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Filing date: **06/28/2012**

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

Proceeding	92053945
Party	Plaintiff Darlington Apple Festival, Inc.
Correspondence Address	HARA K JACOBS BALLARD SPAHR LLP 1735 MARKET STREET, 51ST FLOOR PHILADELPHIA, PA 19103-7599 UNITED STATES jacobsh@ballardspahr.com, phila_tmddocketing@ballardspahr.com, sternam@ballardspahr.com, camposcruzl@ballardspahr.com
Submission	Motion to Compel Discovery
Filer's Name	Hara K. Jacobs
Filer's e-mail	jacobsh@ballardspahr.com, phila_tmddocketing@ballardspahr.com, camposcruzl@ballardspahr.com, sternam@ballardspahr.com
Signature	/Hara K. Jacobs/
Date	06/28/2012
Attachments	Scan-0026.pdf ( 33 pages )(273149 bytes )

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

DARLINGTON APPLE FESTIVAL INC.

Petitioner,

v.

STEPHEN SMITH

Registrant.

Cancellation No. 92053945

**PETITIONER'S MOTION TO COMPEL**

Petitioner, Darlington Apple Festival Inc. ("Petitioner"), hereby moves the Board for an Order compelling Registrant, Stephen Smith ("Registrant"), to produce documents and provide responses to the discovery requests propounded by Petitioner.

**PRELIMINARY STATEMENT**

Petitioner seeks to compel Registrant to provide responses and produce documents responsive to Petitioner's First Set of Requests for the Production of Documents and Things, served on May 14, 2012, and to Petitioner's First Set of Interrogatories to Registrant, served on May 23, 2012 (collectively, "Petitioner's Discovery Requests," attached as Exhs. A and B to Jacobs Decl.). To date, Registrant has never responded to Petitioner's Discovery Requests nor has Registrant responded to Petitioner's multiple communications concerning his failure to respond. Accordingly, Petitioner seeks an Order compelling Registrant to provide a complete production of documents and responses to Petitioner's Discovery Requests, and an Order declaring that Registrant has forfeited his right to object to Petitioner's Discovery Requests on the merits.

## FACTUAL BACKGROUND

Registrant obtained a federal registration on the Supplemental Register for the mark THE DARLINGTON APPLE FESTIVAL, Registration Number 3,949,583, on April 19, 2011 (the “Registration”). Petitioner petitioned the U.S. Patent and Trademark Office on April 21, 2011 for cancellation of the Registration on the grounds of fraud, priority and likelihood of confusion.

Counsel for Registrant withdrew from the proceeding on August 4, 2011. The withdrawal resulted in an extension of all trial deadlines, including the close of discovery which is currently set for July 4, 2012. Petitioner recently filed a motion for a brief extension of time of the remaining trial deadlines to accommodate the schedule of a third party witness who is giving a discovery deposition in this matter.

Petitioner served its First Set of Requests for the Production of Documents and Things on May 14, 2012. (Jacobs Decl. at ¶ 2). Additionally, Petitioner served its First Set of Interrogatories to Registrant on May 23, 2012. (Jacobs Decl. at ¶ 3). To date, Registrant has not served discovery responses, has not produced responsive documents, and indeed, has not communicated with Petitioner at all on these issues. Petitioner’s counsel has sent two e-mails to Registrant regarding Registrant’s overdue discovery responses, but Registrant has not responded to either e-mail. (Jacobs Decl. at ¶¶ 4-6; Emails from Andrew M. Stern, Esq. to Stephen Smith, dated June 22, 2012 and June 27, 2012, Exhs. C and D to Jacobs Decl.). Registrant’s refusal to participate in discovery and refusal to communicate with Petitioner’s counsel is inexcusable. This is particularly true in light of Registrant’s recently filed opposition to Petitioner’s motion for a thirty (30) day extension of the remaining trial deadlines, which Registrant filed on June 28,

2012, in the midst of Petitioner's e-mails concerning Registrant's failure to participate in discovery.

### ARGUMENT

Registrant is required to respond to interrogatories within thirty (30) days after the date of service. TBMP §405.04(a) and (b). Similarly, Registrant is required to respond to document requests within thirty (30) days after the date of service. TBMP §406.04(a) and (b).

Petitioner served its First Set of Requests of the Production of Documents and Things on May 14, 2012. (Jacobs Decl. at ¶ 2). Similarly, Petitioner served its First Set of Interrogatories on May 23, 2012. (Jacobs Decl. at ¶ 3). As of today, Registrant has not provided responses or responsive documents to Petitioner's Discovery Requests, which responses are overdue. (Jacobs Decl. at ¶ 6).

Petitioner, through its counsel, has made a good faith effort to obtain discovery responses from Registrant by sending multiple e-mails to Registrant, however, Registrant refuses to communicate with Petitioner's counsel, thus necessitating this motion. (Jacobs Decl. at ¶¶ 4-6).

Under the circumstances, Petitioner respectfully requests that the Board order Registrant to produce all documents responsive to Petitioner's First Set of Requests for the Production of Documents and Things, as set forth in Exhibit A to the Declaration of Hara Jacobs, and provide full and complete responses to Petitioner's First Set of Interrogatories to Registrant, as set forth in Exhibit B to the Declaration of Hara Jacobs. Additionally, the Board should find that Registrant has forfeited its right to object to the documents requests and interrogatories on the merits because Registrant has inexcusably failed to timely respond to these discovery

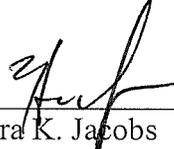
requests. TBMP §405.04(a); TBMP §406.04(a); see also No Fear Inc. v. Rule, 54 U.S.P.Q.2d 1551, 1554 (TTAB 2000).

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that the Board grant Petitioner's Motion to Compel and suspend the proceedings pending the disposition of Petitioner's motion.

Date: June 28, 2012

Respectfully submitted,



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Hara K. Jacobs  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103-7599  
215.665.8500

*Attorney for Petitioner Darlington Apple Festival, Inc.*

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

DARLINGTON APPLE FESTIVAL INC.

Petitioner,

v.

STEPHEN SMITH

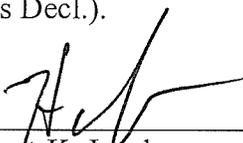
Registrant.

Cancellation No. 92053945

**STATEMENT CERTIFYING GOOD FAITH**

I hereby certify that Darlington Apple Festival, Inc., through its counsel, has made a good faith effort, by written correspondence, to resolve the issues presented in the accompanying Motion to Compel. Darlington Apple Festival, Inc., through counsel, has attempted to obtain discovery responses from Registrant, Stephen Smith, through correspondence dated June 22, 2012 and June 27, 2012. (See Exhs. C and D to Jacobs Decl.).

Dated: June 28, 2012

  
\_\_\_\_\_  
Hara K. Jacobs

**CERTIFICATE OF SERVICE**

I, Andrew M. Stern, hereby certify that on today's date, I caused a copy of the foregoing Petitioner's Motion to Compel, to be served by First Class Mail on the Registrant as set forth below:

STEPHEN SMITH  
4539 CONOWINGO ROAD  
DARLINGTON, MD 21034

Dated: June 28, 2012



*Andrew M. Stern*

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

DARLINGTON APPLE FESTIVAL INC.

Petitioner,

v.

STEPHEN SMITH

Registrant.

Cancellation No. 92053945

**DECLARATION OF HARA K. JACOBS**

I, Hara K. Jacobs, declare as follows:

1. I am a partner in the law firm of Ballard Spahr LLP, counsel for Petitioner, Darlington Apple Festival, Inc. (“Petitioner”) in the above-captioned proceeding. I submit this Declaration in support of Petitioner’s Motion to Compel.

2. On May 14, 2012, Petitioner served its First Set of Requests for the Production of Documents and Things upon Stephen Smith (“Registrant”), attached hereto as Exhibit A.

3. On May 23, 2012, Petitioner served its First Set of Interrogatories to Registrant, attached hereto as Exhibit B.

4. On June 22, 2012, Andrew Stern, Esq., an associate with our firm working on this matter, e-mailed Registrant to inform him that his response to Petitioner’s First Set of Requests for the Production of Documents and Things was overdue, and that Registrant’s response to Petitioner’s First Set of Interrogatories was still outstanding. A copy of Mr. Stern’s

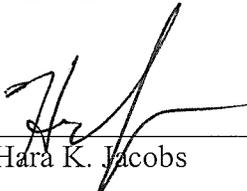
e-mail is attached as Exhibit C. Petitioner's counsel received no response to this correspondence.

5. On June 27, 2012, Mr. Stern followed up with a second e-mail to Registrant, requesting responses to Petitioner's First Set of Requests for the Production of Documents and Things, and Petitioner's First Set of Interrogatories to Registrant. A copy of Mr. Stern's e-mail is attached as Exhibit D. Again, Petitioner's counsel received no response to this correspondence although Petitioner filed his opposition to Petitioner's motion for an extension of time on June 28, 2012 (which opposition we have not yet received).

6. To date, Registrant has not responded to Petitioner's First Set of Requests for the Production of Documents and Things or Petitioner's First Set of Interrogatories to Registrant.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Philadelphia, Pennsylvania  
June 28, 2012

  
\_\_\_\_\_  
Hara K. Jacobs

# **EXHIBIT A**

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

DARLINGTON APPLE FESTIVAL INC.

Petitioner,

v.

STEPHEN SMITH

Registrant.

Cancellation No. 92053945

**PETITIONER'S FIRST SET OF REQUESTS FOR THE  
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Petitioner Darlington Apple Festival, Inc. ("Petitioner"), by their undersigned counsel, hereby requests that Registrant Stephen Smith ("Registrant"), produce the following documents, materials and things for inspection and copying to the offices of Ballard Spahr, LLP, 1735 Market Street, 51<sup>st</sup> Floor, Philadelphia, PA 19103, within thirty (30) days after service hereof.

These Requests shall be answered in accordance with the Instructions and Definitions below. The full text of the Instructions and Definitions shall be deemed incorporated by reference into each Request.

**INSTRUCTIONS AND DEFINITIONS**

**INSTRUCTIONS**

1. You shall produce all documents in a form that renders the documents susceptible to copying. You shall produce all documents as they are kept in the usual course of business or organized and labeled to correspond to the following requests.

2. If You are unable to comply fully with any request herein, You shall comply to the extent possible and provide an explanation as to why full compliance is not possible.

3. If any document within the scope of this Request is unavailable because it has been destroyed, identify the document (by date, author, addressee, signatory, subject and length); state when the document was destroyed and why; and identify the person who ordered the document destroyed.

4. If any of the information or documents requested below are claimed to be privileged or are otherwise withheld, You are requested to provide a privilege log which identifies:

- (a) the basis for asserting the claim of privilege, and the precise ground on which the document is withheld;
- (b) the type of document;
- (c) the identity of the document's author(s) and its addressee(s), and every person who prepared or received the document or any portion thereof;
- (d) the relationship of its author(s) and its addressee(s);
- (e) the title and other identifying data of the document;
- (f) the date of the document;
- (g) the subject matter of the document;
- (h) any attachment(s) to the document;
- (i) the number of pages comprising the document; and
- (j) whether the document is typewritten or handwritten.

5. All Requests herein are directed to those documents within Your possession, custody or control, or within the possession, custody or control of Your agents, servants,

employees, related companies and Your attorneys. They are also directed to those firms, corporations, partnerships, or trusts that You control, and to documents in the possession, custody or control of employees, agents, next friends, trustees, guardians and representatives of such entities.

6. Whenever necessary to bring within the scope of a request any information, document or subject matter which might otherwise be deemed non-responsive, the singular form shall be interpreted as including the plural.

7. Each document request should be answered separately and fully, and should include all information known up to the date of verification.

8. These Requests shall be deemed to be continuing. Your attention is also called to Rule 26(e)(2) of the Federal Rules of Civil Procedure, which provides:

A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

9. You shall mark each document sequentially using a Bates number.

## DEFINITIONS

As used herein, the following terms have the following definitions:

1. “You” or “Your” or “Registrant” shall mean shall mean Darlington Apple Festival, LLC, Stephen Smith, and any predecessors-in-interest, former or current parents, subsidiaries and divisions, present and former officers, directors, agents, employees, independent contractors, attorneys and advertising agencies and all other persons acting or purporting to act on behalf of Darlington Apple Festival, LLC or Stephen Smith.

2. “Petitioner” shall mean Darlington Apple Festival, Inc., and any predecessors-in-interest, former or current parents, subsidiaries and divisions, present and former officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Petitioners.

3. “Your Supplemental Registration” shall mean the mark THE DARLINGTON APPLE FESTIVAL, Supplemental Trademark Registration No. 3,949,583.

4. “Sample of Use” shall mean the series of three images which You submitted to the U.S. Patent & Trademark Office of “screen shots of [Your] website” allegedly showing the THE DARLINGTON APPLE FESTIVAL mark “as used in commerce”, as seen at <http://tdr.uspto.gov/jsp/DocumentViewPage.jsp?85154578/SPE20110121151551/Specimen/3/20-Jan-2011/>.

5. “Trademark” shall be defined to be synonymous in meaning and equal in scope to the definition of the term in 15 U.S.C. § 1127.

6. “Communication” shall mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

7. “Document” shall be defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is

a separate document within the meaning of this term. For your convenience, Federal Rule of Civil Procedure 34(a) is reproduced below:

**Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes**

**(a) In General.** A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

8. “Person” shall mean any natural person or any business, legal or governmental entity or association.

9. “Concerning” shall mean relating to, referring to, describing, evidencing or constituting.

10. The terms “all” and “each” shall be construed as all and each.

11. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

12. “Identify,” “state the identity of,” or any other similar phrase:
- (a) When used with reference to a natural person, means to state in each instance that person’s (i) full name, (ii) present or last known home address, and (iii) present employer and position (occupation or business if self employed).
  - (b) When used with reference to a corporation, partnership, association, joint venture, firm or other business enterprise or legal entity means to state in each instance the full name and address of that entity.
  - (c) When used in connection with a document or writing, means to state in each instance: (i) the date of the document, (ii) the type of document (*e.g.*, letter, memorandum, computer printout, estimate, etc.), (iii) the author and addressee, (iv) any filing or identifying number associated with the document, and (v) the present or last known location or custodian of the document.
  - (d) When used in connection with an oral communication, means to state in each instance: (i) the date, time and place where the communication was made, (ii) the person(s) communicating, (iii) the recipient(s) and intended recipient(s) of the communication, (iv) the identity of any document that embodies, contains, describes, refers to, discusses, or relates in any way to the communication, and (v) the substance of the communication.

13. When an individual, partnership or other non-corporate entity is referred to herein, such reference shall be construed to include that individual, partnership, or other non-corporate entity in any capacity and all and any agents, employees, representatives, attorneys, members, family members, predecessors and successors in interest, affiliates, departments or divisions and all other persons or entities acting on his/her/its behalf or under his/her/its control, whether in the past or the present.

### **REQUESTS**

- 1) All documents showing all of Your uses of the phrase THE DARLINGTON APPLE FESTIVAL in the United States on or before October 1, 2010.
- 2) All documents concerning Your Supplemental Registration, or application in the United States for the registration of the phrase THE DARLINGTON APPLE FESTIVAL as a federal trademark.
- 3) Forensic copies of any computer used to design or create any component of any website operated by You or for You displaying the phrase THE DARLINGTON APPLE FESTIVAL or any variation thereof.
- 4) Forensic copies of every version of every website advertising or promoting Your services using the phrase THE DARLINGTON APPLE FESTIVAL or any variation thereof.
- 5) All documents concerning any invoices or payments made to any person who developed, designed or helped develop or design any website advertising or promoting Your services under the phrase THE DARLINGTON APPLE FESTIVAL.
- 6) All documents concerning Your registration of any domain name containing the phrase DARLINGTON APPLE FESTIVAL, or variations thereof.

- 7) All documents concerning any contracts or agreements between You and any web hosting company.
- 8) All communications between You and any person performing any web hosting services for any website advertising or promoting Your services using the phrase THE DARLINGTON APPLE FESTIVAL.
- 9) All documents concerning any communications received by You that were directed or intended for Petitioner.
- 10) Documents sufficient to identify any litigation or dispute between You and anyone else concerning Your use of the phrase THE DARLINGTON APPLE FESTIVAL in the United States.
- 11) All communications between You and anyone else concerning any alleged infringement in the United States of the phrase THE DARLINGTON APPLE FESTIVAL or any variation thereof.
- 12) All documents concerning Petitioner.
- 13) All documents concerning any communications between You and any person other than Petitioner or Petitioner's counsel concerning this Cancellation proceeding.
- 14) All documents concerning any and all agreements by or between You and anyone else concerning the phrase THE DARLINGTON APPLE FESTIVAL.
- 15) All documents concerning Your knowledge as to the existence of Petitioner and/or its annual Darlington Apple Festival event prior to October 18, 2010.
- 16) All documents concerning Your term on the committee of Petitioner from approximately 2003 through 2006.
- 17) All documents concerning the Sample of Use.

18) All documents concerning Trademarkia.com and/or Raj Abhyanker, P.C., and any of their respective representatives.

19) All communications between You and Trademarkia.com and/or Raj Abhyanker, P.C., and any of their respective representatives.

20) All documents concerning Jennifer Tisch and/or Tisch Creative Services, LLC, and any of their respective representatives.

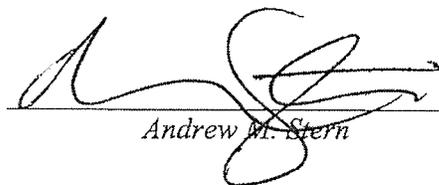
21) All communications between You and Jennifer Tisch and/or Tisch Creative Services, LLC, and any of their respective representatives.

**CERTIFICATE OF SERVICE**

I, Andrew M. Stern, hereby certify that on today's date, I caused a copy of the foregoing Petitioner's First Set of Requests for the Production of Documents and Things, to be served by First Class Mail on the Registrant as set forth below:

STEPHEN SMITH  
4539 CONOWINGO ROAD  
DARLINGTON, MD 21034

Dated: May 14, 2012



*Andrew M. Stern*

# **EXHIBIT B**

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

DARLINGTON APPLE FESTIVAL INC.

Petitioner,

v.

STEPHEN SMITH

Registrant.

Cancellation No. 92053945

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

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Petitioner Darlington Apple Festival, Inc. ("Petitioner"), by their undersigned counsel, propounds the following written interrogatories to Registrant Stephen Smith ("Registrant"), to be answered fully and under oath and to serve such answers within thirty (30) days after service hereof upon the offices of Ballard Spahr, LLP, 1735 Market Street, 51<sup>st</sup> Floor, Philadelphia, PA 19103.

The Interrogatories shall be answered in accordance with the Instructions and Definitions that are included below. The full text of the Instructions and Definitions shall be deemed incorporated by reference into each Interrogatory.

**INSTRUCTIONS AND DEFINITIONS**

**INSTRUCTIONS**

1. If any of the information or documents requested below are claimed to be privileged or are otherwise withheld, you are requested to provide a privilege log which identifies:

- (a) the basis for asserting the claim of privilege, and the precise ground on which the document is withheld;
- (b) the type of document;
- (c) the identity of the document's author(s) and its addressee(s), and every person who prepared or received the document or any portion thereof;
- (d) the relationship of its author(s) and its addressee(s);
- (e) the title and other identifying data of the document;
- (f) the date of the document;
- (g) the subject matter of the document;
- (h) any attachment(s) to the document;
- (i) the number of pages comprising the document; and
- (j) whether the document is typewritten or handwritten.

2. If any responsive document has been lost, destroyed or discarded, or is no longer in existence, that document is to be identified by stating: (i) the information called for in paragraph 1 above; (ii) its date of destruction or discard; and (iii) the manner and reason for its destruction or discard.

3. Whenever necessary to bring within the scope of a request any information, document or subject matter which might otherwise be deemed non-responsive, the singular form shall be interpreted as including the plural.

4. These Interrogatories shall be deemed to be continuing so as to require supplemental responses without additional requests.

5. These Interrogatories are to be regarded as continuing to the extent provided by Rule 26(e) of the Federal Rules of Civil Procedure. Registrant is requested to provide by way of

supplementary compliance herewith such additional information as Registrant, its agents, representatives or attorneys may obtain between the time answers are first provided pursuant to these Interrogatories and the time of trial of this matter. Such additional information is to be produced at the offices of Ballard Spahr LLP promptly after receipt thereof.

6. These Interrogatories are intended to cover all knowledge, information and documents in Registrant's possession, custody or control, whether located at any of Registrant's office(s), residence(s), or at the offices of Registrant's accountants, attorneys, agents or representatives, or at any other place.

7. If you object to any portion of an Interrogatory, explain your objection and answer the remainder.

8. If you cannot supply precise information, state your best estimate or approximation (including your best approximation of date by reference to other events, when necessary), and designate the response as an estimate or approximation.

9. With respect to any conversations or discussions with anyone whom you mention in the Answers hereto, give the name(s) of the individual(s) with whom such conversations or discussions took place, and the date and location, by state and city, of said conversations or discussions.

10. Each Interrogatory should be answered separately and fully, and should include all information known up to the date of verification.

11. The Instructions and Definitions from Petitioner's First Set of Requests for the Production of Documents are incorporated herein by reference.

## DEFINITIONS

As used herein, the following terms have the following definitions:

1. “You” or “Your” or “you” or “your” or “Registrant” shall mean shall mean Darlington Apple Festival, LLC, Stephen Smith, and any predecessors-in-interest, former or current parents, subsidiaries and divisions, present and former officers, directors, agents, employees, independent contractors, attorneys and advertising agencies and all other persons acting or purporting to act on behalf of Darlington Apple Festival, LLC or Stephen Smith.
2. “Petitioner” shall mean Darlington Apple Festival, Inc., and any predecessors-in-interest, former or current parents, subsidiaries and divisions, present and former officers, directors, agents, employees, attorneys, and all other persons acting or purporting to act on behalf of Petitioners.
3. “Your Supplemental Registration” shall mean the mark THE DARLINGTON APPLE FESTIVAL, Supplemental Trademark Registration No. 3,949,583.
4. “Sample of Use” shall mean the series of three images which you submitted to the U.S. Patent & Trademark Office of “screen shots of [your] website” allegedly showing the THE DARLINGTON APPLE FESTIVAL mark “as used in commerce”, as seen at <http://tdr.uspto.gov/jsp/DocumentViewPage.jsp?85154578/SPE20110121151551/Specimen/3/20-Jan-2011/>.
5. “Trademark” shall be defined to be synonymous in meaning and equal in scope to the definition of the term in 15 U.S.C. § 1127.
6. “Communication” shall mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
7. “Document” shall be defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is

a separate document within the meaning of this term. For your convenience, Federal Rule of Civil Procedure 34(a) is reproduced below:

**Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes**

**(a) In General.** A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

8. “Person” shall mean any natural person or any business, legal or governmental entity or association.

9. “Concerning” shall mean relating to, referring to, describing, evidencing or constituting.

10. The terms “all” and “each” shall be construed as all and each.

11. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

12. “Identify,” “state the identity of,” or any other similar phrase:
- (a) When used with reference to a natural person, means to state in each instance that person’s (i) full name, (ii) present or last known home address, and (iii) present employer and position (occupation or business if self employed).
  - (b) When used with reference to a corporation, partnership, association, joint venture, firm or other business enterprise or legal entity means to state in each instance the full name and address of that entity.
  - (c) When used in connection with a document or writing, means to state in each instance: (i) the date of the document, (ii) the type of document (*e.g.*, letter, memorandum, computer printout, estimate, etc.), (iii) the author and addressee, (iv) any filing or identifying number associated with the document, and (v) the present or last known location or custodian of the document.
  - (d) When used in connection with an oral communication, means to state in each instance: (i) the date, time and place where the communication was made, (ii) the person(s) communicating, (iii) the recipient(s) and intended recipient(s) of the communication, (iv) the identity of any document that embodies, contains, describes, refers to, discusses, or relates in any way to the communication, and (v) the substance of the communication.

13. When an individual, partnership or other non-corporate entity is referred to herein, such reference shall be construed to include that individual, partnership, or other non-corporate entity in any capacity and all and any agents, employees, representatives, attorneys, members, family members, predecessors and successors in interest, affiliates, departments or divisions and all other persons or entities acting on his/her/its behalf or under his/her/its control, whether in the past or the present

### INTERROGATORIES

- 1) Identify the date when you first became aware of Petitioner.
- 2) Identify the date when you first became aware of the annual Darlington Apple Festival event sponsored by Petitioner.
- 3) Identify the date when you contend you first began organizing community festivals featuring primarily hay rides, bike riding, running events, pumpkin picking, craft-making and providing flea markets under the phrase THE DARLINGTON APPLE FESTIVAL in the United States.
- 4) Identify each person that assisted in the creation of the Sample of Use.
- 5) Identify the source or sources of the text and imagery used in the Sample of Use.
- 6) Identify the website address (i.e., the Uniform Resource Locator, or URL) of any website ever owned or operated by you or for you, such website being viewable by the general public, that has displayed or currently displays the phrase THE DARLINGTON APPLE FESTIVAL.
- 7) Identify the date when the phrase THE DARLINGTON APPLE FESTIVAL first appeared on any website owned or operated by you or for you, such website being viewable by the general public.

8) Identify each website hosting service that has hosted any website for you that has displayed or currently displays the phrase THE DARLINGTON APPLE FESTIVAL, such website being viewable by the general public.

9) State whether you contend you have or have ever had any connection, association or other relationship you presently have, or ever had, with the website located at <http://www.darlingtonapplefest.org>. If your contention is yes, identify all facts supporting your contention and produce all documents supporting your contention.

10) Identify whether you are currently organizing community festivals featuring primarily hay rides, bike riding, running events, pumpkin picking, craft-making and providing flea markets under the phrase THE DARLINGTON APPLE FESTIVAL in the United States, and, if so, produce all documents supporting your contention.

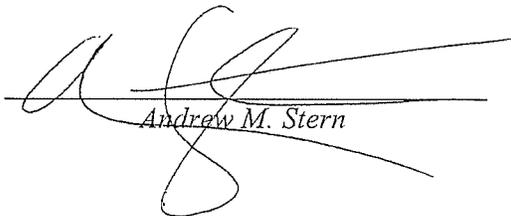
11) State whether you contend the Sample of Use came from a live website accessible by the general public, and if so, produce all documents supporting your contention.

CERTIFICATE OF SERVICE

I, Andrew M. Stern, hereby certify that on today's date, I caused a copy of the foregoing Petitioner's First Set of Interrogatories to Registrant, to be served by First Class Mail on the Registrant as set forth below:

STEPHEN SMITH  
4539 CONOWINGO ROAD  
DARLINGTON, MD 21034

Dated: May 23, 2012



*Andrew M. Stern*

# EXHIBIT C

## **Stern, Andrew M. (Phila)**

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**From:** Stern, Andrew M. (Phila)  
**Sent:** Friday, June 22, 2012 3:22 PM  
**To:** 'stephenhque@gmail.com'  
**Cc:** Jacobs, Hara K. (Phila)  
**Subject:** Response Required to Discovery Requests

Mr. Smith,

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and TBMP § 406.04(a), your response to Petitioner's First Set of Requests for the Production of Documents and Things was due on June 13, 2012. We have not received any documents from you nor have we received any responses to our document requests.

Your response to Petitioner's First Set of Interrogatories is due today, June 22, 2012, and we have not yet received your responses.

If we do not receive responses to our outstanding discovery requests by the close of business on Monday, June 26, 2012, we will be required to file a motion to compel.

Finally, we look forward to seeing you at our Philadelphia office on July 3, 2012 for your deposition, which will begin at 10 a.m.

**Andrew Stern**

Ballard Spahr, LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
Direct: 215.864.8127  
Fax: 215.864.8999  
sternam@ballardspahr.com | [www.ballardspahr.com](http://www.ballardspahr.com)

# **EXHIBIT D**

## **Stern, Andrew M. (Phila)**

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**From:** Stern, Andrew M. (Phila)  
**Sent:** Wednesday, June 27, 2012 12:24 PM  
**To:** 'stephenhque@gmail.com'  
**Cc:** Jacobs, Hara K. (Phila)  
**Subject:** RE: Response Required to Discovery Requests

Mr. Smith,

We are writing concerning our outstanding discovery requests. Your responses to Petitioner's interrogatories and documents requests are overdue and you have not responded to our email below, which requested a response by this past Monday.

If we do not hear from you by close of business today, June 27, 2012, we will be required to file a motion to compel responses to Petitioner's outstanding discovery requests.

We look forward to hearing from you.

Thank you.

**Andrew Stern**  
Ballard Spahr, LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
Direct: 215.864.8127  
Fax: 215.864.8999  
sternam@ballardspahr.com | [www.ballardspahr.com](http://www.ballardspahr.com)

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**From:** Stern, Andrew M. (Phila)  
**Sent:** Friday, June 22, 2012 3:22 PM  
**To:** 'stephenhque@gmail.com'  
**Cc:** Jacobs, Hara K. (Phila)  
**Subject:** Response Required to Discovery Requests

Mr. Smith,

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and TBMP § 406.04(a), your response to Petitioner's First Set of Requests for the Production of Documents and Things was due on June 13, 2012. We have not received any documents from you nor have we received any responses to our document requests.

Your response to Petitioner's First Set of Interrogatories is due today, June 22, 2012, and we have not yet received your responses.

If we do not receive responses to our outstanding discovery requests by the close of business on Monday, June 26, 2012, we will be required to file a motion to compel.

Finally, we look forward to seeing you at our Philadelphia office on July 3, 2012 for your deposition, which will begin at 10 a.m.

**Andrew Stern**  
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sternam@ballardspahr.com | [www.ballardspahr.com](http://www.ballardspahr.com)