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Filing date: **09/17/2014**

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	Other Motions/Papers
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	09/17/2014
Attachments	A-E.PDF(2122341 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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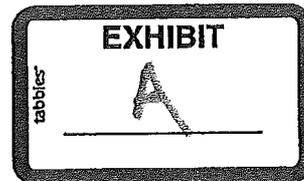
LUXCO, INC.,)	
)	
Petitioner/Counter Registrant,)	
)	
v.)	Cancellation No. 92/058,411
)	
OPICI IP HOLDINGS, LLC)	
)	
Registrant/Counter Petitioner.)	

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

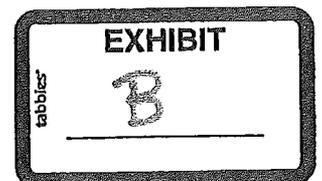
/s/ Andrew R. Gilfoil

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

Gilfoil, Andy

From: Steve Baker <S.Baker@br-tmlaw.com>
Sent: Friday, May 30, 2014 12:27 PM
To: Gilfoil, Andy; K. Hnasko
Cc: Annis, Michael; Nemes, Alan; Smith, Celeste
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Categories: In DM, #713062 : 1031 : SLC : 7289302

Thanks. We never fight over time and appreciate when others do not as well.

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: Friday, May 30, 2014 10:27 AM
To: Steve Baker; K. Hnasko
Cc: Annis, Michael; Nemes, Alan; Smith, Celeste; Gilfoil, Andy
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Steve,

A 30 day extension is fine, and we look forward to receipt of Opici's substantive responses and document production on or before July 2, 2014. We presume and anticipate similar courtesies from Opici in the future if a similar request is made at a later point during discovery.

Best,

Andy



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

From: Steve Baker [<mailto:S.Baker@br-tmlaw.com>]
Sent: Thursday, May 29, 2014 4:27 PM
To: Gilfoil, Andy; K. Hnasko
Cc: Annis, Michael; Nemes, Alan
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Please advise if you will consent to a 30day extension until July 2, 1014 to respond to your discovery requests.

Steve Baker

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: Thursday, May 22, 2014 10:36 AM
To: K. Hnasko
Cc: Annis, Michael; Nemes, Alan; Steve Baker; Gilfoil, Andy
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Ms. Hnasko,

My apologies for not responding to your email yesterday; I was tied up with other matters. Please see the attached word versions that you requested. I presume that the Baker & Rannells firm will afford us the same reciprocal professional courtesy in the event Opici subsequently serves Luxco with discovery requests. If I am mistaken in that regard, please advise.

Best,

Andy

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

From: K. Hnasko [<mailto:K.Hnasko@br-tmlaw.com>]
Sent: Thursday, May 22, 2014 7:42 AM
To: Gilfoil, Andy
Cc: Annis, Michael; Nemes, Alan; Steve Baker
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC
Importance: High

Reminder

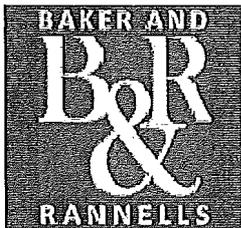
From: K. Hnasko
Sent: Tuesday, May 20, 2014 11:30 AM
To: 'Gilfoil, Andy'
Cc: Annis, Michael; Nemes, Alan; Steve Baker
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Mr. Gilfoil --

Per Mr. Baker's request, can you please provide your Discovery Requests in a Word format? Your cooperation would be much appreciated. Thank you.

Best Regards,

Kelly F. Hnasko
Managing Foreign/Litigation
Paralegal



BAKER AND RANNELLS PA
ATTORNEYS AT LAW
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<http://www.tmlawworldwide.com/>

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From: Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]
Sent: Tuesday, April 29, 2014 7:22 PM
To: Steve Baker
Cc: Annis, Michael; Nemes, Alan; K. Hnasko; Gilfoil, Andy
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Steve/Kelly,

Attached please find Luxco's Initial Disclosures and first discovery requests to Registrant. Hard copies will follow by mail. We look forward to receipt of Registrant's responses and production within the time allowed under the Board's rules.

Thanks,

Andy

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

From: Steve Baker [<mailto:S.Baker@br-tmlaw.com>]
Sent: Tuesday, April 29, 2014 2:22 PM
To: Gilfoil, Andy
Cc: Annis, Michael; Nemes, Alan; K. Hnasko
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

See below

Also, please copy Kelly Hnasko on all correspondence.

From: Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]
Sent: Monday, April 28, 2014 7:24 PM
To: Steve Baker
Cc: Annis, Michael; Nemes, Alan; Gilfoil, Andy
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Mr. Baker,

As you will recall, Luxco has filed a Motion to Dismiss in this matter. Under the Board's rules a suspension order from the Board should issue. 37 C.F.R. 2.120(e)(2). However, as of this writing the Board has not entered any order suspending the case pending resolution of Luxco's motion. As such, we will need to conduct the initial discovery conference as required by the Board. To that end, below please find Luxco's positions on the topics set forth in the Board's Order.

- With respect to potential settlement, Luxco's position is that REBELLION mark cannot exist on the register, and that any possible settlement would need to include, at a minimum, abandonment of the subject registration. As I have mentioned previously, if your client has a settlement proposal in mind I am happy to pass it along to Luxco. –the only settlement I would recommend it that your client withdraw it opposition
- At this point we see no reason to deviate from the schedule set forth in the Board's Scheduling Order. Agreed

- We also see no need to deviate from the Board's rules relating to disclosures, discovery and introduction of evidence at trial. Agreed
- The Board's standard Protective Order is agreeable to Luxco. Agreed, but would consider a Court having jurisdiction to enforce as the TTAB has no enforcement mechanism
- We are not inclined to enter into any stipulations, but if you have any particular proposed stipulations in mind we are happy to consider same. The one stipulation I would add at this point is that Luxco is agreeable to service of documents and papers by way of e-mail. Please advise if that is acceptable to your client. Agreed
- Finally, we do not believe this to be a case that is amenable to accelerated case resolution. If you feel differently please advise. Agreed

Please let me know if you have any objection to treating the forgoing as satisfactory compliance with the parties' discovery conference obligations. If you disagree, please let me know when you are available this week to discuss these issues. I am generally available tomorrow and Wednesday, as well as Thursday morning. I look forward to hearing from you further regarding Applicant's position on the above topics.

Thanks,

Andy

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

From: Gilfoil, Andy
Sent: Friday, March 28, 2014 5:44 PM
To: 'S.Baker@br-tmlaw.com'
Cc: Annis, Michael; Nemes, Alan; Gilfoil, Andy
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Mr. Baker,

Please see the attached, both of which were filed today in the above referenced Cancellation proceeding.

I received no response to my March 5 email below. As indicated below, if your client has a settlement proposal regarding this matter we would be happy to consider same.

Best,

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

From: Gilfoil, Andy
Sent: Wednesday, March 05, 2014 11:08 AM
To: 'S.Baker@br-tmlaw.com'
Cc: Annis, Michael; Nemes, Alan; Gilfoil, Andy
Subject: FW: Luxco Inc. v. Opici IP Holdings LLC

Mr. Baker,

We are in receipt of your below email regarding the above-referenced matter. This will confirm that your assertions are unfounded and without any support. First, *Otto Intl.* expressly held that the petitioner there failed to state any valid ground for cancelling the cited registration despite alleging claims for abandonment and misrepresentation of source. *Otto Intl. Inc. v. Otto Kern GmbH*, 83 U.S.P.Q.2d 1861, 1862 (TTAB 2007). The Board notes the “well settled” rule that the grounds on which a cancellation action may be brought “are limited for a registration that has been in existence for five years.” *Id.* at 1862-63. Finally, the Board goes on to conclude that because Congress expressly barred likelihood of confusion claims after five years that it was unwilling to conclude that the same facts recast as a different alleged claim could somehow constitute a cognizable ground of relief. *Id.* at 1864.

I note that you have offered no authority to the contrary or otherwise suggested that 15 U.S.C. 1064 does not so state. If you have support for your assertion that Registrant is entitled to assert those additional affirmative claims that it has cited by way of Registrant’s second and third counterclaims I would be happy to review same. As noted previously, Registrant’s second and third counterclaims for alleged “failure to police” are not allowable grounds under 15 U.S.C. 1064 and are accordingly insufficient as a matter of law. Based on this settled law we will seek to strike/dismiss Registrant’s improperly pled claims, or at the very least seek a more definite statement regarding Registrant’s pled claims.

Finally, although you ask us below to review your “proposal” please note that to-date we have not received any such proposal from you or your client. From Luxco’s perspective any possible settlement must necessarily include your client’s abandonment of its REBELLION registration and commitment to cease all further infringing use of its REBELLION mark or any other marks confusingly similar to Luxco’s long-standing REBEL Marks.

If you would like to discuss these issues further feel free to contact me.

Best,

Andy Gilfoil

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

From: Steve Baker [<mailto:S.Baker@br-tmlaw.com>]
Sent: Tuesday, February 25, 2014 9:49 AM
To: Brown, Katrina
Cc: K. Hnasko
Subject: RE: Luxco Inc. v. Opici IP Holdings LLC

Settlement communication u

1. Did anyone at your firm actually read *Otto International Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861 (TTAB 2007), or was it a headnote read? In any event, the case does not support your vacuous demand.
2. The marks and labels of our respective clients are more than sufficient to avoid even the possibility of confusion. A meaningful dialogue would address settlement based on labels and the like.

Review our proposal with your client and advise.

Steve Baker

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: Brown, Katrina [<mailto:Katrina.Brown@huschblackwell.com>]
Sent: Wednesday, February 12, 2014 7:14 PM
To: Steve Baker
Subject: Luxco Inc. v. Opici IP Holdings LLC

SENT ON BEHALF OF MICHAEL R. ANNIS OF HUSCH BLACKWELL LLP

Please see the attached regarding the above-referenced matter. Also, you will receive the original via First Class U.S. Mail.

Thank you

Katrina Brown
Legal Administrative Assistant

HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105-3433
Direct: 314.480.6628
Fax: 314.480.1505
Katrina.Brown@huschblackwell.com
huschblackwell.com

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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

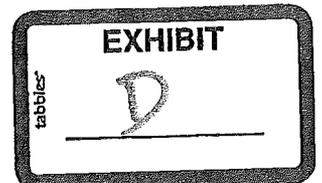
Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Registrant Opici IP Holdings, LLC (hereinafter, "Registrant") hereby responds and objects to Petitioner Luxco, Inc's (hereinafter, "Petitioner") First Set of Interrogatories as follows:

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 or 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.

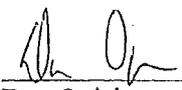
AS TO OBJECTIONS:



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:

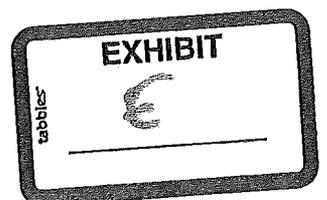
Preliminary Statement

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.



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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