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

Proceeding	92056168
Party	Defendant Quentin Davis
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Submission	Answer
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Signature	/Quentin Davis/
Date	05/06/2014
Attachments	REGISTRANTS RESPONSE TO PLAINTIFFS 4_22_2014 MOTION FOR SANCTIONS.pdf(595792 bytes)

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

IN THE MATTER OF REGISTRATION NO.: **4,106,459**

For the mark **LEGENDARY**

Date of Issue: February 28, 2012

LEGEND PICTURES, LLC,)	
)	
Plaintiff,)	
)	
v.)	Proceeding No. <u>92056168</u>
)	
)	
QUENTIN DAVIS)	
Registrant.)	
)	

**REGISTRANT’S RESPONSE TO PLAINTIFF’S 4/22/2014 MOTION FOR
SANCTIONS**

The Registrant does hereby respond to and oppose Plaintiff’s 4/22/2014 Motion.

In the Plaintiff’s Motion, it seeks sanctions against me for allegations including, failure to comply with required civil procedure and alleged willful obstruction of discovery. The Plaintiff has asserted its claims several times in the Motion;

“...[the Registrant] continues to withhold documents on the claim of privilege while **refusing to produce a privilege document log.**”

“... **[the Registrant] did not produce a privilege log;** 2) has repeatedly claimed pro se status... Respondent is withholding documents by claiming ‘privilege’ and ‘confidentiality.’”

“**[the Registrant has refused] to produce a privilege document log while claiming the work product and attorney client privileges...**”

(Please see respectively, page 2 paragraph 3, page 7 paragraph 2, & page 8, 3rd bullet, of Plaintiff’s 4/22/2014 Motion. Underline and bold added by the Registrant for specific emphasis).

I did make the Plaintiff and the Board expressly aware in my 3/20/2014 Response to the Plaintiff that due to my pro se status, my omission of privilege log was for lack of knowledge (I didn't know what a privilege log was).

I will respectfully ask the Board to note that the Plaintiff has not only conveyed its proficient knowledge in the requirements of civil procedure regarding privilege by citing Fed. R. Civ. P. 26(b)(5) in its 3/10/2014 motion, but did also express the importance of the privilege log with respect to civil requirements and discovery in its 4/4/2014 brief;

“...the privileged document log is critical as in [the Registrant's] answers, Davis claims the attorney client and work product privilege...”

(Please see page 3 footnote 3 of Plaintiff's 4/4/2014 brief. Underline and bold added by the Registrant for specific emphasis).

The Plaintiff's citation of Fed. R. Civ. P. 26(b)(5) reveals the following;

(A) Information Withheld. **When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection** as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) **describe the nature of the documents, communications, or tangible things not produced or disclosed**—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

FACTS CONVEYING PLAINTIFF'S INELIGIBILITY FOR SANCTIONS

I will respectfully ask the Board to note that though my discovery requests were extremely concise, the **Plaintiff's responses** were all but blanketed with objections and **did contain at least ten (10) claims of privilege** (including 5 claims of attorney client privilege and 5 claims of work product privilege), **all of which were unaccompanied by any privilege log whatsoever.**

(Please see Exhibit A - Plaintiff's Answers and Objections to Registrants Interrogatories and accompanying Document Requests. Most specifically Plaintiff's responses to interrogatories and accompanying document requests #8, 10, and Plaintiff's response to Registrant's document request #12.)

The Plaintiff has itself asserted the importance of compliance with the requirements of privilege to discovery, has conveyed its thorough knowledge of these requirements, has listed the guidelines of civil procedure requiring this compliance, and yet has **willfully** failed on its own behalf to comply, thereby **intentionally** obstructing discovery to the Registrant. Despite all of

these undisputable facts, the Plaintiff would still seek sanctions against me for unknowingly omitting the same documents of which the **Plaintiff is fully familiar and has still willfully failed to produce.** In light of these fantastically audacious actions, the Plaintiff appears to find itself utterly infallible.

CASE CITATIONS CONVEYING PLAINTIFF'S INELIGIBILITY FOR SANCTIONS DUE TO UNCLEAN HANDS

The Plaintiff is not currently, nor has been since its intentional obstruction of discovery to the Registrant, in a position to seek sanctions against the Registrant for any mistake that the Plaintiff may allege the Registrant to have made. The Plaintiff's actions are absolutely unethical, inequitable, and **in fact the Plaintiff is guilty of unclean hands in this matter and proceeding.**

The following two equitable maxims underlie the doctrine of clean hands:

(1) **he who seeks equity must do equity**; and (2) **he who comes into equity must come with clean hands.**

See, e.g., 27A Am. Jur. 2d, Equity §§119, 126 (1996)

[unclean hands comprises] **“a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.”**

Precision Instrument Mfg. Co. v. Automotive Maintenance Mach.Co., 324 U.S. 806, 814–15 (1945)

“It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with the controversy to which he is a party, will repel him from the forum whose very foundation is good conscience.”;

Mas v. Coca-Cola Co., 163 F.2d at 507–8.

Moreover, **the doctrine does not call for a balancing of the misconduct on both sides of the case.** Rather, **the conduct of the party seeking relief** and its effect on the judicial process **are the sole considerations.**

E.g. , Alcatel USA, Inc. v. DGI Techs., Inc., 166 F.3d 772, 794 n.92 (5th Cir. 1999); Mas, 163 F.2d at 510–11; United Cities Gas Co. v. Brock Exploration Co., 995 F.Supp. 1284, 1296 n.11 (D. Kan. 1998).

(All underline and bold added by the Registrant for specific emphasis)

CONCLUSION

The Plaintiff has itself asserted the importance of compliance with the requirements of privilege to discovery, has conveyed its thorough knowledge of these requirements, has listed the guidelines of civil procedure requiring this compliance, and yet has **willfully** failed on its own behalf to comply, thereby **intentionally** obstructing discovery to the Registrant. Despite all of these **undisputable** facts, the Plaintiff would **still** seek sanctions against me for unknowingly omitting the same documents of which the **Plaintiff is fully familiar and has still willfully failed to produce.** In light of these fantastically audacious actions, the Plaintiff appears to find itself utterly infallible.

The Plaintiff is not currently, nor has been since its intentional obstruction of discovery to the Registrant, in a position to seek sanctions against the Registrant for any mistake that the Plaintiff may allege the Registrant to have made. The Plaintiff's actions are absolutely unethical, inequitable, and **in fact the Plaintiff is guilty of unclean hands in this matter and proceeding.**

In light of the Plaintiff's undeniable and willful misconduct, the Registrant does respectfully request that the Board dismiss all requests for sanctions made on behalf of the Plaintiff. The Registrant does also respectfully request that the Board permit an extension of discovery on behalf of the Registrant.

Respectfully Submitted,

/Quentin Davis/
Quentin Davis – Registrant
P.O. Box 47893
Tampa, Florida 33646

May 6, 2014
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May 2014, a true and complete copy of the foregoing **REGISTRANT'S RESPONSE TO PLAINTIFF'S 4/22/2014 MOTION FOR SANCTIONS** was served to Plaintiff via electronic mail to:

Carla Calcagno at e-mail addresses:

carla.calcagno@calcagnolaw.com

and

cccagno@gmail.com

Calcagno Law
1250 24th Street NW, Suite 300
Washington, DC 20037

/Gloria Walters/

Gloria Walters
Administrative Assistant to the Registrant
P.O. Box 47893
Tampa, Florida 33646

EXHIBIT A

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

LEGEND PICTURES, LLC,)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92056168
)	
QUENTIN DAVIS,)	
)	
Defendant)	

PETITIONER’S ANSWERS AND OBJECTIONS TO DEFENDANT’S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and 37 C.F.R. 2.120(d)(1),
Petitioner hereby responds to Defendant’s First Set of Interrogatories and Document Requests.

GENERAL OBJECTIONS

Petitioner asserts the following General Objections to Defendant’s First Set of Interrogatories and Document Requests:

A. Petitioner objects to the definitions and instructions, including but not limited to the definitions of “documents” and “people” set forth in Defendant’s Interrogatories and Document Request to the extent that they are inconsistent with Petitioner’s duties under the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

B. Petitioner objects to the definition of “Registrant” as the legal owner of the Registration No. 4106459 for the mark “Legendary” as calling for a legal conclusion not yet established by the evidence.

C. Petitioner objects to the definition of “Petitioner” as referring to “Legend Pictures, LLC and any person hired or performing on their behalf.” Petitioner is defined as Legend Pictures, LLC.

D. Petitioner objects to Defendant’s discovery requests to the extent they purport to impose upon Petitioner any burden to respond beyond the scope of response required by the Federal Rules of Civil Procedure or Trademark Trial and Appeal Board Manual of Practice.

E. Petitioner objects and preserves its right to object to Defendant’s discovery requests to the extent that they request information protected from disclosure by the attorney-client and/or work product privileges under either the Trademark Trial and Appeal Board Manual of Procedure or Federal Rules of Civil Procedure or protected by any other applicable privilege or protection. Petitioner’s general objection, and any subsequent specific objection, are not to be taken as an admission that any information or documents exist that would be responsive to Defendant’s discovery requests.

F. Petitioner objects to Defendant’s discovery requests to the extent that they require Petitioner to respond on behalf of other persons or entities. The responses set forth herein are made solely on behalf of and are based on the existing records of Petitioner.

G. Petitioner’s responses to Defendant’s discovery requests are made after a reasonable inquiry into the relevant facts within the time allowed for responding to Defendant’s discovery requests. Petitioner expressly reserves the right to supplement, amend, correct, or modify its respective responses or objections as ongoing discovery efforts reveal further documents or information.

H. Petitioner’s decision to provide information or documents notwithstanding the objectionable nature of any of the definitions or instructions, or of any of the requests themselves, should not

be construed as: a) a stipulation that the material is relevant; b) a waiver of the General Objections or the objections asserted in response to specific requests; or c) an agreement that requests for similar documents of information in this or any other related proceedings will be treated in a similar manner.

I. Petitioner objects to Defendant's discovery requests to the extent that they are vague, ambiguous, overly broad, unduly burdensome, or call for legal conclusions to which no response is required.

J. Each of the foregoing General Objections is incorporated by reference in response to each of Defendant's discovery requests, whether or not any additional objections are made with respect to a specific request. Any response by Petitioner to the following discovery requests is specifically made without waiver of these General Objections.

INTERROGATORY RESPONSES

Interrogatory No. 1

List the release date of the first motion picture in which Petitioner began advertising itself as "Legendary Pictures".

RESPONSE: At least as early as 2005.

Interrogatory No. 2

Identify the motion picture that pertains to Interrogatory No. 1.

RESPONSE: "Batman Begins."

Interrogatory No. 3

List the release date of the first motion picture in which Petitioner began advertising itself as only “Legendary”.

RESPONSE: Petitioner objects to this interrogatory as vague as to “only Legendary”. Subject to this objection and without waiving it, and to the extent it is understood, to the best of Petitioner’s knowledge and belief, at least as early as 2005.

Interrogatory No. 4

Identify the motion picture that pertains to Interrogatory No. 3.

RESPONSE: See Response to Interrogatory No. 3, incorporated herein by reference. Subject to this objection and without waiving it, and to the extent understood, “Batman Begins.”

Interrogatory No. 5

Identify the first document in which Petitioner began advertising itself as only “Legendary”.

RESPONSE: Petitioner objects to this interrogatory as vague as to “only Legendary”. Subject to this objection and without waiving it, and to the extent this interrogatory is understood, Petitioner will produce this document to the extent that it still exists.

Interrogatory No. 6

Identify all media outlets that have referred to Petitioner as only “Legendary”.

RESPONSE: Petitioner objects to this interrogatory as vague as to “only Legendary” and “media outlets.” Petitioner objects to this interrogatory as potentially overly broad and unduly burdensome given that Petitioner is an entertainment company publicized in thousands of media communications and advertisements throughout the United States each year. Subject to and without waiving these objections and to the extent this interrogatory is understood, Petitioner’s “media outlets” for itself and its “LEGENDARY” services and goods include packaging, films, newspapers, magazines, television commercials, radio commercials, online and mobile social media sites, signage, posters and billboards.

Interrogatory No. 7

Identify all documents in media outlets referring to Petitioner as only “Legendary”.

RESPONSE: See objection to Interrogatory No. 6, which is incorporated by reference. Subject to and without waiving these objections and to the extent this interrogatory is understood, Petitioner will produce representative documents.

Interrogatory No. 8

Explain why Petitioner altered counsel during the discovery phase of proceeding #92056168.

RESPONSE: Petitioner objects to this interrogatory as seeking information protected by the work product and the attorney client privileges and as neither relevant nor likely to result in the discovery of any admissible evidence.

Interrogatory No. 9

Explain why Registrant's trademark was unopposed by Petitioner during the opposition period of Registration #4106459.

RESPONSE: Petitioner was unaware of Registrant's application.

Interrogatory No. 10

Explain why Petitioner's Registrations #3656926 & #3621043 were altered from "Legendary Pictures" to "Legendary" after Petitioner was made aware of Registrant's established mark.

RESPONSE: Petitioner objects to this interrogatory to the extent it seeks information protected by the work product and attorney client privileges, and that it assumes facts not in evidence. Subject to and without waiving this objection, Petitioner will produce non-privileged documents sufficient to explain the reasons for the Voluntary Amendments.

Interrogatory No. 11

Identify any actual confusion concerning the Petitioner's marks and Registration #4106459.

RESPONSE: To the best of Petitioner's knowledge and belief at this present time, none. Petitioner reserves its right to supplement this response upon further investigation and inquiry.

Interrogatory No. 12

Identify any proof of fraud concerning the Registrant.

RESPONSE: Registrant has failed to provide any proof that Registrant performed numerous services listed in its registration certificate. Further, publicly available sources fail to disclose such use.

Respectfully Submitted,

Date May 28, 2013

By__ /*Carla C. Calcagno*/___(as to objections)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC,)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92056168
)	
QUENTIN DAVIS,)	
)	
Defendant)	

**PETITIONER’S RESPONSES TO DEFENDANT’S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS**

GENERAL OBJECTIONS

Petitioner hereby incorporates by reference its General Objections to Defendant’s First Set of Interrogatories and Document Requests:

DOCUMENT REQUEST RESPONSES

Document Request 1

Send all documents evidencing and relating to Interrogatory No.1

RESPONSE: Petitioner objects to this interrogatory as overly broad and unduly burdensome. “Batman Begins” was one of the largest grossing movies of its year, whose release was publicized and reported in numerous advertisements and publications throughout the United States. Subject to and without waiving these objections, Petitioner will produce documents sufficient to evidence Petitioner’s responses to this request.

Document Request 2

Send all documents evidencing and relating to Interrogatory No.2

RESPONSE: See response to Document Request No 1, which Petitioner incorporates by reference.

Document Request 3

Send all documents evidencing and relating to Interrogatory No.3

RESPONSE: See responses to Interrogatory No. 3 and Document Request No 1, which Petitioner incorporates by reference.

Document Request 4

Send all documents evidencing and relating to Interrogatory No.4

RESPONSE: See responses to Interrogatory No. 4 and Document Request No 1, which Petitioner incorporates by reference.

Document Request 5

Send all documents evidencing and relating to Interrogatory No.5

RESPONSE: See Response to Interrogatory No. 5, which Petitioner incorporates by reference. .

Document Request 6

Send all documents evidencing and relating to Interrogatory No.6

RESPONSE: See Response to Interrogatory No. 6, which Petitioner incorporates by reference. Petitioner objects to this request as vague and overly broad and unduly burdensome. Subject to and without waiving this objection, Petitioner will produce representative documents reflecting the advertising media through which Petitioner has authorized and promoted its LEGENDARY mark and name.

Document Request 7

Send all documents evidencing and relating to Interrogatory No.7

RESPONSE: Petitioner objects to this request as Petitioner objects to this interrogatory as vague and overly broad and unduly burdensome. See Response to Interrogatory No. 7, which is incorporated by reference. Subject to and without waiving these objections, and to the extent this Request is understood, Petitioner will produce representative documents. .

Document Request 8

Send all documents evidencing and relating to Interrogatory No.8

RESPONSE: Petitioner objects to this document request as seeking information protected by the attorney-client and work product privileges, and as neither relevant nor likely to lead to the discovery of admissible evidence.

Document Request 9

Send all documents evidencing and relating to Interrogatory No.9

RESPONSE: None exist.

Document Request 10

Send all documents evidencing and relating to Interrogatory No.10

RESPONSE: Petitioner objects to this request to the extent it seeks documents protected by the attorney-client or work product privileges. Subject to and without waiving these objections, Petitioner will produce responsive documents to the extent that they are not protected by the attorney client or work product privileges sufficient to explain the reasons for the Voluntary Amendments.

Document Request 11

Send all documents evidencing and relating to Interrogatory No.11

RESPONSE: None as yet are available.

Document Request 12

Send all documents evidencing and relating to Interrogatory No.12

RESPONSE: Petitioner objects to the extent this document request seeks documents protected by the attorney client or work product privileges. Subject to and without waiving this objection, no non-privileged documents as yet exist as Registrant has failed and refused to produce any documents or respond to any interrogatories to date.

Respectfully Submitted,

Date May 28, 2013

By__/Carla C. Calcagno/____
Carla C. Calcagno, Esq.
Janet G. Ricciuti, Esq.
Calcagno Law PLLC
2300 M Street, N.W.
Suite 800
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Telephone: (202) 973-2880
Attorneys for Legend Pictures, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May 2013, true and accurate copies of **PETITIONER'S ANSWERS AND OBJECTIONS TO DEFENDANT'S FIRST SET OF INTERROGATORIES; PETITIONER'S RESPONSES TO DEFENDANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS, and WILLHITE JURAT FOR DAVIS FIRST SET OF INTERROGATORIES** was served by agreement of the parties by emailing copies of the same to Defendant at the following email addresses:

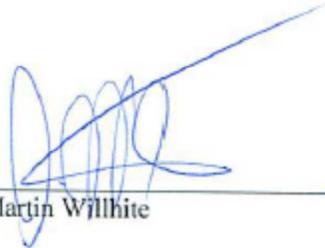
nevisbaby@hotmail.com

and

tharilest@yahoo.com

I declare under penalty of perjury that the foregoing answers to Interrogatories 1-12 are true and correct based upon my personal knowledge, or are believed to be true and correct based upon information supplied by corporate records.

Date: 5-23-2013

By: 
Martin Willhite