

ESTTA Tracking number: **ESTTA574191**

Filing date: **12/03/2013**

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

Proceeding	92057344
Party	Plaintiff Cloudpath Networks, Inc.
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Submission	Motion to Compel Discovery
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Date	12/03/2013
Attachments	1317.2000 - Cancellation - Motion to Compel Discovery.pdf(33332 bytes ) Motion to Compel - Exhibit A - Petitioner's First Request for Production of Documents.pdf(40828 bytes ) Motion to Compel - Exhibit B - Registrant's communication of October 25 2013.PDF(920833 bytes ) Motion to Compel - Exhibit C - 1st Petitioner Reminder Re Production of Docs.pdf(53397 bytes ) Motion to Compel - Exhibit D - Registrant's Reply to 1st Petitioner Reminder.pdf(57386 bytes ) Motion to Compel - Exhibit E - 2nd Petitioner Reminder Re Production of Docs.pdf(74761 bytes ) Motion to Compel - Exhibit F - List of Documents Not Produced.pdf(25185 bytes )

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

Cloudpath Networks, Inc.

Petitioner,

v.

Racemi, Inc.,

Registrant.

Cancellation No. 92057344

**CLOUDPATH'S MOTION TO  
COMPEL DISCOVERY**

December 3, 2013

**CLOUDPATH'S MOTION TO COMPEL DISCOVERY**

Cloudpath seeks an order from this Court compelling the production of documents in response to Cloudpath's First Request for Production of Documents served by Cloudpath on Registrant on September 20, 2013. Such an order is appropriate because Registrant has failed entirely to produce any documents requested in Cloudpath's First Request for Production of Documents. Cloudpath has made repeated good faith efforts to resolve the issue with Registrant but, to date, such efforts have been unsuccessful.

**FACTS**

On June 14, 2013, Cloudpath filed a Notice of Cancellation against United States Trademark Registration No. 4045900 for the CLOUD PATH mark relative to the Class 42 goods and services. Cloudpath asserts, among other things, that it owns the distinctive mark shown in Registration No. 4174640 for CLOUDPATH (the Cloudpath mark) for various Class 42 goods and services. Since 2008, well prior to Registrant's first use of the challenged mark, August 23, 2011, Cloudpath has extensively and continuously used, advertised and promoted the CLOUDPATH mark.

On June 18, 2013, the Board instituted this proceeding and set discovery to open on August 27, 2013, and to close on February 23, 2014. Cloudpath filed its First Request for Production of Documents, and served the same on Registrant's counsel, on September 20, 2013 (copies of the First Request for Production of Documents is attached as Exhibit A). A response to the First Request for Production of Documents, including those documents to be disclosed with the response, was due October 20, 2013. Both parties stipulated to a 35 day response period and thus the deadline for the response was extended to October 25, 2013. Registrant provided notice on October 25, 2013 that it would produce certain of the requested documents at an undefined future date (a copy of

this communication is enclosed as Exhibit B), but refused to produce any documents referenced in that communication.

Two more weeks elapsed without Registrant providing any further indication as to when it would respond to the First Request for Production of Documents, so, on November 11, 2013, Cloudpath asked Registrant, via e-mail, to produce the documents referenced in Registrant's October 25, 2013 communication within two weeks (a copy of this communication is enclosed as Exhibit C). Later that day, Registrant responded by stating that Registrant did not have an obligation to produce any documents on or before the October 25, 2013 deadline for response to the First Request for Production of Documents, but provided no legal support for such a statement (a copy of this communication is enclosed as Exhibit D). Registrant further stated that an "initial wave" of documents would be served during the week of November 25-29. On November 18, 2013, Cloudpath responded with a further request that all documents be produced during the week of November 25-29 and that Registrant produce legal support for its proposition that a full response to the First Request for Production of Documents was not due within 35 days from service of the First Request (a copy of this communication is enclosed as Exhibit E). Registrant then went silent and refused to produce *any* documents by the November 29 date that it had indicated as a deadline for production.

## **ARGUMENT**

In accordance with Trademark Rule 2.120(e), Cloudpath submits that it has made a good faith effort to resolve with Registrant the issues presented in the motion and further submits a list and brief description of the documents that were not produced (see Exhibit F). Specifically, Cloudpath has given Registrant ample extensions of time to respond to the First Request for Production of Documents, which were due, on or before October 25, 2013, and via request of Registrant, were at the latest to be served by November 29, 2013. As detailed above, Registrant has repeatedly taken advantage of Cloudpath's generosity to further delay production with ambiguous responses and even lack of response to Cloudpath's communication. Registrant has had almost two and a half months to fully respond to the First Request for Production of Documents, and yet has refused to produce even a single document in response and has now cut off communication with Cloudpath. Cloudpath respectfully requests that the Board order Registrant to fully respond to the First Request for Production of Documents so that Cloudpath can adequately prepare additional discovery and proceed with the instant trademark cancellation.

Also, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that a party which fails to respond to a discovery document request during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to discovery on the merits. TBMP § 403.03 and 406.04; *see Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303 (TTAB 1987). While Registrant has notified Cloudpath of a plethora of boiler plate objections without providing specifics relative to those objections, it has intentionally delayed discovery and refused to produce any documents in the First Request for Production of Documents. Registrant's partial

response to the First Request therefore constitutes failure to respond to a discovery document request during the time allowed, and the Board should order that Registrant has forfeited its right to object to discovery on the merits.

Further, pursuant to the “preclusion sanction,” a party that fails to produce documents or information requested in discovery may be precluded from relying on such documents or information and from offering testimony with regard thereto during its testimony period. *See e.g., Weiner King, Inc. v. The Weiner King Corp.*, 615 F.2d 512, 521, 204 USPQ 820, 828-29 (CCPA 1980). Although Registrant objected to production of certain documents referenced in the First Request for Production of Documents, it agreed to produce many documents referenced in the First Request, and yet has since refused to do so. Therefore, Applicant respectfully requests that the Board preclude Registrant from relying on such documents or information and from offering testimony with regard thereto during its testimony period (see Exhibit D for a list of documents that the preclusion sanction should apply to).

## **CONCLUSION**

Accordingly, based on the foregoing, Cloudpath respectfully Requests that the Board grant its motion to compel discovery, preclude Registrant from objecting to production of documents in Cloudpath’s First Request for Production of Documents, and preclude Registrant from relying upon the withheld documents during this Cancellation proceeding.

Dated: December 3, 2013

By:

Stephen Gruber  
Neugeboren O’Dowd PC  
1227 Spruce Street  
Suite 200  
Boulder, CO 80302  
Attorneys for Cloudpath Networks, Inc.

Certificate of Service

I certify that on December 3, 2013, I had the foregoing documents served on Mr. Larry Jones, counsel for Racemi, Inc. via email, pursuant to an agreement between the parties to serve all such documents electronically.

/Stephen Gruber/

Stephen Gruber

Neugeboren O'Dowd PC

Attorneys for Cloudpath Networks, Inc.

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

Cloudpath Networks, Inc.

Opposer,

v.

Racemi, Inc.,

Registrant.

Cancellation No. 92057344

**CLOUDPATH'S FIRST REQUEST  
FOR PRODUCTION OF  
DOCUMENTS**

September 20, 2013

Pursuant to the provisions of Rule 34 of the Federal Rules of Civil Procedure, Cloudpath Networks, Inc., hereby addresses its First Set of Requests for Production of Documents to Racemi, Inc. to be responded to and complied with fully within thirty (30) days of service hereof.

**INSTRUCTIONS AND DEFINITION OF TERMS**

A. As used herein, the term "Racemi" refers to Registrant/Petitioner, Racemi, Inc., and includes all principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Racemi, as well as any other person acting on its behalf, pursuant to its authority or subject to its control.

B. The term "Racemi mark" refers to all trade names, trademarks or service marks used by Racemi containing the term "CLOUD PATH," including but not limited to Racemi's federal trademark registration for the mark CLOUD PATH, United States Trademark Registration No. 4174640.

C. The term "Cloudpath" refers to Opposer Cloudpath Networks, Inc.

D. The term "Cloudpath's CLOUDPATH mark" and "Cloudpath's Mark" refer to all trade names, trademarks or service marks used by Cloudpath and/or its predecessor-in-interest containing the term "CLOUD PATH," including but not limited to Cloudpath's federal trademark registration for the mark CLOUD PATH, United States Trademark Registration No. 4045900.

E. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Racemi and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all

originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Racemi, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monograph, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer discs or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants or consulting engineers, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

F. In the event Racemi wishes to assert either attorney-client privilege or work-product exclusion, or both, as to any document for which identification is requested by any of the following specific requests, then as to each document subject to such assertion, Racemi is requested to provide such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Court to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

F. Over and above the requirements of Rule 26(e) of the Federal Rules of Civil Procedure to supplement responses, it is requested that these discovery requests be treated as continuing. If Racemi becomes aware of any supplemental information or documents relating to these discovery requests and which were not included in the initial responses hereto, Racemi is requested to furnish said additional information immediately.

## **REQUESTS FOR PRODUCTION**

### **Request No. 1:**

Produce all documents which record, refer to, or relate to the organization, incorporation, structure, operation and activities of Racemi insofar as they relate to any products sold and/or services offered by and/or intended to be sold, offered or promoted by Racemi under the Racemi mark.

### **Response:**

### **Request No. 2:**

Produce all documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between Racemi and any third party which

relate in any manner to the Racemi mark and/or any mark that includes the terms “CLOUD PATH” or “CLOUDPATH”.

**Response:**

**Request No. 3:**

Produce all documents which record, refer to, or relate to Racemi’s use of the “CLOUD PATH” designation, including Racemi’s investigation of the Racemi mark for its availability for adoption and registration, its licensing, use, intended use, exploitation, and/or intended exploitation.

**Response:**

**Request No. 4:**

Produce all documents which record, refer to, or relate to Racemi’s use of the terms “CLOUD PATH” or “CLOUDPATH” in connection with any goods and/or services.

**Response:**

**Request No. 5:**

Produce all documents which record, refer to, or relate in any manner to the subject matter of these cancellation proceedings.

**Response:**

**Request No. 6:**

Produce all documents which record, refer to, or relate to goods and/or services which are or are to be provided under the Racemi mark.

**Response:**

**Request No. 7:**

Produce all documents which record, refer to, or relate to Racemi’s advertising, intended advertising, promotion, intended promotion, and/or third-party promotion (with or without compensation) of any goods and/or services under the Racemi mark.

**Response:**

**Request No. 8:**

Produce all documents which record, refer to, or relate to Racemi’s sales or intended sales of any goods and/or services under the Racemi mark.

**Response:**

**Request No. 9:**

Produce all documents which record, refer to, or relate to the selection, design, adoption, proposed use of, decision to use, and first use of the Racemi mark and/or any mark including the term “CLOUD PATH”, including samples of any names, designations and/or other marks considered and rejected.

**Response:**

**Request No. 10:**

Produce all documents which record, refer to, or relate to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of Racemi, or by any person acting for or on its behalf, regarding the availability and/or registrability of the Racemi mark, or of the term “CLOUD PATH”.

**Response:**

**Request No. 11:**

Produce all documents which refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state or federal, of marks incorporating the term “CLOUD PATH” by Racemi including, without limitation, Registration No. 4174640.

**Response:**

**Request No. 12:**

Produce all documents which record, refer to, or relate to Racemi’s consideration or decision to select, adopt and/or use the Racemi mark and/or any designation including the term “CLOUD PATH” in each different logotype, design, hang tag, packaging, font of type or style in which said designation is being used, or is intended to be used, by or on behalf of Racemi.

**Response:**

**Request No. 13:**

Produce a sample of each different logotype, design, hang tag, packaging, font of type or style in which the Racemi mark and/or any designation including the term “CLOUD PATH” is being used, or is intended to be used, by or on behalf of Racemi.

**Response:**

**Request No. 14:**

Produce a sample of each and every different advertisement, intended advertisement, item of promotional material and/or intended item of promotional material printed and/or disseminated by or for Racemi in which the Racemi mark appears and/or any designation that includes the term “CLOUD PATH”.

**Response:**

**Request No. 15:**

Produce a sample of each product and/or service which is being used or is intended to be used by Racemi in which the Racemi mark appears.

**Response:**

**Request No. 16:**

Produce copies of all web advertisements, brochures, press releases, television commercials, radio scripts and other media advertising not previously requested herein, prepared by or for Racemi whether or not released or aired, in which the Racemi mark appears.

**Response:**

**Request No. 17:**

Produce all documents which record, refer to, or relate to Racemi's advertising and/or promotional expenditures, or expected advertising and/or promotional expenditures, for any goods offered for sale, sold and/or distributed under the Racemi mark including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with such advertisements and/or promotions.

**Response:**

**Request No. 18:**

Produce all documents which record, refer to, or relate to the amount of sales (actual and/or projected) by calendar quarter of goods sold by or for Racemi under the Racemi mark including, without limitation, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar value of the sales.

**Response:**

**Request No. 19:**

Produce all documents which record, refer to, or relate to any communication, oral or written, received by Racemi from any person which suggests, implies, or infers any connection or association between Cloudpath and Racemi, or which inquires as to whether there is or may be such a connection or association between Cloudpath and Racemi.

**Response:**

**Request No. 20:**

Produce all documents which record, refer to, or relate to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any person between Cloudpath's use of the CLOUDPATH mark, and the Racemi mark.

**Response:**

**Request No. 21:**

Produce all documents which record, refer to, or relate to Racemi's knowledge and/or awareness of the use and/or application for registration of any mark by Cloudpath.

**Response:**

**Request No. 22:**

Produce all documents which record, refer to, or relate to any inquiry, investigation, evaluation, analysis, or survey conducted by Racemi or any person acting for or on behalf of Racemi regarding any issues involved in these proceedings.

**Response:**

**Request No. 23:**

Produce all documents which record, refer to, or which constitute any research, reports, surveys, or studies conducted by or on behalf of Racemi of consumer or customer perception of the Racemi mark.

**Response:**

**Request No. 24:**

Produce all documents in Racemi's possession or control that refer or relate to Cloudpath or any Cloudpath mark including the mark CLOUDPATH.

**Response:**

**Request No. 25:**

Produce all press releases, articles and clippings relating to or commenting on goods or services marketed or sold under the Racemi mark.

**Response:**

**Request No. 26:**

Produce documents sufficient to identify all goods and/or services in connection with which Racemi uses and/or intends to use the Racemi mark and/or any designation that includes the term "CLOUD PATH".

**Response:**

**Request No. 27:**

Produce a copy of any statements and/or opinions of any expert obtained by Racemi or any person acting for or on behalf of Racemi regarding any of the issues in this opposition proceeding.

**Response:**

**Request No. 28:**

Produce a copy of all documents, other than those produced to any of the foregoing requests, upon which Racemi intends to rely in connection with this cancellation proceeding.

**Response**

**Request No. 29**

Produce all documents identified in response to Cloudpath's First Set of Interrogatories to Racemi, not produced in response to the above requests.

**Response:**

**Request No. 30**

Produce all documents produced by Racemi in response to a discovery request in connection with Cancellation Proceeding No. 92047919.

**Response:**

**Request No. 31**

Produce all pleadings and filings made with the TTAB that were prepared by Racemi in connection with Cancellation Proceeding No. 92047919.

**Response:**

**Request No. 32**

Produce all documents tending to support Racemi's assertion in its response dated June 19, 2103, to Cloudpath's letter to Racemi dated June 14, 2013, that both company's customers are "discriminating purchaser[s]".

**Response:**

**Request No. 33**

Produce all documents which refer, relate to, or are in any way concerned with Racemi's attendance at trade shows or conferences at which Racemi has promoted any products or services under the CLOUD PATH designation.

**Response:**

**Request No. 34**

Produce all documents which refer, relate to, or are in any way concerned with Racemi's attendance at trade shows or conferences that Racemi attended for non-promotional purposes.

**Response:**

Dated: September 20, 2013

By:

Stephen Gruber  
Neugeboren O'Dowd PC  
1227 Spruce Street  
Suite 200  
Boulder, CO 80302  
Attorneys for Cloudpath Networks, Inc.

Certificate of Service

I certify that on September 20, 2013, I had the foregoing documents served on Mr. Larry Jones, counsel for Racemi, Inc. via email, pursuant to an agreement between the parties to serve all such documents electronically.

/Stephen Gruber/

Stephen Gruber  
Neugeboren O'Dowd PC  
Attorneys for Cloudpath Networks, Inc.

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

Cloudpath Networks, Inc.,	§	
	§	Cancellation No. 92057344
Petitioner,	§	(Registration No. 4,174,640)
	§	
vs.	§	
	§	
Racemi, Inc.,	§	
	§	
Registrant.	§	
	§	

**REGISTRANT’S RESPONSES TO PETITIONER’S  
FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 34 of the Federal Rules of Civil Procedure, Registrant, Racemi, Inc. (“Racemi” or “Registrant”), hereby provides the following responses to *Cloudpath’s First Request for Production of Documents*.

**GENERAL OBJECTIONS**

1. Racemi objects to each and every request for production to the extent that it seeks information protected from discovery by the attorney-client communications privilege or the attorney work product immunity doctrine.

2. Racemi objects to each and every definition, instruction and request for production to the extent that it purports to require Racemi to search for information or materials not within Racemi’s possession, custody or control. To do so would place an undue added burden upon Racemi.

3. Racemi objects to each and every definition, instruction and request for production to the extent it purports to require Racemi to provide discovery or information and materials not otherwise required under 37 C.F.R. § 2.120 and the applicable Federal Rules of Civil Procedure.

4. Racemi objects to the putative requirement that it produce fully all responsive documents within thirty (30) days of service of the requests for production.

5. Racemi objects to any requirement that it identify or provide a list of any documents withheld from discovery pursuant to either the attorney-client communications privilege and/or the attorney work product immunity doctrine and which documents were created on or after June 14, 2013, the date on which the *Petition to Cancel* was filed in this proceeding. Such a requirement would be unduly burdensome and would interfere with this proceeding by deterring the creation of such documents.

6. Racemi objects to the putative definition of the term “Racemi” to the extent that it is intended to refer to any natural person or entity other than Registrant Racemi, Inc. Racemi also objects to the putative definition of “Racemi” because of the ambiguity arising from the incorporation of the self-contradictory term “Registrant/Petitioner” in that putative definition.

7. Racemi objects to the putative definition of the terms “Racemi mark,” “Cloudpath’s CLOUDPATH mark” and “Cloudpath’s Mark” to the extent that each putative definition purports to include any “federal trademark registration” inasmuch as a federal trademark registration itself is incapable of being a mark and thus the definition is nonsensical or, at best, vague and ambiguous.

8. Racemi also objects to the putative definition of the terms “Cloudpath’s CLOUDPATH mark” and “Cloudpath’s Mark” to the extent that each putative definition refers erroneously to the subject of U.S. Registration No. 4,045,900 as “CLOUD PATH,” whereas, in fact, the subject of that registration is the service mark “CLOUDPATH,” and thus the definition is vague and ambiguous.

9. These responses are made without waiver of and with preservation of:

(a) all questions as to competency, relevancy, materiality, privilege and admissibility of the responses and the subject matter thereof as evidence for any purpose and in any further proceeding in this action and in any other action;

(b) the right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceeding in this action and any other action;

(c) the right to object on any ground at any time to a demand or request for further response to these or any other requests for production or other discovery requests involved or related to the subject matter of the discovery to which these responses are provided; and

(d) the right at any time to review, correct, add to, supplement or clarify any of the responses contained herein.

10. The following responses are based upon information and documents presently available to and located by Racemi and its attorneys. Racemi has not completed its investigation of the facts relating to this proceeding, has not completed its discovery in this proceeding, and has not completed its preparation of its testimony. The responses given herein to the discovery requests are without prejudice to Racemi's right to produce evidence of any additional facts or materials.

These general objections apply to all of Racemi's requests for production. To the extent that the specific General Objections are cited herein in response to specific discovery requests, those specific citations are provided because they are believed to be particularly applicable to the requests and are not to be construed a waiver of any other General Objections applicable to information or materials falling within the scope of the requests.

RESPONSES TO REQUESTS FOR PRODUCTION NOS. 1-34

Request No 1:

Produce all documents which record, refer to, or relate to the organization, incorporation, structure, operation and activities of Racemi insofar as they relate to any products sold and/or services offered by and/or intended to be sold, offered or promoted by Racemi under the Racemi mark.

Response to Request No. 1:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 2:

Produce all documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between Racemi and any third party which relate in any manner to the Racemi mark and/or any mark that includes the terms "CLOUD PATH" or "CLOUDPATH".

Response to Request No. 2:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it is vague and ambiguous.

Under contracts with its partners, Racemi does produce partner-specific, branded implementations of its CLOUD PATH SaaS offerings for its partners' end customers, but it is understood that such contracts are not responsive to this request, and otherwise, Racemi, without waiving any of its objections, and based on its present understanding of this request, responds that, as presently informed, Racemi believes that it has no responsive documents.

Request No. 3:

Produce all documents which record, refer to, or relate to Racemi's use of the "CLOUD PATH" designation, including Racemi's investigation of the Racemi mark for its availability for adoption and registration, its licensing, use, intended use, exploitation, and/or intended exploitation.

Response to Request No. 3:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce:

- (i) Representative samples of materials reflecting its use of the CLOUD PATH mark and the services offered and provided thereunder; and
- (ii) Documents pertaining to its investigation of the availability of the CLOUD PATH mark for Racemi's adoption, use and/or registration, to the extent, if any, that Racemi is able to locate any such non-privileged documents upon a reasonable investigation.

Otherwise, Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 4:

Produce all documents which record, refer to, or relate to Racemi's use of the terms "CLOUD PATH" or "CLOUDPATH" in connection with any goods and/or services.

Response to Request No. 4:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce representative samples of materials reflecting its use of the CLOUD PATH mark and the services offered and provided thereunder.

Otherwise, Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 5:

Produce all documents which record, refer to, or relate in any manner to the subject matter of these cancellation proceedings.

Response to Request No. 5:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 6:

Produce all documents which record, refer to, or relate to goods and/or services which are or are to be provided under the Racemi mark.

Response to Request No. 6:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 7:

Produce all documents which record, refer to, or relate to Racemi's advertising, intended advertising, promotion, intended promotion, and/or third-party promotion (with or without compensation) of any goods and/or services under the Racemi mark.

Response to Request No. 7:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce representative samples of materials reflecting its use of the CLOUD PATH mark and the services offered and provided thereunder.

Otherwise, Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 8:

Produce all documents which record, refer to, or relate to Racemi's sales or intended sales of any goods and/or services under the Racemi mark.

Response to Request No. 8:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce representative samples of materials reflecting its use of the CLOUD PATH mark and the services offered and provided thereunder.

Otherwise, Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 9:

Produce all documents which record, refer to, or relate to the selection, design, adoption, proposed use of, decision to use, and first use of the Racemi mark and/or any mark including the term "CLOUD PATH", including samples of any names, designations and/or other marks considered and rejected.

Response to Request No. 9:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents, to the extent such documents exist, are not privileged, and can be located upon a reasonable investigation.

Request No. 10:

Produce all documents which record, refer to, or relate to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of Racemi, or by any person acting for or on its behalf, regarding the availability and/or registrability of the Racemi mark, or of the term "CLOUD PATH".

Response to Request No. 10:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents, to the extent such documents exist, are not privileged, and can be located upon a reasonable investigation.

Request No. 11:

Produce all documents which refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state or federal, of marks incorporating the term "CLOUD PATH" by Racemi including, without limitation, Registration No. 4174640.

Response to Request No. 11:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents, to the extent such documents exist, are not privileged, and can be located upon a reasonable investigation.

Request No. 12:

Produce all documents which record, refer to, or relate to Racemi's consideration or decision to select, adopt and/or use the Racemi mark and/or any designation including the term "CLOUD PATH" in each different logotype, design, hang tag, packaging, font of type or style in which said designation is being used, or is intended to be used, by or on behalf of Racemi.

Response to Request No. 12:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents, to the extent such documents exist, are not privileged, and can be located upon a reasonable investigation.

Request No. 13:

Produce a sample of each different logotype, design, hang tag, packaging, font of type or style in which the Racemi mark and/or any designation including the term "CLOUD PATH" is being used, or is intended to be used, by or on behalf of Racemi.

Response to Request No. 13:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents, to the extent such documents exist, are not privileged, and can be located upon a reasonable investigation.

Request No. 14:

Produce a sample of each and every different advertisement, intended advertisement, item of promotional material and/or intended item of promotional material printed and/or disseminated by or for Racemi in which the Racemi mark appears and/or any designation that includes the term "CLOUD PATH".

Response to Request No. 14:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce representative samples of the requested materials.

Otherwise, Racemi also objects to this request on the grounds that it is overly broad and unduly burdensome.

Request No. 15:

Produce a sample of each product and/or service which is being used or is intended to be used by Racemi in which the Racemi mark appears.

Response to Request No. 15:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this non-sensical request that it provide a sample of each CLOUD PATH service.

Request No. 16:

Produce copies of all web advertisements, brochures, press releases, television commercials, radio scripts and other media advertising not previously requested herein, prepared by or for Racemi whether or not released or aired, in which the Racemi mark appears.

Response to Request No. 16:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents, to the extent such documents exist, are not privileged, and can be located upon a reasonable investigation.

Request No. 17:

Produce all documents which record, refer to, or relate to Racemi's advertising and/or promotional expenditures, or expected advertising and/or promotional expenditures, for any goods offered for sale, sold and/or distributed under the Racemi mark including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with such advertisements and/or promotions.

Response to Request No. 17:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce an existing business record or other existing document sufficient to identify its annual advertising and/or promotional expenditures for the most recent fiscal year – if any such business record or other document actually exists (inasmuch as Racemi has no duty to create now any such business record or other document).

Otherwise, Racemi also objects to this request on the grounds that it seeks production beyond the scope of discovery permitted under the rules and controlling precedents of the TTAB.

Request No. 18:

Produce all documents which record, refer to, or relate to the amount of sales (actual and/or projected) by calendar quarter of goods sold by or for Racemi under the Racemi mark

including, without limitation, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar value of the sales.

Response to Request No. 18:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce an existing business record or other existing document sufficient to identify its annual CLOUD PATH services sales revenues for the most recent fiscal year – if any such business record or other document actually exists (inasmuch as Racemi has no duty to create now any such business record or other document).

Otherwise, Racemi also objects to this request on the grounds that it seeks production beyond the scope of discovery permitted under the rules and controlling precedents of the TTAB.

Request No. 19:

Produce all documents which record, refer to, or relate to any communication, oral or written, received by Racemi from any person which suggests, implies, or infers any connection or association between Cloudpath and Racemi, or which inquires as to whether there is or may be such a connection or association between Cloudpath and Racemi.

Response to Request No. 19:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that Racemi is able to locate any such non-privileged documents upon a reasonable investigation. However, Racemi, as presently informed, believes that it has no responsive documents.

Request No. 20:

Produce all documents which record, refer to, or relate to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any person between Cloudpath's use of the CLOUDPATH mark, and the Racemi mark.

Response to Request No. 20:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that Racemi is able to locate any such non-privileged documents upon a reasonable investigation. However, Racemi, as presently informed, believes that it has no responsive documents.

Request No. 21:

Produce all documents which record, refer to, or relate to Racemi's knowledge and/or awareness of the use and/or application for registration of any mark by Cloudpath.

Response to Request No. 21:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that Racemi is able to locate any such non-privileged documents upon a reasonable investigation.

Request No. 22:

Produce all documents which record, refer to, or relate to any inquiry, investigation, evaluation, analysis, or survey conducted by Racemi or any person acting for or on behalf of Racemi regarding any issues involved in these proceedings.

Response to Request No. 22:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request to the extent that it requests the production of all documents which record, refer to, or relate to any inquiry, investigation, evaluation or analysis regarding any issues involved in these proceedings on the grounds that such a request is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

With respect to this request to the extent that it requests the production of all documents which record, refer to, or relate to any survey regarding any issues involved in these proceedings, Racemi (while reserving its objections to the scope of such a request should any such survey be conducted in the future) responds that it presently has no such documents.

Request No. 23:

Produce all documents which record, refer to, or which constitute any research, reports, surveys, or studies conducted by or on behalf of Racemi of consumer or customer perception of the Racemi mark.

Response to Request No. 23:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that Racemi is able to locate any such non-privileged documents upon a reasonable investigation. However, Racemi, as presently informed, believes that it has no responsive documents.

Request No. 24:

Produce all documents in Racemi's possession or control that refer or relate to Cloudpath or any Cloudpath mark including the mark CLOUDPATH.

Response to Request No. 24:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that Racemi is able to locate any such non-privileged documents upon a reasonable investigation.

Request No. 25:

Produce all press releases, articles and clippings relating to or commenting on goods or services marketed or sold under the Racemi mark.

Response to Request No. 25:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce representative samples of the requested materials.

Otherwise, Racemi also objects to this request on the grounds that it is overly broad and unduly burdensome.

Request No. 26:

Produce documents sufficient to identify all goods and/or services in connection with which Racemi uses and/or intends to use the Racemi mark and/or any designation that includes the term "CLOUD PATH".

Response to Request No. 26:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents.

Request No. 27:

Produce a copy of any statements and/or opinions of any expert obtained by Racemi or any person acting for or on behalf of Racemi regarding any of the issues in this opposition proceeding.

Response to Request No. 27:

Racemi incorporates by reference all of the foregoing objections.

Racemi will produce the expert witness report for each expert witness, if any, whom Racemi decides to call as a witness, when and having the content required under the controlling rules of practice of the TTAB. To the extent this request would require any other response, Racemi objects to this request.

Request No. 28:

Produce a copy of all documents, other than those produced to any of the foregoing requests, upon which Racemi intends to rely in connection with this cancellation proceeding.

Response to Request No. 28:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it seeks production beyond the scope of discovery permitted under the rules and controlling precedents of the TTAB.

Request No. 29:

Produce all documents identified in response to Cloudpath's First Set of Interrogatories to Racemi, not produced in response to the above requests.

Response to Request No. 29:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that any such documents: (i) are identified in Racemi's responses to such interrogatories; (ii) are located upon a reasonable investigation; (iii) are not otherwise produced in response to any of Request Nos. 1-28; and (iv) are non-privileged.

Request No. 30:

Produce all documents produced by Racemi in response to a discovery request in connection with Cancellation Proceeding No. 92047919.

Response to Request No. 30:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that Racemi is able to locate any such non-privileged documents upon a reasonable investigation. However, Racemi, as presently informed, believes that it has no responsive documents.

Request No. 31:

Produce all pleadings and filings made with the TTAB that were prepared by Racemi in connection with Cancellation Proceeding No. 92047919.

Response to Request No. 31:

Racemi incorporates by reference all of the foregoing objections.

Racemi, without waiving any of its objections, will produce the requested documents to the extent that Racemi is able to locate any such non-privileged documents upon a reasonable investigation. However, Racemi, as presently informed, believes that it has no responsive documents.

Request No. 32:

Produce all documents tending to support Racemi's assertion in its response dated June 19, 2103, to Cloudpath's letter to Racemi dated June 14, 2013, that both company's customers are "discriminating purchaser[s]".

Response to Request No. 32:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 33:

Produce all documents which refer, relate to, or are in any way concerned with Racemi's attendance at trade shows or conferences at which Racemi has promoted any products or services under the CLOUD PATH designation.

Response to Request No. 33:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Request No. 34:

Produce all documents which refer, relate to, or are in any way concerned with Racemi's attendance at trade shows or conferences that Racemi attended for non-promotional purposes.

Response to Request No. 34:

Racemi incorporates by reference all of the foregoing objections.

Racemi also objects to this request on the grounds that it is vague, ambiguous, and, as presently understood, overly broad and unduly burdensome.

Respectfully submitted,



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Larry C. Jones  
Carla H. Clements  
Alston & Bird, LLP  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, North Carolina 28280-4000  
Telephone: (704) 444-1000

Attorneys for Registrant,  
Racemi, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Registrant's Responses to Petitioner's First Set of Requests for Production" was duly served on Petitioner via email as shown below on October 25, 2013, pursuant to an agreement between the parties to serve all such documents electronically:

Craig Neugeboren ([Craig@NeugeborenLaw.com](mailto:Craig@NeugeborenLaw.com))  
Steve Gruber ([Steve@NeugeborenLaw.com](mailto:Steve@NeugeborenLaw.com))  
Rene Roskam ([Rene@NeugeborenLaw.com](mailto:Rene@NeugeborenLaw.com))  
Neugeboren O'Dowd PC  
1227 Spruce St., Suite 200  
Boulder, CO 80302



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Larry C. Jones

## Steve Gruber

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**From:** Steve Gruber  
**Sent:** Monday, November 11, 2013 10:52 AM  
**To:** 'Jones, Larry'  
**Cc:** Craig Neugeboren; Clements, Carla  
**Subject:** Cloudpath Networks, Inc. v. Racemi, Inc.; Cancellation No. 92057344 (TTAB) - Reminder Regarding Production of Documents

Mr. Jones,

Racemi's Response to Petitioner's First Set of Requests for Production was due October 25, 2013 including any documents to be disclosed. You did not produce those documents at that time and have yet to provide those documents or provide any update regarding an expected date to produce those documents. As you have had sufficient time to collect the documents, we request that you provide all documents noted in your Response by this Friday, November 15, 2013 or we will be required to file a motion to compel.

Stephen S. Gruber  
Patent Attorney  
NEUGEBOREN O'DOWD PC  
1227 Spruce St., Suite 200  
Boulder, CO 80302  
720 536 4908 (direct)  
[steve@neugeborenlaw.com](mailto:steve@neugeborenlaw.com)

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## Steve Gruber

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**From:** Jones, Larry [Larry.Jones@alston.com]  
**Sent:** Monday, November 11, 2013 12:03 PM  
**To:** Steve Gruber  
**Cc:** Craig Neugeboren; Clements, Carla  
**Subject:** Cloudpath Networks, Inc. v. Racemi, Inc.; Cancellation No. 92057344 (TTAB) - Reminder Regarding Production of Documents

Mr. Gruber:

Thanks for the reminder. However, and contrary to your contention in your email below, Racemi was not obligated to produce any responsive documents on or before October 25.

In any event, I am informed by Racemi that we can expect to receive from Racemi, process, and then serve its initial wave of documents during the week of November 25-29.

### Larry C. Jones

Alston & Bird LLP  
101 S. Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Direct Phone: (704) 444-1019  
Direct Fax: (704) 444-1759  
Email: [Larry.Jones@Alston.com](mailto:Larry.Jones@Alston.com)

---

**From:** Steve Gruber [<mailto:steve@nodiplay.com>]  
**Sent:** Monday, November 11, 2013 12:52 PM  
**To:** Jones, Larry  
**Cc:** Craig Neugeboren; Clements, Carla  
**Subject:** Cloudpath Networks, Inc. v. Racemi, Inc.; Cancellation No. 92057344 (TTAB) - Reminder Regarding Production of Documents

Mr. Jones,

Racemi's Response to Petitioner's First Set of Requests for Production was due October 25, 2013 including any documents to be disclosed. You did not produce those documents at that time and have yet to provide those documents or provide any update regarding an expected date to produce those documents. As you have had sufficient time to collect the documents, we request that you provide all documents noted in your Response by this Friday, November 15, 2013 or we will be required to file a motion to compel.

Stephen S. Gruber  
Patent Attorney  
NEUGEBOREN O'DOWD PC  
1227 Spruce St., Suite 200  
Boulder, CO 80302  
720 536 4908 (direct)  
[steve@neugeborenlaw.com](mailto:steve@neugeborenlaw.com)

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notify me by reply e-mail, permanently delete this communication from your system, and destroy any hard-copies you may have printed. This communication is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521

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## Steve Gruber

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**From:** Steve Gruber  
**Sent:** Monday, November 18, 2013 9:22 AM  
**To:** 'Jones, Larry'  
**Cc:** Craig Neugeboren; Clements, Carla  
**Subject:** RE: Cloudpath Networks, Inc. v. Racemi, Inc.; Cancellation No. 92057344 (TTAB) - Reminder Regarding Production of Documents

Mr. Jones:

Thank you for informing us to expect *all* of your documents during the week of November 25-29. Racemi was obligated to produce those documents within 35 days of the request for production of documents. If you have a legal basis for supporting your contrary assertion, then please cite the law that you are relying on. Otherwise, please produce all requested documents, not a mere first wave, by the end of next week. We need to begin planning depositions and cannot do so without knowledge of the date when we can expect full disclosure of *all* requested documents.

Since we have made reasonable attempts to discuss this matter with you and to obtain the requested documents, we will be forced to file a motion to compel on December 2 to seek the disclosure of any documents that you withhold past November 29.

Stephen S. Gruber  
Patent Attorney  
NEUGEBOREN O'DOWD PC  
1227 Spruce St., Suite 200  
Boulder, CO 80302  
720 536 4908 (direct)  
[steve@neugeborenlaw.com](mailto:steve@neugeborenlaw.com)

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**From:** Jones, Larry [<mailto:Larry.Jones@alston.com>]  
**Sent:** Monday, November 11, 2013 12:03 PM  
**To:** Steve Gruber  
**Cc:** Craig Neugeboren; Clements, Carla  
**Subject:** Cloudpath Networks, Inc. v. Racemi, Inc.; Cancellation No. 92057344 (TTAB) - Reminder Regarding Production of Documents

Mr. Gruber:

Thanks for the reminder. However, and contrary to your contention in your email below, Racemi was not obligated to produce any responsive documents on or before October 25.

In any event, I am informed by Racemi that we can expect to receive from Racemi, process, and then serve its initial wave of documents during the week of November 25-29.

**Larry C. Jones**

Alston & Bird LLP  
101 S. Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Direct Phone: (704) 444-1019  
Direct Fax: (704) 444-1759  
Email: [Larry.Jones@Alston.com](mailto:Larry.Jones@Alston.com)

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**From:** Steve Gruber [<mailto:steve@nodiapl.com>]  
**Sent:** Monday, November 11, 2013 12:52 PM  
**To:** Jones, Larry  
**Cc:** Craig Neugeboren; Clements, Carla  
**Subject:** Cloudpath Networks, Inc. v. Racemi, Inc.; Cancellation No. 92057344 (TTAB) - Reminder Regarding Production of Documents

Mr. Jones,

Racemi's Response to Petitioner's First Set of Requests for Production was due October 25, 2013 including any documents to be disclosed. You did not produce those documents at that time and have yet to provide those documents or provide any update regarding an expected date to produce those documents. As you have had sufficient time to collect the documents, we request that you provide all documents noted in your Response by this Friday, November 15, 2013 or we will be required to file a motion to compel.

Stephen S. Gruber  
Patent Attorney  
NEUGEBOREN O'DOWD PC  
1227 Spruce St., Suite 200  
Boulder, CO 80302  
720 536 4908 (direct)  
[steve@neugeborenlaw.com](mailto:steve@neugeborenlaw.com)

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## Exhibit D

### **LIST AND BRIEF DESCRIPTION OF DOCUMENTS THAT WERE NOT PRODUCED**

#### Relative to Request No. 3:

- (i) Representative samples of materials reflecting Registrant's use of the CLOUD PATH mark and the services offered and provided thereunder. Namely, all documents which record, refer to, or relate to Registrant's use of the "CLOUD PATH" designation, including Registrant's investigation of the CLOUDPATH mark for its availability for adoption and registration, its licensing, use, intended use, exploitation, and/or intended exploitation.
- (ii) Documents pertaining to Registrant's investigation of the availability of the CLOUD PATH mark for Registrant's adoption, use and/or registration. Namely, all documents which record, refer to, or relate to Registrant's use of the "CLOUD PATH" designation, including Registrant's investigation of the CLOUDPATH mark for its availability for adoption and registration, its licensing, use, intended use, exploitation, and/or intended exploitation.

#### Relative to Request No. 4:

Representative samples of materials reflecting Registrant's use of the CLOUD PATH mark and the services offered and provided thereunder. Namely, all documents which record, refer to, or relate to Registrant's use of the terms "CLOUD PATH" or "CLOUDPATH" in connection with any goods and/or services.

#### Relative to Request No. 7:

Representative samples of materials reflecting Registrant's use of the CLOUD PATH mark and the services offered and provided thereunder. Namely, all documents which record, refer to, or relate to Registrant's advertising, intended advertising, promotion, intended promotion, and/or third-party promotion (with or without compensation) of any goods and/or services under the Registrant mark.

#### Relative to Request No. 8:

Representative samples of materials reflecting Registrant's use of the CLOUD PATH mark and the services offered and provided thereunder. Namely, all documents which record, refer to, or relate to Registrant's sales or intended sales of any goods and/or services under the Registrant mark.

#### Relative to Request No. 9:

All documents which record, refer to, or relate to the selection, design, adoption, proposed use of, decision to use, and first use of the Registrant mark and/or any mark including the term "CLOUD PATH", including samples of any names, designations and/or other marks considered and rejected.

#### Relative to Request No. 10:

All documents which record, refer to, or relate to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of Registrant, or by any person acting for or on its behalf,

## Exhibit D

regarding the availability and/or registrability of the CLOUDPATH mark, or of the term “CLOUD PATH”.

### Relative to Request No. 11:

All documents which refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state or federal, of marks incorporating the term “CLOUD PATH” by Registrant including, without limitation, Registration No. 4174640.

### Relative to Request No. 12:

All documents which record, refer to, or relate to Registrant’s consideration or decision to select, adopt and/or use the CLOUDPATH mark and/or any designation including the term “CLOUD PATH” in each different logotype, design, hang tag, packaging, font of type or style in which said designation is being used, or is intended to be used, by or on behalf of Registrant.

### Relative to Request No. 13:

A sample of each different logotype, design, hang tag, packaging, font of type or style in which the Registrant mark and/or any designation including the term “CLOUD PATH” is being used, or is intended to be used, by or on behalf of Registrant.

### Relative to Request No. 14:

Representative samples of the requested materials. Namely, a sample of each and every different advertisement, intended advertisement, item of promotional material and/or intended item of promotional material printed and/or disseminated by or for Registrant in which the Registrant mark appears and/or any designation that includes the term “CLOUD PATH”.

### Relative to Request No. 16:

Copies of all web advertisements, brochures, press releases, television commercials, radio scripts and other media advertising not previously requested herein, prepared by or for Registrant whether or not released or aired, in which the Registrant mark appears.

### Relative to Request No. 17:

All documents which record, refer to, or relate to Registrant’s advertising and/or promotional expenditures, or expected advertising and/or promotional expenditures, for any goods offered for sale, sold and/or distributed under the CLOUD PATH mark including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with such advertisements and/or promotions.

### Relative to Request No. 18:

All documents which record, refer to, or relate to the amount of sales (actual and/or projected) by calendar quarter of goods sold by or for Registrant under the CLOUD PATH mark including, without limitation, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar value of the sales.

### Relative to Request No. 19:

## Exhibit D

All documents which record, refer to, or relate to any communication, oral or written, received by Registrant from any person which suggests, implies, or infers any connection or association between Petitioner and Registrant, or which inquires as to whether there is or may be such a connection or association between Petitioner and Registrant.

### Relative to Request No. 20:

All documents which record, refer to, or relate to any instance or occurrence of likelihood of confusion and/or actual confusion on the part of any person between Petitioner's use of the CLOUDPATH mark, and Registrant's CLOUD PATH mark.

### Relative to Request No. 21:

All documents which record, refer to, or relate to Registrant's knowledge and/or awareness of the use and/or application for registration of any mark by Petitioner.

### Relative to Request No. 23:

All documents which record, refer to, or which constitute any research, reports, surveys, or studies conducted by or on behalf of Registrant of consumer or customer perception of the CLOUD PATH mark.

### Relative to Request No. 24:

All documents in Registrant's possession or control that refer or relate to Petitioner or any of Petitioner's marks including the mark CLOUDPATH.

### Relative to Request No. 25:

Representative samples of the requested materials. Namely, all press releases, articles and clippings relating to or commenting on goods or services marketed or sold under the CLOUD PATH mark.

### Relative to Request No. 26:

Documents sufficient to identify all goods and/or services in connection with which Registrant uses and/or intends to use the Registrant mark and/or any designation that includes the term "CLOUD PATH".

### Relative to Request No. 27:

The expert witness report for each expert witness, whom Registrant decides to call as a witness.

### Relative to Request No. 29:

The requested documents to the extent that any such documents: (i) are identified in Registrant's responses to Petitioner's First Set of Interrogatories; and (ii) are not otherwise produced in response to any of Request Nos. 1-28.

### Relative to Request No. 30:

All documents produced by Registrant in response to a discovery request in connection with Cancellation Proceeding No. 92047919.

### Relative to Request No. 31:

## Exhibit D

All pleadings and filings made with the TTAB that were prepared by Registrant in connection with Cancellation Proceeding No. 92047919.