

ESTTA Tracking number: **ESTTA588622**

Filing date: **02/21/2014**

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

Proceeding	92054496
Party	Plaintiff Hat World, Inc.
Correspondence Address	JEFFREY S MOLINOFF NIXON PEABODY LLP 401 9TH STREET NW, SUITE 900 WASHINGTON, DC 20004 UNITED STATES was.managing.clerk@nixonpeabody.com, dmay@nixonpeabody.com, jmolinoff@nixonpeabody.com, gmccreadie@nixonpeabody.com
Submission	Motion for Default Judgment
Filer's Name	Jeffrey S. Molinoff
Filer's e-mail	was.managing.clerk@nixonpeabody.com, dmay@nixonpeabody.com, jmolinoff@nixonpeabody.com, nptm@nixonpeabody.com
Signature	/JSM/
Date	02/21/2014
Attachments	FIRM_DM-#14853712-v1-Motion_for_Judgment_(PASS_THE_ROC).pdf(49000 bytes) FIRM_DM-#14855868-v1-Declaration_of_David_May_in_Support_of_Motion_for_Judgment_(PASS_THE_ROC) scanned.pdf(2463320 bytes)

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

In re the Matter of:
Registration No.: 3,016,764
Mark: PASS THE ROC
Filed: December 13, 2003
Registered: November 22, 2005

Hat World, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92054496
)	
Pass The Roc Athletics, Inc.,)	
)	
Registrant)	
)	

PETITIONER’S MOTION FOR SANCTIONS IN FORM OF ENTRY OF JUDGMENT

Pursuant to Trademark Rule 2.120(g)(1) and the Board’s December 6, 2013 Order (the “Order”), Petitioner Hat World, Inc. (“Petitioner”), through counsel, respectfully moves this Board to sanction Registrant Pass the Roc Athletics, Inc. (“Registrant”) by entering judgment granting the above-captioned Petition to Cancel, as contemplated by the Order. As detailed more fully herein, Applicant has failed to serve responses to Opposer’s Requests for Production and Interrogatories by the January 5, 2014 deadline imposed by the Order dated December 6, 2013, in willful disregard of the Order. Registrant’s violation of the Order, combined with its persistent pattern of dilatory and abusive discovery tactics throughout this proceeding, including numerous failures to comply with deadlines, both Board-Ordered and other, mandates sanctions in the form of entry of judgment cancelling the registration.

Petitioner notes that Registrant has failed to respond to discovery requests first served on **January 17, 2013**. To date, Registrant has not served its Initial Disclosures and has in fact ignored essentially every deadline in this case up to the present. Since the filing of the Petition to Cancel, Registrant has actively refused to engage in this proceeding, citing his inability to retain counsel, poor health (on two occasions), as well as the fact that he is acting *pro se*, so things are difficult for him. However, more than two years ago, on February 12, 2012, in no uncertain terms, the Board Interlocutory Attorney admonished Registrant for his continued delay tactics and advised that no further extensions or suspensions would be granted to him for the purpose of obtaining counsel. *Dkt. # 7*. Further, the Board explained that even *pro se* parties must abide by Board Rules, a warning that has been repeatedly disregarded even after that telephone call. *Dkt. # 7, 9, and 18*. In truth, Registrant has done nothing absent a Board Order compelling his attention, and even then, he has refused to participate in this proceeding. Most recently, Registrant has ignored the Board's last Order that he serve fully-responsive discovery responses and initial disclosures by January 5, 2014, a date that passed without comment from Registrant. He has, through his inaction and refusal to follow Board Rules and Orders, caused this proceeding to remain in its initial stages despite the fact that it has been pending since September of 2011.

As detailed more fully herein, Registrant has delayed this proceeding beyond reason. The Petition to Cancel was filed on August 4, 2011, yet now, two and one half years later, discovery has not commenced due to Registrant's refusal to participate in the proceeding. The Answer was not filed until May 24, 2012, and then only after the Board entered an Order giving Registrant thirty days to show cause why default judgment should not be entered. We have now reached essentially the same point with the next deadline in this cancellation proceeding – initial

disclosures and responses to discovery requests, which have been pending for more than one year.

Throughout this proceeding, Registrant has delayed at every possible point, offering numerous excuses and failing to participate in the proceeding in a meaningful way. To date, Registrant's actions have done nothing more than waste the time and resources of the Board and Petitioner. Even at the time of this filing, Registrant has again resurfaced, more than one month after the Board-ordered deadline, to request another extension, this time, once again, alleging new counsel and health reasons. This request directly contravenes the Board's Orders that no further extensions will be permitted to Registrant for the purpose of retaining counsel. Dkt # 7 and 15. In fact, two and one half years after the commencement of this proceeding, Registrant still has not retained counsel. It is apparent that Registrant is again trying to waste the time of the Board and Petitioner, with no intention of participating in this proceeding in a meaningful way. Should the Board allow further time, Registrant will no doubt offer incomplete discovery responses and then stop participating until the next motion and Board Order. For this reason, Petitioner respectfully requests the Board enter default judgment against Registrant and cancel U.S. Trademark Registration No. 3,016,764.

BACKGROUND

This Motion for Sanctions in Form of Entry of Judgment stems from Registrant's repeated disregard of the Board's procedures and proscribed deadlines. Throughout this proceeding, Registrant has missed deadline after deadline, using such excuses as serious illness, inability to locate counsel, or counsel's request to withdraw based on Registrant's refusal to pay a retainer. During the time this proceeding has been pending at the Trademark Trial and Appeal Board, a period in excess of two and one half years, Registrant has retained counsel once,

possibly twice, stated he would proceed *pro se* once, and missed seven (7) deadlines, including the following:

- 1) October 24, 2011 – Answer due;
- 2) March 23, 2012 – Answer due;
- 3) February 13, 2103 – Initial Disclosures due;
- 4) February 16, 2013 – Registrant’s Responses to Petitioner’s First Set of Requests for Documents and Things due;
- 5) February 16, 2013 – Registrant’s Responses to Petitioner’s First Set of Interrogatories to Registrant due;
- 6) May 28, 2013 – Registrant failed to file its Response to Petitioner’s Motion to Compel Initial Disclosures and Discovery Responses (not a required filing, but shows common course of conduct of Registrant); and
- 7) January 5, 2014 – Board ordered Discovery Responses (without objections) and Initial Disclosures due.

Petitioner is clearly interested only in delay, not the resolution of this matter. For this reason, entry of judgment against Registrant is appropriate.

FACTS

As noted above, Registrant has pursued a dilatory course of conduct throughout this proceeding, intended to waste the time and resources of both the Board and Petitioner. The following detailed timeline shows the actions, and thereby the intent, of Registrant.

- August 4, 2011 – Petition for Cancellation of U.S. Registration No. 3,016,764 (the “764 Registration”) for PASS THE ROC filed. *See* Dkt #1. Answer deadline was October 24, 2011. *See* Dkt #2.
- October 25, 2011 – one day after the Answer was due, Registrant filed a letter with the Board requesting a *ninety (90)* day extension to retain an attorney.¹ *See* Dkt # 4.
- December 5, 2011 – the Board granted Registrant’s motion and set January 23, 2012 Answer deadline. *See* Dkt # 5.
- January 20, 2012 – nearly *two months later* and a few days before the Answer was due, Respondent filed another letter with the Board, this time requesting an additional

¹ Registrant failed to serve a copy of this letter on Petitioner's counsel.

- sixty (60) day extension “due to sickness.”² See Dkt # 6. (This was the first of two alleged health issues that were so severe as to prevent Registrant from participating in this case for more than two years.)
- February 14, 2012 – the Board held an oral hearing on Respondent’s second letter (motion to extend). During this hearing, Respondent admitted he still had not retained counsel despite the fact that it was nearly *four months* since the filing of the Petition for Cancellation. See Board’s February 16, 2012 Order, See Dkt # 7. During the hearing and by written order, the Board also informed Respondent that “all parties to a Board proceeding must adhere to the Board’s deadlines and procedures, including *pro se* parties.” *Id.* The Board extended Respondent’s deadline to answer the Petition for Cancellation, but stated that “no further extensions or suspensions will be granted [to] respondent for the purpose of obtaining counsel.” *Id.*
 - March 23, 2012 – (nearly *seven months* after the Petition for Cancellation was filed) Respondent moved for an additional *thirty (30)* day extension to respond to the Petition for Cancellation without explanation. See Dkt # 8.
 - May 1, 2012 – the Board denied Respondent’s request for further extension, and entered a notice of default.³ See Dkt # 9.
 - May 15, 2012 – (*nearly nine months* after the Petition for Cancellation was filed) counsel entered an appearance on behalf of Respondent. See Dkt. #10.
 - May 25, 2012 – counsel for Respondent filed a Motion to Set Aside Notice of Default and filed an Answer to the Petition for Cancellation. See Dkt. # 11 and 12.
 - July 30, 2012 – the Board set aside the Notice of Default and reset the deadlines in the proceeding, including a deadline for the discovery conference on August 29, 2012. See Dkt # 13.
 - August 27, 2012 – counsel for Respondent emailed counsel for Petitioner to request his availability for a discovery conference. See Declaration of David L. May ¶2 and Exhibit 1 thereto.
 - August 28, 2012 – counsel for Respondent filed a request to withdraw as counsel based on Respondent “fail[ing] to pay a retainer in advance of the continued performance of legal services.” See Dkt # 14.
 - August 29, 2012 – the Board granted counsel’s request to withdraw and suspended the proceedings for thirty days to allow Respondent to retain new counsel or represent himself *pro se*.⁴ See Dkt #15.

² Registrant failed to serve a copy of this letter on Petitioner's counsel.

³ The Board noted that “respondent failed to explain the basis for its request and further failed to include a certificate of service despite the Board’s specific instructions provided to respondent during the telephone conference as well as in the Board’s order of February 16, 2012.” *Board Order dated May 1, 2013*. The Board also noted that even if it had granted Respondent’s extension, the answer would have been due by April 22, 2012, and no answer had been filed. *Id.* at 2 n.2.

⁴ The Board noted that “**NO FURTHER EXTENSIONS OR SUSPENSIONS WILL BE GRANTED RESPONDENT DURING THE REMAINDER OF THIS PROCEEDING FOR THE PURPOSE OF**”
(Footnote continued on next page)

- September 28, 2012 – Respondent filed two letters with the Board indicating he would be representing himself. *See* Dkt # 16 and 17.
- On December 13, 2012 – the Board entered an Order resetting deadlines, including setting January 14, 2013 as the deadline for the discovery conference and the opening of discovery and February 13, 2013 as the deadline for initial disclosures. *See* Dkt # 18.
- January 8, 2013 – counsel for Petitioner contacted Respondent regarding his availability for the discovery conference. *See* Declaration of David L. May ¶3 and Exhibit 2 thereto.
- Respondent initially agreed to conduct the discovery conference on January 14, 2013, but on January 11, 2013, Respondent emailed Petitioner’s counsel seeking an extension of the discovery conference until February 5, claiming that he “was waiting for a call from an attorney who [he] interviewed with regard to [his] case.” Petitioner’s counsel responded that it could not agree to a further extension based on the Board’s August 28 Order. *See* Declaration of David L. May ¶4 and Exhibit 3 thereto.
- January 14, 2013 – the parties held their discovery conference, and Petitioner’s counsel sent Respondent an email memorializing the topics discussed during the discovery conference. *See* Declaration of David L. May ¶5 and Exhibit 4 thereto.
- January 17, 2013, Petitioner timely served its initial disclosures and propounded its first set of interrogatories and document requests on Respondent. *See* Declaration of David L. May ¶6 and Exhibit 5 thereto.
- February 27, 2013 – Respondent sent counsel for Petitioner two letters requesting a two week extension to respond. *See* Declaration of David L. May ¶7 and Exhibit 6 thereto.
- April 25, 2013 – counsel for Petitioner sent a letter to Respondent stating that no discovery responses had been received and Respondent’s initial disclosures had not been served. *See* Declaration of David L. May ¶8 and Exhibit 7 thereto.
- May 8, 2013 – Petitioner filed its Motion to Compel Discovery. *See* Dkt # 19.
- May 27, 2013 – the Board suspended proceedings pending its decision on the Motion to Compel, noting that deadlines to make required disclosures or to respond to discovery requests were not tolled. *See* Dkt # 20.
- December 6, 2013 – the Board ordered Registrant to serve complete discovery responses, without objections, as well as its initial disclosures, on Petitioner’s counsel on or before January 5, 2014, failing which, Petitioner was invited to file a motion for judgment. *See* Dkt # 21.

(Footnote continued from previous page)

RETAINING COUNSEL SHOULD THIS SITUATION REPEAT ITSELF.” *Board Order dated August 29, 2013, p. 2 n.1.*

- February 7, 2014 – nearly a full year after Petitioner served its Interrogatories and Discovery Requests, and nearly one year after initial disclosures were due, pursuant to a Board Order, counsel for Petitioner received an e-mail from Flann Lippincott, of Lippincott Burnett LLP, stating as follows: “The Registrant in Cancellation Proceeding No. 92054496 is seeking to retain us. We note that the Registrant has been ordered to provide responses to discovery requests, with a deadline of January 6, 2014. We ask for 10 days to allow us to adequately prepare the responses.” According to this e-mail, counsel had not even been retained. *See* Declaration of David L. May ¶9 and Exhibit 8 thereto.
- February 19, 2014 – Petitioner’s counsel received e-mail notification that new counsel had been retained by Registrant, but that while Registrant was preparing his discovery responses, he suffered chest pains and was admitted to the hospital. According to this e-mail, he was subsequently released from the hospital on February 19, 2014. Therefore, Registrant’s new counsel, who has not entered an appearance to date, requested an additional week to prepare discovery Responses. *See* Declaration of David L. May ¶10 and Exhibit 9 thereto.
- To date, Petitioner has not received any responses to the discovery requests or the production of any documents.
- February 13, 2014 – Petitioner filed its Motion for Sanctions in Form of Entry of Judgment.

ARGUMENT

It has been *two years and six months* since the Petition for Cancellation was filed, yet this proceeding is still in the early stages of discovery because of Respondent’s continued delay tactics and failure to abide by the Board’s deadlines and procedures (despite the Board’s repeated warnings to the contrary). As noted above, Registrant is more than one year delinquent in serving its initial disclosures, and just under one year late in serving responses to Petitioner’s first set of discovery requests. Following what has become the normal course of events in this proceeding, following the latest deadline in this case, the Board-ordered deadline to serve responsive and complete discovery responses as well as initial disclosures, Petitioner’s counsel has again been contacted with a request for additional time. Were Petitioner’s counsel to grant the requested extension, undoubtedly some minimal responses would be served, forcing Petitioner once again to file yet another petition with the Board at additional expense. At that

point, newly appointed counsel, should one be appointed, would likely withdraw due to payment issues, and again, proceedings would be drawn out.

Trademark Rule 2.120(g)(1) allows the Board to sanction any party that fails to comply with a discovery order entered by the Board. *See* 37 C.F.R. § 1.120(g); TBMP § 571.01. Specifically, “[i]f a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery . . . the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure. . . .” Trademark Rule 2.120(g)(1); *see* Fed. R. Civ. P. 37(c)(2)(A)(vi) (sanctions for disobeying a court order include “rendering a default judgment against the disobedient party”). The Board has previously ordered sanctions in the form of entering judgment against the disobedient party for, *inter alia*, failing to obey a discovery order. *See, e.g., MHW, Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d (BNA) 1477, 2000 TTAB LEXIS 717 (TTAB Nov. 29, 2000) (entering sanctions in the form of entry of judgment where opposer repeatedly failed to provide timely discovery responses and once responses were served, the “utter lack[] of content” demonstrated opposer’s intent to delay the proceeding); *Baron Philippe de Rothchild, S.A.*, 55 USPQ2d (BNA) 1848, 2000 TTAB LEXIS 467 (TTAB June 23, 2000) (entering sanctions in the form of entry of judgment where applicant failed to timely respond to discovery pursuant to the Board’s order, engaged in a pattern of dilatory tactics, and purposely avoided applicant’s discovery responsibilities). The Board has specifically noted that entry of judgment is appropriate where it is “obvious from a review of the record that [a party] [has] been engaging for years in delaying tactics, including the willful disregard of the Board’s orders.” *MHW, Ltd.* 59 USPQ2d 1477, 2000 TTAB LEXIS 717 at *6.

Here, Registrant has been given ample opportunity to respond to Petitioner's Requests for Production and Interrogatories, as they were served more than one year ago, following a year of delays prior to Registrant filing an Answer. After numerous attempts to encourage Registrant to provide answers to discovery requests, Registrant was forced to incur the expense of filing a motion to compel responses to its discovery requests (*Dkt # 19*).

Upon the Board's consideration of Petitioner's motion to compel responses to its Requests for Production and Interrogatories, to which Applicant did not respond, the Board ordered Registrant to respond in full and without objection, giving Registrant an additional thirty (30) days to respond to Opposer's discovery requests and provide its initial disclosures. (*Dkt. # 21*). The Board also noted that if Registrant did not timely respond to Petitioner's discovery requests, the proper remedy would lie in a motion for judgment. *Id.* Despite the unambiguous language in the Order, Applicant disregarded the Order and has failed to provide responses to date.

Registrant's violation of the Order should not be viewed in isolation. Here, the record is replete with Registrant's consistent and continuous pattern of dilatory and abusive discovery and non-litigation tactics, which began with his failure to file an answer to the Petition to Cancel for more than nine months. Most recently, Registrant incredibly has failed to serve its initial disclosures, despite the Board's unambiguous order that initial disclosures be served by January 5, 2014. *See* December 6, 2013 Order (*Dkt # 21*). Registrant's repeated abuse of the discovery process and stalling tactics in this proceeding demonstrate a willful disregard of discovery obligations and orders of this Board. Registrant should be sanctioned by entering judgment sustaining the Petition and cancelling U.S. Trademark Registration No. 3,016,764.

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

In re the Matter of:
Registration No.: 3,016,764
Mark: PASS THE ROC
Filed: December 13, 2003
Registered: November 22, 2005

_____)	
Hat World, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92054496
)	
Pass The Roc Athletics, Inc.,)	
)	
Registrant)	
_____)	

DECLARATION OF DAVID L. MAY IN SUPPORT OF
PETITIONER'S MOTION FOR SANCTIONS IN FORM OF ENTRY OF JUDGMENT

I, David L. May, hereby depose and say that:

1) I am a partner in the Washington DC office of Nixon Peabody LLP and am admitted to practice before the Trademark Trial and Appeal Board and represent Petitioner Hat World, Inc ("Petitioner") in this cancellation action. This declaration is offered in support of Petitioner's Motion for Sanctions in Form of Judgment.

2) Attached hereto as Exhibit 1 is a true and accurate copy of counsel for Petitioner's e-mail to Mark J. Ingber, counsel for Registrant, dated August 27, 2012.

3) Attached hereto as Exhibit 2 is a true and accurate copy of counsel for Petitioner's letter to Respondent, dated January 9, 2013, as well as a copy of a simultaneously forwarded e-mail from Petitioner's counsel to Respondent.

4) Attached hereto as Exhibit 3 is a true and accurate copy of e-mail correspondence between counsel for Petitioner and Respondent, dated January 11, 2013, in which counsel for Petitioner confirmed a telephone conversation with Respondent in which the parties agreed to hold the discovery conference on January 14, at 5 PM, followed by Respondent's e-mail requesting the discovery conference be postponed until February 5 to allow him to bring a new attorney up to speed. Also included at the top of this e-mail exchange is Petitioner's counsel's reply that the Board had ordered **"NO FURTHER EXTENSIONS OR SUSPENSIONS WILL BE GRANTED RESPONDENT DURING THE REMAINDER OF THIS PROCEEDING FOR THE PURPOSE OF RETAINING COUNSEL SHOULD THIS SITUATION REPEAT ITSELF,"** and therefore refusing to consent to a further extension.

5) Attached hereto as Exhibit 4 is a true and accurate copy of counsel for Petitioner's e-mail to Respondent, dated January 14, 2013, memorializing the topics covered during the discovery conference.

6) Attached hereto as Exhibit 5 are true and accurate copies of initial disclosures and discovery requests served by Petitioner on Registrant on January 17, 2013.

7) Attached hereto as Exhibit 6 are true and accurate copies of letters sent by Registrant to counsel for Petitioner on February 27, 2013 apologizing for the delinquency of his initial disclosures and requesting an additional two weeks to respond to discovery requests.

8) Attached hereto as Exhibit 7 is a true and accurate copy of counsel for Petitioner's letter to Respondent, dated April 25, 2013 advising that no discovery responses or initial disclosures had been received.

9) Attached hereto as Exhibit 8 is a true and correct copy of the e-mail from Registrant's alleged new counsel on February 7, 2014 requesting Petitioner grant an additional ten days for Respondent to serve discovery Responses, which were due under Board Order on January 5, 2014.

10) Attached hereto as Exhibit 9 is a true and correct copy of the e-mail from Registrant's alleged new counsel on February 19, 2014 requesting Petitioner grant an additional week for Respondent to serve discovery Responses, which were due under Board Order on January 5, 2014.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 20th day of February, 2014.

 /DLM/
David L. May

EXHIBIT 1

Molinoff, Jeffrey

From: May, David
Sent: Monday, August 27, 2012 2:37 PM
To: Mark Ingber (ingber.law@verizon.net)
Cc: Jones, Yvette; Molinoff, Jeffrey; Davidson, Crystal; West, David
Subject: RE: CANCELLATION NO. 92054496 HAT WORLD, INC. v. PASS THE ROC ATHLETICS, INC.; NP Ref. No. 058988-143

Dear Mark,

The parties in this case have a discovery conference deadline of **August 29, 2012**. It is our understanding that you continue to present the Defendant in the matter.

Can you let me know of you availability tomorrow and Wednesday?

I look forward to hearing from you.

Regards,

Dave

David May

Partner

NIXON PEABODY LLP

ATTORNEYS AT LAW

401 9th Street NW

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Washington, DC 20004-2128

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EXHIBIT 2

NIXON PEABODY LLP
ATTORNEYS AT LAW

401 9th Street N.W.
Suite 900
Washington, DC 20004-2128
(202) 585-8000
Fax: (202) 585-8080

Jeffrey S. Molinoff
Direct Dial: (202) 585-8230
E-Mail: jmolinoff@nixonpeabody.com

January 9, 2013

VIA FEDERAL EXPRESS

Mr. Jarrod Greene
PASS THE ROC ATHLETICS INC
72 VAN REIPEN AVE SUITE 121
JERSEY CITY, NJ 07306

Re: Trademark Infringement
Cancellation No. 92054496
Our Ref. 058988-143

Dear Mr. Greene:

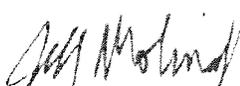
As you know, the Trademark Trial and Appeal Board has set a deadline of January 14, 2013 for the mandatory discovery conference.

As mentioned in our recent e-mail, we can be available during the late afternoon on January 9, 10, 11, or 14 if those dates are convenient for you. Please confirm your availability and we will set up a conference call.

We look forward to your reply.

Very truly yours,

NIXON PEABODY LLP


Jeffrey S. Molinoff

JSM

14280124.1

Molinoff, Jeffrey

From: Molinoff, Jeffrey
Sent: Tuesday, January 08, 2013 9:45 PM
To: passtheroc1891@yahoo.com
Cc: May, David; Weikert, Robert; Davidson, Crystal; Jones, Yvette
Subject: CANCELLATION NO. 92054496 HAT WORLD, INC. v. PASS THE ROC ATHLETICS, INC.; NP Ref. No. 058988-143; FOR SETTLEMENT PURPOSES ONLY

Dear Mr. Greene,

As you know, the Trademark Trial and Appeal Board has set a deadline of January 14, 2013 for the mandatory discovery conference.

We can be available during the late afternoon on January 9, 10, 11, or 14 if those dates are convenient for you. Please confirm your availability and we will set up a conference call.

We look forward to your reply.

Regards,

Jeff

Jeffrey S. Molinoff

Associate

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EXHIBIT 3

Molinoff, Jeffrey

From: Molinoff, Jeffrey
Sent: Friday, January 11, 2013 9:26 PM
To: Jarrod Greene
Cc: Kuscha; Weikert, Robert; May, David; Davidson, Crystal; May, David
Subject: RE: CANCELLATION NO. 92054496 HAT WORLD, INC. v. PASS THE ROC ATHLETICS, INC.; NP Ref. No. 058988-143; FOR SETTLEMENT PURPOSES ONLY

Follow Up Flag: Follow up
Flag Status: Completed

Dear Jarrod,

As you know, in its August 29, 2012 Order, the Trademark Trial and Appeal Board stated as follows:

However, in view of the numerous extensions granted respondent and the resultant delay to these proceedings and drain on Board resources, **NO FURTHER EXTENSIONS OR SUSPENSIONS WILL BE GRANTED RESPONDENT DURING THE REMAINDER OF THIS PROCEEDING FOR THE PURPOSE OF RETAINING COUNSEL SHOULD THIS SITUATION REPEAT ITSELF.**

A copy of this Order is attached. For this reason, we cannot consent to an additional delay in this proceeding. You can file a Motion to Extend with the Board, but unless such a Motion is granted, we will be on the conference call at 5 PM on Monday January 14, 2013 and we expect you to participate in this call.

We look forward to hearing from you.

Regards,

Jeff

Jeffrey S. Molinoff

Associate

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Unauthorized use, dissemination, distribution or reproduction of this message by other than the intended recipient is strictly prohibited and may be unlawful.

From: Jarrod Greene [mailto:passtheroc1891@yahoo.com]
Sent: Friday, January 11, 2013 5:37 PM
To: Molinoff, Jeffrey
Cc: Kusch
Subject: Re: CANCELLATION NO. 92054496 HAT WORLD, INC. v. PASS THE ROC ATHLETICS, INC.; NP Ref. No. 058988-143; FOR SETTLEMENT PURPOSES ONLY

Hello Jeff, I was waiting for a call from an attorney who I was interviewing in regards to my case. I need to push the discovery conference call back until February 5th in order to bring my new attorney up to speed. All the other dates can remain the same. Please advise. Thank you.

On Jan 11, 2013, at 5:10 PM, "Molinoff, Jeffrey" <jmolinoff@nixonpeabody.com> wrote:

Yes.

From: Jarrod Greene [mailto:passtheroc1891@yahoo.com]
Sent: Friday, January 11, 2013 5:04 PM
To: Molinoff, Jeffrey
Subject: Re: CANCELLATION NO. 92054496 HAT WORLD, INC. v. PASS THE ROC ATHLETICS, INC.; NP Ref. No. 058988-143; FOR SETTLEMENT PURPOSES ONLY

At 5 pm right?

On Jan 11, 2013, at 5:00 PM, "Molinoff, Jeffrey" <jmolinoff@nixonpeabody.com> wrote:

Dear Mr. Greene,

Thank you for your call today.

Confirming our telephone conversation, we agreed that the discovery teleconference in this matter will be held on Monday, January 14, 2013. We have set up a conference call-in number as follows:

Toll Free Number: 1-888-850-4523
Participant Passcode: 608396

You also advised that your telephone number is 609.643.1141.

We will talk to you Monday. Have a nice weekend.

Regards,

Jeff

Jeffrey S. Molinoff
Associate
<image001.jpg>
401 9th Street NW

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<image002.jpg>

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EXHIBIT 4

Molinoff, Jeffrey

From: Weikert, Robert
Sent: Monday, January 14, 2013 8:59 PM
To: passtheroc1891@yahoo.com
Cc: May, David; Molinoff, Jeffrey; Kappler, Kerry
Subject: CANCELLATION NO. 92054496 HAT WORLD, INC. v. PASS THE ROC ATHLETICS, INC.; NP Ref. No. 058988-143

Dear Jarrod,

Thank you for participating in the mandatory discovery conference earlier today. Below is a brief summary of the topics we discussed per Fed. R. Civ. P. 26(f) and TBMP § 401.01:

Nature and basis of claims and defenses

- We briefly discussed the fact that we see no evidence that you are using, or have ever used, the PASS THE ROC mark, and further, we believe that even if you have used the mark at some point in time, such use has not been continuous as required by law. Because you claim you are in fact using the mark, we were unable to reach any agreement on these issues at the present time.

Settlement

- The parties discussed the possibility of settlement, but that does not seem to be a realistic possibility at the present time.

Possibility of ACR

- We discussed ACR, but our client is interested in a full hearing to allow the submission of a full record with all available evidence, including written discovery and depositions. Therefore, no agreement regarding ACR could be reached.

Initial Disclosures

- At this time, initial disclosures will be served on or before the deadline set forth in the Board's Scheduling Order.

Disclosure of Electronically Stored Information

- We discussed electronically stored information, such as e-mails, electronic orders, and records. We suggested such electronic information can be served via DVDs, memory sticks, or uploading to a secure site. This is an important issue and one that our client intends to pursue vigorously through the discovery process.

Inadvertent Production of Privileged Materials

- The parties will adopt the standard form protective order governing the confidentiality of documents. The Board's standard protective order can be found online. As we discussed, we propose amending it to include a procedure for the inadvertent production of privileged information. The additional language we propose is as follows:

The inadvertent production of any documents or other discovery materials protected by the attorney-client privilege, work product doctrine, or other immunity from disclosure shall not constitute a waiver of such privilege, work product, or immunity, and a receiving party who becomes aware that the producing party has produced such document or other materials shall promptly contact the producing party to inform it of this fact. If a party determines that it has inadvertently produced documents or

materials that are subject to a claim of privilege, work product, or other immunity from disclosure, the producing party shall inform the receiving party of the inadvertent production in writing, and the receiving party shall promptly return such document or other materials (including any copies) to the producing party. After the return of the documents, the receiving party may contest the producing party's claim(s) of privilege, work product, or other immunity from disclosure and submit such issue to the Board for determination. That determination shall be made without regard to the fact that any such document has been produced.

You were agreeable to this addition in principle, but we look forward to hearing from you soon regarding the acceptability of adding this specific provision to the standard protective order.

Limitations of Discovery

- At this time, the parties agreed that they will follow the Federal Rules of Civil Procedure and the Trademark Rules regarding the scope of and limits on discovery. We briefly discussed the potential issue of depositions and where they will take place. We agreed to address this issue at a later time. We also agreed to table the issue of possible stipulations of fact.

Please let us know if the above does not accurately reflect your recollection and understanding of our conference.

Best regards,

Robert Weikert

Partner

NIXON PEABODY^{LLP}
ATTORNEYS AT LAW

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EXHIBIT 5

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

In re the Matter of:
Registration No.: 3,016,764
Mark: PASS THE ROC
Filed: December 13, 2003
Registered: November 22, 2005

Hat World, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92054496
)	
Pass The Roc Athletics, Inc.,)	
)	
Registrant)	

PETITIONER'S INITIAL DISCLOSURES

Pursuant to 37 C.F.R. § 2.120 and Fed. R. Civ. P. 26(a)(1), Petitioner Hat World, Inc. ("Petitioner"), through counsel, hereby makes the following initial disclosures. These disclosures are preliminary and Petitioner reserves the right to supplement them following additional discovery.

A. Names and Addresses of Individuals having non-privileged, personal knowledge concerning significant factual issues.

Petitioner's preliminary, non-exclusive list is as follows:

<u>Person</u>	<u>Topics</u>
William Stote Anaconda Sports Inc., wholly-owned subsidiary of Opposer 85 Katrine Lane	<ul style="list-style-type: none">• Use, including first use, of the mark THE ROCK depicted in U.S. Registration Nos. 1,951,224, 2,719,009, 1,353,316, 1,328,626, and 3,876,315, the mark THE ROCK (and Design) depicted in U.S.

<u>Person</u>	<u>Topics</u>
<p>Lake Katrine, NY 12449</p> <p><i>(to be contacted by counsel for Petitioner only)</i></p>	<p>Registration Nos. 3,254,394 and 3,333,365, the mark CITY ROCK depicted in U.S. Registration Nos. 1,534,487 and 2,804,533, the mark CITY ROCK (and Design) depicted in U.S. Registration No. 2,049,744, the mark THE BIG ROCK (and Design) depicted in U.S. Registration No. 3,333,366, and the mark KEEP ON ROCKIN' depicted in U.S. Registration Nos. 3,408,199 and 3,815,075 (collectively, "THE ROCK Marks")</p> <ul style="list-style-type: none"> • Geographic scope, duration, and extent of use of THE ROCK Marks; • Marketing, advertising, and promotion of THE ROCK Marks and goods and services offered on or in connection with THE ROCK Marks; • Use of THE ROCK Marks prior to Registrant's use of the PASS THE ROC mark depicted in U.S. Registration Serial No. 3,016,764; • Goods and services offered under THE ROCK Marks; and • Channels of trade in which goods and/or services are offered under THE ROCK Marks.
<p>John Stote, III Anaconda Sports Inc., wholly-owned subsidiary of Opposer 85 Katrine Lane Lake Katrine, NY 12449</p> <p><i>(to be contacted by counsel for Petitioner only)</i></p>	<ul style="list-style-type: none"> • Use, including first use, of the mark THE ROCK depicted in U.S. Registration Nos. 1,951,224, 2,719,009, 1,353,316, 1,328,626, and 3,876,315, the mark THE ROCK (and Design) depicted in U.S. Registration Nos. 3,254,394 and 3,333,365, the mark CITY ROCK depicted in U.S. Registration Nos. 1,534,487 and 2,804,533, the mark CITY ROCK (and Design) depicted in U.S. Registration No. 2,049,744, the mark THE BIG ROCK (and Design) depicted in U.S. Registration No. 3,333,366, and the mark KEEP ON ROCKIN' depicted in U.S. Registration Nos. 3,408,199 and 3,815,075 (collectively, "THE ROCK Marks") • Geographic scope, duration, and extent of use of THE ROCK Marks;

<u>Person</u>	<u>Topics</u>
	<ul style="list-style-type: none"> • Marketing, advertising, and promotion of THE ROCK Marks and goods and services offered on or in connection with THE ROCK Marks; • Use of THE ROCK Marks prior to Registrant's use of the PASS THE ROC mark depicted in U.S. Registration No. 3,016,764; • Goods and services offered under THE ROCK Marks; and • Channels of trade in which goods and/or services are offered under THE ROCK Marks.
Jarrod Greene Pass The Roc Athletics Inc. 72 Van Reipen Ave Suite 121 Jersey City, NJ 07306	<ul style="list-style-type: none"> • Registrant's non-use and lack of intent to resume use of the PASS THE ROC Mark in connection with the goods and/or services listed in U.S. Registration No. 3,016,764

Discovery in this action is ongoing, and Petitioner reserves the right to supplement this list with respect to parties, non-parties and others as discovery of this Cancellation Proceeding continues. In addition, many of the documents in this case may address the issues discussed above. Those documents may identify additional persons with knowledge of these and other issues, and are included by reference in this disclosure. Some of the individuals listed above may not, in fact, have substantial knowledge regarding the matters raised in the Cancellation Proceeding, but are included herein solely in an effort to include all persons who potentially have knowledge.

B. Documents within Petitioner's possession, custody or control that it may use to support its contentions with respect to significant factual issues.

Petitioner may use the following categories of documents, among others, in support of its claims: general correspondence, discovery responses, pleadings, deposition testimony, publicly available information, including without limitation Internet webpages, file histories for U.S.

Registration Nos. 1,951,224, 2,719,009, 1,353,316, 1,328,626, 3,876,315, 3,254,394, 3,333,365, 1,534,487, 2,804,533, 2,049,744, 3,333,366, 3,408,199, and 3,815,075 for THE ROCK Marks, and for U.S. Registration No. 3,016,764 for PASS THE ROC; and documents showing: (1) use, extent, and geographic scope of use by Petitioner of THE ROCK Marks; (2) goods and/or services, and channels of trade in which Petitioner offers goods and/or services under THE ROCK Marks; and (3) marketing, advertisement, and promotion of goods and/or services offered under THE ROCK Marks. These documents shall be maintained at the offices of Nixon Peabody LLP, 401 9th Street, N.W., Suite 900, Washington, D.C. 20004-2128 and Anaconda Sports Inc., 85 Katrine Lane, Lake Katrine, NY 12449. The foregoing categories of documents are identified without limiting Petitioner's right to identify other documents that it may rely upon, once such documents are located and copied.

C. Damages Calculations.

Not Applicable.

D. Insurance Agreements.

Not Applicable.

Dated: January 17 2013

Respectfully submitted,

NIXON PEABODY LLP

By /JSM/

David L. May

Robert A. Weikert

Jeffrey S. Molinoff

NIXON PEABODY LLP

401 9th Street NW, Suite 900

Washington, DC 20004-2128

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Counsel for Petitioner

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

In re the Matter of:
Registration No.: 3,016,764
Mark: PASS THE ROC
Filed: December 13, 2003
Registered: November 22, 2005

Hat World, Inc.,

Petitioner,

v.

Pass The Roc Athletics, Inc.,

Registrant

Cancellation No. 92054496

PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT

Pursuant to Fed. R. Civ. P. 26 and 33 and Trademark Rule 2.120, Petitioner Hat World, Inc. ("Petitioner"), through counsel, hereby requests that Registrant, Pass The Roc Athletics, Inc. ("Registrant") answer the following Interrogatories, under oath and in writing, within thirty (30) days of service hereof by providing written responses thereto at the offices of Nixon Peabody LLP, attorneys for Petitioner, located at 401 Ninth Street NW, Suite 900, Washington, DC 20004, Attention: Jeffrey S. Molinoff, within thirty (30) days after service of these Interrogatories.

DEFINITIONS AND INSTRUCTIONS

1) Petitioner incorporates by reference the definitions and instructions contained in the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Rules.

- 2) "Registrant," "You," and "Your" refers to Pass The Roc Athletics, Inc., and all persons or entities acting for or on behalf of Pass The Roc Athletics, Inc.
- 3) "Petitioner" refers to Petitioner Hat World, Inc.
- 4) The "Mark" refers to U.S. Registration No. 3,016,764 for the mark PASS THE ROC.
- 5) The terms "Petition" or "Petition to Cancel" shall mean the Petition to Cancel filed by Petitioner on or about August 4, 2011 in the above-captioned matter.
- 6) The term "Answer" shall mean The Registrant's Answer to Petition to Cancel filed by Registrant on or about May 24, 2012 in the above-captioned matter.
- 7) The term "Action" shall mean the Action arising from Petitioner's filing of the Petition in this matter, docketed as Cancellation No. 92054496.
- 8) The term "document" shall be defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
- 9) The term "concerning" means relating to, referring to, describing, evidencing, or constituting.
- 10) The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), regardless of the manner or medium.
- 11) The term "person" is defined as any natural person or business or legal entity or association.
- 12) All references to "including" shall be understood to mean "including without limitation."

13) The term "identify" with respect to persons shall mean to give, to the extent known, the person's full name, present or last known address, and, when referring to natural person, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

14) The term "identify" with respect to documents shall mean to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s), and recipient(s).

15) The term "identify" with respect to communications shall mean to state its date, the place at which the communication occurred and the medium used to make it, to identify the persons who participated in the communication or were present when it was made, and to state in as much detail as possible the full and complete content of the communication with appropriate attribution to each participant.

16) When an interrogatory calls upon a party to "state the basis" of or for a particular claim, assertion, allegation, or contention, the Registrant shall:

- (a) identify each and every document, (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
- (b) identify each and every communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
- (c) state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the persons involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the interrogatory; and
- (d) state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the interrogatory.

17) "And" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all information which might otherwise be construed to be outside its scope.

18) "All" and "each" shall be construed as all and each.

19) The singular shall include the plural and the present tense shall include the past tense and *vice versa* in order to bring within the scope of the interrogatory all information which might otherwise be construed to be outside the scope.

20) If any of the interrogatories contained herein is claimed to be objectionable, then:

- (a) Identify the portion of the interrogatory that is claimed to be objectionable;
- (b) State the nature and basis of the objection in sufficient fashion to permit the Board to rule on the validity of the objection; and
- (c) Provide an answer to any portion of the request that is not claimed to be objectionable.

21) In the event that You have reason to believe that any information and/or documents requested by these interrogatories has been destroyed or was transferred from your possession, custody, or control, each such document should be identified by date, author, and subject matter, and should further be identified with respect to each paragraph of this request which calls for that document. The reason for the destruction or transfer should also be stated, along with the date of destruction or transfer and the person(s) involved in the destruction or transfer.

INTERROGATORIES

1) Identify each person who participated, assisted, or was consulted in the formulation and/or preparation of Your responses to these interrogatories, and any subsequent interrogatories propounded on You in this Action.

2) Identify every good and/or service that You offer, or intend to offer, under the Mark, and for each good or service identified, specifically provide the following information:

- a. Describe, in detail, its features and characteristics;
- b. Total sales (by total number of good/service and total revenues derived);
- c. The geographical scope of the use or intent to use the Mark;
- d. The geographical location where You first used the Mark;
- e. The identity of Your first customer, including current address;
- f. Identify a representative sampling of consumers for each year the goods/service have been offered, including dates of sales to each representative consumer and the precise goods or services sold or transferred;
- g. The channels of marketing and/or promotion through which You advertise/promote the good/service or intend to do so;
- h. Describe in detail the target consumers of Your goods and/or services offered under the Mark;
- i. Describe in detail Your plans to expand the line of goods/services offered under the Mark;
- j. The name, location, and date of any trade show in which the goods/services have been, or are scheduled to be, exhibited; and
- k. Retail locations, including brick and mortar and on-line retail stores for all goods/services offered in conjunction with the Mark.

3) Indicate whether the goods You offer are designed for use in a particular sport, and if so, please indicate each specific product and the sport for which it is designed.

4) For each good or service on which -- or in connection with which -- You have used the Mark, indicate the period of time in which You have used such term, or any variants thereof, including first use, last use, and the start and end dates of any periods of non-use.

5) Identify each person who has, claims to have, or whom You believe may have knowledge or information concerning any of the allegations contained in the Petition to Cancel, the underlying subject matter of this Action, or information sought by Petitioner's interrogatories

in this matter, and set forth in detail the knowledge or information maintained by each such person.

6) State the date on which You first used (or You first intend to use) the Mark in commerce in connection with any good/service and describe with particularity the circumstances of this use.

7) For each of the types of goods/services identified in Your response to Interrogatory No. 2 on or in connection with which You have already used the Mark, state Registrant's quarterly volume of business in the United States by identifying the quarterly volume of sales in terms of units and value (U.S. dollars) of the goods/services from the date of first sale(s) of such goods/services to date in the United States. If the information requested in this Interrogatory is not kept by quarter in Registrant's usual course of business, please state the answer in the manner it is kept by Registrant in its usual course of business.

8) Identify the circumstances surrounding Your awareness of Petitioner's Marks, including the date You became aware of each of Petitioner's Marks and the medium through which You became aware of each of Petitioner's Marks.

9) Identify each communication Registrant has ever received from any person or entity which was apparently intended for Petitioner.

10) Identify all persons known to Registrant who have been confused as to the source of the goods/services of Petitioner's and Registrant's mark, and describe in detail the nature of all such instances of confusion.

11) Identify each interview, survey, public opinion poll, consumer, marketing, or focus group survey or study regarding the markets to which Your goods/services are offered under the Mark conducted by, or on behalf of, Registrant or its former or current counsel, on a

formal or informal basis, regardless of whether the interview, poll or survey was completed, including without limitation secondary meaning surveys, confusion surveys, dilution surveys, or brand awareness surveys. Your answer should:

- a) State the date(s) of each interview, survey or public opinion poll;
- b) State the location(s) of each interview, survey or public opinion poll;
- c) Identify the persons involved in each interview, survey or public opinion poll;
- d) State the questions asked at each interview, survey or public opinion poll; and
- e) Identify all documents concerning each interview, survey or public opinion poll.

12) State Registrant's actual or projected total advertising and promotional expenditures (in U.S. dollars) made toward sales in the United States of the goods/services with which the Mark has been used or associated or will be used or associated from the date of first such expenditure to the present or as projected on a quarterly basis.

13) Apart from this Cancellation proceeding, identify all litigation, *inter partes* proceedings, or other conflicts engaged in, received, or sent by Registrant, relating to the use or registration by others of trademarks, service marks or trade names alleged to conflict in any manner whatsoever with the Mark by describing, as applicable, the names of the parties, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of any published opinion.

14) Identify each person whose testimony Registrant intends to offer as evidence during this proceeding, and provide a summary of each witness' anticipated testimony.

15) State in detail the factual basis for each of Your Affirmative Defenses.

Dated: January 17, 2013

Respectfully submitted,

NIXON PEABODY LLP

by: /ISM/

David L. May
Robert A. Weikert
Jeffrey S. Molinoff

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Counsel for Opposer

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

In re the Matter of:
Registration No.: 3,016,764
Mark: PASS THE ROC
Filed: December 13, 2003
Registered: November 22, 2005

Hat World, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92054496
)	
Pass The Roc Athletics, Inc.,)	
)	
Registrant)	
)	

PETITIONER'S FIRST SET OF REQUESTS FOR DOCUMENTS AND THINGS

Pursuant to 37 C.F.R. § 2.120 and Fed. R. Civ. P. 26 and 33, Petitioner Hat World, Inc. ("Petitioner") hereby requests that Registrant Pass The Roc Athletics, Inc. ("Registrant"), produce documents at the offices of Nixon Peabody LLP, attorneys for Petitioner, located at 401 Ninth Street NW, Suite 900, Washington, DC 20004, Attention Jeffrey S. Molinoff, within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

- 1) Petitioner incorporates by reference the definitions and instructions contained in the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Rules.
- 2) "Registrant," "You," and "Your" refers to Pass The Roc Athletics, Inc., and all persons or entities acting for or on behalf of Pass The Roc Athletics, Inc.

- 3) "Petitioner" refers to Petitioner Hat World, Inc.
- 4) "Petitioner's Marks" refers to U.S. Trademark Registration No. 1,951,224 for the mark THE ROCK, U.S. Trademark Registration No. 3,333,365 for the mark THE ROCK & Design, U.S. Trademark Registration No. 3,333,366 for the mark THE BIG ROCK & Design, and U.S. Trademark Registration No. 3,876,315 for the mark THE ROCK.
- 5) The "Mark" refers to U.S. Registration No. 3,016,764 for the mark PASS THE ROC.
- 6) The terms "Petition" or "Petition to Cancel" shall mean the Petition to Cancel filed by Petitioner on or about August 4, 2011 in the above-captioned matter.
- 7) The term "Answer" shall mean The Registrant's Answer to Petition to Cancel filed by Registrant on or about May 24, 2012 in the above-captioned matter.
- 8) The term "Action" shall mean the Action arising from Petitioner's filing of the Petition in this matter, docketed as Cancellation No. 92054496.
- 9) "Affirmative Defenses" shall mean the Affirmative Defenses included with the Answer filed by Registrant on or about May 24, 2012 in the above-captioned matter.
- 10) The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), and shall include, but is not limited to any papers, writings, drafts, notes, letters, diaries, agreements, contracts, calendars, memoranda, reports, drawings, plans, blueprints, notation books, financial records, computer or other business machine records, communications sent via any electronic means, including but not limited to internet, extranet and intranet, and any attachments to such electronic communications and any other data, compilations or written or graphic material stored in a tangible, electronic, mechanical or electric form, or any representation of any kind, including, but not limited to, materials stored on or in computer disks, networks, mainframes, hard drives, CD-ROM, tapes or other forms of memory, as well as back-up and deleted files of any computer, computer storage

device or media, whether located on or off site, from which the information can be obtained, as well as any draft, non-identical copy, and/or translation of the foregoing.

11) The term “concerning” means relating to, referring to, describing, evidencing, or constituting.

12) The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), regardless of the manner or medium.

13) The term “person” is defined as any natural person or business or legal entity or association.

14) All references to “including” shall be understood to mean “including without limitation.”

15) The term “identify” with respect to documents shall mean to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s), and recipient(s).

16) “And” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of the request all information which might otherwise be construed to be outside its scope.

17) “All” and “each” shall be construed as all and each.

18) The singular shall include the plural and the present tense shall include the past tense and *vice versa* in order to bring within the scope of the request all information which might otherwise be construed to be outside the scope.

19) If any of the requests contained herein are claimed to be objectionable, then:

- (a) Identify the portion of the request that is claimed to be objectionable;
- (b) State the nature and basis of the objection in sufficient fashion to permit the board to rule on the validity of the objection; and
- (c) Provide documents in response to any portion of the request that is not claimed to be objectionable.

20) In the event that You have reason to believe that any information and/or documents requested herein have been destroyed or were transferred from Your possession, custody, or control, each such document should be identified by date, author, and subject matter, and should further be identified with respect to each paragraph of this request which calls for that document. The reason for the destruction or transfer should also be stated, along with the date of destruction or transfer and the person(s) involved in the destruction or transfer.

DOCUMENTS REQUESTED

1) All documents identified in Your responses to Petitioner's interrogatories, and any subsequent interrogatories.

2) All documents relied upon by You in drafting Your Responses to Petitioner's interrogatories, and any subsequent interrogatories.

3) Documents sufficient to identify Your first use of the Mark in connection with each good/service offered under the Mark.

4) Documents sufficient to show every good or service on which -- or in connection with which -- You have used, or intend to use, the Mark, or any variants thereof, including without limitation documents sufficient to establish the duration of such use.

5) For each good or service on which -- or in connection with which -- You have used, or intend to use, the Mark, documents sufficient to show the full extent of the geographical scope of such use, or intent to use, within the United States, specifically including the expansion of that geographical scope, if any, over time.

6) For each good or service on which -- or in connection with which -- You have used, or intend to use, the Mark, documents sufficient to show the first geographical location within the United States in which You used, or intend to use, such term, or any variants thereof, and the date of such first use, or intended use, for any expansion of such use.

7) For each good or service on which -- or in connection with which -- You have used the Mark, documents sufficient to show the period of time in which You have used such term, or any variants thereof.

8) Any studies or analyses of the market(s) to which Your goods and/or services offered under the Mark are directed, including any analysis of the size and geographical scope within the United States of such market(s) or the identities of participants in such market(s).

9) Documents sufficient to show Your annual advertising expenditures -- actual and budgeted -- for all goods and/or services offered under the Mark for each year in which You have used the Mark.

10) All marketing plans, advertising plans, strategic business plans, and market research concerning any goods and/or services You offer, sell, or intend to offer or sell, under the Mark or concerning the market(s) for such products and/or services.

11) All documents concerning Your advertisement, promotion, marketing, or use of any goods and/or services under the Mark at a trade show, including without limitation the name, location, and dates of each such trade show and the specific goods and/or services advertised, promoted, marketed, or otherwise used at each such trade show.

12) Documents sufficient to show every use You have made of the Mark, including without limitation all advertisements or promotional materials.

13) All documents concerning the timing of and circumstances surrounding Your selection and adoption of the Mark.

14) Documents sufficient to show the channels of trade through which You market any goods and/or services under the Mark.

15) Documents sufficient to identify the names and locations of the customers, potential customers, or target customers, to whom You offer or sell any product or service under the Mark.

16) Documents sufficient to identify the names and locations of the first customers to whom You provided each product or service under the Mark.

17) Documents sufficient to identify any other goods and/or services that are, or are intended to be, marketed or promoted in conjunction with the goods and/or services offered under the Mark.

18) Documents sufficient to show expansion of the line of goods and/or services offered under The Mark, including without limitation identification of those other goods and/or services.

19) Documents sufficient to identify all sales, by month, year or any other applicable period of time for which data is available to You, of each good/service on which -- or in connection with which -- You have used the Mark.

20) All documents concerning any plans by You to expand the use of the Mark.

21) Documents sufficient to show, on a yearly basis and per product/service, all gross revenue generated by You from the sale or other use of any good/service offered under the Mark.

22) All documents showing Your awareness, including without limitation Your first awareness, of Petitioner.

23) All documents showing Your awareness, including without limitation Your first awareness, of Petitioner's Marks.

24) All documents, including communications, concerning Petitioner.

25) All documents concerning Your investigation into the availability of the Mark, including without limitation all trademark search reports (formal and informal), investigative reports, and opinions of counsel.

26) All documents concerning any consumer, marketing, focus group, or brand awareness studies and/or surveys performed by or on behalf of You or Your current or former counsel concerning the Mark.

27) All research, reports, surveys or studies conducted by You or on Your behalf concerning consumer or customer perception of the Mark (whether completed or not), including without limitation confusion and secondary meaning surveys.

28) All documents that relate to any instance in which any person or entity was mistaken or actually confused between You and Petitioner, or between Your goods and/or services and Petitioner's goods and/or services and/or the source thereof, including but not limited to instances of initial interest confusion or actual confusion involving products or services offered under the Petitioner's Mark and the Mark.

29) All documents constituting or concerning any communications (e.g., letters, e-mails, telephone calls, etc.) that were intended for Petitioner, or concerning Petitioner's goods and/or services, but which were mistakenly delivered to You.

30) Documents sufficient to identify the age, gender, income level, nationality, ethnicity, and education level of prospective purchasers of Your goods and/or services offered under the Mark.

31) With the exception of the above-captioned proceeding, documents sufficient to identify any litigation, including administrative litigation and/or *inter partes* proceedings, and/or other disputes in which You have been involved concerning the Mark.

32) All trademark search reports (including without limitation Thomson & Thomson search reports) concerning the Mark, or any variants thereof.

33) All documents concerning any legal opinions You obtained concerning the Mark, including without limitation any legal opinions concerning the selection, validity, and/or protectability of the Mark.

34) All documents provided to -- or shown to -- any witnesses who may offer expert opinions in this litigation, regardless of whether the witness relied on the documents in formulating his/her opinions.

35) All documents provided to -- or shown to -- You or Your counsel by any witness who may offer expert opinions in the above-captioned proceeding.

36) All expert reports (including all drafts and versions of any report) for all witnesses who will offer an expert opinion on Your behalf in the above-captioned proceeding.

37) All documents constituting or concerning any license agreement, co-existence agreement, or any other agreement concerning the Mark, into which You have entered or contemplated entering.

38) All documents sufficient to identify each and every mark, name, or symbol considered by You as an alternative to the Mark.

39) Documents sufficient to identify each and every person who has ever assisted or participated in, or in any other way was involved in or responsible for, the development, design, registration, hosting, and/or maintenance of any of Your websites and/or any content that has ever been displayed on Your websites, from the date of registration of the domain names for these websites to the present.

40) All documents upon which you have relied, or intend to rely, to support, in any way, the allegations You made in ¶ 6 of Your Answer.

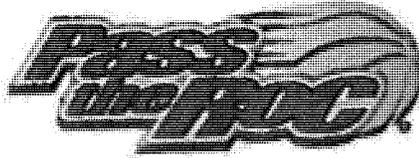
41) All documents upon which you have relied, or intend to rely, to support, in any way, the allegations You made in ¶ 10 of Your Answer.

42) All documents upon which you have relied, or intend to rely, to support, in any way, the allegations You made in ¶ 11 of Your Answer.

43) All documents upon which you have relied, or intend to rely, to support, in any way, the allegations You made in ¶ 12 of Your Answer.

44) All documents upon which you have relied, or intend to rely, to support, in any way, the allegations You made in ¶ 13 of Your Answer.

EXHIBIT 6



2-27-13

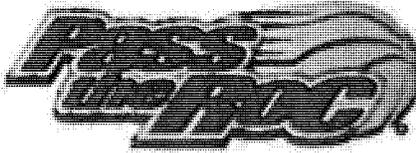
Attn. David May
Nixon Peabody, LLP.
Suite 900
401 9th Street, N.W.
Washington, DC. 20004

Dear Mr. May,

I apologize that my Initial Disclosures and responses to your discovery requests in Cancellation Proceeding 920554496 are a couple of days late. As you know, I am pro se and have been trying to obtain counsel to assist me, including student attorneys under the direction of local law clinics. With that in mind, please bear with me; I am doing my best to stay on top of everything. I am asking for a two-week extension to respond to the current set of discovery requests you sent. I am trying to gather as complete a set of documents as I can. I hope you understand.

Jarrold Greene
CEO/President

PASS THE ROC ATHLETICS, INC.



2-27-13

Attn. David May
Nixon Peabody, LLP.
Suite 900
401 9th Street, N.W.
Washington, DC. 20004

Dear Mr. May,

I apologize that my initial Disclosures and responses to your discovery requests in Cancellation Proceeding 920554496 are a couple of days late. As you know, I am pro se and have been trying to obtain counsel to assist me, including student attorneys under the direction of local law clinics. With that in mind, please bear with me; I am doing my best to stay on top of everything. I am asking for a two-week extension to respond to the current set of discovery requests you sent. I am trying to gather as complete a set of documents as I can. I hope you understand.

Jarrold Greene
CEO/President

PASS THE ROC ATHLETICS, INC.

EXHIBIT 7

Molinoff, Jeffrey

From: Molinoff, Jeffrey
Sent: Thursday, April 25, 2013 7:43 PM
To: Jarrod Greene
Cc: May, David; McCreadie, Gina; Jones, Yvette
Subject: CANCELLATION NO. 92054496 HAT WORLD, INC. v. PASS THE ROC ATHLETICS, INC.; NP Ref. No. 058988-143; FOR SETTLEMENT PURPOSES ONLY
Attachments: FIRM_DM-#14441423-v1-ltr_to_J_Greene_re_failure_to_respond_to_discovery.pdf

Dear Jarrod,

Please see the attached letter from Dave May.

Regards,

Jeff

Jeffrey S. Molinoff

Associate

NIXON PEABODY LLP
ATTORNEYS AT LAW

401 9th Street NW

Suite 900

Washington, DC 20004-2128

P (202) 585-8230

C (202) 255-1132

F (866) 857-7355

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NIXON PEABODY LLP
ATTORNEYS AT LAW

401 9th Street N.W.
Suite 900
Washington, DC 20004-2128
(202) 585-8000
Fax: (202) 585-8080

David L. May
Direct Dial: (202) 585-8220
E-Mail: dmay@nixonpeabody.com

April 25, 2012

VIA FIRST CLASS MAIL

(Confirmation via e-mail: passtheroc1891@yahoo.com)

Jarrold Greene
Pass the Roc Athletics, Inc.
72 Van Reipen Avenue #121
Jersey City, NJ 07306

Re: Trademark Infringement
Our Ref. 058988-143

Dear Mr. Greene:

We have not yet received Respondent's initial disclosures, which are now approximately three months overdue, or responses to Petitioner's first set of interrogatories or document requests, which are now approximately two months overdue. We also note that you failed to serve responses to these discovery requests by the extended deadline requested in your February 27, 2013 letter. As a result, all objections to these discovery requests have been waived.

Your delay in providing these materials is causing prejudice to my client. If we do not receive your initial disclosures along with full and complete discovery responses without objection, including documents, 5:00pm on Monday, April 29, 2013, we will have no choice but to seek appropriate relief from the Board.

Very truly yours,

NIXON PEABODY LLP



David L. May

EXHIBIT 8

Molinoff, Jeffrey

From: flann lippincott <flann@lippincottburnett.com>
Sent: Friday, February 07, 2014 4:35 PM
To: Molinoff, Jeffrey
Cc: Managing Clerk; Paul Burnett
Subject: Hat World, Inc. v Pass The Roc Athletics, Inc. Cancellation No. 92054496

Dear Mr. Molinoff:

The Registrant in Cancellation Proceeding No. 92054496 is seeking to retain us. We note that the Registrant has been ordered to provide responses to discovery requests, with a deadline of January 6, 2014. We ask for 10 days to allow us to adequately prepare the responses.

Sincerely,



Flann Lippincott
Lippincott Burnett LLP

107 Van Lieus Road
Ringoes, New Jersey 08551
Tel (908) 237.0400
Fax (908) 237.0401
Cell (908) 507.5507
www.lippincottburnett.com

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EXHIBIT 9

14855868.1

Molinoff, Jeffrey

From: flann lippincott <flann@lippincottburnett.com>
Sent: Wednesday, February 19, 2014 9:07 AM
To: May, David; Molinoff, Jeffrey; Weikert, Robert
Cc: Paul Burnett
Subject: Hat World v Pass the Roc Cancellation No. 92054496

Dear Sirs:

We represent Pass the Roc Athletics, Inc. in this Cancellation proceeding. While our client was preparing his materials for his responses to the interrogatories and requests for documents last week, he suffered chest pains and was admitted to the hospital. We were just informed that the client was released from the hospital today, and will provide us with the necessary information shortly.

We request an additional week to prepare and submit our client's responses.

Respectfully yours,



Flann Lippincott
Lippincott Burnett LLP

107 Van Lieus Road
Ringoes, New Jersey 08551
Tel (908) 237.0400
Fax (908) 237.0401
Cell (908) 507.5507
www.lippincottburnett.com

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