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

Proceeding	92055358
Party	Defendant Urban Asphalt Skatewear
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Submission	Motion to Compel Discovery
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Signature	/William R. Samuels/
Date	07/15/2013
Attachments	Motion to Compel - Signed 7.15.13.pdf(4905932 bytes ) Motion to Compel - Affidavit Signed.pdf(1573805 bytes ) Exhibit 1 (2).pdf(2250050 bytes ) Exhibit 2.pdf(99045 bytes )

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

UNDER ARMOUR, INC. )

Petitioner, )

V. )

URBAN ASPHALT SKATEWEAR, LLC )

Registrant. )

) Cancellation No. 92055358

) Mark



) Registration No: 3611357

) Registration Date: April 28, 2009

**REGISTRANTS MOTION TO COMPEL DISCOVERY RESPONSES FROM  
PETITIONER AND SUSPEND PROCEEDINGS**

Pursuant to 37 C.F.R. §2.120 and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §523, Registrant, Urban Asphalt Skatewear, LLC (“Registrant” or “Urban Asphalt”) respectfully requests that the Trademark Trial and Appeal Board (“Board”) enter an order compelling Petitioner, Under Armour, Inc., (“Petitioner”) to provide all information requested in Registrant’s First Set of Interrogatories Nos. 1-19 (“Registrant’s First Set of Interrogatories”) and to provide written responses and produce all documents and things responsive to Registrant’s First Set Of Requests For The Production Of Documents And Things Nos. 1-23 (“Registrant’s First Set of Document Requests”) (collectively, “Registrant’s First Set of Discovery Requests”).

**1. Introduction**

This Motion to Compel is necessitated by the failure of Petitioner to serve any responses whatsoever to Registrant’s First Set of Discovery Requests, which were properly and timely

served. The issues raised are as follows: (1) On November 26, 2012, Registrant timely served Registrant's First Set of Discovery Requests; (2) Petitioner's responses to Registrant's First Set of Discovery Requests were due on December 31, 2012; (3) Petitioner has not provided any response to Registrant's First Set of Discovery Requests; (4) After Petitioner failed to respond to Registrant's First Set of Discovery Requests, and in an effort to resolve this matter, on February 25, 2013 counsel emailed counsel for Petitioner concerning Petitioner's failure to respond to Registrant's First Set of Discovery Requests. On February 26, 2013, Counsel for Petitioner indicated that Petitioner would not provide responses to Registrant's First Set of Discovery Requests while Registrant's Motion for Summary Judgment was pending.

This motion is based on the statement of facts and law set forth below and the Declaration of William R. Samuels filed concurrently herewith and the Exhibits attached hereto.

## **2. Statement of Facts**

This Motion to Compel arises out of the above-caption Cancellation action brought by Petitioner against Registrant. The Registration at issue is U.S. Trade Mark Registration No. 3611357 for "Decals; Paper banners; Printed paper signs; Stickers" in International Class 16, "Hats; Pants; Shoes; T-shirts" in International Class 25, and "Skateboard wheels; Skateboards" in International Class 28 ("Urban Asphalt Mark").

On November 26, 2012, Registrant timely served Registrant's First Set of Discovery Requests on counsel for Petitioner by First Class Mail. Declaration of William R. Samuels ("Samuels Decl.") at ¶ 2, Ex. 1. Accordingly, pursuant to 37 C.F.R. §§2.119(c) and 2.120(a)(3), the deadline for Petitioner to respond to Registrant's First Set of Discovery Requests was December 31, 2012.

On January 8, 2013, eight days after Petitioner's Answer to Registrant's First Set of Discovery Requests was due, Registrant filed a Motion for Summary Judgment. Petitioner did not provide any responses to Registrant's First Set of Discovery Requests prior to the filing of the Motion for Summary Judgment.

On February 25, 2013, counsel for Registrant emailed counsel for Petitioner concerning Petitioner's failure to timely respond to Registrant's First Set of Discovery Documents. On February 26, 2013, Counsel for Petitioner indicated that Petitioner did not intend to respond to Registrant's First Set of Discovery Documents while Registrant's Motion for Summary Judgment was pending. Samuels Decl. at ¶ 3, Ex. 2. As of March 7, 2013, the proceeding was suspended pending the disposition of the Motion for Summary Judgment.

Registrant's Motion for Summary Judgment was denied on July 2, 2013 and proceedings were resumed. Samuels Decl. at ¶ 4, Ex. 2. As of the date of this Motion, Registrant has not received any responses to Registrant's First Set of Discovery Documents. Samuels Decl. at ¶ 5, Ex. 2.

### **3. Motion to Compel**

#### ***a. Legal Standard***

A motion to compel discovery should be granted where, as here, (1) Petitioner failed to provide responses to properly served discovery requests, or produce documents or information responsive to Registrant's First Set of Discovery Requests; (2) Registrant made a good faith attempt to resolve the matter. *See* 37 C.F.R. §2.120(e); TBMP §§523.01-523.02. A motion to compel must be filed prior to the commencement of the first testimony period as originally set or as reset. 37 C.F.R. §2.120(e)(1). If a party fails to timely respond to discovery and is unable to

show that its failure was the result of excusable neglect, such party forfeits its right to object to the discovery requests on their merits. TBMP §527.01(c).

***b. The Motion to Compel is Timely Filed***

Registrant's Motion for Summary Judgment was filed on January 8, 2013 and was subsequently denied by the Board on July 2, 2013. As a result, the Board reset the first testimony period for this matter to July 18, 2013. This Motion to Compel is filed prior to July 18, 2013, and, as such, is timely filed.

***c. Board Should Compel Petitioner to Respond to Registrant First Set of Discovery Requests***

None of the relevant circumstances are subject to dispute: (1) Registrant timely served Registrant's First Set of Discovery Requests on November 26, 2012, (2) Petitioner's responses to Registrants First Set of Discovery Requests were due on December 31, 2012; (3) Applicant did not provide responses or objections to Registrant's First Set of Discovery Requests by the December 31, 2012 deadline; (4) Registrant filed a Motion for Summary Judgment on January 8, 2013 and the matter was suspended pending the disposition of the Motion for Summary Judgment; (5) After Petitioner failed to timely respond to Registrants First Set of Discovery Requests, counsel for the parties corresponded by email on February 25 and 26, 2013, in which counsel for Petitioner indicated that Petitioner would not respond to Registrants First Set of Discovery Requests while Registrants Motion for Summary Judgment was pending; (6) Registrant's Motion for Summary Judgment was denied on July 2, 2013; (7) To date, Petitioner has not responded to Registrant's First Set of Discovery Requests and has failed to produce any documents responsive thereto.

Accordingly, Petitioner's refusal to respond to Registrant's First Set of Discovery Requests in a timely manner prior to Registrant's Motion for Summary Judgment, coupled with counsel for Petitioner's correspondence on February 26, 2013 refusing to provide responses to Registrant's First Set of Discovery Requests because of Registrant's Motion for Summary Judgment, demonstrates Petitioner's failure was not the result of excusable neglect. As such, Petitioner forfeits its right to object to the discovery requests on their merits.

***d. Registrant's Good Faith Effort***

In accordance with 37 C.F.R. §§ 2.120(e) and 2.120(h), Registrant has made a good-faith effort by correspondence to resolve with Petitioner the issues presented in this motion. In particular, as detailed above, Petitioner refused to produce discovery documents because Registrant's Motion for Summary Judgment effectively suspended the proceeding. Samuels Decl. at ¶ 3, Ex. 2. In light of the Board's decision denying Registrant's Motion for Summary Judgment which reset the trial dates and resumed the proceeding, along with Petitioner's failure to provide any response to Registrant's First Set of Discovery Requests, Registrant had no choice but to bring this issue before the Board for resolution prior to the reset first testimony period for this matter.

Accordingly, Registrant is entitled to an Order compelling Petitioner to provide responses to Registrant's First Set of Discovery Requests without objection and compelling Petitioner to produce all documents and things requested in Registrant's First Set of Document Requests.

**4. Motion for Suspension**

Registrant moves to suspend all proceedings pending disposition of Registrant's Motion to Compel. In accordance with 37 C.F.R. §2.120(e)(2), when a party files a motion to compel, the

Board will suspend all matters not germane to the motion. Further, the Board has the discretion to suspend proceedings for good cause shown under 37 C.F.R. §2.117(c) and TBMP §510.03. Suspension of all proceedings pending disposition of this Motion to Compel will save the time and resources of both parties and the Board, and is thus warranted.

**5. Conclusion**

For the reasons set forth above, Registrant respectfully requests that the Board: (1) order Petitioner to provide complete responses, without objection, to Registrant's First Set of Interrogatories and First Set of Document Requests; (2) order Petitioner to produce all documents requested, without objection. Additionally, Registrant respectfully submits that good cause has been shown to suspend all proceedings pending the disposition of Registrant's Motion to Compel.

Dated: July 15, 2013

Respectfully submitted,



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William R. Samuels  
W.R. Samuels Law PLLC  
230 Park Ave., Suite 1000  
New York, NY 10169  
212-808-6502  
Attorneys for Registrant  
Urban Asphalt Skatewear, LLC

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing MOTION TO COMPEL DISCOVERY RESPONSES FROM PETITIONER AND SUSPEND PROCEEDINGS was served on July 15, 2013 by first-class mail, postage prepaid, upon counsel for Petitioner:

Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P  
Attn: Danny M. Awdeh, Attorney for Petitioner, Under Armour Inc.  
901 New York Avenue, NW  
Washington, DC 20001  
danny.awdeh@finnegan.com

docketing@finnegan.com  
larry.white@finnegan.com



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William R. Samuels  
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New York, NY 10169  
212-808-6502  
Attorneys for Registrant  
Urban Asphalt Skatewear, LLC



Summary Judgment was pending. A true and accurate copy of this email correspondence with Mr. Awdeh is attached hereto as Exhibit 2.

4. Registrant's Motion for Summary Judgment was denied on July 2, 2013 and the Cancellation No. 92055358 was resumed on that date, July 2, 2013.
5. To date, Registrant has not received any response to Registrant's First Set of Discovery Requests.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 15, 2013.



---

William R. Samuels  
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230 Park Avenue, Suite 1000  
New York, NY 10169  
212-808-6502  
Attorneys for Registrant  
Urban Asphalt Skatewear, LLC

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing DECLARATION OF WILLIAM R. SAMUELS was served on July 15, 2013 by first-class mail, postage prepaid, upon counsel for Petitioner:

Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P  
Attn: Danny M. Awdeh, Attorney for Petitioner, Under Armour Inc.  
901 New York Avenue, NW  
Washington, DC 20001  
danny.awdeh@finnegan.com  
docketing@finnegan.com  
larry.white@finnegan.com



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230 Park Avenue, Suite 1000  
New York, NY 10169  
212-808-6502  
Attorneys for Registrant  
Urban Asphalt Skatewear, LLC

# EXHIBIT 1

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

<p>UNDER ARMOUR, INC.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>URBAN ASPHALT SKATEWEAR,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No.: 92055358</p> <p>Mark:</p> <div style="text-align: center;"></div> <p>Registration No.: 3611357 Registration Date: April 28, 2009</p>
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**REGISTRANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Registrant Urban Asphalt Skatewear (“Urban Asphalt” or “Registrant”) requests that Petitioner Under Armour Inc. (“Under Armour” or “Petitioner”) serve upon Registrant sworn answers to the interrogatories set forth below within thirty (30) days after the service hereof. These interrogatories are intended to be continuing in nature and any information that may be discovered subsequent to the service of the answers should be brought to Registrant’s attention through supplemental answers within a reasonable time following such discovery.

For the convenience of the Board and the parties, Urban Asphalt requests that each interrogatory be quoted in full immediately preceding the response.

## INSTRUCTIONS

1. These instructions and definitions should be construed to require answers based upon the actual or constructive knowledge of, and information available to, Petitioner as well as your attorneys, representatives, investigators, and others acting on your behalf.

2. No part of an Interrogatory can be left unanswered merely because of an objection interposed to another part of the Interrogatory.

3. If, after exercising due diligence, you cannot answer the following Interrogatories, so state and answer to the extent possible, specifying your inability to answer the remainder. State whatever knowledge or information you have regarding the unanswered portion, and identify and describe in detail what you did in attempting to secure the unknown information. Estimated dates should be given when, but only when, exact dates cannot be supplied. Any estimates should be identified as such. The sources and means of derivation of each estimation should be specifically set forth.

4. If you object to a portion or an aspect of any Interrogatory, state the grounds of your objection with specificity and answer the remainder of the Interrogatory. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, is waived.

5. If, in answering these Interrogatories, you encounter any ambiguities when construing a question, instruction, or definition, Under Armour should assume a reasonable meaning, state the assumed meaning, and respond to the request accordingly.

6. Where a claim of privilege or work product is asserted in responding or objecting to any discovery requested in these Interrogatories or Document Requests, or sub-parts thereof, and an answer or information is not provided on the basis of such assertion, the attorney asserting the privilege must in the answer to the Interrogatory or Document Request, or sub-part thereof, identify the nature of the privilege being claimed (including work product); and provide the following information, unless divulgence of the information would cause disclosure of the allegedly privileged information:

(a) whether any documents exist, and if so, the type of document, the general subject matter of the document, and such other relevant information sufficient to identify the document for a subpoena *duces tecum*.

(b) whether any oral communications took place and, if so, the general subject matter of the communication, the name of the person making the communication, the names of the persons present while the communication was made and the relationship of these persons, and the date and place of communication.

7. If you elect to specify and produce business records in answer to any Interrogatory or Document Request, the specification shall be in sufficient detail so as to permit Registrant to locate and identify the business records from which the answer may be ascertained.

8. For every response to the Interrogatories and Document Request:

(a) Identify every communication relating to the requests.

(b) Identify every person who has knowledge of facts relating to the respective requests, by providing the person's full name, present or last known home address and telephone number, and present or last known title, position, and business affiliation. Once the 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;

(c) Identify every document relating to the request, by providing a specific and individual identification of each document or thing, including the type of document or thing and a brief description consisting of at least (i) the type of document; (ii) its general subject matter; (iii) its date; (iv) its author(s); address(ees), and recipients(s); (v) the present location of each document or thing and each copy thereof; (vi) the name, job title, employer, and address of the custodian of the document or thing; and (vii) if a copy of the document or thing has been previously produced to any party, so state and specifically and individually describe the previously supplied copy by production numbers or otherwise.

(d) Identify the person(s) in charge of the department that created, functioned on or used the document produced, including the persons name, title, employer, and name of the department.

9. Documents and things should be consecutively numbered and the numbers should be preceded by a prefix identifying the documents and electronically stored information

originating from Under Armour.

### **DEFINITIONS**

A. The following definitions apply to all of Urban Asphalt's discovery requests:

(1) "Advertising plan" shall mean a detailed outline of Under Armour, Inc., and its parent or subsidiaries advertising campaign which shows the skateboarding products advertised, what are the advertising objectives, how they will be achieved, the class of purchasers targeted, and what commitment of resources is, was or shall be required

(2) "Class of purchasers" shall mean a group of people who obtains property for money or other valuable consideration that have common characteristics, attributes or qualities.

(3) "Clearance" shall mean the authorization or certification of a thing clear of any objection or reservation.

(4) "Commerce" signifies commerce that the U.S. Congress may lawfully regulate. The phrase "use in commerce" is defined in Section 45 of the Trademark Act, 15 U.S.C. §1127, to mean that a mark shall be deemed to be in use in commerce "(1) on goods when (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

(5) "Communication" means the transmittal of information from a party to another party or parties by any means.

(6) "Contention" shall mean a point advanced or maintained in a debate or argument, an assertion, especially one maintained in argument.

(7) "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a) and includes, without limitation, any and all information in tangible or other form, whether typed, recorded, printed, computerized, filmed, reproduced by any process, or written or produced by hand, or whether translated from the original language or form, and whether an original, draft, master, duplicate or copy, or notated version thereof, that is in Under Armour's possession, custody, or control. A draft or non-identical copy is a separate document within the meaning of this term.

(8) “Fact” shall mean an actual or alleged event or circumstances; any act or condition of things assumed as happening or existing, something that actually exists; or an aspect of reality.

(9) “Industry athlete” shall mean a person who is a professional skateboarder, who competes in skateboarding events and/or skateboarding competitions and is sponsored, endorsed, or affiliated with a brand, trademark, company, or trade name promoting skateboarding products.

(10) “Investigate” shall mean an inquiry into a matter systematically, to make a topic or thing the subject of an inquiry.

(11) “Mark” means any trademark, trade name, commercial name, service mark, collective mark, certification mark, domain name, and other indicators covered by 15 U.S.C. § 1127, including all designations used to identify or distinguish one's goods and/or services.

(12) “Media schedule” shall mean a program or plan that identifies the media channels (e.g., TV, Internet, Newspapers, Magazines and the like) used in an advertising campaign, and specifies insertion or broadcast dates, positions, and duration of the messages.

(13) “Negate” or “negating” shall mean to deny or to nullify/to render ineffective.

(14) “Objection” shall mean a formal statement or meeting minutes opposing something that has or will occur that is accompanied by a statement of one or more grounds in support of the objection.

(15) “Person” is defined as any natural person or any business, legal, or governmental entity or association.

(16) “Possession”, “custody” or “control” shall mean the fact of having or holding property in one’s power, including a subsidiary, employee, independent contractor or third party of Under Armour, Inc.; the care and control of a thing or person for inspection, preservation or security; the direct or indirect power to direct, manage or oversee a person or thing.

(17) “Products” refers to both goods and services in association with any and all Under Armour and Urban Asphalt application(s), registration(s), and mark(s).

(18) “Regarding” or “referring or relating to” means constituting, comprising, concerning, mentioning, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, discussing, either directly or indirectly, in whole or in part, and should be given the broadest possible scope consistent with the Federal Rules of Civil Procedure.

(19) “Registrant” or “Petitioner” as well as a party's full or abbreviated name (e.g., “Urban Asphalt” or “Under Armour”), or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, contract employees, partners, corporate parent, predecessors in interest, successors in interest, licensees, franchisees, U.S. importers, U.S. distributors, subsidiaries, and affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the cancellation proceeding.

(20) “Report” shall mean a detailed account or statement of a proceeding, meeting, investigation or survey.

(21) “State” or “state all facts,” “identify all documents,” and “identify all communications” mean to state all facts discoverable under Fed. R. Civ. P. 26(b) that are known to Under Armour. When used in reference to a contention, “state,” “state all facts,” “identify all documents,” and “identify all communications” shall include all facts, documents, and communications negating as well as supporting the contention. When used in reference to a contention, “identify each person” shall include persons having knowledge of facts negating, as well as supporting, the contention.

(22) “Selection” shall mean the act or action or fact of choosing someone or something as being the best or most suitable from a number or group by fitness or preference.

(23) “Skate park” shall mean a purpose-built recreational environment made for skateboarding, which may contain half-pipes, quarter-pipes, spine transfers, handrails, funboxes, vert ramps, pyramids, full pipes, pools, bowls and any number of other objects used to perform skateboarding tricks.

(24) “Skateboarding event” or “skateboarding competition” shall mean a public event, usually affiliated with or endorsed by an entity, which may or may not be televised, where skateboarders compete amongst each other by performing skateboarding tricks at a skate park for a prize, whether of monetary value or not.

(25) “Skateboarding products” shall refer to:

(a) the parts and pieces comprising a skateboard, including the board (also

known as a deck), the trucks (an axle assembly connecting the wheels to the board), and the wheels;

(b) hats, pants, helmets, shoes, and t-shirts designed for, used by, and marketed towards persons participating in the sport of skateboarding;

(c) decals, paper banners, printed paper signs and stickers used in conjunction with skateboarding, including the promotion of a mark at a skate park, skateboarding competitions or skateboarding events.

(26) “Sponsored”, “endorse”, “endorsements” and/or “affiliated” and/or affiliations” shall mean an association between a brand, trademark, company, or trade name, and a skateboarding event and/or competition or industry athlete where the brand, trademark, company or trade name elicits itself as a member, producer or recommender of skateboarding products or skate parks at a skateboarding event, skateboard competition or an industry athlete.

(27) “Survey” shall mean a general consideration of something, an appraisal; to query a class of purchasers or non-interested persons. Non-interested persons shall exclude owners of, person’s employed by, persons performing professional services for, and independent contractors of Under Armour, Inc. and its parent or subsidiary companies.

(28) “Time period” shall mean the date of first use until the present or the date of the mark no longer being in continuous use of the mark in commerce as defined by 15 U.S.C. §1127.

(29) The “Under Armour Mark(s)” refers to Under Armour’s mark(s) in block-letter *or* stylized form in any respective United States Patent and Trademark Office application or registration owned by or controlled by Under Armour Inc., its parent or subsidiary. The form will be specifically referenced in each request to avoid vagueness or confusion.

(30) The “Urban Asphalt Mark(s)” refers UA Urban Asphalt mark, which is the subject of Trademark Registration No. 3611357.

B. The following rules of construction shall apply to all of Registrant’s discovery requests:

(1) The terms “all” and “each” shall be constructed as all and each.

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

(3) The use of the singular form of any word shall include within its meaning the plural form of the word, and vice versa.

(4) The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

(5) The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

Identify the date that Under Armour first used “UA” in block-letter form in commerce.

### **INTERROGATORY NO. 2**

Identify the date that Under Armour first used “UA” in stylized form in commerce.

### **INTERROGATORY NO. 3**

Identify all Marks that Under Armour has used in commerce or registered comprised of or containing "UA" in the block-letter, non-stylized form.

### **INTERROGATORY NO. 4**

Describe in detail the circumstances surrounding the selection and clearance of the Under Armour Mark in block-letter, non-stylized form, including, but not limited to, the reason(s) Under Armour selected the mark in block-letter, non-stylized form, when Under Armour selected the mark in block-letter, non-stylized form, all persons involved in the selection and clearance of the mark(s), the person in charge of the selection process, and all other marks considered.

### **INTERROGATORY NO.5**

Describe in detail the circumstances surrounding the selection and clearance of the Under Armour Mark in stylized form, including but not limited to the reason(s) Under Armour selected the mark in stylized form, when Under Armour selected the mark in stylized form, all persons involved in the selection and clearance of the mark(s), and all other marks considered.

**INTERROGATORY NO.6**

Describe in detail the circumstances under which Under Armour first became aware of Urban Asphalt, Urban Asphalt's Mark, and Urban Asphalt's products, including but not limited to the date when Under Armour became aware of each of the foregoing, and the person(s) most knowledgeable of the foregoing.

**INTERROGATORY NO.7**

Identify each of the products ever promoted, offered, or sold by Petitioner in connection with the Under Armour Mark(s) in block-letter, non-stylized form.

**INTERROGATORY NO.8**

State the time period(s) in which the Under Armour Mark(s) in block-letter, non-stylized form have been used for each of the Petitioner's products, including the date of first use anywhere and date of first use in commerce.

**INTERROGATORY NO.9**

State the time period(s) in which the Under Armour first sold stickers bearing the Under Armour Mark(s) in the following forms:

- (a) Block-letter, non-stylized form, and/or
- (b) Stylized form.

**INTERROGATORY NO.10**

Describe the classes of purchasers to whom Under Armour has marketed or sold and intends to market or sell each of the Under Armour products.

**INTERROGATORY NO.11**

Describe in detail the first time that Under Armour created products intended to be used in the skateboarding industry, namely with skateboarding products and/or regarding any other products relating to skateboarding.

**INTERROGATORY NO. 12**

Describe in detail the first time that Under Armour sponsored, or otherwise has been affiliated with, a skateboarding event, skateboarding competition, or skateboard industry athlete.

**INTERROGATORY NO. 13**

Describe in detail all inquiries, investigations, reports, and comments that Under Armour has received regarding Urban Asphalt (including, without limitation, Registrant's marks, products, stores, and Web sites).

**INTERROGATORY NO. 14**

Describe in detail all investigations, studies, surveys, or reports conducted by or on behalf of Under Armour relating to the parties' marks or products at issue in this proceeding.

**INTERROGATORY NO. 15**

Identify all investigations, searches, and reports concerning the availability of the Under Armour Mark(s), namely, the mark in block-letter, non-stylized form.

**INTERROGATORY NO. 16**

For each of the Under Armour products bearing the Under Armour Mark(s) in block-letter, non-stylized form, namely, skateboarding products, identify:

- a) the date the product was first released and sold in commerce; and
- b) the price for each product; and
- c) the annual sales in units and dollar volume for each product.

**INTERROGATORY NO. 17**

For each of the Under Armour products bearing the Under Armour Mark(s) in stylized form, namely, stickers, skateboards, and skateboard wheels, identify:

- a) the date the product was first released and sold in commerce; and
- b) the price for each product; and
- c) the annual sales in units and dollar volume for each product.

**INTERROGATORY NO.18**

Identify all types of media (e.g., social media, newspapers, magazines, trade journals, direct mail, radio, television, and the Internet) in which Under Armour has advertised and/or has ever

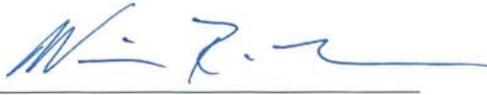
intended to advertise each of the Under Armour products, namely skateboarding products.

**INTERROGATORY NO.19**

Identify the person(s) most familiar with the use of the Under Armour Mark(s) with the Under Armour products, including their sale and promotion.

Respectfully Submitted,

Dates: November 26, 2012

By: 

William R. Samuels  
Nadia Muñoz  
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Tel. 212-808-6502

Attorneys for Registrant

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES was served by first class mail, postage prepaid, on this 26 day of November 2012, upon counsel for Under Armour:

Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.  
Attn: Danny M. Awdeh, Attorney for Petitioner, Under Armour Inc.  
901 New York Avenue, NW  
Washington, DC 20001  
danny.awdeh@finnegan.com  
docketing@finnegan.com  
larry.white@finnegan.com

By:   
\_\_\_\_\_  
William R. Samuels

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

<p>UNDER ARMOUR, INC.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>URBAN ASPHALT SKATEWEAR,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No.: 92055358</p> <p>Mark:</p> <div style="text-align: center;"></div> <p>Registration No.: 3611357 Registration Date: April 28, 2009</p>
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**REGISTRANT'S FIRST SET OF REQUESTS FOR  
THE PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Registrant Urban Asphalt Skatewear (“Urban Asphalt” or “Registrant”) serves this First Set of Requests for the Production of Documents and Things on Petitioner Under Armour, Inc. (“Under Armour” or “Petitioner”) and requests that Under Armour produce the requested documents at the offices of Urban Asphalt’s counsel, W.R. Samuels Law PLLC, 230 Park Avenue, Suite 1000, New York, NY, 10169, within thirty (30) days of service.

For the convenience of the Board and the parties, Urban Asphalt requests that each document request be quoted in full immediately preceding the response.

**DEFINITIONS AND INSTRUCTIONS**

Urban Asphalt incorporates by reference the definitions and instructions set forth in Registrant's First Set of Interrogatories.

## **REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

### **REQUEST NO. 1**

All documents identified or requested to be identified in Petitioner's First Set of Interrogatories.

### **REQUEST NO. 2**

All documents referring or relating to Under Armour's conception, selection, adoption, and clearance of the Under Armour Mark(s) in block-letter, non-stylized form, including, but not limited to, all communications, surveys, searches, studies, research, investigations, reports, polls, and opinions.

### **REQUEST NO. 3**

All documents referring or relating to Under Armour's conception, selection, adoption, and clearance of the Under Armour Mark(s) in stylized form, including, but not limited to, all communications, surveys, searches, studies, research, investigations, reports, polls, and opinions.

### **REQUEST NO. 4**

All documents referring or relating to Under Armour's conception, selection, adoption, and clearance of the Under Armour Mark(s) in both block-letter, non-stylized form and stylized form, including, but not limited to, all communications, surveys, searches, studies, research, investigations, reports, polls, and opinions in relation to Under Armour Mark(s) and Under Armour products deemed relevant to the skateboarding industry.

### **REQUEST NO. 5**

Documents sufficient to identify all other marks (other than the Under Armour Mark(s)) ever considered for use with the Under Armour products.

### **REQUEST NO. 6**

Documents sufficient to show or identify each of the Under Armour products, specifically, products common to the skateboarding industry, namely, skateboarding products, and any other

**REQUEST NO. 13**

Documents sufficient to identify all Internet Web sites and blogs owned or operated by or on behalf of Under Armour that contain or display the Under Armour Mark(s) or refer or relate to the Under Armour products, and representative pages from each such Internet Web site(s) or blog(s) showing the Under Armour Mark(s) or products, namely, as related to skateboarding, skateboarding products, skateboarding events or promotions, skateboarding sponsorships including industry athlete endorsements, or any other related skateboard-industry-focused Web sites and blogs.

**REQUEST NO.14**

All documents comprising, referring, or relating to trademark searches, reports, research, or investigations concerning the Under Armour Mark(s) in block letter, non-stylized form.

**REQUEST NO.15**

All documents referring or relating to any communications, research, investigations, reports, polls, surveys, opinions, or studies regarding consumer or customer perception of the Under Armour Mark(s) in relation to whether or not the Under Armour Mark(s) and Under Armour products are used or preferred by consumers within the skateboarding industry (e.g., skateboarder(s), skateboard industry retailers, skateboard industry athlete(s), or other relevant skateboard industry participants).

**REQUEST NO.16**

All documents referring or relating to objections Under Armour has made to any third party's use and/or registration of any marks, names, or designations comprised of or containing "UA" in block-letter, non-stylized form or any variation thereof.

**REQUEST NO.17**

All documents referring or relating to objections Under Armour has received from any third party regarding the use and/or registration of the Under Armour Mark(s) and/or

“UA” in block-letter, non-stylized form.

**REQUEST NO. 18**

All documents in Under Armour’s possession, custody, or control that refer or relate to Urban Asphalt, Urban Asphalt’s Mark, and/or any of Urban Asphalt's products.

**REQUEST NO. 19**

All documents referring or relating to all communications, investigations, surveys, searches, studies, research, reports, polls, focus groups, or opinions concerning actual confusion or the likelihood of confusion by or between the parties, their marks, and/or their products.

**REQUEST NO. 20**

All documents referring or relating to any and all instances in which a person has confused the parties, their marks, and/or their products.

**REQUEST NO. 21**

All documents comprised of or referring or relating to all inquires/comments Under Armour has received regarding Urban Asphalt, any of Urban Asphalt 's marks, and/or any of Urban Asphalt 's products.

**REQUEST NO. 22**

All documents referring or relating to the circumstances under which Under Armour first became aware of Urban Asphalt, Urban Asphalt’s Mark, and any of Urban Asphalt’s products, including the date when and how Under Armour became aware of the foregoing and the persons most knowledgeable about the foregoing.

**REQUEST NO. 23**

To the extent not already produced in response to these requests, all documents identified and referenced in Under Armour’s initial disclosures.

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES was served by first class mail, postage prepaid, on this 26th of November 2012, upon counsel for Under Armour, Inc.:

Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.  
Attn: Danny M. Awdeh, Attorney for Petitioner, Under Armour Inc.  
901 New York Avenue, NW  
Washington, DC 20001  
danny.awdeh@finnegan.com  
docketing@finnegan.com  
larry.white@finnegan.com

By:   
\_\_\_\_\_  
William R. Samuels

# EXHIBIT 2

**Staff: W.R. Samuels Law**

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**From:** Bill Samuels <bill@wrsamuelslaw.com>  
**Sent:** Wednesday, February 27, 2013 12:18 AM  
**To:** Awdeh, Danny  
**Cc:** W.R.S. Staff; David Rodrigues; Rettew, Doug; White, Larry  
**Subject:** Re: Discovery Requests: Under Armour v. Urban Asphalt, Cancellation No. 92055358 (Your Ref. 8253-8076; Our Ref. No. TMO7)

Dear Danny,

Thanks for your e-mail. I appreciate your explanation and your clarity regarding deadlines and the suspension of proceedings.

Feel free to contact me any time.

Best regards,  
Bill

William R. Samuels | W.R. Samuels Law PLLC  
P: 212-808-6502 | C: 646-801-7565 | F: 917-522-9615  
230 Park Ave., Suite 1000 | New York, NY 10169 bill@wrsamuelslaw.com | www.wrsamuelslaw.com

On Feb 26, 2013, at 7:40 PM, "Awdeh, Danny" <Danny.Awdeh@finnegan.com> wrote:

- > Thank you for your email.
- > As you will recall, the parties agreed to an extension of time until January 30, 2013 for Under Armour to respond to discovery. Under Armour understood that Urban Asphalt's filing of its motion for summary judgment on January 8, 2013 effectively suspended all proceedings and Under Armour's obligation to respond to outstanding discovery by the January 30 deadline.
- >
- > 37 C.F.R. 2.127(d) states that when any party files a motion for summary judgment "the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion . . ."
- >
- > As Section 528.03 of the TBMP states, though the filing of a motion for summary judgment "does not, in and of itself, automatically suspend proceedings in a case," the Board has found that the "filing of a motion for summary judgment provides a party with good cause for not complying with an otherwise outstanding obligation, for example, responding to discovery requests."
- >
- > If you disagree with this understanding, please let us know and we will request a telephone conference with the TTAB to resolve the suspension issue.
- >
- > On Feb 25, 2013, at 3:03 PM, "Bill Samuels" <bill@wrsamuelslaw.com<mailto:bill@wrsamuelslaw.com>> wrote:
- >
- > Dear Danny,
- > We never received your client's responses to our discovery requests. Please let me know when we should expect them.
- >
- > Best regards,
- > Bill
- >
- >

>  
>  
> William R. Samuels | W.R. Samuels Law PLLC  
> P: 212-808-6502 | C: 646-801-7565 | F: 917-522-9615  
> 230 Park Ave., Suite 1000 | New York, NY 10169  
> bill@wrsamuelslaw.com<mailto:bill@wrsamuelslaw.com> |  
> www.wrsamuelslaw.com<http://www.wrsamuelslaw.com>

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> addressed and may contain information that is privileged, confidential, proprietary, or otherwise exempt from disclosure  
under applicable law. If you believe you have received this message in error, please advise the sender by return e-mail and  
delete it from your mailbox. Thank you.