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Filing date: **09/28/2010**

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

Proceeding	92051860
Party	Plaintiff La Montre Hermes S.A.
Correspondence Address	ANDREW BAUM FOLEY & LARDNER LLP 90 PARK AVENUE NEW YORK, NY 10016-1314 UNITED STATES ptomailnewyork@foley.com, abaum@foley.com, emarmo@foley.com
Submission	Motion to Compel Discovery
Filer's Name	Andrew Baum
Filer's e-mail	ptomailnewyork@foley.com, abaum@foley.com, emarmo@foley.com
Signature	/Andrew Baum/
Date	09/28/2010
Attachments	MOTION TO COMPEL-AKKAWI.PDF ( 34 pages )(323312 bytes )

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

LA MONTRE HERMÈS S.A.,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	CANCELLATION NO.
	)	92-051860
MICHAEL AKKAWI,	)	(Reg. No. 3,433,601)
	)	
<i>Registrant.</i>	)	

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**PETITIONER’S MOTION TO COMPEL**

La Montre Hermès S.A., by its attorneys Foley & Lardner LLP, hereby moves for an order pursuant to Rule 2.120(e) of the Trademark Rules of Practice, and Rule 37 of the Federal Rules of Civil Procedure, compelling Registrant, Michael A. Akkawi, to respond in full to Petitioner’s First Set and Second Sets of Requests for Production of Documents (the “RPDs”) and to do so without objections on the merits.

**STATEMENT OF FACTS**

On March 16, 2010, Petitioner served its Initial Disclosures as well as a first set of interrogatories, a set of requests for admissions, and a First Set of Requests for Production of Documents (the “First RPD”). A copy of the First RPD is attached as Exhibit A. The initial due date for responses to these discovery requests was April 20, 2010 (thirty days plus an additional five days due to service by mail).

On April 22, counsel for Registrant, Milton Oliver, served untimely responses to Petitioner’s First Set of Requests for Admissions (not at issue in this motion) and also requested a thirty-day extension of time to respond to the interrogatories and the RPD. Although this

request was untimely (since the response period had already expired), undersigned counsel agreed to a thirty-day extension, to and including May 20, 2010. A copy of the exchange of correspondence between counsel is attached to this Motion as Exhibit B.

The May 20 deadline passed without any response from either Registrant or his counsel. On June 4, undersigned counsel sent an email to Mr. Oliver, asking that he advise when he would be available to meet and confer concerning his failure to respond to discovery. A copy of this email is attached as Exhibit C. Mr. Oliver did not respond. On June 17, 2010, Mr. Oliver forwarded via email some documents said to be responsive to one of petitioner's interrogatories, but did not supply the necessary written response to the RPD (see Exhibit D).

Undersigned counsel emailed Mr. Oliver again on June 22, 2010 in a "final attempt to resolve the matter without the need to file a Motion to Compel". Later that same day, Mr. Oliver replied that "we are still working on pulling it together. Expect to have most or all of it by sometime on Wednesday." (see Exhibit E). On June 24, Mr. Oliver forwarded one photograph of one of his client's products and documents from the PTO file on his client's application (which are available online anyway), but still did not deliver the written response required by Rule 34., F R. Civ. P. (see Exhibit F). Nor, despite the promise in his June 24 email, was there any "more for you tomorrow"; indeed, no documents at all have been produced since then.

On July 14, 2010, petitioner served, by mail, a brief Second Set of Document Requests (the "Second RPD"; see Exhibit G). A written response was due by August 18, but Registrant did not respond, nor were any responsive documents produced. On September 3, 2010, undersigned counsel sent an email to Mr. Oliver, noting the failure to timely respond to the Second RPD and again requesting a written response to the First RPD. Mr. Oliver did not respond. On September 21, 2010, undersigned counsel sent another email, "writing in a last

attempt to avoid the need for a motion to compel,” and again requesting written responses to both RPDs and production of all responsive documents. Copies of the September 3 and September 21 emails are attached as Exhibit H. Mr. Oliver has not responded.

### ARGUMENT

Rule 37(a)(3)(B), Fed. R. Civ. P., provides that a party seeking discovery “may move for an order compelling an answer, designation, production or inspection. This motion may be made if...(iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to respond that inspection will be permitted – or fails to permit inspection – as requested in Rule 34.” *Accord*, TBMP Section 523.

Here there is no dispute over the facts. Registrant, represented by counsel, has failed to respond to the RPDs, despite Petitioner’s cooperation in consenting to an extension even after the initial time for response had passed. Nor has registrant produced any responsive documents other than some sales invoices, a photo of his client’s product, and the publicly available file history on registrant’s registration. Petitioner should not be deprived of its right to obtain discoverable information due to Registrant’s total lack of cooperation.

Section 403.03 of the TTAB Manual of Procedure provides that a party which fails to timely respond to a request for discovery, and is unable to show that the failure was the result of excusable neglect, may be found, upon a motion to compel to have forfeited its right to object to the discovery on the merits. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); *Crane Co. v. Shimano Industrial Co.*, 184 USPQ 691 (TTAB 1975). Here, Registrant’s counsel was fully aware of the deadlines for response and benefitted from undersigned counsel’s generous extension of the initial deadline, despite the untimely request. Registrant’s utter lack of

cooperation is not excusable neglect. Rather, it justifies entry of a further order that Registrant has forfeited its right to object to the Discovery Requests on the merits.

Pursuant to Trademark Rule 2.120(e), undersigned counsel certifies that, as demonstrated by the attached correspondence and lack of response, he has made a good faith effort, by conference or correspondence, to resolve with opposing counsel the issues presented in this motion and has been unable to reach agreement.

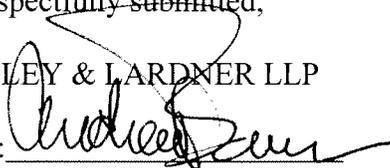
### **CONCLUSION**

The Board should grant Petitioner's Motion to Compel and order Registrant to serve (1) Responses to Petitioner's First RPD, (2) Responses to Petitioner's Second RPD, and (3) all documents responsive to such requests, without the right to object to any such requests on the merits.

Dated: September 26, 2010  
New York, New York

Respectfully submitted,

FOLEY & LARDNER LLP

By: 

Andrew Baum  
90 Park Avenue  
New York, NY 10016-1314  
Tel. (212) 338-3527  
Fax (212) 687-2329  
*Attorneys for Petitioner*  
La Montre Hermès S.A.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing PETITIONER'S MOTION TO COMPEL was served, pursuant to agreement of counsel, via email to Registrant's attorney Milton Oliver at [miltonoliver@comcast.net](mailto:miltonoliver@comcast.net) and [miltonoliver@gmail.com](mailto:miltonoliver@gmail.com).

Date: September 27, 2010

  
Elizabeth Marmo

# **EXHIBIT A**



controlled and wholly or partially, directly or indirectly owned, and all other related entities (as defined by 15 U.S.C. § 1127), and the past and present employees, agents, representatives, attorneys and other personnel thereof, as well as each entity through which the Registrant claims the right to use and/or register Registrant's Mark and any variants thereof.

3. If in its possession, custody or control, Registrant shall produce the originals of all documents requested herein, as well as any and all copies of documents which bear any mark or notation not present on the original.

4. If, for any reason, there are no responsive documents to a particular request, Registrant shall so state.

5. No part of a Request shall be left unanswered or documents and things not produced merely because an objection is interposed as to any other part of a Request.

6. If Registrant cannot respond to any of the following Requests in full, after exercising due diligence to secure the full response, Registrant should respond to the Request to the best of its present ability, state that the response is based upon what Registrant believes to be incomplete information, give the grounds for being unable to fully and sufficiently respond to the Request, and produce whatever documents, information, things or materials Registrant has in its possession, custody and/or control that are or may be responsive to the particular Request.

7. If any document or information requested herein is withheld on a claim of privilege, or other objection, including the attorney client or work product doctrine, Registrant shall provide the following information for each document:

- i. the reason for withholding the document;
- ii. identify the nature of the privilege (i.e., work product) that is being claimed;
- iii. the place, approximate date, and manner of recordation or preparation of the document;
- iv. the number of pages and attachments to the document;
- v. the name and title of the sender and the name and title of each recipient of the document;
- vi. the name and title of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;
- vii. the name and position of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading or substantial summarization;
- viii. a brief description of the subject matter contained in the document;
- ix. the numbers of the Requests herein to which the document is responsive;
- x. the identity and position of the person or persons supplying the attorney with the information requested in subsections (ii) through (ix) above.

### **DEFINITIONS**

The definitions set forth in Petitioner's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference.

### **DOCUMENT REQUESTS**

Documents sufficient to identify and describe fully all goods offered or to be offered for sale, in the United States, in connection with the Registrant's Mark.

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

Documents sufficient to identify and describe fully all goods offered or to be offered for sale, in the United States, in connection with the Registrant's Mark.

**DOCUMENT REQUEST NO. 2:**

One sample of each label, tag, and item of packaging bearing the Registrant's Mark that is used in connection with Registrant's Goods.

**DOCUMENT REQUEST NO. 3:**

All documents concerning the selection, adoption, creation, and/or acquisition of Registrant's Mark.

**DOCUMENT REQUEST NO. 4:**

All documents concerning any opinion of counsel as to Registrant's right to adopt or use Registrant's Mark.

**DOCUMENT REQUEST NO. 5:**

Any trademark searches or investigations conducted in connection with the Registrant's Mark.

**DOCUMENT REQUEST NO. 6:**

All documents concerning any agreement with any manufacturer of any of Registrant's Goods.

**DOCUMENT REQUEST NO. 7:**

All documents concerning any agreement with any person with respect to advertising, marketing, distribution, or selling any of Registrant's Goods.

**DOCUMENT REQUEST NO. 8:**

Current price lists for products sold in the U.S. in connection with the Registrant's Mark.

**DOCUMENT REQUEST NO. 9:**

Documents sufficient to disclose the volume of sales of each of Registrant's Goods, to date, in units and dollars.

**DOCUMENT REQUEST NO. 10:**

All documents which any expert retained in connection with the instant proceeding has seen, may use or rely upon in the course of arriving at any opinions or conclusions at any trial or other hearing in this case.

**DOCUMENT REQUEST NO. 11:**

All reports, memoranda, correspondence or other documents concerning the opinions or conclusions of any experts consulted or retained by Registrant or by any person or persons acting for or on Registrant's behalf in connection with this action.

**DOCUMENT REQUEST NO. 12:**

All strategic marketing, or business plans or related documents or communications concerning the sale, advertising, promotion, or intended sale, advertising, promotion of marketing of products, within the United States, in connection with the Registrant's Mark.

**DOCUMENT REQUEST NO. 13:**

All documents, including market research, consumer surveys, focus groups and internal memos, concerning the likelihood of confusion between Registrant's Mark and Petitioner's Marks.

**DOCUMENT REQUEST NO. 14:**

All documents concerning, referring, or relating to Petitioner or any products sold by Petitioner under the trademarks CAPE COD or CAPE COD WATCH.

**DOCUMENT REQUEST NO. 15:**

Representative samples of all advertisements and other promotional materials which have been used in connection with Registrant's Goods.

**DOCUMENT REQUEST NO. 16:**

All documents concerning any confusion or mistake on the part of any person regarding Petitioner or Petitioner's trademarks CAPE COD or CAPE CODE 2 ZONE on the one hand, and Registrant, Registrant's business, Registrant's Mark and/or Registrant's Goods on the other hand.

**DOCUMENT REQUEST NO. 17:**

All documents concerning the belief of any person that there is an association between Petitioner or Petitioner's products and any products sold by Registrant under Registrant's Mark.

**DOCUMENT REQUEST NO. 18:**

A specimen of each of Registrant's Goods or, alternatively, a clear photograph of each of Registrant's Goods showing Registrant's Mark, if it is affixed to such Goods.

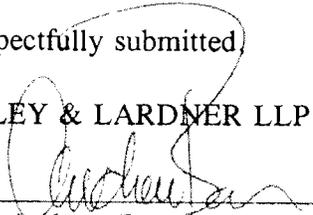
**DOCUMENT REQUEST NO. 19:**

Documents sufficient to disclose each and every purchaser of Registrant's Goods sold under Registrant's Mark.

Dated: March 16, 2010  
New York, New York

Respectfully submitted

FOLEY & LARDNER LLP

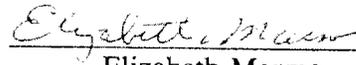
By:   
Andrew Baum  
90 Park Avenue  
New York, NY 10016-1314  
Tel. (212) 338-3527  
Fax (212) 687-2329  
*Attorneys for Petitioner*  
La Montre Hermès S.A.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing PETITIONER'S FIRST SET OF DOCUMENT REQUESTS TO REGISTRANT was served by first-class mail, postage prepaid, to Registrant at the address of record as follows:

Michael Akkawi  
8 Plum Hollow Road  
East Falmouth, MA 02536

Date: March 16, 2010

  
\_\_\_\_\_  
Elizabeth Marmo

# **EXHIBIT B**

**Baum, Andrew**

**From:** Baum, Andrew  
**Sent:** Friday, April 23, 2010 9:35 AM  
**To:** Milton Oliver  
**Cc:** Marmo, Elizabeth  
**Subject:** LMH v. Akkawi (our 093012-7000; your 872-026-001) CANC. # 92-051860

**From the Desk of: Andrew Baum**



[My Location](#) [My Record](#) [My Bio](#)

[www.foley.com](http://www.foley.com)

Dear Milton:

I acknowledge receipt of your responses to our Request for Admissions.

The responses are untimely. We served the Requests for Admissions on March 16. Responses were due within thirty days, i.e., April 15. Because we served by first class mail, you were entitled to five additional days, to and including April 20. You did not serve the responses until April 22.

Therefore, all of our requests are deemed admitted. Rule 36(a)(3), Fed. R. Civ. P.; TMBP Section 407.03 (a).

Similarly, your responses to our interrogatories and document requests are past due. Therefore, objections to these requests on the merits have been waived. See TMBP Section 403.03. I am agreeable to a thirty-day extension of time, to and including May 20, to provide answers and substantive responses to the interrogatories and document requests.

Andrew Baum  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, New York 10016-1314

Tel. 212.338.3527  
Fax 212.687.2329

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**From:** miltoliver@gmail.com [mailto:miltoliver@gmail.com] **On Behalf Of** Milton Oliver  
**Sent:** Thursday, April 22, 2010 10:59 PM  
**To:** Baum, Andrew  
**Cc:** Marmo, Elizabeth  
**Subject:** Your 093012-7000; our 872-026-001; CANC. # 92-051860

OLIVER INTELLECTUAL PROPERTY LLC  
PO BOX 1670, COTUIT MA 02635 USA  
TEL: 774-521-3058  
FAX: 774-521-3062

9/27/2010

Andrew Baum, Esq.  
FOLEY & LARDNER  
90 Park Avenue, Flr 41  
New York NY 10016-1314

Re: Your ref.: 093012-7000  
La Montre Hermès v. Akkawi  
Cancellation # 92-051860  
Our ref: 872-026-001

Dear Mr. Baum:

Enclosed are Registrant's Answers to Petitioner's First Set of Requests for Admissions. We are working on answers to the remaining discovery requests. Would your client kindly agree to a 30-day extension to respond to those additional discovery requests?

Very truly yours,

Milton Oliver



# **EXHIBIT C**

**Baum, Andrew**

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**From:** Baum, Andrew  
**Sent:** Friday, June 04, 2010 1:00 PM  
**To:** 'Milton Oliver'; miltoliver@gmail.com  
**Subject:** RE: LMH v. Akkawi (our 093012-7000; your 872-026-001) CANC. # 92-051860

Dear Milton:

Per your request, I agreed to extend the deadline for your client to respond to our Interrogatories and Document Requests until May 20, 2010. However, as of today, we have not received them.

Pursuant to the TTAB Rules of Practice, I am writing to request that we meet and confer by telephone later today, or early next week in order to resolve the issues pertaining to your client's failure to meet the discovery deadlines. Please let me know when you will be available.

Sincerely,

Andrew Baum  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, New York 10016-1314

Tel. 212.338.3527  
Fax 212.687.2329

---

**From:** Baum, Andrew  
**Sent:** Friday, April 23, 2010 9:35 AM  
**To:** Milton Oliver  
**Cc:** Marmo, Elizabeth  
**Subject:** LMH v. Akkawi (our 093012-7000; your 872-026-001) CANC. # 92-051860

**From the Desk of: Andrew Baum**

**FOLEY**  
FOLEY & LARDNER LLP

My Location My V-card My Etc [www.foley.com](http://www.foley.com)

Dear Milton:

I acknowledge receipt of your responses to our Request for Admissions.

The responses are untimely. We served the Requests for Admissions on March 16. Responses were due within thirty days, i.e., April 15. Because we served by first class mail, you were entitled to five additional days, to and including April 20. You did not serve the responses until April 22.

Therefore, all of our requests are deemed admitted. Rule 36(a)(3), Fed. R. Civ. P.; TMBP Section 407.03 (a).

9/27/2010

# EXHIBIT D

**Baum, Andrew**

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**From:** Baum, Andrew  
**Sent:** Thursday, June 17, 2010 6:11 PM  
**To:** Milton Oliver  
**Cc:** Acevedo, Luz  
**Subject:** RE: Hermes vs. Akkawi; Supporting Receipts (093012-7000)

Thank you.

Will there be a written response to the Request for Production?

Any other documents to produce?

Andrew Baum  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, New York 10016-1314

Tel. 212.338.3527  
Fax 212.687.2329

---

**From:** miltoliver@gmail.com [mailto:miltoliver@gmail.com] **On Behalf Of** Milton Oliver  
**Sent:** Thursday, June 17, 2010 4:43 PM  
**To:** Baum, Andrew  
**Subject:** Hermes vs. Akkawi; Supporting Receipts

Dear Andy:

The attached documents are the basis for the answer to Interrogatory 11, concerning interstate sales.

Regards,

Milton Oliver

# **EXHIBIT E**

**Baum, Andrew**

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**From:** miltoliver@gmail.com on behalf of Milton Oliver [miltonoliver@IEEE.org]  
**Sent:** Tuesday, June 22, 2010 9:51 PM  
**To:** Baum, Andrew  
**Subject:** Re: La Montre Hermes v. Akkawi (093012-7000)

We are still working on pulling it together. Expect to have most or all of it by sometime on Wednesday.

Regards, Milton Oliver

On Tue, Jun 22, 2010 at 10:25 AM, Baum, Andrew <[ABaum@foley.com](mailto:ABaum@foley.com)> wrote:

**From the Desk of: Andrew Baum**



[My Location](#)   [My Work](#)   [My Bio](#)

Milton:

I have had no response from you on the issue of your client's response to our First Request for Production of Documents.

The responses were due more than two months ago. I agreed to an extension of time (after the original due date) but we are now well past that extended date.

I am writing in a final attempt to resolve this matter without the need to file a Motion to Compel. Unless I hear from you by tomorrow, June 23, I will file the motion.

Regards,

Andrew Baum  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, New York 10016-1314

Tel. 212.338.3527  
Fax 212.687.2329



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the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

# EXHIBIT F

**Baum, Andrew**

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**From:** miltoliver@gmail.com on behalf of Milton Oliver [miltonoliver@IEEE.org]  
**Sent:** Wednesday, June 23, 2010 5:45 PM  
**To:** Baum, Andrew  
**Cc:** Akkawi, Michael  
**Subject:** HERMES vs. AKKAWI; DocReqs 2 & 3  
**Attachments:** CapeCodWatch.jpg; 2007-12-27-SPECIMENS.pdf; 2007-12-27-TEAS-PLUS-APPN.pdf; 2007-12-27-TM-DRAWING.pdf; 2008-03-30-OFFICE-ACTION.pdf; 2008-03-30-XSearch-Search-Summary.pdf; 2008-04-01-EXR-AMENDMENT.pdf; 2008-04-02-MAIL-PROCESS-COMplete.pdf; 2008-04-02-TRAM-SNAPSHOT-AT-PUB-OK.pdf; 2008-04-12-PUB-ISSUE-RVW-COMplete.pdf; 2008-05-20-REGN-CERT-3433601.pdf

Dear Mr. Baum:

My client tells me that there are no special CAPE COD WATCH packages; they just package them in HANNOUSH jewelers boxes like their other merchandise.

The attached CapeCodWatch.jpg illustrates the tag used in connection with Registrant's Goods.

The other attached documents are from the prosecution file of Reg. # 3,433,601 and are responsive to Doc. Req. 3.

We are continuing to assemble the other documents, but this is taking longer than anticipated, due to some staff members being on vacation. We expect to have more for you tomorrow, and to have signed responses by the end of the week.

Very truly yours,

Milton Oliver

# EXHIBIT G

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

LA MONTRE HERMÈS S.A.,

*Petitioner,*

v.

MICHAEL AKKAWI,

*Registrant.*

CANCELLATION NO.  
92-051860  
(Reg. No. 3,433,601)

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**PETITIONER'S SECOND SET OF DOCUMENT REQUESTS TO REGISTRANT**

La Montre Hermès S.A., by its attorneys Foley & Lardner LLP, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, requests that Registrant, Michael A. Akkawi, produce, within thirty (30) days of service hereof, the documents and things identified below for inspection and copying at the offices of Foley & Lardner LLP, 90 Park Avenue, New York, New York 10016-1314.

**INSTRUCTIONS**

1. These Requests for Documents are continuing in nature and any documents or things obtained, discovered or formulated by Registrant subsequent to its production hereto, which would have been responsive to these Requests, shall be produced promptly to Petitioner, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

2. The documents requested herein are intended to include all documents in the possession, custody, or control of Registrant and include, unless otherwise specifically indicated, its predecessor(s), agents, legal representatives, divisions, subsidiary entities, both controlled and wholly or partially, directly or indirectly owned, and all other related entities (as defined by 15

U.S.C. § 1127), and the past and present employees, agents, representatives, attorneys and other personnel thereof, as well as each entity through which the Registrant claims the right to use and/or register Registrant's Mark and any variants thereof.

3. If in its possession, custody or control, Registrant shall produce the originals of all documents requested herein, as well as any and all copies of documents which bear any mark or notation not present on the original.

4. If, for any reason, there are no responsive documents to a particular request, Registrant shall so state.

5. No part of a Request shall be left unanswered or documents and things not produced merely because an objection is interposed as to any other part of a Request.

6. If Registrant cannot respond to any of the following Requests in full, after exercising due diligence to secure the full response, Registrant should respond to the Request to the best of its present ability, state that the response is based upon what Registrant believes to be incomplete information, give the grounds for being unable to fully and sufficiently respond to the Request, and produce whatever documents, information, things or materials Registrant has in its possession, custody and/or control that are or may be responsive to the particular Request.

7. If any document or information requested herein is withheld on a claim of privilege, or other objection, including the attorney client or work product doctrine, Registrant shall provide the following information for each document:

- i. the reason for withholding the document;
- ii. identify the nature of the privilege (i.e., work product) that is being claimed;
- iii. the place, approximate date, and manner of recordation or preparation of the document;

- iv. the number of pages and attachments to the document;
- v. the name and title of the sender and the name and title of each recipient of the document;
- vi. the name and title of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;
- vii. the name and position of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading or substantial summarization;
- viii. a brief description of the subject matter contained in the document;
- ix. the numbers of the Requests herein to which the document is responsive;
- x. the identity and position of the person or persons supplying the attorney with the information requested in subsections (ii) through (ix) above.

### **DEFINITIONS**

The definitions set forth in Petitioner's First Set of Interrogatories are incorporated herein by reference.

### **DOCUMENT REQUESTS**

#### **DOCUMENT REQUEST NO. 20**

All documents concerning the license agreement between Registrant and Hannoush Jewelers of Cape Cod, including but not limited to a copy of the license agreement itself, if any.

#### **DOCUMENT REQUEST NO. 21**

Documents sufficient to disclose the nature and legal status of the business entity known as Hannoush Jewelers of Cape Cod (e.g., partnership agreement, articles of incorporation, etc., certificate of doing business, etc.)

#### **DOCUMENT REQUEST NO. 22**

A copy of the franchise agreement between HJCC and Hannoush Jewelers, Inc. or any of its subsidiaries.

Dated: July 14, 2010  
New York, New York

Respectfully submitted,

FOLEY & LARDNER LLP

By: 

Andrew Baum  
90 Park Avenue  
New York, NY 10016-1314  
Tel. (212) 338-3527  
Fax (212) 687-2329  
*Attorneys for Petitioner*  
La Montre Hermès S.A.

**CERTIFICATE OF SERVICE**

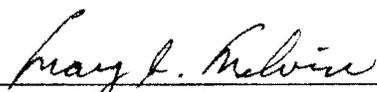
I hereby certify that a true and complete copy of the foregoing PETITIONER'S SECOND SET OF DOCUMENT REQUESTS TO REGISTRANT was served by first-class mail, postage prepaid, to Registrant at the address of record as follows:

Michael Akkawi  
8 Plum Hollow Road  
East Falmouth, MA 02536

with a copy by email to:

Milton Oliver, Esq.  
Oliver Intellectual Property LLC  
Box 1670  
Cotuit MA 02635-1670

Date: July 14, 2010

  
\_\_\_\_\_  
Mary A. Melvin

# EXHIBIT H

**Baum, Andrew**

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**From:** Baum, Andrew  
**Sent:** Tuesday, September 21, 2010 6:14 PM  
**To:** miltonmoliver@comcast.net  
**Cc:** Marmo, Elizabeth  
**Subject:** FW: La Montre Hermes v. Akkawi (093012-7000)

Dear Mr. Oliver:

We acknowledge receipt of the Answer to the First Amended Petition for Cancellation, which you just served via email.

This follows my email of September 3, 2010, copy of which is below.

As of today, we still have not received written responses to our requests for production of documents or copies of any further documents.

We are writing in a last attempt to avoid the need for a motion to compel. If we have not heard from you by the end of the week we reserve the right to file a motion without further notice to you.

Regards,

Andrew Baum  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, New York 10016-1314

Tel. 212.338.3527  
Fax 212.687.2329

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**From:** Baum, Andrew  
**Sent:** Friday, September 03, 2010 2:54 PM  
**To:** Milton Oliver; Milton Oliver  
**Cc:** Marmo, Elizabeth  
**Subject:** La Montre Hermes v. Akkawi (093012-7000)

**From the Desk of: Andrew Baum**

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FOLEY & LARDNER LLP

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Dear Milton:

A written response to our Second Set of Document Requests, served on July 14, was due on August 18. As of today, we have received neither a written response nor any responsive documents.

9/27/2010

Nor have you ever served a response to our First Set of Document Requests, or produced all responsive documents, despite your promise in an email on June 17 that they would be "forthcoming shortly."

The failure to timely respond to the document requests waives any objection to production. Please let us have copies of all responsive documents within the next two weeks.

Sincerely,

Andrew Baum  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, New York 10016-1314

Tel. 212.338.3527  
Fax 212.687.2329

