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

Proceeding	92054629
Party	Defendant Wohali Outdoors, LLC
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Signature	/s/ S. Max Harris
Date	05/30/2013
Attachments	05-30-13 - Wohali's 1st Supp to Wohali's Objections - Final Submitted.pdf(33274 bytes) Ex 1 to supp.pdf(72405 bytes) Ex 2 to supp.pdf(220052 bytes) Ex 3 to supp.pdf(96744 bytes) Ex 4 to supp.pdf(109825 bytes) Ex 5 to supp.pdf(198183 bytes)

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

In re Registration No. 3,904,929)	
)	
SHELTERED WINGS, INC.)	Cancellation No. 92054629
)	
Petitioner/Plaintiff,)	
)	
v.)	
)	
WOHALI OUTDOORS, LLC)	
)	
Respondent/Defendant.)	
)	

**WOHALI OUTDOORS, LLC’S FIRST SUPPLEMENT TO:
WOHALI’S OBJECTIONS TO SHELTERED WINGS, INC.’S PRETRIAL
DISCLOSURES (WOHALI’S OBJECTIONS FILED MAY 17, 2013)**

Respondent/Defendant, Wohali Outdoors, LLC (“Wohali”), submits the following supplement in support of Wohali’s Objections to Sheltered Wings, Inc.’s Pretrial Disclosures. This supplement outlines the facts and authority supporting Wohali’s objection/motion.¹

I. STATEMENT OF FACTS

1. On March 5, 2012, Sheltered Wings, Inc. (“Wings”) served its Initial Disclosures.² Ben Lizdas was **not** identified in Wings’ Initial Disclosures. (Ex. 1, Wings’ Initial Disclosures.)

¹ On May 29, 2013, the Court entered an Order in this matter. Among other things, the Order stated: “The Board construes respondent’s May 17, 2013 objections as a motion to limit the scope of testimony taken by petitioner during petitioner’s assigned testimony period...”

² “Initial Disclosures” are governed by TBMP 401.02, 37 CFR §§ 2.120(a)(2) and (3) and FRCP 26(a)(1).

2. On August 24, 2012, (in response to Wohali's motion for summary judgment) Wings filed its opposition brief and included the Declaration of Ben Lizdas. (Ex. 2, Declaration of Ben Lizdas.)

3. Ben Lizdas' Declaration is narrow in scope and is limited to Eagle Optics' marketing and advertising. The Declaration is extremely vague. (Ex. 2, Declaration of Ben Lizdas.)

4. On December 10, 2012, Wings served its Response to Wohali's First Set of Interrogatories. (Wohali had given Wings another opportunity to identify any witnesses Wings intended to use at trial and the subject matter of the testimony.) Wings again elected **not** to identify Ben Lizdas.

Interrogatory No. 18: Identify all persons Wings intends to submit any testimony of in this matter (whether by declaration, affidavit and/or any other method), and provide with detail the substance and description of such expected testimony."

RESPONSE: Petitioner objects to this interrogatory to the extent that it seeks information protected from discovery by the attorney-client privilege, work product doctrine, or any other applicable privilege. **Petitioner also objects to this request because it is premature because discovery is ongoing."**

(Ex. 3, Wings' Response to Interrogatory No. 18) (emphasis added).

5. On January 15, 2013, Wings served supplemental responses. However, Wings elected **not** to supplement its Response to Interrogatory No. 18. (Ex. 4, Wings' Supplemental Response to Interrogatory No. 18.)

6. On May 3, 2013, Wings served its Pretrial Disclosures, and listed Ben Lizdas as a witness to provide testimony concerning: (i) advertising and promotion; (ii) use of the EAGLE marks; (iii) goods sold and offered; (iv) notoriety of marks; (v) similarity of marks; (vi) strength

of marks; (vii) geographic scope and channels of trade; (viii) level of sophistication; (ix) likelihood of confusion and actual confusion; and (x) that Mr. Lizdas may be used to identify certain documents. (Ex. 5, Wings' Pretrial Disclosures at p. 2-3.)

This subject matter **far exceeds** the scope of Ben Lizdas' Declaration (Ex. 2).

7. Ben Lizdas was **not** identified in Wings' Initial Disclosures; and Wings elected **not** to supplement its Initial Disclosures.

8. Ben Lizdas was **not** identified in Wings' responses to interrogatories (nor in any supplement to same).

9. The discovery cutoff was **March 19, 2013**.

II. BEN LIZDAS' TRIAL TESTIMONY MAY NOT EXCEED THE SCOPE OF HIS DECLARATION

Pursuant to TBMP 401.02, 37 CFR §§ 2.120(a)(2) and (3) and FRCP 26(a)(1), Wings was required to identify all individuals likely to have discoverable information, along with the subjects of such information.

“Fed. R. Civ. P. 26(a)(1) Initial Disclosures.

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party **must**, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual **likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses**, unless the use would be solely for impeachment;...”

TBMP 401.02 (emphasis added).

“A party need not, through its mandatory initial disclosures, identify particular individuals as prospective trial witnesses, per se, but **must identify “each individual likely to have discoverable**

information that the disclosing party may use to support its claims or defenses.” (quoting Fed. R. Civ. P. 26(a)(1)).

Jules Jurgensen/Rhapsody Inc. v. Baumberger, 91 U.S.P.Q.2d 1443, fn 1 (TTAB 2009) (emphasis added).

Ben Lizdas was **not** identified in Wings’ Initial Disclosures. (See Statement of Facts (“SOF”) No. 1 above)). Ben Lizdas was **not** identified in any of Wings’ discovery responses. (SOF Nos. 4, 5 and 8.)

Prior to Wings’ Pretrial Disclosures, the **only** time Wings identified Ben Lizdas was through the Declaration of Ben Lizdas filed with Wings’ summary judgment brief. (SOF No. 2.) The Declaration is narrow in scope and only references Eagle Optics’ advertising and marketing activities. (SOF Nos. 2 and 3.)

Prior to Wings’ Pretrial Disclosures, Wings elected **not** to provide any further information concerning Ben Lizdas. Wings elected **not** to identify Ben Lizdas in either its Initial Disclosures nor in response to discovery requests. Wings should be precluded from presenting any testimony from Ben Lizdas that exceeds the narrow scope of the 5 page Declaration of Ben Lizdas (Ex. 2).

“A responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto (provided that the requesting party raises the matter by objecting to the evidence in question) unless the response is supplemented in a timely fashion pursuant to Fed. R. Civ. P. 26(e).”

Panda Travel, Inc. v. Resort Option Enterprises, Inc., 94 U.S.P.Q.2d 1789, 2 (TTAB 2009) (emphasis added).

Wings’ attempt to surprise Wohali by “laying behind the log” should **not** be rewarded. Ben Lizdas’ testimony (if offered) should be limited to the narrow scope of the 5 page

Declaration of Ben Lizdas. He should be precluded from testifying about anything not specifically stated therein. *See Jules Jergensen/Rhapsody, Inc. v. USPTO*, 91 U.S.P.Q.2d 1443, 1444-1445 (TTAB 2009) (Witness not disclosed in Initial Disclosures or Pretrial Disclosures was precluded from testifying.)

Here, Wohali would be unfairly prejudiced if Wings was permitted to introduce testimony from Ben Lizdas that is outside the narrow scope of his 5 page Declaration.

III. CONCLUSION/PRAYER

Wings moves the Court to preclude any testimony from Ben Lizdas that exceeds the narrow scope of the 5 page Declaration of Ben Lizdas, and to award any further relief the Court deems just and equitable or for which Wohali proves it is entitled to.

Respectfully Submitted,

DOYLE HARRIS DAVIS & HAUGHEY

/s/ S. Max Harris

Steven M. Harris, OBA #3913
S. Max Harris, OBA #22166
Doyle Harris Davis & Haughey
1350 South Boulder, Suite 700
Tulsa, OK 74119
(918) 592-1276
(918) 592-4389 (fax)
Attorneys for Wohali

CERTIFICATE OF SERVICE

I do hereby certify that on the 30th day of May, 2013, I caused a true and correct copy of the above and foregoing instrument to be sent to the following parties in the manner indicated below:

James D. Peterson Jennifer L. Gregor GODFREY & KAHN, S.C. One East Main Street, Suite 500 Madison, Wisconsin 53701-2719	<u>Email & Certified Mail: 7011 2970 0001 7871 6528</u>
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Pat Guest	<u>Email only</u>
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JT Griffin	<u>Email only</u>
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JT Brocksmith	<u>Email only</u>
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/s/ S. Max Harris

1637-5:mh

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

In re Registration No. 3,904,929)	
)	
SHELTERED WINGS, INC.)	
)	
Petitioner,)	Cancellation No. 92054629
)	
v.)	
)	
WOHALI OUTDOORS, LLC)	
)	
Respondent.)	

SHELTERED WINGS, INC.’S INITIAL DISCLOSURES

Petitioner, Sheltered Wings, Inc., (“Sheltered Wings”), hereby serves its initial disclosures.

1. Preliminary disclosure of persons with information.

Dan Hamilton, president of Sheltered Wings. Mr. Hamilton has knowledge of Sheltered Wings’ use and registration of its marks. Mr. Hamilton may be contacted through Sheltered Wings’ counsel.

Individuals disclosed by Wohali. Wohali witnesses may have information relevant to this proceeding.

2. Preliminary disclosure of documents, electronically stored information, and tangible things.

Sheltered Wings discloses that the documents and electronically stored information upon which it intends to rely are available from the United States Patent and Trademark Office, constituting the prosecution history of the subject mark and the marks cited in the Petition.



Additional documents and documents and electronically stored information demonstrating the parties' use of the marks may become relevant. If so, documents and electronically stored information concerning Sheltered Wings' use of its marks is available through counsel.

SHELTERED WINGS, INC.

Date: March 5, 2012

By: s/James D. Peterson
James D. Peterson
Jennifer L. Gregor
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Madison, Wisconsin 53701-2719
Tel.: (608) 257-3911
Fax: (608) 257-0609
Email: jpeterson@gklaw.com,
jgregor@gklaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document was served by email March 5, 2012, upon the following:

Steven M. Harris (steve.harris@1926blaw.com)
S. Max Harris (max.harris@1926blaw.com)
DOYLE HARRIS DAVIS & HAUGHEY
1350 South Boulder, Suite 700
Tulsa, OK 74119

s/James D. Peterson

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

In re Registration No. 3,904,929

SHELTERED WINGS, INC.

Petitioner,

v.

WOHALI OUTDOORS, LLC

Respondent.

Cancellation No. 92054629

DECLARATION OF BEN LIZDAS

I, Ben Lizdas, declare as follows:

1. I am the Sales Manager of Eagle Optics, a division of petitioner, Sheltered Wings, Inc., and submit this declaration in support of petitioner's opposition to Wohali Outdoors, LLC's motion for summary judgment. I have been employed by Eagle Optics for 12 years, and have held my current position for 6 years. In my position as Sales Manager, I am responsible for coordinating the marketing activities of Eagle Optics and budgeting and tracking the company's marketing expenses and efforts. I have personal knowledge of the facts in this declaration and, if called upon, I could and would testify to these facts.

2. The Eagle Optics company markets and promotes its EAGLE OPTICS brand in several ways: through advertisements in the primary industry publications; attendance and participation at trade shows and events; donations and sponsorships; Internet advertising and promotional activities; as well as through Eagle Optics' blogs and newsletter.

3. Eagle Optics' advertising and marketing efforts have grown over the years, in



correlation with the growth of the company. As an example of some of Eagle Optics' early advertising, group **Exhibit A** comprises true and correct copies of representative EAGLE OPTICS advertisements that were published in Bird Watcher's Digest from 1988 through 1992.

4. More recently, for example, in the last five years, Eagle Optics has regularly placed advertisements in each of the major print publications targeted towards bird watchers, such as Bird Watcher's Digest, Birding Magazine, Indiana Outdoor News, Living Bird Magazine, Michigan Birds and Natural History, and WildBird Magazine. Attached as group **Exhibit B** are representative copies of proofs of advertisements that were published in these publications from 2009 to the present.

5. Additional representative advertisements are also attached here. **Exhibit C** is a true and correct copy of an advertisement for EAGLE OPTICS' GOLDEN EAGLE binocular and an advertisement for a SWAROVSKI binocular sold by the EAGLE OPTICS store published in the July/August 2012 edition of Bird Watcher's Digest. **Exhibit D** comprises a true and correct copy of two advertisements published in the Spring 2012 edition of Living Bird magazine: one is an ad for the EAGLE OPTICS RANGER binocular, and one is an ad for a KENKO binocular sold by the EAGLE OPTICS store. **Exhibit E** is a true and correct copy of an advertisement published in the May 2012 edition of Birding magazine for a SWAROVSKI binocular sold by the EAGLE OPTICS store. **Exhibit F** is a true and correct copy of an advertisement published in the March/April 2012 issue of WildBird magazine for a NIKON binocular sold by EAGLE OPTICS.

6. We also promote and market the EAGLE OPTICS brand through our attendance and participation at trade shows, festivals, and other events. For example, Eagle Optics representatives regularly attend and staff a booth at events including:

- Space Coast Birding and Wildlife Festival in Titusville, Florida
- Port Aransas Whooping Crane Festival in Port Aransas, Texas
- Chicago Audubon Society's Birding America event in Chicago, Illinois
- San Diego Bird Festival
- Canoecopia in Madison, Wisconsin
- Galveston Featherfest in Galveston Island, Texas
- Eagle Optics Days with Houston Audubon Society at High Island, Texas
- Florida's Birding and Fotofest, St. Augustine, Florida
- The Biggest Week in American Birding: Magee Marsh, Oak Harbor, Ohio
- Kachemak Bay Birding Festival, Homer, Alaska
- Detroit Lakes Festival of Birds, Detroit Lakes, Minnesota
- Rockport Hummingbird Festival, Rockport, Texas
- Midwest Birding Symposium, Lakeside, Ohio
- ABA (American Birding Association) Half Moon Bay, California
- Rio Grande Valley Bird Fest, Harlingen, Texas
- Festival of the Cranes at Bosque Del Apache, Socorro, New Mexico

7. Attached as **Exhibit G** are several images showing our EAGLE OPTICS booths at various tradeshows in 2011 and 2012.

8. Some of the larger of these events and festivals include the Rio Grande Valley Bird Fest (attended by about 4,000 in 2011); Midwest Birding Symposium (attended by about 1,000 in 2011); The Biggest Week in American Birding (attended by about 32,000 in 2011); Space Coast (attended by about 5,300 in 2011); and Canoecopia (attended by about 25,000 in 2011).

9. As part of its promotional and marketing efforts, and to be a good citizen in the outdoor and bird watching communities, Eagle Optics also makes donations of money and products to certain organizations in the bird watching and hunting markets, and sponsors certain events and activities in these markets. For example, in 2011, Eagle Optics made donations to the 91 organizations listed in **Exhibit H**. Each of these donations was publicly acknowledged in programming materials offered by the recipient. Although the recipients of donations from Eagle Optics will vary a bit from year to year, the above list is typical of our donations in the last

five years.

10. Eagle Optics also does special donations or participates in partnerships with certain organizations on a case-by-case basis. For example, in 2003, Eagle Optics partnered with Operation Migration which promotes conservation and reintroduction of Whooping Cranes, an endangered bird species. As shown in **Exhibit I**, which was a highlight in the 2003 Eagle Optics catalog, Eagle Optics outfitted the volunteers of Operation Migration with binoculars and a spotting scope for their field operations and observations.

11. Another example is that Eagle Optics made a special edition PELICAN binocular to commemorate the U.S. Fish & Wildlife Service's centennial celebration of the Pelican Island National Wildlife Refuge in 2003. The profits from the sales of the PELICAN binocular were donated to the National Wildlife Refuge System, and EAGLE OPTICS was acknowledged in programming materials for the centennial celebration, in advertising, and with an award from the National Wildlife Refuge System. **Exhibit J** is a copy of the programming materials; **Exhibit K** is a copy of an EAGLE OPTICS advertisement for the PELICAN binocular; and **Exhibit L** is an image of Eagle Optics' National Wildlife Refuge System Centennial Partnership Award.

12. In addition to the promotional activities above, Eagle Optics also engages in several types of Internet advertising. For example, Eagle Optics places advertisements with Internet news providers and blogs, such as OutdoorNews.com and 10000Birds.com. Eagle Optics also purchases ads on Internet search engines such as Google, Yahoo! and Bing. Eagle Optics has a Facebook page with more than 4900 fans, and has a YouTube account where it has several instructional and promotional videos, collectively having more than 350,000 views since March 2008.

13. Eagle Optics also publishes its own newsletter, which is distributed to 16,000

people weekly, and its own blogs, such as the "Eagle Optics Blog" at www.eagleopticsblog.com, the "Birding Binoculars Q&A" at www.birdingbinoculars.com, and the "Binocular Reviews" at www.binocularreviews.org. Eagle Optics' main website at www.eagleoptics.com, and its blog websites receive approximately 41,000 unique visitors each month.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 23, 2012, in Middleton, Wisconsin.


Ben Lizdas

8315151

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

In re Registration No. 3,904,929

SHELTERED WINGS, INC.

Petitioner,

v.

WOHALI OUTDOORS, LLC

Respondent.

Cancellation No. 92054629

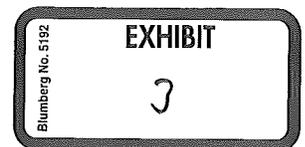
**SHELTERED WINGS, INC.'S RESPONSE TO RESPONDENT'S
FIRST SET OF INTERROGATORIES**

In accordance with Trademark Rule § 2.120(d) and Federal Rules of Civil Procedure 26 and 33, petitioner, Sheltered Wings, Inc., ("Sheltered Wings" or "Petitioner"), provides its responses and objections to respondent, Wohali Outdoors, LLC's, first set of interrogatories, served on June 28, 2012.

General Objections

1. Petitioner objects to Wohali's definitions and instructions to the extent that they seek to expand the requirements of, or are inconsistent with, the Trademark Rules and the Federal Rules of Civil Procedure.

2. Petitioner objects to Wohali's interrogatories to the extent that they call for the disclosure of information and materials protected from discovery by the attorney-client privilege, work product doctrine, or any other applicable privilege. Nothing contained herein, including any inadvertent disclosure, is intended to be or should be construed as a waiver of the attorney-



Commission, or any other court, agency, or tribunal involving the marks identified in Paragraph 3 of its Petition for Cancellation.

Interrogatory No. 17: Identify all persons who Wings has consulted or intends to consult as an expert witness in this proceeding and identify the subject(s) of their expertise and the substance of their opinion(s).

RESPONSE: Petitioner objects to this interrogatory to the extent that it seeks information protected from discovery by the attorney-client privilege, work product doctrine, or any other applicable privilege.

Subject to the foregoing objections, and the General Objections, Petitioner states that it does not currently intend to submit expert testimony in this proceeding.

Interrogatory No. 18: Identify all persons Wings intends to submit any testimony of in this matter (whether by declaration, affidavit and/or any other method), and provide with detail the substance and description of such expected testimony.

RESPONSE: Petitioner objects to this interrogatory to the extent that it seeks information protected from discovery by the attorney-client privilege, work product doctrine, or any other applicable privilege. Petitioner also objects to this request because it is premature because discovery is ongoing.

Interrogatory No. 19: The following interrogatory shall be answered with respect to each involved mark of the responding party (i.e. the 5 marks identified on page 2 of Wings' Petition for Cancellation).

Identify and describe any and all agreements between Wings and any third party concerning the use of any of these marks.

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2012 a true and complete copy of the foregoing document was served by email and Federal Express (overnight delivery) to the following:

Steven M. Harris (steve.harris@1926blaw.com)
S. Max Harris (max.harris@1926blaw.com)
DOYLE HARRIS DAVIS & HAUGHEY
1350 South Boulder, Suite 700
Tulsa, OK 74119

/Jennifer L. Gregor/
Jennifer L. Gregor

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

In re Registration No. 3,904,929)	
)	
SHELTERED WINGS, INC.)	
)	
Petitioner,)	Cancellation No. 92054629
)	
v.)	**Contains Trade Secret/ Commercially Sensitive Information
)	
WOHALI OUTDOORS, LLC)	
)	
Respondent.)	**Attorneys' Eyes Only per Stipulated Protective Order

**SHELTERED WINGS, INC.'S SUPPLEMENTAL RESPONSES TO RESPONDENT'S
FIRST SET OF INTERROGATORIES**

In accordance with Trademark Rule § 2.120(d) and Federal Rules of Civil Procedure 26 and 33, petitioner, Sheltered Wings, Inc., (“Sheltered Wings” or “Petitioner”), provides these supplemental responses and objections to respondent, Wohali Outdoors, LLC’s, first set of interrogatories, served on June 28, 2012.

****Please note that Petitioner’s responses to interrogatories numbers 20 and 21 contain Confidential Trade Secret/Commercially Sensitive Information and must be treated as attorneys’ eyes only under the Stipulated Protective Order in this proceeding.**

General Objections

1. Petitioner objects to Wohali’s definitions and instructions to the extent that they seek to expand the requirements of, or are inconsistent with, the Trademark Rules and the Federal Rules of Civil Procedure.



- *Sheltered Wings, Inc. v. Wohali Outdoors, LLC*, Cancellation No. 92054629 (TTAB)
- *Sheltered Wings, Inc. v. Wohali Outdoors, LLC*, Opposition No. 91205187 (TTAB)
- *Sheltered Wings, Inc. v. Wohali Outdoors, LLC*, Civil Action No. 11-cv-300 (W.D. Wis.)
- *Sheltered Wings, Inc. v. Nikon Inc.*, Cancellation No. 92041239 (TTAB)

Petitioner has not been involved in any other proceeding before the USPTO, Trademark Trial and Appeal Board, Bureau of Customs, Better Business Bureau, Federal Trade Commission, or any other court, agency, or tribunal involving the marks identified in Paragraph 3 of its Petition for Cancellation.

Interrogatory No. 17: Identify all persons who Wings has consulted or intends to consult as an expert witness in this proceeding and identify the subject(s) of their expertise and the substance of their opinion(s).

RESPONSE: Petitioner objects to this interrogatory to the extent that it seeks information protected from discovery by the attorney-client privilege, work product doctrine, or any other applicable privilege.

Subject to the foregoing objections, and the General Objections, Petitioner states that it does not intend to submit expert testimony in this proceeding.

Interrogatory No. 18: Identify all persons Wings intends to submit any testimony of in this matter (whether by declaration, affidavit and/or any other method), and provide with detail the substance and description of such expected testimony.

RESPONSE: Petitioner objects to this interrogatory to the extent that it seeks information protected from discovery by the attorney-client privilege, work product doctrine, or any other applicable privilege. Petitioner also objects to this request because it is premature because discovery is ongoing.

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2013 a true and complete copy of the foregoing document was served by email and Federal Express (overnight delivery) to the following:

Steven M. Harris (steve.harris@1926blaw.com)
S. Max Harris (max.harris@1926blaw.com)
DOYLE HARRIS DAVIS & HAUGHEY
1350 South Boulder, Suite 700
Tulsa, OK 74119

/Jennifer L. Gregor/
Jennifer L. Gregor

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- Prosecution of applications to register EAGLE Marks in the USPTO
- Eagle Optics' 2003 consent agreement with Nikon and Eagle Optics' relationship with Nikon
- The notoriety of Eagle Optics and the EAGLE Marks
- Enforcement efforts relating to the EAGLE Marks
- The litigation between the parties in the Western District of Wisconsin and the TTAB
- The similarity of the EAGLE Marks and Wohali Outdoors, LLC's ("Wohali") STEEL EAGLE and GOLDEN EAGLE marks
- The strength of Wohali's STEEL EAGLE and GOLDEN EAGLE marks relative to the EAGLE Marks
- The geographic scope and channels of trade for the EAGLE Marks and products sold under those marks
- The level of sophistication of consumers of Wohali's and Petitioner's products
- The likelihood of confusion and any actual confusion concerning Wohali and Petitioner and their products and marks

Petitioner may seek to introduce the following types of documents as exhibits during Mr.

Hamilton's testimony:

- Documents concerning each of the testimony topics above
- Petitioner's discovery responses and documents from Petitioner's and Wohali's document productions
- Pleadings and other documents filed in litigation between the parties in the TTAB and in the Western District of Wisconsin

2. Ben Lizdas, Sales Manager of Eagle Optics.

Mr. Lizdas' business address and phone number are: 2120 W. Greenview Dr., Middleton,

WI 53562, (800) 426-0048.

Petitioner expects to seek testimony from Mr. Lizdas on the following topics:

- Advertising and promotion of products sold under the EAGLE Marks
- Use of the EAGLE Marks
- The goods sold and offered for sale under the EAGLE Marks
- Sales of products under the EAGLE Marks
- The notoriety of Eagle Optics and the EAGLE Marks
- The similarity of the EAGLE Marks and Wohali Outdoors, LLC's ("Wohali") STEEL EAGLE and GOLDEN EAGLE marks
- The strength of Wohali's STEEL EAGLE and GOLDEN EAGLE marks relative to the EAGLE Marks
- The geographic scope and channels of trade for the EAGLE Marks and products sold under those marks
- The level of sophistication of consumers of Wohali's and Petitioner's products
- The likelihood of confusion and any actual confusion concerning Wohali and Petitioner and their products and marks

Petitioner may seek to introduce the following types of documents as exhibits during Mr.

Lizdas' testimony:

- Documents concerning each of the testimony topics above
- Petitioner's discovery responses and documents from Petitioner's and Wohali's document productions
- Pleadings and other documents filed in litigation between the parties in the TTAB and in the Western District of Wisconsin

3. Jeremy (JT) Griffin, member Wohali Outdoors, LLC.

Petitioner understands that Mr. Griffin's business address and phone number are: 1300 N.

Industrial Blvd., Claremore, OK 74017, (877) 974-4353.

Petitioner may seek testimony from Mr. Griffin on the following topics:

- The selection and adoption of Wohali's STEEL EAGLE and GOLDEN EAGLE marks
- Wohali's use of the STEEL EAGLE and GOLDEN EAGLE marks
- The goods sold and offered for sale under the STEEL EAGLE and GOLDEN EAGLE marks
- Wohali's sales of products under the STEEL EAGLE and GOLDEN EAGLE marks
- Wohali's advertisement and promotion of products sold under the STEEL EAGLE and GOLDEN EAGLE marks
- Prosecution of Wohali's STEEL EAGLE marks in the USPTO
- The litigation between the parties in the Western District of Wisconsin and the TTAB
- The similarity of the STEEL EAGLE and GOLDEN EAGLE marks and Petitioner's EAGLE Marks
- The strength of the STEEL EAGLE and GOLDEN EAGLE marks and Petitioner's EAGLE Marks
- The geographic scope and channels of trade for Wohali's use of its STEEL EAGLE and GOLDEN EAGLE marks and products sold under those marks
- Wohali's knowledge of Petitioner and its marks, and Wohali's intent to trade off the goodwill of Petitioner
- The level of sophistication of consumers of Wohali's products
- The likelihood of confusion and any actual confusion concerning Wohali and Petitioner and their products and marks.

Petitioner may seek to introduce the following types of documents as exhibits during Mr.

Griffin's testimony:

- Documents concerning each of the testimony topics above
- Wohali's discovery responses and documents from Wohali's and the Petitioner's document productions
- Pleadings and other documents filed in litigation between the parties in the TTAB and in the Western District of Wisconsin

Petitioner may not seek testimony on every topic disclosed. Petitioner's disclosures are accurate as of the date of service, based on information available to Petitioner. Petitioner reserves the right to supplement or amend these disclosures based on additional information or material received, including information or material produced or provided by Wohali. Petitioner reserves the right to disclose additional witnesses or exhibits if the need arises for the rebuttal phase.

SHELTERED WINGS, INC.

Date: May 3, 2013

By: /Jennifer L. Gregor/
James D. Peterson
Jennifer L. Gregor
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Madison, Wisconsin 53701-2719
Tel.: (608) 257-3911
Fax: (608) 257-0609
Email: jpeterson@gklaw.com,
jgregor@gklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2013 a true and complete copy of Sheltered Wings, Inc.'s Pretrial Disclosures was served by email and Federal Express (overnight delivery) to the following:

Steven M. Harris (steve.harris@1926blaw.com)
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