

ESTTA Tracking number: **ESTTA373786**

Filing date: **10/18/2010**

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

Proceeding	92052314
Party	Plaintiff Mother Parker's Tea & Coffee, Inc.
Correspondence Address	PRISCILLA L. DUNCKEL BAKER BOTTS L.L.P. 2001 ROSS AVENUE, SUITE 600 DALLAS, TX 752012980 UNITED STATES Priscilla.Dunckel@bakerbotts.com
Submission	Other Motions/Papers
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Signature	/Priscilla L. Dunckel/
Date	10/18/2010
Attachments	Motion for Oral Exam.PDF (58 pages)(1813501 bytes)

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

MOTHER PARKER'S TEA & COFFEE,
INC.,

Petitioner,

vs.

CAFÉ MYSTIQUE, INC.,

Respondent.

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Cancellation No. 92052314

Mark: **CAFÉ MYSTIQUE
COFFEE & Design**

Registration No. 3,514,570
Issued October 14, 2008

**MOTION FOR ORAL EXAMINATION OF RESPONDENT CAFÉ MYSTIQUE,
INC. PURSUANT TO RULE 30(b)(6) and 37 C.F.R. § 2.123(a)(2)**

TELEPHONE CONFERENCE REQUESTED

Petitioner Mother Parker's Tea & Coffee, Inc. ("Petitioner") files this Motion for Oral Examination of Respondent Café Mystique, Inc. pursuant to Rule 30(b)(6) and 37 C.F.R. § 2.123(a)(2). Petitioner submits that good cause exists for the Board to grant this Motion because the advantages of an oral deposition significantly outweigh any financial hardship for the Respondent.

I. BACKGROUND

Petitioner and Respondent are both foreign corporations with headquarters in Canada. Petitioner Mother Parker's Tea and Coffee, Inc. is located in Mississauga, Ontario Canada, a suburb of Toronto. Respondent Café Mystique, Inc. is located in

Saint-Laurent, Quebec Canada, a suburb of Montreal. Respondent's counsel is located in Ossining, New York, just over 300 miles away from Montreal.¹

As a Canadian company, Respondent has requested and obtained benefits from the U.S. system of trademark registration through Respondent's application for registration of the CAFÉ MYSTIQUE COFFEE & Design mark. Reg. No. 3,514,570, the subject of this Cancellation proceeding, was granted by the United States Patent and Trademark Office ("USPTO") on October 14, 2008.

On July 13, 2010, in the 26(f) discovery conference, Petitioner's counsel proposed to Respondent's counsel that the parties mutually agree to oral examination for both parties, rather than submit to the unwieldy process of depositions on written questions. Declaration of J. Scannell, Exhibit A. Respondent's counsel indicated that he would discuss the issue with his client, and that the proposal seemed reasonable. In the alternative, he indicated that he would ask his client if they might be willing to travel to the U.S. for a deposition. After several reminders and requests for a response to the deposition proposal, Respondent's attorney responded on September 13, 2010 that Respondent would agree only to a telephonic or video deposition. See Declaration of P. Dunckel, Exhibit B, and correspondence from Thomas Gulick, attached as Exhibit B-1 to Declaration of P. Dunckel.

Since then, Petitioner's attorney has repeatedly attempted to obtain more information as to why the deposition proposal was limited to a telephonic or video

¹ Pursuant to 37 C.F.R. § 10.14(c) and TBMP 114.05, the USPTO's Office of Enrollment and Discipline recognizes Canada as qualifying for the exception in 37 C.F.R. § 10.14(c), where a foreign attorney who is not a resident of the U.S. may be recognized for the limited purpose of representing, in trademark cases before the Office, parties located in the country in which the attorney or agent resides or practices. Therefore, Respondent could be represented by Canadian trademark counsel in Montreal either for the entire proceeding or to defend it in a live deposition, and travel would not be necessary.

deposition, and details about the proposal, without success, including whether Respondent's attorney would be physically present with the witness, how he proposed to handle documents, and whether Respondent would pay the substantial costs of a video conference for the deposition. See Declaration of P. Dunckel, Exhibit B and correspondence between P. Dunckel and T. Gulick, attached as Exhibits B-1 - B-8 to Declaration of P. Dunckel.

Petitioner has noticed a 30(b)(6) deposition of Respondent for October 20, 2010, and left the format open to agreement between the parties.² See Notice of Deposition, Exhibit C. However, to date, Respondent has maintained the position that it will agree only to a telephonic or video deposition, and has objected to the Notice of Deposition as deficient and improper under the Rules because it is not consistent with the alternative means which Respondent has proposed. Respondent's attorney has completely ignored Petitioner's repeated requests to provide the reason for the limitation on the format of the deposition and further details of the proposal.

II. LEGAL STANDARD

A party may take an oral discovery deposition of a party that is a foreign resident upon Order of the Board. 37 C.F.R. § 2.120(c)(1). "The discovery deposition of . . . a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, shall, if taken in a foreign country, be taken in the manner prescribed by § 2.124 [on written questions] unless the Trademark Trial and Appeal Board, upon motion for good cause, orders or the parties stipulate, that the deposition be taken by oral examination." *Id.*

² On October 12, 2010, Respondent's attorney notified Petitioner's attorney that Respondent's representative was not available for the deposition on October 20, 2010, but has not provided any alternate dates.

Upon reviewing a motion for oral examination of a foreign deponent, the Board determines if good cause exists on a case-by-case basis, considering the particular facts and circumstances in each situation. “In determining whether good cause exists for a motion to take a foreign deposition orally, the Board weighs the equities, including the advantages of an oral deposition and any financial hardship that the nonmoving party might suffer if the deposition were taken orally in the foreign country.” TBMP § 520. *See also Orion Group Inc. v. The Orion Insurance Co. P.L.C.*, 12 U.S.P.Q.2d 1923 (TTAB 1989) (finding good cause to take oral deposition of witness in England since the cost of a round-trip flight from New York to England was not that much greater than flights within the U.S.; oral deposition would not involve translating from a foreign language). If appropriate, the Board may order that the deposition be taken orally.

II. ARGUMENT

Good cause exists for Petitioner to take Respondent’s deposition in-person because the information sought through the deposition, including information pertaining to dates of use of the CAFÉ MYSTIQUE mark in the United States, is uniquely in Respondent’s control. In addition, the subject matter of the deposition is central to the instant proceeding. The benefits of in-person examination, which include the ease of providing documents during the deposition for the deponent’s review, avoiding the costs associated with a video conference deposition, and permitting counsel for Petitioner to observe the deponent’s demeanor, significantly outweigh any financial hardship to Respondent, which would be no more than the costs associated with a deposition in the United States.

A. Respondent is a Party to this Proceeding.

As a party to this Cancellation proceeding, Respondent may be deposed upon oral examination, if the Board so orders pursuant to 37 C.F.R. § 2.120.

B. The Information Sought through the Deposition is Uniquely in Respondent's Control.

Where the facts are within the proposed deponent's control, an oral deposition may be appropriate. *See Orion*, 12 U.S.P.Q.2d at 1925. In the instant proceeding, factual assertions concerning Respondent's use of the CAFÉ MYSTIQUE mark in the United States, including dates of use and whether such use, if any, has been continuous and uninterrupted or abandoned, are uniquely within Respondent's control.

C. The Subject Matter of the Deposition is Central to this Proceeding.

Whether or not Respondent has commenced use of the CAFÉ MYSTIQUE mark in the United States, and whether or not such use has been continuous and uninterrupted or has been abandoned, is central to this dispute. On issues that are central to the case, equity requires that Petitioner be afforded the opportunity to depose the witness in person. *See Orion*, 12 U.S.P.Q.2d at 1925.

Respondent has claimed first use of the CAFÉ MYSTIQUE mark in the United States in 1998, and continuous use since that time. Information pertaining to use of the mark, including dates of first use, is critical in determining the central issues in the proceeding, i.e., priority and whether Respondent has abandoned use of its CAFÉ MYSTIQUE mark. Respondent claims to have been doing business in the United States since 1998, including claims of attending conferences here. See excerpt of Respondent's Responses to Petitioner's Interrogatory Nos. 5 and 22, Exhibit D. An oral deposition of Respondent in the location of its headquarters would not create any hardship to

Respondent, financial or otherwise. In fact, Respondent should not be allowed to request and expect benefits from the U.S. trademark system of registration and protection, and then to seek special treatment compared to requirements of domestic parties in regard to discovery depositions, even though it would incur no hardship or prejudice in connection with an in-person oral deposition. The equities weigh in favor of an in-person oral deposition.

In light of the centrality of the issues, and the lack of any prejudice or hardship to Respondent, Petitioner should not be deprived of the opportunity to depose Respondent in person.

D. The Benefits of In-Person Examination

Petitioner should be afforded the opportunity to confront Respondent in person. Respondent has offered a “live deposition” by telephone or video conference, but has refused to agree to allow Petitioner’s counsel to be present in person. Petitioner maintains that Respondent’s proposal is unacceptable. First, both of Respondent’s proposed alternatives to an in-person deposition, i.e., video conference or telephone conference, pose similar difficulties in providing documents for the deponent’s review and entering such documents into evidence. Second, a deposition by video conference would be considerably more expensive than travel costs associated with an in-person deposition, as companies offering video conferencing technology services charge substantial hourly fees. Third, a deposition by telephone conference would deprive Petitioner’s counsel of the opportunity to observe the deponent and his or her demeanor during the deposition. Fourth, since Respondent has sought and obtained the benefits of the U.S. trademark system, Respondent should not be allowed to hide behind its “foreign

entity” status to refuse a deposition in person which would be freely available for an entity located about fifty (50) miles south, in the United States. Finally, Petitioner is also a foreign entity, but has proposed a mutual agreement for in-person oral depositions. Petitioner sees no hardship or prejudice to comply with the same type of depositions required of parties with headquarters in the U.S.

E. Respondent will not Suffer any Undue Financial Hardship

Prior to amendments to Rule 1.120, effective June 22, 1983, a discovery deposition of a person designated to testify on behalf of a party located in a foreign country could only be taken on written questions, unless the parties agreed or the deponent traveled to the U.S. for an oral deposition. The underlying reason for the rule was to protect the foreign entity from substantial costs involved in getting their U.S. counsel to the foreign country. See Janet E. Rice, *TIPS FROM THE TTAB: Recent Changes in the TTAB Discovery Rules*, 74 TMR 449 (1984). Following the changes to the Rules in 1983, an oral deposition of a foreign entity may be ordered by the Board upon motion of one of the parties. 37 C.F.R. § 2.120(c)(1). One specific example of an appropriate situation for an oral deposition that was provided in the *Tips from the TTAB* involves a foreign party located in Toronto, Canada. 74 TMR 449, 450 (1984). In this example, which is strikingly similar to the instant case, the article advises that “[the foreign party] is not likely to suffer much more financial hardship from the taking of his oral deposition in Toronto than he would if he were located in Buffalo, New York.” *Id.*

In this case, Respondent will not incur any substantial additional expense for the requested in-person deposition over the costs it would incur if it were a company with its headquarters in the United States. Travel between the U.S. and Canada is as easy and

inexpensive as travel within the United States. Respondent's attorney is little more than 300 miles away from Respondent's headquarters and the proposed location of the deposition is less than the distance from his office to Pittsburgh, Chicago, Dallas, Los Angeles, and most other locations in the U.S. Respondent's counsel can drive or fly to his client's location without any significant inconvenience. In fact, the greater inconvenience and expense would be borne by Petitioner's counsel, who has proposed to travel nearly 1800 miles twice, for depositions of each of the parties.

In its offer of a deposition by telephone or video conference, Respondent has mentioned no need for a translation, so we can assume no translation is necessary. The only costs that Respondent will incur for the requested in-person oral deposition is the same as would be required of any U.S. entity, i.e., Respondent's counsel's fees to defend the deposition, and minimal travel expenses. Further, the only costs that would not be incurred by Respondent for the proposed telephone or video conference deposition rather than the in person deposition would be the minimal travel costs, and those would be less than the cost of video conference services.

III. CONCLUSION

Petitioner respectfully asserts that it would be unjust for the Board to deny Petitioner the opportunity to depose Respondent in person on oral examination. Petitioner states that good cause exists for Petitioner to depose Respondent in person because the advantages of an in-person deposition far outweigh any hardship to Respondent. Respondent will incur no travel costs, as Respondent will be deposed in Quebec, where Respondent is headquartered. Respondent will bear only minimal,

reasonable costs associated with counsel for Respondent's travel expenses from upstate New York to Toronto.

Petitioner therefore respectfully requests that the Board grant Petitioner's Motion for Oral Examination for the reasons explained above, and issue an Order that Petitioner may depose Respondent in person in Quebec, Canada.

Petitioner further requests a telephone hearing to resolve the simple issue raised in this motion, and submits that because time is of the essence, a telephone hearing is appropriate pursuant to TMBP. 502.06. Petitioner has followed the procedures set forth in the Rules for requesting a telephone conference. *Id.* The parties have a deadline for the disclosure of expert testimony on December 20, 2010, and discovery is scheduled to close on January 20, 2011. Petitioner scheduled the requested deposition for October 20, 2010, but has been advised that Respondent's representative is not available until after October 20, 2010, but to date has not offered and alternative dates. Thus, it is important that the deposition be scheduled as soon as possible, within the next couple of weeks, in order to move forward with other discovery. Petitioner requests that a telephone conference be scheduled as soon as possible so that discovery can go forward without further delay.

Respectfully submitted this 16th day of October, 2010.

By: 

Priscilla L. Dunckel
Jennifer Scannell
Baker Botts L.L.P.
2001 Ross Ave., Suite 600
Dallas, Texas 75201-2980
Tel: (214) 953-6818
Fax: (214) 661-4899
Email: priscilla.dunckel@bakerbotts.com

ATTORNEYS FOR PETITIONER
MOTHER PARKER'S TEA & COFFEE,
INC.

CERTIFICATE OF SERVICE

I hereby certify that on this ___th day of October, 2010, I served, via email and First Class Mail, a true and correct copy of the foregoing *MOTION FOR ORAL EXAMINATION OF RESPONDENT CAFÉ MYSTIQUE, INC. PURSUANT TO RULE 30(b)(6) and 37 C.F.R. § 2.123(a)(2)*.

Thomas P. Gulick
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
tgulick@collenip.com



Priscilla L. Dunckel

EXHIBIT A

EXHIBIT A

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

MOTHER PARKER'S TEA & COFFEE,
INC.,

Petitioner,

vs.

CAFÉ MYSTIQUE, INC.,

Respondent.

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Cancellation No. 92052314

Mark: **CAFÉ MYSTIQUE
COFFEE & Design**

Registration No. 3,514,570
Issued October 14, 2008

DECLARATION OF JENNIFER L. SCANNELL

I, JENNIFER L. SCANNELL, hereby declare as follows:

1. I am over the age of eighteen and competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true.
2. I am an attorney with the firm Baker Botts L.L.P. and am licensed to practice in the State of Texas. I am counsel for Petitioner, Mother Parker's Tea & Coffee, Inc. I am familiar with the facts in this matter and submit this Declaration for the purpose of providing information in support of Petitioner's Motion for Oral Examination of Respondent Café Mystique, Inc. Pursuant to Rule 30(b)(6) and 37 C.F.R. § 2.123(a)(2).
3. On July 13, 2010 I participated in the 26(f) discovery conference for the above-referenced matter. Counsel for Respondent, Thomas Gulick, was also in attendance.
4. During the course of the discovery conference, I proposed that the parties mutually agree to oral examination in Canada for both parties, rather than resorting to depositions on written questions.

5. Counsel for Respondent, Thomas Gulick, indicated that he would discuss the issue with his client, and that the proposal sounded reasonable.

6. Mr. Gulick further indicated that he would ask his client if they would be willing to travel to the U.S. for a deposition.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

EXECUTED on this 18th of October, 2010 in Dallas, Texas.


Jennifer L. Scannell
Jennifer L. Scannell

EXHIBIT B

EXHIBIT B

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

MOTHER PARKER'S TEA & COFFEE,
INC.,

Petitioner,

vs.

CAFÉ MYSTIQUE, INC.,

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Cancellation No. 92052314

Mark: **CAFÉ MYSTIQUE
COFFEE & Design**

Registration No. 3,514,570
Issued October 14, 2008

DECLARATION OF PRISCILLA L. DUNCKEL

I, PRISCILLA L. DUNCKEL, hereby declare as follows:

1. I am over the age of eighteen and competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true.
2. I am an attorney with the firm Baker Botts L.L.P. and am licensed to practice in the State of Texas. I am counsel for Petitioner, Mother Parker's Tea & Coffee, Inc. I am familiar with the facts in this matter and submit this Declaration for the purpose of providing information in support of Petitioner's Motion for Oral Examination of Respondent Café Mystique, Inc. Pursuant to Rule 30(b)(6) and 37 C.F.R. § 2.123(a)(2).
3. **Exhibit B-1** to this Declaration is a true and correct copy of correspondence received by me from Thomas P. Gulick, counsel for Respondent, dated September 13, 2010.
4. Since September 13, 2010, I have repeatedly attempted to obtain more information concerning Respondent's proposal, but have not received a substantive response.

5. **Exhibit B-2** to this Declaration is a true and correct copy of an email string consisting of email correspondence between me and Mr. Gulick, dated from September 13, 2010 to October 7, 2010.
6. **Exhibit B-3** to this Declaration is a true and correct copy of an email received by me from Mr. Gulick, dated October 4, 2010.
7. **Exhibit B-4** to this Declaration is a true and correct copy of correspondence received by me from Mr. Gulick, dated October 7, 2010.
8. **Exhibit B-5** to this Declaration is a true and correct copy of correspondence sent by me to Mr. Gulick, dated October 7, 2010.
9. **Exhibit B-6** to this Declaration is a true and correct copy of an email string consisting of email correspondence between me and Mr. Gulick, dated from October 7, 2010 to October 8, 2010.
10. **Exhibit B-7** to this Declaration is a true and correct copy of correspondence received by me from Mr. Gulick, dated October 12, 2010.
11. **Exhibit B-8** to this Declaration is a true and correct copy of correspondence sent by me to Mr. Gulick, dated October 12, 2010.
10. As of the filing of this motion, and more than four weeks following receipt of Respondent's proposal regarding the telephone or video deposition, Petitioner has not received any substantive response to any of its requests for additional information regarding Respondent's refusal to agree to an in-person deposition.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. The undersigned being warned that willful false statements and the like are

Cancellation No. 920252314

punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

EXECUTED on this 18th day of October, 2010 in Dallas, Texas.


Priscilla L. Dunkel

EXHIBIT B-1



September 13, 2010

VIA EMAIL TO: Priscilla.Dunckel@bakerbotts.com
Jennifer.Scannell@bakerbotts.com

CONFIRMATION VIA FIRST CLASS MAIL

Baker Botts LLP
2001 Ross Avenue
Dallas, Texas 75201-2980
Attn: Priscilla L. Dunckel, Esq.
Jennifer Scannell, Esq.

RE: U.S. Trademark Cancellation No. 92052314
Mark : CAFÉ MYSTIQUE
U.S. Trademark Reg. No. : 3514570
Our Reference : K357

Dear Ms. Dunckel and Ms. Scannell:

Enclosed please find:

1. Registrant's First Set of Interrogatories;
2. Registrant's First Set of Requests for Admission to Petitioner, and
3. Registrant's First Request for Production of Documents.

We have been in contact with our client regarding depositions. Our client is agreeable to either a telephonic or video deposition. Please advise if this is agreeable with your client. We are still working on dates for availability in October.

Very truly yours,
COLLEN IP

A handwritten signature in cursive script that reads 'Thomas P. Gulick'.

Thomas P. Gulick

TPG: eg
Encl. Requests (x3)
P:\K\K3\K357_Letter to Patricia Dunckel discovery requests_100910.DOC

EXHIBIT B-2

Porterfield, Cecily

From: Dunckel, Priscilla
Sent: Thursday, October 07, 2010 3:28 PM
To: 'Thomas Gulick'
Cc: Scannell, Jennifer; Porterfield, Cecily; 'Jess Collen'
Subject: RE: K357 CAFE MYSTIQUE Cancellation No. 92052314

Thomas:

I just tried to call you to see if we could discuss the deposition date and the format. The receptionist said you were not available. I will be out of the office next week from Wednesday afternoon through Friday, October 13th - 15th, so I would like to get the deposition date and format finalized before I leave, since it is currently scheduled for the following week.

Are you available for a call sometime tomorrow? At this point, I am free all day, so I can talk at your convenience. I am also still available today. Please let me know a convenient time. Thanks.

Priscilla L. Dunckel
Baker Botts LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201
(214) 953-6618 direct phone
(214) 661-4618 direct fax
priscilla.dunckel@bakerbotts.com

From: Dunckel, Priscilla
Sent: Monday, October 04, 2010 3:45 PM
To: 'Thomas Gulick'
Cc: Scannell, Jennifer; Porterfield, Cecily; Jess Collen
Subject: FW: K357 CAFE MYSTIQUE Cancellation No. 92052314

Thomas--

My prior email asking about the reasoning behind your proposal for a deposition by telephone or video conference is attached below. I would appreciate some background information on why your client objects to me attending in person.

I know you mentioned that you were not sure whether you would be representing them in person, or if you would be attending by telephone, but you did not respond to the question about why this proposed format. We need more information, and will specifically need to know if you will be attending the deposition in person. This is obviously an unusual request--I have never agreed to take a deposition by telephone before, nor have I had another attorney request one. In fact I have never heard of the deposing party demanding the deposition be by telephone--that is usually the request of the attorney giving the deposition or someone attending. In regards to a video conference, since the tape cannot be submitted to the TTAB, the only purpose would be so we could see the deponent during the deposition, which I agree is very important. However, the cost of a video conference would be substantially more than any travel costs for us to appear in person. Is your client proposing to pay for the video conference costs?

There is also the cumbersome problem of getting documents in front of the witness. Please let me know more

10/15/2010

why your client is making the request, the specifics of what you propose, whether you will be in the room in person, whether your client will pay the additional costs, and how you propose to resolve the problem with documents. Once I have this information, we can discuss the details of the deposition and whether the telephone or video conference format is acceptable.

Thanks.

Priscilla L. Dunckel
Baker Botts LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201
(214) 953-6618 direct phone
(214) 661-4618 direct fax
priscilla.dunckel@bakerbotts.com

From: Dunckel, Priscilla
Sent: Friday, September 17, 2010 1:26 PM
To: 'Thomas Gulick'
Cc: Jess Collen; Scannell, Jennifer
Subject: RE: K357 CAFE MYSTIQUE Cancellation No. 92052314

Can you please let me know why you are proposing a deposition by telephone or video conference, rather than allowing me or another attorney representing our client to attend in person? I don't see that there would be any difference or disadvantage to your client between a deposition where we attend in person, and one by telephone or video conference. Perhaps I am missing something. I would appreciate it if you would explain.

I understand that on the extension, you are copying our proposal on your request for an extension of the discovery deadlines. However, while we had already granted you an extension of 30 days on the Answer, delaying the proceeding, this is the first request we have made for any accommodation. I again request that you agree to the 30 days, which is consistent with the first extension we granted your client. If you are unwilling to do that, I will need to wait until I return, and figure out if we can meet your proposed time for the extension, or if we will need to file a motion with the TTAB for more time.

I will look to hear back from you on the extension. I'll be in town until Sunday, and will then be in China and will have limited email access until October 1st. However, please feel free to provide any additional information by email, and be sure to include Jennifer Scannell. One of us will get back to you, but there may be a delay of a few days.

Thanks.

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priscilla.dunckel@bakerbotts.com

From: Thomas Gulick [<mailto:tgulick@collenip.com>]
Sent: Friday, September 17, 2010 12:22 PM

10/15/2010

To: Dunckel, Priscilla
Cc: Jess Collen; Scannell, Jennifer
Subject: RE: K357 CAFE MYSTIQUE Cancellation No. 9205231

Dear Ms. Dunckel,

Thank you for your emails. We are offering a deposition by telephone or video conference rather than on written questions. We have not worked out the details. We clearly plan to defend our witness at the deposition but do not know where we will attend.

If you are interested in taking the deposition by telephone or video conference, please provide us with a notice with a proposed date. The dates of availability are of course contingent on identifying the witness for which we need a notice. We believe the parties can then find a mutually agreeable scheduling date at that time.

We are willing to offer you a reciprocal one week extension of time to respond to discovery requests. We would be willing to add an additional four (4) day extension on the condition that you agree: (1) not to file a motion to further extend that deadline for discovery responses and (2) that we will receive Mother Parker's documents along with the responses by the end of business on such date.

Thanks,

Tom

From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Thursday, September 16, 2010 7:34 PM
To: Priscilla.Dunckel@bakerbotts.com; Thomas Gulick; Jennifer.Scannell@bakerbotts.com
Cc: Jess Collen
Subject: RE: K357 CAFE MYSTIQUE Cancellation No. 92052314

Thomas--

Would you please provide me more information about the type of deposition you are proposing? Also, what date are you proposing?

For the next two weeks, I will be in China, and will have some but limited access to email. Since I won't be back until October 1st, we need to get dates scheduled. While I understand that you need to find out from your client, I proposed dates in my letter of August 30, and haven't heard anything from you on whether your client is available any of those dates, October 7th or 8th, or the 11th, 12th, 13th 14th or 15th. You also have not proposed any alternative dates.

Also, I requested an extension of time to respond to the discovery requests you served this week, but I haven't heard from you on that either. I would appreciate a response on both of these issues, the deposition and also the extension of time.

Thanks. I will be in the office all day tomorrow if you would like to discuss either of these.

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10/15/2010

From: Dunckel, Priscilla
Sent: Tuesday, September 14, 2010 10:04 AM
To: 'Thomas Gulick'; Scannell, Jennifer
Cc: Jess Collen
Subject: RE: K357 CAFE MYSTIQUE Cancellation No. 92052314

Thomas:

In regard to the deposition, would you please provide me more information on what it is you are proposing? Are you proposing either a telephonic or video conference (where the witness can be seen live)? Will you or another attorney be on their end defending them in the deposition, or also by phone or videoconference? I would appreciate a little more information. I would also like to get the dates firmed up before I leave. Thanks.

Also, as you are aware, I will be out of the country for the next two weeks. Therefore, I would like to request a 30 day extension of time for Mother Parker's responses. Since we have not asked for any extension of time before, I am hopeful you will agree. Please let me know.

Priscilla

From: Thomas Gulick [mailto:tgulick@collenip.com]
Sent: Monday, September 13, 2010 7:07 PM
To: Dunckel, Priscilla; Scannell, Jennifer
Cc: Jess Collen
Subject: K357 CAFE MYSTIQUE Cancellation No. 92052314

Dear Ms. Dunckel and Ms. Scannell,

Please find attached an update letter regarding the above referenced matter. Attached are word versions of Registrant's discovery requests. Should you have any further questions, please contact me.

Thanks,

Tom

Thomas Gulick
Senior Associate

COLLEN IP

INTELLECTUAL PROPERTY LAW

The Holyoke-Manhattan Building

80 South Highland Avenue | Ossining-on-Hudson, Westchester County, NEW YORK 10562 | U.S.A.

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10/15/2010

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EXHIBIT B-3

Porterfield, Cecily

From: Scannell, Jennifer
Sent: Monday, October 04, 2010 2:44 PM
To: Porterfield, Cecily
Subject: FW: Notice of Deposition - CAFE MYSTIQUE

From: Thomas Gulick [mailto:tgulick@collenip.com]
Sent: Monday, October 04, 2010 2:39 PM
To: Scannell, Jennifer; Dunckel, Priscilla
Cc: Jess Collen
Subject: RE: Notice of Deposition - CAFE MYSTIQUE

Dear Ms. Dunckel and Ms. Scannell,

We acknowledge receipt of your letter earlier today. Based on this letter, it is our understanding that you are now amenable to a telephone or video deposition. (We presume that the reciprocal would be agreeable should our client wish to proceed in that matter to take the deposition of your client.)

As to the further extension, on discovery, we maintain our offer as stated in my email of September 17, 2010, which is to grant an extension equivalent to the period of time which you provided for our discovery responses. As you know, when Respondent sought two extra weeks to prepare responses to Petitioner's discovery requests because Respondent's counsel was working on a brief to the Supreme Court, Petitioner declined to grant anything more than seven days plus an additional four days if we did not file for an extension with the Board.

While claiming you do not have sufficient time to provide responses to Registrant's discovery requests, you are seeking to take Respondent's deposition prior to the date that the discovery responses are due. We will review your notice of deposition and determine the proper representative and their availability.

Thanks,

Tom

From: Jennifer.Scannell@bakerbotts.com [mailto:Jennifer.Scannell@bakerbotts.com]
Sent: Monday, October 04, 2010 3:11 PM
To: Thomas Gulick
Cc: Priscilla.Dunckel@bakerbotts.com; cecily.porterfield@bakerbotts.com
Subject: Notice of Deposition - CAFE MYSTIQUE

Thomas,

Attached please find correspondence from Priscilla Dunckel regarding the notice of deposition, and a courtesy copy of the same. We have sent the original notice of deposition to you via first class mail. Please do not hesitate to contact us with any questions.

Best regards,

Jennifer Scannell

10/15/2010

Jennifer Scannell | Associate | Baker Botts L.L.P. ■ | 214.953.6754 | 214.661.4754 fax

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10/15/2010

EXHIBIT B-4



Telephone (914) 941-5668

Facsimile (914) 941-6091

www.colLENIP.com

email: tgulick@colLENIP.com

October 7, 2010

VIA EMAIL TO: Priscilla.Dunckel@bakerbotts.com
CONFIRMATION VIA FIRST CLASS MAIL

Baker Botts LLP
2001 Ross Avenue
Dallas, Texas 75201-2980
Attn: Priscilla L. Dunckel, Esq.

RE: U.S. Trademark Cancellation No. 92052314
Mother Parker's Tea & Coffee, Inc. v. Café Mystique, Inc.
Mark : CAFÉ MYSTIQUE
U.S. Reg. No. : 3514570
Our Ref. : K357
Your Ref. : 073701.0175

Dear Ms. Dunckel:

We confirm receipt of Petitioner's Notice of Rule 30(b)(6) Deposition.

Please be advised that Petitioner's Notice of Deposition is deficient. Pursuant to TBMP § 404.03(b), a Rule 30(b)(6) deposition of a person residing in a foreign country must be taken on written questions.

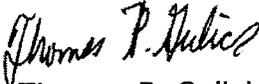
When Petitioner inquired whether a deposition on written questions could be avoided in favor of another form of deposition, we offered either a video or telephone deposition. However, Petitioner's has noticed a live Rule 30(b)(6) deposition of Café Mystique, Inc. outside the United States, in a manner not consented to by Registrant. Because Petitioner noticed a live deposition of a foreign-residing deponent, and neither a deposition on written questions as the Trademark Rules provide, nor notice for one of the two alternative means to which Registrant had voluntarily agreed to consent, we object to your notice of deposition as improper under the Rules.

We also confirm receipt of Petitioner's October 5, 2010 letter. We are presently reviewing the issues with our client and will endeavor to provide you with appropriate responses in due course. We are uncertain that we will be able to

respond to all of the issues by October 13, 2010, but will make every effort to respond substantively in a prompt and diligent manner.

Should you have any questions, please let me know.

Very truly yours,
COLLEN IP


Thomas P. Gulick

TPG/OG:lk

P:\k\k3\k357_letter to priscilla dunckel re petitioner's notice of deposition & deficiency letter_101006.doc

EXHIBIT B-5

BAKER BOTTS LLP

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WASHINGTON

October 7, 2010

Via Electronic Mail

Priscilla L. Dunckel
TEL +1 (214) 953-6618
FAX +1 (214) 661-4618
priscilla.dunckel@bakerbotts.com

Mr. Thomas Gulick
Collen IP Intellectual Property Law, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining-on-Hudson
Westchester County, New York 10562 USA

Re: Mother Parker's Tea & Coffee, Inc. v. Café Mystique, Inc., Cancellation No. 92052314 in the Trademark Trial and Appeal Board

Dear Thomas:

I acknowledge receipt of your letter dated today, October 7, 2010, relating to the Notice of Deposition of Café Mystique, Inc. Pursuant to Rule 30(b)(6), which was served following your offer for a video or telephone deposition of your client. Notwithstanding your characterization of the deposition notice as deficient, the Notice of Deposition was issued pursuant to Rule 30(b)(6) at your own suggestion, and is consistent with a telephone, video or live oral deposition. In fact, the deposition notice specifically notes that the deposition may be taken at "such other location as agreed by the parties" and that "[a]dditional details will be arranged by mutual agreement of the parties following further discussion."

As you are aware, in our settlement conference last summer, we made a proposal to you that our clients mutually agree to depositions on oral examination rather than the standard depositions on written questions. Since both of our clients are located in Canada, and travel is no more expensive than it would be within the U.S., neither party would be prejudiced or unduly burdened by such an agreement. In fact, between the parties, the expenses for my client for both depositions would be more for my travel from Dallas, than expenses would be for your client for you to travel the short distance from New York.

Finally, after some time, you made the offer for a deposition of your client, but only by telephone or video conference. You would not agree to me attending the deposition in person. Following your offer, I have not at any point refused that format. In fact, I sent you two emails, (on September 17th and October 4th) asking for more details about the format you were proposing. Before deciding whether one of those formats would be acceptable, I requested information regarding whether you planned to be in attendance in person or by telephone yourself, how you proposed to have documents handled, etc. I also tried to call you today to discuss the format you were suggesting, and sent you an email requesting to schedule a call with

October 7, 2010

you sometime today or tomorrow. My efforts have been clear in trying to work with you cooperatively to find out any specific reasons behind your proposal, as well as to try to see if we could reach an agreement. However, you have ignored my questions and refused to take my call or respond to my emails.

I am sure you are aware that 37 CFR § 2.120(c)(1) provides that [t]he discovery deposition of . . . a person designated under Rule 30(b)(6) OR Rule 31(a) of the Federal Rules of Civil Procedure, shall, if taken in a foreign country, be taken in the manner prescribed by § 2.124 unless the Trademark Trial and Appeal Board, upon motion for good cause, orders or the parties stipulated, that the deposition be taken by oral examination. Thus, it is not a hard and fast rule that a Rule 30(b)(6) deposition of a person residing in a foreign country must be taken on written questions. In fact, Rule 2.120(c)(1) [as amended in 1984] “allows the Board to weigh the advantages of an oral deposition against any financial hardship that the party to be deposed might suffer if the deposition were taken orally in the foreign country and to order that the deposition be taken orally in appropriate cases. For example, if the foreign party is located in Toronto, Canada, he is not likely to suffer much more financial hardship from the taking of his oral deposition in Toronto than he would if he were located in Buffalo, New York.” Janet E. Rice, *TIPS FROM THE TTAB: Recent Changes in the TTAB Discovery Rules*, 74 Trademark Rep. 450 (1984).

We have attempted to work with you to resolve this issue, but since you are refusing to even discuss the deposition and the reasons for your limitation to a telephone or video conference deposition, we obviously have no option but to file a motion with the TTAB for oral examination of your client. The circumstances in this case are nearly identical to the example the TTAB gave to illustrate when the deponent was unlikely to suffer a financial hardship, and the very reason the change was made to the Rules over twenty-five years ago. It seems likely that the TTAB will be open to such a request in our case, especially since our own client is in the very same situation of being a foreign corporation and has proposed a mutual agreement.

I am hopeful that you will reconsider our request for oral examination of your client. I am still available for a call tomorrow to discuss this matter to see if we can reach a resolution. If I do not hear from you tomorrow, we will prepare our motion for filing on Monday, and will ask for a telephone hearing on the motion.

Very truly yours,

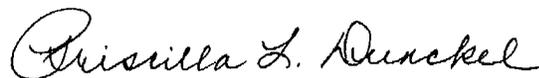

Priscilla L. Dunckel

EXHIBIT B-6

Porterfield, Cecily

From: Dunckel, Priscilla
Sent: Friday, October 08, 2010 10:52 AM
To: 'Thomas Gulick'
Cc: Jess Collen; Scannell, Jennifer; Porterfield, Cecily
Subject: RE: Mother Parker's v. Cafe Mystique Cancellation Proceeding

We are not in agreement--we need more information on what it is you are proposing and why before we can consider your proposal.

From: Thomas Gulick [mailto:tgulick@collenip.com]
Sent: Friday, October 08, 2010 10:49 AM
To: Dunckel, Priscilla
Cc: Jess Collen; Scannell, Jennifer; Porterfield, Cecily
Subject: RE: Mother Parker's v. Cafe Mystique Cancellation Proceeding

Dear Priscilla,

Pursuant to your first paragraph, are we in agreement that the deposition will be taken orally, either by telephone or videoconference? If we are in agreement, we will withdraw the objection.

Thanks,

Tom

From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Thursday, October 07, 2010 7:22 PM
To: Thomas Gulick
Cc: Jess Collen; Jennifer.Scannell@bakerbotts.com; cecily.porterfield@bakerbotts.com
Subject: Mother Parker's v. Cafe Mystique Cancellation Proceeding

<<Document7.pdf>>

Thomas:

Please see the attached correspondence.

Priscilla L. Dunckel
Baker Botts LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201
(214) 953-6618 direct phone
(214) 661-4618 direct fax
priscilla.dunckel@bakerbotts.com

10/15/2010

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EXHIBIT B-7



Telephone (914) 941-5668
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 email: tgulick@colLENIP.com

October 12, 2010

VIA EMAIL TO: Priscilla.Dunckel@bakerbotts.com
CONFIRMATION VIA FIRST CLASS MAIL

Baker Botts LLP
 2001 Ross Avenue
 Dallas, Texas 75201-2980
 Attn: Priscilla L. Dunckel, Esq.

RE: U.S. Trademark Cancellation No. 92052314
Mother Parker's Tea & Coffee, Inc. v. Café Mystique, Inc.
 Mark : CAFÉ MYSTIQUE
 U.S. Reg. No. : 3514570
 Our Ref. : K357
 Your Ref. : 073701.0175

Dear Ms. Dunckel:

In response to Petitioner's Notice of Rule 30(b)(6) Deposition served October 4, 2010, Registrant Café Mystique identifies Sevan Istamboulian, President of Café Mystique, as its designated deponent. Mr. Istamboulian is knowledgeable about all the subjects identified in the Notice of Deposition. We are still trying to ascertain dates of availability for Mr. Istamboulian's deposition. Mr. Istamboulian is on vacation until October 20, 2010 for Canada's Thanksgiving holiday.

We also take this opportunity to lodge our objection to topic number 8 identified in Petitioner's Notice of Rule 30(b)(6) Deposition. The identity of Registrant's customers constitutes confidential information and is not discoverable, even under the Protective Order. See TBMP § 414(3). We demand that Petitioner withdraw this topic from its Notice of Deposition.

No information or objection in this letter regarding the Notice of Deposition should be inferred to indicate that we consent or agree to an in person deposition and Registrant maintains its previous offer of a telephone or video deposition.

Should you have any questions, please let me know.

Very truly yours,
 COLLEN IP


 Thomas P. Gulick

TPG/OG:Ik
 P:\k\k3\k357_letter to priscilla dunckel re petitioner's notice of deposition & deficiency letter_101006.doc

COLLEN IP Intellectual Property Law, P.C., THE HOLYOKE-MANHATTAN BUILDING,
 80 South Highland Avenue, Ossining-on-Hudson, Westchester County, New York 10562 USA



EXHIBIT B-8

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RIYADH
WASHINGTON

October 12, 2010

Priscilla L. Dunckel
TEL +1 (214) 953-6618
FAX +1 (214) 661-4618
priscilla.dunckel@bakerbotts.com

Via Electronic Mail to tgulick@collenIP.com

Thomas P. Gulick
Collen IP Intellectual Property Law, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossing-on-Hudson
Westchester County, New York 10562

Re: U.S. trademark Cancellation No. 92052314
Mother Parker's Tea & Coffee, Inc. v. Café Mystique, Inc.

Dear Thomas:

Thank you for your letter dated today, October 12, 2010, identifying the designated deponent for the 30(b)(6) deposition of Café Mystique, Inc., and informing us that he is not available on the scheduled date, October 20, 2010. We appreciate the information at this point, and will provide a revised Notice of Deposition once you let us know when he will be available.

In regard to your objection to topic No. 8 in the Notice of Deposition, we point you to TMBP § 414(3) which states “. . .if there is a question of abandonment, the names of a minimal number of customers for the period in question may be discoverable under a protective order” In this case, your client has produced only one invoice showing alleged “sales” of products by your client in the U.S. in 1998 and no further evidence of any other use. Therefore, there is a question of whether Café Mystique, Inc. has used the mark in the U.S. sufficiently to establish trademark rights and if so, whether there has been abandonment of use of the CAFÉ MYSTIQUE mark. Thus, the names of a minimal number of customers for the 12 years since 1998 are discoverable. Please be advised that we will only expect the designated representative to be familiar with names of a minimal number of customers for each of the years since 1998.

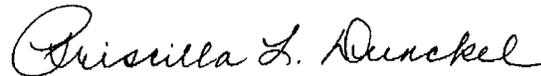
I acknowledge your continuing objection to an in-person deposition, and that you have offered only a telephone or video deposition. I again request that you provide more information regarding the reason for the objection. Since we do not have any basis for agreeing that an in-person deposition is not viable, and/or why the deposition should be by telephone or video conference, as I mentioned to you last week, we plan to file a motion with the TTAB for the live in-person deposition. I left a message with the interlocutory attorney to call me, so I can request a telephone conference pursuant to TMBP § 502.06(a) “*Requesting a telephone conference,*” to receive his instructions regarding whether we must file a motion or brief or written agenda. If

you would like topic No. 8 of the Notice of Deposition to be a part of the telephone conference, if approved, please let me know. I will call you to schedule the telephone conference if the interlocutory attorney agrees to it..

I again request that we reach a mutual agreement on behalf of both of our Canadian clients for live, in-person depositions. This is just the type of situation anticipated by the Rules and the exception to depositions on written questions for oral depositions either by agreement between the parties or order of the Board.

Please give me a call if you would like to discuss this.

Very truly yours,

A handwritten signature in cursive script that reads "Priscilla L. Dunkel".

Priscilla L. Dunkel

EXHIBIT C

Porterfield, Cecily

From: Scannell, Jennifer
Sent: Monday, October 04, 2010 2:11 PM
To: 'Thomas Gulick'
Cc: Dunckel, Priscilla; Porterfield, Cecily
Subject: Notice of Deposition - CAFE MYSTIQUE
Attachments: Cafe Mystique Letter.pdf

Thomas,

Attached please find correspondence from Priscilla Dunckel regarding the notice of deposition, and a courtesy copy of the same. We have sent the original notice of deposition to you via first class mail. Please do not hesitate to contact us with any questions.

Best regards,

Jennifer Scannell

Jennifer Scannell | Associate | Baker Botts L.L.P. ■ | 214.953.6754 | 214.661.4754 fax

10/15/2010

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October 4, 2010

**PRIVILEGED & CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATION**

VIA FIRST CLASS MAIL & EMAIL

Mr. Thomas P. Gulick
Collen IP Intellectual Property Law, P.C.
The Hollyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562

Priscilla L. Dunckel
TEL +1 214.953.6618
FAX +1 214.661.4899
priscilla.dunckel@bakerbotts.com

Re: *Mother Parker's Tea & Coffee, Inc. v. Café Mystique, Inc.*
Mark: **CAFÉ MYSTIQUE COFFEE & Design** (Reg. No. 3,514,570)
Cancellation No: 92052314
Our File: 073701.0175

Dear Tom:

Enclosed please find a service copy of Petitioner's Notice of Deposition of Café Mystique, Inc. Pursuant to Rule 30(b)(6).

We note that you have agreed to either a deposition by telephone or by video conference. I have proposed October 20th for the deposition, but I can be available any day that week (October 18th through 22nd), or Monday, Tuesday or Wednesday of the following week (October 25th, 26th or 27th).

Once we get the date firmed up, we can further discuss details of the deposition. Please let us know immediately if a different date or location would be preferable. We look forward to reaching a mutual agreement on date, location and format.

If you have any questions, do not hesitate to contact me.

Very truly yours,



Priscilla L. Dunckel

PLD:jls:ckp
Enclosure

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

MOTHER PARKER'S TEA & COFFEE,
INC.,

Petitioner,

vs.

CAFÉ MYSTIQUE, INC.,

Respondent.

§
§
§
§
§
§
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§
§
§
§

Cancellation No. 92052314

Mark: **CAFÉ MYSTIQUE
COFFEE & Design**

Registration No. 3,514,570
Issued October 14, 2008

**NOTICE OF DEPOSITION OF CAFÉ MYSTIQUE, INC. PURSUANT TO RULE
30(b)(6)**

To: Respondent Café Mystique, Inc., by and through its counsel of record, Thomas P. Gulick, Collen IP, The Holyoke-Manhattan Building, 80 South Highland Avenue, Ossining, New York 10562.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Petitioner, Mother Parker's Tea & Coffee, Inc. ("Mother Parker's"), will take the deposition upon oral examination of Café Mystique, Inc. ("Café Mystique"), through one or more officers, directors, managing agents, or other representatives who are designated to testify regarding the subject matters set forth in Exhibit A to this Notice.

The deposition shall commence at 9:00 a.m. on October 20, 2010 at the Quebec office of Lapointe Rosenstein Marchand Melançon, located at 1250 René-Levesque Blvd. West, Suite 1400, Montreal, Quebec, or such other location as agreed by the parties, and will continue until completed. The deposition will be taken before a court reporter or other person qualified to administer the oath and will be recorded by stenographic means. Additional details will be arranged by mutual agreement of the parties following further discussion.

Please provide a list of representatives by Monday, October 11, 2010, which, for each representative, identifies the name, company, title, job responsibilities and the topics on which that representative will be designated to testify.

Respectfully submitted this 4th day of October, 2010.

By: 

Priscilla Dunckel
Jennifer Scannell
Baker Botts L.L.P.
2001 Ross Ave., Suite 600
Dallas, Texas 75201-2980
Tel: (214) 953-6818
Fax: (214) 661-4899
Email: priscilla.dunckel@bakerbotts.com

ATTORNEYS FOR PETITIONER
MOTHER PARKER'S TEA & COFFEE,
INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2010, I served, via email and First Class Mail, a true and correct copy of the foregoing *Notice of Deposition of Café Mystique, Inc.* Pursuant to Rule 30(b)(6) to:

Thomas P. Gulick
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
tgulick@collenip.com


Priscilla L. Dunckel

EXHIBIT A

As used herein, the following terms shall have the meaning(s) set forth below:

1. "Respondent" shall mean Café Mystique, Inc., and any predecessor, parent, subsidiary or affiliated company and each of their respective directors, officers, employees, representatives and agents.
2. "Respondent's Mark" shall mean the CAFÉ MYSTIQUE COFFEE & Design mark which is the subject of United States Trademark Registration No. 3,514,570.
3. "Communicate" and "Communication" are defined as (1) every manner or means of disclosure, transfer, or exchange of information; and (2) every disclosure, transfer or exchange of information, whether made or accomplished orally or by document, whether face-to-face, by telephone, mail, telex, facsimile, personal delivery, electronic mail (e-mail) or otherwise.
4. "Relating," "concerning" "pertaining to" or "referring to" is defined as referring to, relating to, having any relationship to, pertaining to, evidencing or constituting evidence of, directly or indirectly, or in whole or in part, the subject matter of the particular request.
5. "Or" is defined as "including, but not limited to."
6. "Including" is defined as "including, but not limited to"
7. "Respondent's Website" shall mean the website located at www.mystiquecoffee.com.
8. "Petitioner" shall mean Mother Parker's Tea and Coffee, Inc., and any predecessor, parent, subsidiary or affiliated company.
9. "Petitioner's Mark" shall mean the CAFÉ MYSTIQUE mark, which Petitioner has used in connection with the sale of coffee in the United States since about 1998.
10. "Interrogatories" shall mean Petitioner's First Interrogatories, served on July 24, 2010 by Mother Parker's, as Petitioner, in connection with the instant Cancellation Proceeding.
11. "Document Requests" shall mean Petitioner's First Requests for Production of Documents to Respondent, served on July 24, 2010 by Mother Parker's, as Petitioner, in connection with the instant Cancellation Proceeding.
12. "Requests for Admissions" shall mean Petitioner's First Requests for Admissions, served on July 24, 2010 by Mother Parker's, as Petitioner, in connection with the instant Cancellation Proceeding.

EXHIBIT A CON'T.

Subjects

Pursuant to Federal Civil Procedure 30(b)(6), Café Mystique, Inc. is requested to designate one or more officers, directors, managing agents, or other persons to testify on its behalf concerning the following matters:

1. Respondent's corporate history and corporate structure.
2. The business operations of Respondent in the United States.
3. The goods and services marketed or offered in the United States under or in connection with Respondent's Mark.
4. Use of Respondent's Mark in the United States.
5. Dates of use of Respondent's Mark in the United States, including dates of first use, first use in commerce, and any periods of non-use.
6. The trade channels through which Respondent markets or offers goods or services in connection with Respondent's Mark to customers in the United States, including any and all retail establishments and websites on which Respondent's Mark is displayed or through which goods or services are offered for sale under or in connection with Respondent's Mark.
7. Specific geographic areas in the United States where products or services are currently offered by Respondent under or in connection with Respondent's Mark.
8. The identity of ten U.S. customers to whom Respondent has distributed or sold products bearing or in connection with Respondent's Mark for each year since first use of the mark in the United States.
9. All surveys, studies, reports, focus groups or investigations conducted by or on behalf of Respondent concerning, referring or relating to either Respondent's Mark or Petitioner's Mark.

10. Respondent's marketing (i.e., promotion, sale, offers for sale, advertising and/or licensing) of goods or services in connection with Respondent's Mark in the United States.

11. Actual amounts spent by Respondent in promoting and/or advertising goods or services in connection with Respondent's Mark in the United States.

12. Actual revenue generated from Respondent's sales of its goods or services in connection with Respondent's Mark in the United States.

13. All statements set forth in Respondent's Answer to the Petition for Cancellation in the instant Cancellation Proceeding, and the basis for such statements.

14. All statements set forth in Respondent's responses to Petitioner's Interrogatories, and the basis for such statements.

15. All statements set forth in Petitioner's responses to Petitioner's Document Requests, and the basis for such statements.

16. Facts and details concerning the documents produced by Respondent in response to Petitioner's Document Requests, including, without limitation, the source and contents of each document, where such documents were located, the dates of such documents, and how such dates and other information regarding the documents were determined.

17. All statements set forth in Respondent's responses to Petitioner's Requests for Admissions.

18. Facts concerning marketing and/or business plans developed by or for Respondent in connection with the marketing or sale of goods bearing or in connection with Respondent's Mark in the United States, including any plans to expand or resume use of Respondent's Mark in the United States.

19. Respondent's awareness or knowledge of Petitioner and/or Petitioner's Mark, including the date and circumstances relating to Respondent first becoming aware of Petitioner's use of Petitioner's Mark.

20. Respondent's policies pertaining to enforcing its trademark rights in the United States.

21. Respondent's knowledge or awareness of the use of marks similar to or the same as the Respondent's Mark in the United States.

22. Facts and circumstances surrounding any assertion by Respondent of rights in Respondent's Mark against any third party using a similar mark in the United States.

23. Facts and circumstances surrounding any decision by Respondent not to assert rights in Respondent's Mark against any third party using a similar mark in the United States.

24. Facts and circumstances surrounding any trade shows, conferences or conventions in the United States which Respondent has attended or at which Respondent has exhibited, including the specific dates and locations of such trade shows, conferences or conventions.

25. Facts and circumstances surrounding any training sessions held by or sponsored by Respondent in the United States, including the specific dates of any past training sessions, and the dates of any future training sessions which are planned by Respondent.

EXHIBIT D

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

MOTHER PARKER'S TEA & COFFEE,
INC.,

Petitioner,

vs.

CAFÉ MYSTIQUE, INC.,

Registrant.

§
§
§
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Cancellation No. 92052314

Mark: **CAFÉ MYSTIQUE
COFFEE & Design**

Registration No. 3,514,570
Issued October 14, 2008

**REGISTRANT'S RESPONSES TO PETITIONER'S
FIRST SET OF INTERROGATORIES**

Registrant, Café Mystique, Inc. ("Café Mystique" or "Registrant"), by and through its attorneys, hereby serves its Objections and Responses to Petitioner's First Set of Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice. In accordance with 37 C.F.R. §2.116(g) these non-confidential discovery responses are provided pursuant to the Trademark Trial and Appeal Board's standard Protective Order. Registrant's Objections and Responses to Petitioner's First Set of Document Production Requests and First Set of Admission are served concurrently.

GENERAL OBJECTIONS

1. Registrant objects to each and every interrogatory and document request in their entirety on the ground that Registrant is responding on the basis of its current knowledge and information. Registrant reserves the right to supplement each response to these interrogatories and document request.

INTERROGATORY NO. 4:

Identify all specific categories of products and services intended to be offered in the United States by Registrant under or in connection with Registrant's Mark.

RESPONSE: Registrant hereby incorporates by reference all of its General Objections as if fully set forth herein. Registrant objects to this Interrogatory to the extent that Petitioner has exceeded the allowable interrogatory limit set out in 37 C.F.R. § 2.120(d)(1). Notwithstanding and without waiving the foregoing objections, Registrant responds: Coffee.

INTERROGATORY NO. 5:

For each product and service identified in response to Interrogatory Nos. 3 and 4, state the date the product or service was first offered for sale in the United States, or if not yet offered, the date on which Registrant intends to offer the product or service for sale.

RESPONSE: Registrant hereby incorporates by reference all of its General Objections as if fully set forth herein. Registrant objects to this Interrogatory to the extent that Petitioner has exceeded the allowable interrogatory limit set out in 37 C.F.R. § 2.120(d)(1). Notwithstanding and without waiving the foregoing objections, Registrant responds April 24, 1998.

INTERROGATORY NO. 6:

For each category of product and service identified in response to Interrogatory Nos. 3 and 4, state the volume of sales in dollars and units for each category in each year in the United States since the date of first use.

RESPONSE: Registrant hereby incorporates by reference all of its General Objections as if fully set forth herein. Registrant objects to this Interrogatory to the extent that Petitioner has exceeded

INTERROGATORY NO. 22:

Describe in detail, including dates and locations, any trade shows, conferences or conventions Registrant has attended, including specifically whether Registrant attended the Specialty Coffee Association of America 19th Annual Conference and Convention in Long Beach, California in 2007.

RESPONSE: Registrant hereby incorporates by reference all of its General Objections as if fully set forth herein. Registrant objects to this Interrogatory to the extent that Petitioner has exceeded the allowable interrogatory limit set out in 37 C.F.R. § 2.120(d)(1). Notwithstanding and without waiving the foregoing objections, Sevan Istamboulian has attended all of the Specialty Coffee Association conventions, including the 19th Annual Conference and Convention in Long Beach, California in 2007. Mr. Istamboulian was a lecturer and/or instructor at these conferences.

INTERROGATORY NO. 23:

Describe in detail, including dates and locations, any trade shows, conferences or conventions in the United States at which Registrant has exhibited products for sale or intended for sale within the United States.

RESPONSE: Registrant hereby incorporates by reference all of its General Objections as if fully set forth herein. Registrant objects to this Interrogatory to the extent that Petitioner has exceeded the allowable interrogatory limit set out in 37 C.F.R. § 2.120(d)(1). Notwithstanding and without waiving the foregoing objections, Sevan Istamboulian has attended all of the Specialty Coffee Association conventions and has also participated in the International Exhibition, known as SIAL which was targeted to the U.S. market.

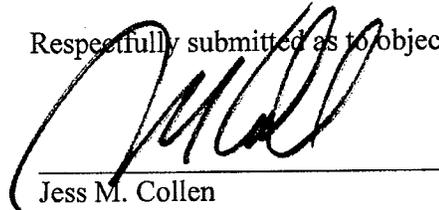
waiving the foregoing objections, Registrant responds that there are no such licenses, authorizations, grants or assignments relating to the CAFÉ MYSTIQUE mark.

INTERROGATORY NO. 34:

Identify those persons who had more than a clerical role in the answering of the foregoing Interrogatories or in any search for documents in connection with answering these Interrogatories.

RESPONSE: Registrant hereby incorporates by reference all of its General Objections as if fully set forth herein. Registrant objects to this Interrogatory to the extent that Petitioner has exceeded the allowable interrogatory limit set out in 37 C.F.R. § 2.120(d)(1). Notwithstanding and without waiving the foregoing objections, Registrant's attorney's listed below, Registrant's Canadian counsel and employee(s) of Registrant.

Respectfully submitted as to objections only,



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Thomas P. Gulick
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ATTORNEYS FOR REGISTRANT
CAFÉ MYSTIQUE, INC.

Date: September 7, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2010, I served, via email and first class mail, postage prepaid, a true and correct copy of the foregoing *Registrant's Responses to Petitioner's First Set of Interrogatories* to:

Priscilla L. Dunckel
Jennifer Scannell
Baker Botts L.L.P.
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Edith Garvey