its claims or defenses:

Yael Menkin retains business records, trademark applications and other pertinent documents which it may use to support this claim in this instant matter.

**Alexander Slobidker**  
59 Haven Rd  
Maple, ON L6A0W8  
Canada  
TEL: (1)-647-702-7418

Alexander Slobidker is manager of the Petitioner's Company P. Service and has a personal knowledge NIC-OUT product sales, promotions, advertizing and contacts. Alexander Slobidker's testimony is relevant to this case due to Alexander Slobidker's position as the manager of the Petitioner's company "P. Service", solely engaged in business of selling, promoting and advertising Petitioner's Trademark NIC-OUT.

Alexander Slobidker as the manager has personal knowledge of the following facts:

1. All sale transactions, advertising, promotions, marketing and business relations of the Petitioner's Trademark NIC-OUT since year 2000.
2. First shipment being forwarded to Yael Menkin in year 2000.
3. Registration of the domain nic-out.com and website www.nic-out.com.

4. Direct sales of "NIC-OUT" in the United States.
5. All articles on the website were written by Petitioner.
6. Sending of the Shipments in early April 2002, as major industrial cargo of "NIC-OUT" to United States for "Safety Aid Supplies, Inc."
7. Major shipment sent to United States in September 2002.
8. In October 2002, "Safety Aid Supplies Inc." ordered its barcode for packs made by Petitioner's company for the United States.
9. Agreement with Mr. Maslov, owner of "Safety Aid Supplies, Inc".
10. Petitioner first use of the mark NIC-OUT in connection with the above-identified goods in interstate commerce at least as early as October 1, 2000.
11. Petitioner's use of the mark NIC-OUT in connection with the above-identified services has been continuous since on or about October 1, 2000.
12. Petitioner has invested significant sums of money in the promotion of the mark NIC-OUT and the Petitioner's goods in the United States.
13. Petitioner was barred by the Defendant – Respondent, Product Source International, LLC (hereinafter "Respondent") to deliver and sell in United States Petitioner's product under Petitioner's Trademark NIC-OUT.
14. Petitioner has developed a valuable reputation and goodwill in its NIC-OUT mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's mark NIC OUT identified more fully in U.S. Registration No. 3,350,041.
15. Petitioner's consumers confronted with the Respondent's mark NIC OUT will inevitably be confused and deceived into the mistaken belief that the Respondent's goods

have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with his NIC-OUT mark.

Copies or descriptions of all documents, electronically stored information, and tangible things that Alexander Slobidker has in his possession, custody, or control and may be used to support its claims or defenses:

Alexander Slobidker retains business records, trademark applications and other pertinent documents which it may use to support this claim in this instant matter.

3. For inspection and copying any insurance agreement:

None.

Respectfully submitted this 9<sup>th</sup> day of February, 2011.



/Vera Chernobylsky/  
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4623 Dunman Avenue  
Woodland Hills, CA 91364  
Telephone (818) 251-6783  
Facsimile (818) 638-7844  
Vchernob@yahoo.com  
Attorney for Petitioner



EXHIBIT 66F,

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,350,041,  
For the mark NIC OUT,  
Registered on the Principal Register on December 4, 2007.

Leonid Nahshin,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Petition No. 92051140
	:	
Product Source International, LLC,	:	
	:	
Registrant.	:	

**INITIAL DISCLOSURES**

COMES NOW the Petitioner, Leonid Nahshin (hereinafter "Petitioner"), and pursuant to the scheduling order entered in this matter provides the following initial disclosures as required by the applicable rules of the Board.

**Disclosures**

1. The name(s) and address(s) of each individual likely to have discoverable information along with the subject(s) of that information that may be used to support Petitioner's claims:

Leonid Nahshin  
ISRAEL HAZVI 153/36  
Beer-Sheva ISRAEL 84746

Leonid Nahshin retains information concerning all aspects of the instant matter including, but not limited to, his rights in the mark at issue, dates of use thereof, marketing and other stream of commerce matters, as well as other information pertinent to the instant claims.

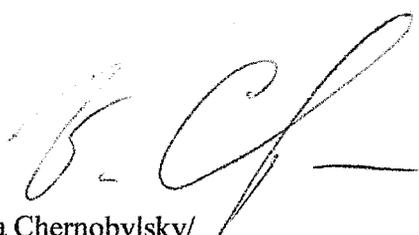
2. Copies or descriptions of all documents, electronically stored information, and tangible things that Petitioner has in his possession, custody, or control and may be used to support its claims or defenses:

Petitioner retains business records, trademark applications and other pertinent documents which it may use to support his claim in this instant matter.

3. For inspection and copying any insurance agreement:

None.

Respectfully submitted this 19<sup>th</sup> day of October, 2010.



/Vera Chernobylsky/

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