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Filing date: **07/20/2015**

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

| | |
|------------------------|---|
| Proceeding | 92058315 |
| Party | Plaintiff State of Michigan |
| Correspondence Address | TONI L HARRIS TRANSPORTATION DIVISION VAN WAGONER BLDG, 425 W OTTAWA 4TH FLOOR LANSING, MI 48913 UNITED STATES harrisT19@michigan.gov, lubitzs@michigan.gov |
| Submission | Other Motions/Papers |
| Filer's Name | Toni L. Harris |
| Filer's e-mail | harrist19@michigan.gov, lubitzs@michigan.gov |
| Signature | /s/ Toni L. Harris |
| Date | 07/20/2015 |
| Attachments | P - M-22 LLC - Motion To Extend Time 7-20-15.pdf(57521 bytes) Exhibit 1 to Petitioner's Motion to Extend.pdf(716050 bytes) Exhibit 2 to Petitioner's Motion to Extend.pdf(142198 bytes) Exhibit 3 to Petitioner's Motion to Extend.pdf(536927 bytes) |

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

| | | |
|-------------------|---|----------------------|
| State of Michigan |) | |
| |) | |
| Petitioner, |) | Reg. Nos.: 3992159 |
| |) | 3348635 |
| |) | |
| v. |) | |
| |) | |
| M22, LLC |) | Proceeding: 92058315 |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |
| |) | |

**PETITIONER’S COMBINED
MOTION TO EXTEND TIME TO FILE
DISCOVERY RESPONSES AND BRIEF IN SUPPORT**

Petitioner, State of Michigan, by and through its attorneys, Bill Schuette, Attorney General, and Toni L. Harris, Assistant Attorney General, moves for an order under TBMP §403.4, Trademark Rule of Practice, 37 C.F.R. § 120(a)(3), and Fed. R. Civ. P. 33(b)(2). 34(b)(2)(A), and 36(a)(3) extending the time to file Petitioner’s answers and objections to Registrant’s First Requests for Admissions and Registrant’s First Set of Interrogatories and Requests for Production of Documents to August 14, 2015.

In support of its Motion, the Petitioner State of Michigan (the State) states as follows:

1. Respondent served its First Request for Admissions and First Set of Interrogatories and Requests for Production of Documents on the State June 23, 2015. (Exhibit 1, Discovery requests.) These discovery requests require detailed

answers and numerous documents that must be gathered from a number of different sources within State agencies.

2. Responses and objections to Respondent's discovery requests are due July 23, 2015.

3. The number and breadth of the requests and require gathering information from multiple individuals and entities.

4. The discovery requests were served just prior to the long July 4th holiday weekend which reduce the number of worked days available to gather information and documents and prepare responses. Also, the pre-planned summer vacations of employees who may have requested information delay the State's ability to complete its responses by the July 23, 2015 deadline.

5. Pursuant to the Board's most recent scheduling order, discovery closes on November 25, 2015.

6. On July 7, 2015, the State sent a letter to Respondent's counsel in a good faith effort to resolve this and another discovery matter pursuant to Trademark Rule 2.120(f) and Fed. R. Civ. P. 29. The State also requested an agreement to extend the time to response to these discovery requests because of the number and breadth of the requests, which were served prior to the long July 4th holiday weekend and pre-planned summer vacation schedules of employees that may have information relating to the responses. (Exhibit 2, July 7, 2015 Letter.)

7. On July 8, 2015, Respondent refused to Petitioner's request.
(Exhibit 3.)

ARGUMENT

The grant or denial of a motion to extend time to respond to discovery requests is within the TTAB's discretion. TBMP §403.4, Trademark Rule of Practice, 37 C.F.R. § 120(a)(3), and Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A), and 36(a)(3). That discretion should be exercised here to grant Petitioner's request extending the time to respond to Respondent's Request for Admissions and First Interrogatories and Requests for Document Production.

First, Petitioner's motion is timely. It is not intended to needlessly or unnecessarily delay these proceedings. Discovery does not close until November 25, 2015; and Petitioner is requesting only a 21-day extension, leaving more than three months to complete discovery. Second, Petitioner has reasonable grounds supporting this request—the timing of the service of these requests and the number and breadth of the discovery requests, and the difficulty in obtaining information and preparing responses because of the unavailability of employees who may have information due to pre-planned vacations require additional time to gather information and prepare responses. Third, Respondent is not prejudiced by the requested 21-day extension. Respondent already has Petitioner's disclosures, including the documents. And there is sufficient time to complete additional discovery after the responses are served on August 14, 2015.

RELIEF REQUESTED

The State, therefore, asks this Board to grant this motion and enter its Order extending the time to file responses to Respondent's First Requests for Admission and First Set of Interrogatories and Requests for Document Production to August 14, 2015.

Respectfully submitted,

By: /s/Toni L. Harris

Date: July 20, 2015

BILL SCHUETTE, Attorney General
Toni L. Harris, Assistant Attorney General
Transportation Division
Van Wagoner Building
425 W. Ottawa, 4th Floor
Lansing, MI 48913
Tel: 517-373-1470
Fax: 517-335-6586

PROOF OF SERVICE

I, Susan Lubitz, legal secretary to Assistant Attorney General Toni L. Harris, certify that on July 20, 2015, I served a true and correct copy of Petitioner's Combined Motion to Extend Time to File Discovery Responses and Brief in Support on Respondent's counsel of record by e-mail and mail with first-class postage fully prepaid thereon and causing same to be deposited in the United States mail service.

/s/ Susan Lubitz

Susan Lubitz

Proceeding: 92058315

EXHIBIT 1 to Petitioner's
Combined Motion to Extend Time to File
Discovery Responses and Brief in Support

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

State of Michigan

Petitioner,

v.

M22, LLC,

Registrant.

Proceeding No: 92058315

REGISTRANT'S FIRST REQUESTS FOR ADMISSION

M22, LLC, by and through its attorneys Revision Legal, PLLC, and pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, requests that Opposer State of Michigan answer the following requests for admission under oath, subject the following, and serve responses upon Registrant within 30 days of service:

DEFINITIONS AND INSTRUCTIONS

INSTRUCTIONS

These Requests for Admissions ("Request(s)") will be admitted unless, within thirty (30) days after service, a sworn written answer or objection responding to each Request is served upon Registrant's counsel. Answers will specifically deny the Request or set forth in detail why the Request cannot be truthfully admitted or denied. Where a party cannot, in good faith, fully answer a Request, it will answer or deny the parts of the Request that can be answered or denied and set forth in detail why the remainder of the Request cannot be admitted or denied. Lack of information or

knowledge is an insufficient reason for a failure to admit or deny a Request unless a party has made a reasonable inquiry into the Request and, based on that inquiry, cannot admit or deny the request with information known or readily available to the party. If you answer a Request on the basis that you lack sufficient information to respond, describe any and all efforts you made to inform yourself of the facts and circumstances necessary to answer or respond.

These Requests are continuing in nature and your answers to these Requests must be supplemented within thirty (30) days or before trial, whichever is earlier, if you directly or indirectly obtain further information after you have submitted a response to these Requests.

DEFINITIONS

The words "State of Michigan", "You", and "Your" as used herein refer to the State of Michigan, its agents, officers, directors, departments, subsidiaries, employees and all other persons acting on its behalf.

The words "M22 Apparel Mark" as used herein refer to United States Patent and Trademark Office Registration No. 3348635.

The words "M22 Retail Mark" as used herein refer to United States Patent and Trademark Office Registration No. 3992159.

The words "M22 Marks" as used herein refer to the M22 Apparel Mark and M22 Retail Mark collectively.

The words "M22 Sign" as used herein refer to the State of Michigan's traffic control device indicating the M-22 trunkline highway.

REQUESTS FOR ADMISSION

Request to Admit 1: Admit that the State of Michigan has never used the M22 Sign in association with the sale or offering for sale of goods or services.

Answer:

Request to Admit 2: Admit that the State of Michigan has never displayed the M22 Sign on clothing sold by the State of Michigan.

Answer:

Request to Admit 3: Admit that the State of Michigan has never displayed the M22 Sign on a retail store.

Answer:

Request to Admit 4: Admit that the M22 Retail Mark is not identical to the M22 Sign.

Answer:

Request to Admit 5: Admit that the M22 Apparel Mark is not identical to the M22 Sign.

Answer:

Request to Admit 6: Admit that the State of Michigan has never used the M22 Mark except as a traffic control device.

Answer:

Request to Admit 7: Admit that the State of Michigan has never enforced the intellectual property statements contained within the Manual of Uniform Traffic Control Devices against any third party other than Registrant.

Answer:

Request to Admit 8: Admit that Attorney General Bill Schuette was previously an attorney at the law firm of Warner, Norcross, and Judd.

Answer:

Request to Admit 9: Admit that Attorney General Bill Schuette appointed James Scott, an attorney at Warner, Norcross, and Judd, as a special attorney general to file this cancellation proceeding.

Answer:

Request to Admit 10: Admit that You have no evidence supporting your allegation that "Registrant stopped use of the mark in the M22 Online Registration in association with the goods identified in the M22 Online Registration with no intent to resume such use" as alleged in Paragraph 30 of Your Second Amended Petition to Cancel.

Answer:

Request to Admit 11: Admit that You have no evidence supporting your allegation that "The fame or reputation of Petitioner is such that, when the M-22 Sign is used with Registrant's goods or services, a connection with Petitioner is presumed" as alleged in Paragraph 43 of Your Second Amended Petition to Cancel.

Answer:

Request to Admit 12: Admit that You have no evidence supporting your allegation that "consumers purchase goods decorated with the M-22 Sign, because the M-22 Sign points to Petitioner as the source" as alleged in Paragraph 55 of Your Second Amended Petition to Cancel.

Answer:

Request to Admit 13: Admit that the State of Michigan has never used the M22 Sign as its flag or coat of arms.

Answer:

Request to Admit 14: Admit that the State of Michigan has never used the M22 Sign as the seal of a department.

Answer:

Request to Admit 15: Admit that You have no evidence supporting your allegation that "Registrant knew, or at least had no reasonable basis for believing otherwise, that its use of the M-22 Sign would create a likelihood of confusion as to the source of the associated goods and services" as alleged in Paragraph 62 of Your Second Amended Petition to Cancel.

Answer:

Request to Admit 16: Admit that You have no evidence supporting your allegation that "Registrant was not using the mark M 22 M22ONLINE.COM on all the goods identified in the application Serial No. 78963038 when it filed the application, and upon information and belief, is not currently using the mark on all the goods identified in the application" as alleged in Paragraph 66 of Your Second Amended Petition to Cancel.

Answer:

Request to Admit 17: Admit that the State of Michigan has never used the M22 Sign to indicate the origin or source of its goods or services.

Answer:

Request to Admit 18: Admit that the State of Michigan does not provide color tours.

Answer:

Request to Admit 19: Admit that the State of Michigan does not provide real estate services under the M22 Sign.

Answer:

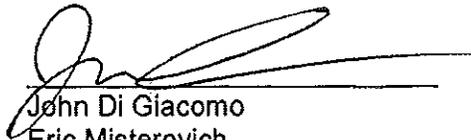
Dated: June 23, 2015



John Di Giacomo
Eric Misterovich
Revision Legal, PLLC
148 E. Front St. 3rd Floor
Traverse City, MI 49684
(231) 714-0100
eric@revisionlegal.com
john@revisionlegal.com

CERTIFICATE OF SERVICE

I, John Di Giacomo, an attorney, hereby certify that I served a true and correct copy of Registrant's First Requests to Admit on counsel of record via electronic mail on June 23, 2015.



John Di Giacomo
Eric Misterovich
148 E. Front St.
3rd Floor
Traverse City, MI 49684
Phone: (231) 714-0100
Fax: (231) 714-0200
Email: john@revisionlegal.com,
eric@revisionlegal.com
Attorneys for Registrant

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

State of Michigan

Petitioner,

Proceeding No: 92058315

v.

M22, LLC,

Registrant.

**REGISTRANT'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

M22, LLC, by and through its attorneys Revision Legal, PLLC, and pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, requests that Petitioner State of Michigan answer the following interrogatories under oath, subject to the following, and produce documents and serve responses upon Registrant:

DEFINITIONS AND INSTRUCTIONS

A. Instructions

Please complete the answers in the space provided, attach all responsive documents and, if needed, add additional pages. Within the time provided by the Federal Rules of Civil Procedures (the "Rules"), either return the signed and verified original to this office, or transmit copies thereof to the following email address: john@revisionlegal.com.

This discovery is intended to be continuing in nature, and any information which may be discovered subsequent to the service of your responses is to be brought to the attention of the party propounding the discovery through supplemental responses within thirty (30) days following discovery or prior to the date set for trial of this matter, whichever period of time is shorter.

The responses to each discovery request shall include such information and knowledge as is within your custody, possession, or control, including, but not limited to, knowledge, documents, and tangible things in your custody, possession or control, or that of your consultants, accountants, attorneys and other agents. If this discovery cannot be answered in full, answer to the extent possible, specify reasons for your inability to answer the remainder, and state whatever information or knowledge you have concerning the unanswered portion. In answering this discovery, furnish such information as is available to you regardless of whether this information is obtained directly by you, through your agents or other representatives, or by your attorneys.

If you object to answering any request, in whole or in part, state your objection and all of the factual and legal reasons supporting your objection with particularity in lieu of your answer or response. If you object to the discovery on the ground of privilege or immunity, also state with particularity the legal and factual basis of the privilege claimed. If you object to answering only part of the request, specify the part to which you object and answer the remainder.

The Rules require that you respond to this discovery under oath, within thirty (30) days of service. Failure to respond to this discovery within the time required by the Rules will be deemed a waiver of any objections that you might have asserted. In addition, failure to comply with the requirements of the Rules in responding to this discovery may subject you to sanctions pursuant to Rule 37, including the exclusion from trial of documentary, testimonial, or other evidence available to you; judgment by default against you; and an award requiring you to pay expenses, including attorneys' fees.

B. Definitions

The words "State of Michigan", "You", and "Your" as used herein refer to the State of Michigan, its agents, officers, directors, departments, subsidiaries, employees and all other persons acting on its behalf.

The words "M22 Apparel Mark" as used herein refer to United States Patent and Trademark Office Registration No. 3348635.

The words "M22 Retail Mark" as used herein refer to United States Patent and Trademark Office Registration No. 3992159.

The words "M22 Marks" as used herein refer to the M22 Apparel Mark and M22 Retail Mark collectively.

The words "M22 Sign" as used herein refer to the State of Michigan's traffic control device indicating the M-22 trunkline highway.

"Communications" includes, but is not limited to, any and all oral or written phone conversations, emails, chat logs, phone messages, correspondence, meetings, conferences, instant messages, text messages, memoranda, Document or any record of communication which stored on paper or digitally.

"Document" means as it is defined in Rules 26 and 34 and includes the original or a copy of the original and any non-identical copy, regardless of original location, of any recorded, written, printed, types or other graphic material of any kind, variety, type or character including, by way of example but not limited to, the following: books; records; contracts; agreements; invoices; orders; bills; certificates; bills of sale; bills of lading; correspondence; trip reports; spreadsheets; databases; certificates of title; financing statements; instruments; expense accounts; canceled checks; bank statements; bank books; receipts; disbursements journals; tax returns; financial statements; check stubs; promissory notes; resumes; address books; appointment books; telephone logs; worksheets; pictures; income statements; profit and loss statements; balance statements; deposit slips; credit card receipts; records or notations of telephone or personal conversations; conferences; intra office communications; postcards; letters; telexes; partnership agreements; articles of incorporation; mailing lists; catalog price lists; sound, tape and video records; memoranda; minutes, manuals, diaries; calendar or deskpads; scrapbooks; notebooks; correspondence; bulletins; circulars; policies; forms; pamphlets; notices; statements; journals; letters; telegrams; reports; interoffice communications; Photostats; microfilm; microfiche; maps; deposition transcripts; email messages; drawings; blueprints; photographs; negatives; and any other data, information, or statistics contained within any data storage device/modules, tapes, discs or any other memory device (including on any computer or cell phone) or any other information retrievable on storage systems, including computer-generated reports and printouts.

"Identify" in relation to person means provide the full name, job title, all known personal email address(es), all known business email address(es), all known aliases and all known home addresses, past and present, for each person identified.

"Identify" in relation to all other subjects/objects means provide any and all identification information, title, description, dates of use, persons who use the subject/object, the creators, the owners, and all known personal email address(es), all known business email address(es), all known aliases and all known home addresses, past and present, for each person related to the subject/object.

"Relate to," "relating to," or "related to," means constituting, referring, discussing, analyzing, comprising, embodying, recording, evidencing, concerning, or containing any information which pertains to the subject matter addressed in the request.

When asked for the date of an event, if the exact date or dates are unknown, then please give an estimate of the date (identifying it as an estimate) or a range of dates, as accurately as you can. Do not fail to answer on the basis that exact dates are unknown. Similarly, when asked for any other information, do not fail to answer on the

basis that the answer is not known fully or with exact precision. Rather, answer with the best information an estimates available to your, and identify your estimates as estimates.

When asked to provide to "state each fact" or the "facts upon which you rely" relating to any allegation, statement, or, legal theory, furnish a full and complete statement of the factual basis of any such allegation, statement, or, legal theory, the reason or rationale that such facts relate or pertain to the allegation, statement, or, legal theory, and how such facts relate or pertain to the allegation, statement, or, legal theory.

In responding to these requests, furnish all information and documents in your possession, custody, or control and that is known by you or subject to your reasonable inquiry. This includes, but is not limited to, information and documents in the possession of your attorneys, accountant, agents, or other persons directly or indirectly employed by you or connected with you or your attorneys.

The documents requested herein shall be produced by email to john@revisionlegal.com or at the offices of Revision Legal, 148 E. Front St., 3rd Floor, Traverse City, MI 49684, during normal business hours.

Produce all documents in full and unexpurgated form, organized, and labeled to correspond with the categories in the discovery.

CLAIM OF PRIVILEGE OR OTHER PROTECTION: with respect to any document or information you withhold claiming that is privileged or subject to protection as trial preparation materials, or for any other reason, state the privilege or other grounds for non-production and describe the nature and subject matter of the documents, communications, or things not produced or disclosed (including the type of document or communication, the date it was made, the author or maker, and all recipients) in a manner that will enable other parties to assess the applicability of the claimed privilege or protection. If a portion of any otherwise discoverable document contains information subject to a claim of privilege or protection, delete or redact those portions of the documents subject to the claim of privilege or protection, affix an indication of the location and size of a portion deleted or redacted, and produce the document along with the information described in this paragraph.

INTERROGATORIES

Interrogatory No. 1: State the factual basis for Your claim that the M22 Marks are identical to the M22 Sign.

Answer:

Interrogatory No. 2: State the factual basis for Your claim that the State of Michigan will suffer harm from Registrant's registration of the M22 Marks.

Answer:

Interrogatory No. 3: Identify all goods sold by the State of Michigan bearing the M22 Sign.

Answer:

Interrogatory No. 4: Identify all uses of the M22 Sign in association with the State of Michigan's provision, offering for sale, or sale of services.

Answer:

Interrogatory No. 5: Identify all individuals interviewed or otherwise identified by the State of Michigan who have been confused into believing that the goods or services of Registrant originate from the State of Michigan.

Answer:

Interrogatory No. 6: State the factual basis for Your claim that Registrant was not using the M22 Apparel Mark in association with all of the goods listed in its application for the M22 Apparel Mark at the time the application was filed.

Answer:

Interrogatory No. 7: Identify the manner in which the State of Michigan has used the M22 Sign as an insignia of the State of Michigan.

Answer:

Interrogatory No. 8: State the factual basis for Your allegation that "consumers purchase goods decorated with the M-22 Sign, because the M-22 Sign points to

Petitioner as the source," which is contained in Paragraph 55 of Your Second Amended Petition to Cancel.

Answer:

Interrogatory No. 9: Identify the manner in which the State of Michigan has obtained goodwill in the M22 Sign.

Answer:

Interrogatory No. 10: State the facts underlying the State of Michigan's search for a Special Assistant Attorney General for this matter, including all law firms considered and all individuals interviewed for the position.

Answer:

REQUEST FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1: Produce all Documents and other Communications referred to or related to Your responses to Registrant's First Interrogatories.

Answer:

Request for Production No. 2: Produce all Documents and Communications concerning Your use of the M22 Sign.

Answer:

Request for Production No. 3: Produce all Documents and Communications concerning Your adoption of the Uniform Manual of Traffic Control Devices.

Answer:

Request for Production No. 4: Produce all Documents and Communications that You have received concerning the M22 Marks.

Answer:

Request for Production No. 5: Produce all Documents and Communications that You have received or created concerning this Trademark Trial and Appeal Board proceeding.

Answer:

Request for Production No. 6: Produce all Documents and Communications supporting Your allegations in Your Second Amended Petition to Cancel.

Answer:

Request for Production No. 7: Produce all Documents and Communications supporting Your allegation that Registrant has abandoned the M22 Marks.

Answer:

Request for Production No. 8: Produce all Documents and Communications supporting Your allegation that consumers associate Registrant's goods with You.

Answer:

Request for Production No. 9: Produce all Documents and Communications supporting Your allegation that You have been harmed by Registrant's registration of the M22 Marks.

Answer:

Request for Production No. 10: Produce all Documents and Communications supporting Your allegation that consumers believe that Registrant's goods or services originate from You.

Answer:

Request for Production No. 11: Produce all Documents and Communications supporting Your allegation that Registrant has misrepresented the source of its goods or services.

Answer:

Request for Production No. 12: Produce all Documents and Communications supporting Your allegation that You have used the M22 Sign as an insignia.

Answer:

Request for Production No. 13: Produce all Documents and Communications supporting Your allegation that the M22 Marks were obtained fraudulently.

Answer:

Request for Production No. 14: Produce all Documents and Communications concerning Your allegation that consumers have been confused into believing that Registrant's goods or services originate from You.

Answer:

Request for Production No. 15: Produce all Documents and Communications concerning Your allegation that the M22 Sign represents a region.

Answer:

Dated this 23 day of June, 2015.

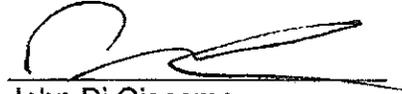


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eric@revisionlegal.com

john@revisionlegal.com

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2015, a true and correct copy of the above Registrant's First Set of Interrogatories and Requests for Production of Documents was served on Petitioner's counsel of record by electronic mail.



John Di Giacomo
Eric Misterovich
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Traverse City, MI 49684
(231) 714-0100
eric@revisionlegal.com
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Proceeding: 92058315

EXHIBIT 2 to Petitioner's
Combined Motion to Extend Time to File
Discovery Responses and Brief in Support

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



425 W. OTTAWA
LANSING, MICHIGAN 48913

BILL SCHUETTE
ATTORNEY GENERAL

July 7, 2015

Mr. John Di Giacomo
Revision/Legal
148 E. Front St., 3rd Floor
Traverse City, MI 49684

Re: M22 Trademark Cancellation No. 92058315

Dear Mr. Di Giacomo:

I have reviewed your client's Initial Disclosures, 30(b)(6) deposition notice and discovery requests. The State of Michigan objects to the Notice of Deposition generally because, with 19 topics, it is overly broad on its face. The State also objects to Traverse City as the location for the depositions. We will make the State's designee(s) available for deposition at the Office of the Attorney General in Lansing, Michigan.

With regard to the topics listed in the Notice, the State of Michigan objects as follows:

- a. Topic No. 2 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant;
- b. Topic No. 3 on grounds that it is overbroad, unduly burdensome, unlimited as to time period and scope, and relates to information that is irrelevant;
- c. Topic No. 4 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, and unlimited as to time period and scope;

- d. Topic No. 5 on grounds that it is overbroad, unduly burdensome, and unlimited as to time period and scope, and relates to information that is irrelevant;
- e. Topic No. 6 on grounds that it is overbroad, unduly burdensome, and unlimited as to time period, and relates to information that is irrelevant;
- f. Topic No. 7 on grounds that it is overbroad, unduly burdensome, and unlimited as to time period, and relates to information that is irrelevant;
- g. Topic No. 9 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant;
- h. Topic No. 10 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant;
- i. Topic No. 11 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant;
- j. Topic No. 12 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, and relates to information that is irrelevant;
- k. Topic No. 13 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, and relates to information that is irrelevant;
- l. Topic No. 14 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, and relates to information that is irrelevant;

Mr. Di Giacomo
Page 3
July 7, 2015

- m. Topic No. 15 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, and relates to information that is irrelevant; and
- n. Topic No. 19 on grounds that it is vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, and relates to information that is irrelevant.

Upon service of a non-objectionable notice, we can discuss a deposition date once the State has adequate time to review the notice and determine the designee(s) for each topic. Accordingly, the July 28th date of deposition as set forth in the current Notice will not work.

Regarding Respondent's discovery requests, due to the number and breadth of requests and vacation schedules, additional time is needed to obtain information and prepare responses. Please confirm that you will agree to a 30-day extension of the deadline to respond to all discovery requests. Thank you in advance for the courtesy.

Absent your concurrence to the relief requested above by close of business on Thursday, July 9th, the State will file motions as appropriate.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Toni L. Harris

Toni L. Harris
Assistant Attorney General
Transportation Division
HarrisT19@michigan.gov
(517) 373-1470

TLH/sjl
c: James Scott

Proceeding: 92058315

EXHIBIT 3 to Petitioner's
Combined Motion to Extend Time to File
Discovery Responses and Brief in Support



Toni L. Harris
Assistant Attorney General
Transportation Division
425 W. Ottawa
Lansing, Michigan 48913
HarrisT19@michigan.gov

Date: July 8, 2015

Subject: Letter dated July 7, 2015 concerning TTAB Cancellation Proceeding No. 92058315

Dear Ms. Harris:

We are in receipt of your letter dated July 7, 2015 wherein you object to M22, LLC's Notice of Deposition issued under Fed. R. Civ. P. 30(b)(6). Though you have provided no citations to the law justifying your objections, this letter is intended to respond to your objections with the applicable law.

First, you have objected to M22, LLC's Notice of Deposition on the basis that July 28, 2015 "will not work." You have provided no legal justification for your objection other than the boilerplate statement that the categories of information contained within M22, LLC's 30(b)(6) deposition notice are "vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relate[s] to information that is irrelevant." Rule 2.120(a) of the Trademark Rules of Practice "provides that mere notice alone is sufficient to secure the attendance of a party for the taking of his discovery deposition." See *Consol. Foods Corp.*, 189 U.S.P.Q. (BNA) ¶ 582 (P.T.O. Mar. 5, 1976). Rule 2.123(c) states that "[d]epositions may be noticed for any reasonable time and place in the United States."



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Since M22, LLC's Notice of Deposition was served upon the State of Michigan on June 23, 2015, over thirty days prior to the date and time of the deposition, M22, LLC's Notice of Deposition is both reasonable and was properly noticed.

Second, you have asserted various objections to M22, LLC's 30(b)(6) Notice of Deposition on the basis that the categories of information requested are either vague, ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relate to information that is irrelevant. Though you have provided no details justifying these objections, which are, at best, boilerplate, M22, LLC responds to your objections in turn:

Topic 2: M22, LLC has requested that the State of Michigan provide testimony on its "development, creation, and use of the M-22 sign." You have objected on the basis that this request is "vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant."

The State of Michigan's Second Amended Petition to Cancel specifically states that the State of Michigan created the sign (§ 2), that the State of Michigan used the sign "to represent and describe the culture of Northern Michigan (§ 5)," that the State of Michigan's use of the sign has caused it to become a "symbol of that region of Petitioner (§ 7)," that, though the federal manual suggests a default sign for route markers, "Michigan chose to maintain its historic design... (§ 20)," that the "M-22 Sign points uniquely and unmistakably to the State of Michigan (§ 40)," that "Registrant has copied all aspects of Petitioner's M-22 Sign... (§ 54)," that the "M-22 Sign is an insignia of the State of Michigan (§ 59)," that the State of Michigan has "used the M-22 Sign continuously in interstate commerce for nearly a century... (§ 70)," and that "[t]hrough Petitioner's use of the M-22 Sign, Petitioner has built up extensive and valuable

goodwill in the M-22 Sign ¶ (73)," among others. Your objection, that M22, LLC's request is vague, ambiguous, overbroad, unduly burdensome, unlimited in time period and scope, not described with particularity, and relates to information that is irrelevant, is entirely unsupportable.

Topic 3: M22, LLC has requested that the State of Michigan provide testimony on its "development, creation, and use of the M-22 sign as a trademark." You have objected on the basis that this request is "overbroad, unduly burdensome, unlimited as to time period and scope, and relates to information that is irrelevant."

The State of Michigan's Second Amended Petition to Cancel specifically states that the State of Michigan created the sign (¶ 2), that the State of Michigan used the sign "to represent and describe the culture of Northern Michigan (¶ 5)," that the State of Michigan's use of the sign has caused it to become a "symbol of that region of Petitioner (¶ 7)," that, though the federal manual suggests a default sign for route markers, "Michigan chose to maintain its historic design... (¶ 20)," that the "M-22 Sign points uniquely and unmistakably to the State of Michigan (¶ 40)," that "Registrant has copied all aspects of Petitioner's M-22 Sign... (¶ 54)," that the "M-22 Sign is an insignia of the State of Michigan (¶ 59)," that the State of Michigan has "used the M-22 Sign continuously in interstate commerce for nearly a century... (¶ 70)," and that "[t]hrough Petitioner's use of the M-22 Sign, Petitioner has built up extensive and valuable goodwill in the M-22 Sign ¶ (73)," among others. Your objection, that M22, LLC's request is overbroad, unduly burdensome, unlimited as to time period and scope, and relates to information that is irrelevant, is unsupportable as well.

Topic 4: M22, LLC has requested that the State of Michigan provide testimony on its "use of the M-22 sign as an insignia for the State." You have objected on the basis that this request is "vague and ambiguous, overbroad, unduly burdensome, and unlimited as to time period and scope."

The State of Michigan's Second Amended Petition to Cancel specifically states that the "M-22 Sign is an insignia of the State of Michigan (§ 59)." Since the State of Michigan pleads that it has used the M-22 sign as an insignia of the State of Michigan, the State of Michigan's objection to this request is absurd.

Topic 5: M22, LLC has requested that the State of Michigan provide testimony on the "State of Michigan's adoption of and adherence to the Manual on Uniform Traffic Control Devices." You have objected on the basis that this request is "overbroad, unduly burdensome, and unlimited as to time period and scope, and relates to information that is irrelevant."

The State of Michigan's Second Amended Petition to Cancel specifically states that "[t]o remain eligible for federal highway and highway safety program funds, a state must adopt the federal MUTCD as a state regulation, adopt a state MUTCD that is approved by the Secretary of Transportation as being in 'substantial conformance' with the federal MUTCD, or adopt the federal MUTCD in conjunction with a state supplement (§ 18)," that the Michigan Vehicle Code requires MDOT to "adopt and maintain a uniform system of traffic control devices (§ 19)," that the State of Michigan, in compliance with the Michigan Vehicle Code, "has adopted versions of the Michigan MUTCD that are consistent with the federal manual... (§ 20)," and that the "MUTCD under the Highway Safety Act of 1966 reserves the M-22 Sign for the specific

purpose of functioning as a traffic control device (§ 23).” Consequently, your objection is meritless.

Topic 6: M22, LLC has requested that the State of Michigan provide testimony on the State’s “use of the M-22 sign as a geographical indicator for the northwest Michigan region.” You have objected on the basis that this request is “overbroad, unduly burdensome, and unlimited as to time period, and relates to information that is irrelevant.”

The State of Michigan’s Second Amended Petition to Cancel specifically states that the State of Michigan’s use of the sign has caused it to become a “symbol of that region of Petitioner (§ 7),” that, though the federal manual suggests a default sign for route markers, “Michigan chose to maintain its historic design... (§ 20),” that the “M-22 Sign points uniquely and unmistakably to the State of Michigan (§ 40),” and that “Registrant has copied all aspects of Petitioner’s M-22 Sign... (§ 54).” Thus, your objection is groundless.

Topic 7: M22, LLC has requested that the State of Michigan provide testimony on the State’s “receipt of revenue from the use of the M-22 sign on goods or services.” You have objected on the basis that this request is “overbroad, unduly burdensome, and unlimited as to time period, and relates to information that is irrelevant.”

The State of Michigan’s Second Amended Petition to Cancel specifically states that the State of Michigan has used the M-22 sign as a mark in association with “providing traffic management services, providing road and traffic information, and facilitating the safe and efficient travel of travelers within its borders (§ 70).” Since the State of Michigan has alleged that it has used the M-22 sign as a mark and that consumers have “come to recognize the sign as signifying Petitioner, its services, and

specific geographic areas (§ 72)...," this information is clearly relevant and discoverable.

Topic 9: M22, LLC has requested that the State of Michigan provide testimony on the State's "receipt of highway funds as a result of its 'substantial conformance' with the Manual on Uniform Traffic Control Devices." You have objected on the basis that this request is "vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant."

The State of Michigan's Second Amended Petition to Cancel specifically states that "[t]o remain eligible for federal highway and highway safety program funds, a state must adopt the federal MUTCD as a state regulation, adopt a state MUTCD that is approved by the Secretary of Transportation as being in 'substantial conformance' with the federal MUTCD, or adopt the federal MUTCD in conjunction with a state supplement (§ 18)." Consequently, the your objection is groundless.

Topic 10: M22, LLC has requested that the State of Michigan provide testimony on the State's "denial of highway funds for failure to comply with federal law." You have objected on the basis that this request is "vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant."

Again, the State of Michigan's Second Amended Petition to Cancel states that "[t]o remain eligible for federal highway and highway safety program funds, a state must adopt the federal MUTCD as a state regulation, adopt a state MUTCD that is approved by the Secretary of Transportation as being in 'substantial conformance' with the federal MUTCD, or adopt the

federal MUTCD in conjunction with a state supplement (¶ 18).” Thus, this information is clearly relevant to determine whether the State of Michigan has consistently complied with federal law in the manner asserted in this case, whether the State of Michigan can decline to accept federal funding that is expressly made conditional upon compliance with federal law, and the State of Michigan’s purported damages.

Topic 11: M22, LLC has requested that the State of Michigan provide testimony on all correspondence received by the State of Michigan concerning its failure to comply with or adhere to the Manual on Uniform Traffic Control Devices or regulations of the Federal Highway Administration or Department of Transportation of the United States of America. You have objected on the basis that this request is “vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, not described with particularity, and relates to information that is irrelevant.”

The State of Michigan contends that M22’s cannot maintain registration of the M22 marks because said registration is prohibited by the Manual on Uniform Traffic Control Devices. Thus, correspondence concerning the State of Michigan’s failure to comply with the MUTCD, or other, similar purported federal mandates, are directly relevant to whether the State of Michigan’s assertions that it will be harmed by M22’s registrations are true or are, rather, manufactured for the purposes of continuing this TTAB action.

Topic 12: M22, LLC has requested that the State of Michigan provide testimony on the “taxes paid by M22, LLC to the State of Michigan.” You have objected on the basis that this request is “vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, and relates to information that is irrelevant.”

The State of Michigan contends that it has been harmed by M22's use of the M22 marks. Thus, the taxes paid by M22 from its business activities are directly relevant to the question of whether the State of Michigan has been harmed, and to what extent. Therefore, your objection is without merit.

Topic 13: M22, LLC has requested that the State of Michigan provide testimony on its recognition of M22, LLC as one of Michigan's 50 Companies to Watch. You have objected on the basis that this request is "vague and ambiguous, overbroad, unduly burdensome, and relates to information that is irrelevant."

The State of Michigan contends that it is harmed by M22, LLC's use of the M22 marks, but it has, at the same time, recognized M22, LLC as one of Michigan's 50 Companies to Watch. Thus, your objection is without merit because this information is directly relevant to whether the State of Michigan's assertions that it will be harmed by M22's registrations are true or are, rather, manufactured for the purposes of continuing this TTAB action.

Topic 14: M22, LLC has requested that the State of Michigan provide testimony on its use of M22 in its Pure Michigan campaign. You have objected on the basis that it is "vague and ambiguous, overbroad, unduly burdensome, and relates to information that is irrelevant."

The State of Michigan contends that it has been harmed by M22's use of the M22 marks, but it has, at the same time, recognized M22 in its Pure Michigan campaign. Thus, your objection is without merit because this information is directly relevant to whether the State of Michigan's

assertions that it will be harmed by M22's registrations are true or are, rather, manufactured for the purposes of continuing this TTAB action.

Topic 15: M22, LLC has requested that the State of Michigan provide testimony on the State of Michigan's use of M22, LLC in the Pure Michigan "Official State Travel Guide." You have objected on the basis that it is "vague and ambiguous, overbroad, unduly burdensome, and relates to information that is irrelevant."

The State of Michigan contends that it has been harmed by M22's use of the M22 marks, but it has, at the same time, recognized M22 in its Pure Michigan campaign. Thus, your objection is without merit because this information is directly relevant to whether the State of Michigan's assertions that it will be harmed by M22's registrations are true or are, rather, manufactured for the purposes of continuing this TTAB action.

Topic 19: M22, LLC has requested that the State of Michigan provide testimony on its "adoption and enforcement of the Michigan Manual on Uniform Traffic Control Devices against third parties." You have objected on the basis that it is "vague and ambiguous, overbroad, unduly burdensome, unlimited as to time period and scope, and relates to information that is irrelevant."

The State of Michigan contends that it must enforce the Michigan Manual on Uniform Traffic Control Devices against M22, LLC or lose federal highway funding. Consequently, this information is clearly relevant to determining whether the State of Michigan has consistently enforced the MUTCD against third parties, or whether it has only enforced the MUTCD against M22.

Third, you objected on the basis that M22's Notice of Deposition sets Traverse City, Michigan as the place for the deposition. M22's Notice of Deposition was noticed for a reasonable place in the United States and within a judicial district in which the State of Michigan can be found. The State of Michigan clearly resides within Traverse City, Michigan, and has no reasonable basis for objecting to a deposition within Traverse City, Michigan. Therefore, your objection is without merit.

Finally, M22 is not agreeable to your request to extend the time to respond to its discovery requests. As you know, this matter has been in front of the TTAB since December 2013, and the interlocutory attorney has instructed the parties to proceed with discovery. In light of this, and because M22's Notice of Deposition is entirely reasonable, M22 will be proceeding with the deposition of the State of Michigan in Traverse City, Michigan on July 28 as scheduled. *See In re Christina Sukljan*, Opposition No. 91205046, 2015 WL 496140, at 3 (Jan. 20, 2015) (holding that 9 days was sufficient time for notice of a deposition); *see also Sunrider Corp. v. Raats*, 83 USPQ 2d 1648, 1653 (TTAB 2007) (finding six days reasonable notice for deposition). Should the State of Michigan fail to attend, M22 will proceed with filing a motion to compel and request that the interlocutory attorney sanction the State of Michigan for its failure to attend by dismissing this cancellation proceeding with prejudice. *See Christina Sukljan* at 4.

Do not hesitate to contact me should you have any questions.

Sincerely,

John Di Giacomo