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

Proceeding	92057280
Party	Defendant Meenaxi Enterprise, Inc.
Correspondence Address	JASON L DEFRANCESCO BAKER & RANNELLS PA 575 ROUTE 28, SUITE 102 RARITAN, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, k.hnasko@br-tmlaw.com, jld@br-tmlaw.com
Submission	Motion to Compel Discovery
Filer's Name	Jason DeFrancesco
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Signature	/Jason DeFrancesco/
Date	04/08/2014
Attachments	Motion to Compel.pdf(109762 bytes) Affidavit of JLD.pdf(92729 bytes) Exhibits.pdf(1779950 bytes)

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

In the Matter of Regis No. 4,206,026
Mark: BOURNVITA

Cadbury UK, Ltd.,	:	Cancellation No. 92057280
	:	
Petitioner,	:	
	:	
v.	:	
	:	
Meenaxi Enterprises, Inc.,	:	
	:	
Registrant.	:	

REGISTRANT’S MOTION TO COMPEL DISCOVERY

Pursuant to 37 CFR Section 2.120(e) and TBMP Sections 523.01 and 523.02, Registrant, Meenaxi Enterprises, Inc. (“Meenaxi”), by and through its counsel, hereby requests an order compelling Petitioner, Cadbury UK., Ltd. (“Cadbury”) to respond in full and without objection, to Registrant’s First Set of Requests for the Production of Documents and Things at the office of Baker & Rannells, PA, 575 Route 28, Suite 102, Raritan, NJ 08869.

FACTUAL AND PROCEDURAL HISTORY

On November 18, 2013, Meenaxi served its First Set of Requests for the Production of Documents and Things (“Document Requests”) and First Set of Interrogatories. *See Declaration of Jason L. DeFrancesco in Support of Registrant’s Motion to Compel* (“DeFrancesco Decl.”) at ¶5. At the time the Discovery Requests were served, Meenaxi was represented by the law firm of Kenyon & Kenyon, LLP (“Kenyon”). On December 9, 2013, Kenyon agreed to grant Cadbury a 30-day extension to respond to discovery. *See id.* at ¶5, Exhibit C. On January 13, 2014, Kenyon agreed to grant a second extension of time to Cadbury to respond to discovery. *See id.* at

¶8, Exhibit D. On February 7, 2014, Kenyon agreed to grant a third extension of time to Cadbury to respond to discovery. *See id.* at ¶9, Exhibit E. On February 18, 2014, Cadbury requested Kenyon grant it a fourth extension of time to respond to discovery, however, it was unable to as the undersigned law firm filed its appearance the same day. *See id.* at ¶10, Exhibit F. Meenaxi, however, agreed to a fourth extension of time for Petitioner to reply to discovery, to wit, responses would be due on April 3, 2014. *See id.* at ¶12, Exhibit G.

As of the date of filing this motion, Cadbury has not responded to Discovery. It merely objected to Interrogatories and failed and or refused to respond to the Document Requests. *See id.* at ¶13, Exhibit H. (To narrow the issues presented herein, Meenaxi withdraws its Interrogatory Nos. 1-38 and focuses this motion solely on Petitioner's gamesmanship with regards to the Documents Requests. Meenaxi highlights the fact that Petitioner sat on the discovery never with an intention to respond, but to wait until the deadline arose to state it was not going to answer due to a very minor typo).

ARGUMENT

A motion to compel may be filed when a party fails to produce requested documents. *See, e.g.*, 37 C.F.R. § 2.120(e)(1). If the non-moving party cannot show its neglect of its discovery obligations was excusable, the Board generally should order discovery responses be provided without objection. *See No Fear, Inc. v. Rule*, 54 USPQ 2d 1551, 1554 (TTAB 2000). Here, Petitioner cannot show that its neglect of its discovery obligations was excusable.

Registrant's Document Request did contain a minor Typographical Error, but the error was obvious, not misleading, and not fatal to the request.

According to Petitioner, because the first page of the Discovery Requests has a typo (incorrectly identifying Venture Execution Partners, Inc.) the discovery is fatally flawed and Petitioner does not have to reply. This position is nonsense. The existence of a single and obvious typographical error does not constitute good reason or excusable neglect to discount the discovery request and or its efficacy. *See for e.g., Ratzel v. Sidel*, 2006 U.S. Dist. LEXIS 73323 (E.D. Wis. Oct. 6, 2006)(A typographical error is not relevant, especially in light of the fact that a party is fully aware a filing is directed to him); *see also, EANE Corp. v. Town of Auburn*, 176 F.R.D. 433, 438 (D. Mass. 1997)(allowing a motion to compel despite a typographical error).

Furthermore, any confusion is unjustifiable or waived, because,

- Definitions provided in discovery define “Petitioner” as “Cadbury UK Limited, and any predecessor or successor corporation or entity; any parent, subsidiary, or affiliated company; and any attorney, officer, director, agent, representative or employee of Cadbury UK Limited or any of the other foregoing entities.” *See DeFrancesco Decl.* at ¶6, and instructions in Exhibits A and B;

- The style and or title page of the discovery clearly identifies Petitioner as “Cadbury UK Limited”. *See id.*;

- No objection was, or has ever been made by Petitioner regarding any alleged misunderstanding or refusal to accept discovery due to a minor typographical error; and

- Four (4) extensions of time were requested by the Petitioner identifying the discovery and never excluding Document Requests. *See id.* at ¶¶7-10 and 12.

Suffice it to say, it is disingenuous for Petitioner to sit on the discovery until now - after the time to respond has expired - and first state that the document requests originally served

November 18, 2013 should be re-served because of a minor typo.¹ Petitioner was fully aware the discovery was served to it and that it had to reply.

Petitioner's actions are gamesmanship and an attempt to gain an unfair advantage in the proceedings solely to detriment of Meenaxi.

Meenaxi hopes the Board will recognize its hardship and not look kindly to Petitioner's calculated failure to respond to discovery that was due last year. Although, it may have appeared to Meenaxi that Petitioner's requests for extensions over the past four months were earnest, the fact of the matter is they were not: Petitioner sat on the Document Requests never with an intention to respond. And, because Petitioner cannot show this intentional failure was "excusable neglect," it should forfeit its right to object to the discovery request. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551(TTAB 2000). Accordingly, Meenaxi requests the Board find Petitioner acted unreasonably in its refusal to produce documents pursuant to 37 CFR § 2.120(d)(2), and in doing so, order Petitioner to directly mail all responsive documents to its new counsel: Baker & Rannells, PA, 575 Route 28 Suite 102, Raritan, New Jersey 08869. *See No Fear*, 54 USPQ2d 1551, 1555 (TTAB 2000) (having waived its right to object to discovery requests, applicant was not entitled to raise objection regarding place of production of documents).

CONCLUSION

Registrant's failure to participate in discovery has been unreasonable and solely for gamesmanship causing severe prejudice to Meenaxi. Because Registrant's actions are inexcusable, Meenaxi should be entitled to the following relief,

¹ Or else, according to Petitioner, "the Board would [not] look kindly on a motion to compel under these circumstances." See DeFrancesco Decl. at ¶16, Exhibit J.

(A) An Order compelling Petitioner to immediately produce all responsive documents without objection; and

(B) Deliver copies of said all responsive documents to the undersigned at 575 Route 28, Suite 102, Raritan, NJ 08869.

Dated: April 8, 2014

Respectfully submitted for Registrant
Meenaxi Enterprises, Inc.

/Jason DeFrancesco/

By:

Jason L. DeFrancesco
BAKER and RANNELLS, PA
575 Route 28, Suite 102
Raritan, New Jersey 08869
Tel (908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Registrant's Motion to Compel in the above-captioned matter was sent by first class mail on this the 8th day of April, 2014 to counsel for Registrant at the following,

Robert A Becker
FROSS, ZELNICK, LEHRMAN & ZISSU, PC
866 United Nations Plaza
New York, NY 10017

/Jason DeFrancesco/
Jason L. DeFrancesco

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

In the Matter of Regis No. 4,206,026
Mark: BOURNVITA

CADBURY UK, LTD.,	:	Cancellation No. 92057280
	:	
Petitioner,	:	
v.	:	
	:	
MEENAXI ENTERPRISES, INC.,	:	
	:	
Registrant.	:	
	:	

**DECLARATION OF JASON L. DE FRANCESCO IN SUPPORT OF
REGISTRANT’S MOTION TO COMPEL**

I, JASON L. DE FRANCESCO, declare as follows:

1. I am over the age of 18 and I am an associate with Baker & Rannells, PA, attorneys for Registrant, Meenaxi Enterprises, Inc. (“Meenaxi”) in the above captioned proceeding.
2. Except as otherwise stated, I make this declaration on personal knowledge in support of Registrant’s Motion to Compel to demonstrate the good faith efforts that were undertaken to obtain the requested discovery from Cadbury UK, Ltd., (“Petitioner”) before making the instant motion.
3. The Exhibits attached hereto are true and correct copies of documents that were exchanged by the parties during the course of this proceeding.
4. On June 3, 2013, Petitioner commenced this action against Meenaxi, seeking cancellation of U.S. Reg. No. 4,206,026 for the mark BOURNVITA.

5. On November 18, 2013, Meenaxi served its First Set of Interrogatories (“Interrogatories”) and its First Set of Requests for the Production of Documents and Things (“Document Requests”). The title of said discovery identified the Petitioner as Cadbury UK Limited and included the required certificate of service which provided that discovery was “served by hand delivery to Petitioner’s counsel.” *See Interrogatories and Document Requests* attached as Exhibits A and B, respectively.

6. The DEFINITIONS AND INSTRUCTIONS portion of the Document Requests referenced and incorporated the definitions in Meenaxi’s Interrogatories, which define “Petitioner” as “Cadbury UK Limited, and any predecessor or successor corporation or entity; any parent, subsidiary, or affiliated company; and any attorney, officer, director, agent, representative or employee of Cadbury UK Limited or any of the other foregoing entities.” *See Exhibit A*, p. 2 at ¶(a).

7. On December 9, 2013, Meenaxi (via former counsel, Kenyon & Kenyon, LLP) agreed to grant Petitioner an additional 30-day extension to respond to the outstanding discovery. As provided by attorney Barbara Solomon, “if we serve any discovery on Meenaxi before we respond to the outstanding requests your client will have 60 days to respond.” *See e-mail trail* attached as Exhibit C.¹

8. On January 13, 2014, Meenaxi (via former counsel) agreed to grant Petitioner a second, additional 30-day extension to respond to the outstanding discovery “i.e., Cadbury’s responses will be due on February 18 (accounting for the holiday weekend) and Meenaxi would have 60 days to respond to any discovery served on it before February 18.” *See e-mail trail* attached as Exhibit D.

¹ e-mails attached hereto in ¶¶ 7-10 regard communications between Petitioner and Kenyon & Kenyon, LLP. The e-mails were directly received by the undersigned from Kenyon & Kenyon, LLP and have not been modified in anyway.

9. On February 7, 2014, Meenaxi (via former counsel) agreed to grant Petitioner a third, additional 30-day extension to respond to the outstanding discovery “[a]s per our conversation just now, our client’s discovery responses will be due 3/4/14.” *See e-mail* attached as Exhibit E.

10. On February 18, 2014 Petitioner e-mailed Meenaxi’s former counsel, Kenyon & Kenyon, LLP, requesting yet a fourth extension to respond stating “we think it would make sense for you to agree to a further 30-day extension of our client’s time to respond to your client’s discovery requests.” *See e-mail* attached as Exhibit F.

11. On February 18, 2014, the law firm of Baker & Rannells, PA newly appeared in the instant matter replacing Meenaxi former counsel Kenyon & Kenyon. (*See # 9, D APPEARANCE / POWER OF ATTORNEY*, filed 02/18/2014.)

12. On February 21, Meenaxi granted a fourth, additional 30-day extension of time for Petitioner to respond to discovery (wherein Petitioner notes “[Meenaxi] agreed that our client’s responses to discovery requests would be due 4/3.” *See e-mail* attached as Exhibit G.

13. On Monday, April 8, 2014, the undersigned received just Petitioner’s Objections to Registrant’s First Set of Interrogatories, nothing more. Petitioner did not respond to the Interrogatories and it did not serve any response to the Discovery Requests. *See Objections to Interrogatories* attached as Exhibit H.

14. On the same day, the undersigned e-mailed Petitioner requesting substantive responses and provided that the communication was “[i]n effort to obtain an answer without Board intervention, this communication represents continuing good-faith attempts to confer with a party failing to act.” Petitioner’s counsel suggested a phone call which was attended to on the same day as filing this motion. *See e-mail chain* attached as Exhibit I.

15. During the phone call, Petitioner's counsel advised that the Interrogatories count exceeded what was allowed and that the Document Requests did not identify the Petitioner, so they do not have to be responded to. (Notwithstanding the fact that the discovery was received by hand, or that it identified Petitioner as Cadbury UK Limited in the title, or that it defined "Petitioner" as Cadbury UK Limited in the instructions, or that Petitioner never raised the issue before, Petitioner stated it would not respond).

16. By follow-up e-mail, the undersigned agreed to withdraw the Interrogatories but advised that a motion to compel production of documents would be forthcoming. In response counsel for Petitioner stated that "it would be cheaper and quicker for both parties if you simply re-serve your document requests with the error corrected, rather than engage in motion practice. And for that reason, I do not believe the Board would look kindly on a motion to compel in these circumstances." *See e-mail chain* attached as Exhibit J.

17. Accordingly, as detailed herein and in the accompanying Motion, the parties have been unable to reach a resolution and as such, Meenaxi now moves the Board to compel Petitioner to comply with the outstanding discovery requests, and in doing so, find that Petitioner acted with intent to deceive, without any inexcusable neglect, and as such forfeited its right to object to the Document Requests; and, that it shall immediately produce photocopies of all documents to the offices of the undersigned.

I HEREBY CERTIFY that the above statements are true. I am aware that if any of the foregoing statements are false, I am subject to the penalty of perjury pursuant to 28 U.S.C. 1746.

Dated: April 8, 2014

/Jason DeFrancesco/
JASON DEFRANCESCO

Exhibit A

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

CADBURY UK LIMITED,

Petitioner,

v.

MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No.: 92/057,280

Mark: BOURNVITA

Registration No.: 4,206,026

REGISTRANT MEENAXI ENTERPRISE, INC.'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Section 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office, Registrant Meenaxi Enterprise, Inc. (hereinafter "Registrant") hereby propounds the following written Interrogatories to be answered by Cadbury UK Limited (hereinafter "Petitioner"), separately and under oath, by serving written responses to the offices of Kenyon & Kenyon LLP, 1 Broadway, New York, New York 10004, within thirty (30) days of the date of service of this *First Set of Interrogatories*, pursuant to the attached Definitions and Instructions. These Interrogatories are continuing in nature, and impose upon Petitioner the obligations set forth in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

These Interrogatories, and *Registrant Meenaxi Enterprise, Inc.'s First Set of Document Requests* being served concurrently herewith, are subject to the definitions and instructions set forth below:

(a) The term “Petitioner” shall refer to Cadbury UK Limited, and any predecessor or successor corporation or entity; any parent, subsidiary, or affiliated company; and any attorney, officer, director, agent, representative or employee of Cadbury UK Limited or any of the other foregoing entities.

(b) The term “Registrant” shall refer to Meenaxi Enterprise, Inc., and any predecessor or successor corporation or entity; any parent, subsidiary or affiliated company; and any attorney, officer, director, agent, representative or employee of Meenaxi Enterprise, Inc. or any of the other foregoing entities.

(c) The term “Petition” shall refer to the *Petition for Cancellation* filed by Petitioner in this Cancellation No. 92/057,280.

(d) The term “bear” or “bearing” in connection with “designation,” “mark,” “Mark,” “trademark,” or “trade name,” as in, for example, “bearing the designation,” or “bearing the mark,” shall refer to the designation appearing on the product itself, on tags or labels for the product, on packaging for the product, on displays associated with the product, or in any other way used in connection with the product that would be considered “use” under United States trademark laws.

(e) The term the “Registration” shall refer to United States Trademark Registration No. 4,206,026, which is the subject of the above-captioned cancellation proceeding.

(f) “Good” or “goods” shall be construed to include a “service” or “services.”

(g) The term “documents” shall include, without limitation, all “writings” or “photographs” of any kind, as those terms are defined in Rule 1001(1) and (2) of the Federal Rules of Evidence (hereinafter the “FRE”), including the “original” of any such documents, as that term is defined in FRE 1001(3), drafts, and non-identical copies (whether differing from the

original by reason of notations made on the copies or otherwise), and any “duplicate” of said documents, as that term is defined in FRE 1001(4), and shall further include, without limitation, the following items, whether printed or recorded, or reproduced by any electronic or mechanical means or process, or written or produced by hand: writings; drawings; graphs, charts; photographs; phone records; correspondence; notes; telegrams; telefaxes, facsimile transmissions; agreements; drafts of agreements; memoranda; summaries of records of telephone conversations; instructions to employees or independent contractors; opinions; training manuals; reports; laboratory and engineering reports or notebooks; field test reports; studies; diaries; plans; brochures; compact discs and all packaging and inserts therefor; advertisements; marketing and promotional materials; specifications; bids; proposals; contracts; trademark applications; trademark registrations; surveys; copyright applications; copyright registrations; patents; patent applications; computer program specifications including input or output specifications; job orders; bills of lading; purchase orders; invoices; material specifications; investigative reports; data compilations from which information can be obtained, or translated, if necessary, through detection devices into reasonably useable form; computer programs; source listings; electronic mail; data processing storage media; and computer printouts.

(h) The term “relating to” shall include, without limitation, referring to, responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, evidencing, reflecting, analyzing, constituting, and forming a basis for.

(i) The term “person,” as well as any pronoun referring thereto, shall include, but shall not be limited to, any natural person, group, investigatory body, governmental unit, governmental agency, governmental department, corporation, association, partnership, limited

partnership, joint venture, sole proprietorship, business, business entity, organization, or institution.

(j) The term “entity” shall refer to a person, organization, corporation, partnership, business, association, or other enterprise carrying on a trade or business.

(k) The term “communication” shall refer to the transmittal of information in the form of facts, opinions, ideas, inquiries, or otherwise, whether oral or written or in electronic form.

(l) Any word written herein in the singular shall be construed as plural, or vice versa, when necessary to facilitate an inclusive, comprehensive, and exhaustive answer to the discovery request.

(m) “And” and “or” shall be construed disjunctively and/or conjunctively as necessary in order to bring within the scope of the discovery request all possible responses which might otherwise be construed to be outside its scope.

(n) “Identify” when used herein with respect to a person, shall require a response that includes, without limitation:

(i) the person’s full name;

(ii) the person’s employer, business position, and business address at the relevant time; and

(iii) the person’s last known employer, business position, business address, telephone numbers, facsimile number, and email address.

(o) “Identify” or “state” when used herein with respect to a business entity, shall require a response that includes, without limitation:

(i) the entity’s full name;

- (ii) the entity's principal place of business;
- (iii) the nature or type of entity;
- (iv) the state of incorporation or registration, if applicable; and
- (v) the principal business conducted by such entity.

(p) "Identify" or "state" when used herein with respect to a document or communication, shall require a response that includes, without limitation:

- (i) the general character, nature, or type of the document or communication;
- (ii) the date of the document or communication, or if it has no date or the date is uncertain, the approximate date of its preparation or occurrence;
- (iii) the title of the document;
- (iv) the full name(s) of the author(s) and all addressee(s) and recipient(s) of the document or communication;
- (v) a summary of the document's or communication's subject matter;
- (vi) the present location and custodian of the document or communication or any copies thereof; and
- (vii) a file number or other identifying mark or code, if applicable.

(q) These are continuing interrogatories and requests, and therefore require further and supplemental responses by Petitioner as it acquires or locates additional information responsive to these interrogatories and requests.

(r) If any document(s) requested to be identified or produced has been destroyed, a response shall require the following additional information as to each such document:

- (i) the date of destruction of the document;
- (ii) the reason for the destruction of the document;

- (iii) the identity of the person who destroyed the document; and
 - (iv) the identity of any person who directed that the document be destroyed.
- (s) If any of these discovery requests cannot be answered in full, respond to the fullest extent possible, specifying the reasons for the inability to respond to the remainder of the discovery request, and state whatever information or knowledge is available concerning the unanswered portion.

If any responsive information, communication or document is withheld on the basis of any claim of privilege, a response shall require a general description of the substance or subject matter of the information, communication, or document withheld, a statement of the privilege being invoked or claimed and the basis therefor, and identification all persons who have had access to such information, communication or document. Where applicable, a response shall also require the date of the document and identification of the author or sender, addressee, and all recipients thereof, by name, address, title, and business affiliation.

INTERROGATORIES

Interrogatory No. 1

Identify and describe in detail the organization and structure of Petitioner including, without limitation, the corporate chain of command, corporate divisions, its membership, identification of those persons having managerial and/or executive positions, their titles, their duties and responsibilities, and their superiors.

Interrogatory No. 2

Identify and describe in detail Petitioner's corporate status, and the effective date(s) and expiration date(s) of same.

Interrogatory No. 3

Identify Petitioner's officers.

Interrogatory No. 4

Describe in detail how Petitioner: (i) has used Petitioner's alleged BOURNVITA mark in the United States; (ii) currently uses Petitioner's alleged BOURNVITA mark in the United States; and (iii) intends to use Petitioner's alleged BOURNVITA mark in the United States in the future.

Interrogatory No. 5

Identify the date upon which Petitioner first used Petitioner's alleged BOURNVITA mark in commerce in the United States and the extent and nature of that use.

Interrogatory No. 6

Identify every retailer or outlet through which Petitioner's goods bearing Petitioner's alleged BOURNVITA mark were sold or offered for sale in the United States and the dates those goods were offered for sale.

Interrogatory No. 7

Identify the person(s) most knowledgeable concerning the marketing and sale of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Interrogatory No. 8

State the total number of units sold to date of each of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Interrogatory No. 9

For Petitioner's goods bearing Petitioner's alleged BOURNVITA mark, identify the geographic location(s) in which such goods were sold or offered for sale in the United States and the dates those goods were offered for sale.

Interrogatory No. 10

Identify each publication or type of publication in which any advertisement for or promotion of Petitioner's alleged BOURNVITA mark has appeared in the United States in connection with Petitioner's goods.

Interrogatory No. 11

Identify the initial publication or release dates of all advertisements or promotions identified in Interrogatory No. 10

Interrogatory No. 12

Identify each television station, radio station, or Internet website on which any advertisement for Petitioner's alleged BOURNVITA mark has been broadcasted or exhibited in the United States.

Interrogatory No. 13

Identify the initial publication or release dates of all advertisements identified in Interrogatory No. 12.

Interrogatory No. 14

State whether Petitioner has ever challenged any third party regarding use in the United States of its alleged BOURNVITA mark or other designation which Petitioner considered to be in conflict with Petitioner's right to use its alleged BOURNVITA mark, and if so:

- (a) identify the third party;
- (b) describe the designation used and the goods or services in connection with which it is or was used;
- (c) describe the nature of the action taken by the Petitioner;
- (d) describe the results, if any, of said action; and
- (e) identify and locate all documents relating thereto.

Interrogatory No. 15

Identify all witnesses you expect to call during this cancellation proceeding and state for each such witness:

- (a) the subject matter upon which he/she is expected to testify;
- (b) the substance of the facts and opinions to which he/she is expected to testify; and
- (c) the grounds for each opinion that he/she is expected to give.

Interrogatory No. 16

Identify the dates and particulars of any and all applications and approvals of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark to and by any and all applicable federal and/or state governmental and/or regulatory authorities, including, without limitation, the United States Food and Drug Administration and United States and Customs and Border Protection and any applicable state regulatory body.

Interrogatory No. 17

Identify the dates and particulars of any and all third party licenses and/or other agreements relating to Petitioner's goods bearing Petitioner's alleged BOURNVITA mark, including, without limitation, any and all third party relationships relating to the manufacture, labeling, advertising, sale, and/or shipment of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark.

Interrogatory No. 18

Identify the dates and particulars of any and all assignments and licenses relating to Petitioner's alleged BOURNVITA mark, including any and all related correspondence.

Interrogatory No. 19

Identify the persons with the most knowledge concerning Petitioner's first use of Petitioner's alleged BOURNVITA mark in the United States.

Interrogatory No. 20

Identify all persons involved in selection, adoption and use of Petitioner's alleged BOURNVITA mark on Petitioner's goods bearing Petitioner's alleged BOURNVITA mark, and detail their involvement in the decision(s).

Interrogatory No. 21

Identify the person(s) with the most knowledge concerning the marketing, promotion, and sale of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Interrogatory No. 22

Identify the manufacturer(s) of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark and their locations.

Interrogatory No. 23

Identify all distributors and/or retailers to whom Petitioner has sold and/or distributed Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United states.

Interrogatory No. 24

Identify the number of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in inventory in the United States as of the date of filing of the Petition.

Interrogatory No. 25

Identify and explain the present and any former corporate relationship between Petitioner and Cadbury India Limited.

Interrogatory No. 26

Identify and explain the present and any former corporate relationship between Petitioner and Cadbury plc.

Interrogatory No. 27

Identify and explain the present and any former corporate relationship between Petitioner and Cadbury Schweppes plc.

Interrogatory No. 28

Identify and explain the present and any former corporate relationship between Petitioner and Mondelēz International Inc.

Interrogatory No. 29

Identify and explain the present and any former corporate relationship between Petitioner and Kraft Foods Inc.

Interrogatory No. 30

Identify and explain the present and any former corporate relationship between Petitioner and Dr. Pepper Snapple Group, Inc.

Interrogatory No. 31

Identify all entities that “have been authorized by Petitioner to use the BOURNVITA mark” in the United States as alleged in Paragraph 6 of the Petition for Cancellation.

Interrogatory No. 32

Identify Petitioner’s use of Petitioner’s alleged BOURNVITA mark in the United States as alleged in Paragraph 6 of the Petition for Cancellation.

Interrogatory No. 33

Explain why Petitioner did not submit evidence of use of the trademark that was the subject of United States Trademark Application Serial No. 78/044,467, which resulted in its abandonment.

Interrogatory No. 34

Explain why Petitioner did not submit evidence of use of the trademark that was the subject of United States Trademark Application Serial No. 78/634,834, which resulted in its abandonment.

Interrogatory No. 35

Explain why United States Trademark Application Serial No. 86/093,210 was filed by Mondelēz International Inc. on Petitioner's behalf.

Interrogatory No. 36

Explain why Petitioner is not the owner of the domain name <cadburybournvita.com>, as evidenced by public WHOIS records.

Interrogatory No. 37

Explain why Petitioner is not the owner of the domain name <bournvita.com>, as evidenced by public WHOIS records.

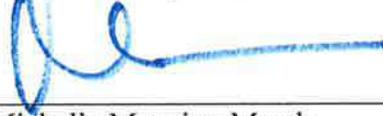
Interrogatory No. 38

Identify all persons who furnished any information used in responding to each of the foregoing interrogatories and to *Registrant Inc.'s First Set of Document Requests*, and for each person so identified, indicate the discovery request for which such person furnished information, and identify all documents referred to or considered in responding to the foregoing interrogatories.

Dated: November 18, 2013

KENYON & KENYON LLP

*Attorneys for Registrant
Meenaxi Enterprise, Inc.*



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Registrant Meenaxi Enterprise, Inc.'s First Set of Interrogatories* was served by hand delivery to Petitioner's counsel of record on the 18th day of November, 2013, at the following address:

Robert A. Becker, Esq.
Fross Zelnick Lehrman & Zissu PC
866 United Nations Plaza
New York, New York 10017



Natasha Sardesai-Grant

Exhibit B

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

CADBURY UK LIMITED,

Petitioner,

v.

MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No.: 92/057,280

Mark: BOURNVITA

Registration No.: 4,206,026

**REGISTRANT MEENAXI ENTERPRISE, INC.'S FIRST SET OF
REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Section 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office, Petitioner Meenaxi Enterprise, Inc. (hereinafter "Registrant") hereby requests that Petitioner Venture Execution Partners, Inc. (hereinafter "Petitioner") produce the documents and things listed below for inspection and copying at the offices of Kenyon & Kenyon LLP, 1 Broadway, New York, New York 10004, within thirty (30) days of the date of service of this *First Set of Requests for the Production of Documents and Things*, pursuant to the attached Definitions and Instructions. These requests are continuing in nature, and impose upon Petitioner the obligations as stated in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

The definitions and instructions contained in *Registrant Meenaxi Enterprise, Inc.'s First Set of Interrogatories* are hereby incorporated by reference as though fully set forth herein.

The following additional instructions are to be used with respect to each request contained herein:

(a) Petitioner is required to furnish responsive documents within its possession, custody, or control, or within the possession, custody, or control of its attorneys, agents, representatives, or employees.

(b) Each response shall be made based upon Petitioner's entire knowledge and acquired with due diligence from all available sources, including without limitation all information in Petitioner's possession or that of its agents, representatives, or attorneys.

(c) If Petitioner cannot respond to a request in full after exercising the due diligence necessary to secure the applicable documents and/or things, Petitioner shall respond to the extent possible, and set forth and describe in detail all efforts to ascertain the requested documents and/or things.

(d) If Petitioner qualifies a response in any manner, Petitioner shall set forth the exact nature and extent of the qualification.

(e) Wherever reasonably practical, please produce documents in such a manner as will facilitate their identification with the particular request or category of requests to which they are responsive, pursuant to the provisions of Rule 34(b) of the Federal Rules of Civil Procedure.

DOCUMENT REQUESTS

Request No. 1

Any and all documents and things relating to the organization and structure of Petitioner, including, without limitation, the corporate chain of command, corporate divisions, its membership, identification of those persons having managerial and/or executive positions, their titles, their duties and responsibilities, their superiors, and any and all organizational charts or other documents which reflect the organization and operational structure of Petitioner or its predecessors.

Request No. 2

Any and all documents and things relating to Petitioner's corporate status, and the effective date(s) and expiration date(s) of same.

Request No. 3

Any and all documents and things identifying Petitioner's officers.

Request No. 4

Any and all documents and things describing how Petitioner: (i) has used Petitioner's alleged BOURNVITA mark in the United States; (ii) currently uses Petitioner's alleged BOURNVITA mark in the United States; and (iii) intends to use Petitioner's alleged BOURNVITA mark in the United States in the future.

Request No. 5

Any and all documents and things evidencing the alleged first date(s) of use of Petitioner's alleged BOURNVITA mark in connection with Petitioner's goods in the United States.

Request No. 6

Any and all documents and things relating to Petitioner's channel(s) of trade in connection with the sale of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Request No. 7

Any and all documents and things identifying or listing retailers and outlets in the United States which have sold or offered for sale Petitioner's goods bearing Petitioner's alleged BOURNVITA mark.

Request No. 8

All invoices and purchase orders for Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Request No. 9

Any and all documents and things evidencing or relating to shipments of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Request No. 10

Any and all documents and things evidencing or relating to the total sales of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Request No. 11

Any and all documents and things evidencing or relating to the total number of units of Petitioner's goods sold under Petitioner's alleged BOURNVITA mark in the United States.

Request No. 12

Any and all documents and things evidencing the geographic location(s) at which Petitioner's goods have been sold under Petitioner's alleged BOURNVITA mark in the United States.

Request No. 13

All annual, quarterly, monthly, and weekly sales reports and/or royalty reports for each of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark.

Request No. 14

Representative samples of documents and things relating to the marketing, promotion, or advertising of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Request No. 15

Representative samples of all printed publications, television exhibitions, radio exhibitions, Internet exhibitions, and website pages relating to the advertising or promotion of Petitioner's alleged BOURNVITA mark in connection with Petitioner's goods in the United States.

Request No. 16

Any and all documents and things relating to the publication or release dates of all advertisements or promotions of which representative samples are requested in Request Nos. 14 and 15.

Request No. 17

Representative samples of each type of label, container, carton, tag, invoice, sticker, embossing, box, bag, packaging, silkscreen, or other means by which Petitioner has used Petitioner's alleged BOURNVITA mark in connection with Petitioner's goods in the United States.

Request No. 18

Any and all documents and things relating to any time Petitioner has ever challenged a third party regarding the use of Petitioner's alleged BOURNVITA mark or other designation in which Petitioner considered such mark to be in conflict with Petitioner's alleged BOURNVITA mark in the United States, including, without limitation:

- (a) Any and all documents and things identifying the third party;
 - (b) Any and all documents and things describing the designation used and the goods or services in connection with which it is or was used;
 - (c) Any and all documents and things describing the nature of the action taken by the Petitioner, including, without limitation any and all protest letters sent by Petitioner to any third party regarding the use of any trademark or other designation in which Petitioner considered such mark to be in conflict with Petitioner's right to use a mark or designation;
 - (d) Any and all documents and things describing the results, if any, of said action;
- and

(e) Any and all documents and things identifying and locating all documents relating thereto.

Request No. 19

Any and all assignments and licenses relating to Petitioner's alleged BOURNVITA mark in the United States, including any related correspondence.

Request No. 20

Any and all documents and things relating to any and all third party licenses and/or other agreements relating to Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States, including, without limitation, any and all third party relationships relating to the manufacture, labeling, advertising, sale, and/or shipment of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark.

Request No. 21

Any and all documents and things concerning Registrant.

Request No. 22

Any and all documents and things concerning the first use, timing, and scope of the use of Petitioner's alleged BOURNVITA mark in the United States.

Request No. 23

Any and all documents and things concerning Petitioner's advertising, promotional, and marketing efforts involving use of Petitioner's alleged BOURNVITA mark in connection with Petitioner's goods in the United States, including but not limited to a sample of each advertisement and any other promotional or marketing materials featuring Petitioner's alleged BOURNVITA mark

Request No. 24

Samples or photographs of Petitioner's goods that make use of Petitioner's alleged BOURNVITA mark in the United States.

Request No. 25

Any and all documents and things concerning sales information for Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Request No. 26

Any and all documents and things sufficient to identify the total number of Petitioner's goods, by quarter and by product name, sold and/or distributed to consumers by Petitioner or others under Petitioner's alleged BOURNVITA mark in the United States.

Request No. 27

Any and all documents and things sufficient to identify the amount of money and/or compensation that Petitioner has received, by quarter and by product name, for Petitioner's goods sold and/or distributed by Petitioner under Petitioner's alleged BOURNVITA mark in the United States.

Request No. 28

Any and all documents and things concerning the acquisition, purchase, or procurement of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States, including purchase orders, payment receipts, delivery receipts, lading documents, and email communications.

Request No. 29

Any and all documents and things sufficient to identify all persons involved in the distribution or sale of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark to consumers in the United States.

Request No. 30

Any and all documents and things sufficient to identify the date of the first distribution or sale of Petitioner's goods bearing Petitioner's alleged BOURNVITA mark in the United States.

Request No. 31

Any and all documents and things related to Cadbury plc's demerger of its Americas beverages business, which it announced on or about October 10, 2007.

Request No. 32

Any and all documents and things related to Dr. Pepper Snapple Group, Inc.

Request No. 33

Any and all agreements by and between Petitioner and the entities that "have been authorized by Petitioner to use the BOURNVITA mark" in the United States as alleged in Paragraph 6 of the Petition for Cancellation.

Request No. 34

Any and all correspondence by and between Petitioner and the entities that "have been authorized by Petitioner to use the BOURNVITA mark" in the United States as alleged in Paragraph 6 of the Petition for Cancellation.

Request No. 35

Any and all documents and things related to Petitioner's use of the BOURNVITA mark in the United States as alleged in Paragraph 6 of the Petition for Cancellation.

Request No. 36

Any and all documents and things related to United States Trademark Application Serial No. 78/044,467, including without limitation, documents related to the abandonment of such application for failure to submit evidence of use to the United States Patent and Trademark Office.

Request No. 37

Any and all documents and things related to United States Trademark Application Serial No. 78/634,834, including without limitation, documents related to the abandonment of such application for failure to submit evidence of use to the United States Patent and Trademark Office.

Request No. 38

Any and all documents and things related to United States Trademark Application Serial No. 86/093,210.

Request No. 39

Any and all documents and things related to the domain name <cadburybournvita.com>.

Request No. 40

Any and all documents and things related to the registration of the domain name <cadburybournvita.com>.

Request No. 41

Any and all documents and things related to the domain name <bournvita.com>.

Request No. 42

Any and all documents and things related to the registration of the domain name <bournvita.com>.

Request No. 43

Any and all documents and things concerning Petitioner's claim that "Registrant is not the owner of the registered mark."

Request No. 44

Any and all documents and things concerning Petitioner's claim of fraud on the United States Patent and Trademark Office.

Request No. 45

Any and all documents and things identified by Petitioner in response to the Interrogatories which are not otherwise covered by these Requests.

Dated: November 18, 2013

KENYON & KENYON LLP

*Attorneys for Registrant
Meenaxi Enterprise, Inc.*



Michelle Mancino Marsh
Michael Kelly
Natasha Sardesai-Grant
One Broadway
New York, New York 10004
Tel: 212-425-7200
Fax: 212-425-5288
mmarsh@kenyon.com
mkelly@kenyon.com
nsardesai@kenyon.com
tmdocketny@kenyon.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Registrant Meenaxi Enterprise, Inc.'s First Set of Requests for the Production of Documents and Things* was served by hand delivery to Petitioner's counsel of record on the 18th day of November, 2013, at the following address:

Robert A. Becker, Esq.
Fross Zelnick Lehrman & Zissu PC
866 United Nations Plaza
New York, New York 10017



Natasha Sardesai-Grant

Exhibit C

Jason L. DeFrancesco

From: Barbara Solomon <bsolomon@fzlz.com>
Sent: Tuesday, December 10, 2013 11:48 AM
To: Kelly, Michael; Robert A. Becker
Cc: Marsh, Michelle
Subject: RE: Bournvita

Michael – Thank you for agreeing to the extension of our clients time to respond to discovery for an addition thirty days or until January 17. This will also confirm that if we serve any discovery on Meenaxi before we respond to the outstanding requests your client will have 60 days to respond.

As for a resolution of this matter, I hope to have a proposal to you before the holidays.

Barbara A. Solomon
Fross Zelnick Lehrman & Zissu
866 United Nations Plaza
New York, New York, 10017
Ph: 212-813-5900
Fax: 212- 813-5901

From: Kelly, Michael [<mailto:MKelly@kenyon.com>]
Sent: Monday, December 09, 2013 5:45 PM
To: Robert A. Becker
Cc: Marsh, Michelle; Barbara Solomon
Subject: Bournvita

Rob:

Following up on our call last week, Meenaxi is willing to agree to a 30-day extension of time for Cadbury to respond to the discovery that Meenaxi served on November 18, 2013 provided that Meenaxi shall receive the same length of time (i.e., 60 days) to respond to any discovery served on it before Cadbury responds to Meenaxi's November 18 discovery requests.

Let me know if Cadbury agrees.

Thank you.

Michael Kelly
Kenyon & Kenyon LLP
One Broadway | New York, NY 10004-1007
212.908.6030 Phone | 212.425.5288 Fax
mkelly@kenyon.com | www.kenyon.com

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Exhibit D

Jason L. DeFrancesco

From: Robert A. Becker <rbecker@fzlz.com>
Sent: Monday, January 13, 2014 12:41 PM
To: Kelly, Michael
Cc: Marsh, Michelle; Barbara Solomon; Brittany Brady
Subject: RE: Cancellation action against registration of BOURNVITA

Michael -

We agree to this.

Rob Becker

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

From: Kelly, Michael [<mailto:MKelly@kenyon.com>]
Sent: Monday, January 13, 2014 11:16 AM
To: Barbara Solomon
Cc: Robert A. Becker; Marsh, Michelle
Subject: RE: Cancellation action against registration of BOURNVITA

Barbara,

Our client is traveling and we will not have a chance to discuss the offer before the upcoming discovery response deadline. Therefore, we are willing to extend the current arrangement another 30 days, i.e., Cadbury's responses will be due on February 18 (accounting for the holiday weekend) and Meenaxi would have 60 days to respond to any discovery served on it before February 18. Let me know if this is acceptable.

Michael Kelly
Kenyon & Kenyon LLP
One Broadway | New York, NY 10004-1007
212.908.6030 Phone | 212.425.5288 Fax
mkelly@kenyon.com | www.kenyon.com

From: Barbara Solomon [<mailto:bsolomon@fzlz.com>]
Sent: Monday, January 13, 2014 10:41 AM
To: Kelly, Michael

Cc: Robert A. Becker

Subject: Cancellation action against registration of BOURNVITA

Michael -

I am following up on our discussion of last week. Can you please get back to me today and let me know the status of our settlement offer as well as whether you will consent to the extension of time to respond to discovery.

Also, we have now received two unsolicited and anonymous emails, attached, concerning your client and its business activities. The emails make claims not only about your client's activities surrounding the BOURNVITA mark but also allegations concerning other business practices of your client. We do not have any idea who is sending these emails.

Barbara A. Solomon
Fross Zelnick Lehrman & Zissu
866 United Nations Plaza
New York, New York, 10017
Ph: 212-813-5900
Fax: 212- 813-5901

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Exhibit E

Jason L. DeFrancesco

From: Robert A. Becker <rbecker@fzlz.com>
Sent: Friday, February 07, 2014 3:38 PM
To: Kelly, Michael
Cc: Barbara Solomon; Brittany Brady
Subject: BOURNVITA cancellation

Mike -

As per our conversation just now, our client's discovery responses will be due 3/4/14.

Rob Becker

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

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Exhibit F

Jason L. DeFrancesco

From: Robert A. Becker <rbecker@fzlz.com>
Sent: Tuesday, February 18, 2014 5:49 PM
To: Kelly, Michael
Cc: Brittany Brady; Barbara Solomon
Subject: BOURNVITA

Mike -

Back on 2/7, you agreed to extend our client's time to respond to your client's outstanding discovery requests till 3/4 while we waited to hear from your client re settlement. We still have not heard back from you re settlement, and a good bit of our extension period has now been taken up waiting to hear from your client, so we are virtually where we were on 2/7. Under these circumstances, we think it would make sense for you to agree to a further 30-day extension of our client's time to respond to your client's discovery requests. And it probably makes sense to file a 30-day extension of all dates in the TTAB schedule.

Please let us know whether you consent to this. Thanks.

Rob Becker

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please reply to the sender.

Exhibit G

Jason L. DeFrancesco

From: Robert A. Becker <rbecker@fzlz.com>
Sent: Friday, February 21, 2014 4:45 PM
To: Jason L. DeFrancesco
Cc: Brittany Brady; Barbara Solomon
Subject: BOURNVITA cancellation

Mr. DeFrancesco -

This e-mail is to memorialize our phone conversation this afternoon during which you agreed that our client's responses to discovery requests would be due 4/3. We look forward to hearing your client's response to the settlement offer set forth in my e-mail to you of yesterday.

Rob Becker

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

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Exhibit H

responses to individual interrogatories shall not prejudice its rights to do so later if necessary and pursuant to the rule no objections have been waived by the failure to assert the same.

GENERAL OBJECTIONS TO REGISTRANT'S DEFINITIONS AND INSTRUCTIONS

1. Petitioner objects to the instruction that it respond to the interrogatories "under oath" as such requirement goes beyond the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Petitioner objects to Definition and Instruction (b) on the grounds that it is overly broad and exposes Petitioner to undue burden or expense in relation to the interrogatories' likely benefit, taking into account the needs of the case, the property in controversy, Petitioner's resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. Petitioner further objects to this definition on the ground that it contains undefined terms and unidentified persons.

3. Petitioner objects to Definitions and Instructions (n), (o), (p), and (r) to the extent they constitute an attempt to obtain information without serving interrogatories. Petitioner further objects to these Definitions and Instructions on the ground that they are overly broad and unduly burdensome.

4. Petitioner objects to Definition and Instruction (s) to the extent it imposes greater burdens on Petitioner than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

5. Petitioner objects to the final paragraph of the Definitions and Instructions to the extent it imposes greater burdens on Petitioner than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

GENERAL OBJECTIONS

1. Petitioner objects to the Interrogatories to the extent they are overly broad or expose Petitioner to undue burden or expense in relation to its likely benefit, taking into account the needs of the case, the property in controversy, Petitioner's resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

2. Petitioner objects to the Interrogatories on the ground of irrelevance to the extent that they (a) seek information concerning any activities of Petitioner outside of the United States, (b) seek information on issues not raised in the pleadings, or (c) seek information not reasonably calculated to lead to the discovery of admissible evidence.

3. Petitioner objects to the Interrogatories to the extent they are duplicative or otherwise are unreasonably cumulative or the information sought can be obtained from some other source that is more convenient, less burdensome, or less expensive.

4. Petitioner objects to the Interrogatories to the extent they are not reasonably particular or seek information merely tangential to the proceeding or not limited in time.

5. Petitioner objects to the Interrogatories to the extent they are vague or ambiguous.

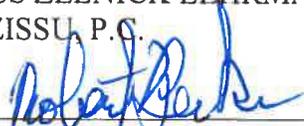
6. Petitioner objects to the Interrogatories to the extent that they call for information subject to the attorney-client, attorney work product, or other privilege.

7. Petitioner objects to the Interrogatories to the extent that they seek confidential and/or proprietary information requiring a protective order governing disclosure.

Dated: New York, New York
April 3, 2014

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 

Barbara A. Solomon

Robert A. Becker

Attorneys for Petitioner
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of PETITIONER'S OBJECTIONS TO REGISTRANT'S FIRST SET OF INTERROGATORIES to be served by prepaid, first-class mail on this 3rd day of April, 2014, to counsel of record for Registrant: Jason L. DeFrancesco, Esq., Baker & Rannells PA, 575 Route 28, Suite 102, Raritan, NJ 08869.



Robert A. Becker

Exhibit I

Jason L. DeFrancesco

From: Jason L. DeFrancesco
Sent: Tuesday, April 08, 2014 10:30 AM
To: 'Robert A. Becker'
Cc: J. Rannells; K. Hnasko; 'Barbara Solomon'; 'Brittany Brady'
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

Although it appears I misunderstood your availability, I did not hear from you this morning in regards to firming up a time to call.

Please call me Today, Tuesday, April 8, 2014 at 11:15 AM EST

In effort to obtain an answer without Board intervention, this communication represents continuing good-faith attempts to confer with a party failing to act.

Thank you,
Jason

From: Jason L. DeFrancesco
Sent: Monday, April 07, 2014 6:45 PM
To: 'Robert A. Becker'
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

Ok. Please call me tomorrow: Tuesday, April 8, 2014 at 10:00 AM EST.

Again, I am unsure what there is to discuss when there are just boiler plate objections (much different than your cited recent decision of the Board). Unless you have substantive response to provide us, we shall move to compel.

Nevertheless, I look forward to speaking with you tomorrow and suggest we may also discuss your response to requests for production (due April 4, 2014) which we did not receive.

This is a good-faith attempted to confer with a party failing to act, in effort to obtain an answer without Board intervention.

Regards,
Jason

From: Robert A. Becker [<mailto:rbecker@fzlz.com>]
Sent: Monday, April 07, 2014 6:22 PM
To: Jason L. DeFrancesco
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

I have to leave now. I am available the rest of the week except the following times:

Tuesday: Before 11 and 1-2

Wednesday: Before 2:30

Thursday: 12:30-3:30

If you let me know when you are available, I will get back to you tomorrow morning to firm up a time for a call.

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

From: Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]
Sent: Monday, April 07, 2014 6:18 PM
To: Robert A. Becker
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

I am unsure how to resolve "the issue raised" by your response – because its non-responsive and you answered nothing.

I am however available now. (908) 722-5640. Please follow the prompts to reach me.

Jason DeFrancesco

From: Robert A. Becker [<mailto:rbecker@fzlj.com>]
Sent: Monday, April 07, 2014 6:07 PM
To: Jason L. DeFrancesco
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. DeFrancesco -

This confirms that the attached is the only response to Registrant's interrogatories that we served. Please let us know when you would like to have a telephone conference to resolve the issue raised by our response, since your e-mail below does not satisfy your client's obligations to confer prior to a motion to compel under Rule 2.120(e)(1). See TBMP Section 405.03(e) and this recent opinion of the Board <http://ttabvue.uspto.gov/ttabvue/v?pno=91209030&pty=OPP&eno=11>.

Rob Becker

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

From: Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]
Sent: Monday, April 07, 2014 5:36 PM
To: Robert A. Becker; Barbara Solomon
Cc: J. Rannells; K. Hnasko
Subject: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

If you have mailed a response to Registrant's First Set of Interrogatories (served November 18, 2013) *in addition to what is attached* please e-mail a copy it as it was not received.

Otherwise, please confirm that the attached is the extent of your response so we can pursue a motion to compel.

This is a good-faith attempted to confer with a party failing to act, in effort to obtain an answer without Board intervention.

Regards,
Jason



Jason DeFrancesco, Esq.
575 Route 28, Ste 102
Raritan, New Jersey 08869
(908) 722-5640
jld@br-tmlaw.com

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Please consider the environment before printing this e-mail

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Exhibit J

Jason L. DeFrancesco

From: Robert A. Becker <rbecker@fzlz.com>
Sent: Tuesday, April 08, 2014 12:31 PM
To: Jason L. DeFrancesco
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. DeFrancesco -

I respectfully suggest that it would be cheaper and quicker for both parties if you simply re-serve your document requests with the error corrected, rather than engage in motion practice. And for that reason, I do not believe the Board would look kindly on a motion to compel in these circumstances.

Rob Becker

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

From: Jason L. DeFrancesco [mailto:JLD@br-tmlaw.com]
Sent: Tuesday, April 08, 2014 12:14 PM
To: Robert A. Becker
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

Thank you for the call earlier in attempts to resolve the discovery issues regarding interrogatories and requests for production.

While I do not agree with the interrogatory count, I withdraw Interrogatory Nos. 1-38 and will be serving new interrogatories.

With regards to the Request for Production, you stated that you will not reply because of the typo on the first page (incorrectly identifying Venture Execution Partners, Inc.). I am unable to agree this is good reason, so I am writing to let you know that we will file a motion to compel.

Best,
Jason

From: Jason L. DeFrancesco
Sent: Tuesday, April 08, 2014 10:30 AM
To: 'Robert A. Becker'
Cc: J. Rannells; K. Hnasko; 'Barbara Solomon'; 'Brittany Brady'
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

Although it appears I misunderstood your availability, I did not hear from you this morning in regards to firming up a time to call.

Please call me Today, Tuesday, April 8, 2014 at 11:15 AM EST

In effort to obtain an answer without Board intervention, this communication represents continuing good-faith attempts to confer with a party failing to act.

Thank you,
Jason

From: Jason L. DeFrancesco
Sent: Monday, April 07, 2014 6:45 PM
To: 'Robert A. Becker'
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

Ok. Please call me tomorrow: Tuesday, April 8, 2014 at 10:00 AM EST.

Again, I am unsure what there is to discuss when there are just boiler plate objections (much different than your cited recent decision of the Board). Unless you have substantive response to provide us, we shall move to compel.

Nevertheless, I look forward to speaking with you tomorrow and suggest we may also discuss your response to requests for production (due April 4, 2014) which we did not receive.

This is a good-faith attempted to confer with a party failing to act, in effort to obtain an answer without Board intervention.

Regards,
Jason

From: Robert A. Becker [<mailto:rbecker@fzlz.com>]
Sent: Monday, April 07, 2014 6:22 PM
To: Jason L. DeFrancesco
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

I have to leave now. I am available the rest of the week except the following times:

Tuesday: Before 11 and 1-2
Wednesday: Before 2:30
Thursday: 12:30-3:30

If you let me know when you are available, I will get back to you tomorrow morning to firm up a time for a call.

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

phone 212-813-5900
fax 212-813-5901

From: Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]
Sent: Monday, April 07, 2014 6:18 PM
To: Robert A. Becker
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

I am unsure how to resolve "the issue raised" by your response – because its non-responsive and you answered nothing.

I am however available now. (908) 722-5640. Please follow the prompts to reach me.

Jason DeFrancesco

From: Robert A. Becker [<mailto:rbecker@fzlz.com>]
Sent: Monday, April 07, 2014 6:07 PM
To: Jason L. DeFrancesco
Cc: J. Rannells; K. Hnasko; Barbara Solomon; Brittany Brady
Subject: RE: Meenaxi adv. Cadbury; No. 92057280

Mr. DeFrancesco -

This confirms that the attached is the only response to Registrant's interrogatories that we served. Please let us know when you would like to have a telephone conference to resolve the issue raised by our response, since your e-mail below does not satisfy your client's obligations to confer prior to a motion to compel under Rule 2.120(e)(1). See TBMP Section 405.03(e) and this recent opinion of the Board <http://ttabvue.uspto.gov/ttabvue/v?pno=91209030&pty=OPP&eno=11>.

Rob Becker

Robert A. Becker
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
phone 212-813-5900
fax 212-813-5901

From: Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]
Sent: Monday, April 07, 2014 5:36 PM
To: Robert A. Becker; Barbara Solomon
Cc: J. Rannells; K. Hnasko
Subject: Meenaxi adv. Cadbury; No. 92057280

Mr. Becker,

If you have mailed a response to Registrant's First Set of Interrogatories (served November 18, 2013) *in addition to what is attached* please e-mail a copy it as it was not received.

Otherwise, please confirm that the attached is the extent of your response so we can pursue a motion to compel.

This is a good-faith attempted to confer with a party failing to act, in effort to obtain an answer without Board intervention.

Regards,
Jason



Jason DeFrancesco, Esq.
575 Route 28, Ste 102
Raritan, New Jersey 08869
(908) 722-5640
jld@br-tmlaw.com

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