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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	F-Q.PDF(4231238 bytes )

# HUSCH BLACKWELL

Andy Gilfoil  
Attorney

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July 8, 2014

## VIA ELECTRONIC DELIVERY and U.S. MAIL

Stephen L. Baker  
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[s.baker@br-tmlaw.com](mailto:s.baker@br-tmlaw.com)  
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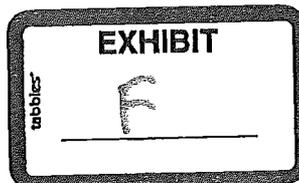
Re: *Luxco, Inc. v. Opici IP Holdings, LLC*  
United States Patent and Trademark Office, Trademark Trial and Appeal Board  
Cancellation No. 92058411  
Request for Meet and Confer regarding Registrant's Objections and Responses to  
Luxco's Initial Discovery Requests

Dear Mr. Baker:

Please allow this letter to serve as Luxco's request that counsel meet and confer to address Luxco's perceived deficiencies in Registrant's Objections and Responses to Luxco's Initial Interrogatories, Request for Production and Request for Admissions in the above-referenced matter. Our time is likely better served discussing this matter telephonically. However, I will, in an overabundance of caution, outline in very broad strokes some of the issues we will need to discuss. Again, the main purpose of this letter is to ask that you provide us with several dates and times over the next few weeks when we could conduct a meet and confer, as contemplated under the Trademark Rules of Practice. I have general availability the week of July 8 and further have time available on July 14 and 15. Again, I will in broad strokes outline some of the perceived deficiencies below:

### I. Applicant's Responses to Luxco's First Set of Admissions

In response to Request No. 16, Opici objected suggesting that terms used in those requests were "vague and ambiguous" and call for "conjecture and speculation." The terms objected to have clear and unequivocal meaning, particularly in the context in which they were



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used. Speculation is not an appropriate objection for purposes of discovery. Demand is made that Opici withdraw its objections and respond to the request as submitted.

Request no. 21 seeks a basic admission regarding Opici's REBELLION trademark registration and what limitations or restrictions it imposes (or does not impose). Opici's contention that the request is "harassing" or that the REBELLION Registration "speaks for itself" are improper and unfounded. Please provide a full and complete response to this request at your earliest opportunity.

Request nos. 26-27 are specifically directed to Opici's claim that Luxco has abandoned its REBEL YELL and REBEL RESERVE Marks. Frankly, for Opici to now claim lack of knowledge appears disingenuous and evasive. Consistent with Rule 11, Opici surely relied on some factual basis to assert a counterclaim alleging that Luxco has abandoned its REBEL YELL and REBEL RESERVE. These requests are straight forward and could not be clearer. I cannot imagine how facts of which *Registrant* is or is not aware could instead be "solely within the knowledge of [*Luxco*]." Again, demand is made that full and complete responses be provided to these requests at your earliest convenience.

## II. Applicant's Response to Opposer's Request for Production of Documents

It appears that in many instances Opici makes broad unsubstantiated objections and then states that it will make documents available for inspection and copying as mutually agreed by the parties at a mutually agreeable date and time. Unfortunately, no documents were provided with Opici's responses. Please advise when you will produce all responsive documents to these requests. Thank you in advance for your courtesies in this regard. Luxco is by all means agreeable to receipt of photocopies of all responsive documents, which as you know is the most efficient means the Board encourages the parties to use in this proceeding. *See Influence Inc. v. Zulker*, 88 U.S.P.Q.2d 1859, 1861 n. 4 (TTAB 2008). Of course Luxco would afford Opici the same courtesy in response to any future document requests that Opici serves on Luxco.

With respect to a Request Nos. 6, 32, 33, 34, 35 and 38 Opici objects to producing documents based on its contention that the documents are protected by the "attorney-client privilege" or "attorney-work product privilege." However, it is well settled that the law does not permit a party to use the work product doctrine to hide the facts themselves, which is particularly germane here where many of the requests simply ask Opici to produce those documents that support its various contentions in this matter. Similarly, as you know, search reports themselves are not privileged and are subject to production. *Goodyear Tire & Rubber Co. v. Tyco Industries*, 186 U.S.P.Q. 207, 208 (TTAB 1975); *Amerace Corp. v. USM Corp.*, 183 U.S.P.Q. 506, 507 (TTAB 1974). In addition, no privilege log has been provided. As required by applicable Federal Rules, Opici must provide a privilege log describing the nature of the documents, communications or tangible things that contends to be privileged in a manner allowing Luxco to assess the claim. *See Fed. R. Civ. P. 26(e)(5)*. Please produce all non-privileged documents responsive to these requests as well as a privilege log for any withheld document as soon as possible.

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Opici also lodges objections to a number of requests, namely nos. 11, 23, 24, 25, 30, on the grounds that the requests are purportedly “overly broad and unduly burdensome.” Opici offers no factual basis to support its broad unsubstantiated boiler plate objections. As you know, boilerplate generalized objections are “tantamount to no objection at all” and are routinely overruled by the courts. *See, e.g., Nissan North America, Inc. v. Johnson Elec. North America, Inc.*, 2011 WL 669352, \*2 (E.D. Mich. 2011). Opici has wholly failed to satisfy its burden here of explaining how each discovery request is purportedly burdensome. *Cont. Ill. Nat. Bank & Trust Co.*, 136 F.R.D. at 685. Demand is made that Opici withdraw its improper objections and provide full and complete responses to these production requests.

Finally, Opici also objects to producing any documents in response to Request No. 16. This request seeks documents identifying the retail price or intended retail price of REBELLION-branded goods, a category of documents that is plainly relevant and properly discoverable. Opici must withdraw its objections and produce any documents in its possession, custody or control that identify the retail price or intended retail price for REBELLION-branded goods.

### III. Opici's Response to Opposer's First Set of Interrogatories

As with many of its responses to Luxco's document requests, Opici objects to Interrogatory Nos. 17, 19, 23, 24, 28 claiming that the requested information is overly broad and unduly burdensome. Opici's failure to identify any “undue burden” renders these objections meritless. The interrogatories seek basic discoverable information regarding Opici's distributors (no. 17), Opici's awareness of third-party use (no. 19), as well requests for Opici to state those facts on which it relied to support Opici's various contentions (nos. 23, 24 and 28). Opici fails to provide any explanation why Interrogatory No. 19 is somehow “vague and ambiguous.” This straightforward request asks Opici to state whether it is aware of any third-party use of any trademark containing the term “REBEL” in conjunction with the offer or sale of any distilled spirits. To the extent Opici seeks further clarification regarding the meaning of “unauthorized,” please consider any trademark containing the term “REBEL” for any distilled spirits not owned by Luxco to be “unauthorized” for purposes of this interrogatory. Please withdraw Opici's boilerplate objections and provide and full and complete response to these interrogatories.

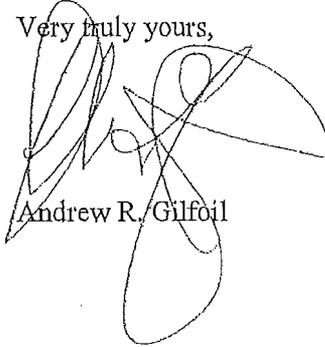
Opici again objects to a number of interrogatories based on its assertion that the information requested is purportedly protected by the “attorney-client privilege” or “attorney-work product privilege.” As noted above, the law does not permit a party to use the attorney-client privilege and work product doctrine to hide the facts themselves. Please provide supplemental responses identifying those facts that Opici relied on to support its contentions or state affirmatively that no such facts exist.

Again, I do not think it is productive to go through each and every interrogatory to address the noted objections. I think our time is better spent discussing these matters by phone and determining what, if anything, that Opici is prepared to do to withdraw unsupportable objections and supplement its responses.

# HUSCH BLACKWELL

We look forward to hearing from you in regards to the above and addressing Opici's objections and responses as provided in the trademark rules of practice.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew R. Gilfoil". The signature is stylized and somewhat abstract, with several loops and flourishes.

Andrew R. Gilfoil

cc: Michael R. Annis, Esq.

**Gilfoil, Andy**

---

**From:** Steve Baker <S.Baker@br-tmlaw.com>  
**Sent:** Tuesday, July 15, 2014 10:33 AM  
**To:** Gilfoil, Andy; K. Hnasko  
**Cc:** Annis, Michael; Nemes, Alan; J. Rannells; K. Hnasko  
**Subject:** RE: Luxco, Inc. v. Opici IP Holdings, LLC

**Categories:** In DM, #713062 : 1031 : SLC : 7289301

I have your letter of July 8, 2014. We are preparing a written response and then will be available to meet and confer. Given that the proceedings are suspended, a motion to compel will not be entertained by the Board at this time. Also, we are more than prepared to meet our obligations re: discovery, etc.

Steve

Stephen L. Baker



Baker and Rannells, PA  
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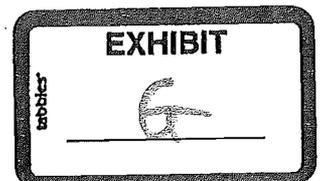
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**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Monday, July 14, 2014 11:26 AM  
**To:** Steve Baker; K. Hnasko  
**Cc:** Annis, Michael; Gilfoil, Andy; Nemes, Alan  
**Subject:** RE: Luxco, Inc. v. Opici IP Holdings, LLC

Steve,

I have not heard anything further regarding the discovery issues identified in our July 8 golden-rule letter. Please let me know when we can meet and confer regarding same.



As to document production, please confirm whether Opici will be providing Luxco with copies of all responsive non-privileged documents--or whether Opici is insisting that Luxco come inspect and copy responsive documents where they are held. If Opici is insisting on the latter, please provide the location of all responsive documents and the soonest that they can be made available for inspection and copying so that we can make travel arrangements.

As noted in my letter, Luxco is certainly agreeable to the parties exchanging copies of documents in lieu of requiring inspection and copying—which should also minimize the cost and expense on both parties. That said, to the extent Opici insists on inspection and copying we will follow suit for any document requests received from Opici.

I look forward to hearing from you as soon as practical regarding these issues.

Best,

Andy

**Andrew R. Gilfoil**  
**Attorney**  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

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**From:** Brown, Katrina  
**Sent:** Tuesday, July 08, 2014 4:55 PM  
**To:** 's.baker@br-tmlaw.com'; 'k.hnasko@br-tmlaw.com'  
**Cc:** Annis, Michael; Gilfoil, Andy  
**Subject:** Luxco, Inc. v. Opici IP Holdings, LLC

SENT ON BEHALF OF ANDREW GILFOIL OF HUSCH BLACKWELL LLP

Mr. Baker:

Please see the attached regarding the above-referenced matter. Also, you will receive the original via U.S. First Class 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](mailto:Katrina.Brown@huschblackwell.com)  
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ADMITTED TO PRACTICE IN:  
♦NEW YORK & NEW JERSEY  
+NEW JERSEY  
\* WASHINGTON, DC & FLORIDA  
& REG. PATENT ATTORNEY

PLEASE RESPOND TO THE NEW JERSEY ADDRESS  
EMAIL: JMR@BR-TMLAW.COM

July 23, 2014

Andy Gilfoil  
Husch Blackwell  
190 Carondelet Plaza,  
Suite 600  
St. Louis, MO 63105

Re: Luxco, Inc. v. Opici IP Holdings, LLC  
Canc. No. 92058411  
Reply to Deficiency Letter dated July 8, 2014

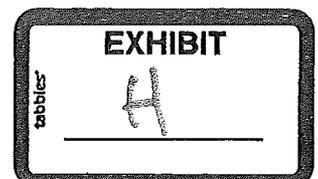
Dear Mr. Gilfoil:

Registrant replies to Petitioner's deficiency letter in the order the issues were presented. For each request, Registrant first sets forth the request, followed by Registrant's response, followed by Registrant's reply to the issue(s) raised in your letter.

Requests for Admission

16. Admit that products sold under the REBELLION Mark are capable of being sold at the same retail price as those products sold by Luxco under its REBEL Marks.

**RESPONSE:** Registrant objects to the request on the grounds that it a) is vague and ambiguous as to the meaning of "capable of being sold"; and b) calls for conjecture and speculation. A meaningful response cannot be framed. Further, Registrant does not determine or control the retail price at which its products are sold.



Opici does not know what Luxco means by “capable of being sold.” Rather than offer a meaningful clarification or clear definition of the phrase, you simply state that the meaning is “clear and unequivocal.” That is not a good-faith effort to resolve the matter. Opici does not know what retail price Luxco’s products are capable of being sold at. Opici has no idea as to Luxco’s costs and expenses to produce, market and sell its products. As Luxco must know, retailers in some states can sell product at any price, while in other states there are restrictions. I suppose that Opici’s products are “capable” of being sold in some locations for a penny or for a thousand dollars or more. In the spirit of cooperation, Opici will conjecture that Registrant’s products are “capable” of being sold in some locations for a penny or for a thousand dollars or more, although Opici does not know. Opici admits, on one level, that any retail price is possible in certain jurisdictions.

21. Admit that your U.S. Registration for the term REBELLION places no limitations or restrictions on the retail price or intended retail price at which Registrant or its licensees or distributors can sell REBELLION-branded goods.

**RESPONSE: Registrant objects to the request as being harassing in nature. Opici’s U.S. Registration speaks for itself. Registrant further objects to the request as being compound in nature and thereby violative of Rule 36(a)(2) F.R.Civ.P. which requires that each matter be separately stated.**

You state that Opici’s objection is “improper and unfounded.” Seriously? The registration is obviously of record in the proceeding, as it is the registration in issue. The registration says what it says, nothing more and nothing less. Your request yields nothing and serves no purpose. That is certainly one definition of “harassing in nature.”

Opici also objected to the request as being compound in nature and thereby violative of Rule 36(a)(2) which requires that each matter be separately stated. Your request goes to “limitations” and also to “restrictions.” It refers to “retail price” and to “suggested retail price.” It also requests admission concerning “Registrant” and “licensees” and “distributors.” The rule is clear. Requests for admission require that each matter of inquiry “be separately stated.” The objection is both proper and founded in the rule. Rather than simply demanding that we waive the rule, perhaps you could address the objections.

26. Admit that Registrant is not aware of any consecutive three year period since September 29, 2008 during which time Luxco's REBEL RESERVE Mark had not been offered or sold in U.S. commerce in connection with the sale of liquors and distilled spirits.

**RESPONSE: Registrant objects to the request on the grounds that the information is solely within the knowledge of Petitioner and on the grounds that the request calls for conjecture. Registrant lacks knowledge or information sufficient to form a response.**

27. Admit that Registrant is not aware of any consecutive three year period since August 1937 during which time Luxco's REBEL YELL Mark had not been offered or sold in U.S. commerce in connection with the sale of straight bourbon whiskey.

**RESPONSE: Registrant objects to the request on the grounds that the information is solely within the knowledge of Petitioner and on the grounds that the request calls for conjecture. Registrant lacks knowledge or information sufficient to form a response.**

You state that requests 26 and 27 are specifically directed to Opici's claim that Luxco has abandoned its REBEL YELL and REBEL RESERVE Marks. They are not. You also state that the "requests are straight forward and could not be clearer." "Frankly," reading the actual Counterclaim makes Opici's claim much clearer. As is obvious by the language of the claim, Opici's claim is for abandonment resulting from naked licensing and/or failure to police the mark. It has nothing whatsoever to do with any three year period of non-use by Luxco. In any event, Opici is unaware (meaning has no knowledge) of any three year sequential period of either use or non-use by Luxco of its marks. Again, and as quite clearly stated in the objection, such information would be solely within the knowledge of Petitioner and accordingly calls for pure conjecture on Opici's part. The objection is valid.

#### **Production of Documents**

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.**

Your letter states that “search reports themselves are not privileged.” While that is, in part accurate, the rule also states that “comments or opinions of attorneys relating thereto are privileged.” Opici identifies:

(1) An email sent July 20, 2010 from Stephen Baker of Baker and Rannells to Sonia Pucci of Registrant. The document is privileged in its entirety.

(2) An email sent September 6, 2012 from Stephen Baker of Baker and Rannells to Dina Opici with cc to Sonia Pucci both of Registrant. The document is privileged in its entirety.

(3) An email sent September 9, 2012 from Dina Opici of Registrant to Stephen Baker of Baker and Rannells cc to Sonia Pucci of Registrant. The document is privileged in its entirety.

(4) An email sent September 12, 2012 from Stephen Baker of Baker and Rannells to Dina Opici with cc to Sonia Pucci both of Registrant. The document is privileged in its entirety.

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.**

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.**

With regard to requests to produce nos. 32, 33, 34, 35, and 38: Registrant has not located any documents responsive to the requests.

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).**

Your letter states that Opici has not offered any factual basis to support its broad unsubstantiated boiler plate objections." Your letter avoids and/or ignores the non-boiler plate case law cited in the objections. It has long been the law that the names of customers, including dealers, is overly broad and overly intrusive but that classes of customers or types of businesses involved are proper grounds for discovery. Do you disagree? If so, what is the basis for your disagreement?

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.**

Regarding Document Requests 23 and 24: First, you will note from the response that Opici agreed to make “representative non-privileged documents available for inspection and copying. Your boiler plate statement regarding Opici’s objection is not a good faith effort to resolve any dispute you believe may exist. If you would agree to a report or particular reports showing annual sales data taken from a query of Opici’s records we have something to talk about. If you want something else, please let us know so that we have something substantive to discuss.

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.**

First, you will note from the response that Opici agreed to make “representative non-privileged documents available for inspection and copying. Your boiler plate statement regarding Opici’s objection is not a good faith effort to resolve any dispute you believe may exist. If you would agree to a report or particular reports showing annual advertising/promotion spend data taken from a query of Opici’s records we have something to talk about. If you want something else, please let us know so that we have something substantive to discuss.

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.**

First, you will note from the response that Opici agreed to make "representative non-privileged documents available for inspection and copying.

As you well know, the trademark file wrapper for the registration in issue is publically and readily available to you on the TESS/TARR database of the United States Patent and Trademark Office. Also, as you well know, COLA label approvals are publically and readily available to you on the TTB COLA database.

As regards "fictitious trade names," Opici has no responsive documents.

Finally, Opici does not know what you mean by "trade names approved by the Alcohol and Tobacco Tax and Trade Bureau." Please clarify.

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.**

#### Interrogatories

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 Anisehl Co.*, 229 USPQ 147, 149 (TTAB 1985).

Your letter avoids and/or ignores the case law cited in the objections. It has long been the law that the names of customers, including dealers, is overly broad and overly intrusive but that classes of customers or types of businesses involved are proper grounds for discovery. Do you disagree? If so, what is the basis for your disagreement?

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.**

Your letter states that "Opici fails to provide any explanation why Interrogatory 19 is somehow "vague and ambiguous." The explanation seems clear – it is the meaning of "unauthorized third-party use of Petitioner's Marks" that is vague and ambiguous. Since Opici has no idea who may be or may not be an "unauthorized" or an authorized user of Petitioner's Marks and since as between the parties, only Petitioner knows the answer, the request is vague and ambiguous. Opici requested that you inform it "of all third-party "authorized" uses so that the request can be knowledgeably responded to. Rather than make a good faith effort to clarify the request, you simply demand an answer. Rather than resorting to rhetoric, our time would be better spent if you would simply clarify the request as requested.

I would also note that once (or if) we receive clarification, your interrogatory expects Opici to have specific and detailed knowledge of any third-parties' uses of a mark such as dates of use, geographic area of use, and "all persons with knowledge of such use." Your inquiry is

improperly placed. Such information can only be ascertained by Petitioner addressing the same with any such third party user.

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.**

[Paragraph 26 - As and for a first counterclaim, the Petitioner has abandoned its use of Petitioner's Alleged Mark in the United States by engaging in naked licensing of REBEL and/or REBELLION marks used by other parties.]

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.**

[Paragraph 27 - As and for a second counterclaim, the Petitioner and/or its alleged predecessor-in-interest have failed to police the use of Petitioner's Alleged Mark by unrelated third parties.]

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.**

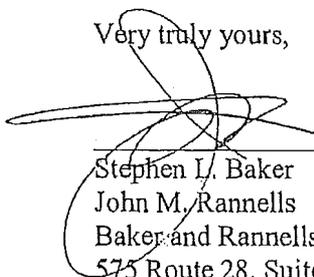
As regards interrogatories 23, 24, and 28, in general, the contentions arise from the significant number of REBEL and variation marks that Petitioner has not complained of or challenged or otherwise taken any action against. It is assumed that such parties are not licensees, however that is a question for discovery.

We have addressed all requests specified in your letter. We look forward to working things out as best we can.

Registrant will agree to produce copies of documents directly to you if Petitioner will agree and stipulate to producing Petitioner's documents directly to our office. Please let us know.

As regards a time to discuss matter over the phone, is Thursday of next week convenient for you?

Very truly yours,



---

Stephen L. Baker  
John M. Rannells  
Baker and Rannells PA  
575 Route 28, Suite 102  
Raritan, NJ 08869  
908-722-5640

## Gilfoil, Andy

---

**From:** Gilfoil, Andy  
**Sent:** Wednesday, July 23, 2014 4:32 PM  
**To:** 'J. Rannells'  
**Cc:** Steve Baker; K. Hnasko; Annis, Michael; Nemes, Alan; Gilfoil, Andy; Smith, Celeste  
**Subject:** RE: Luxco v Opici 92058411  
**Attachments:** Ltr. to Gilfoil 7-23-14 reply deficiency ltr.pdf  
  
**Categories:** In DM, #713062 : 1031 : SLC : 7290125

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](mailto: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 8<sup>th</sup>. Hard copy to follow via mail. We look forward to discussing the matter further with you.

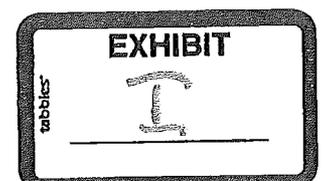
Very truly yours,

John "Jack" M. Rannells

Baker and Rannells, PA

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**Gilfoil, Andy**

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**From:** Gilfoil, Andy  
**Sent:** Wednesday, August 27, 2014 8:38 AM  
**To:** 'Steve Baker'; J. Rannells  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411

Jack,

Just following up on my email from last Thursday, as I have heard nothing further since Steve's below email. Please advise where Opici stands on these issues.

Thanks,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** Steve Baker [<mailto:S.Baker@br-tmlaw.com>]  
**Sent:** Thursday, August 21, 2014 1:43 PM  
**To:** Gilfoil, Andy; J. Rannells  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste  
**Subject:** RE: Luxco v Opici 92058411

Jack is out of the office and is expected to return tomorrow.

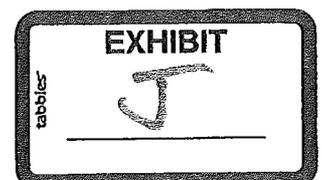
Steve

Stephen L. Baker



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---

**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Thursday, August 21, 2014 2:31 PM  
**To:** J. Rannells; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411

Jack,

I'm not sure where we stand on this. In making the below highlighted statement are you stating that Opici is not withholding any information in response to any of Luxco's interrogatories based on alleged super numerosity? Please confirm.

As you know, a number of Luxco's prior interrogatories are directed to Opici's counterclaim contentions. As I understand it Opici is taking the position that it is not obligated to provide responses because the Board has since dismissed the counterclaims, and further that the specific facts are subject to the attorney-client privilege and/or the attorney work product privilege (for which no log has been provided to date). While you have stated that Opici has no present intention to re-plead, to the extent Opici does in fact re-assert its counterclaims will Opici be providing substantive responses to these interrogatories? Please confirm on way or the other.

My proposed revision to Interrogatory No. 19 is set forth below. We strongly disagree with your alleged counting scheme. Interrogatory No. 13 is directed to a single piece of information, known instances of confusion, and even the authority you cite below acknowledges that the correct inquiry when counting sub-parts is directed to the substance of the interrogatory. Interrogatory No. 13 asks on question with four sub-parts, for a total of five sub-parts.

Finally, aside from issues with the interrogatories we still have yet to receive any responsive documents or any privilege log, both of which were discussed as forthcoming during our July 31 call. We have now had Opici's responses and objections since July 2, but have yet to receive a single document, almost two months later now. I would think that the three weeks that have passed since our meet and confer have been ample time. As you can appreciate, we have a limited amount of time to complete discovery in this matter. Please provide responsive documents and a privilege log on or before August 28, a week from today. To the extent you foresee any problems providing these materials by then please advise.

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Monday, August 18, 2014 5:59 PM  
**To:** Gilfoil, Andy; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste  
**Subject:** RE: Luxco v Opici 92058411

Andy:

I think there is a misunderstanding or two. This seems like much ado about nothing.

1. The cases you cite are no longer precedent and no longer practice and/or procedure in Board cases.
2. Yes, in the spirit of cooperation, we responded to your first set of interrogatories notwithstanding their excessive amount. The only present issue regarding the 75 Rule applies to any further interrogatories, revised or otherwise. It is to

put you on notice now that if you serve us with additional interrogatories or alleged revised interrogatories, we will make a general objection based upon the 75 Rule limit. We have no obligation to seek a protective order.

3. I simply do not understand what you are saying regarding Interrogatory #19. It was agreed to that we would endeavor to provide a response to the interrogatory upon receipt from you of a list of entities who are authorized by Luxco. I am not even sure why or how you want to revise the interrogatory. It states:

19. State whether you are aware of any third-party use of any 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.

Please state what it is you wish to revise.

4. Finally, I never said that I objected to a telephonic conference. I said that it was not the proper procedure to deal with a 75 interrogatory rule matter. It also seems premature to me, as we have not been served with additional interrogatories.

Best regards,

John "Jack" M. Rannells

Baker and Rannells, PA

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---

**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Monday, August 18, 2014 5:52 PM  
**To:** J. Rannells; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411

Jack,

Confirmed as to courtesy copies.

To the extent your response suggests that *Chicago Corp.* and *Brawn of California* are no longer good law no authority is cited to support that proposition. Moreover, the version of 2.120(d)(1) that you cite below provides that Opici “shall, **within the time for (and instead of) serving answers and specific objections** . . . serve a general objection on the ground of their excessive number.” Opici did not do so, and instead answered Luxco’s interrogatories with “specific answers and specific objections.” No objection based on alleged excessive number was set forth in Opici’s July 23 response to Luxco’s prior golden rule letter. Indeed, you did not raise any objection based on count until our meet and confer call on July 31, well after Opici had served its answers and objections.

I did not specifically recount my statement on our meet and conference call about serving a revised interrogatory because it was a clear non-starter as the response indicated (for the first time) that Luxco was allegedly already in excess of 75 interrogatories including subparts. The summary of your notes does not appear to address Interrogatory No. 19, so there would be nothing to advise as “incorrect.” In any event, to the extent you are now suggesting that I did not make such an offer during our July 31 meet and confer call, that is not consistent with my recollection.

To the extent you suggest that a telephonic conference with the interlocutory attorney is not the “correct procedure” to resolve this issue, the Board’s rules do not support your assertion. See 37 CFR 2.120(i)(1). We continue to perceive that it would be more practical and in the interests of both parties (and the Board) to get resolution from the interlocutory attorney regarding this matter by way of a telephonic conference. That said, your objection to participating in a telephonic conference is noted.

I have yet to receive any documents in response to Luxco’s production requests. Your Aug. 13 response below states that documents would be provided “shortly.” Please provide a date certain when we can expect receipt of responsive documents and Opici’s privilege log.

Thanks,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Thursday, August 14, 2014 12:32 PM  
**To:** Gilfoil, Andy; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste  
**Subject:** RE: Luxco v Opici 92058411

Andy:

Just so that I am clear, am I correct that we will serve hard copies and also courtesy copies electronically and that response times will have the standard additional 5 days attached? Please confirm your understanding.

Regarding the 75 Interrogatory rule. The case law you cite is outdated as is your prior version of 37 CFR 2.120(d)(1). The current rule states:

37 CFR § 2.120(d)(1) ... If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.

The rules for addressing and resolving the matter are clear. I do not believe that the correct procedure to resolve the interrogatory count issue is via telephonic conference with the interlocutory attorney.

Regarding a revised version of interrogatory 19, I do not recall that being our conversation or how the issue could be resolved. Your summary (dated July 31<sup>st</sup>) of our meet and confer regarding interrogatory 19 is my recollection, namely and as per your words, Opici "would endeavor to provide a response to Interrogatory No. 19 upon receipt of a list of entities who are authorized by Luxco." To date we have not received such a list from you.

I would also note that on August 1<sup>st</sup> I responded to your July 31<sup>st</sup> email and stated "If any of the above is incorrect, please advise." Since I have not heard otherwise, I will assume that my additional summary is correct.

Best,

John "Jack" M. Rannells

Baker and Rannells, PA

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**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Wednesday, August 13, 2014 6:41 PM  
**To:** J. Rannells; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411

Jack,

No objection to service by electronic courtesy copy and hard copy to follow. I believe we have been doing so throughout.

Look forward to receipt of Opici's document production as soon as practical.

Thanks for the follow-up on the interrogatory issue. Luxco does not agree with your break-down characterization of asserted "sub parts" in interrogatory no. 13 and none of the case-law you cite actually discusses the particulars of the interrogatories at issue. More importantly, however, Opici failed to file a motion for protective order in response to Luxco's interrogatories, which it was obliged to do in order to preserve this assertion. See 37 C.F.R. 2.120(d)(1); *Brawn of California*, 15 U.S.P.Q.2d at 1574. Board case-law on this subject makes plain that Opici has waived its right to object

on the basis of number. *See, e.g., Chicago Corp. v. North American Chicago Corp.*, 16 U.S.P.Q.2d at 1480; *Brawn of California*, 15 U.S.P.Q.2d at 1574 (“Applicant waived its right to opposer’s interrogatories by failing to file a motion for protective order”). If you have authority to the contrary please advise.

Thank you for confirming that Opici does not presently intend to re-plead. However, whether or not Opici does so Luxco is still entitled to discovery relative to any third-party use that Opici is aware of. During our prior call I inquired whether Opici would be agreeable to us providing a revised version of Interrogatory No. 19 to resolve Opici’s concerns with that wording, which was declined. If Opici is steadfast in its position viz Luxco’s interrogatories we would like to set up a telephonic conference with the interlocutory attorney to address this issue on an expedited basis. Please advise whether Opici is agreeable to doing so.

Thanks,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Wednesday, August 13, 2014 10:37 AM  
**To:** Gilfoil, Andy; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Smith, Celeste  
**Subject:** RE: Luxco v Opici 92058411

Andy:

I was unaware of the agreement regarding service of papers as it is not our standard practice and was not noted on the file. I have taken notice. I would prefer to amend the agreement to paper service but with electronic courtesy copy. That way, our standard scheduling will not change. Let me know.

I had a family matter that took up most of my time last week. I expect to have documents to you shortly. Sorry about the delay.

My understanding of the 75 Rule is based, *inter alia*, upon the following:

The general rule is that “compound questions seeking separate information but not set forth separately will be broken down by the Board and counted as separate interrogatories. *See Calcagno, Tips From the TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)*, 80 TMR 285 (1990)” – *see also, Jan Bell Marketing Inc. v. Centennial Jewelers Inc.*, 19 USPQ2d 1636 (TTAB 1990). The Board looks to the substance of the interrogatories in making its determination on the number thereof and is not be bound by a propounding party’s numbering system. *See, Kellogg Co. v. Nugget Distributors’ Cooperative of America Inc.*, 16 USPQ2d 1468 (TTAB 1990)

If two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory. *Kellogg, supra*. If an interrogatory contains both an initial question, and follow-up questions to be answered if the first is answered in the affirmative, the initial question and each follow-up question are counted as separate interrogatories. *See Kellogg*. Similarly, if an interrogatory begins with a broad introductory clause followed by several subparts the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated. *See Jan Bell*.

Further, if an interrogatory requests information concerning more than one issue, such as information concerning both “sales and advertising figures,” or both “adoption and use,” the Board will count each issue on which information is sought as a separate interrogatory.

By way of example, your interrogatory no. 13 asks: "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.

The interrogatory is comprised of numerous independent questions/issues etc. By way of example:

1. Awareness of confusion
2. Awareness of mistake
3. Involving source
4. Involving origin
5. Involving sponsorship
6. Of goods or services
7. Offered by Registrant
8. Offered by its licensees
9. Inquiry regarding whether goods were sponsored by Luxco
10. Inquiry regarding whether goods were otherwise connected with Luxco
11. Or connected with any goods of Luxco
12. Or connected with any services of Luxco
13. Including any of Petitioner's Marks
14. Identify persons confused
15. Identify persons mistaken
16. Identify persons making inquiry
17. Identify the substance or content of such confusion, mistake of inquiry
18. Identify the date inquiry was made
19. Identify all persons with knowledge regarding inquiries
20. Identify all persons with knowledge regarding confusion
21. Identify all persons with knowledge regarding mistake
22. Identify all documents regarding inquiries
23. Identify all documents regarding confusion
24. Identify all documents regarding mistake

With regard to RFPDs 32-35 and 38, advised that any responsive documents would be privileged and has, as a result of the Board's decision, objected to those requests as being irrelevant and immaterial. Presently, Opici has no plans to re-plead.

In any event, even without taking RFPDs 32-35 and 38 into consideration, the interrogatory count exceeds 75. If you disagree, please provide a detailed explanation.

Best regards,

John "Jack" M. Rannells

Baker and Rannells, PA

575 Route 28, Suite 102  
Raritan, New Jersey 08869

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Facsimile: (908) 725-7088  
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**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Tuesday, August 12, 2014 1:45 PM  
**To:** J. Rannells; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan; Gilfoil, Andy; Smith, Celeste  
**Subject:** RE: Luxco v Opici 92058411

Jack,

We were surprised to receive the attached motion yesterday by mail, which was apparently filed last Wednesday. I was under the impression that the parties had agreed to service of documents and papers by way of e-mail (see Steve Baker's prior email, attached). To the extent that is still the case please provide same, as Luxco has done throughout this matter.

On our call you indicated that responsive documents would be produced last week, and that you would endeavor to provide a privilege log last week as well. We have not received any documents nor a privilege log as of this writing. Please provide a date certain when we can expect same.

Finally, please provide a detailed explanation for how you are arriving at any alleged 100 interrogatories so we can effectively meet and confer on that issue short of involving the Board. As you know, many of the interrogatories are directed to Opici's counterclaim allegations, which the Board has given Opici the opportunity to re-plead. Please confirm whether Opici will or will not be willing to answer interrogatories directed to these issues in the event Opici re-pleads its abandonment/failure to police claims.

I look forward to your response regarding these issues.

Best,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** J. Rannells [<mailto: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

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Telephone: (908) 722-5640  
Facsimile: (908) 725-7088  
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[www.tmlawworldwide.com](http://www.tmlawworldwide.com)

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---

**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](mailto: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 8<sup>th</sup>. 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](mailto:s.baker@br-tmlaw.com)  
[www.tmlawworldwide.com](http://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](mailto: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](mailto: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 8<sup>th</sup>. 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](mailto:jmr@br-tmlaw.com)

[www.tmlawworldwide.com](http://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.

**Gilfoil, Andy**

---

**From:** J. Rannells <JMR@br-tmlaw.com>  
**Sent:** Wednesday, September 03, 2014 5:22 PM  
**To:** Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures  
**Attachments:** Opici Documents and Privilege Log.pdf

Andy:

Attached is Privilege Log and documents.

Hard copy to follow by mail.

Best regards,

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](mailto:jmr@br-tmlaw.com)

[www.tmlawworldwide.com](http://www.tmlawworldwide.com)

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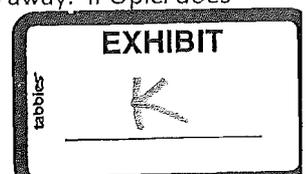
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**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Friday, August 29, 2014 3:31 PM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I did not receive a privilege log yesterday, as previously promised, and have yet to receive any documents whatsoever in response to Luxco's RFPD's—which were served now four months ago, on April 29. I asked previously that all responsive documents be provided by August 28 and that you advise of any issues with providing responsive documents by then. I have received no further response.

As you know, the Board has entered a new scheduling order leaving the parties with a limited amount of time left to undertake remaining discovery. As such, we cannot continue to sit idly by while discovery time ticks away. If Opici does



not provide responsive documents by COB Monday, September 1, we will have no option but to pursue a motion to compel.

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. See TBMP 405.03(e). Please advise whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

I look forward to hearing from you on these issues as soon as practical.

Best,

Andy

**Andrew R. Gilfoil**  
**Attorney**  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Wednesday, August 27, 2014 9:34 AM  
**To:** Annis, Michael; Gilfoil, Andy  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko  
**Subject:** Luxco v Opici 92058411 Initial Disclosures

Dear Mr. Gilfoil and Mr. Annis:

Attached is a courtesy copy of Registrant's Initial Disclosures.  
Hard copies to follow by mail.

My paralegal should finish with Privilege Log today and I forward documents to you tomorrow.

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](mailto:jmr@br-tmlaw.com)

[www.tmlawworldwide.com](http://www.tmlawworldwide.com)

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

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

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**PRIVILEGE LOG THROUGH 12/10/2013**

Date	Type	From	To	Subject	Privilege
12/10/13	Email	SP	SB CC: Don, Dina, SC	RPD 3	ACP
12/9/13	Email	SB	SP Cc: Don, Dina, SC	RPD 3	ACP
12/9/13	Email	SP	SB Cc: Don, Dina	RPD 3	ACP
10/10/13	Email	SB	Dina Cc: SP, KH	RPD 17 Rog 21	ACP
6/27/12	Email	SB	SP	RPD 7,17 Rog 21	ACP
7/19/12	Email	Dina	SB, SP	RPD 3, 7	ACP
7/2/12	Email	SB	Dina, SP	RPD 3, 7	ACP
6/27/12	Email	Dina	SB, SP	RPD 3, 7	ACP
6/26/12	Email	SB	SP Cc: Dina	RPD 3, 7	ACP

9/30/13	Email	Dina	SB	RPD 3, 7	ACP
9/30/13	Email	SB	Dina	RPD 3, 7	ACP
7/29/13	Email	JB	Dina Cc: DC, SB, PC, SC	RPD 3	ACP
7/30/13	Email	SB	Dina, SP, JB Cc: Don, SC, DC	RPD 3	ACP
7/29/13	Email	SB	Dina, SP, JB Cc: Don, SC, SB	RPD 3	ACP
7/29/13	Email	Dina	SB, SP, JB Cc: Don	RPD 3, 7	ACP
7/29/13	Email	SB	SP, JB, Dina	RPD 3, 7	ACP
7/29/13	Email	SP	JB, SB Dina	RPD 1, 2, 3, 7	ACP
7/29/13	Email	JB	Dina, DC, SB, PC, SC	RPD 3	ACP
5/31/13	Email	SP	SB Cc: Dina	RPD 1, 2, 3	ACP
3/29/13	Email	SB	Dina, SP, SC	RPD 1, 2, 3, 7	ACP
3/29/13	Email	Dina	SB, SP, SC	RPD 1, 2, 3, 7	ACP
3/29/13	Email	SB	SP, SC Cc: Dina, KD	RPD 1, 2, 3, 7	ACP
2/15/13	Email	SP	SB, SC Cc: Dina	RPD 1, 2, 3, 7	ACP
2/15/13	Email	SP	JB Cc: KD, PC, Dina	RPD 1, 2, 3, 7	ACP
2/9/13	Email	JB	Dina, KD, PC	RPD 3	ACP
9/7/12	Email	SP	KD Cc: Dina, SB	RPD 3, 7	ACP
9/7/12	Email	KD	SP Cc: Dina, SB	RPD 3	ACP

9/7/13	Email	SP	KD Cc: Dina, SB	RPD 3, 7	ACP
7/2/12	Email	Dina	SB, SP	RPD 7	ACP
6/26/12	Email	SB	SP Cc: Dina	RPD 7	ACP
6/8/12	Email	SP	SB Cc: Dina	RPD 1, 2, 7, 10, 12	ACP
7/20/10	Email/Ltr	SB	SP	RPD 6	ACP
7/20/10	Email	SP	SB	RPD 7	ACP
9/12/12	Email	SB	Dina Cc: SP	RPD 6	ACP
9/6/12	Email	SB	Dina Cc: SP	RPD 6	ACP
9/9/12	Email	Dina	SB Cc: SP	RPD 7	ACP
8/24/12	Email	Dina	SB Cc: SP	RPD 7	ACP
3/15/12	Email	Dina	SB, Don, SP Cc: KH	RPD 7	ACP
12/9/11	Email	SB	SP Cc: Don, LG, Dina, PC, KW	RPD 7	ACP
12/9/11	Email	SP	SB Cc: Don, LG, Dina	RPD 7	ACP
10/11/11	Email	SP	SB	RPD 7	ACP

**LEGEND**

RPD            Opposer's Request to Produce Documents  
Rog            Opposer's First Set of Interrogatories

KD Kelly Drogowski (nee Worosila) – paralegal Baker and Rannells  
SB Stephen Baker – Attorney Baker and Rannells  
SC Stephanie Cesaro – paralegal Baker and Rannells  
RB Roxanne Bianchi – staff Baker and Rannells  
JB Jessica Bianchi – staff Baker and Rannells  
KH Kelly Hnasko – paralegal Baker and Rannells  
DC Dan Comunale – paralegal Baker and Rannells  
PC Pei-Lun Chang – attorney Baker and Rannells

Dina Dina Opici – Opici  
Don Don Opici - Opici  
SP Sonia Pucci – Opici  
LG Lou Geneux - Opici

**Gilfoil, Andy**

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**From:** Gilfoil, Andy  
**Sent:** Friday, September 05, 2014 11:34 AM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I have now have opportunity to review Opici's document production and privilege log that you provided Wednesday evening. Thank you for the same. However, Opici's log and production are deficient in multiple respects and not in keeping with Opici's discovery obligations.

Opici's privilege log fails to provide any description whatsoever of the documents claimed to be privileged that would enable Luxco to assess the claim, as required under the FRCP. Please provide a privilege log that complies with the FRCP immediately.

Opici's document production (29 total pages which are not bates-numbered or given any identifying page number) are equally deficient. Frankly, I am surprised that despite having now had over four months to gather responsive documents Opici has failed to produce, inter alia, any advertising data (No. 25), any product sample or examples of tags and labels used in conjunction with the sale of REBELLION-branded products (Nos. 12-13), nor documents relating to many of the categories of identified in your initial disclosures, i.e., those relating to alleged "third party uses," "materials concerning the Whiskey Rebellion" and other professed "reference materials" relating to commercial impression of the terms REBEL and REBELLION (No. 31).

Instead, Opici has provided in many instances incomplete pdfs that are cut-off and incomplete. Similarly, in response to Luxco's request for those documents relating to the development/adoption of the REBELLION Mark, Opici produces a single email and a one page depiction of a REBELLION bourbon bottle. Demand is hereby made that Opici provide a date certain when it will provide supplemental production and a privilege log that comply with Opici's discovery obligations.

In addition, I have heard nothing in response to my prior inquiry regarding service of revised interrogatories. As noted, we perceive it in Luxco, Opici and the Board's interest for the parties to voluntarily agree to the service of a revised set of interrogatories, as the Board has strongly recommended we do.

Please let me hear from you by close of business whether our proposal regarding revised interrogatories is acceptable and with regard to the other deficiencies set forth above.

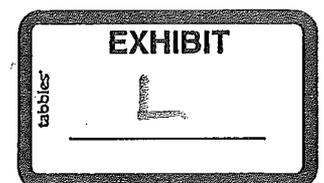
Best,

Andy

**Andrew R. Gilfoil**  
**Attorney**  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** Gilfoil, Andy  
**Sent:** Friday, August 29, 2014 2:31 PM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures



Jack,

I did not receive a privilege log yesterday, as previously promised, and have yet to receive any documents whatsoever in response to Luxco's RFPD's—which were served now four months ago, on April 29. I asked previously that all responsive documents be provided by August 28 and that you advise of any issues with providing responsive documents by then. I have received no further response.

As you know, the Board has entered a new scheduling order leaving the parties with a limited amount of time left to undertake remaining discovery. As such, we cannot continue to sit idly by while discovery time ticks away. If Opici does not provide responsive documents by COB Monday, September 1, we will have no option but to pursue a motion to compel.

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. See TBMP 405.03(e). Please advise whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

I look forward to hearing from you on these issues as soon as practical.

Best,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Wednesday, August 27, 2014 9:34 AM  
**To:** Annis, Michael; Gilfoil, Andy  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko  
**Subject:** Luxco v Opici 92058411 Initial Disclosures

Dear Mr. Gilfoil and Mr. Annis:

Attached is a courtesy copy of Registrant's Initial Disclosures.  
Hard copies to follow by mail.

My paralegal should finish with Privilege Log today and I forward documents to you tomorrow.

Very truly yours,

John "Jack" M. Rannells

Baker and Rannells, PA

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Raritan, New Jersey 08869

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Facsimile: (908) 725-7088  
Email: [jmr@br-tmlaw.com](mailto:jmr@br-tmlaw.com)

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**Gilfoil, Andy**

---

**From:** J. Rannells <JMR@br-tmlaw.com>  
**Sent:** Monday, September 08, 2014 4:31 PM  
**To:** Gilfoil, Andy; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Jason L. DeFrancesco; K. Hnasko  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures  
**Attachments:** Privilege Log to 12-10-13 - 2.docx

Dear Andy:

In response to your email of the 5<sup>th</sup>:

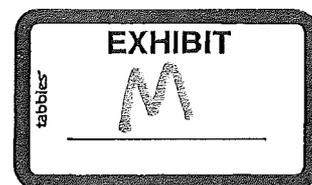
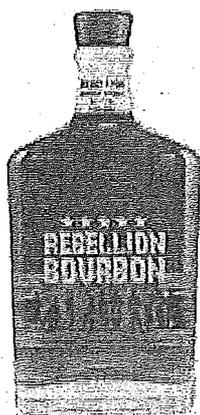
Your Comment: “Opici’s privilege log fails to provide any description whatsoever of the documents claimed to be privileged that would enable Luxco to assess the claim, as required under the FRCP.”

I respectfully disagree. In each case, the log describes the type of document, who it was from and to whom it was sent, and advises of the subject matter of the email by reference to your client’s specific document requests. The rule states that we must “describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” While we disagree with you, in the spirit of cooperation I am amending the privilege log to include narrative after the specific reference(s) to your discovery requests. I am also revising and amending the log. It is attached hereto.

RPD 12 and 13. 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. 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

We produced color copies of examples. Also, previously on June 12, 2014, Opici produced color copies of the bottle and case packaging.

You can go anywhere on line and easily or readily find the following:



You can go into the liquor store and view or purchase the same. What is it that you want that has not been provided? Please advise.

With regard to third parties, the actual reference in the Initial Disclosures was:

- Internet materials concerning third party uses of the term REBEL and variations thereof
- Uses by third parties of products bearing the term REBEL and variations thereof
- USPTO records of third party applications and registrations that include the term REBEL or variations thereof
- TTB Cola Label approvals concerning labels bearing the term REBEL or variations thereof

In that regard, I previously advised on August 1, 2014 regarding Opici's Amended Response to RFA No. 22 that "Our client is aware of, *inter alia*, The Rebel Spirits Group LLC."

In addition thereto, we served you with Registrant's First and Second Requests for Admissions, they include specific reference to third party uses, third party trademark applications and registrations, and third party Cola label approvals. In each case, a copy of the document(s) referenced in the request was provided as an exhibit. Those include:

- 2 TTB Colas for "REBELLION" Traditional Ale
- 1 TTB Cola for "REBELLION" Fine Traditional Lager
- 3 TTB Colas for "REBELLION ALE"
- 1 TTB Cola for "REBELLION" Merlot wine
- 1 TTB Cola for "REBELLION" amber ale
- 1 TTB Cola for "REBELLION RED" table wine
- 5 TTB Colas for "REBELLION CIDERWORKS" hard cider (various types)
- 1 TTB Cola for "REBELLION" red ale
- 2 TTB Colas for "REBELLION Stout"
- 5 TTB Colas for "REBELLION" red ale
- 1 TTB Cola for "REBELLION" rum
- 2 TTB Colas for "REBELLION" red lager
- 1 TTB Cola for "REBELLION" Marquette wine
- 1 TTB Cola for "REBELLIOUS" Petit Sirah wine
- 1 TTB Cola for "REBELLIOUS" red wine
- 1 TTB Cola for "REBELLIOUS" white wine
- 1 TTB Cola for "REBELLIOUS" raspberry wine
- 2 TTB Colas for "REBELLIOUS DOCKHAND" sour-wort ale
- 2 TTB Colas for "REBELLIOUS PATRIOT" American ale
- 1 TTB Cola for "REBELLIOUS" whiskey
- 1 TTB Cola for "REBELLE" wine
- 1 TTB Cola for "REBELLO" port
- 1 TTB Cola for "REBELLE" sparkling wine
- 1 TTB Cola for "REBELLE" wine
- 1 TTB Cola for "REBELLE" Sauvignon wine
- 1 U.S. trademark application for REBELLE for, *inter alia*, wines
- 1 U.S. trademark application for REBEL for beer
- 1 U.S. trademark registration for REBEL COAST WINERY for wine

- 1 U.S. trademark application for SAMUEL ADAMS REBEL IPA for beer
- 1 U.S. trademark application for REBELLE for, inter alia, wines
- 1 U.S. trademark application for SHAY'S REBELLION AMERICAN WHISKEY for whiskey
- 1 U.S. trademark application for REBELLIOUS SPIRITS for, inter alia, distilled spirits
- 1 U.S. trademark application for REBELLION MEETS REFINEMENT for wines
- 1 U.S. trademark application for REBELLION for beer
- 1 U.S. trademark application for PATAGONIA REBELDE for wine
- 1 U.S. trademark application for REBEL MONK for, inter alia, ale
- 1 U.S. trademark application for AMERICAN REBEL SPIRIT COMPANY for, distilled spirits, spirits and liqueurs
- 1 U.S. trademark registration for SAMUEL ADAMS REBEL for beer
- 1 U.S. trademark registration for REBEL.LIA for wines
- 1 U.S. trademark application for YOU REBEL for wine
- 1 U.S. trademark application for BLONDE REBELLION for wine
- 1 U.S. trademark application for IMPERIAL REBELLION for beer
- 1 U.S. trademark application for CRIMSON REBELLION for wine
- 1 U.S. trademark registration for AMERICAN REBEL for wines
- 1 U.S. trademark registration for REBEL ROBLES for wines
- 1 U.S. trademark registration for LITTLE REBEL for wines
- 1 U.S. trademark registration for LA RIBELLE for wine
- 1 U.S. trademark application for GENERACION REBELDE for tequila
- 1 U.S. trademark registration for THE REBEL for wine
- 1 U.S. trademark registration for CZECH REBEL BEER for beer
- 1 U.S. trademark registration for CZECH REBEL BEER SINCE 1333 for beer
- 1 U.S. trademark registration for REBEL KENT the FIRST for beer

Do you want me to re-serve copies of each of the above as a formal response to your document requests? Please advise.

Opici will continue to supplement discovery.

Your comment: "I have heard nothing in response to my prior inquiry regarding service of revised interrogatories."

Correspondence

7/31/14 you stated:

"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."

8/1/14 I responded:

"By my count, there are already 100 interrogatories."

8/12/14 you responded:

“Finally, please provide a detailed explanation for how you are arriving at any alleged 100 interrogatories so we can effectively meet and confer on that issue short of involving the Board. As you know, many of the interrogatories are directed to Opici’s counterclaim allegations, which the Board has given Opici the opportunity to re-plead. Please confirm whether Opici will or will not be willing to answer interrogatories directed to these issues in the event Opici re-pleads its abandonment/failure to police claims.”

8/13/14 I responded:

“My understanding of the 75 Rule is based, *inter alia*, upon the following:

The general rule is that “compound questions seeking separate information but not set forth separately will be broken down by the Board and counted as separate interrogatories. *See* Calcagno, *Tips From the TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)*, 80 TMR 285 (1990)” – *see also*, *Jan Bell Marketing Inc. v. Centennial Jewelers Inc.*, 19 USPQ2d 1636 (TTAB 1990). The Board looks to the substance of the interrogatories in making its determination on the number thereof and is not bound by a propounding party's numbering system. *See, Kellogg Co. v. Nugget Distributors’ Cooperative of America Inc.*, 16 USPQ2d 1468 (TTAB 1990)

If two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory. *Kellogg, supra*. If an interrogatory contains both an initial question, and follow-up questions to be answered if the first is answered in the affirmative, the initial question and each follow-up question are counted as separate interrogatories. *See Kellogg*. Similarly, if an interrogatory begins with a broad introductory clause followed by several subparts the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated. *See Jan Bell*.

Further, if an interrogatory requests information concerning more than one issue, such as information concerning both “sales and advertising figures,” or both “adoption and use,” the Board will count each issue on which information is sought as a separate interrogatory.

By way of example, your interrogatory no. 13 asks: “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.

The interrogatory is comprised of numerous independent questions/issues etc. By way of example:

1. Awareness of confusion
2. Awareness of mistake
3. Involving source
4. Involving origin
5. Involving sponsorship
6. Of goods or services
7. Offered by Registrant
8. Offered by its licensees
9. Inquiry regarding whether goods were sponsored by Luxco
10. Inquiry regarding whether goods were otherwise connected with Luxco
11. Or connected with any goods of Luxco
12. Or connected with any services of Luxco
13. Including any of Petitioner's Marks
14. Identify persons confused
15. Identify persons mistaken
16. Identify persons making inquiry.
17. Identify the substance or content of such confusion, mistake of inquiry
18. Identify the date inquiry was made
19. Identify all persons with knowledge regarding inquiries
20. Identify all persons with knowledge regarding confusion
21. Identify all persons with knowledge regarding mistake
22. Identify all documents regarding inquiries
23. Identify all documents regarding confusion
24. Identify all documents regarding mistake

8/14/14 you responded:

Thanks for the follow-up on the interrogatory issue. Luxco does not agree with your breakdown characterization of asserted "sub parts" in interrogatory no. 13 and none of the case-law you cite actually discusses the particulars of the interrogatories at issue. More importantly, however, Opici failed to file a motion for protective order in response to Luxco's interrogatories, which it was obliged to do in order to preserve this assertion. See 37 C.F.R. 2.120(d)(1); *Brawn of California*, 15 U.S.P.Q.2d at 1574. Board case-law on this subject makes plain that Opici has waived its right to object on the basis of number. See, e.g., *Chicago Corp. v. North American Chicago Corp.*, 16 U.S.P.Q.2d at 1480; *Brawn of California*, 15 U.S.P.Q.2d at 1574 ("Applicant waived its right to opposer's interrogatories by failing to file a motion for protective order"). If you have authority to the contrary please advise."

8/14/14 I responded:

Regarding the 75 Interrogatory rule. The case law you cite is outdated as is your prior version of 37 CFR 2.120(d)(1). The current rule states:

37 CFR § 2.120(d)(1) ... If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the

ground of their excessive number.

The rules for addressing and resolving the matter are clear. I do not believe that the correct procedure to resolve the interrogatory count issue is via telephonic conference with the interlocutory attorney.

Regarding a revised version of interrogatory 19, I do not recall that being our conversation or how the issue could be resolved. Your summary (dated July 31<sup>st</sup>) of our meet and confer regarding interrogatory 19 is my recollection, namely and as per your words, Opici "would endeavor to provide a response to Interrogatory No. 19 upon receipt of a list of entities who are authorized by Luxco." To date we have not received such a list from you.

8/18/14 you responded:

To the extent your response suggests that *Chicago Corp.* and *Brawn of California* are no longer good law no authority is cited to support that proposition. Moreover, the version of 2.120(d)(1) that you cite below provides that Opici "shall, **within the time for (and instead of) serving answers and specific objections** . . . serve a general objection on the ground of their excessive number." Opici did not do so, and instead answered Luxco's interrogatories with "specific answers and specific objections." No objection based on alleged excessive number was set forth in Opici's July 23 response to Luxco's prior golden rule letter. Indeed, you did not raise any objection based on count until our meet and confer call on July 31, well after Opici had served its answers and objections.

I did not specifically recount my statement on our meet and conference call about serving a revised interrogatory because it was a clear non-starter as the response indicated (for the first time) that Luxco was allegedly already in excess of 75 interrogatories including subparts. The summary of your notes does not appear to address Interrogatory No. 19, so there would be nothing to advise as "incorrect." In any event, to the extent you are now suggesting that I did not make such an offer during our July 31 meet and confer call, that is not consistent with my recollection.

To the extent you suggest that a telephonic conference with the interlocutory attorney is not the "correct procedure" to resolve this issue, the Board's rules do not support your assertion. See 37 CFR 2.120(i)(1). We continue to perceive that it would be more practical and in the interests of both parties (and the Board) to get resolution from the interlocutory attorney regarding this matter by way of a telephonic conference. That said, your objection to participating in a telephonic conference is noted.

8/18/14 I responded:

I think there is a misunderstanding or two. This seems like much ado about nothing.

1. The cases you cite are no longer precedent and no longer practice and/or procedure in Board cases.
2. Yes, in the spirit of cooperation, we responded to your first set of interrogatories notwithstanding their excessive amount. The only present issue regarding the 75 Rule applies to any further interrogatories, revised or otherwise. It is to put you on notice now that if you serve us with additional interrogatories or alleged revised interrogatories, we will make a

general objection based upon the 75 Rule limit. We have no obligation to seek a protective order.

3. I simply do not understand what you are saying regarding Interrogatory #19. It was agreed to that we would endeavor to provide a response to the interrogatory upon receipt from you of a list of entities who are authorized by Luxco. I am not even sure why or how you want to revise the interrogatory. It states:

19. State whether you are aware of any third-party use of any 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.

Please state what it is you wish to revise.

4. Finally, I never said that I objected to a telephonic conference. I said that it was not the proper procedure to deal with a 75 interrogatory rule matter. It also seems premature to me, as we have not been served with additional interrogatories.

8/21/14 you responded:

I'm not sure where we stand on this. In making the below highlighted statement are you stating that Opici is not withholding any information in response to any of Luxco's interrogatories based on alleged super numerosity? Please confirm.

As you know, a number of Luxco's prior interrogatories are directed to Opici's counterclaim contentions. As I understand it Opici is taking the position that it is not obligated to provide responses because the Board has since dismissed the counterclaims, and further that the specific facts are subject to the attorney-client privilege and/or the attorney work product privilege (for which no log has been provided to date). While you have stated that Opici has no present intention to re-plead, to the extent Opici does in fact re-assert its counterclaims will Opici be providing substantive responses to these interrogatories? Please confirm on way or the other:

My proposed revision to Interrogatory No. 19 is set forth below. We strongly disagree with your alleged counting scheme. Interrogatory No. 13 is directed to a single piece of information, known instances of confusion, and even the authority you cite below acknowledges that the correct inquiry when counting sub-parts is directed to the substance of the interrogatory. Interrogatory No. 13 asks on question with four sub-parts, for a total of five sub-parts.

8/29/14 you wrote:

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's

rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. *See* TBMP 405.03(e). Please advise whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

Regarding outstanding issues: In my letter of 8/18/14 I included the following highlighted sentence: "The only present issue regarding the 75 Rule applies to any further interrogatories, revised or otherwise." In your letter of 8/21/14 you stated: "I'm not sure where we stand on this. In making the . . . highlighted statement are you stating that Opici is not withholding any information in response to any of Luxco's interrogatories based on alleged super numerosity? My highlighted sentence has nothing to do with any limitations or restrictions on your first set of interrogatories or our responses of objections thereto. I thought it was clear that our reference to the 75 rule pertains only to any additional interrogatories, regardless of how you wish to characterize the same (i.e., new questions, revised questions, or the like).

In your letter of 8/29/14 you imply that the Board Interlocutory Attorney strongly recommended that Opici voluntarily agree to the service of a revised set of interrogatories. First, that was not the subject matter of our meeting with the Interlocutory Attorney. Second, I do not recall her recommending the same. Finally, I do not recall even mentioning our 75 rule dispute with the Interlocutory Attorney.

In your letter of 8/21/14, you ask that if Opici decides to later replead its counterclaims, will Opici be providing substantive responses to the interrogatories going to said counterclaims. As you know, Opici objected to those interrogatories on the grounds that the specific facts are subject to the attorney-client privilege and/or attorney work product privilege. The subject matter of any such responses would relate to informal attorney to client search related opinions. Accordingly, there would not be any non-privileged substantive responses to give. The same are already identified on Opici's privilege log and were previously provided to you in correspondence.

I also previously advised you that we consider the number of interrogatories to exceed the limit even without reference to the interrogatories going to the now stricken counterclaims. In any event, we did respond by objection and reference to privilege to said interrogatories.

Finally, I do not know what revisions you intend or how many. Please let me know.

Kind regards,

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](mailto:jmr@br-tmlaw.com)

[www.tmlawworldwide.com](http://www.tmlawworldwide.com)

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**From:** Gilfoil, Andy [mailto:Andy.Gilfoil@huschblackwell.com]  
**Sent:** Friday, September 05, 2014 12:34 PM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I have now have opportunity to review Opici's document production and privilege log that you provided Wednesday evening. Thank you for the same. However, Opici's log and production are deficient in multiple respects and not in keeping with Opici's discovery obligations.

Opici's privilege log fails to provide any description whatsoever of the documents claimed to be privileged that would enable Luxco to assess the claim, as required under the FRCP. Please provide a privilege log that complies with the FRCP immediately.

Opici's document production (29 total pages which are not bates-numbered or given any identifying page number) are equally deficient. Frankly, I am surprised that despite having now had over four months to gather responsive documents Opici has failed to produce, inter alia, any advertising data (No. 25), any product sample or examples of tags and labels used in conjunction with the sale of REBELLION-branded products (Nos. 12-13), nor documents relating to many of the categories of identified in your initial disclosures, i.e., those relating to alleged "third party uses," "materials concerning the Whiskey Rebellion" and other professed "reference materials" relating to commercial impression of the terms REBEL and REBELLION (No. 31).

Instead, Opici has provided in many instances incomplete pdfs that are cut-off and incomplete. Similarly, in response to Luxco's request for those documents relating to the development/adoption of the REBELLION Mark, Opici produces a single email and a one page depiction of a REBELLION bourbon bottle. Demand is hereby made that Opici provide a date certain when it will provide supplemental production and a privilege log that comply with Opici's discovery obligations.

In addition, I have heard nothing in response to my prior inquiry regarding service of revised interrogatories. As noted, we perceive it in Luxco, Opici and the Board's interest for the parties to voluntarily agree to the service of a revised set of interrogatories, as the Board has strongly recommended we do.

Please let me hear from you by close of business whether our proposal regarding revised interrogatories is acceptable and with regard to the other deficiencies set forth above.

Best,

Andy

Andrew R. Gilfoil  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

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**From:** Gilfoil, Andy  
**Sent:** Friday, August 29, 2014 2:31 PM

**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I did not receive a privilege log yesterday, as previously promised, and have yet to receive any documents whatsoever in response to Luxco's RFPD's—which were served now four months ago, on April 29. I asked previously that all responsive documents be provided by August 28 and that you advise of any issues with providing responsive documents by then. I have received no further response.

As you know, the Board has entered a new scheduling order leaving the parties with a limited amount of time left to undertake remaining discovery. As such, we cannot continue to sit idly by while discovery time ticks away. If Opici does not provide responsive documents by COB Monday, September 1, we will have no option but to pursue a motion to compel.

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. See TBMP 405.03(e). Please advise whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

I look forward to hearing from you on these issues as soon as practical.

Best,

Andy

**Andrew R. Gilfoil**  
**Attorney**  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

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**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Wednesday, August 27, 2014 9:34 AM  
**To:** Annis, Michael; Gilfoil, Andy  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko  
**Subject:** Luxco v Opici 92058411 Initial Disclosures

Dear Mr. Gilfoil and Mr. Annis:

Attached is a courtesy copy of Registrant's Initial Disclosures.  
Hard copies to follow by mail.

My paralegal should finish with Privilege Log today and I forward documents to you tomorrow.

Very truly yours,

John "Jack" M. Rannells

Baker and Rannells, PA

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Raritan, New Jersey 08869  
Telephone: (908) 722-5640  
Facsimile: (908) 725-7088  
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[www.tmlawworldwide.com](http://www.tmlawworldwide.com)

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

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

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**PRIVILEGE LOG THROUGH 12/10/2013**

Date	Type	From	To	Subject	Privilege
12/10/13	Email	SP	SB CC: Don, Dina, SC	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
12/9/13	Email	SB	SP Cc: Don, Dina, SC	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
12/9/13	Email	SP	SB Cc: Don, Dina	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
10/10/13	Email	SB	Dina Cc: SP, KH	RPD 17 Rog 21 – pertains to Opici awareness of Petitioner’s mark	ACP
10/10/13	Email	Dina	SB Cc: SP, KH, Don	RPD 3, 7 - pertains to “adoption” of the REBELLION mark and trademark application therefor	ACP
10/10/13	Email	SB	Dina Cc: SP, KH,	RPD 3, 7 - pertains to “adoption” of the REBELLION mark and trademark application therefor	ACP

6/27/12	Email	SB	SP	RPD 7,17 Rog 21 - pertains to "adoption" of the REBELLION mark, and also reference to search pertaining to the mark, and pertains to Opici awareness of Petitioner's mark	ACP
7/19/12	Email	Dina	SB, SP	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
7/2/12	Email	SB	Dina, SP	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
6/27/12	Email	Dina	SB, SP	RPD 3, 7 - pertains to "adoption" and "development" of the REBELLION mark and trademark application therefor	ACP
6/26/12	Email	SB	SP Cc: Dina	RPD 3, 7 - pertains to "adoption" and "development" of the REBELLION mark and trademark application therefor	ACP
9/30/13	Email	Dina	SB	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
9/26/13	Email	Dina	SB	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
9/30/13	Email	SB	Dina	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
7/29/13	Email	JB	Dina Cc: DC, SB, PC, SC	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
7/30/13	Email	SB	Dina, SP, JB Cc: Don, SC, DC	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
7/29/13	Email	SB	Dina, SP, JB Cc: Don, SC, SB	RPD 3 - pertains to trademark application for the REBELLION mark	ACP

7/29/13	Email	Dina	SB, SP, JB Cc: Don	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
7/29/13	Email	SB	SP, JB, Dina	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
7/29/13	Email	SP	JB, SB Dina	RPD 1, 2, 3, 7 - pertains to first use of the REBELLION mark and also to "adoption" of the REBELLION mark and trademark application therefor	ACP
7/29/13	Email	JB	Dina, DC, SB, PC, SC	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
7/19/13	Email	SP	SB	RPD 3 - pertains to trademark application for the REBELLION mark	
7/18/13	Email	Dina	SB, Don Cc: SP, SC	RPD 3 - pertains to trademark application for the REBELLION mark	
7/18/13	Email	SB	Don, Dina Cc: SP, SC	RPD 3 - pertains to trademark application for the REBELLION mark	
5/31/13	Email	SP	SB Cc: Dina	RPD 1, 2, 3 - pertains first use of the REBELLION mark and to trademark application for the REBELLION mark	ACP
3/29/13	Email	SB	Dina, SP, SC	RPD 1, 2, 3, 7 - pertains first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark	ACP
3/29/13	Email	Dina	SB, SP, SC	RPD 1, 2, 3, 7 - pertains first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark	ACP
3/29/13	Email	SB	SP, SC Cc: Dina, KD	RPD 1, 2, 3, 7 - pertains first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the	ACP

				REBELLION mark	
2/15/13	Email	SP	SB, SC Cc: Dina	RPD 1, 2, 3, 7 - pertains first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark	ACP
2/15/13	Email	SP	JB Cc: KD, PC, Dina	RPD 1, 2, 3, 7 - pertains first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark	ACP
2/9/13	Email	JB	Dina, KD, PC	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
9/7/12	Email	SP	KD Cc: Dina, SB	RPD 3, 7 - pertains to "adoption" of the REBELLION mark and trademark application therefor	ACP
9/7/12	Email	KD	SP Cc: Dina, SB	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
9/12/12	Email	SB	Dina Cc: SP	RPD 3, 6, 7 - pertains to "adoption" of the REBELLION mark, search pertaining to the mark, and trademark application therefor	ACP
7/2/12	Email	Dina	SB, SP	RPD 7 - pertains to "adoption" of the REBELLION mark	ACP
6/26/12	Email	SB	SP Cc: Dina	RPD 7 - pertains to "adoption" of the REBELLION mark	ACP
6/8/12	Email	SP	SB Cc: Dina	RPD 1, 2, 3, 7, 10 - pertains first use of the REBELLION mark, "adoption" of the REBELLION mark, trademark application for the REBELLION mark including goods therein and label/bottle design for product	ACP
7/20/10	Email/ Ltr	SB	SP	RPD 6 - Opinion letter concerning registerability	ACP
7/20/10	Email	SP	SB	RPD 7 - pertains to "adoption" of the	ACP

				REBELLION mark	
7/27/10	Email	SP	SB	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
9/6/12	Email	SB	Dina Cc: SP	RPD 3, 6 and 7 – pertains to “adoption” of the REBELLION mark, search pertaining, in part, to the mark, and trademark application therefor	ACP
9/9/12	Email	Dina	SB Cc: SP	RPD 3 and 7 – pertains to “adoption” of the REBELLION mark and trademark applications therefor	ACP
8/24/12	Email	Dina	SB Cc: SP	RPD 3 - pertains to trademark applications for the REBELLION mark	ACP
3/15/12	Email	Dina	SB, Don, SP Cc: KH	RPD 3 and 7 – pertains to “adoption” of the REBELLION mark and trademark applications therefor	ACP
3/6/12	Email	JD	SP Cc: KW, PC	RPD 3 - pertains to trademark application for the REBELLION mark	ACP
12/9/11	Email	SB	SP Cc: Don, LG, Dina, PC, KW	RPD 3 and 7 – pertains to “adoption” of the REBELLION mark and trademark applications therefor	ACP
12/9/11	Email	SP	SB Cc: Don, LG, Dina	RPD 3 and 7 – pertains to “adoption” of the REBELLION mark and trademark applications therefor	ACP
10/7/11	Email	SP	Dina	RPD 3 and 7 – pertains to “adoption” of the REBELLION mark and trademark applications therefor and references attorney opinion of SB.	
10/11/11	Email	SP	SB	RPD 3 - pertains to trademark application for the REBELLION mark	ACP

**LEGEND**

RPD	Opposer's Request to Produce Documents
Rog	Opposer's First Set of Interrogatories
KD or KW	Kelly Drogowski (nee Worosila) -- paralegal Baker and Rannells
SB	Stephen Baker -- Attorney Baker and Rannells
SC	Stephanie Cesaro -- paralegal Baker and Rannells
RB	Roxanne Bianchi -- staff Baker and Rannells
JB	Jessica Bianchi -- staff Baker and Rannells
KH	Kelly Hnasko -- paralegal Baker and Rannells
DC	Dan Comunale -- paralegal Baker and Rannells
PC	Pei-Lun Chang -- attorney Baker and Rannells
JD	Jennise Daley - paralegal Baker and Rannells
Dina	Dina Opici -- Opici
Don	Don Opici - Opici
SP	Sonia Pucci -- Opici
LG	Lou Geneux - Opici

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

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LUXCO, INC.,

Petitioner

v.

OPICI IP HOLDINGS, LLC,

Registrant.

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Cancellation No. 92058411

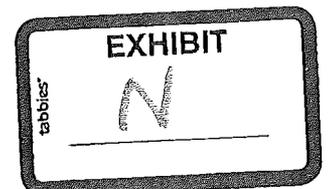
**REGISTRANT'S INITIAL DISCLOSURES**

Registrant, Opici IP Holdings, LLC ("Registrant's"), by and through its attorneys Baker and Rannells, PA., hereby makes its Initial Disclosures as required by Federal Rule of Civil Procedure 26(a)(1):

**GENERAL MATTERS**

By making representations of fact or law or by identifying certain individuals and categories of documents, Registrant does not waive or intend to waive, but on the contrary preserves and intends to preserve, all information and documents that are subject to the attorney-client privilege, the work product doctrine and any other privilege available under federal or state statutory, constitutional or common law.

These disclosures are made subject to Registrant's continuing investigation of facts underlying the claims and defenses in this proceeding and, therefore, Registrant expressly reserves its right to supplement, amend, correct, or modify these Initial Disclosures as its ongoing investigatory or discovery efforts reveal further information or documents.



## INITIAL DISCLOSURES

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information:

The following individuals are likely to have discoverable information that Registrant may use to support the claims and defenses alleged in the proceeding. Registrant's response is based on information presently available to it, and it reserves the right to supplement this list as discovery progresses.

Subject to these qualifications, Registrant discloses the following:

Don Opici  
Secretary of Opici Import Co.  
May be contacted through counsel.

### Subjects of information:

- Registrant's adoption and use of Registrant's REBELLION mark
- Registrant's trademark application and registration for REBELLION
- Registrant's TTB Cola approvals
- Registrant's manufacture, bottling and distribution of products featuring the REBELLION mark
- Registrant's marketing, advertising and promotion of products featuring Registrant's REBELLION mark
- Registrant's sale of products featuring Registrant's REBELLION mark
- Third party uses of and/or applications/registrations for REBEL and REBEL variation marks and names.
- TTB Cola Label approvals for labels bearing a REBEL or REBEL variation mark or name
- Knowledge of the Whiskey Rebellion
- Lack of consumer and/or wholesaler/distributor confusion concerning the marks in issue herein

B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

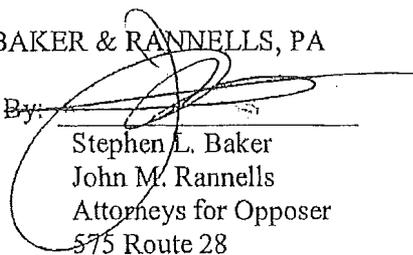
The following list identifies the documents in Registrant's possession, custody or control that Registrant may use to support its claims and/or defenses. Registrant reserves the right to supplement this list when discovery progresses.

- Registrant's trademark file wrapper
- Registrant's registration in issue
- Representative documents concerning Registrant's sales of its REBELLION products
- Representative documents concerning advertising/promotional expenditures for Registrant's REBELLION products
- REBELLION advertisements
- REBELLION promotional materials
- REBELLION marketing materials
- Internet materials concerning third party uses of the term REBEL and variations thereof
- Uses by third parties of products bearing the term REBEL and variations thereof
- USPTO records of third party applications and registrations that include the term REBEL or variations thereof
- TTB Cola Label approvals concerning labels bearing the term REBEL or variations thereof
- Materials concerning the Whiskey Rebellion
- Any documents, interrogatory responses and/or responses to admissions received from Petitioner
- Dictionary definitions of and other reference materials concerning the meaning and/or commercial impression of the terms REBEL and REBELLION

Dated August 27, 2014

Respectfully submitted,

BAKER & RANNELLS, PA

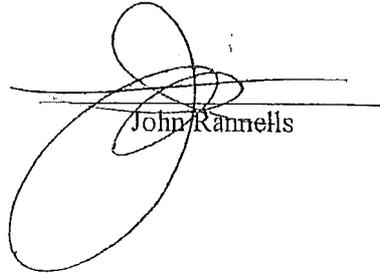
By: 

Stephen L. Baker  
John M. Rannells  
Attorneys for Opposer  
575 Route 28  
Raritan, NJ 08869  
(908) 722-5640

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of REGISTRANT'S INITIAL DISCLOSURES was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service (and by email to Andy.Gilfoil@huschblackwell.com and Mike.Annis@huschblackwell.com) on this 27<sup>th</sup> day of August, 2014 to the Petitioner's counsel of record, Michael R. Annis, Esq., at the following address:

HUSCH BLACKWELL LLP  
190 CARONDELET PLAZA, STE 600  
ST LOUIS, MO 63105

  
John Rannells

**Gilfoil, Andy**

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**From:** Gilfoil, Andy  
**Sent:** Monday, September 15, 2014 12:20 PM  
**To:** 'J. Rannells'  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Annis, Michael; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

My August 29 email did not state nor imply anything regarding our prior call with the interlocutory attorney--because we did not discuss interrogatories on that call. My reference, as noted below, was to the text of the TBMP stating that:

"it is strongly recommended that the parties voluntarily agree to the service of a revised set of interrogatories, in the manner normally allowed by the Board, instead of bringing their dispute to the Board by motion to compel." TBMP 405.03(e).

We have offered many times to resolve this supernumerosity interrogatory dispute by compromise with service of a revised set of interrogatories. I am still awaiting a simple yes or no regarding whether Opici will agree to same.

Andy

**Andrew R. Gilfoil**  
**Attorney**  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

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**From:** J. Rannells [mailto:JMR@br-tmlaw.com]  
**Sent:** Monday, September 08, 2014 4:31 PM  
**To:** Gilfoil, Andy; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Jason L. DeFrancesco; K. Hnasko  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

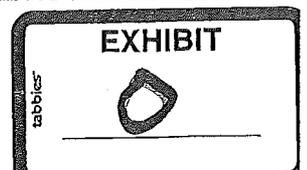
Dear Andy:

In response to your email of the 5<sup>th</sup>:

Your Comment: "Opici's privilege log fails to provide any description whatsoever of the documents claimed to be privileged that would enable Luxco to assess the claim, as required under the FRCP."

I respectfully disagree. In each case, the log describes the type of document, who it was from and to whom it was sent, and advises of the subject matter of the email by reference to your client's specific document requests. The rule states that we must "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." While we disagree with you, in the spirit of cooperation I am amending the privilege log to include narrative after the specific reference(s) to your discovery requests. I am also revising and amending the log. It is attached hereto.

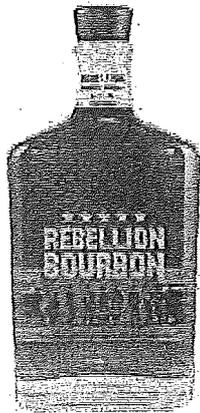
RPD 12 and 13. Produce examples of any tags or labels used by Registrant or its licensees that are used in connection with the offer or sale of goods bearing the REBELLION Mark.



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

We produced color copies of examples. Also, previously on June 12, 2014, Opici produced color copies of the bottle and case packaging.

You can go anywhere on line and easily or readily find the following:



You can go into the liquor store and view or purchase the same. What is it that you want that has not been provided? Please advise.

With regard to third parties, the actual reference in the Initial Disclosures was:

- Internet materials concerning third party uses of the term REBEL and variations thereof
- Uses by third parties of products bearing the term REBEL and variations thereof
- USPTO records of third party applications and registrations that include the term REBEL or variations thereof
- TTB Cola Label approvals concerning labels bearing the term REBEL or variations thereof

In that regard, I previously advised on August 1, 2014 regarding Opici's Amended Response to RFA No. 22 that "Our client is aware of, *inter alia*, The Rebel Spirits Group LLC."

In addition thereto, we served you with Registrant's First and Second Requests for Admissions, they include specific reference to third party uses, third party trademark applications and registrations, and third party Cola label approvals. In each case, a copy of the document(s) referenced in the request was provided as an exhibit. Those include:

- 2 TTB Colas for "REBELLION" Traditional Ale
- 1 TTB Cola for "REBELLION" Fine Traditional Lager
- 3 TTB Colas for "REBELLION ALE"
- 1 TTB Cola for "REBELLION" Merlot wine
- 1 TTB Cola for "REBELLION" amber ale
- 1 TTB Cola for "REBELLION RED" table wine
- 5 TTB Colas for "REBELLION CIDERWORKS" hard cider (various types)
- 1 TTB Cola for "REBELLION" red ale
- 2 TTB Colas for "REBELLION Stout"

- 5 TTB Colas for “REBELLION” red ale
- 1 TTB Cola for “REBELLION” rum
- 2 TTB Colas for “REBELLION” red lager
- 1 TTB Cola for “REBELLION” Marquette wine
- 1 TTB Cola for “REBELLIOUS” Petit Sirah wine
- 1 TTB Cola for “REBELLIOUS” red wine
- 1 TTB Cola for “REBELLIOUS” white wine
- 1 TTB Cola for “REBELLIOUS” raspberry wine
- 2 TTB Colas for “REBELLIOUS DOCKHAND” sour-wort ale
- 2 TTB Colas for “REBELLIOUS PATRIOT” American ale
- 1 TTB Cola for “REBELLIOUS” whiskey
- 1 TTB Cola for “REBELLE” wine
- 1 TTB Cola for “REBELLO” port
- 1 TTB Cola for “REBELLE” sparkling wine
- 1 TTB Cola for “REBELLE” wine
- 1 TTB Cola for “REBELLE” Sauvignon wine
- 1 U.S. trademark application for REBELLE for, inter alia, wines
- 1 U.S. trademark application for REBEL for beer
- 1 U.S. trademark registration for REBEL COAST WINERY for wine
- 1 U.S. trademark application for SAMUEL ADAMS REBEL IPA for beer
- 1 U.S. trademark application for REBELLE for, inter alia, wines
- 1 U.S. trademark application for SHAY’S REBELLION AMERICAN WHISKEY for whiskey
- 1 U.S. trademark application for REBELLIOUS SPIRITS for, inter alia, distilled spirits
- 1 U.S. trademark application for REBELLION MEETS REFINEMENT for wines
- 1 U.S. trademark application for REBELLION for beer
- 1 U.S. trademark application for PATAGONIA REBELDE for wine
- 1 U.S. trademark application for REBEL MONK for, inter alia, ale
- 1 U.S. trademark application for AMERICAN REBEL SPIRIT COMPANY for, distilled spirits, spirits and liqueurs
- 1 U.S. trademark registration for SAMUEL ADAMS REBEL for beer
- 1 U.S. trademark registration for REBEL.LIA for wines
- 1 U.S. trademark application for YOU REBEL for wine
- 1 U.S. trademark application for BLONDE REBELLION for wine
- 1 U.S. trademark application for IMPERIAL REBELLION for beer
- 1 U.S. trademark application for CRIMSON REBELLION for wine
- 1 U.S. trademark registration for AMERICAN REBEL for wines
- 1 U.S. trademark registration for REBEL ROBLES for wines
- 1 U.S. trademark registration for LITTLE REBEL for wines
- 1 U.S. trademark registration for LA RIBELLE for wine
- 1 U.S. trademark application for GENERACION REBELDE for tequila
- 1 U.S. trademark registration for THE REBEL for wine
- 1 U.S. trademark registration for CZECH REBEL BEER for beer

- 1 U.S. trademark registration for CZECH REBEL BEER SINCE 1333 for beer
- 1 U.S. trademark registration for REBEL KENT the FIRST for beer

Do you want me to re-serve copies of each of the above as a formal response to your document requests? Please advise.

Opici will continue to supplement discovery.

Your comment: “I have heard nothing in response to my prior inquiry regarding service of revised interrogatories.”

### Correspondence

7/31/14 you stated:

“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.”

8/1/14 I responded:

“By my count, there are already 100 interrogatories.”

8/12/14 you responded:

“Finally, please provide a detailed explanation for how you are arriving at any alleged 100 interrogatories so we can effectively meet and confer on that issue short of involving the Board. As you know, many of the interrogatories are directed to Opici’s counterclaim allegations, which the Board has given Opici the opportunity to re-plead. Please confirm whether Opici will or will not be willing to answer interrogatories directed to these issues in the event Opici re-pleads its abandonment/failure to police claims.”

8/13/14 I responded:

“My understanding of the 75 Rule is based, *inter alia*, upon the following:

The general rule is that “compound questions seeking separate information but not set forth separately will be broken down by the Board and counted as separate interrogatories. *See Calcagno, Tips From the TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)*, 80 TMR 285 (1990)” – *see also, Jan Bell Marketing Inc. v. Centennial Jewelers Inc.*, 19 USPQ2d 1636 (TTAB 1990). The Board looks to the substance of the interrogatories in making its determination on the number thereof and is not bound by a propounding party's numbering system. *See, Kellogg Co. v. Nugget Distributors’ Cooperative of America Inc.*, 16 USPQ2d 1468 (TTAB 1990)

If two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory. *Kellogg, supra*. If an interrogatory contains both an initial question, and follow-up questions to be answered if the first is answered in the affirmative, the initial question and each follow-up question are

counted as separate interrogatories. *See Kellogg*. Similarly, if an interrogatory begins with a broad introductory clause followed by several subparts the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated. *See Jan Bell*.

Further, if an interrogatory requests information concerning more than one issue, such as information concerning both "sales and advertising figures," or both "adoption and use," the Board will count each issue on which information is sought as a separate interrogatory.

By way of example, your interrogatory no. 13 asks: "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.

The interrogatory is comprised of numerous independent questions/issues etc. By way of example:

1. Awareness of confusion
2. Awareness of mistake
3. Involving source
4. Involving origin
5. Involving sponsorship
6. Of goods or services
7. Offered by Registrant
8. Offered by its licensees
9. Inquiry regarding whether goods were sponsored by Luxco
10. Inquiry regarding whether goods were otherwise connected with Luxco
11. Or connected with any goods of Luxco
12. Or connected with any services of Luxco
13. Including any of Petitioner's Marks
14. Identify persons confused
15. Identify persons mistaken
16. Identify persons making inquiry
17. Identify the substance or content of such confusion, mistake of inquiry
18. Identify the date inquiry was made
19. Identify all persons with knowledge regarding inquiries
20. Identify all persons with knowledge regarding confusion
21. Identify all persons with knowledge regarding mistake
22. Identify all documents regarding inquiries
23. Identify all documents regarding confusion
24. Identify all documents regarding mistake

8/14/14 you responded:

Thanks for the follow-up on the interrogatory issue. Luxco does not agree with your break-down characterization of asserted “sub parts” in interrogatory no. 13 and none of the case-law you cite actually discusses the particulars of the interrogatories at issue. More importantly, however, Opici failed to file a motion for protective order in response to Luxco’s interrogatories, which it was obliged to do in order to preserve this assertion. See 37 C.F.R. 2.120(d)(1); *Brawn of California*, 15 U.S.P.Q.2d at 1574. Board case-law on this subject makes plain that Opici has waived its right to object on the basis of number. See, e.g., *Chicago Corp. v. North American Chicago Corp.*, 16 U.S.P.Q.2d at 1480; *Brawn of California*, 15 U.S.P.Q.2d at 1574 (“Applicant waived its right to opposer’s interrogatories by failing to file a motion for protective order”). If you have authority to the contrary please advise.”

8/14/14 I responded:

Regarding the 75 Interrogatory rule. The case law you cite is outdated as is your prior version of 37 CFR 2.120(d)(1). The current rule states:

37 CFR § 2.120(d)(1) ... If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.

The rules for addressing and resolving the matter are clear. I do not believe that the correct procedure to resolve the interrogatory count issue is via telephonic conference with the interlocutory attorney.

Regarding a revised version of interrogatory 19, I do not recall that being our conversation or how the issue could be resolved. Your summary (dated July 31<sup>st</sup>) of our meet and confer regarding interrogatory 19 is my recollection, namely and as per your words, Opici “would endeavor to provide a response to Interrogatory No. 19 upon receipt of a list of entities who are authorized by Luxco.” To date we have not received such a list from you.

8/18/14 you responded:

To the extent your response suggests that *Chicago Corp.* and *Brawn of California* are no longer good law no authority is cited to support that proposition. Moreover, the version of 2.120(d)(1) that you cite below provides that Opici “shall, **within the time for (and instead of) serving answers and specific objections . . .** serve a general objection on the ground of their excessive number.” Opici did not do so, and instead answered Luxco’s interrogatories with “specific answers and specific objections.” No objection based on alleged excessive number was set forth in Opici’s July 23 response to Luxco’s prior golden rule letter. Indeed, you did not raise any objection based on count until our meet and confer call on July 31, well after Opici had served its answers and objections.

I did not specifically recount my statement on our meet and conference call about serving a revised interrogatory because it was a clear non-starter as the response indicated (for the first time) that Luxco was allegedly already in excess of 75 interrogatories including subparts. The summary of your notes does not appears to address Interrogatory No. 19, so there would be

nothing to advise as "incorrect." In any event, to the extent you are now suggesting that I did not make such an offer during our July 31 meet and confer call, that is not consistent with my recollection.

To the extent you suggest that a telephonic conference with the interlocutory attorney is not the "correct procedure" to resolve this issue, the Board's rules do not support your assertion. See 37 CFR 2.120(i)(1). We continue to perceive that it would be more practical and in the interests of both parties (and the Board) to get resolution from the interlocutory attorney regarding this matter by way of a telephonic conference. That said, your objection to participating in a telephonic conference is noted.

8/18/14 I responded:

I think there is a misunderstanding or two. This seems like much ado about nothing.

1. The cases you cite are no longer precedent and no longer practice and/or procedure in Board cases.

2. Yes, in the spirit of cooperation, we responded to your first set of interrogatories notwithstanding their excessive amount. The only present issue regarding the 75 Rule applies to any further interrogatories, revised or otherwise. It is to put you on notice now that if you serve us with additional interrogatories or alleged revised interrogatories, we will make a general objection based upon the 75 Rule limit. We have no obligation to seek a protective order.

3. I simply do not understand what you are saying regarding Interrogatory #19. It was agreed to that we would endeavor to provide a response to the interrogatory upon receipt from you of a list of entities who are authorized by Luxco. I am not even sure why or how you want to revise the interrogatory. It states:

19. State whether you are aware of any third-party use of any 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.

Please state what it is you wish to revise.

4. Finally, I never said that I objected to a telephonic conference. I said that it was not the proper procedure to deal with a 75 interrogatory rule matter. It also seems premature to me, as we have not been served with additional interrogatories.

8/21/14 you responded:

I'm not sure where we stand on this. In making the below highlighted statement are you stating that Opici is not withholding any information in response to any of Luxco's interrogatories based on alleged super numerosity? Please confirm.

As you know, a number of Luxco's prior interrogatories are directed to Opici's counterclaim contentions. As I understand it Opici is taking the position that it is not obligated to provide responses because the Board has since dismissed the counterclaims, and further that the specific facts are subject to the attorney-client privilege and/or the attorney work product privilege (for which no log has been provided to date). While you have stated that Opici has no present intention to re-plead, to the extent Opici does in fact re-assert its counterclaims will Opici be providing substantive responses to these interrogatories? Please confirm on way or the other.

My proposed revision to Interrogatory No. 19 is set forth below. We strongly disagree with your alleged counting scheme. Interrogatory No. 13 is directed to a single piece of information, known instances of confusion, and even the authority you cite below acknowledges that the correct inquiry when counting sub-parts is directed to the substance of the interrogatory. Interrogatory No. 13 asks on question with four sub-parts, for a total of five sub-parts.

8/29/14 you wrote:

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. *See* TBMP 405.03(e). Please advise whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

Regarding outstanding issues: In my letter of 8/18/14 I included the following highlighted sentence: "The only present issue regarding the 75 Rule applies to any further interrogatories, revised or otherwise." In your letter of 8/21/14 you stated: "I'm not sure where we stand on this. In making the . . . highlighted statement are you stating that Opici is not withholding any information in response to any of Luxco's interrogatories based on alleged super numerosity? My highlighted sentence has nothing to do with any limitations or restrictions on your first set of interrogatories or our responses of objections thereto. I thought it was clear that our reference to the 75 rule pertains only to any additional interrogatories, regardless of how you wish to characterize the same (i.e., new questions, revised questions, or the like).

In your letter of 8/29/14 you imply that the Board Interlocutory Attorney strongly recommended that Opici voluntarily agree to the service of a revised set of interrogatories. First, that was not the subject matter of our meeting with the Interlocutory Attorney. Second, I do not recall her recommending the same. Finally, I do not recall even mentioning our 75 rule dispute with the Interlocutory Attorney.

In your letter of 8/21/14, you ask that if Opici decides to later replead its counterclaims, will Opici be providing substantive responses to the interrogatories going to said counterclaims. As you know, Opici objected to those interrogatories on the grounds that the specific facts are subject to the attorney-client privilege and/or attorney work product privilege. The subject matter of any such responses would relate to informal attorney to client search related opinions. Accordingly, there would not be any non-privileged substantive

responses to give. The same are already identified on Opici's privilege log and were previously provided to you in correspondence.

I also previously advised you that we consider the number of interrogatories to exceed the limit even without reference to the interrogatories going to the now stricken counterclaims. In any event, we did respond by objection and reference to privilege to said interrogatories.

Finally, I do not know what revisions you intend or how many. Please let me know.

Kind regards,

John "Jack" M. Rannells

Baker and Rannells, PA

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Raritan, New Jersey 08869  
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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.

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**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Friday, September 05, 2014 12:34 PM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I have now have opportunity to review Opici's document production and privilege log that you provided Wednesday evening. Thank you for the same. However, Opici's log and production are deficient in multiple respects and not in keeping with Opici's discovery obligations.

Opici's privilege log fails to provide any description whatsoever of the documents claimed to be privileged that would enable Luxco to assess the claim, as required under the FRCP. Please provide a privilege log that complies with the FRCP immediately.

Opici's document production (29 total pages which are not bates-numbered or given any identifying page number) are equally deficient. Frankly, I am surprised that despite having now had over four months to gather responsive documents Opici has failed to produce, inter alia, any advertising data (No. 25), any product sample or examples of tags and labels used in conjunction with the sale of REBELLION-branded products (Nos. 12-13), nor documents relating to many of the categories of identified in your initial disclosures, i.e., those relating to alleged "third party uses," "materials concerning the Whiskey Rebellion" and other professed "reference materials" relating to commercial impression of the terms REBEL and REBELLION (No. 31).

Instead, Opici has provided in many instances incomplete pdfs that are cut-off and incomplete. Similarly, in response to Luxco's request for those documents relating to the development/adoption of the REBELLION Mark, Opici produces a single email and a one page depiction of a REBELLION bourbon bottle. Demand is hereby made that Opici provide a date certain when it will provide supplemental production and a privilege log that comply with Opici's discovery obligations.

In addition, I have heard nothing in response to my prior inquiry regarding service of revised interrogatories. As noted, we perceive it in Luxco, Opici and the Board's interest for the parties to voluntarily agree to the service of a revised set of interrogatories, as the Board has strongly recommended we do.

Please let me hear from you by close of business whether our proposal regarding revised interrogatories is acceptable and with regard to the other deficiencies set forth above.

Best,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

**From:** Gilfoil, Andy  
**Sent:** Friday, August 29, 2014 2:31 PM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I did not receive a privilege log yesterday, as previously promised, and have yet to receive any documents whatsoever in response to Luxco's RFPD's—which were served now four months ago, on April 29. I asked previously that all responsive documents be provided by August 28 and that you advise of any issues with providing responsive documents by then. I have received no further response.

As you know, the Board has entered a new scheduling order leaving the parties with a limited amount of time left to undertake remaining discovery. As such, we cannot continue to sit idly by while discovery time ticks away. If Opici does not provide responsive documents by COB Monday, September 1, we will have no option but to pursue a motion to compel.

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. See TBMP 405.03(e). Please advise whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

I look forward to hearing from you on these issues as soon as practical.

Best,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

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**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Wednesday, August 27, 2014 9:34 AM  
**To:** Annis, Michael; Gilfoil, Andy  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko  
**Subject:** Luxco v Opici 92058411 Initial Disclosures

Dear Mr. Gilfoil and Mr. Annis:

Attached is a courtesy copy of Registrant's Initial Disclosures.  
Hard copies to follow by mail.

My paralegal should finish with Privilege Log today and I forward documents to you tomorrow.

Very truly yours,

John "Jack" M. Rannells

Baker and Rannells, PA

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Email: [jmr@br-tmlaw.com](mailto:jmr@br-tmlaw.com)

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**Gilfoil, Andy**

---

**From:** J. Rannells <JMR@br-tmlaw.com>  
**Sent:** Monday, September 15, 2014 6:40 PM  
**To:** Gilfoil, Andy  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Annis, Michael; Jason L. DeFrancesco  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures  
**Attachments:** Interrogatory Count 9-15-14.doc

Andy:

As previously advised, in the spirit of cooperation we responded to your client's first set of interrogatories even though they exceed the 75 interrogatory limit. Any further interrogatories posed (regardless of how characterized) will be objected to on the basis of the 75 limit rule.

I have stated the above on more than one occasion. Accordingly, I do not understand how you are "awaiting a simple yes or no"?

Attached is my count of your first set of interrogatories. Perhaps you could reciprocate and provide me with your count.

Regards,

John "Jack" Rannells

---

**From:** Gilfoil, Andy [mailto:Andy.Gilfoil@huschblackwell.com]  
**Sent:** Monday, September 15, 2014 1:20 PM  
**To:** J. Rannells  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Annis, Michael; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

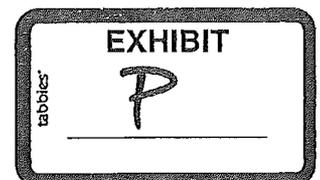
My August 29 email did not state nor imply anything regarding our prior call with the interlocutory attorney--because we did not discuss interrogatories on that call. My reference, as noted below, was to the text of the TBMP stating that:

"it is strongly recommended that the parties voluntarily agree to the service of a revised set of interrogatories, in the manner normally allowed by the Board, instead of bringing their dispute to the Board by motion to compel." TBMP 405.03(e).

We have offered many times to resolve this supernumerosity interrogatory dispute by compromise with service of a revised set of interrogatories. I am still awaiting a simple yes or no regarding whether Opici will agree to same.

Andy

Andrew R. Gilfoil  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)



---

**From:** J. Rannells [mailto:JMR@br-tmlaw.com]  
**Sent:** Monday, September 08, 2014 4:31 PM  
**To:** Gilfoil, Andy; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Jason L. DeFrancesco; K. Hnasko  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Dear Andy:

In response to your email of the 5<sup>th</sup>:

Your Comment: "Opici's privilege log fails to provide any description whatsoever of the documents claimed to be privileged that would enable Luxco to assess the claim, as required under the FRCP."

I respectfully disagree. In each case, the log describes the type of document, who it was from and to whom it was sent, and advises of the subject matter of the email by reference to your client's specific document requests. The rule states that we must "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." While we disagree with you, in the spirit of cooperation I am amending the privilege log to include narrative after the specific reference(s) to your discovery requests. I am also revising and amending the log. It is attached hereto.

RPD 12 and 13. 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. 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

We produced color copies of examples. Also, previously on June 12, 2014, Opici produced color copies of the bottle and case packaging.

You can go anywhere on line and easily or readily find the following:



You can go into the liquor store and view or purchase the same. What is it that you want that has not been provided? Please advise.

With regard to third parties, the actual reference in the Initial Disclosures was:

- Internet materials concerning third party uses of the term REBEL and variations thereof
- Uses by third parties of products bearing the term REBEL and variations thereof

- USPTO records of third party applications and registrations that include the term REBEL or variations thereof
- TTB Cola Label approvals concerning labels bearing the term REBEL or variations thereof

In that regard, I previously advised on August 1, 2014 regarding Opici's Amended Response to RFA No. 22 that "Our client is aware of, *inter alia*, The Rebel Spirits Group LLC."

In addition thereto, we served you with Registrant's First and Second Requests for Admissions, they include specific reference to third party uses, third party trademark applications and registrations, and third party Cola label approvals. In each case, a copy of the document(s) referenced in the request was provided as an exhibit. Those include:

- 2 TTB Colas for "REBELLION" Traditional Ale
- 1 TTB Cola for "REBELLION" Fine Traditional Lager
- 3 TTB Colas for "REBELLION ALE"
- 1 TTB Cola for "REBELLION" Merlot wine
- 1 TTB Cola for "REBELLION" amber ale
- 1 TTB Cola for "REBELLION RED" table wine
- 5 TTB Colas for "REBELLION CIDERWORKS" hard cider (various types)
- 1 TTB Cola for "REBELLION" red ale
- 2 TTB Colas for "REBELLION Stout"
- 5 TTB Colas for "REBELLION" red ale
- 1 TTB Cola for "REBELLION" rum
- 2 TTB Colas for "REBELLION" red lager
- 1 TTB Cola for "REBELLION" Marquette wine
- 1 TTB Cola for "REBELLIOUS" Petit Sirah wine
- 1 TTB Cola for "REBELLIOUS" red wine
- 1 TTB Cola for "REBELLIOUS" white wine
- 1 TTB Cola for "REBELLIOUS" raspberry wine
- 2 TTB Colas for "REBELLIOUS DOCKHAND" sour-wort ale
- 2 TTB Colas for "REBELLIOUS PATRIOT" American ale
- 1 TTB Cola for "REBELLIOUS" whiskey
- 1 TTB Cola for "REBELLE" wine
- 1 TTB Cola for "REBELLO" port
- 1 TTB Cola for "REBELLE" sparkling wine
- 1 TTB Cola for "REBELLE" wine
- 1 TTB Cola for "REBELLE" Sauvignon wine
- 1 U.S. trademark application for REBELLE for, *inter alia*, wines
- 1 U.S. trademark application for REBEL for beer
- 1 U.S. trademark registration for REBEL COAST WINERY for wine
- 1 U.S. trademark application for SAMUEL ADAMS REBEL IPA for beer
- 1 U.S. trademark application for REBELLE for, *inter alia*, wines
- 1 U.S. trademark application for SHAY'S REBELLION AMERICAN WHISKEY for whiskey
- 1 U.S. trademark application for REBELLIOUS SPIRITS for, *inter alia*, distilled spirits

- 1 U.S. trademark application for REBELLION MEETS REFINEMENT for wines
- 1 U.S. trademark application for REBELLION for beer
- 1 U.S. trademark application for PATAGONIA REBELDE for wine
- 1 U.S. trademark application for REBEL MONK for, inter alia, ale
- 1 U.S. trademark application for AMERICAN REBEL SPIRIT COMPANY for, distilled spirits, spirits and liqueurs
- 1 U.S. trademark registration for SAMUEL ADAMS REBEL for beer
- 1 U.S. trademark registration for REBEL.LIA for wines
- 1 U.S. trademark application for YOU REBEL for wine
- 1 U.S. trademark application for BLONDE REBELLION for wine
- 1 U.S. trademark application for IMPERIAL REBELLION for beer
- 1 U.S. trademark application for CRIMSON REBELLION for wine
- 1 U.S. trademark registration for AMERICAN REBEL for wines
- 1 U.S. trademark registration for REBEL ROBLES for wines
- 1 U.S. trademark registration for LITTLE REBEL for wines
- 1 U.S. trademark registration for LA RIBELLE for wine
- 1 U.S. trademark application for GENERACION REBELDE for tequila
- 1 U.S. trademark registration for THE REBEL for wine
- 1 U.S. trademark registration for CZECH REBEL BEER for beer
- 1 U.S. trademark registration for CZECH REBEL BEER SINCE 1333 for beer
- 1 U.S. trademark registration for REBEL KENT the FIRST for beer

Do you want me to re-serve copies of each of the above as a formal response to your document requests? Please advise.

Opici will continue to supplement discovery.

Your comment: “I have heard nothing in response to my prior inquiry regarding service of revised interrogatories.”

#### Correspondence

7/31/14 you stated:

“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.”

8/1/14 I responded:

“By my count, there are already 100 interrogatories.”

8/12/14 you responded:

“Finally, please provide a detailed explanation for how you are arriving at any alleged 100 interrogatories so we can effectively meet and confer on that issue short of involving the Board. As you know, many of the interrogatories are directed to Opici’s counterclaim

allegations, which the Board has given Opici the opportunity to re-plead. Please confirm whether Opici will or will not be willing to answer interrogatories directed to these issues in the event Opici re-pleads its abandonment/failure to police claims.”

8/13/14 I responded:

“My understanding of the 75 Rule is based, *inter alia*, upon the following:

The general rule is that “compound questions seeking separate information but not set forth separately will be broken down by the Board and counted as separate interrogatories. *See* Calcagno, *Tips From the TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)*, 80 TMR 285 (1990)” – *see also*, *Jan Bell Marketing Inc. v. Centennial Jewelers Inc.*, 19 USPQ2d 1636 (TTAB 1990). The Board looks to the substance of the interrogatories in making its determination on the number thereof and is not bound by a propounding party's numbering system. *See*, *Kellogg Co. v. Nugget Distributors' Cooperative of America Inc.*, 16 USPQ2d 1468 (TTAB 1990)

If two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory. *Kellogg, supra*. If an interrogatory contains both an initial question, and follow-up questions to be answered if the first is answered in the affirmative, the initial question and each follow-up question are counted as separate interrogatories. *See Kellogg*. Similarly, if an interrogatory begins with a broad introductory clause followed by several subparts the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated. *See Jan Bell*.

Further, if an interrogatory requests information concerning more than one issue, such as information concerning both “sales and advertising figures,” or both “adoption and use,” the Board will count each issue on which information is sought as a separate interrogatory.

By way of example, your interrogatory no. 13 asks: “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.

The interrogatory is comprised of numerous independent questions/issues etc. By way of example:

1. Awareness of confusion
2. Awareness of mistake
3. Involving source
4. Involving origin

5. Involving sponsorship
6. Of goods or services
7. Offered by Registrant
8. Offered by its licensees
9. Inquiry regarding whether goods were sponsored by Luxco
10. Inquiry regarding whether goods were otherwise connected with Luxco
11. Or connected with any goods of Luxco
12. Or connected with any services or Luxco
13. Including any of Petitioner's Marks
14. Identify persons confused
15. Identify persons mistaken
16. Identify persons making inquiry
17. Identify the substance or content of such confusion, mistake of inquiry
18. Identify the date inquiry was made
19. Identify all persons with knowledge regarding inquiries
20. Identify all persons with knowledge regarding confusion
21. Identify all persons with knowledge regarding mistake
22. Identify all documents regarding inquiries
23. Identify all documents regarding confusion
24. Identify all documents regarding mistake

8/14/14 you responded:

Thanks for the follow-up on the interrogatory issue. Luxco does not agree with your break-down characterization of asserted "sub parts" in interrogatory no. 13 and none of the case-law you cite actually discusses the particulars of the interrogatories at issue. More importantly, however, Opici failed to file a motion for protective order in response to Luxco's interrogatories, which it was obliged to do in order to preserve this assertion. See 37 C.F.R. 2.120(d)(1); *Brawn of California*, 15 U.S.P.Q.2d at 1574. Board case-law on this subject makes plain that Opici has waived its right to object on the basis of number. See, e.g., *Chicago Corp. v. North American Chicago Corp.*, 16 U.S.P.Q.2d at 1480; *Brawn of California*, 15 U.S.P.Q.2d at 1574 ("Applicant waived its right to opposer's interrogatories by failing to file a motion for protective order"). If you have authority to the contrary please advise."

8/14/14 I responded:

Regarding the 75 Interrogatory rule. The case law you cite is outdated as is your prior version of 37 CFR 2.120(d)(1). The current rule states:

37 CFR § 2.120(d)(1) ... If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.

The rules for addressing and resolving the matter are clear. I do not believe that the correct procedure to resolve the interrogatory count issue is via telephonic conference with the interlocutory attorney.

Regarding a revised version of interrogatory 19, I do not recall that being our conversation or how the issue could be resolved. Your summary (dated July 31<sup>st</sup>) of our meet and confer regarding interrogatory 19 is my recollection, namely and as per your words, Opici “would endeavor to provide a response to Interrogatory No. 19 upon receipt of a list of entities who are authorized by Luxco.” To date we have not received such a list from you.

8/18/14 you responded:

To the extent your response suggests that *Chicago Corp.* and *Brawn of California* are no longer good law no authority is cited to support that proposition. Moreover, the version of 2.120(d)(1) that you cite below provides that Opici “shall, **within the time for (and instead of) serving answers and specific objections** . . . serve a general objection on the ground of their excessive number.” Opici did not do so, and instead answered Luxco’s interrogatories with “specific answers and specific objections.” No objection based on alleged excessive number was set forth in Opici’s July 23 response to Luxco’s prior golden rule letter. Indeed, you did not raise any objection based on count until our meet and confer call on July 31, well after Opici had served its answers and objections.

I did not specifically recount my statement on our meet and conference call about serving a revised interrogatory because it was a clear non-starter as the response indicated (for the first time) that Luxco was allegedly already in excess of 75 interrogatories including subparts. The summary of your notes does not appear to address Interrogatory No. 19, so there would be nothing to advise as “incorrect.” In any event, to the extent you are now suggesting that I did not make such an offer during our July 31 meet and confer call, that is not consistent with my recollection.

To the extent you suggest that a telephonic conference with the interlocutory attorney is not the “correct procedure” to resolve this issue, the Board’s rules do not support your assertion. *See* 37 CFR 2.120(i)(1). We continue to perceive that it would be more practical and in the interests of both parties (and the Board) to get resolution from the interlocutory attorney regarding this matter by way of a telephonic conference. That said, your objection to participating in a telephonic conference is noted.

8/18/14 I responded:

I think there is a misunderstanding or two. This seems like much ado about nothing.

1. The cases you cite are no longer precedent and no longer practice and/or procedure in Board cases.
2. Yes, in the spirit of cooperation, we responded to your first set of interrogatories notwithstanding their excessive amount. The only present issue regarding the 75 Rule applies to any further interrogatories, revised or otherwise. It is to put you on notice now that if you serve us with additional interrogatories or alleged revised interrogatories, we will make a general objection based upon the 75 Rule limit. We have no obligation to seek a protective order.
3. I simply do not understand what you are saying regarding Interrogatory #19. It was agreed to that we would endeavor to provide a response to the interrogatory upon receipt from you of

a list of entities who are authorized by Luxco. I am not even sure why or how you want to revise the interrogatory. It states:

19. State whether you are aware of any third-party use of any 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.

Please state what it is you wish to revise.

4. Finally, I never said that I objected to a telephonic conference. I said that it was not the proper procedure to deal with a 75 interrogatory rule matter. It also seems premature to me, as we have not been served with additional interrogatories.

8/21/14 you responded:

I'm not sure where we stand on this. In making the below highlighted statement are you stating that Opici is not withholding any information in response to any of Luxco's interrogatories based on alleged super numerosity? Please confirm.

As you know, a number of Luxco's prior interrogatories are directed to Opici's counterclaim contentions. As I understand it Opici is taking the position that it is not obligated to provide responses because the Board has since dismissed the counterclaims, and further that the specific facts are subject to the attorney-client privilege and/or the attorney work product privilege (for which no log has been provided to date). While you have stated that Opici has no present intention to re-plead, to the extent Opici does in fact re-assert its counterclaims will Opici be providing substantive responses to these interrogatories? Please confirm on way or the other.

My proposed revision to Interrogatory No. 19 is set forth below. We strongly disagree with your alleged counting scheme. Interrogatory No. 13 is directed to a single piece of information, known instances of confusion, and even the authority you cite below acknowledges that the correct inquiry when counting sub-parts is directed to the substance of the interrogatory. Interrogatory No. 13 asks on question with four sub-parts, for a total of five sub-parts.

8/29/14 you wrote:

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. *See* TBMP 405.03(e). Please advise

whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

Regarding outstanding issues: In my letter of 8/18/14 I included the following highlighted sentence: "The only present issue regarding the 75 Rule applies to any further interrogatories, revised or otherwise." In your letter of 8/21/14 you stated: "I'm not sure where we stand on this. In making the . . . highlighted statement are you stating that Opici is not withholding any information in response to any of Luxco's interrogatories based on alleged super numerosity? My highlighted sentence has nothing to do with any limitations or restrictions on your first set of interrogatories or our responses of objections thereto. I thought it was clear that our reference to the 75 rule pertains only to any additional interrogatories, regardless of how you wish to characterize the same (i.e., new questions, revised questions, or the like).

In your letter of 8/29/14 you imply that the Board Interlocutory Attorney strongly recommended that Opici voluntarily agree to the service of a revised set of interrogatories. First, that was not the subject matter of our meeting with the Interlocutory Attorney. Second, I do not recall her recommending the same. Finally, I do not recall even mentioning our 75 rule dispute with the Interlocutory Attorney.

In your letter of 8/21/14, you ask that if Opici decides to later replead its counterclaims, will Opici be providing substantive responses to the interrogatories going to said counterclaims. As you know, Opici objected to those interrogatories on the grounds that the specific facts are subject to the attorney-client privilege and/or attorney work product privilege. The subject matter of any such responses would relate to informal attorney to client search related opinions. Accordingly, there would not be any non-privileged substantive responses to give. The same are already identified on Opici's privilege log and were previously provided to you in correspondence.

I also previously advised you that we consider the number of interrogatories to exceed the limit even without reference to the interrogatories going to the now stricken counterclaims. In any event, we did respond by objection and reference to privilege to said interrogatories.

Finally, I do not know what revisions you intend or how many. Please let me know.

Kind regards,

John "Jack" M. Rannells

Baker and Rannells, PA

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**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]  
**Sent:** Friday, September 05, 2014 12:34 PM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I have now have opportunity to review Opici's document production and privilege log that you provided Wednesday evening. Thank you for the same. However, Opici's log and production are deficient in multiple respects and not in keeping with Opici's discovery obligations.

Opici's privilege log fails to provide any description whatsoever of the documents claimed to be privileged that would enable Luxco to assess the claim, as required under the FRCP. Please provide a privilege log that complies with the FRCP immediately.

Opici's document production (29 total pages which are not bates-numbered or given any identifying page number) are equally deficient. Frankly, I am surprised that despite having now had over four months to gather responsive documents Opici has failed to produce, inter alia, any advertising data (No. 25), any product sample or examples of tags and labels used in conjunction with the sale of REBELLION-branded products (Nos. 12-13), nor documents relating to many of the categories of identified in your initial disclosures, i.e., those relating to alleged "third party uses," "materials concerning the Whiskey Rebellion" and other professed "reference materials" relating to commercial impression of the terms REBEL and REBELLION (No. 31).

Instead, Opici has provided in many instances incomplete pdfs that are cut-off and incomplete. Similarly, in response to Luxco's request for those documents relating to the development/adoption of the REBELLION Mark, Opici produces a single email and a one page depiction of a REBELLION bourbon bottle. Demand is hereby made that Opici provide a date certain when it will provide supplemental production and a privilege log that comply with Opici's discovery obligations.

In addition, I have heard nothing in response to my prior inquiry regarding service of revised interrogatories. As noted, we perceive it in Luxco, Opici and the Board's interest for the parties to voluntarily agree to the service of a revised set of interrogatories, as the Board has strongly recommended we do.

Please let me hear from you by close of business whether our proposal regarding revised interrogatories is acceptable and with regard to the other deficiencies set forth above.

Best,

Andy

**Andrew R. Gilfoil**  
Attorney  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

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**From:** Gilfoil, Andy  
**Sent:** Friday, August 29, 2014 2:31 PM  
**To:** J. Rannells; Annis, Michael  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko; Smith, Celeste; Gilfoil, Andy  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures

Jack,

I did not receive a privilege log yesterday, as previously promised, and have yet to receive any documents whatsoever in response to Luxco's RFPD's—which were served now four months ago, on April 29. I asked previously that all responsive documents be provided by August 28 and that you advise of any issues with providing responsive documents by then. I have received no further response.

As you know, the Board has entered a new scheduling order leaving the parties with a limited amount of time left to undertake remaining discovery. As such, we cannot continue to sit idly by while discovery time ticks away. If Opici does not provide responsive documents by COB Monday, September 1, we will have no option but to pursue a motion to compel.

I have also received no response to my 8/21 email regarding Opici's current position on Luxco's interrogatories. As previously mentioned, we strongly disagree with your subpart counting scheme and believe it to be contrary to both the letter and the spirit of the Board's rules. If Opici remains unwilling to confirm that it is not withholding any discoverable information, we will have need to bring this issue to the Board's attention as well.

In the interest of compromise we propose that the parties' heed the Board's strong recommendation to voluntarily agree to the service of a revised set of interrogatories instead of wasting the Board's attention resolving this issue. See TBMP 405.03(e). Please advise whether Opici will agree to provide responses to a revised set of interrogatories, within two weeks of service. Please let me know at your earliest opportunity whether this compromise is agreeable.

I look forward to hearing from you on these issues as soon as practical.

Best,

Andy

**Andrew R. Gilfoil**  
**Attorney**  
Direct: 314.480.1812  
[Andy.Gilfoil@huschblackwell.com](mailto:Andy.Gilfoil@huschblackwell.com)

---

**From:** J. Rannells [<mailto:JMR@br-tmlaw.com>]  
**Sent:** Wednesday, August 27, 2014 9:34 AM  
**To:** Annis, Michael; Gilfoil, Andy  
**Cc:** Steve Baker; Jason L. DeFrancesco; K. Hnasko  
**Subject:** Luxco v Opici 92058411 Initial Disclosures

Dear Mr. Gilfoil and Mr. Annis:

Attached is a courtesy copy of Registrant's Initial Disclosures.  
Hard copies to follow by mail.

My paralegal should finish with Privilege Log today and I forward documents to you tomorrow.

Very truly yours,

John "Jack" M. Rannells

Baker and Rannells, PA

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Raritan, New Jersey 08869  
Telephone: (908) 722-5640  
Facsimile: (908) 725-7088

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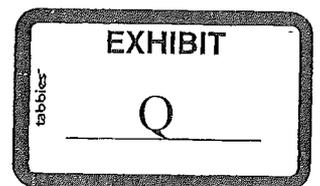
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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

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**Representative Documents Responsive to Request for Production No. 7**



**MARKED CONFIDENTIAL**  
**FILED UNDER SEAL**

**MARKED CONFIDENTIAL**  
**FILED UNDER SEAL**