

ESTTA Tracking number: **ESTTA622466**

Filing date: **08/20/2014**

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

Proceeding	92058411
Party	Plaintiff Luxco, Inc.
Correspondence Address	MICHAEL R ANNIS HUSCH BLACKWELL LLP 190 CARONDELET PLAZA, STE 600 ST LOUIS, MO 63105 UNITED STATES mike.annis@huschblackwell.com, andy.gilfoil@huschblackwell.com, alan.nemes@huschblackwell.com
Submission	Opposition/Response to Motion
Filer's Name	Andrew R. Gilfoil
Filer's e-mail	andy.gilfoil@huschblackwell.com, mike.annis@huschblackwell.com, alan.nemes@huschblackwell.com
Signature	/s/ Andrew R. Gilfoil
Date	08/20/2014
Attachments	Opici opposition.PDF(2365064 bytes)

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

LUXCO, INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92058411
)	
OPICI IP HOLDINGS, LLC)	
)	
Registrant.)	

**LUXCO’S OPPOSITION TO OPICI’S MOTION TO CLARIFY/RECONSIDER THE
BOARD’S ORDER OF JULY 29, 2014**

Luxco, Inc. (“Luxco” or “Opposer”), by and through its undersigned counsel and pursuant to 37 C.F.R. §2.127(b) and 2.119(c), submits the following response in opposition to Registrant’s Motion to Clarify the Board’s Order dated July 29, 2014 [Dkt. 12], as follows:

INTRODUCTION

It is unclear under what legal basis Opici seeks relief in bringing the present motion to “clarify.” First, Opici asks that the Board “clarify,” that is—reconsider—the Board’s prior Order. The Board’s July 29, 2014 Order dismissing Opici’s counterclaims without prejudice was rightly decided and should not be reconsidered or “clarified.” The Board correctly found that Opici’s counterclaims were factually deficient and provided Opici thirty days leave to re-plead amended counterclaims to the extent Opici is able to do so. The Board’s clear order affords Opici leave to submit amended counterclaims if, consistent with Opici’s obligations under Rule 11, doing so is “possible, justified and appropriate.” Opici fails to identify any manifest error in the Board’s prior order warranting reconsideration or “clarification.” As the movant here, Opici

undoubtedly bore the burden to do so. Opici thus fails to satisfy its burden and the present motion should accordingly be denied on that basis alone.

Second, although far from the picture of clarity, it also appears that Opici asks that the Board “acknowledge” Opici’s ability to seek discovery regarding abandonment and that it “be permitted to seek leave to amend” after August 29, 2014 “upon a sufficient showing.” *Id.* at p. 2. Opici’s request amounts to a request for an advisory opinion from the Board on some future potential development, which the Board does not issue. TBMP §605.03(f). In any event, to the extent the Board is nonetheless inclined to take up Opici’s improper request, Opici, as the movant, again offers no competent reason why the Board should amend the amendment deadline set forth in its prior order. Opici again fails to articulate any “good cause” supporting its request which, as the movant, Opici was obligated to show. In truth, it appears that Opici now confesses that it lacks any present factual basis to submit an abandonment counterclaim consistent with Rule 11. In short, whether the present motion is viewed as one for reconsideration or as a motion for extension Opici wholly fails to meet its burden and the present motion must be denied.

FACTUAL BACKGROUND

1. Luxco filed its Petition to Cancel in this matter over eight months ago, on December 10, 2013, asserting a likelihood of consumer confusion between Luxco’s REBEL Marks and Opici’s registered mark REBELLION when used on legally identical goods. (*See* Petition [Dkt. 1].)

2. In response, Opici answered and filed three denominated counterclaims alleging that Luxco’s REBEL Marks should be cancelled because of purported “naked licensing” and Luxco’s “failure to police” its REBEL Marks. (*See* Counterclaims [Dkt. 4], p. 4.)

3. Discovery first opened over five months ago, on February 28, 2014. *See* Order [Dkt. 2], at p. 2. Upon Opici's filing of its counterclaims, that discovery date was reset to April 27. *See* Order [Dkt. 5], at p.1.

4. Luxco previously moved to cancel Opici's counterclaims because Opici's second and third denominated "counterclaims" failed to provide sufficient factual specificity and clarity to allow Luxco to fully and completely respond to the same. (*See* Motion to Dismiss [Dkt. 6], at p. 2.)

5. On April 29, 2014, Luxco served Opici with Luxco's First Interrogatories and First Requests for Production of Documents. *See* Exs. A and B attached hereto. Therein, Luxco asked that Opici state all facts that it relied on to support its counterclaim contentions (Ex. A, at Interrogatory Nos. 23-28) and produce any documents that Opici relied on to support its various conclusory abandonment/"naked licensing" contentions (*See* Ex. B, at Request Nos. 32-38.)

6. In response, Opici lodged various specific objections and claimed that any information or documents relied on to support Opici's counterclaim contentions were purportedly "subject to the attorney-client privilege and/or the attorney work product privilege." *See* Registrant's response to Luxco's Interrogatories, Ex. C attached hereto, at pp. 11-13. Opici has similarly refused to produce any documents that it relied on to support its various counterclaim contentions, again claiming that "[a]ny such documents would be subject to the attorney-client privilege and/or attorney-work product privilege." *See* Registrant's Responses to Luxco's First Production Requests, Ex. D attached hereto, at pp. 14-16.

7. On July 29, 2014, the Board entered its order granting Luxco's motion, dismissing¹ Opici's counterclaims without prejudice. (*See* Order [Dkt. 12], p. 7-8.) The Board

¹ The Board also struck Opici's fourth affirmative defense as factually insufficient. (*Id.* at p. 6.)

went on to allow Opici thirty (30) days leave to submit amended counterclaims “if possible, justified and appropriate.” (See Order [Dkt. 12], p. 7-8.)

8. In subsequent follow-up to golden rule correspondence, Opici has confirmed that it is unwilling to waive its prior objections to the above-referenced interrogatories and production requests. (See August 1, 2014 e-mail from J. Rannells to A. Gilfoil, attached hereto at Ex. E, p. 1.) Particularly as it relates to documents and information relating to alleged “naked licensing” or “failure to police,” Opici refuses to provide any information or documents. In this regard, Opici maintains that because the Board has since dismissed its counterclaims, that the referenced interrogatories are allegedly “not in issue.” (*Id.*)

ARGUMENT AND AUTHORITIES

I. LEGAL STANDARD

A motion for reconsideration, modification or clarification requires a showing by the movant that based on the facts before it and the prevailing authorities “the Board erred in reaching the order it issued.” See TBMP §518; *Vignette Corp. v. Marino*, 77 U.S.P.Q.2d 1408, 1411 (TTAB 2005). That is, motions for reconsideration are to be utilized in the limited circumstances where the movant shows that, based on the facts before it and the applicable law, that the Board’s ruling was in error and requires change. *Vignette Corp. v. Marino*, 77 U.S.P.Q.2d 1408, 1411 (TTAB 2005)(denying motion for reconsideration, finding no error in prior ruling). This burden applies regardless of whether a movant attempts to recast its motion by some other name. See *Baron Phillippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 U.S.P.Q.2d 1848, 1853-54 (TTAB 2000)(treating so-called request for “reformation” as a motion for reconsideration “because it requests a modification of an order of the Board”). In fact, the

Board views such semantic games as a clear attempt to “avoid the obvious requirements of the correct rule” and indicia of bad faith. *Id.*

II. OPICI FAILS TO OFFER ANY COMPETENT LEGAL OR FACTUAL SUPPORT FOR RECONSIDERATION OR “CLARIFICATION” OF THE BOARD’S PRIOR ORDER

As noted above, in bringing a motion to “clarify” or reconsider Opici bears the burden of showing that the Board clearly erred in reaching the order or decision it issued based on the facts before it and the prevailing authorities. *See Threshold.Tv, Inc.*, 96 U.S.P.Q.2d at 1038, n. 16; *Vignette Corp. v. Marino*, 77 U.S.P.Q.2d 1408, 1411 (TTAB 2005); *see also* TBMP §518. Here, however, Opici makes no effort to even meet this standard. Opici fails to identify any manifest error in the Board’s Order or provide any newly discovered evidence supporting reconsideration or “clarification” of that Order. To the extent Opici attempts in reply to supplement its briefing with so-called legal or factual authority, the Board should rightly refuse consideration of Opici’s untimely assertions. It is well-settled that the “presentation of one’s arguments and authority should be presented thoroughly in the motion or the opposition brief thereto.” *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 U.S.P.Q.2d 1719, 1720 n. 3 (TTAB 1999)(refusing consideration of reply brief).

In truth, it appears that by characterizing its motion as one to “clarify” that Opici is attempting to avoid the “obvious requirements” of the correct rule for a motion for reconsideration. *See Baron Philippe de Rothschild S.A.*, 55 U.S.P.Q.2d at 1854 (finding mis-captioning of motion for reconsideration as motion for “reformation” to be indication of “bad faith”). Simply stated, Opici’s request that the Board “clarify” its prior holding is without any factual or legal support and should be denied as such. *See Joy Mfg. Comp. v. The Robbins*, 181

U.S.P.Q. 408, 409 (TTAB 1974)(denying reconsideration); *Baron Philippe de Rothschild*, 55 U.S.P.Q.2d at 1854 (same).

III. TO THE EXTENT OPICI'S MOTION IS READ AS A REQUEST TO EXTEND THE BOARD'S DEADLINE TO SUBMIT AMENDED COUNTERCLAIMS, NO GOOD CAUSE SUPPORTS OPICI'S REQUEST

Although far from clear, it appears that in the present motion Opici also asks that it “be permitted to seek leave to amend” after August 29, 2014 “upon a sufficient showing.” *See* Motion [Dkt. 12], p 2. To the extent Opici is asking that the Board’s set deadline to amend be extended, however, Opici equally fails to meet its burden.

A motion to extend the time to take action requires that the movant establish good cause to extend the time to take the required action. *See* Fed. R. Civ. P. 6(b). To that end, the movant bears the burden of proof to “state with particularity the grounds therefor, including detailed facts constituting good cause.” *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 U.S.P.Q.2d 1372, 1373 (TTAB 2001). Sparse motions containing very little information upon which good cause could be found are routinely denied by the Board. *Luemme Inc. v. D.B. Plus, Inc.*, 53 U.S.P.Q.2d 1758, (TTAB 1999); *SFW Licensing Corp.*, 60 U.S.P.Q.2d at 1375 (finding motion without detailed facts to evidence nothing more than a bad faith attempt to delay). Finally, it is plain that the mere delay in initiating discovery cannot constitute “good cause” to extend. *See Luemme Inc.*, 53 U.S.P.Q.2d at 1760-61.

Here, first and foremost, Opici has not identified any “good cause” supporting its request. (*See* Motion [Dkt. 12].) Opici offers no averment that “good cause” exists here, nor does it submit any facts that purportedly show Opici’s good cause in bringing the present Motion.² The

² Again, to the extent Opici attempts in reply to do so for the first time, its untimely attempt to submit additional arguments or claims should be ignored as improper. *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 U.S.P.Q.2d 1719, 1720 n. 3 (TTAB 1999)(refusing consideration of reply brief in light of well-settled rule

reason for Opici's failure to do so is plain: no good cause exists. Because Opici fails to meet its burden, the present request should be denied on this basis alone.

The facts here make equally clear that no "good cause" could exist to support Opici's request. First, the provisions of Federal Rule 11 are plainly applicable in this matter and obligated Opici to assert its prior counterclaims only if, "after an inquiry reasonable under the circumstances" Opici believed that there was factual support for its claims. *See* Fed .R. Civ. P. 11(b). In so filing Opici also certified to the Board that its counterclaims were not being presented for any "improper purpose, such as to harass, cause unnecessary delay, or needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1). Thus, Luxco assumes that consistent with its obligations under Rule 11 that Opici possessed some factual support to support its counterclaims or Opici would not have even filed them in the first place. To the extent Opici is now contending that it requires additional discovery in order to raise an abandonment counterclaim consistent with Rule 11, Opici offers no explanation why it has not previously served discovery requests on Luxco. Opici certainly could have done so if it perceived a need to obtain additional factual information bearing on its "naked licensing" and "failure to police" counterclaims. Opici has had months to do so already but has failed to serve any discovery.

In truth, Opici's request has not been submitted in good faith and as such cannot possibly constitute "good cause" to extend Opici's filing deadline. As noted above, Opici has consistently failed and refused to satisfy its discovery objections in this matter. Luxco specifically requested discovery from Opici in this matter regarding the factual basis relied on to support its "naked licensing" and "failure to police" counterclaims, and Opici has refused to provide any information or documents regarding these issues on the basis that any documents or

that "presentation of one's arguments and authority should be presented thoroughly in the motion or the opposition brief thereto").

information are purportedly subject to attorney-client privilege and/or attorney work product privilege. *See* Ex. C, at pp. 11-13; Ex. D, at pp. 14-16. Luxco has made multiple attempts to obtain whatever information and documents purportedly support Opici's claim, but Opici has failed and refused to provide any information or documents in response. Opici should not be allowed to hide behind the attorney work product doctrine when served with discovery yet at the same time maintain to this Board that it requires additional discovery in order to obtain factual support for its claims. Simply stated, no good cause exists to grant the present motion.

CONCLUSION

Opici has failed to satisfy the standard it bears in bringing this motion. No manifest error is alleged supporting reconsideration of the Board's prior order. No good cause is provided supporting an extension of the Board's deadline to amend, as none exists. Opici has refused to provide information or documents in discovery regarding its abandonment counterclaims, and should not be rewarded for asserting counterclaims that, based on Opici's current contentions in the present motion, appear to lack any present factual support consistent with Rule 11. For the reasons set forth above, the Board should deny Registrant's request to "clarify" or reconsider the Board's July 29, 2014 Order dismissing Opici's abandonment counterclaims.

Respectfully submitted,

Dated: August 20, 2014

By: /s/ Andrew R. Gilfoil

Michael R. Annis
Andrew R. Gilfoil
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Telephone: (314) 480-1500
Fax: (314) 480-1505
mike.annis@huschblackwell.com
andy.gilfoil@huschblackwell.com

Attorneys for Opposer Luxco, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was served via e-mail and first class mail, postage prepaid on this 20th day of August, 2014 upon:

Stephen L. Baker
Baker & Rannells P.A.
575 Route 28, Suite 102
Raritan, NJ 08869
baker@tmlaw.com

 /s/ Andrew R. Gilfoil

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

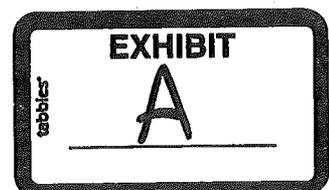
LUXCO, INC.,)	
)	
Petitioner/Counter Registrant,)	
)	
v.)	Cancellation No. 92/058,411
)	
OPICI IP HOLDINGS, LLC)	
)	
Registrant/Counter Petitioner.)	

LUXCO INC.'S FIRST SET OF INTERROGATORIES TO REGISTRANT

Petitioner Luxco, Inc. (“Luxco” or “Petitioner”), by and through its attorneys, Husch Blackwell LLP, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, and submits the following interrogatories to Registrant Opici IP Holdings, LLC (“Opici” or “Registrant”) to be answered under oath by written response and delivered to the offices of Husch Blackwell LLP, 190 Carondelet Plaza, Suite 600, St. Louis, MO 63105, within 30 days after service of this request, pursuant to the attached instructions and definitions.

DEFINITIONS

1. “Person” means any individual, sole proprietorship, association, partnership, corporation or other legal entity.
2. “Document” means the originals (or any copies when originals are not available) unless otherwise stated and any non-identical copies (whether different from the originals because of notes made on such copies or otherwise), of writings of every kind and description whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means,



as well as phonic (such as tape recordings) or visual reproductions or oral statements, conversations or events, and including, but not limited to, correspondence, teletype messages, internal memoranda, notes, reports, compilations, studies, tabulations, tallies, maps, diagrams, plans, pictures, computer-stored data, computer printouts, all information stored electronically, including but not limited to e-mails, search requests, stored files or folders, meta data, telephone records, internet records, prior drafts of records, files, folders, or correspondence.

3. "Identify", "identity" or "identification" when used in reference to a natural person means to state his full name and present or last known residence, his present or last known position and business affiliation and each of his positions in the applicable time period; when used in reference to a document or communication, means to state its date, its subject and substance, its authority, the type of document (e.g., letter, memorandum, telegrams, charts, computer input or printout, etc.) or, if the above information is not available, some other means of identifying it, and its present location, and the names of each of its present custodians.

4. "Describe in detail" means:

A. Describe fully by reference to underlying facts rather than ultimate facts;

and

B. Particularize as to:

1. Time;

2. Place, irrespective of whether it is in the United States, its possessions and territories or anywhere else in the world;

3. Manner; and

4. Identity of person involved including the present address and name and address of his or her employer

C. Whenever it is required that Registrant describe in detail the subject matter of a document, Registrant may attach a copy of said document to its answers to interrogatories in lieu of describing in detail the subject matter of such document if she has the document or a copy thereof in her possession.

5. The term "concerning" or "concern", when used herein, means in any way related to, containing, contained in, referring to, regarding, embodied in, connected to or part of, in whole or in part.

6. "You", "your" or "Registrant" refers to Opici IP Holdings LLC and any agent, employee or other person acting on its behalf.

7. The term "REBELLION" shall mean any mark, logo, signage or other form as referenced in U.S. Registration No. 4,407,601 in singular, plural, or otherwise.

8. The terms "Petitioner" or "Luxco" refers to Luxco, Inc., and any agent, employee or representative acting on its behalf.

9. The term "Petitioner's Marks" refers collectively to the marks REBEL YELL and REBEL RESERVE, which are the subject of U.S. Registration No. 727,786 and 3,632,812, respectively, the marks FOUR REBELS and 4 REBELS that are the subject of U.S. Trademark Application Serial Nos. 77/758,725 and 77/758,705, respectively, as well as any common law rights attached to Luxco's use of the Marks REBEL YELL and/or REBEL RESERVE.

INSTRUCTIONS

1. These interrogatories shall be deemed continuing pursuant to Rule 33 of the Federal Rules of Civil Procedure as to request additional answers if Registrant requires additional information between the time the answers are served and the time of trial. Such additional answers shall be served seasonably, but not later than thirty (30) days after such further information is received. Information requested is to include all information in the

possession of the party, its attorney, insurance investigators, agents, or others in privity with Registrant.

2. Each interrogatory is to be considered as having been asked individually of Registrant, and Registrant shall file separate answers, first giving the question, followed by the answering party's response.

3. Whenever used herein, the singular shall be deemed to include the plural, the feminine shall be deemed to include the masculine, the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"), and each of the functional words, "each", "every", "any", and "all" shall be deemed to include each of the other functional words.

4. Interrogatories which cannot be answered in full shall be answered as completely as possible, an incomplete answer shall be accompanied by a specification of the reasons for the incompleteness of the answer, as well as by a statement of whatever knowledge, information or belief you possess with respect to each unanswered or incompletely answered interrogatory.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Registrant and any entities Registrant has a controlling ownership in, including but not limited to any licensees, in which the REBELLION Mark is currently used, or is intended to be used.

ANSWER:

INTERROGATORY NO. 2: Describe in detail each and every product and/or service ever branded or marketed by Registrant, or any licensees, at any time under the REBELLION Mark.

ANSWER:

INTERROGATORY NO. 3: Set forth the date of first use of the REBELLION Mark on, or in connection with, each product identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

ANSWER:

INTERROGATORY NO. 4: Fully identify any license which has been granted to or by Registrant for use of the REBELLION Mark, including parties to the license, date, duration, substance of the license, and goods and/or services for which such license was granted.

ANSWER:

INTERROGATORY NO. 5: For each product and service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- (a) The quantity of products sold by Registrant (or its licensees) under the REBELLION Mark; and
- (b) The dollar amount of annual sales for each such product.

ANSWER:

INTERROGATORY NO. 6: For each product and/or service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended

by Registrant and any licensees on advertising and promotion of the REBELLION Mark and products branded under that Mark.

ANSWER:

INTERROGATORY NO. 7: State whether use of the REBELLION Mark by Registrant or any licensees has ever been interrupted, and, if so, describe in detail each such interruption.

ANSWER:

INTERROGATORY NO. 8: Identify all forms of media through which Registrant and/or your licensees have advertised the REBELLION Mark since its first use in commerce.

ANSWER:

INTERROGATORY NO. 9: If the REBELLION Mark is not used by Registrant, identify with particularity each and every entity which does, or has used, the subject mark.

ANSWER:

INTERROGATORY NO. 10: State whether a trademark search or any other type of search was conducted by Registrant in connection with its adoption, application for registration

or use of the trademark REBELLION. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

ANSWER:

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the REBELLION Mark in connection with Registrant's goods.

ANSWER:

INTERROGATORY NO. 12: Identify the person(s) most knowledgeable regarding the manufacture, production, promotion and sale of the goods offered under Registrant's REBELLION Mark.

ANSWER:

INTERROGATORY NO. 13: State whether you are aware of any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Registrant or its licensees under the REBELLION Mark, including inquiry regarding whether any of its goods were sponsored by or otherwise connected with Luxco or any goods or services of Luxco, including any of Petitioner's Marks. If so, identify:

- (a) The person(s) confused or mistaken or making an inquiry;
- (b) The substance or content of any such confusion, mistake or inquiry;
- (c) The date on which any inquiry was made; and

(d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

ANSWER:

INTERROGATORY NO. 14: Identify each class of customer to whom you or your licensees sell and/or intend to sell your goods under the REBELLION Mark and identify the person(s) most knowledgeable about Registrant's class of customer.

ANSWER:

INTERROGATORY NO. 15: Identify all channels of trade through which goods branded under the REBELLION Mark are sold or are offered for sale and identify the person(s) most knowledgeable about the channels of trade for Registrant's REBELLION-branded goods.

ANSWER:

INTERROGATORY NO. 16: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the REBELLION Mark.

ANSWER:

INTERROGATORY NO. 17: Identify by name and address each company, wholesaler, dealer or distributor to whom you sell your goods under the REBELLION Mark.

ANSWER:

INTERROGATORY NO. 18: State all facts relating to Registrant's adoption of the term "REBELLION" including without limitation the circumstances surrounding such adoption, any significance or meaning of the term "REBEL" to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable of such adoption.

ANSWER:

INTERROGATORY NO. 19: State whether you are aware of any unauthorized third-party use of Petitioner's Marks, or any other trademark containing the term "REBEL," in conjunction with the offer or sale of any distilled spirits. If so, identify:

- (a) All identifying information about the party or parties using such mark;
- (b) The dates of such use; and
- (c) The geographic area(s) of such use; and
- (d) All persons with knowledge and all documents relating to or relating to any such use.

ANSWER:

INTERROGATORY NO. 20: Identify all trademark registrations and applications for registration for marks containing the term "REBEL" for distilled spirits of which you are aware or intend to rely upon as evidence in this matter.

ANSWER:

INTERROGATORY NO. 21: Identify the date you or any of your agent(s) involved in seeking registration of the REBELLION Mark first became aware of any of Petitioner's Marks.

ANSWER:

INTERROGATORY NO. 22: Describe in detail the circumstances surrounding any permit application filed for Registrant's REBELLION Marks with the Alcohol and Tobacco Tax and Trade Bureau.

ANSWER:

INTERROGATORY NO. 23: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

ANSWER:

INTERROGATORY NO. 24: State all facts that you relied on to support your contention in paragraph 27 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

ANSWER:

INTERROGATORY NO. 25: State all facts that you relied on to support your contention in paragraph 27 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

ANSWER:

INTERROGATORY NO. 26: State all facts that you relied on to support your contention that Luxco “is barred by the acquiescence and laches in that the respective marks of the parties coexisted with the knowledge of and without prior legal action from Petition,” as stated in Registrant’s second affirmative defense.

ANSWER:

INTERROGATORY NO. 27: State all facts that you relied on to support your contention that Luxco’s “Petition for Cancellation is barred by the doctrine of waiver and estoppel,” as stated in Registrant’s third affirmative defense.

ANSWER:

INTERROGATORY NO. 28: State all facts that you relied on to support your contention that Luxco’s Petition for Cancellation is barred by reason of Luxco’s “failure to challenge the use of Rebel and/or Rebellion marks on related goods and services by unrelated third parties,” as stated in Registrant’s fourth affirmative defense.

ANSWER:

DATED: April 29, 2014

LUXCO, INC.

By: /s/ Michael R. Annis

Michael R. Annis

Andrew R. Gilfoil

HUSCH BLACKWELL LLP

190 Carondelet Plaza, Suite 600

St. Louis, MO 63105

Telephone: (314) 480-1500

Facsimile: (314) 480-1505

mike.annis@huschblackwell.com

andy.gilfoil@huschblackwell.com

Attorneys for Luxco, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was served by e-mail and First Class Mail, postage prepaid on this 29th day of April, 2014, upon:

Stephen L. Baker
Baker & Rannells P.A.
575 Route 28, Ste. 102
Raritan, New Jersey 08869-1354
s.baker@br-tmlaw.com
k.hnasko@br-tmlaw.com

Attorneys for Registrant

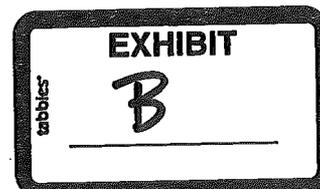
/s/ Andrew R. Gilfoil

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

LUXCO, INC.,)	
)	
Petitioner/Counter Registrant,)	
)	
v.)	Cancellation No. 92/058,411
)	
OPICI IP HOLDINGS, LLC)	
)	
Registrant/Counter Petitioner.)	

LUXCO INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Luxco, Inc. (“Luxco” or “Petitioner”), by and through its attorneys, Husch Blackwell LLP, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, and submits the following Request for Production of Documents to Registrant Opici IP Holdings, LLC (“Opici” or “Registrant”) to produce the documents and things set forth below for inspection and copying at the offices of Husch Blackwell Sanders LLP, 190 Carondelet Plaza, Suite 600, St. Louis, Missouri 63108, within thirty (30) days after the service of this request.



INSTRUCTIONS AND DEFINITIONS

Petitioner hereby incorporates the Instruction and Definitions contained in its First Set of Interrogatories served concurrently herewith. Those Instructions and Definitions shall apply to these requests.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce those documents that evidence the first use of the REBELLION Mark by Registrant or any licensee.

RESPONSE:

2. Produce those documents that evidence the first use in interstate commerce in the United States of the REBELLION Mark by Registrant or any licensee.

RESPONSE:

3. Produce those documents that pertain to any application ever filed for registration of the REBELLION Mark by Registrant or anyone acting on its behalf, or any other mark incorporating the term "Rebel" or "Rebellion."

RESPONSE:

4. Produce documents that show any ownership interest held by Registrant in any entity or business that owns trademark rights to any term or logo that includes the term "REBEL."

RESPONSE:

5. Produce representative sample of invoices evidencing the sale of goods under the REBELLION Mark by Registrant or any licensee for each year from the date of first use of the mark to the present.

RESPONSE:

6. Produce those trademark search(es) conducted by Registrant or any agent(s) on behalf of Registrant with respect to the REBELLION Mark, including but not limited to the application that matured into the subject registration.

RESPONSE:

7. Produce those documents that pertain to the development, creation, and/or adoption of the REBELLION Mark.

RESPONSE:

8. Produce any trademark registration certificates owned by Registrant for the REBELLION Mark, in any country, state or territory.

RESPONSE:

9. Produce representative samples of the advertising for any goods branded under the REBELLION Mark and offered or sold by Registrant or its licensees.

RESPONSE:

10. Produce representative documents evidencing those goods and/or services under which the REBELLION Mark is currently used or is intended to be used, including but not limited to labels, bottles, tags and boxes.

RESPONSE:

11. Produce a list of Registrant's customers for any goods offered or sold in association with the REBELLION Mark.

RESPONSE:

12. Produce examples of any tags or labels used by Registrant or its licensees that are used in connection with the offer or sale of goods bearing the REBELLION Mark.

RESPONSE:

13. Produce a sample of the complete packaging in which the product(s) sold or intended to be sold under the REBELLION Mark appear, as those goods:

- (a) are shipped from Registrant to Registrant's customers;
- (b) are displayed at the point of sale to potential purchasers; and/or
- (c) are contained when offered or sold to potential purchasers.

RESPONSE:

14. Produce all COLAs applied for and/or obtained from the TTB bearing the REBELLION Mark.

RESPONSE:

15. Produce documents identifying and showing the channels of trade of REBELLION -branded goods, or the intended channels of trade of such goods.

RESPONSE:

16. Produce documents identifying and showing the retail price or intended retail price of all goods bearing or sold in conjunction with the REBELLION Mark.

RESPONSE:

17. Produce all documents identified or requested to be identified in response to Petitioner's First Set of Interrogatories to Registrant, or that were otherwise relied upon or referenced by Registrant in responding to said interrogatories.

RESPONSE:

18. Produce specimens of all current and proposed advertising, including, but not limited to educational and promotional materials, journals, catalogues, circulars, sale sheets, price sheets, leaflets, newspaper and magazine advertisements, press releases, computer screen displays of websites, including social media and other webpages, and any other materials used by Registrant or any licensee or related company bearing the REBELLION Mark.

RESPONSE:

19. Produce those documents showing any investigation or survey undertaken by or on behalf of Registrant that relate to the terms "REBEL," and/or "REBELLION."

RESPONSE:

20. Produce those documents that show consent, authorization or permission given by Registrant to any individual and/or entity to use the REBELLION Mark in commerce.

RESPONSE:

21. Produce all documents in your possession which evidence, refer or relate to statements, inquiries, comments or other communications by or from Registrant's customers (or those of your licensees), competitors or third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said person as to a relationship or affiliation between Registrant and Luxco and/or their respective goods or services.

RESPONSE:

22. Produce representative samples of all advertising, packaging and labeling materials for Registrant's goods and/or services bearing the REBELLION Mark, and all prototypes, drafts and sketches for said advertising, packaging and labeling.

RESPONSE:

23. Produce all documents showing the annual sales volume of products sold under or in conjunction with the REBELLION Mark.

RESPONSE:

24. Produce all documents showing the annual dollar value of sales of products sold in conjunction with the REBELLION Marks.

RESPONSE:

25. Produce all documents that show the amount of money expended, on an annual basis, to advertise or promote products and/or services under Registrant's REBELLION Mark.

RESPONSE:

26. Produce any studies, surveys, market research tests or memoranda including, but not limited to, demographic or consumer profile studies, that relate to the purchasers or potential purchasers of products marketed, offered for sale, advertised or promoted under the REBELLION Mark.

RESPONSE:

27. Produce any studies, surveys, market research, test or memoranda relating to consumer recognition of the REBELLION Mark.

RESPONSE:

28. Produce any studies, surveys, market research tests, memoranda and other documents relating thereto, or referring to use of the mark REBELLION in connection with any products marketed, offered for sale, advertised or promoted by Registrant or your licensees,

including, but not limited to, those relating to any confusion or likelihood of confusion between Registrant's products and Petitioner's products.

RESPONSE:

29. Produce documents that show the initial and continuous use of the REBELLION Mark in connection with the goods identified in your registration.

RESPONSE:

30. Produce any documents submitted or received by Registrant as part of any permitting, certifying, or application for registration of the REBELLION Mark, and any fictitious trade name(s) under which you have or intend to offer and sell your branded products and/or labels for the same, as well as any permits or certificates of label and/or trade names approved by the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), or any other permitting, registering or certifying authority within the United States.

RESPONSE:

31. Produce any and all documents and other materials referenced or referred to in your initial disclosures.

RESPONSE:

32. Produce any documents that you relied on to support your contention that Luxco's REBEL YELL and REBEL RESERVE registrations have been abandoned.

RESPONSE:

33. Produce any documents that you relied on to support your contention that Luxco has engaged in “naked licensing of REBEL and/or REBELLION marks used by other parties,” as stated in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE:

34. Produce any documents that you relied on to support your contention that Luxco and/or any predecessor-in-interest to Luxco have failed to police the use of its marks by unrelated third parties, as stated in paragraph 27 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE:

35. Produce any documents that you relied on to support your contention that Luxco and/or any predecessor-in-interest to Luxco have failed to police the use of the term REBELLION by unrelated third parties, as stated in paragraph 28 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE:

36. Produce any documents that you relied on to support your contention that Luxco “is barred by the acquiescence and laches in that the respective marks of the parties coexisted

with the knowledge of and without prior legal action from Petition,” as stated in Registrant’s second affirmative defense.

RESPONSE:

37. Produce any documents that you relied on to support your contention that Luxco’s “Petition for Cancellation is barred by the doctrine of waiver and estoppel,” as stated in Registrant’s third affirmative defense.

RESPONSE:

38. Produce any documents that you relied on to support your contention that Luxco’s Petition for Cancellation is barred by reason of Luxco’s “failure to challenge the use of Rebel and/or Rebellion marks on related goods and services by unrelated third parties,” as stated in Registrant’s fourth affirmative defense.

RESPONSE:

39. Produce any documents in your possession, custody or control that discuss any interruption since September 29, 2008 during which time Luxco’s REBEL RESERVE Mark had not been offered for sale in U.S. commerce.

RESPONSE:

40. Produce any documents in your possession, custody or control that discuss any interruption since August 1937 during which time Luxco’s REBEL YELL Mark had not been offered for sale in U.S. commerce.

RESPONSE:

DATED: April 29, 2014

Respectfully submitted,

By: /s/ Michael R. Annis

Michael R. Annis
Andrew R. Gilfoil
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Telephone: (314) 480-1500
Facsimile: (314) 480-1505
mike.annis@huschblackwell.com
andy.gilfoil@huschblackwell.com

Attorneys for Luxco, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was served by e-mail and First Class Mail, postage prepaid on this 29th day of April, 2014, upon:

Stephen L. Baker
Baker & Rannells P.A.
575 Route 28, Ste. 102
Raritan, New Jersey 08869-1354
s.baker@br-tmlaw.com
k.hnasko@br-tmlaw.com

Attorneys for Registrant

/s/ Andrew R. Gilfoil

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

LUXCO, INC.,)	
)	
Petitioner/Counter Registrant,)	
)	
v.)	Cancellation No. 92/058,411
)	
OPICI IP HOLDINGS, LLC)	
)	
Registrant/Counter Petitioner.)	

REGISTRANT'S RESPONSES TO LUXCO INC.'S FIRST SET OF INTERROGATORIES TO REGISTRANT

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Registrant Opici IP Holdings, LLC (hereinafter, "Registrant") hereby responds and objects to Petitioner Luxco, Inc.'s (hereinafter, "Petitioner") First Set of Interrogatories as follows:

Preliminary Statement

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Registrant at the present state of this proceeding. Accordingly, Registrant reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

General Objections

1. The following general objections are incorporated by reference in Registrant's response to each and every Interrogatory below.



2. The specific responses set forth below are for the purposes of discovery only, and Registrant neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.

3. Registrant expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific response set forth below as a result of mistake, oversight or inadvertence.

4. The specific responses set forth below are based upon Registrant's interpretation of the language used in the Interrogatories, and Registrant reserves its right to amend or to supplement its responses in the event Petitioner asserts an interpretation that differs from Registrant's interpretation.

5. By making these responses, Registrant does not concede it is in possession of any information responsive to any particular Interrogatory or Document Request or that any response given is relevant to this action.

6. Subject to and without waiving the general and specific responses and objections set forth herein, Registrant will provide herewith information that Registrant has located and reviewed to date. Registrant will continue to provide responsive information as such is discovered. Registrant's failure to object to a particular Interrogatory, Document Request or willingness to provide responsive information pursuant to an Interrogatory or Document Request is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

7. Because Registrant may not have discovered all the information that is possibly within the scope of the Interrogatories, Registrant expressly reserves its right to amend or to supplement

these Responses and Objections with any additional information that emerges through discovery or otherwise.

8. Registrant objects to the Interrogatories and Document Requests to the extent that they require the disclosure of information or the production of documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunities. Registrant responds to the Interrogatories and Document Requests on the condition that the inadvertent response regarding information covered by such privilege, rule or doctrine does not waive any of Registrant's right to assert such privilege, rule or doctrine and the Registrant may withdraw any such response inadvertently made as soon as identified.

9. Registrant objects to the Interrogatories and Document Requests to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Registrant objects to the Interrogatories and Document Requests to the extent that they are vague, ambiguous, or overbroad and therefore not susceptible to a response as propounded. To the extent that any interrogatory requests information concerning, or a request for documents that purports to require Registrant to identify or produce a sample of each different document used for any particular category, or to identify or produce all documents or persons, or to "describe in detail", Registrant objects to the same as being overly broad, overly burdensome, and beyond what is required of Registrant under the applicable rules. Accordingly, to the extent that Registrant agrees to produce documents or identify documents or persons in response to any such requests, such response shall be limited to representative documents and/or information.

11. Registrant objects to the Interrogatories to the extent that they exceed the requirements of the Federal Rules of Civil Procedure of the Trademark Rules of Practice.

12. Registrant objects to the Interrogatories and Document Requests to the extent that they require Registrant to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and or because information from other sources is equally available to Petitioner.

13. Registrant objects to the Interrogatories and Document Requests to the extent that they require Registrant to undertake such an extensive review that such Interrogatories and Document Requests are unduly burdensome and harassing.

14. Registrant objects to the Interrogatories and Document Requests to the extent that Petitioner seeks the residential addresses of individuals, on the grounds that disclosure of such information impinges on the privacy interest of such individuals.

15. Registrant objects to the definition of "Registrant" on the grounds that it a) is vague and ambiguous as to the meaning of "other person acting on its behalf"; and b) calls for conjecture and speculation. A meaningful response cannot be framed. Registrant also objects to the definition to the extent it includes all agents, employees and/or other persons acting on its behalf as being overly broad and unduly burdensome to comply with. Registrant is under no obligation to interview every agent, employee and other person acting on its behalf (whatever that may mean) in responding to these interrogatories. Registrant responds on behalf of Opici IP Holdings LLC.

16. Registrant objects to the definition of "Petitioner" on the grounds that it is vague and ambiguous and calls for conjecture and speculation. The identities of each "agent, employee or representative acting on [Petitioner's] behalf is solely within the knowledge of Petitioner. Without such persons or entities being specifically identified to Registrant, the definition is

incomprehensible. Registrant is under no obligation to investigate the identities of each such persons or entities prior to responding to the interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Registrant and any entities Registrant has a controlling ownership in, including but not limited to any licensees, in which the REBELLION Mark is currently used, or is intended to be used.

ANSWER: National sales and marketing of alcoholic beverages

INTERROGATORY NO. 2: Describe in detail each and every product and/or service ever branded or marketed by Registrant, or any licensees, at any time under the REBELLION Mark.

ANSWER: Bourbon

INTERROGATORY NO. 3: Set forth the date of first use of the REBELLION Mark on, or in connection with, each product identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

ANSWER: April 23, 2014; invoices demonstrating first sale

INTERROGATORY NO. 4: Fully identify any license which has been granted to or by Registrant for use of the REBELLION Mark, including parties to the license, date, duration, substance of the license, and goods and/or services for which such license was granted.

ANSWER: None

INTERROGATORY NO. 5: For each product and service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- (a) The quantity of products sold by Registrant (or its licensees) under the REBELLION Mark; and
- (b) The dollar amount of annual sales for each such product.

ANSWER:

2013: Cases: 4,062 / Wholesale Dollar Amount: \$446,352.00

2014 (through 6/25/14): Cases: 2,974 / Wholesale Dollar Amount: \$363,494.00

INTERROGATORY NO. 6: For each product and/or service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Registrant and any licensees on advertising and promotion of the REBELLION Mark and products branded under that Mark.

ANSWER: Total to date: \$57,180.60

INTERROGATORY NO. 7: State whether use of the REBELLION Mark by Registrant or any licensees has ever been interrupted, and, if so, describe in detail each such interruption.

ANSWER: Use has never been interrupted.

INTERROGATORY NO. 8: Identify all forms of media through which Registrant and/or your licensees have advertised the REBELLION Mark since its first use in commerce.

ANSWER: Print media

INTERROGATORY NO. 9: If the REBELLION Mark is not used by Registrant, identify with particularity each and every entity which does, or has used, the subject mark.

ANSWER: All use inures to the benefit of Registrant.

INTERROGATORY NO. 10: State whether a trademark search or any other type of search was conducted by Registrant in connection with its adoption, application for registration or use of the trademark REBELLION. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

ANSWER: Yes. Report dated July 20, 2010 from Stephen L. Baker of Baker and Rannells PA to Registrant. The report and opinion are subject to the attorney-client privilege.

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the REBELLION Mark in connection with Registrant's goods.

ANSWER: DINA OPICI and DON OPICI, c/o Registrant

INTERROGATORY NO. 12: Identify the person(s) most knowledgeable regarding the manufacture, production, promotion and sale of the goods offered under Registrant's REBELLION Mark.

ANSWER: DINA OPICI and DON OPICI, c/o Registrant

INTERROGATORY NO. 13: State whether you are aware of any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Registrant or its licensees under the REBELLION Mark, including inquiry regarding whether any of its goods were sponsored by or otherwise connected with Luxco or any goods or services of Luxco, including any of Petitioner's Marks. If so, identify:

- (a) The person(s) confused or mistaken or making an inquiry;
- (b) The substance or content of any such confusion, mistake or inquiry;
- (c) The date on which any inquiry was made; and
- (d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

ANSWER: Registrant is unaware any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Registrant or its licensees under the REBELLION Mark.

INTERROGATORY NO. 14: Identify each class of customer to whom you or your licensees sell and/or intend to sell your goods under the REBELLION Mark and identify the person(s) most knowledgeable about Registrant's class of customer.

ANSWER: Licensed wholesalers of alcoholic beverages; Dina Opici and Don Opici are the person(s) most knowledgeable about Registrant's class of customer.

INTERROGATORY NO. 15: Identify all channels of trade through which goods branded under the REBELLION Mark are sold or are offered for sale and identify the person(s) most knowledgeable about the channels of trade for Registrant's REBELLION-branded goods.

ANSWER: Wholesale and retail outlets licensed to sell alcoholic beverages; Dina Opici and Don Opici are the person(s) most knowledgeable about the channels of trade for Registrant's REBELLION-branded goods.

INTERROGATORY NO. 16: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the REBELLION Mark.

ANSWER: Registrant does not sell REBELLION goods at retail and does not set or control retail prices.

INTERROGATORY NO. 17: Identify by name and address each company, wholesaler, dealer or distributor to whom you sell your goods under the REBELLION Mark.

ANSWER: Registrant objects to the request as being overly broad, overly intrusive, unduly burdensome and harassing in nature. *See, for example, Johnston Pump v. Chromalloy, 10 USPQ2d 1671 1675 (TTAB 1988), and Sunkist Growers, Inc. v. Benjamin Ansehl Co., 229 USPQ 147, 149 (TTAB 1985).*

INTERROGATORY NO. 18: State all facts relating to Registrant's adoption of the term "REBELLION" including without limitation the circumstances surrounding such adoption, any significance or meaning of the term "REBEL" to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable of such adoption.

ANSWER: Shortly prior to the adoption of the mark, Rebellion was proposed during an internal brain storming session considering mark. As to the meaning of Rebel,

the persons involved are aware of its ordinary meaning as reflected in standard dictionaries, i.e. a person who refuses allegiance to the government of his/her country.

Persons with knowledge: DINA OPICI and DON OPICI, c/o Registrant

INTERROGATORY NO. 19: State whether you are aware of any unauthorized third-party use of Petitioner's Marks, or any other trademark containing the term "REBEL," in conjunction with the offer or sale of any distilled spirits. If so, identify:

- (a) All identifying information about the party or parties using such mark;
- (b) The dates of such use; and
- (c) The geographic area(s) of such use; and
- (d) All persons with knowledge and all documents relating to or relating to any such

use.

ANSWER: Registrant objects to the request on the grounds that it a) is vague and ambiguous as to the meaning of "unauthorized third-party use of Petitioner's Marks"; and b) calls for conjecture and speculation. A meaningful response cannot be framed unless Petitioner first informs Registrant of all third-party "authorized" uses as such knowledge is solely within Petitioner's knowledge.

INTERROGATORY NO. 20: Identify all trademark registrations and applications for registration for marks containing the term "REBEL" for distilled spirits of which you are aware or intend to rely upon as evidence in this matter.

ANSWER: None at this time

INTERROGATORY NO. 21: Identify the date you or any of your agent(s) involved in seeking registration of the REBELLION Mark first became aware of any of Petitioner's Marks.

ANSWER: Upon receipt of a cease and desist letter dated January 27, 2014 sent on behalf of Petitioner.

INTERROGATORY NO. 22: Describe in detail the circumstances surrounding any permit application filed for Registrant's REBELLION Marks with the Alcohol and Tobacco Tax and Trade Bureau.

ANSWER: Applications to TTB on 3/1/2013 and on 11/27/2012.

INTERROGATORY NO. 23: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

ANSWER: Registrant objects to the request on the grounds that requesting "all facts" is overly broad and unduly burdensome. Registrant also objects to the request on the basis that the specific facts are subject to the attorney-client privilege and/or the attorney work product privilege. As any subsequent non-privileged facts come to light during the course of the proceeding, they will be identified.

INTERROGATORY NO. 24: State all facts that you relied on to support your contention in paragraph 27 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

ANSWER: Registrant objects to the request on the grounds that requesting "all facts" is overly broad and unduly burdensome. Registrant also objects to the

request on the basis that the specific facts are subject to the attorney-client privilege and/or the attorney work product privilege. As any subsequent non-privileged facts come to light during the course of the proceeding, they will be identified.

INTERROGATORY NO. 25: State all facts that you relied on to support your contention in paragraph 27 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

ANSWER: Registrant objects to the interrogatory as being redundant of interrogatory no. 24. Registrant is under no obligation to provide duplicative responses.

INTERROGATORY NO. 26: State all facts that you relied on to support your contention that Luxco “is barred by the acquiescence and laches in that the respective marks of the parties coexisted with the knowledge of and without prior legal action from Petition,” as stated in Registrant’s second affirmative defense.

ANSWER: As non-privileged facts come to light during the course of the proceeding, they will be identified.

INTERROGATORY NO. 27: State all facts that you relied on to support your contention that Luxco’s “Petition for Cancellation is barred by the doctrine of waiver and estoppel,” as stated in Registrant’s third affirmative defense.

ANSWER: As non-privileged facts come to light during the course of the proceeding, they will be identified.

INTERROGATORY NO. 28: State all facts that you relied on to support your contention that Luxco's Petition for Cancellation is barred by reason of Luxco's "failure to challenge the use of Rebel and/or Rebellion marks on related goods and services by unrelated third parties," as stated in Registrant's fourth affirmative defense.

ANSWER: Registrant objects to the request on the grounds that requesting "all facts" is overly broad and unduly burdensome. Registrant also objects to the request on the basis that the specific facts are subject to the attorney-client privilege and/or the attorney work product privilege. As any subsequent non-privileged facts come to light during the course of the proceeding, they will be identified.

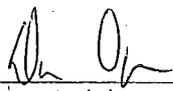
AS TO OBJECTIONS:



Stephen L. Baker
BAKER AND RANNELLS PA
Attorneys for Registrant

AS TO RESPONSES:

I, Don Opici, Manager of Opici IP Holdings, LLC, have reviewed the responses set forth above and declare this 26 day of June, 2014, that they are true and correct to the best of my knowledge and my review of corporate and division records.



Don Opici

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESPONSES AND OBJECTIONS TO PETITIONER'S FIRST SET OF INTERROGATORIES has been served on Petitioner by first class mail this 20th day of July 2014:

Michael R. Annis
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63108



Stephen L. Baker

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

LUXCO, INC.,)	
)	
Petitioner/Counter Registrant,)	
)	
v.)	Cancellation No. 92/058,411
)	
OPICI IP HOLDINGS, LLC)	
)	
Registrant/Counter Petitioner.)	

**REGISTRANT'S RESPONSES TO LUXCO INC.'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

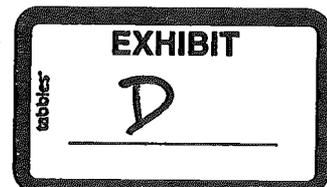
Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Registrant Opici IP Holdings, LLC (hereinafter, "Registrant") hereby responds and objects to Petitioner Luxco, Inc's (hereinafter, "Petitioner") First Request for Production of Documents as follows:

Preliminary Statement

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Registrant at the present state of this proceeding. Accordingly, Registrant reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

General Objections

1. The following general objections are incorporated by reference in Registrant's response to each and every Document Request below.



2. The specific responses set forth below are for the purposes of discovery only, and Registrant neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.

3. Registrant expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific response set forth below as a result of mistake, oversight or inadvertence.

4. The specific responses set forth below are based upon Registrant's interpretation of the language used in the Interrogatories, and Registrant reserves its right to amend or to supplement its responses in the event Petitioner asserts an interpretation that differs from Registrant's interpretation.

5. By making these responses, Registrant does not concede it is in possession of any information responsive to any particular Interrogatory or Document Request or that any response given is relevant to this action.

6. Subject to and without waiving the general and specific responses and objections set forth herein, Registrant will provide herewith information that Registrant has located and reviewed to date. Registrant will continue to provide responsive information as such is discovered. Registrant's failure to object to a particular Interrogatory, Document Request or willingness to provide responsive information pursuant to an Interrogatory or Document Request is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

7. Because Registrant may not have discovered all the information that is possibly within the scope of the Interrogatories, Registrant expressly reserves its right to amend or to supplement

these Responses and Objections with any additional information that emerges through discovery or otherwise.

8. Registrant objects to the Interrogatories and Document Requests to the extent that they require the disclosure of information or the production of documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunities. Registrant responds to the Interrogatories and Document Requests on the condition that the inadvertent response regarding information covered by such privilege, rule or doctrine does not waive any of Registrant's right to assert such privilege, rule or doctrine and the Registrant may withdraw any such response inadvertently made as soon as identified.

9. Registrant objects to the Interrogatories and Document Requests to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Registrant objects to the Interrogatories and Document Requests to the extent that they are vague, ambiguous, or overbroad and therefore not susceptible to a response as propounded. To the extent that any interrogatory requests information concerning, or a request for documents that purports to require Registrant to identify or produce a sample of each different document used for any particular category, or to identify or produce all documents or persons, or to "describe in detail", Registrant objects to the same as being overly broad, overly burdensome, and beyond what is required of Registrant under the applicable rules. Accordingly, to the extent that Registrant agrees to produce documents or identify documents or persons in response to any such requests, such response shall be limited to representative documents and/or information.

11. Registrant objects to the Interrogatories to the extent that they exceed the requirements of the Federal Rules of Civil Procedure of the Trademark Rules of Practice.

12. Registrant objects to the Interrogatories and Document Requests to the extent that they require Registrant to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and or because information from other sources is equally available to Petitioner.

13. Registrant objects to the Interrogatories and Document Requests to the extent that they require Registrant to undertake such an extensive review that such Interrogatories and Document Requests are unduly burdensome and harassing.

14. Registrant objects to the Interrogatories and Document Requests to the extent that Petitioner seeks the residential addresses of individuals, on the grounds that disclosure of such information impinges on the privacy interest of such individuals.

15. Registrant objects to the definition of "Registrant" on the grounds that it a) is vague and ambiguous as to the meaning of "other person acting on its behalf"; and b) calls for conjecture and speculation. A meaningful response cannot be framed. Registrant also objects to the definition to the extent it includes all agents, employees and/or other persons acting on its behalf as being overly broad and unduly burdensome to comply with. Registrant is under no obligation to interview every agent, employee and other person acting on its behalf (whatever that may mean) in responding to these interrogatories. Registrant responds on behalf of Opici IP Holdings LLC.

16. Registrant objects to the definition of "Petitioner" on the grounds that it is vague and ambiguous and calls for conjecture and speculation. The identities of each "agent, employee or representative acting on [Petitioner's] behalf is solely within the knowledge of Petitioner. Without such persons or entities being specifically identified to Registrant, the definition is

incomprehensible. Registrant is under no obligation to investigate the identities of each such persons or entities prior to responding to the interrogatories.

17. Registrant's only obligation pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 34(b) of the Federal Rules of Civil Procedure is to produce documents and things where they are normally kept during the normal course of business. For the most part, those documents and things are kept at the offices of OPICI IP HOLDINGS, LLC at 25 DeBoer Drive, Glen Rock, New Jersey 07430 and may be inspected and copied where kept upon proper notice at a mutually convenient date and time.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce those documents that evidence the first use of the REBELLION Mark by Registrant or any licensee.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

2. Produce those documents that evidence the first use in interstate commerce in the United States of the REBELLION Mark by Registrant or any licensee.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

3. Produce those documents that pertain to any application ever filed for registration of the REBELLION Mark by Registrant or anyone acting on its behalf, or any other mark incorporating the term "Rebel" or "Rebellion."

RESPONSE: Registrant objects to the request on the grounds that the requested documents are readily, equally and easily accessible to Petitioner through the Trademark Office database.

4. Produce documents that show any ownership interest held by Registrant in any entity or business that owns trademark rights to any term or logo that includes the term "REBEL."

RESPONSE: None.

5. Produce representative sample of invoices evidencing the sale of goods under the REBELLION Mark by Registrant or any licensee for each year from the date of first use of the mark to the present.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

6. Produce those trademark search(es) conducted by Registrant or any agent(s) on behalf of Registrant with respect to the REBELLION Mark, including but not limited to the application that matured into the subject registration.

RESPONSE: Registrant objects to the request on the grounds that the documents are protected by the attorney-client privilege.

7. Produce those documents that pertain to the development, creation, and/or adoption of the REBELLION Mark.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

8. Produce any trademark registration certificates owned by Registrant for the REBELLION Mark, in any country, state or territory.

RESPONSE: Registrant objects to the request on the grounds that the requested documents are readily, equally and easily accessible to Petitioner through the Trademark Office database. As to any registrations outside the United States, the request is objected to as being irrelevant, immaterial and unlikely to lead to the discovery of relevant evidence.

9. Produce representative samples of the advertising for any goods branded under the REBELLION Mark and offered or sold by Registrant or its licensees.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

10. Produce representative documents evidencing those goods and/or services under which the REBELLION Mark is currently used or is intended to be used, including but not limited to labels, bottles, tags and boxes.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

11. Produce a list of Registrant's customers for any goods offered or sold in association with the REBELLION Mark.

RESPONSE: Registrant objects to the request as being overly broad, overly intrusive, unduly burdensome and harassing in nature. *See, for example, Johnston Pump v. Chromalloy*, 10 USPQ2d 1671 1675 (TTAB 1988), and *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147, 149 (TTAB 1985).

12. Produce examples of any tags or labels used by Registrant or its licensees that are used in connection with the offer or sale of goods bearing the REBELLION Mark.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

13. Produce a sample of the complete packaging in which the product(s) sold or intended to be sold under the REBELLION Mark appear, as those goods:

(a) are shipped from Registrant to Registrant's customers;

- (b) are displayed at the point of sale to potential purchasers; and/or
- (c) are contained when offered or sold to potential purchasers.

RESPONSE: A sample will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

14. Produce all COLAs applied for and/or obtained from the TTB bearing the REBELLION Mark.

RESPONSE: Registrant objects to the request on the grounds that the requested documents are readily, equally and easily accessible to Petitioner through the TTB COLA database. Subject to and without waiver of the foregoing objection, copies of final label approvals will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

15. Produce documents identifying and showing the channels of trade of REBELLION-branded goods, or the intended channels of trade of such goods.

RESPONSE: Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

16. Produce documents identifying and showing the retail price or intended retail price of all goods bearing or sold in conjunction with the REBELLION Mark.

RESPONSE: Registrant objects to the request as requesting third-party documents that are not in the possession, custody or control of Registrant. As Petitioner well knows, Registrant does not set or control the retail price at which its alcoholic beverage products are sold.

17. Produce all documents identified or requested to be identified in response to Petitioner's First Set of Interrogatories to Registrant, or that were otherwise relied upon or referenced by Registrant in responding to said interrogatories.

RESPONSE: Relevant representative, non-duplicative, non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

18. Produce specimens of all current and proposed advertising, including, but not limited to educational and promotional materials, journals, catalogues, circulars, sale sheets, price sheets, leaflets, newspaper and magazine advertisements, press releases, computer screen displays of websites, including social media and other webpages, and any other materials used by Registrant or any licensee or related company bearing the REBELLION Mark.

RESPONSE: Relevant representative, non-duplicative, non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

19. Produce those documents showing any investigation or survey undertaken by or on behalf of Registrant that relate to the terms "REBEL," and/or "REBELLION."

RESPONSE: None.

20. Produce those documents that show consent, authorization or permission given by Registrant to any individual and/or entity to use the REBELLION Mark in commerce.

RESPONSE: None.

21. Produce all documents in your possession which evidence, refer or relate to statements, inquiries, comments or other communications by or from Registrant's customers (or those of your licensees), competitors or third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said person as to a relationship or affiliation between Registrant and Luxco and/or their respective goods or services.

RESPONSE: None.

22. Produce representative samples of all advertising, packaging and labeling materials for Registrant's goods and/or services bearing the REBELLION Mark, and all prototypes, drafts and sketches for said advertising, packaging and labeling.

RESPONSE: Relevant representative, non-duplicative, non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

23. Produce all documents showing the annual sales volume of products sold under or in conjunction with the REBELLION Mark.

RESPONSE: Registrant objects to the request for “all documents” as being overly broad and unduly burdensome. Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

24. Produce all documents showing the annual dollar value of sales of products sold in conjunction with the REBELLION Marks.

RESPONSE: Registrant objects to the request for “all documents” as being overly broad and unduly burdensome. Relevant representative non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

25. Produce all documents that show the amount of money expended, on an annual basis, to advertise or promote products and/or services under Registrant’s REBELLION Mark.

RESPONSE: Registrant objects to the request for “all documents” as being overly broad and unduly burdensome. Relevant representative, non-duplicative, non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

26. Produce any studies, surveys, market research tests or memoranda including, but not limited to, demographic or consumer profile studies, that relate to the purchasers or potential purchasers of products marketed, offered for sale, advertised or promoted under the REBELLION Mark.

RESPONSE: None.

27. Produce any studies, surveys, market research, test or memoranda relating to consumer recognition of the REBELLION Mark.

RESPONSE: None.

28. Produce any studies, surveys, market research tests, memoranda and other documents relating thereto, or referring to use of the mark REBELLION in connection with any products marketed, offered for sale, advertised or promoted by Registrant or your licensees, including, but not limited to, those relating to any confusion or likelihood of confusion between Registrant's products and Petitioner's products.

RESPONSE: None.

29. Produce documents that show the initial and continuous use of the REBELLION Mark in connection with the goods identified in your registration.

RESPONSE: Relevant representative, non-duplicative, non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

30. Produce any documents submitted or received by Registrant as part of any permitting, certifying, or application for registration of the REBELLION Mark, and any fictitious trade name(s) under which you have or intend to offer and sell your branded products

and/or labels for the same, as well as any permits or certificates of label and/or trade names approved by the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), or any other permitting, registering or certifying authority within the United States.

RESPONSE: Registrant objects to the request for "any documents" as being overly broad and unduly burdensome and harassing in nature. Subject to and without waiver of the foregoing objection, relevant representative, non-duplicative, non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

31. Produce any and all documents and other materials referenced or referred to in your initial disclosures.

RESPONSE: To the extent not made available for inspection and copying pursuant to any document request herein, relevant representative, non-duplicative, non-privileged documents will be made available for inspection and copying where the documents are kept or as otherwise mutually agreed by the parties, and at a mutually agreed date and time.

32. Produce any documents that you relied on to support your contention that Luxco's REBEL YELL and REBEL RESERVE registrations have been abandoned.

RESPONSE: Any such documents would be subject to the attorney-client privilege and/or attorney-work product privilege.

33. Produce any documents that you relied on to support your contention that Luxco has engaged in “naked licensing of REBEL and/or REBELLION marks used by other parties,” as stated in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE: Any such documents would be subject to the attorney-client privilege and/or attorney-work product privilege.

34. Produce any documents that you relied on to support your contention that Luxco and/or any predecessor-in-interest to Luxco have failed to police the use of its marks by unrelated third parties, as stated in paragraph 27 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE: Any such documents would be subject to the attorney-client privilege and/or attorney-work product privilege.

35. Produce any documents that you relied on to support your contention that Luxco and/or any predecessor-in-interest to Luxco have failed to police the use of the term REBELLION by unrelated third parties, as stated in paragraph 28 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE: Any such documents would be subject to the attorney-client privilege and/or attorney-work product privilege.

36. Produce any documents that you relied on to support your contention that Luxco “is barred by the acquiescence and laches in that the respective marks of the parties coexisted with the knowledge of and without prior legal action from Petition,” as stated in Registrant’s second affirmative defense.

RESPONSE: None at this time.

37. Produce any documents that you relied on to support your contention that Luxco’s “Petition for Cancellation is barred by the doctrine of waiver and estoppel,” as stated in Registrant’s third affirmative defense.

RESPONSE: None at this time.

38. Produce any documents that you relied on to support your contention that Luxco’s Petition for Cancellation is barred by reason of Luxco’s “failure to challenge the use of Rebel and/or Rebellion marks on related goods and services by unrelated third parties,” as stated in Registrant’s fourth affirmative defense.

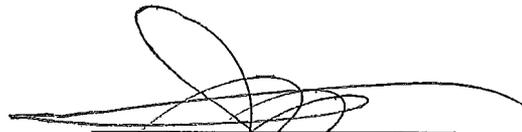
RESPONSE: Any such documents would be subject to the attorney-client privilege and/or attorney-work product privilege.

39. Produce any documents in your possession, custody or control that discuss any interruption since September 29, 2008 during which time Luxco’s REBEL RESERVE Mark had not been offered for sale in U.S. commerce.

RESPONSE: None at this time.

40. Produce any documents in your possession, custody or control that discuss any interruption since August 1937 during which time Luxco's REBEL YELL Mark had not been offered for sale in U.S. commerce.

RESPONSE: None at this time.

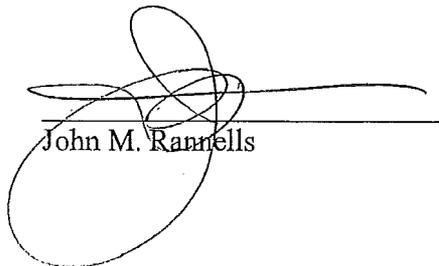


Stephen L. Baker
John M. Rannells
BAKER AND RANNELLS PA
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESPONSES AND OBJECTIONS TO PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS has been served on Petitioner by first class mail this 2nd day of July 2014:

Michael R. Annis
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63108



John M. Rannells

Gilfoil, Andy

From: J. Rannells <JMR@br-tmlaw.com>
Sent: Friday, August 01, 2014 8:57 AM
To: Gilfoil, Andy; Steve Baker
Cc: K. Hnasko; Annis, Michael; Nemes, Alan
Subject: RE: Luxco v Opici 92058411

Andy:

With regard to your summary below:

- With respect to RFPDs 32-35 and 38, we also raised an objection based upon the counterclaims being dismissed by the Board and therefore not in issue.
- With respect to interrogatories 23, 24 and 28 – while we are refusing to respond based upon the fact that the counterclaims have been dismissed and are therefore not in issue, we also are not waiving our prior objections.

In addition to your summary, my notes indicate the following:

- With respect to RFA 16 you are not pursuing a response
- With respect to RFA 21 you are not pursuing a response
- With respect to RFAs 26 and 27, I am not sure if you are pursuing a response. I offered that we could respond by indicating we simply don't know and therefore are unaware of any consecutive 3 year period of either use or nonuse. I believe we agreed to await further response until we receive discovery responses from Luxco.
- With respect to RFPD 6 we indicated that the list of privileged documents would be added to a privilege log.
- With respect to RFPD 11 you are not pursuing production
- With respect to RFPDs 23-25 I believe that we agreed to provide a report listing annual figures and we would then discuss if you require further documents (without waiver of our original objections).
- With respect to Interrogatory 17 you are not pursuing a response.

By my count, there are already 100 interrogatories.

If any of the above is incorrect, please advise.

Thank you,

John "Jack" M. Rannells

Baker and Rannells, PA

575 Route 28, Suite 102
Raritan, New Jersey 08869
Telephone: (908) 722-5640
Facsimile: (908) 725-7088
Email: jmr@br-tmlaw.com

www.tmlawworldwide.com



This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

From: Gilfoil, Andy [mailto:Andy.Gilfoil@huschblackwell.com]
Sent: Thursday, July 31, 2014 12:03 PM
To: Steve Baker; J. Rannells
Cc: K. Hnasko; Annis, Michael; Nemes, Alan
Subject: RE: Luxco v Opici 92058411

Gentlemen,

Nice to speak with you. To summarize our call:

- You indicated that responsive documents would be produced next week, and that you would endeavor to provide a privilege log next week as well. We agreed to address particular issues with the documents upon receipt and review of same.
- With respect to RFPDs 32-35 and 38, you confirmed that other than documents that are privileged there are no responsive documents.
- You indicated that as to RFPD No. 16 you will inquire with your client as to any documents showing retail price that Opici may have within its possession, custody or control.
- With respect to the various interrogatories asking Opici to "state all facts that you relied on," you are refusing to respond based on your position that the counterclaims have now been dismissed by the Board.
- You indicated that you would endeavor to provide a response to Interrogatory No. 19 upon receipt of a list of entities who are authorized by Luxco.

If any of the above is incorrect please advise.

Finally, you also stated that you perceive Luxco's First Set of Interrogatories to already be over seventy-five including subparts. I have liberally counted subparts contained within the 28 numbered interrogatories and come up with far fewer than 75. Please advise how you reach a different number.

Thanks,

Andy

Andrew R. Gilfoil
Attorney
Direct: 314.480.1812
Andy.Gilfoil@huschblackwell.com

From: Steve Baker [mailto:S.Baker@br-tmlaw.com]
Sent: Thursday, July 31, 2014 9:07 AM
To: Gilfoil, Andy; J. Rannells
Cc: K. Hnasko; Annis, Michael; Nemes, Alan
Subject: RE: Luxco v Opici 92058411

Jack is in. Our number is 9087225640

Steve

From: Steve Baker
Sent: Thursday, July 31, 2014 10:00 AM
To: 'Gilfoil, Andy'; J. Rannells
Cc: K. Hnasko; Annis, Michael; Nemes, Alan
Subject: RE: Luxco v Opici 92058411

We may have to push to call to later today or tomorrow. Jack Rannells responded to your letter of July 8th. He is not expected in this morning due to family issues. As he wrote the response, I prefer that he participate in the call.

I will let you know of his availability.

Steve

Stephen L. Baker



Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869
Telephone: (908) 722-5640
Facsimile: (908) 725-7088
E-mail: s.baker@br-tmlaw.com
www.tmlawworldwide.com

This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

From: Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]
Sent: Monday, July 28, 2014 3:50 PM
To: J. Rannells
Cc: Steve Baker; K. Hnasko; Annis, Michael; Nemes, Alan
Subject: RE: Luxco v Opici 92058411

Thursday at 10:30 eastern is fine. My direct number is below, or if you let me know what number to call I will plan accordingly.

Andrew R. Gilfoil
Attorney
Direct: 314.480.1812
Andy.Gilfoil@huschblackwell.com

From: J. Rannells [<mailto:JMR@br-tmlaw.com>]
Sent: Thursday, July 24, 2014 2:16 PM
To: Gilfoil, Andy
Cc: Steve Baker; K. Hnasko
Subject: RE: Luxco v Opici 92058411

How about Thursday 10:30 AM eastern time which, I believe, is 9:30 St. Louis time.

Jack Rannells

From: J. Rannells
Sent: Wednesday, July 23, 2014 5:35 PM
To: 'Gilfoil, Andy'
Subject: RE: Luxco v Opici 92058411

I will check with Steve as he is lead on this.

Thanks.
Jack

From: Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]
Sent: Wednesday, July 23, 2014 5:32 PM
To: J. Rannells
Cc: Steve Baker; K. Hnasko; Annis, Michael; Nemes, Alan; Gilfoil, Andy; Smith, Celeste
Subject: RE: Luxco v Opici 92058411

Jack,

Thank you for your letter. As noted previously, we have no objection to the parties each producing responsive documents directly to counsel. We agree to do the same and look forward to receipt of Opici's documents as soon as practical.

Per your request, I am generally available July 31 to discuss these issues via phone. Morning would be better on my end, but please let me know when you would like to talk and I will plan to be available.

Best,

Andy

Andrew R. Gilfoil
Attorney
Direct: 314.480.1812
Andy.Gilfoil@huschblackwell.com

From: J. Rannells [<mailto:JMR@br-tmlaw.com>]
Sent: Wednesday, July 23, 2014 4:15 PM
To: Gilfoil, Andy
Cc: Steve Baker; K. Hnasko
Subject: Luxco v Opici 92058411

Dear Mr. Gilfoil:

Please see the attached reply to your deficiency letter of the 8th. Hard copy to follow via mail. We look forward to discussing the matter further with you.

Very truly yours,

John "Jack" M. Rannells

Baker and Rannells, PA

575 Route 28, Suite 102

Raritan, New Jersey 08869
Telephone: (908) 722-5640
Facsimile: (908) 725-7088
Email: jmr@br-tmlaw.com

www.tmlawworldwide.com

This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.