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

Proceeding	92051532
Party	Defendant Juan B. Melendez III
Correspondence Address	Juan B. Melendez III 2008 Grant Ave #1 Redondo Beach, CA 90278 UNITED STATES DNShogun@gmail.com, juan@digitalninja.us, shogun@digitalninja.us
Submission	Motion to Compel Discovery
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Signature	/Juan B. Melendez III/
Date	04/12/2010
Attachments	DNmotion2Compel.pdf ( 63 pages )(97908 bytes )

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

PICTURECODE, LLC	)	
	)	
	)	<b>Cancellation No. 92051532</b>
	)	
Petitioner,	)	<b>Mark: DIGITAL NINJA</b>
	)	<b>Registration No.: 3,321,797</b>
v.	)	
	)	
JUAN B. MELENDEZ III	)	
Respondent	)	
	)	

**MOTION TO COMPEL  
REQUEST OF DOCUMENT PRODUCTION  
AND REQUEST FOR ADMISSIONS**

**I.     INTRODUCTION**

This is a cancellation proceeding initiated by PictureCode LLC (“Petitioner”) on October 1, 2009. Petitioner has alleged fraud, abandonment, non-use, and the likelihood of confusion in its claims toward the cancellation of the DIGITAL NINJA trademark registration (Reg. No. 3,321,797), possessed by Juan B. Melendez III (“Respondent”). At the outset, the requirement of Trademark Rule 2.120(e)(1), 37 C.F.R. § 2.120(e)(1), requires that a motion to compel must be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented by the motion, and has been unable to reach an agreement. See TBMP §532.02 (2d ed. rev. 2004).

Petitioner issued a document request on January 10, 2010 which was fulfilled by Respondent with copies of documents within the thirty days allotted to respond. Petitioner requested no additional information. Respondent requested document production from Petitioner

on February 23, 2010, and was provided partial production on March 27, 2009. Respondent requested on April 1, 2010 (exhibit A) that the missing documents be provided by August 8<sup>th</sup>, 2010. As of Friday April 9<sup>th</sup>, 2010, PictureCode has not completed its document production and has now gained an unfair advantage. Petitioner believes Respondent executed intent to deceive, as Respondent reciprocated a nearly IDENTICAL document request from Petitioner, and as Petitioner has now requested a stay in these proceedings and modification of the Standard Protective Order, and a rush to judgment for the Ex Parte application. Both the Petitioner's Request and Respondent's requests have been attached as exhibit B and C, respectively.

The following interrogatories are representative of the Document Request at issue from Respondent and Petitioner's responses to those requests, in addition to the argument for production of those documents requested.

## **II. INTERROGATORIES**

### **RESPONDENT'S REQUEST NO. 18:**

The tax return for PICTURECODE for 2003.

### **PETITIONER'S RESPONSE TO REQUEST NO. 18:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in

question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 19:**

The tax return for PICTURECODE for 2004.

**PETITIONER'S RESPONSE TO REQUEST NO. 19:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative

invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 20:**

The tax return for PICTURECODE for 2005.

**PETITIONER'S RESPONSE TO REQUEST NO. 20:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 21:**

The tax return for PICTURECODE for 2006.

**PETITIONER'S RESPONSE TO REQUEST NO. 21:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide.

so the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 22:**

The tax return for PICTURECODE for 2007.

**PETITIONER'S RESPONSE TO REQUEST NO. 22:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 23:**

The tax return for PICTURECODE for 2008.

**PETITIONER'S RESPONSE TO REQUEST NO. 23:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 24:**

The tax return for PICTURECODE for 2009.

**PETITIONER'S RESPONSE TO REQUEST NO. 24:**

In light of the volume of documents which PICTURECODE will produce evidencing the

use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the sales Petitioner is claiming to have sold in the state of Texas, nationwide, and worldwide and as Respondent provided tax records.

**RESPONDENT'S REQUEST NO. 25:**

All DOCUMENTS that constitute communications to or from any accountant who prepared tax returns for PICTURECODE.

**PETITIONER'S RESPONSE TO REQUEST NO. 25:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. Due to the

volume of PICTURECODE's sales activity, PICTURECODE objects to the use of the term "all" documents on the ground that the request is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation.

PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights.

Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The documents that constitute communications to or from any accountant who prepared tax returns for PICTURECODE would corroborate the sales Petitioner is claiming to have sold in the state of Texas, nationwide, and worldwide.

**RESPONDENT'S REQUEST NO. 26:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2003.

**PETITIONER'S RESPONSE TO REQUEST NO. 26:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to

this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 27:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2004.

**PETITIONER'S RESPONSE TO REQUEST NO. 27:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and

consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 28:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2005.

**PETITIONER'S RESPONSE TO REQUEST NO. 28:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks

in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 29:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2006.

**PETITIONER'S RESPONSE TO REQUEST NO. 29:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted

listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 30:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2007.

**PETITIONER'S RESPONSE TO REQUEST NO. 30:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation

emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 31:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2008.

**PETITIONER'S RESPONSE TO REQUEST NO. 31:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide. Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT'S REQUEST NO. 32:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2009.

**PETITIONER'S RESPONSE TO REQUEST NO. 32:**

In light of the volume of documents which PICTURECODE will produce evidencing the use of its trademark and extensive sales records, PICTURECODE objects to this request on the ground that it is unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of what is reasonable for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks information that is subject to attorney-client privilege, protected as attorney work product or is subject to privacy rights. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its sales and first use and continuous use over time of the trademarks in question, including evidence of the first five sales and one sale per quarter thereafter; a redacted listing of 77000 individual online sales from 2003 to present; SWREG reports of total annual online sales volume and revenue from 2003-2009; representative invoices, order confirmation emails, customer support emails for customers; and representative orders, invoices, cancelled checks and available shipping records for resellers.

**ARGUMENT FOR PRODUCTION:** The tax return would corroborate the extremely high volume of sales claimed to have been sold in the state of Texas, nationwide, and worldwide.

Also the return should be provided as Respondent provided their returns in good faith; that production should be reciprocated.

**RESPONDENT’S REQUEST NO. 38:**

Any business plan for any person or entity selling or intending to sell any product bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**PETITIONER’S RESPONSE TO REQUEST NO. 38:**

In light of the voluminous production of documents evidencing PICTURECODE’s business activity, PICTURECODE objects to the use of the term “any” in the context of “any business plan”, “any person or entity”, or “any product” to the extent that it renders this request unreasonably cumulative, duplicative, burdensome, overbroad and beyond the scope of reasonable discovery for purposes of this litigation. PICTURECODE further objects to this request to the extent it seeks documents that are subject to attorney-client privilege, attorney work product or that are proprietary. PICTURECODE further objects to the extent this request requires PICTURECODE to search each and every form of electronic backup media or produce duplicative electronic copies of documents. PICTURECODE reserves the right to request reasonable compensation for searches of electronic databases. Subject to the foregoing objections and consistent with them, PICTURECODE will conduct a diligent search and produce non-privileged, nonprotected documents of business plans to the extent they are relevant to trademark use.

**RESPONDENT’S REQUEST NO. 47:**

Corporate organizational documents for PICTURECODE, including but not limited to the Articles of Organization, any amendments to the articles, Statements of Information, any

operating agreements, and member information.

**PETITIONER’S RESPONSE TO REQUEST NO. 47:**

PICTURECODE objects to the extent that the request is overbroad and requests documents which are beyond the reasonable scope of discovery for purposes of this litigation. PICTURECODE objects to this request to the extent it seeks documents that are subject to attorney-client privilege, protected as attorney work product or are proprietary. PICTURECODE further objects to this request to the extent it seeks confidential business information. Subject to the foregoing objections and consistent with them, PICTURECODE will produce non-privileged, non-protected documents sufficient to evidence its status, including its articles of organization, amendments and statements of information.

**ARGUMENT FOR PRODUCTION:** The Articles of Incorporation would provide the exact date the company PICTURECODE, LLC came into being as a legitimate business and dignify their claims they are able to do business in the state of Texas, nationwide, and worldwide.

**III. CONCLUSION**

Petitioner *cannot* claim attorney-client privilege as PICTURECODE is not an attorney and its customer’s were not its clients, Petitioner makes no mention of customer confidentiality in regards to customer IDENTITY on its website, as this court has enacted a Standard Protective Order, and as Respondent gains no unfair advantage in production of these documents. Furthermore, Respondent has produced such documents in good faith and those acts should be reciprocated. An evasive or incomplete response is the equivalent of a failure to disclose, Fed. R. Civ. P. 26(g) and 37(a)(3). Furthermore, a production of “representative” documents must truly be a representative sampling, and not merely a self-serving selection of favorable

documents. See, e.g., *The Procter & Gamble Company v. Keystone Automotive Warehouse, Inc.*, 191 USPQ 468 (TTAB 1976). Applicant is also reminded that, if a party provides an incomplete response to a discovery request, that party may not thereafter rely at trial on information from its records which was properly sought in the discovery request, pursuant to Fed. R. Civ. P. 26(e). See *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718 (TTAB 1987); and TBMP §408.02.

In regards, to Petitioner's denial of production as to the IDENTITY of its customers, Respondent is entitled to more specific information on geographic areas of distribution of goods sold with the NOISE NINJA mark (TBMP § 414(3)). Therefore, to the extent it has not already done so, applicant must provide documents in its custody, possession or control which show geographic areas of distribution of the involved goods sold in connection with the NOISE NINJA mark. Respondent would argue Petitioner was able to deduce with peculiar particularity monthly downloads were 30,000 times, state they have 77, 000 online sales since 2003, and sales in "millions of dollars" per month as per Petitioner's complaint filed in District Court.

Respondent argues Petitioner is attempting to avoid document production and admissions, as evident in their notice of filing in a district court, Petitioner's Ex Parte application, stay of these cancellation proceedings, and request the "TTAB should shorten time on a motion schedule to hear this motion quickly, and require any opposition to be filed within two days of the TTAB's order, with PictureCode's reply to be filed within one day of the filing of the opposition, provided the opposition is served by electronic mail." Respondent requests Petitioner be compelled to answer the document request and the request for admissions, (exhibit D).

Dated: April 12, 2010

Respectfully Submitted,

/Juan B. Melendez III/  
Juan B. Melendez III  
("Respondent")

Digital Ninja LLC  
2008 Grant Ave #1  
Redondo Beach, CA 90278  
310-663-9632  
[juan@digitalninja.us](mailto:juan@digitalninja.us)

**EXHIBIT A**

**From:** juan [mailto:juan@digitalninja.us]  
**Sent:** Thursday, April 01, 2010 10:52 AM  
**To:** 'kenneth.parker@haynesboone.com'; 'kparker@tlpfirm.com'  
**Cc:** 'katherine@madianoslaw.com'  
**Subject:** DOCUMENT REQUEST - FAILURE TO COMPLY

Kenneth G. Parker,

A Document Request was sent on February 23, 2010 to you, (Kenneth G. Parker) and Katherine Klammer Madianos. The thirty days allotted in order to provide the information/ documentation has passed and your client, Picturecode, has failed to comply. If your client chooses not to voluntarily provide *all* of the requested information, a Motion to Compel will be filed to obtain it (as per the TTAB rules Section 523). Your client would then be exposed to sanctions should they fail to comply with the motion (Section 527).

Federal Rules of Civil Procedure 26(a)(1) specifically addresses the scope of discovery. It states the information to be provided is the, "name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses". It continues in stating, "a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses." In addition, it (FRCP 26) states, "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

Before filing such a motion, the TTAB rules require I make a *good faith* effort to resolve this issue. If *all* of the information requested is not disclosed by close of business, 5pm Pacific Time on April 8<sup>th</sup>, 2010, the Motion to Compel will be filed.

**Juan Melendez**  
**SHOGUN**



**CONFIDENTIALITY NOTICE:** This message and any subsequent correspondence, including any attachments, if any, is intended only for the person or entity ((addressee(s)) to which it is addressed and may contain legally confidential/ inside and/ or privileged material. Any unauthorized review, disclosure, dissemination, use, or distribution is strictly prohibited and may be unlawful. If you are not the intended recipient, please immediately contact/ notify the sender by telephone or email, and destroy all copies of the original message from your system. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

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**EXHIBIT B**

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

In re Registration No. 3,321,797  
Mark: DIGITAL NINJA  
Issued: October 23, 2007

PICTURECODE, LLC,

Petitioner,

v.  
JUAN B. MELENDEZ III  
Respondent

Cancellation No. 92051532

PETITIONER'S REQUEST FOR  
PRODUCTION OF  
DOCUMENTS, SET ONE

Requesting Party: Petitioner PictureCode, LLC  
Responding Party: Respondent Juan B. Melendez III  
Set No.: One

Pursuant to Sections 406.01 through 406.04 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") and Rule 34 of the Federal Rules of Civil Procedure, Petitioner PictureCode, LLC requests that Respondent Juan B. Melendez III produce the requested documents and things for inspection and provide written responses within thirty days of the service of this request.

Instructions

1. Respondent may produce the documents for inspection by notifying requesting party of the time and place of their availability for inspection and copying or by providing copies to Respondent. If Respondent produces copies, all copies must truly and accurately reflect precisely all qualities of the original document. Requesting notifies responding party that requesting party will not be responsible for copy costs unless the parties confer and agree that requesting party will be responsible for them in advance and in writing.

2. In the case of electronic documents, all electronic documents must be

produced in a form identical to the original form, including compiled and uncompiled versions. Where specifically noted, originals must be presented on original media.

3. You should produce documents either (a) as they are kept in the usual course of business, or (b) organized and labeled to correspond with the particular categories set forth below. All documents should be produced in the file, folder, envelope, or other container in which the documents are kept or maintained. If for any reason the container cannot be produced, please produce copies of all labels or other identifying markings.

4. If any requested document or thing cannot be produced in full, please produce it to the extent possible, indicating what is being withheld and the reason it is being withheld.

5. If a document once existed, but has been lost or destroyed or otherwise is no longer in your possession, custody, or control, identify the document and state the details concerning the loss or destruction of such document, including the name and address of the present custodian of any such document if known.

6. If you claim that the attorney-client privilege or any other privilege is applicable to any document or any portion of a document, that document or portion of that document need not be produced but you shall with respect to that document or portion thereof:

a. state the date of the document;

b. identify each and every author of the document;

c. identify each and every other person who prepared or participated in the preparation of the document;

d. identify each and every person who received the document;

e. identify each and every person from whom the document was received;

f. state the present location of the document and all copies thereof;

g. identify each and every person having custody or control of the document and all copies thereof; and

h. provide sufficient further information concerning the document to explain the claim of privilege and to permit the fully informed adjudication of the propriety of the claim.

Definitions

1. "MELENDEZ," "YOU," and "YOURS" refer to Juan Melendez III and, when appropriate in context, his affiliates, agents, partners and all persons acting or purporting to act on his behalf.
2. "DOCUMENT" includes without limitation any kind of printed, recorded, written, graphic, photographic, magnetic, or electronic matter (including without limitation audio, video, digital or electronic recordation, such as computer memories, tapes, discs, and any other material for computer use), however printed, produced, reproduced, coded, or stored, of any kind or description, regardless of author or origin and whether or not sent or received, including originals, copies, reproductions, facsimiles, drafts, and both sides thereof.
3. "IDENTIFY" means state the name and all known addresses, telephone numbers, e-mail addresses, fax numbers of the person or entity requested.
4. The conjunctions "and" and "or" shall be interpreted inclusively so as to not exclude any matter otherwise within the scope of any request.
5. The term "any" or "each" should be understood to include and encompass "all"; "or" should be understood to include and encompass "and"; and "and" should be understood to include and encompass "or."

#### Requests

##### REQUEST NO. 1:

For each of the fourteen product types claimed in the Digital Ninja trademark registration, a sample of an actual product (a) sold by YOU or any of YOUR licensees, including but not limited to DIGITAL NINJA, (b) in interstate commerce (c) that shows the use of or bears the "Digital Ninja" mark (d) on or within six months prior to May 1, 2007.

##### REQUEST NO. 2:

For each of the fourteen product types claimed in the Digital Ninja trademark registration, a sample of an actual product (a) sold by YOU or any of YOUR licensees, including but not limited to DIGITAL NINJA, (b) in interstate commerce (c) that shows the use of or bears the "Digital Ninja" mark (d) as of October 1, 2009

##### REQUEST NO. 3:

For each of the fourteen product types claimed in the Digital Ninja trademark registration, a sample of an actual product (a) sold by YOU or any of YOUR licensees, including but not limited to DIGITAL NINJA, (b) in interstate commerce (c) that shows the use of or bears the "Digital Ninja" mark (d) on or prior to August 2003.

##### REQUEST NO. 4:

For any computer program for editing images as claimed in the Digital Ninja trademark registration, a sample of the actual computer program for editing images (a) sold by YOU or any of YOUR licensees, including but not limited to DIGITAL NINJA, (b) in interstate commerce (c) that shows the use of or bears the “Digital Ninja” mark (d) on or within six months prior to May 1, 2007.

REQUEST NO. 5:

For any computer program for editing images as claimed in the Digital Ninja trademark registration, a sample of the actual computer program for editing images (a) sold by YOU or any of YOUR licensees, including but not limited to DIGITAL NINJA, (b) in interstate commerce (c) that shows the use of or bears the “Digital Ninja” mark (d) as of October 1, 2009

REQUEST NO. 6:

For any computer program for editing images as claimed in the Digital Ninja trademark registration, a sample of the actual computer program for editing images (a) sold by YOU or any of YOUR licensees, including but not limited to DIGITAL NINJA, (b) in interstate commerce (c) that shows the use of or bears the “Digital Ninja” mark (d) on or prior to August 2003.

REQUEST NO. 7:

All DOCUMENTS that evidence or refer to sales in 2006 of any product bearing the trademark DIGITAL NINJA, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

REQUEST NO. 8:

All DOCUMENTS that evidence or refer to sales in 2007 of any product bearing the trademark DIGITAL NINJA, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

REQUEST NO. 9:

All DOCUMENTS that evidence or refer to sales in 2008 of any product bearing the trademark DIGITAL NINJA, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

REQUEST NO. 10:

All DOCUMENTS that evidence or refer to sales in 2009 of any product bearing the trademark DIGITAL NINJA, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

REQUEST NO. 11:

All DOCUMENTS that evidence or refer to any advertisement containing the trademark DIGITAL NINJA.

REQUEST NO. 12:

All DOCUMENTS that evidence or refer to any press release or other press-related communication mentioning the trademark DIGITAL NINJA.

REQUEST NO. 13:

All DOCUMENTS that evidence or refer to any computer programs for editing images.

REQUEST NO. 14:

All DOCUMENTS that evidence or refer to any license of the trademark DIGITAL NINJA.

REQUEST NO. 15:

All DOCUMENTS that evidence or refer to any business arrangement, including partnerships or joint ventures, in which the use of the trademark DIGITAL NINJA is an element.

REQUEST NO. 16:

All DOCUMENTS that evidence reviews or articles on third-party websites regarding any product bearing the DIGITAL NINJA trademark.

REQUEST NO. 17:

All DOCUMENTS that evidence discussions in any forums, particularly online forums, of any product bearing the DIGITAL NINJA trademark.

REQUEST NO. 18:

All DOCUMENTS that evidence product descriptions, download pages, or online order forms on third-party websites for any product bearing the DIGITAL NINJA trademark.

REQUEST NO. 19:

All DOCUMENTS that evidence magazine or newspaper articles regarding any product bearing the DIGITAL NINJA trademark.

REQUEST NO. 20:

All DOCUMENTS that evidence any printed catalogs containing any product bearing the DIGITAL NINJA trademark.

REQUEST NO. 21:

The tax return for Digital Ninja, LLC for 2005.

REQUEST NO. 22:

The tax return for Digital Ninja, LLC for 2006.

REQUEST NO. 23:

The tax return for Digital Ninja, LLC for 2007.

REQUEST NO. 24:

The tax return for Digital Ninja, LLC for 2008.

REQUEST NO. 25:

The tax return for Digital Ninja, LLC for 2009.

REQUEST NO. 26:

All DOCUMENTS that constitute communications to or from any accountant who prepared tax returns for Digital Ninja, LLC.

REQUEST NO. 27:

All DOCUMENTS that evidence payment of sales taxes to the State of California by Digital Ninja, LLC in 2005.

REQUEST NO. 28:

All DOCUMENTS that evidence payment of sales taxes to the State of California by Digital Ninja, LLC in 2006.

REQUEST NO. 29:

All DOCUMENTS that evidence payment of sales taxes to the State of California by Digital Ninja, LLC in 2007.

REQUEST NO. 30:

All DOCUMENTS that evidence payment of sales taxes to the State of California by Digital Ninja, LLC in 2008.

REQUEST NO. 31:

All DOCUMENTS that evidence payment of sales taxes to the State of California by Digital Ninja, LLC in 2009.

REQUEST NO. 32:

All DOCUMENTS that constitute anything shown on the website at [www.digitalninja.us](http://www.digitalninja.us) at any time.

REQUEST NO. 33:

All DOCUMENTS that constitute anything shown on any webpage maintained by Digital Ninja, LLC at any time.

REQUEST NO. 34:

All DOCUMENTS reflecting any download of any software bearing or sold in connection with the DIGITAL NINJA trademark.

REQUEST NO. 35:

Any marketing plans for any person or entity selling or intending to sell any product bearing or sold under the DIGITAL NINJA trademark.

REQUEST NO. 36:

All DOCUMENTS evidencing any effort to promote any product bearing or sold under the DIGITAL NINJA trademark.

REQUEST NO. 37:

Any business plan for any person or entity selling or intending to sell any product bearing or sold under the DIGITAL NINJA trademark.

REQUEST NO. 38:

Any prototype or beta version of any software program bearing or sold under the DIGITAL NINJA trademark.

REQUEST NO. 39:

Any development snapshot of any software program bearing or sold under the DIGITAL NINJA trademark.

REQUEST NO. 40:

DOCUMENTS sufficient to evidence development tools (compilers, editors, GUI builders, source code control, etc.) used to develop any software program bearing or sold under the DIGITAL NINJA trademark.

REQUEST NO. 41:

DOCUMENTS sufficient to IDENTIFY any person who has purchased any software program bearing, or sold under, the DIGITAL NINJA trademark.

REQUEST NO. 42:

DOCUMENTS sufficient to IDENTIFY any person who has purchased any product identified in the Section 7 Request form marked as Exhibit 8 in YOUR December 21, 2009 deposition.

REQUEST NO. 43:

DOCUMENTS sufficient to show the prices charged for each product identified in the Section 7 Request form marked as Exhibit 8 in YOUR December 21, 2009 deposition.

REQUEST NO. 44:

DOCUMENTS sufficient to show the prices charged for each product identified in the Section 7 Request form marked as Exhibit 8 in YOUR December 21, 2009 deposition.

REQUEST NO. 45:

Any snapshots of Digital Ninja (or other) website, including the website displayed at [www.digitalninja.us](http://www.digitalninja.us), showing any product releases or updates.

REQUEST NO. 46:

All DOCUMENTS evidencing involvement in the ADCC 2007 Submission Fighting DVD set project, including services provided by Digital Ninja LLC and

distribution or sales of the DVD by Digital Ninja LLC).

REQUEST NO. 47:

All DOCUMENTS evidencing Digital Ninja LLC's or YOUR involvement in the marketing, distribution, or sale of the ADCC 2007 DVD (as distinguished from merely providing video filming & production services to other parties).

REQUEST NO. 48:

Corporate organizational documents for Digital Ninja, LLC, including but not limited to the Articles of Organization, any amendments to the articles, Statements of Information, and any operating agreement.

REQUEST NO. 49:

All DOCUMENTS relevant to Petitioner's Petition for Cancellation.

REQUEST NO. 50:

All DOCUMENTS that evidence the IDENTITY of the individual working at IBM as described on page 106 of YOUR deposition.

REQUEST NO. 51:

All DOCUMENTS that constitute, evidence or refer to the receipt described on page 106, lines 1-7 of YOUR deposition.

REQUEST NO. 52:

All DOCUMENTS evidencing, constituting or referring to the disk described at page 106, lines 11-15 of your deposition and page 109, line 8, through page 110, line 4 of your deposition.

REQUEST NO. 53:

Copies of all information contained on the disk described at page 106, lines 11-15 of your deposition and page 109, line 8, through page 110, line 4 of your deposition.

Dated: January 10, 2010

Respectfully Submitted,

/Kenneth G. Parker/

Kenneth G. Parker, Esq.  
Teuton, Loewy & Parker LLP  
3121 Michelson Drive, Suite 250

Irvine, CA 92612  
949-442-7100; Fax: 949-442-7105

kparker@tlpfirm.com

Katherine Klammer Madianos, Esq.  
Attorneys for Petitioner

### Certificate of Service

Pursuant to 37 C.R.F. § 2.119 (a), I hereby certify that a true and complete copy of the foregoing document has been served on Respondent Juan B. Melendez III by e-mailing said copy on January 10, 2010 pursuant to an agreement of the parties to accept service by e-mail to the following e-mail :

/Kenneth G. Parker/

Kenneth G. Parker, Esq.  
Attorney for PictureCode, LLC

**EXHIBIT C**

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

PICTURECODE, LLC,  
  
                    Petitioner,  
  
                    v.  
  
JUAN B. MELENDEZ III  
  
                    Respondent.

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Cancellation No. 92051532

**RESPONDENT’S REQUEST FOR  
PRODUCTION OF DOCUMENTS, SET  
NO. ONE**

In re Registration No. 3,321,797  
Mark: DIGITAL NINJA  
Issued: October 23, 2007

**Requesting Party:**                      **Respondent, Juan B. Melendez III**

**Responding Party:**                    **Petitioner, PictureCode, LLC**

**Set No.:**                                    **One**

Pursuant to Sections 406.01 through 406.04 of the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and Rule 34 of the Federal Rules of Civil Procedure, Respondent Juan B. Melendez III requests Petitioner PICTURECODE produce the requested documents and things for inspection and provide written responses within thirty days of the service of this request.

**Instructions**

1. Petitioner may produce the documents for inspection by notifying requesting party of the time and place of their availability for inspection and copying or by providing copies to Respondent. If Petitioner produces copies, all copies must truly and accurately reflect precisely all qualities of the original document. Requesting party notifies responding party that requesting

party will not be responsible for copy costs unless the parties confer and agree requesting party will be responsible for them in advance and in writing.

2. In the case of electronic documents, all electronic documents must be produced in a form identical to the original form, including compiled and uncompiled versions. Where specifically noted, originals must be presented on original media.

3. Responding party should produce documents either (a) as they are kept in the usual course of business, or (b) organized and labeled to correspond with the particular categories set forth below. All documents should be produced in the file, folder, envelope, or other container in which the documents are kept or maintained. If for any reason the container cannot be produced, produce copies of all labels or other identifying markings.

4. If any requested document or thing cannot be produced in full, produce it to the extent possible, indicating what is being withheld and the reason it is being withheld.

5. If a document once existed, but has been lost or destroyed or otherwise is no longer in your possession, custody, or control, identify the document and state the details concerning the loss or destruction of such document, including the name and address of the present custodian of any such document if known.

6. If you claim that the attorney-client privilege or any other privilege is applicable to any document or any portion of a document, that document or portion of that document need not be produced but you shall with respect to that document or portion thereof:

- a. state the date of the document;
- b. identify each and every author of the document;
- c. identify each and every other person who prepared or participated in the preparation of the document;
- d. identify each and every person who received the document;
- e. identify each and every person from whom the document was received;
- f. state the present location of the document and all copies thereof;
- g. identify each and every person having custody or control of the document and all copies thereof; and
- h. provide sufficient further information concerning the document to explain the claim of privilege and to permit the fully informed adjudication of the propriety of the claim.

### **Definitions**

1. "PICTURECODE," "YOU," and "YOURS" refer to Petitioner, PictureCode, LLC, and, when appropriate in context, its affiliates, agents, partners and all persons acting or purporting to act on its behalf.
2. "DOCUMENT" includes without limitation any kind of printed, recorded, written, graphic, photographic, magnetic, or *electronic* matter (including without limitation

audio, video, digital or electronic recordation, such as computer memories, tapes, discs, and any other material for computer use), however printed, produced, reproduced, coded, or stored, of any kind or description, regardless of author or origin and whether or not sent or received, including originals, copies, reproductions, facsimiles, drafts, and both sides thereof.

3. “IDENTIFY” means state the name and all known addresses, telephone numbers, e-mail addresses, fax numbers of the person or entity requested.

4. The conjunctions “and” and “or” shall be interpreted inclusively so as to not exclude any matter otherwise within the scope of any request.

5. The term “any” or “each” should be understood to include and encompass “all”; “or” should be understood to include and encompass “and”; and “and” should be understood to include and encompass “or.”

### **Requests**

#### **REQUEST NO. 1:**

For the product type claimed, “Computer programs for editing images” in the PICTURECODE “Photo Ninja” and “Noise Ninja” trademark applications, a sample of all actual products (a) sold by YOU or any of YOUR licensees, including but not limited to PICTURECODE, (b) in interstate commerce (c) that shows the use of or bears the “PictureCode LLC”, “Photo Ninja”, or “Noise Ninja” marks (d) on or since November 2003.

#### **REQUEST NO. 2:**

All DOCUMENTS that evidence or refer to sales in 2004 of any product bearing “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

**REQUEST NO. 3:**

All DOCUMENTS that evidence or refer to sales in 2005 of any product bearing “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

**REQUEST NO. 4:**

All DOCUMENTS that evidence or refer to sales in 2006 of any product bearing “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

**REQUEST NO. 5:**

All DOCUMENTS that evidence or refer to sales in 2007 of any product bearing “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

**REQUEST NO. 6:**

All DOCUMENTS that evidence or refer to sales in 2008 of any product bearing the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

**REQUEST NO. 7:**

All DOCUMENTS that evidence or refer to sales in 2009 of any product bearing the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks, including but not limited to any invoice, order form, purchase order, cancelled checks, credit card receipts, shipping receipts, confirming e-mails, or payment records.

**REQUEST NO. 8:**

All DOCUMENTS that evidence or refer to any advertisement containing the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 9:**

All DOCUMENTS that evidence or refer to any press release or other press-related communication mentioning the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 10:**

All DOCUMENTS that evidence or refer to any of YOUR computer programs for editing images.

**REQUEST NO. 11:**

All DOCUMENTS that evidence or refer to any license of the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 12:**

All DOCUMENTS that evidence or refer to any of YOUR business arrangements, including partnerships or joint ventures, in which the use of the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks are an element.

**REQUEST NO. 13:**

All DOCUMENTS that evidence reviews or articles on third-party websites regarding any of YOUR products bearing the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 14:**

All DOCUMENTS that evidence discussions in any forums, particularly online forums, of any of YOUR products bearing the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 15:**

All DOCUMENTS that evidence YOUR product descriptions, download pages, or online order forms on third-party websites for any product bearing “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 16:**

All DOCUMENTS that evidence magazine or newspaper articles regarding

any of YOUR products bearing “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 17:**

All DOCUMENTS that evidence any printed catalogs containing any

of YOUR products bearing the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 18:**

The tax return for PICTURECODE for 2003.

**REQUEST NO. 19:**

The tax return for PICTURECODE for 2004.

**REQUEST NO. 20:**

The tax return for PICTURECODE for 2005.

**REQUEST NO. 21:**

The tax return for PICTURECODE for 2006.

**REQUEST NO. 22:**

The tax return for PICTURECODE for 2007.

**REQUEST NO. 23:**

The tax return for PICTURECODE for 2008.

**REQUEST NO. 24:**

The tax return for PICTURECODE for 2009.

**REQUEST NO. 25:**

All DOCUMENTS that constitute communications to or from any accountant who prepared tax returns for PICTURECODE.

**REQUEST NO. 26:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2003.

**REQUEST NO. 27:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2004.

**REQUEST NO. 28:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2005.

**REQUEST NO. 29:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2006.

**REQUEST NO. 30:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2007.

**REQUEST NO. 31:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2008.

**REQUEST NO. 32:**

All DOCUMENTS that evidence payment of sales taxes to the State of Texas by PICTURECODE in 2009.

**REQUEST NO. 33:**

All DOCUMENTS that constitute anything shown on the website at [www.picturecode.com](http://www.picturecode.com) at any time.

**REQUEST NO. 34:**

All DOCUMENTS that constitute anything shown on any webpage maintained by PICTURECODE at any time.

**REQUEST NO. 35:**

All DOCUMENTS reflecting any download of any software bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 36:**

Any marketing plans for any person or entity selling or intending to sell any product bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 37:**

All DOCUMENTS evidencing any effort to promote any product bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 38:**

Any business plan for any person or entity selling or intending to sell any product bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 39:**

Any prototype or beta version of any software program bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 40:**

Any development snapshot of any software program bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 41:**

DOCUMENTS sufficient to evidence development tools (compilers, editors, GUI builders, source code control, etc.) used to develop any software program bearing or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 42:**

DOCUMENTS sufficient to IDENTIFY any person who has purchased any software program bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 43:**

DOCUMENTS sufficient to IDENTIFY any person who has purchased any product identified bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 44:**

DOCUMENTS sufficient to show the prices charged for each product Identified and bearing, or sold under the “PictureCode LLC”, “Noise Ninja”, or “Photo Ninja” marks.

**REQUEST NO. 45:**

Any snapshots of YOURS (or other) websites, including the website displayed at [www.picturecode.com](http://www.picturecode.com), showing any product releases or updates.

**REQUEST NO. 46:**

All DOCUMENTS evidencing YOUR involvement in the marketing, distribution, or sale of the sale of “Noise Ninja”, or “Photo Ninja”.

**REQUEST NO. 47:**

Corporate organizational documents for PICTURECODE, including but not limited to the Articles of Organization, any amendments to the articles, Statements of Information, any operating agreements, and member information.

**REQUEST NO. 48:**

All DOCUMENTS relevant to Petitioner's Petition for Cancellation.

DATED: February 23, 2010

/Juan B. Melendez III/  
JUAN B. MELENDEZ III, Respondent

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. section 2.119(a), I hereby certify that a true and complete copy of **RESPONDENT'S RESPONSE TO PETITIONER'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. ONE** has been served on Petitioner, PICTURECODE, LLC by electronic mail on February 23, 2010 through its following attorneys:

1. Petitioner's Attorney, Katherine Klammer Madianos, Esq., at the following electronic mail address: [katherine@madianoslaw.com](mailto:katherine@madianoslaw.com)

Katherine Klammer Madianos, Esq.  
3606 Enfield Road  
Austin, TX 78703  
[katherine@madianoslaw.com](mailto:katherine@madianoslaw.com)

2. Petitioner's Co-Counsel, Kenneth G. Parker, Esq., at the following electronic mail address: [kparker@tlpfirm.com](mailto:kparker@tlpfirm.com)

Kenneth G. Parker, Esq.  
Teuton, Loewy & Parker, LLP  
3121 Michelson Drive, Suite 250  
Irvine, CA 92612  
[kparker@tlpfirm.com](mailto:kparker@tlpfirm.com)

Dated: February 23, 2010

/Juan B. Melendez III/  
\_\_\_\_\_  
JUAN B.MELENDEZ III, Respondent

**EXHIBIT D**

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

PICTURECODE, LLC,

Petitioner,

v.

JUAN B. MELENDEZ III

Respondent.

Cancellation No. 92051532

**RESPONDENT'S REQUEST FOR  
PRODUCTION OF DOCUMENTS, SET  
ONE**

In re Registration No. 3,321,797  
Mark: DIGITAL NINJA  
Issued: October 23, 2007

**REQUEST FOR ADMISSIONS**

Respondent, Juan B. Melendez, III, hereby requests that Petitioner, PictureCode, LLC, answer under oath, separately and fully, within thirty (30) days from the date of service hereof (not counting day of receipt), pursuant to the TBMP §§ 407.01-407.04 and § 408, and Fed. R. Civ. P. 36(a), the following Request for Admissions:

**Definitions**

The term "YOU", "YOUR" or "YOURS" shall mean Petitioner, PictureCode, LLC, YOUR agents, employees, accountants, attorneys, experts, investigators, or anyone else acting

on YOUR behalf.

**The Rules of Civil Procedure provide that:**

1. For a matter to be pleaded, at the time of pleading you must have factual information that provides a reasonable ground for you to prevail at trial.
2. For a matter to be denied on a request for admission, you must have factual information that provides a reasonable ground for you to prevail at trial.
3. You may not give lack of information as a reason for failure to admit the following items (unless you state that in fact you already have made a reasonable inquiry to ascertain any reasonable ground to believe that you might prevail on this matter).
4. “An assertion that the request presents an issue for trial is not a proper response.”

**REQUEST FOR ADMISSION NO. 1**

Admit that YOU did not sell any products prior to August 12, 2003.

**REQUEST FOR ADMISSION NO. 2**

Admit that YOU have sold products with the NOISE NINJA mark since November 5, 2003.

**REQUEST FOR ADMISSION NO. 3**

Admit that YOU have not sold any product with the PHOTO NINJA.

**REQUEST FOR ADMISSION NO. 4**

Admit that the first date that YOU applied to trademark the name PHOTO NINJA the Federal Patent and Trademark Office was April 9, 2009.

**REQUEST FOR ADMISSION NO. 5**

Admit that YOU applied to trademark the name NOISE NINJA after PHOTO NINJA.

**REQUEST FOR ADMISSION NO. 6**

Admit that YOU were not aware of the Digital Ninja trademark until July 7, 2009.

**REQUEST FOR ADMISSION NO. 7**

Admit that YOU contacted Juan B. Melendez III, owner of Digital Ninja, LLC on July 22, 2009 and requested he sign an agreement which stated there was no likelihood of confusion.

**REQUEST FOR ADMISSION NO. 8**

Admit that the first date that YOU applied to trademark the name NOISE NINJA with the Federal Patent and Trademark Office was July 29, 2009.

**REQUEST FOR ADMISSION NO. 9**

Admit that YOUR product, NOISE NINJA enhances images.

**REQUEST FOR ADMISSION NO. 10**

Admit YOU continue to sell products with the NOISE NINJA mark.

**REQUEST FOR ADMISSION NO. 11**

Admit that YOU have never dealt with any programs or products which edit video or sound.

**REQUEST FOR ADMISSION NO. 12**

Admit YOU were provided documents in response to your Document Request propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 13**

Admit that YOU are not aware of any legal requirement preventing JUAN B. MELENDEZ III from selling his Digital Ninja products for \$.99 to maintain DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 14**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III must make a profit from selling his Digital Ninja products to maintain DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 15**

Admit that YOU are not aware of any legal requirement that prevents JUAN B. MELENDEZ III from advertising his Digital Ninja products via oral, voice, or word-of-mouth communication to maintain DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 16**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III must make “press releases or press-related communications” to maintain DIGITAL NINJA trademark no. 3,321,797. "Press releases" and “press-related communication” shall have the same meaning as that intended by PictureCode on page 7, Request #12 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 17**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III is required to make a “business arrangement, partnership, or joint venture” to maintain DIGITAL NINJA trademark no. 3,321,797. "Business arrangement", “partnership” and “joint venture” shall have the same meaning as that intended by PictureCode on page 8, Request #15 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 18**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III is required to have “reviews or articles on third-party websites” to maintain DIGITAL NINJA trademark no. 3,321,797. "Reviews or articles on third-party websites” shall have the same meaning as that intended by PictureCode on page 8, Request #16 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 19**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III is

required to have “discussions in any forums, particularly online forums” to maintain DIGITAL NINJA trademark no. 3,321,797. “Discussions in any forums, particularly online forums” shall have the same meaning as that intended by PictureCode on page 8, Request #17 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 20**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III is required to have “product, descriptions, download pages, or online order forms on third-party websites” to maintain DIGITAL NINJA trademark no. 3,321,797. “Product descriptions, download pages, or online order forms on third-party websites” shall have the same meaning as that intended by PictureCode on page 8, Request #18 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 21**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III is required to have “magazine or newspaper articles” to maintain DIGITAL NINJA trademark no. 3,321,797. “Magazine or newspaper articles” shall have the same meaning as that intended by PictureCode on page 8, Request #19 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 22**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III is required to have “printed catalogs” to maintain DIGITAL NINJA trademark no. 3,321,797. “Printed catalogs” shall have the same meaning as that intended by PictureCode on page 9, Request #20 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 23**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III is required to have "communications to or from any accountant" to maintain DIGITAL NINJA trademark no. 3,321,797. "Communications to or from any accountant" shall have the same meaning as that intended by PictureCode on page 9, Request #26 of YOUR request for production of documents propounded on Juan B. Melendez III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 24**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III must have his products available for "download" to maintain DIGITAL NINJA trademark no. 3,321,797. "Download" shall have the same meaning as that intended by PictureCode on page 10, Request #34 of YOUR request for production of documents propounded on Digital Ninja on January 10, 2010.

**REQUEST FOR ADMISSION NO. 25**

Admit that YOU are not aware of any legal requirement that JUAN B. MELENDEZ III must have a "marketing plan" to maintain DIGITAL NINJA trademark no. 3,321,797. "Marketing plan" shall have the same meaning as that intended by PictureCode on page 10, Request #35 of YOUR request for production of documents propounded on Digital Ninja on January 10, 2010.

**REQUEST FOR ADMISSION NO. 26**

Admit that YOU are not aware of any legal requirement that Juan JUAN B. MELENDEZ III must "business plan" to maintain DIGITAL NINJA trademark no. 3,321,797. "Marketing plan" shall have the same meaning as that intended by PictureCode on page 11, Request #37 of YOUR request for production of documents propounded on Digital Ninja on January 10,

2010.

**REQUEST FOR ADMISSION NO. 27**

Admit that YOU are not aware of any legal requirement that prevents JUAN B. MELENDEZ III from advertising his Digital Ninja products via text message to maintain DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 28**

Admit that YOU are not aware of any legal requirement that prevents JUAN B. MELENDEZ III from advertising his Digital Ninja products via email to maintain DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 29**

Admit that YOU are not aware of any legal requirement that prevents JUAN B. MELENDEZ III from writing receipts for his Digital Ninja products on the back of napkins, paper, or graph paper to maintain DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 30**

Admit YOU do not have any “communications to or from any accountant”. “Communications to or from any accountant” shall have the same meaning as that intended by PictureCode on page 9, Request #26 of YOUR request for production of documents propounded on JUAN B. MELENDEZ III on January 10, 2010.

**REQUEST FOR ADMISSION NO. 31**

Admit YOU have never had an accountant.

**REQUEST FOR ADMISSION NO. 32**

Admit that YOU did not pay Federal income tax for the year 2003.

**REQUEST FOR ADMISSION NO. 33**

Admit that YOU did not pay State income tax for the year 2004.

**REQUEST FOR ADMISSION NO. 34**

Admit that YOU did not pay Federal income tax for the year 2005.

**REQUEST FOR ADMISSION NO. 35**

Admit that YOU did not pay State income tax for the year 2005.

**REQUEST FOR ADMISSION NO. 36**

Admit that YOU did not pay Federal income tax for the year 2006.

**REQUEST FOR ADMISSION NO. 37**

Admit that YOU did not pay State income tax for the year 2006.

**REQUEST FOR ADMISSION NO. 38**

Admit that YOU did not pay Federal income tax for the year 2007.

**REQUEST FOR ADMISSION NO. 39**

Admit that YOU did not pay State income tax for the year 2007.

**REQUEST FOR ADMISSION NO. 40**

Admit that YOU did not pay Federal income tax for the year 2008.

**REQUEST FOR ADMISSION NO. 41**

Admit that YOU did not pay State income tax for the year 2008.

**REQUEST FOR ADMISSION NO. 42**

Admit that YOU did not pay Federal income tax for the year 2009.

**REQUEST FOR ADMISSION NO. 43**

Admit that YOU did not pay State income tax for the year 2009.

**REQUEST FOR ADMISSION NO. 44**

Admit that YOU do not have Articles of Incorporation for your business.

**REQUEST FOR ADMISSION NO. 45**

Admit YOU received a copy of the DIGITAL NINJA PHOTO MASTER software.

**REQUEST FOR ADMISSION NO. 46**

Admit the software YOU received on behalf of JUAN B. MELENDEZ III, contains the words DIGITAL NINJA and PHOTO MASTER.

**REQUEST FOR ADMISSION NO. 47**

Admit that YOU contacted JUAN B. MELENDEZ III, owner of the DIGITAL NINJA trademark no. 3,321,797 on repeated occasions asking he sign an agreement.

**REQUEST FOR ADMISSION NO. 48**

Admit that YOU did not pay for an attorney for JUAN B. MELENDEZ III, owner of DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 49**

Admit that YOU were never contacted by JUAN B. MELENDEZ III about an agreement to amend amending his Trademark.

**REQUEST FOR ADMISSION NO. 50**

Admit that the statement made by JUAN B. MELENDEZ III in the Deposition referred to in Paragraph 19, section G on page 31 of YOUR Complaint Civil No.A10CA 188LY filed in Federal District Court does not contradict his registration of DIGITAL NINJA trademark no. 3,321,797.

**REQUEST FOR ADMISSION NO. 51**

Admit that YOU are not aware of any legal requirement that prevents JUAN B. MELENDEZ III from selling his Digital Ninja products to "friends and family" to maintain DIGITAL NINJA trademark no. 3,321,797. ("Friends and family shall have the same meaning as that intended by

YOU on page 35, Paragraph 35 line of YOUR Complaint Civil No.A10CA 188LY filed in Federal District Court.)

**REQUEST FOR ADMISSION NO. 52**

Admit that YOU sell the NOISE NINJA product nationwide.

**REQUEST FOR ADMISSION NO. 53**

Admit that YOU sell the PHOTO NINJA product worldwide.

**REQUEST FOR ADMISSION NO. 54**

Admit that YOU do not possess a trademark registration for the NOISE NINJA mark in the state of Texas.

**REQUEST FOR ADMISSION NO. 55**

Admit that YOU do not possess a trademark registration for the PHOTO NINJA mark in the state of Texas.

**REQUEST FOR ADMISSION NO. 56**

Admit that YOU do not possess a trademark registration for the PICTURECODE mark in the state of Texas.

**REQUEST FOR ADMISSION NO. 57**

Admit that YOU are entitled to common-law rights.

**REQUEST FOR ADMISSION NO. 58**

Admit that YOU possess common-law rights to the NOISE NINJA mark that began on November 5, 2003.

**REQUEST FOR ADMISSION NO. 59**

Admit that you sold NOISE NINJA products on November 5, 2003.

**REQUEST FOR ADMISSION NO. 60**

Admit that YOU did not research the name NOISE NINJA or PICTURECODE with the United States Patent and Trademark Office or the State of Texas.

**REQUEST FOR ADMISSION NO. 61**

Admit the website [www.digitalninja.us](http://www.digitalninja.us) does not contain the word “service”.

**REQUEST FOR ADMISSION NO. 62**

Admit YOU were provided a document that shows the purchase of the [www.digitalninja.us](http://www.digitalninja.us) domain name on July 25, 2003.

**REQUEST FOR ADMISSION NO. 63**

Admit YOU were provided an invoice that shows the sale of all 14 items contained in the registration on August 12, 2003 that bears the DIGITAL NINJA registered trademark.

**REQUEST FOR ADMISSION NO. 64**

Admit YOU were provided a document an invoice that shows the sale of all 14 items contained in the registration prior to August 12, 2003 that bears the DIGITAL mark.

**REQUEST FOR ADMISSION NO. 65**

Admit YOU were provided a copy of an additional DIGITAL NINJA mark (Reg. No. 3,169,349) filed on August 19, 2003 for related services associated with DIGITAL NINJA products.

**REQUEST FOR ADMISSION NO. 66**

Admit YOU will provide the Trademark Trials and Appeals Board with a full copy of the deposition taken on December 21, 2009.

**REQUEST FOR ADMISSION NO. 67**

Admit YOU did not provide JUAN B. MELENDEZ III with a copy of the deposition taken on December 21, 2009.

**REQUEST FOR ADMISSION NO. 68**

Admit YOU did not provide JUAN B. MELENDEZ III with all the documents requested as per the Document Request on February 23, 2010.

**REQUEST FOR ADMISSION NO. 69** Admit JUAN B. MELENDEZ III asked (via email on April 1<sup>st</sup>, 2010) that all of the non-provided documents requested as per the Document Request from JUAN B. MELENDEZ III on February 23, 2010, be provided.

**REQUEST FOR ADMISSION NO. 70**

Admit on April 2, 2010 YOU stated (via email) you would provide the additional documents requested, as per the Document Request from JUAN B. MELENDEZ III.

**REQUEST FOR ADMISSION NO. 71**

Admit YOU stated (via email) additional documents, as per the Document Request from JUAN B. MELENDEZ III, would be provided on April 9th, 2010.

**REQUEST FOR ADMISSION NO. 72**

Admit that YOU are now currently selling NOISE NINJA products.

**REQUEST FOR ADMISSION NO. 73**

Admit that YOU are now currently selling PHOTO NINJA products.

**REQUEST FOR ADMISSION NO. 74**

Admit that Owner and founder of PictureCode, LLC, Mr. Jim Christian, possesses a PhD.

**REQUEST FOR ADMISSION NO. 75**

Admit that YOU know the month of August 12, 2003 comes before November 5, 2003.

**REQUEST FOR ADMISSION NO. 76**

Admit that YOU waited over five years to apply for a United States Trademark registration.

**REQUEST FOR ADMISSION NO. 76**

Admit that Owner and Founder of PictureCode LLC, Jim attended and graduated from the University of Texas at Austin.

**REQUEST FOR ADMISSION NO. 76**

Admit that Attorney Kenneth G. Parker went attended and graduated from the University of Texas at Austin.

**REQUEST FOR ADMISSION NO. 76**

Admit that Attorney Adam Secenbaugh attended and graduated from the University of Texas at Austin.

**REQUEST FOR ADMISSION NO. 76**

Admit that The Honorable Lee Yeakel, Judge, U.S. District Court for the Western District of Texas attended and graduated from the University of Texas at Austin.

**REQUEST FOR ADMISSION NO. 77**

Admit that YOU included, along with notice of the district court filing, another agreement for JUAN B. MELENDEZ III to sign that requires he amend the DIGITAL NINJA mark (Reg. No. 3,169,349).

Dated: April 12, 2010

/Juan B. Melendez III/  
Juan B. Melendez III  
("Respondent")  
Digital Ninja LLC  
2008 Grant Ave #1  
Redondo Beach, CA 90278  
310-663-9632  
[juan@digitalninja.us](mailto:juan@digitalninja.us)

**CERTIFICATE OF SERVICE**

Pursuant to C.R.F. § 2.111, and by agreement of the parties, I hereby certify that a true and correct copy of the foregoing response has been served on Petitioner's Attorneys via electronic mail on April 12, 2010:

1. Petitioner's Attorney, Kenneth G. Parker, Esq., at the following electronic mail address: [kenneth.parker@haynesboone.com](mailto:kenneth.parker@haynesboone.com)

Kenneth G. Parker  
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Irvine, CA 92612  
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/Juan B. Melendez III/  
Juan B. Melendez III, Respondent