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

Proceeding	92058411
Party	Defendant Opici IP Holdings, LLC
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Submission	Opposition/Response to Motion
Filer's Name	John M. Rannells
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Signature	/John Rannells/
Date	10/02/2014
Attachments	92058411 Opici response to motion to compel 10-2-14.pdf(233179 bytes ) 92058411 Decl. Rannells 10-2-14.pdf(5274304 bytes )

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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**REGISTRANT’S RESPONSE AND OBJECTION  
TO PETITIONER’S MOTION TO COMPEL**

Registrant, Opici IP Holdings, LLC (hereinafter “Opici”) responds and objects to Petitioner’s motion to compel.

The Petitioner’s motion to compel is comprised of four matters for the Board’s consideration, namely:

1) Petitioner’s request for the Board to determine the number of interrogatories comprising Petitioner’s first set of interrogatories and request to serve revised interrogatories (notwithstanding that Petitioner’s interrogatories have already been responded to by Opici);

(2) Petitioner’s complaint that Opici has not provided adequate responses to Interrogatories 23-28<sup>1</sup>;

(3) Petitioner’s complaint that Opici has failed to fully respond to the following document requests: Request Nos. 6, 7, 12-13, 31-35 and 38;

(4) Petitioner’s complaint that Opici refuses to provide a privilege log that satisfies its duty under the Federal Rules<sup>2</sup>.

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<sup>1</sup> Opici served amended responses to said interrogatories on October 1, 2014. See Declaration of Rannells at Ex. 9.

For the following reasons Petitioner's arguments, to the extent they are understood, lack factual or legal support, do not constitute a good faith effort to resolve issues, and should be given no further consideration.

**A. Registrant Simply Does Not Understand the Issue Raised by Petitioner Concerning Rule 2.120(d) (i.e., the 75 interrogatory limit rule).**

The Petitioner appears to be asking the Board permission to serve a revised set of interrogatories in place of Petitioner's first set notwithstanding the fact that Opici has already responded to Petitioner's first set of interrogatories. Petitioner also appears to be asking the Board to issue an advisory opinion as to the number of interrogatories comprising Petitioner's first set, as a result of Opici's contention that they exceed the 75 interrogatory limit and that Opici will object, on that basis, to any further interrogatories served. No revised or new interrogatories have been disclosed, identified or served by Petitioner to date. Further, Petitioner contends that Opici has somehow waived its right to object to service of further interrogatories as a result of not having served a general objection to Petitioner's first set. Petitioner is also complaining that Opici did not quickly respond to Petitioner's request for Opici to agree to service of certain unidentified, undisclosed "revised" interrogatories (after Opici already responded to Petitioner's interrogatories).

**1. Preliminary Matter**

Opici takes issue with Petitioner's claim that Opici failed or refused to respond to Petitioner for some time but "has now finally confirmed that it would not agree" to service of

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<sup>2</sup> Opici served a second amended Privilege Log on Petitioner on September 26, 2014. See Decl. Rannells at Ex. 7.

Petitioner's unidentified, undisclosed so-called "revised interrogatories".<sup>3</sup> In effect, Petitioner accuses Opici of dragging its feet. Here are the facts:

On July 31, 2014 the parties' attorneys spoke in a telephonic meet and confer. During that conference Petitioner's attorney discussed service of additional or revised interrogatories. Opici's attorneys objected arguing that Petitioner's first set of interrogatories already exceeded the permissible limit and that Opici would object to service of any further interrogatories (whether characterized as revised interrogatories or new interrogatories). *See* Decl. Rannells, ¶2.

On August 18, 2014, in response to an email from Petitioner's attorney, Opici advised: "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." *See*, Decl. Rannells at Ex. 1.

On September 8, 2014 Opici wrote: "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

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<sup>3</sup> On page 6, paragraphs 22 and 23 Petitioner states that Registrant failed to confirm that it would not agree to service of revised interrogatories.

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).” *See*, Decl. Rannells *at* Ex. 2 (p.9).

And, on September 15, 2014 Opici wrote: “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”. *See*, Decl. Rannells *at* Ex. 3.

Opici advised Petitioner on at least four separate occasions that it would object to any further interrogatories (regardless of how characterized). There was no foot dragging.

***2. Petitioner’s Request to Serve So-called “Revised” Interrogatories***

The simple fact is that Opici responded to Petitioner’s first set of interrogatories (i.e., on July 2, 2014). *See*, Declaration of Rannells *at* Ex. 8. Petitioner’s first set of interrogatories cannot now be taken back. Petitioner requested Opici’s consent to Petitioner serving some unidentified, undisclosed “revised” interrogatories and now seeks an order of the Board permitting Petitioner to serve its “revised” interrogatories with disclosing them and without making any showing of need therefor. Petitioner cites to TBMP §405.03(e) for the Board’s position and/or recommendation concerning revised interrogatories. However, Petitioner misreads the TBMP. It states:

If, on determining a motion to compel filed in response to a general objection to interrogatories on the ground of excessive number, the Board finds that the interrogatories are excessive in number, and that the propounding party has not previously used up its allotted 75 interrogatories,

the Board normally will allow the propounding party an opportunity to serve a revised set of interrogatories not exceeding the numerical limit.

As is clear from the language, TBMP §405.03(e) only applies (1) where a party has filed a general objection on the ground of excessive number in lieu of responding to interrogatories, and only applies if a party has not already used up its allotted 75 interrogatories. It is inapplicable to the present case where Opici already responded to Petitioner's First Set of Interrogatories and where, as here, Petitioner has already exceeded its allotted 75 interrogatories. The Petitioner seems unable to accept the fact that Opici responded to Petitioner's first set of interrogatories and that the issue of excessive interrogatories relates solely to any additional interrogatories Petitioner may serve (regardless of how characterized – i.e., “revised” or new interrogatories).

Further, in an effort to see if something could be worked out, Opici requested Petitioner's attorney to advise what revisions he intends and how many. *See*, Decl. Rannells, Ex. 2 (p.9). Petitioner's only response was to file the present motion to compel. Opici has no idea what Petitioner proposes, as Petitioner has thus far refused to share the information with Opici and has not attempted to serve a revised or second set of interrogatories.

That is hardly a good faith effort to attempt to resolve the matter.

***3. Opici has not Waived its Right to Object Based Upon the 75 Limit Rule***

At pages 3 (paragraph 6), 5-6 (paragraph 19) and pages 7-8 the Petitioner argues that because Opici did not serve a general objection to Petitioner's first set of interrogatories, it has waived its right to object to any further interrogatories served by Petitioner. That is simply not the rule. In fact, it is a rather absurd conclusion. The rule states:

**2.120(d) Interrogatories;** request for production. (1) The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts.

The 75 limit rule applies to “a proceeding” not to a specific set of interrogatories. *See also, Phillippe De Rothschild S.A. v. S. Rothschild & Co. Inc.*, 16 USPQ2d 1466 (TTAB 1990).

***4. In Any Event, Petitioner’s First Set  
Of Interrogatories Exceeds 75***

While Petitioner’s interrogatories exceed the 75 number limit, it should be noted that in any event Petitioner never made a sufficient good faith effort to resolve the issue. When asked, Opici advised Petitioner of its count of the first set of interrogatories (i.e., 100). *See Decl. Rannells, Ex. 4* (email dated August 1, 2014). Petitioner simply disagreed. When asked for a detailed explanation for how Opici arrived at its count, Opici provided quite a detailed explanation complete with case law and an example of its counting method. *See Decl. Rannells, Ex. 5* (email dated August 13, 2014). Petitioner simply disagreed. This was followed by some protracted correspondence over Petitioner’s mistaken understanding of the current version of Rule 2.120(d)(1). Then, when asked, Opici provided its actual count, interrogatory by interrogatory. *See Decl. Rannells, Ex. 3* (email dated September 15, 2014 with appended count, interrogatory-by-interrogatory). Opici asked Petitioner to reciprocate and provide its count [*Id.*] so that the two could be compared and the parties could possibly come to some understanding. Petitioner’s only response was to file the instant motion to compel.

In making a motion to compel it is the general and recommended practice for the moving party to set forth its counting method. *See TBMP §405.03(e)*. Petitioner failed and refused to do so for Opici, and has failed to include its counting method for the Board’s consideration.

Opici's count as provided to Petitioner on September 15, 2014 is annexed to the Decl. Rannells at Exhibit 3. The following case law applies:

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).

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. *See*, *Kellogg Co. v. Nugget Distributors' Cooperative of America Inc.*, 16 USPQ2d 1468 (TTAB 1990).

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. *See*, TBMP §40.03(d).

[I]f 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. *Id.*

Also, as set forth in TBMP §405.03(d): "Similarly, if an interrogatory begins with a broad introductory clause ("Describe fully the facts and circumstances . . .") 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." [Citing *Jan Bell*]. *See, for example*, Petitioner's Request Nos. 4, 13 and 18.

And, 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 Co. v. Nugget Distributors' Cooperative of America Inc.*, 16 USPQ2d 1468 (TTAB 1990). *See, for example*, Petitioner's Request Nos. 10 and 19.

As demonstrated by Opici's count (*See Decl. Rannells Ex. 3*), it is Opici's reasonable contention that Petitioner's First Set of Interrogatories consists of well in excess of 75 in number.

***5. Petitioner is, in Effect, Asking the Board  
To Issue an Advisory Opinion***

In any event, since there are no so-called "revised" interrogatories on the table and no second set of interrogatories have been served, Petitioner's request is nothing more than a request for an advisory opinion.

**B. Opici Has Provided Adequate  
Responses To Interrogatories 23-28  
(pp. 8-9 Petitioner's Brief).**

The interrogatories in issue ask Opici to "state all facts [it] relied on to support [its] contentions" concerning Opici's now dismissed counterclaims (i.e., naked licensing and failure to police) and Opici's affirmative defenses (i.e., acquiescence and laches, waiver and estoppel, and failure to challenge third party use defenses).

Petitioner's attorney was advised that the sources that formed the basis of Opici's now dismissed counterclaims, were the subject of informal searches that showed numerous third party uses, registrations, applications and TTB label approvals for the term REBEL and variations thereof, as well as TTAB database records concerning Petitioner and Petitioner's litigation efforts (or lack thereof); that the results (which would obviously be protected by the attorney

work product doctrine) were not, in any event downloaded or saved; that any report to the client was also informal (*See* discussion regarding Document Request No. 6 below), and that therefore, there was nothing to produce.

Apparently, Petitioner is demanding a formal response. Accordingly, in its continuing efforts to work things out with Petitioner, Opici has amended its responses to interrogatories 23, 24, 26, 27 and 28.<sup>4</sup> A copy of the amended responses is annexed to the accompanying declaration of Rannells as Exhibit 9. Opici trusts that the matter is now resolved.

### **C. Opici Has Properly Responded To And Produced Responsive Documents**

Petitioner has alleged that Opici's responses/production is deficient concerning Document Request Nos. 6, 7, 10, 12-13, 31-35 and 38. Opici respectfully disagrees and responds to Petitioner's arguments in order herebelow.

#### **1. Document Request 6**

Request No. 6 asks for production of trademark searches with respect to the REBELLION mark. Opici objected to the request on the grounds that any such documents are protected by the attorney-client privilege.

Again, Opici's trademark search was an informal search conducted by Opici's attorneys. There is no mention of Petitioner or any of Petitioner's marks in the search. There are no specific references to third party registration or application numbers or TTB Cola ID numbers. Opici's attorney's comments and opinions are merged with and inseparable from the mention of any third party marks. As such, it is Opici's position that the search is protected by the attorney-client privilege. Additional emails that reference third party marks are all between counsel and

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<sup>4</sup> Interrogatory 25 is identical to Petitioner's interrogatory 24 and was objected to on that basis. Opici trusts that Petitioner is not insisting on an identical answer to an identical interrogatory.

Opici and are protected by the attorney-client privilege and are set forth in Opici's Privilege Log. There are no un-privileged documents responsive to the request. Accordingly, Opici's response and objection are proper and valid. Opici is amenable to providing the referenced search report for *in camera* review if requested to do so by the Board. See Decl. Rannells at ¶12.

### **2. Document Request 7**

Request No. 7 asks for production of documents that pertain to the development, creation and/or adoption of the REBELLION mark.

Opici produced a drawing board rendition of product label for its REBELLION Bourbon. There is also the search report addressed above and there are also a number of privileged emails between counsel and Opici concerning legal advice that pertain to the development, creation and/or adoption of the REBELLION mark. They are listed in Opici's Privilege Log.

Opici is continuing its review of records for documents responsive to the request.

### **3. Document Request 10**

Request No. 10 asks for production of "representative documents evidencing those goods and/or services under which the REBELLION mark is currently used or is intended to be used, including but not limited to labels, bottles, tags and boxes"

Opici advised that representative documents would be produced. Opici has produced representative documents, and in any event is not aware that an issue exists.

Opici produced numerous documents responsive to the request, including *inter alia*, a photocopy showing Opici's REBELLION bourbon bottle, a photocopy of Opici's REBELLION product label, a photocopy of the shipper box, a photocopy of Opici's REBELLION logo, Opici's brand kit, the product fact sheet, POS shelf talkers, cocktail recipe cards, Wine Enthusiast rating and review, Craft Spirits Award, Press clipping, representative invoices, third

party e-retailer sites featuring REBELLION bourbon, and print advertisements. Examples of non-confidential documents produced are annexed to the declaration of Rannells at Exhibit 6. All of the documents evidence Opici's use of its mark on product, labels and the like. They are quite representative.

Opici is continuing its review of records for documents responsive to the request and is in the process of producing additional documents concerning Opici's REBELLION rum product.

#### **4. Document Requests 12-13**

Request No. 12 asks for "examples of any tags or labels used . . . in connection with the offer or sale of goods bearing the REBELLION Mark." Request No. 13 asks for "a sample of the complete packaging in which the product(s) sold . . . under the REBELLION Mark appear."

Petitioner states on page 10 of its brief that "Opici fails to produce any product sample or examples of tags and labels used in conjunction with the sale of REBELLION-branded products." The statement is simply untrue.

Opici has produced *inter alia* a photocopy of its shipper box, the REBELLION logo, a photocopy of Opici's REBELLION bourbon bottle and REBELLION product label. *See* Decl. Rannells, Ex. 6.

Also, on September 8<sup>th</sup> and in response to Petitioner's email of September 5<sup>th</sup> Opici stated:

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.

*See Decl. Rannells, Ex. 2.* Rather than reply, Petitioner responded by filing the present motion to compel.

Opici is continuing its review of records for documents responsive to the request and is in the process of producing additional documents concerning Opici's REBELLION rum product.

**5. Document Request 31**

Request No. 31 asks for the production of documents referenced or disclosed in Opici's initial disclosures. Petitioner's motion goes specifically to third party uses, registrations and applications bearing the term REBEL and variations, as well as materials concerning the Whiskey Rebellion and dictionary definitions of the terms REBEL and REBELLION.

The applicable documents listed in Opici's initial disclosures list generally the types of documents that Opici intends to "use to support its claims or defenses." All the documents collected thus far by Opici's attorneys concerning third party uses, registrations and the like as well as information on the Whiskey Rebellion and dictionary definitions of the terms "rebel" and "rebellion" were collected after the commencement of this proceeding.

On September 9<sup>th</sup> and in response to Petitioner's email of September 5<sup>th</sup> Opici stated:

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 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 [40 TTB alcoholic beverage label approvals for REBEL variations, 16 U.S. trademark applications (Class 33) for REBEL variations, and 11 U.S. trademark registrations (Class 33) for REBEL variations.]

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

*See Decl. Rannells, Ex. 2.* Petitioner's only response was to file the instant motion to compel.

Beyond the above, Opici's attorneys' collection of third party materials, reference works on the Whisky Rebellion, and dictionary definitions that have occurred after the commencement of this proceeding by Petitioner, are protected by the attorney work product privilege. Petitioner needs to conduct its own research. Further, privileged material occurring after commencement of the proceeding does not need to be included in Opici's Privilege Log. Courts that have addressed the issue have found that a privilege log is not required for communications that occur after the commencement of the action. In fact, various jurisdictions have specific rules in that regard. *See, for example*, USDC, District of Connecticut, Local Rules of Civil Procedure, Rule 26(e):

This rule requires preparation of a privilege log with respect to all documents withheld on the basis of a claim of privilege or work product protection except the following: written or electronic communications between a party and its trial counsel after commencement of the action and the work product material created after commencement of the action.

Opici has not located any specific rule promulgated by the TTAB, but assumes that the TTAB follows the general rule.

Regarding material concerning third party uses etc. prior to commencement, Opici's amended response to Petitioner's Document Request 23 states:

Registrant relied upon the advice of counsel. Counsel conducted an informal search of USPTO database records, TTB database records, and a general Google Internet search all of which revealed numerous third party uses, registrations, applications and label approvals for alcoholic beverages under the term REBEL and variations thereof. The results were not downloaded or saved in any way. Counsel also conducted a search of TTAB database records concerning Petitioner and Petitioner's litigation efforts (or non-efforts as the case may be) before the TTAB. The results were not downloaded or saved in any way.

*See*, Decl. Rannells, Ex. 9 (copy of Opici's Amended Responses and Objections to Petitioner's Request Nos. 23, 24, 26, 27 and 28). Opici sufficiently responded to the above request.

**6. Document Requests 32-35 and 38**

Document Requests Nos. 33-35 and 38 asks for the production of all documents Opici relied upon to support its contentions of (i) abandonment, (ii) naked licensing, (iii) failure to police, and (iv) failure to challenge third party uses.

As stated above and in response to Petitioner's parallel subject interrogatories, the documents reviewed and relied upon to support its contentions were not downloaded or saved. Accordingly, other than attorney-client privileged emails concerning the subject matters, there are no documents to produce, hence Opici's response to the document requests that "any such documents would be subject to the attorney-client privilege and/or attorney work product privilege." Any privileged emails are identified on Opici's Privilege Log.

**D. Opici Has Provided A Privilege Log  
That Complies With the Federal Rules**

Petitioner states on page 11 of its brief that Opici refuses to provide a privilege log that satisfies Opici's duty" under the federal rules. Petitioner's characterization of the facts is misleading. Opici has never refused to provide a satisfactory log.

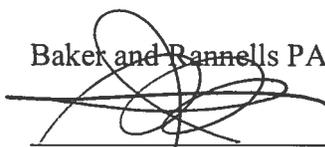
Opici served its first privilege log on Petitioner on September 3, 2014. Petitioner objected that Opici did not provide Petitioner with a sufficient description of documents claimed to be privileged. Accordingly, Opici served an amended log on Petitioner on September 8, 2014. Petitioner never complained or commented on the amended log. Instead, Petitioner filed the instant motion to compel. In any event, in Opici's continuing efforts to work things out (and notwithstanding Opici's position that its prior log was sufficient), Opici has again amended/revised its privilege log, which it served on Petitioner on September 26, 2014. It is attached to the accompanying declaration of Rannells as Exhibit 7. Opici trusts that the matter is resolved.

**CONCLUSION**

For the foregoing reasons, Petitioner's motion to compel should be dismissed in its entirety.

Respectfully submitted

Baker and Rannells PA



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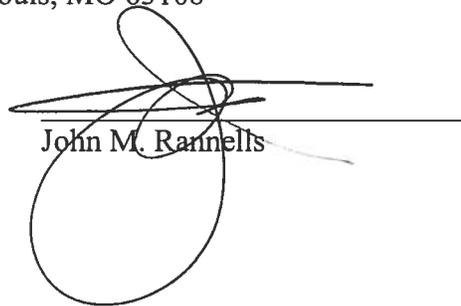
Stephen L. Baker  
John M. Rannells  
BAKER AND RANNELLS PA  
Attorneys for Registrant,  
Opici IP Holdings, LLC

908-722-5640  
jmr@br-tmlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S RESPONSE AND OBJECTION TO PETITIONER'S MOTION TO COMPEL has been served on Petitioner by first class mail this 2<sup>nd</sup> day of October 2014:

Andrew R. Gilfoil, Esq.  
HUSCH BLACKWELL LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63108



John M. Rannells

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

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

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**DECLARATION OF JOHN M. RANNELLS**

John M. Rannells declares as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a member of the law firm of Baker and Rannells, PA, attorneys for Registrant Opici IP Holdings, LLC ("Opici"). I submit this declaration in support of Opici's Response and Objection to Petitioner's Motion to Compel.

2. On July 31, 2014, Opici's attorney and Petitioner's attorney spoke in a telephonic meet and confer concerning discovery issues. During said conference Petitioner's attorney discussed service of additional or revised interrogatories. Opici's attorneys objected arguing that Petitioner's first set of interrogatories already exceeded the permissible limit and that Opici would object to service of any further interrogatories (whether characterized as revised interrogatories or new interrogatories).

3. Annexed hereto as Exhibit 1 is a true copy of an email dated August 18, 2014 sent from Opici's attorney to Petitioner's attorney regarding Petitioner's interrogatories.

4. Annexed hereto as Exhibit 2 is a true copy of an email dated August 18, 2014 sent from Opici's attorney to Petitioner's attorney regarding Petitioner's interrogatories.

5. Annexed hereto as Exhibit 3 is a true copy of an email dated September 15, 2014 sent from Opici's attorney to Petitioner's attorney regarding Petitioner's interrogatories.

6. Annexed hereto as Exhibit 4 is a true copy of an email dated August 1, 2014 sent from Opici's attorney to Petitioner's attorney regarding Petitioner's interrogatories.

7. Annexed hereto as Exhibit 5 is a true copy of an email dated August 13, 2014 sent from Opici's attorney to Petitioner's attorney regarding Petitioner's interrogatories.

8. Annexed hereto as Exhibit 6 are true copies of examples of non-confidential documents produced to Petitioner by Opici in response to Petitioner's Document Request Nos. 10, 12 and 13.

9. Annexed hereto as Exhibit 7 is a true copy of an email dated September 26, 2014 sent from Opici's attorney to Petitioner's attorney regarding Opici's Privilege Log and a true copy of Opici's Second Amended Privilege Log served on Petitioner on said date.

10. Annexed hereto as Exhibit 8 is a true copy Opici's Responses and Objections to Petitioner's First Set of Interrogatories, which was served upon Petitioner on July 2, 2014.

11. Annexed hereto as Exhibit 9 is a true copy Opici's Amended Responses and Objections to Petitioner's First Set of Interrogatories (Nos. 23, 24, 26, 27 and 28), which was served upon Petitioner on October 1, 2014.

12. With regard to Petitioner's Document Request No. 6 regarding trademark searches (the production of which was objected to on the basis of the attorney-client privilege) - Opici's trademark search was an informal search conducted by Opici's attorneys. There is no mention of Petitioner or any of Petitioner's marks in the search. There are no specific references to third party registration numbers or application numbers or TTB Cola ID numbers. Opici's attorney's comments and opinions are merged with and inseparable from the mention of any third party

marks. Additional emails that reference third party marks are all between counsel and Opici and are set forth in Opici's Privilege Log. Opici is amenable to providing the referenced search report for *in camera* review if requested to do so by the Board.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed at Raritan, New Jersey  
on October 2, 2014

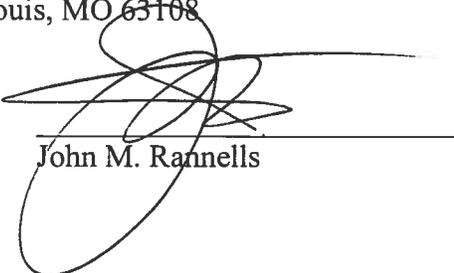
Dated: Raritan, New Jersey  
October 2, 2014

/John M. Rannells/  
JOHN M. RANNELLS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing DECLARATINO OF JOHN M. RANNELLS IN SUPPORT OF OPICI'S RESPONSE AND OBJECTION TO PETITIONER'S MOTION TO COMPEL has been served on Petitioner by first class mail this 2<sup>nd</sup> day of October 2014:

Andrew R. Gilfoil, Esq.  
HUSCH BLACKWELL LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63108

  
\_\_\_\_\_  
John M. Rannells

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

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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 1**

## J. Rannells

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**From:** J. Rannells  
**Sent:** Monday, August 18, 2014 7:01 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 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. |

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

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)

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

---

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

---

**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 2**

**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 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  
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**From:** Gilfoil, Andy [<mailto:Andy.Gilfoil@huschblackwell.com>]

**Sent:** Friday, September 05, 2014 12:34 PM

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

---

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

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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 3**

## J. Rannells

---

**From:** J. Rannells  
**Sent:** Monday, September 15, 2014 7:42 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)

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

- Describe business conducted by Registrant
- Describe business conducted by entities Registrant has a controlling ownership in
- Describe business conducted by licensees
- In which mark currently used
- Intended to be used

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

- Describe every product branded by Registrant
- Describe every product marketed by Registrant
- Product branded by licensees
- Product marketed by licensees
- And every service

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

- Set forth date of first use
- Identify all documents

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

- Identify any license granted to Registrant
- Identify any license granted by Registrant
- Parties to license
- Date

- Duration
- Substance of license
- Goods and services for which license granted

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

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

- For each product and service
- Quantity of products sold by Registrant
- Or licensees
- Dollar amount of annual sales

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

- For each product and service
- Dollar amount expended by Registrant on advertising and promoting mark
- By licensees
- Dollar amount expended by Registrant on advertising and promoting products
- By licensees.

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

- State if use by Registrant interrupted
- If use by licensee(s) interrupted
- Describe each such interruption

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

- Identify forms of media through which Registrant has advertised
- Through which licensees

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

- If not used by Registrant identify each entity which does use
- Which has used

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

- State whether trademark search conducted
- Other type of search conducted
- In connection with adoption
- In connection with application for registration or use
- If so, describe documents
- Identify persons

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

- Identify persons knowledgeable regarding creation
- Regarding adoption
- Regarding use

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

- Identify persons knowledgeable regarding manufacture
- Regarding production

- Regarding promotion
- Regarding sale of goods

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

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

- State if aware of instances or occasions of confusion or mistake
- Involving source
- Involving origin
- Involving sponsorship
- Goods or services offered by Registrant
- By its licensees (for each of the above)
- Including inquiry regarding if goods sponsored by Luxco
- Or any goods or services of Luxco
- If so, identify persons confused or mistaken
- Substance of content of confusion
- Date inquiry made
- All persons with knowledge
- All documents

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

- Identify class of customer to whom Registrant sells
- Intends to sell
- To whom licensees sell

- Intend to sell
- Identify persons most knowledgeable

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

- Identify channels of trade through which goods sold
- Or offered for sale
- Identify persons most knowledgeable

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

- Identify retail price
- Intended retail price
- Currently sold or intended to be sold

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

- Name of each company
- Address
- Of each wholesaler
- Of each dealer
- Of each distributor

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

- State all facts relating to adoption including
- Circumstances surrounding adoption
- Significance or meaning of term REBEL
- Origin of mark
- Identify persons most knowledgeable

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

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

use.

- State whether aware of unauthorized third party use of Petitioner's Marks
- Or any other trademark containing the term REBEL
- If so, identify all info about the party
- The dates of such use
- The geographic areas of such use
- All persons with knowledge
- All documents

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

- Identify all trademark registrations
- All applications
- Which you are aware or intend to rely upon

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

- Date you became aware of Petitioner’s Marks
- Date agents became aware of Petitioner’s marks

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

- Describe circumstances surrounding TTB permit application

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

- State all facts relied on in support of

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

- State all facts relied on in support of

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

- State all facts relied on in support of

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

- State all facts relied on in support of

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

- State all facts relied on in support of

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

- State all facts relied on in support of

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

---

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

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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 4**

## J. Rannells

---

**From:** J. Rannells  
**Sent:** Friday, August 01, 2014 9:59 AM  
**To:** 'Gilfoil, Andy'; Steve Baker  
**Cc:** K. Hnasko; Annis, Michael; Nemes, Alan  
**Subject:** RE: Luxco v Opici 92058411

Andy:

With regard to your summary below:

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

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

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

By my count, there are already 100 interrogatories.

If any of the above is incorrect, please advise.

Thank you,

John "Jack" M. Rannells

Baker and Rannells, PA

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

---

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

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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 5**

## J. Rannells

---

**From:** J. Rannells  
**Sent:** Wednesday, August 13, 2014 11:39 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 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  
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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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 6**

**LEWIS & CLARK**  
**BOURBON WHISKEY**  
**ALL 47% VOL**

★ ★ ★ ★ ★  
**REBELLION**  
**BOURBON**

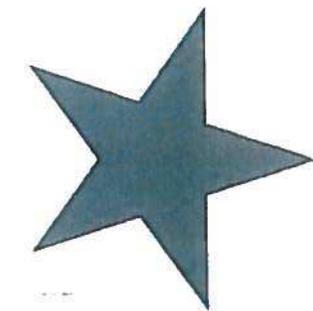
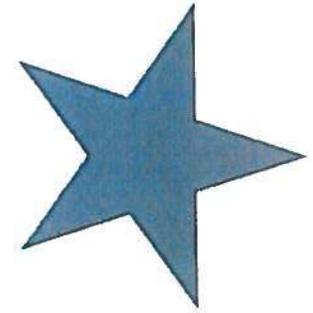
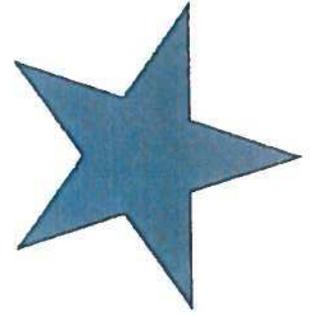
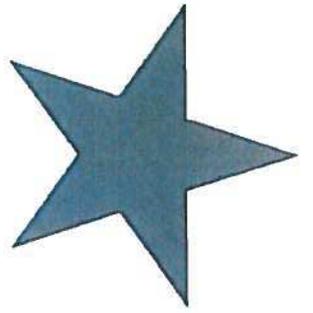
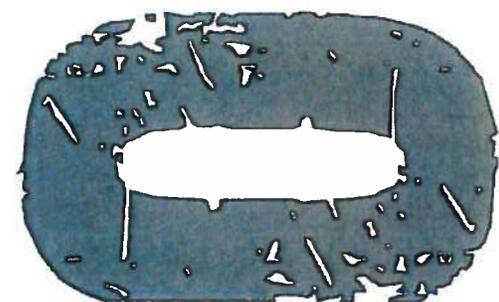
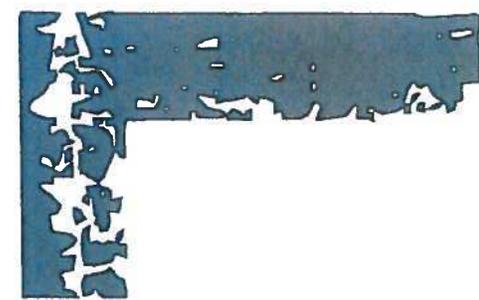
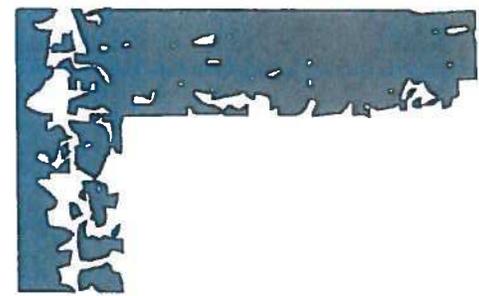
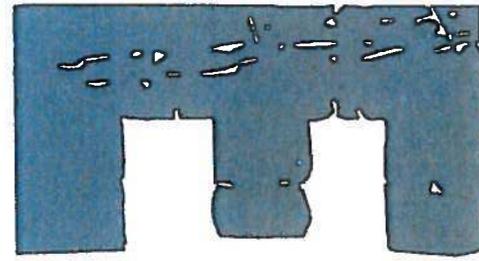
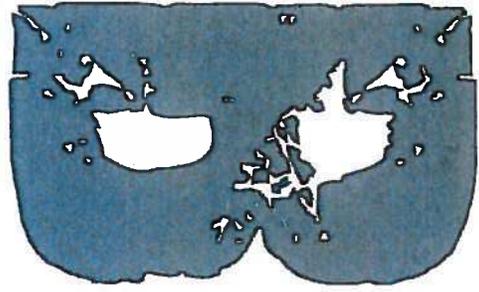
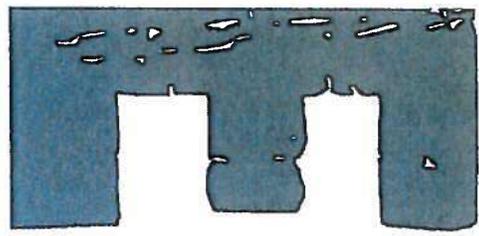
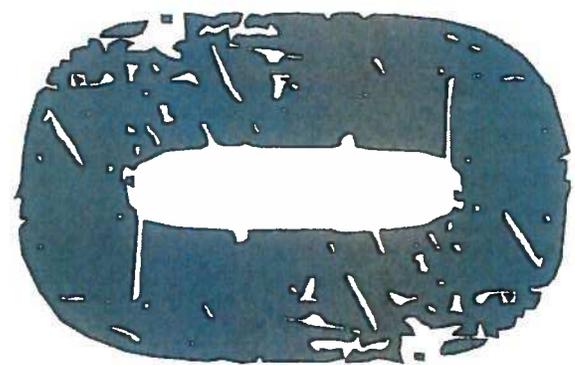
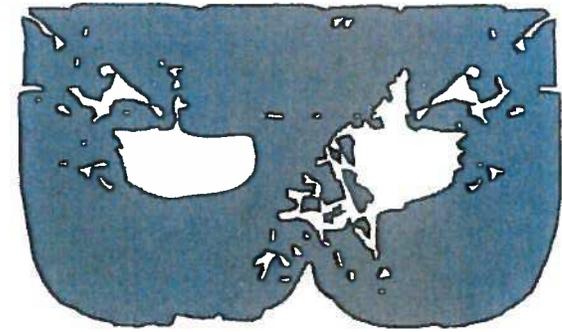
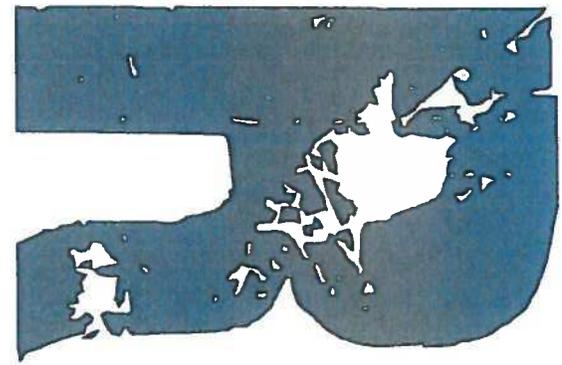
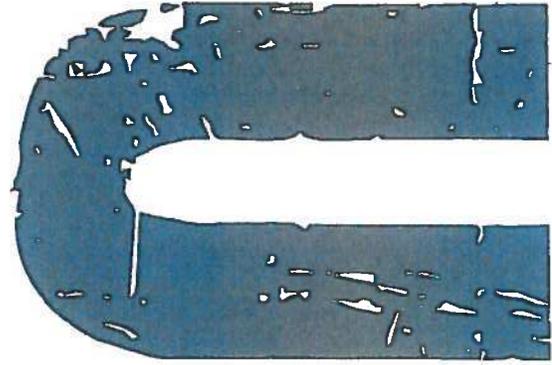
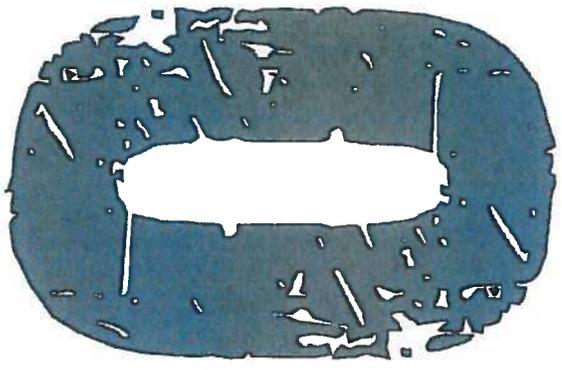


911

★ ★ ★ ★ ★  
**REBELLION  
BOURBON**

6 x 750mL 47% VOL. (94 PROOF)

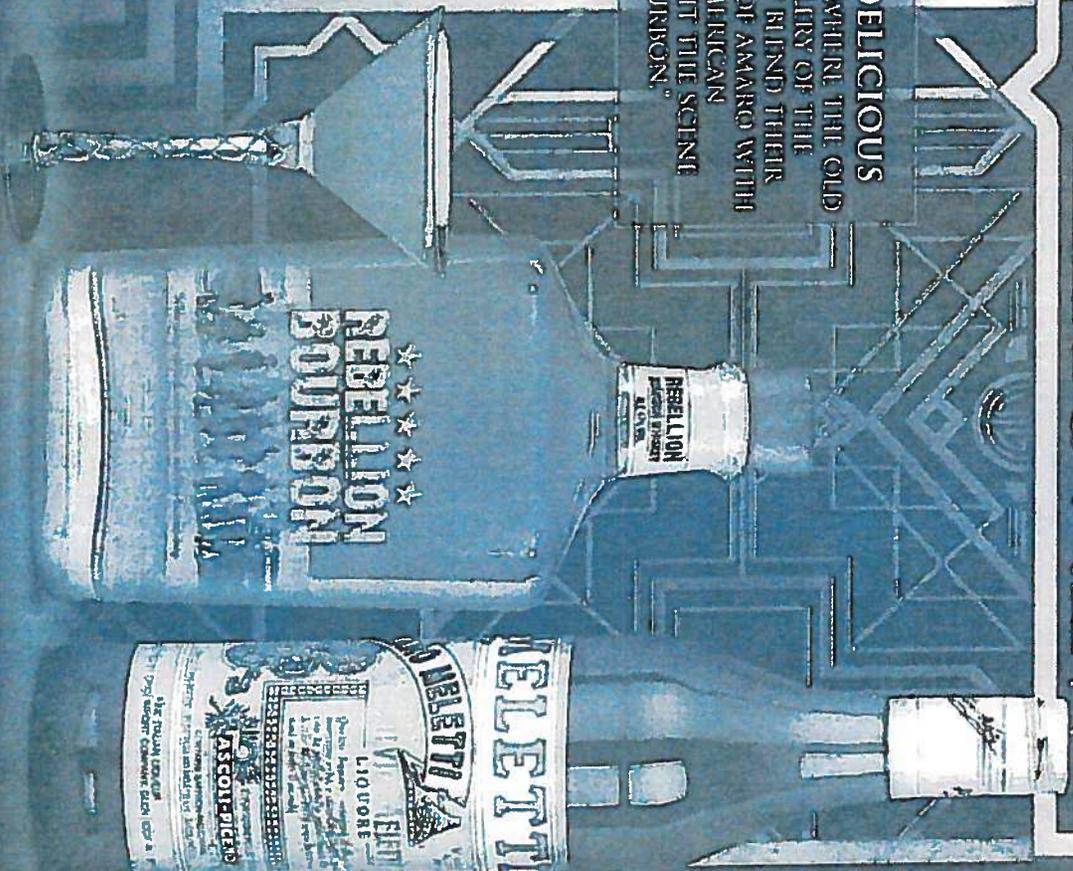




IF YOU LIKE A CLASSIC MANHATTAN YOU'LL LOVE THIS OPGI WINES FAVORITE

# OLD WORLD MEETS NEW

TRY THIS DELICIOUS  
COCKTAIL. WHEN THE OLD  
SCHOOL DISTILLERY OF THE  
MILETTI FAMILY BLEND THEIR  
SECRET RECIPE OF AMARO WITH  
THE NEWEST AMERICAN  
BOURBON TO HIT THE SCENE  
"REBELLION BOURBON."



## ITAL-AMERICANO

1 PART MELETTI AMARO  
3 PARTS REBELLION BOURBON  
A SPLASH OF BRANDED CHERRY JUICE  
COMBINE AND SHAKE OVER ICE.  
GARNISH WITH CHERRIES.

MELETTI AMARO LIQUORE  
© 2013 OPGI WINES

REBELLION BOURBON IS A REGISTERED TRADEMARK OF THE DISTILLERS COMPANY. OPGI WINES IS A REGISTERED TRADEMARK OF OPGI WINES. ALL RIGHTS RESERVED. OPGI WINES IS A REGISTERED TRADEMARK OF OPGI WINES. ALL RIGHTS RESERVED.



★ ★ ★ ★ ★  
**REBELLION  
BOURBON**

*When cheap spirits become common, rebellion becomes duty.*

This quote loosely references the words spoken by Benjamin Franklin during British oppression in the United States. Today, the rebellious spirit thrives as hand-crafted, American artisanal spirits are category game changers and continue to carve out a significant place in the minds of spirits enthusiasts searching for a new consumption experience. So stop drinking sub-par bourbons. Start the Rebellion!

Opici Wines has partnered with a family owned and operated distillery in Bardstown, Kentucky. Together, they are distilling small-batch, top quality Bourbon. For bourbon lovers worldwide, Rebellion Bourbon represents superior quality for great value in a unique package. This smooth and versatile bourbon can be enjoyed neat or on the rocks and mixes well with a variety of cocktail ingredients.

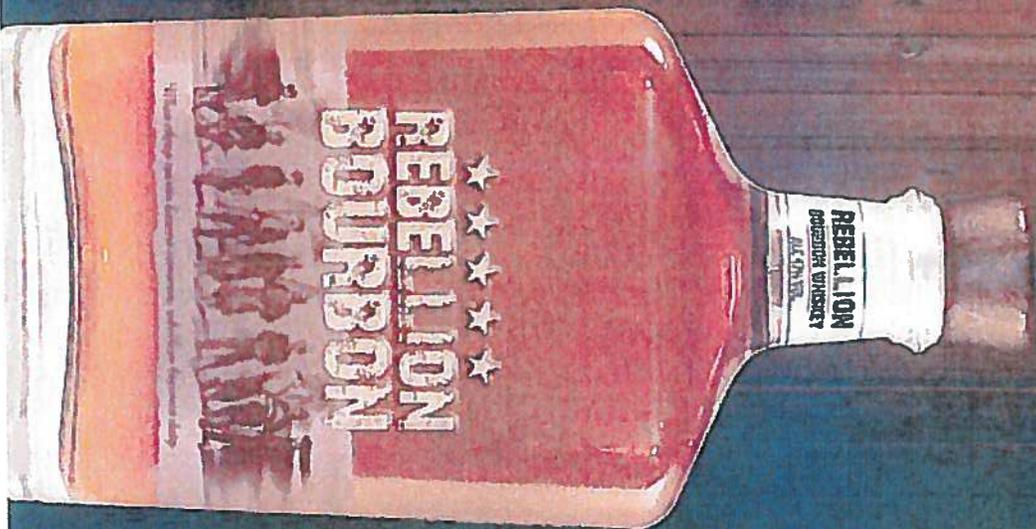


★★★★★  
REBELLION  
BOURBON

# STARTE REBELLION

*When cheap spirals become common, rebellion becomes duty.*

History has a way of repeating itself. And when you're presented with conditions that can no longer be tolerated, it's not only your right but your duty to stand up and do something about it. So stop drinking sub-par bourbons. Start the rebellion!



★ ★ ★ ★ ★  
**REBELLION  
 BOURBON**

**PRODUCTION:**

Hand-crafted by a 5th generation Master Distiller in Bardstown, Kentucky – the bourbon capital of the world. A mash bill of 70-72% corn and 28-30% small grains, such as rye and barley, are distilled in a copper still. Rebellion Bourbon is aged 6 years in oak, achieving 94 proof. This small batch bourbon produced in limited quantities of about 5,500 bottles is hand bottled, labeled, and numbered.



**REBELLION BOURBON**

Distinct flavors of ripe red cherries are complemented by sweet notes of vanilla and honey. Toasted nuts and dried apricots mark the finish.

**UNIQUE SELLING POINTS:**

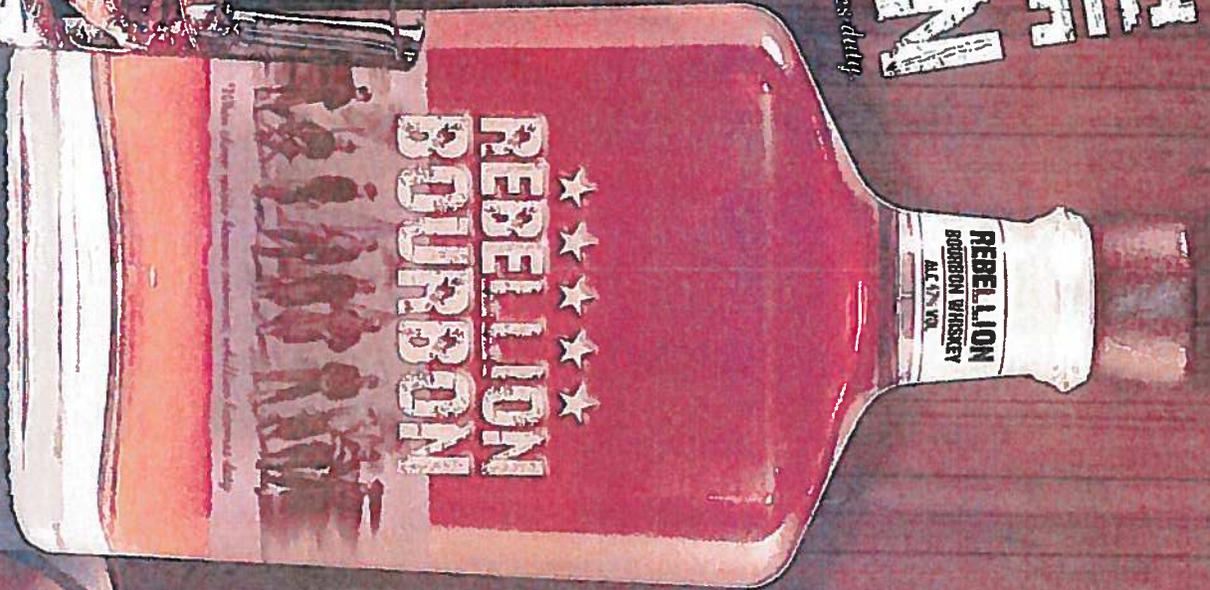
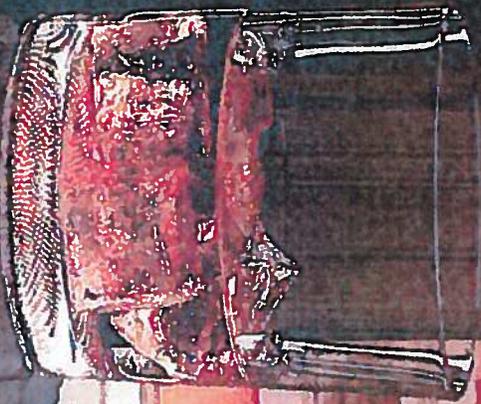
- Limited-production, small batch bourbon, hand bottled, labeled and numbered
- Distilled and bottled in Bardstown, Kentucky by a 5th generation Master Distiller
- Premium packaging consisting of an alluring proprietary bottle with a striking beveled metallic gold logo, interior back label illustration made of birch paper, and a colorful outer shipper

**START  
 REBELLION**  
*'When cheap spirits became common, rebellion becomes duty'*



# THE STREET REBELLION

*When cheap spirits became common, rebellion becomes duty.*



MARKSAP'S  
SPIRITS

Home > Rebellion Bourbon

### CATEGORIES

- [Engraved Bottles](#)
- [Liquor Gifts & Gift Sets](#)
- [Bourbon Gifts](#)
- [Scotch & Whiskey Gifts](#)
- [Vodka](#)
- [Gin](#)
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### Rebellion Bourbon

Price: \$55.00  
in stock

[Add Review](#)

Bottle Size: 750ml  
Country Of Origin: U.S.

If you're going to enjoy a great bourbon then... be a **R WITH** a cause!

This bold and pronounced bourbon comes into the spirit's fray in fine fashion. Rebellion Bourbon sports strong flavors of cherries and notes of honey on the palate with a nut and apricot finish. Each bottle is hand crafted, numbered and labeled.

Aged 8 years in oak. This small batch bourbon is only available for a limited time.

For the rebel in your life; gift them a rebellion bourbon!

Qty:

[Add to Wishlist](#)

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#### Additional Information

#### Shipping & Engraving

#### Rating and Reviews

Available in limited quantities

### More Bourbon Gifts



Makers Mark Bourbon



Breuckelen Distilling Company Wheat '77' Whiskey



Four Roses Small Batch Kentucky Straight Bourbon Whiskey



Orphan Barrel Black Bourbon



**CASKERS**  
DISCOVER CRAFT SPIRITS

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## Rebellion Bourbon Whiskey

Aged for a minimum of six years, each bottle of Rebellion Kentucky Straight Bourbon Whiskey is numbered and bottled by hand.

In stock

~~\$42.99~~ Retail Price

\$39.99



Add to cart



Sale ends in 14 days



### Product Information

Size: 750ml

Proof: 94 (47% ABV)

Availability: This product is not available in AL, AK, AR, DE, FL, HI, IA, KS, MA, MN, MD, MS, NH, PA, TX or UT.

Sold and shipped in New York by Andrew's Wine Cellar, Inc.

### Tasting Notes

Sweet notes of honey and caramel, which are followed by touches of oak and smoky spices. Long, smooth finish with notes of vanilla and butterscotch.

While the history of bourbon is not well documented, industry lore has it that a Baptist minister in Kentucky named Elijah Craig was the first person to distill bourbon and age it in charred, American oak casks. Craig's distillery, which was situated in Fayette County, Kentucky, was founded in 1791. Across the county line, another Kentucky pioneer named Jacob Spears is credited with being the first person to label his whiskey "bourbon." As America's fascination with whiskey grew during the 19th century, the United States Congress tasked "the appropriate agencies of the United States Government" to codify the definition of bourbon.

Today, federal regulations (27 C.F.R. 5) require that bourbon be made from a mashbill of at least 51% corn and aged in new, charred oak barrels before being bottled at a minimum of 80 proof. Bourbon that meets these requirements and that has been aged for a minimum of at least two years may be called straight bourbon.

Rebellion Bourbon is a Kentucky straight bourbon made from a mash of 70% corn, along with 30% rye and malted barley. After the grains are harvested, they are fermented and distilled in copper-pot stills. Then, the whiskey is aged in charred, American oak casks for a minimum of six years, before each cask is brought to proof and bottled by hand.

Rebellion Bourbon has sweet notes of honey and caramel, which are followed by touches of oak and smoky spices, and ultimately lead to a long, smooth finish. Each batch of Rebellion produces approximately 5,000 bottles of bourbon, and each bottle is numbered by hand.

When cheap spirits become common, rebellion becomes your duty. Try a bottle of Rebellion Bourbon today!

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[Who are H.J.G. Liquors, Inc., Andrew's Wine Cellar, Inc., and Gramercy Wine Country, Inc.?](#)

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## Rebellion Bourbon NV



There are currently no submitted critic scores.

+ WINE CRITIC

Do you love Kentucky Bourbon Distillers? Follow them to show your support. Why?

+ FOLLOW WINERY

Avg Price: \$40.00

De Wine Spot  
New York NY (1,300 nt)

\$40.00  
750ml [Buy Now](#)



0 reviews

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List It

Edit

Winery: Kentucky Bourbon Distillers

Region: USA » Kentucky

Vintages

NV

Add a vintage

Winery's Notes:

Rebellion Bourbon a 6 year old, 94 proof Bourbon distilled in a copper still and aged in oak from a mash bill of 70% ...

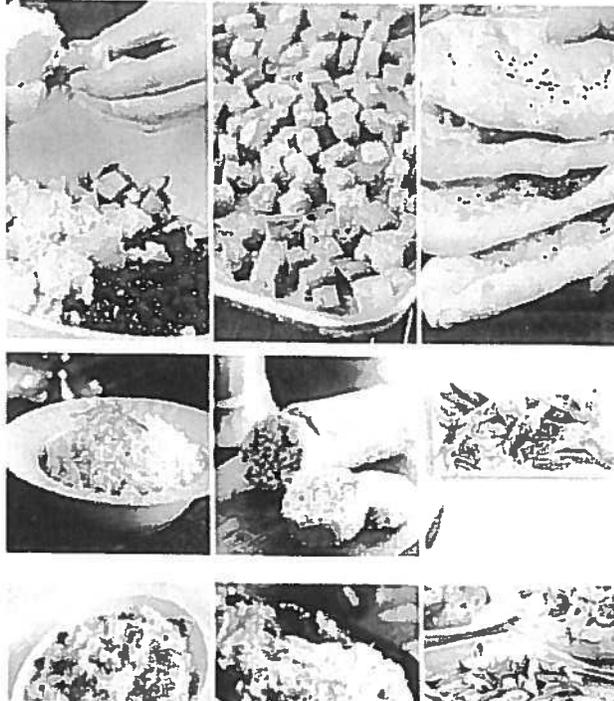
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Add a price

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Pivot

### FOOD PAIRINGS FOR REBELLION BOURBON



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ADVERTISING

-DISCOVER-

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OMB No. 1513-0020 (07/31/2015)

<b>FOR TTB USE ONLY</b>		<b>DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL</b> <small>(See Instructions and Paperwork Reduction Act Notice on Back)</small>	
TTB ID 13060001000182			
1. REP. ID. NO. (If any)	CT 141	OR 22	
<b>PART I - APPLICATION</b>			
2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) DSP-KY-78	3. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported	8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON LABEL (Required)  KENTUCKY BOURBON DISTILLERS, LTD 1869 LORETTO RD  BARDSTOWN KY 40004  MARKET STREET SPIRITS (Used on label)	
4. SERIAL NUMBER (Required) 130002	5. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input checked="" type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGE		
6. BRAND NAME (Required) REBELLION		8a. MAILING ADDRESS, IF DIFFERENT	
7. FANCIFUL NAME (If any)			
9. EMAIL ADDRESS DREW@WILLETTDISTILLERY.COM	10. GRAPE VARIETAL(S) (If any)	11. FORMULA	18. TYPE OF APPLICATION (Check applicable box(es))  a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL  b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation.)  c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL. TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount)  d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID. NO. _____
12. NET CONTENTS 750 MILLILITERS	13. ALCOHOL CONTENT 47	14. WINE APPELLATION IF ON LABEL	
15. WINE VINTAGE DATE IF ON LABEL	16. PHONE NUMBER (502) 348-0081	17. FAX NUMBER (502) 348-5539	
19. SHOW ANY INFORMATION THAT IS BLOWN, BRANDED, OR EMBOSSED ON THE CONTAINER (e.g., net contents) ONLY IF IT DOES NOT APPEAR ON THE LABELS AFFIXED BELOW. ALSO, SHOW TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS			
<b>PART II - APPLICANT'S CERTIFICATION</b>			
Under the penalties of perjury, I declare; that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.			
20. DATE OF APPLICATION 03/01/2013	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT (Application was e-filed)		22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT EVEN KULSVEEN

PART III - TTB CERTIFICATE	
This certificate is issued subject to applicable laws, regulations and conditions as set forth in the Instructions portion of this form.	
23. DATE ISSUED 04/11/2013	24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  <i>Sarah L. Johnson</i>

FOR TTB USE ONLY	
<b>QUALIFICATIONS</b> TTB has not reviewed this label for type size, characters per inch or contrasting background. The responsible industry member must continue to ensure that the mandatory information on the actual labels is displayed in the correct type size, number of characters per inch, and on a contrasting background in accordance with the TTB labeling regulations, 27 CFR parts 4, 5, 7, and 16, as applicable.	<b>EXPIRATION DATE (if any)</b>
<b>STATUS</b> THE STATUS IS SURRENDERED.	
<b>CLASS/TYPE DESCRIPTION</b> BOURBON WHISKY	

AFFIX COMPLETE SET OF LABELS BELOW

Image Type:

Back

Actual Dimensions: 4.5 inches W X 1.86 inches H

★★★ **REBELLION BOURBON** ★★★

*History has a way of repeating itself. And when you're presented with conditions that can no longer be tolerated, it's not only your right but your duty to stand up and do something about it. So stop drinking sub-par bourbons. Start the rebellion!*

DISTILLED IN KENTUCKY. BOTTLED BY MARKET STREET SPIRITS, BARDSTOWN, KY  
ALC. 47% BY VOL. (94 PROOF) 750 ML

**GOVERNMENT WARNING:** (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.



Image Type:

Back

Actual Dimensions: 4.5 inches W X 1.86 inches H

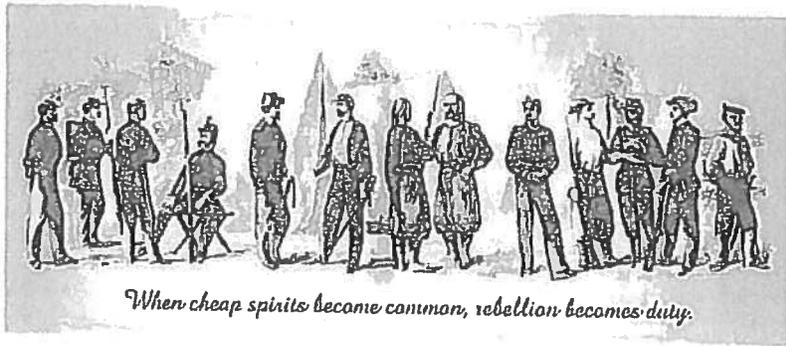


Image Type:

Other

Actual Dimensions: 2.63 inches W X .64 inches H

750mL 47%ALC/VOL	Batch No.	Bottle No.

Image Type:

Other

Actual Dimensions: 2.63 inches W X .64 inches H



Image Type:

Brand (front)

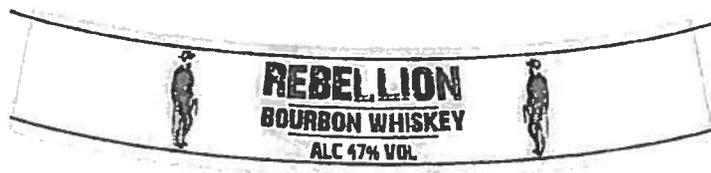
Actual Dimensions: 3.45 inches W X 1.90 inches H

★ ★ ★ ★ ★  
**REBELLION**  
**BOURBON**

Image Type:

Neck

Actual Dimensions: 4.01 inches W X .95 inches H



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TTB F 5100.31 (7/2012) PREVIOUS EDITIONS ARE OBSOLETE

OMB No. 1513-0020 (07/31/2015)

<b>FOR TTB USE ONLY</b>		<b>DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL</b> <small>(See Instructions and Paperwork Reduction Act Notice on Back)</small>	
TTB ID 14024001000096			
1. REP. ID. NO. (If any)	CT 493	OR 7T	
<b>PART I - APPLICATION</b>			
2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) NY-I-15235		3. SOURCE OF PRODUCT (Required) <input type="checkbox"/> Domestic <input checked="" type="checkbox"/> Imported	
4. SERIAL NUMBER (Required) 140007		5. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input checked="" type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGE	
6. BRAND NAME (Required) REBELLION		8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON LABEL (Required)  DUNDEE FOODS, LLC 1050 LEE RD  ROCHESTER NY 14606  MARKET STREET SPIRITS (Used on label)	
7. FANCIFUL NAME (If any)		8a. MAILING ADDRESS, IF DIFFERENT	
9. EMAIL ADDRESS JOEF@LIDESTRIFOODS.COM		10. GRAPE VARIETAL (S) (If any)	
12. NET CONTENTS 750 MILLILITERS		11. FORMULA	
13. ALCOHOL CONTENT 40		14. WINE APPELLATION IF ON LABEL	
15. WINE VINTAGE DATE IF ON LABEL		16. PHONE NUMBER (585) 270-2424	
		17. FAX NUMBER (585) 388-6788	
18. TYPE OF APPLICATION (Check applicable box(es)) a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation.) c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount) d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID. NO. _____			
19. SHOW ANY INFORMATION THAT IS BLOWN, BRANDED, OR EMBOSSED ON THE CONTAINER (e.g., net contents) ONLY IF IT DOES NOT APPEAR ON THE LABELS AFFIXED BELOW. ALSO, SHOW TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS.			
<b>PART II - APPLICANT'S CERTIFICATION</b>			
Under the penalties of perjury, I declare; that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.			
20. DATE OF APPLICATION 01/24/2014	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT (Application was e-filed)		22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT JOE FERRIGNO
<b>PART III - TTB CERTIFICATE</b>			

This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.

<p>23. DATE ISSUED 03/07/2014</p>	<p>24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU <i>Sarah L. Johnson</i></p>
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<p><b>QUALIFICATIONS</b> TTB has not reviewed this label for type size, characters per inch or contrasting background. The responsible industry member must continue to ensure that the mandatory information on the actual labels is displayed in the correct type size, number of characters per inch, and on a contrasting background in accordance with the TTB labeling regulations, 27 CFR parts 4, 5, 7, and 16, as applicable.</p> <p><b>STATUS</b> THE STATUS IS APPROVED.</p> <p><b>CLASS/TYPE DESCRIPTION</b> OTHER RUM GOLD FB</p>	<p><b>EXPIRATION DATE (if any)</b></p>

AFFIX COMPLETE SET OF LABELS BELOW

Image Type:

Brand (front)

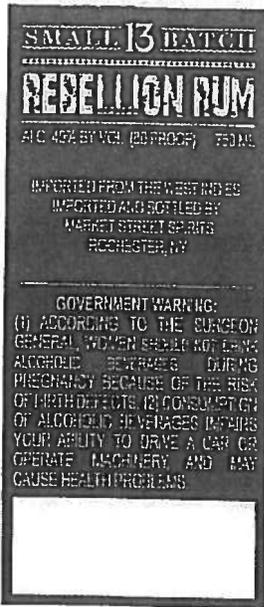
Actual Dimensions: 3.5 inches W X 2.27 inches H



Image Type:

Back

Actual Dimensions: 1.5 inches W X 3.38 inches H



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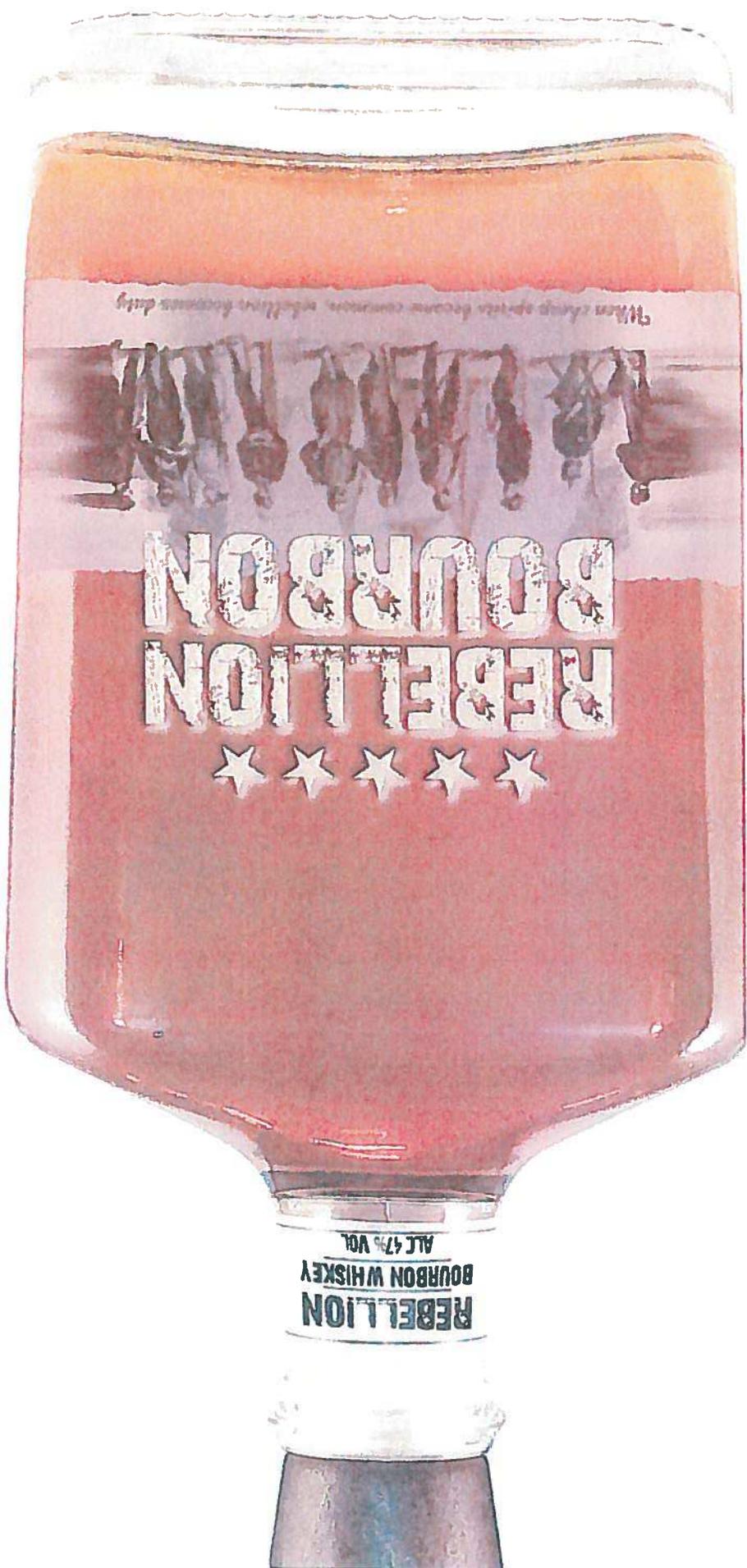
LUXCO, INC.,	)	
	)	
Petitioner/Counter Registrant,	)	
	)	
v.	)	Cancellation No. 92/058,411
	)	
OPICI IP HOLDINGS, LLC	)	
	)	
Registrant/Counter Petitioner.	)	

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**Supplemental Representative Documents Responsive to  
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**BOTTLE**



When cheap spirits become common, rebellion becomes duty



REBELLION  
BOURBON



REBELLION  
BOURBON WHISKEY  
ALC 47% VOL

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

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

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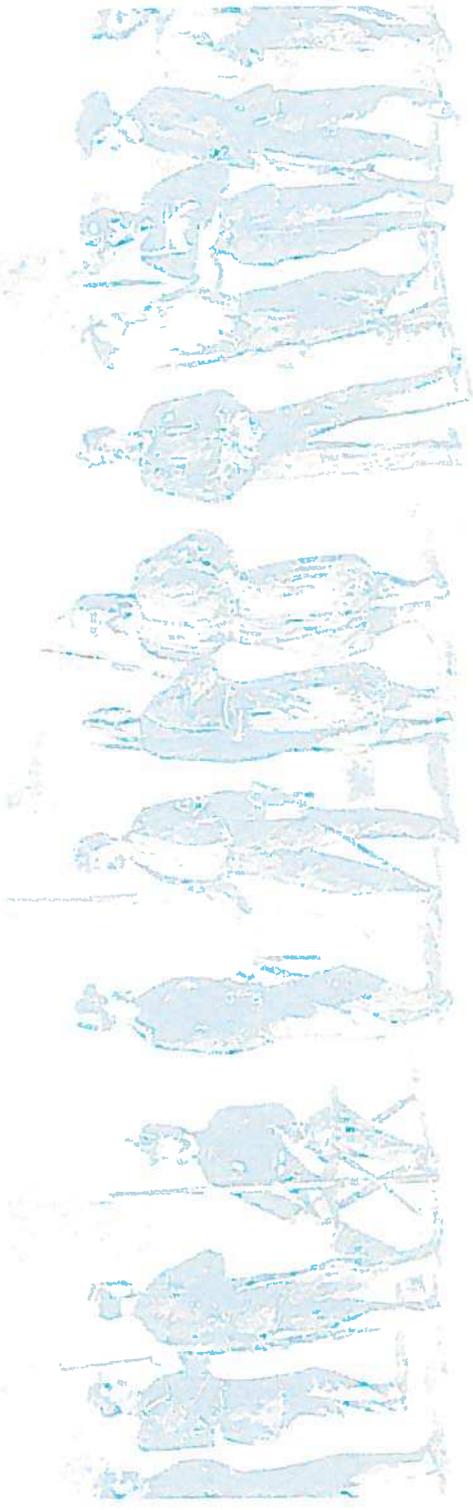
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**LABEL**



# REBELS FOR LION NON



*'When cheap spirits become common, rebellion becomes duty.'*

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

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

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**Representative Documents Responsive to  
Request for Production Nos. 12, 13 and 22**

**SHIPPER**

REBELLION BOURBON

REBELLION BOURBON



**REBELLION  
BOURBON**

6 x 750mL 47% VOL. (94 PROOF)



**REBELLION  
BOURBON**

REBELLION BOURBON

REBELLION BOURBON

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

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

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**Supplemental Representative Documents Responsive to  
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**LOGO**



**REBELLION**

**BOURBON**

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

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

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**Supplemental Representative Documents Responsive to  
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**SHELF TALKER (WINE ENTHUSIAST)**

★★★★★  
**REBELLION  
BOURBON**

*History has a way of repeating itself. And when you're presented with conditions that can no longer be tolerated, it's not only your right but your duty to stand up and do something about it. So stop drinking sub-par bourbons. Start the rebellion!*

**WINE ENTHUSIAST.**

*"Look for bold, beautiful caramel aromatics, with a hint of dried apricot. It feels soft on the palate, finishing with vanilla, brown sugar, clove and cinnamon."*

41% BY VOL. (84 PROOF) 750 ML PLEASE DRINK RESPONSIBLY



★★★★★  
**REBELLION  
BOURBON**

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BOURBON**

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41% BY VOL. (84 PROOF) 750 ML PLEASE DRINK RESPONSIBLY



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

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

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**Supplemental Representative Documents Responsive to  
Request for Production Nos. 9, 18, and 22**

**MEDIA LIBRARY  
SHELF TALKER (GENERIC)**

★★★★★  
**REBELLION  
BOURBON**

*History has a way of repeating itself. And when you're presented with conditions that can no longer be tolerated, it's not only your right but your duty to stand up and do something about it. So stop drinking sub-par bourbons. Start the rebellion!*

*"Ripe red cherries, hints of vanilla and toasted grains in a complex, fleshy palate"*

- ★ 940 cases per batch 6 year old, 94 proof
- ★ Distilled & bottled in Bardstown, Kentucky
- ★ Hand Bottled, Labeled & Numbered

41% BY VOL. (84 PROOF) 750 ML PLEASE DRINK RESPONSIBLY

★★★★★  
**REBELLION  
BOURBON**

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41% BY VOL. (84 PROOF) 750 ML PLEASE DRINK RESPONSIBLY

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

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

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**Supplemental Representative Documents Responsive to  
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**BRAND KIT**

★ ★ ★ ★ ★  
**REBELLION  
BOURBON**

*When cheap spirits become common, rebellion becomes duty.*

This quote loosely references the words spoken by Benjamin Franklin during British oppression in the United States. Today, the rebellious spirit thrives as hand-crafted, American artisanal spirits are category game changers and continue to carve out a significant place in the minds of spirits enthusiasts searching for a new consumption experience. So stop drinking sub-par bourbons. Start the Rebellion!

Opici Wines has partnered with a family owned and operated distillery in Bardstown, Kentucky. Together, they are distilling small-batch, top quality Bourbon. For bourbon lovers worldwide, Rebellion Bourbon represents superior quality for great value in a unique package. This smooth and versatile bourbon can be enjoyed neat or on the rocks and mixes well with a variety of cocktail ingredients.



★ ★ ★ ★ ★  
**REBELLION  
 BOURBON**

**PRODUCTION:**

Hand-crafted by a 5th generation Master Distiller in Bardstown, Kentucky – the bourbon capital of the world. A mash bill of 70-72% corn and 28-30% small grains, such as rye and barley, are distilled in a copper still. Rebellion Bourbon is aged 6 years in oak, achieving 94 proof. This small batch bourbon produced in limited quantities of about 5,500 bottles is hand bottled, labeled, and numbered.



**REBELLION BOURBON**

Distinct flavors of ripe red cherries are complemented by sweet notes of vanilla and honey. Toasted nuts and dried apricots mark the finish.

**UNIQUE SELLING POINTS:**

- Limited-production, small batch bourbon, hand bottled, labeled and numbered
- Distilled and bottled in Bardstown, Kentucky by a 5th generation Master Distiller
- Premium packaging consisting of an alluring proprietary bottle with a striking beveled metallic gold logo, interior back label illustration made of birch paper, and a colorful outer shipper

**START THE  
 REBELLION**  
*When cheap spirits become common, rebellion becomes duty*



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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**Supplemental Representative Documents Responsive to  
Request for Production Nos. 9, 18, and 22**

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**FACT SHEET**

# Rebellion

## Bourbon

---

Using traditional methods, Rebellion Bourbon is hand-crafted by Master Distillers to provide spirits enthusiasts with a smooth and versatile artisanal bourbon that can be enjoyed neat or on the rocks and that mixes well with a variety of cocktail ingredients. For bourbon lovers worldwide, Rebellion Bourbon represents superior quality for great value in a unique package whose stars will shine from the shelf.

### Mash Bill:

70-72% Corn  
20-23% Small Grains of Rye & Barley

### Proof:

94

### Age:

6 years

### Origin:

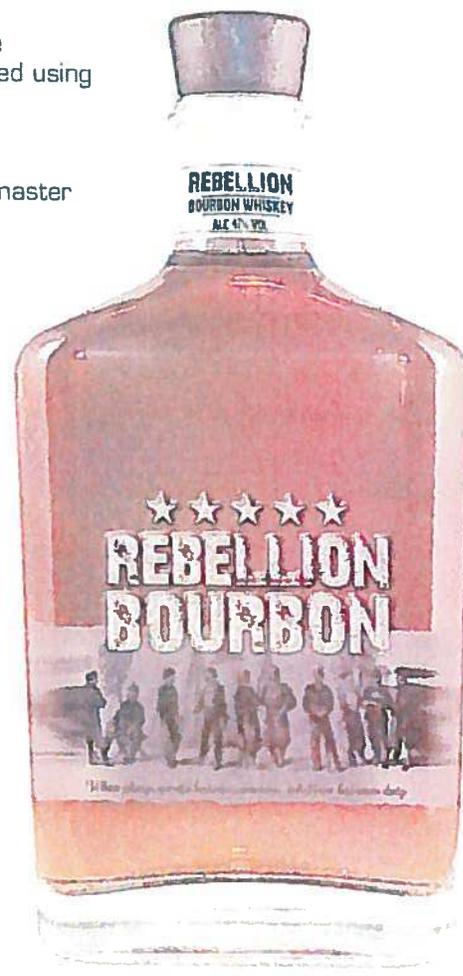
Distilled and bottled in Bardstown, Kentucky - the bourbon capital of the world. Each limited-production small batch is hand-labeled and numbered using significant dates that commemorate Opici's history.

### Distillation Process:

Using a traditional copper still, Rebellion Bourbon is hand-crafted by a master distiller and aged for 6 years in oak.

### Tasting Notes:

Rich in color and flavor. A soft and sweet mouthfeel with distinct flavors of ripe red cherries, hints of vanilla, honey, and syrup is offset by a complex, fleshy palate. Nuts, dried apricots, and toasted grains combine in a broad, sweet finish.



OPICI WINES  
25 Ce BOER DRIVE GLEN ROCK NJ  
201.689.3256  
[WWW.OPICIWINES.COM](http://WWW.OPICIWINES.COM)



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.	)	

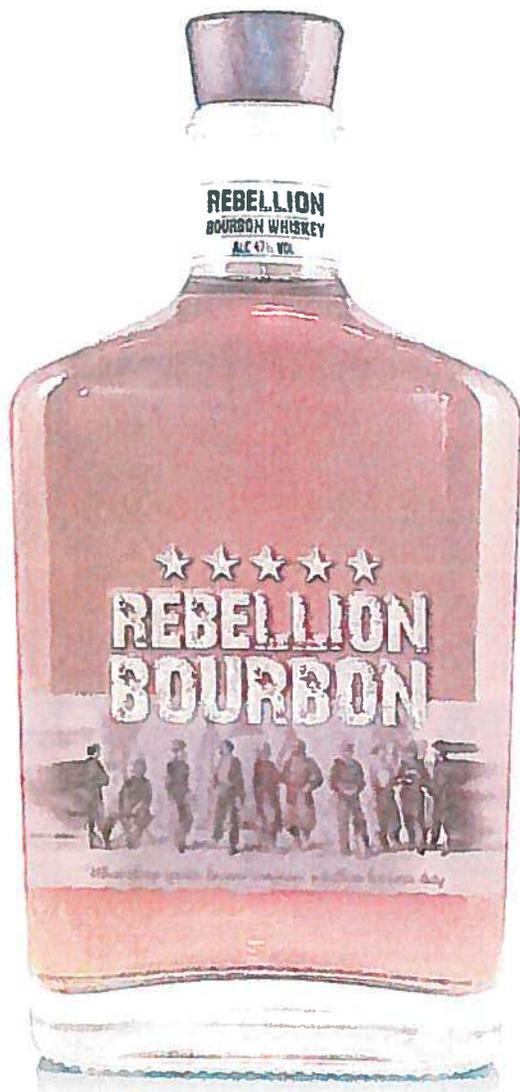
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**Supplemental Representative Documents Responsive to  
Request for Production Nos. 9, 18, and 22**

**MEDIA LIBRARY**

**RATINGS/REVIEWS WINE ENTHUSIAST**

# WINEENTHUSIAST®



**87 Points**

## **Rebellion Bourbon**

Look for bold, beautiful caramel aromatics, with a hint of dried apricot. It feels soft on the palate, finishing with vanilla, brown sugar, clove and cinnamon.

- September 2014



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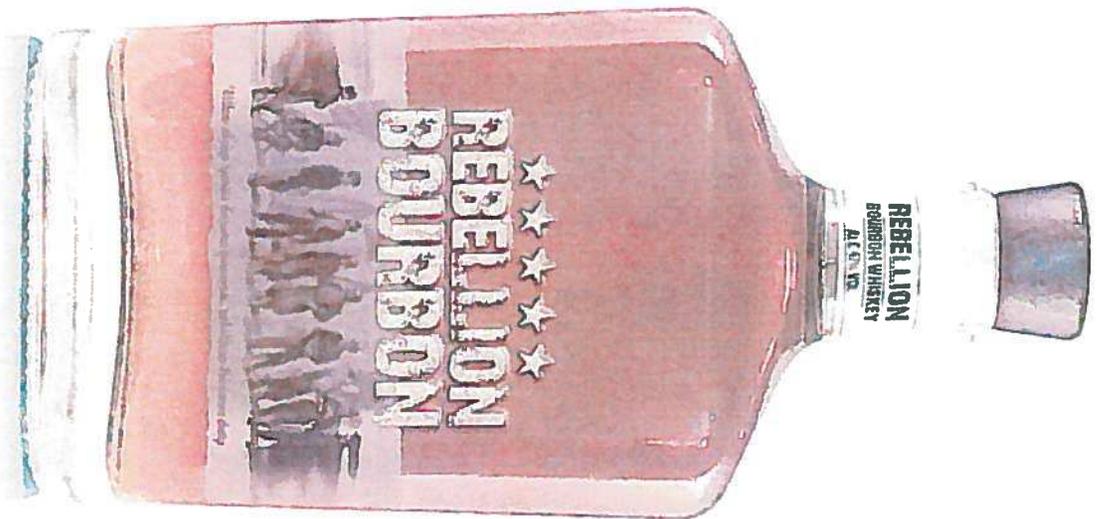
LUXCO, INC.,	)	
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**Supplemental Representative Documents Responsive to  
Request for Production Nos. 9, 18, and 22**

**MEDIA LIBRARY**

**RATINGS/REVIEWS CRAFT SPIRITS AWARDS 2014**



# Silver Medal Rebellion Bourbon



OPICI WINES  
211 DE BOER DRIVE GLEN ROCK, NJ  
201 689 3256  
[WWW.OPICIWINES.COM](http://WWW.OPICIWINES.COM)



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Registrant/Counter Petitioner.	)	

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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 7**

## J. Rannells

---

**From:** J. Rannells  
**Sent:** Friday, September 26, 2014 12:32 PM  
**To:** 'Gilfoil, Andy'; Annis, Michael  
**Cc:** Steve Baker; K. Hnasko; Smith, Celeste; Nemes, Alan; Jason L. DeFrancesco  
**Subject:** RE: Luxco v Opici 92058411 Initial Disclosures  
**Attachments:** Privilege Log rev. 9-26-14.pdf

Andy:

I believe it would probably constitute malpractice for an attorney conducting a clearance search for an alcoholic beverage not to consult the TTB label approval database.

Since you are aware of the ZIM's vodka product and the fact that it is being sold in the U.S., you must also know that "The Rebel Spirits Group" appears on the label, as well as their website address, namely "therebelspiritsgroup.com."

It is our position that the investigation and collection of documents showing third party use, registration and the like constitutes attorney work product. We are under no obligation to conduct research for Luxco. It is also our position that documents collected after the commencement of the proceeding do not need to be included in the Privilege Log. Opici's initial disclosures list general types of documents that Opici intends to "use to support its claims or defenses."

Finally, and as previously advised, none of the informal search results that formed the basis of our client's counterclaims were not downloaded or saved. Accordingly we have no such documents to produce or to identify on a privilege log. Privilege emails concerning the same are listed in Opici's Privilege Log. Attached hereto is a revised Privilege Log.

Jack

---

**From:** Gilfoil, Andy [mailto:Andy.Gilfoil@huschblackwell.com]  
**Sent:** Friday, September 26, 2014 11:49 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,

Regarding your comments relating to Luxco's document requests, Rebel Spirits Group appears to produce a single product branded as "ZIM's vodka." COLA approvals are also nothing more than a perfunctory requirement to legally sell alcohol in the United States and are not evidence of actual use. As such, neither of these encompass documents relating to "uses by third parties of products bearing the term REBEL and variations thereof," which Opici states it has within Opici's possession, custody or control.

Again, any of the document categories identified in Opici's initial disclosures should have already been produced in response to Luxco's production requests.

Andy

**Andrew R. Gilfoil**  
Attorney

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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LUXCO, INC.,	)	
	)	
Petitioner/Counter Registrant,	)	
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	)	
Registrant/Counter Petitioner.	)	

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

Given the nature of the emails, and out of precaution concerning the potential waiver of a privilege, Registrant contends that the following emails are protected by the attorney-client privilege, or the attorney work product doctrine, or litigation strategy privilege, and/or a common interest privilege.

Date	Type	Author	To	Subject	Privilege
------	------	--------	----	---------	-----------

12/10/13	Email	SP	SB CC: Don, Dina, SC	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to trademark application for REBELLION RUM mark (Responsive to RPD 3)	ACP
12/9/13	Email	SB	SP Cc: Don, Dina, SC	Confidential communication with client regarding legal advice and legal strategy - pertains to trademark application for REBELLION RUM mark (Responsive to RPD 3)	ACP
12/9/13	Email	SP	SB Cc: Don, Dina	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to trademark application for REBELLION RUM mark (Responsive to RPD 3)	ACP
10/10/13	Email	SB	Dina Cc: SP, KH	Confidential communication with client regarding legal advice and legal strategy - pertains to Opici awareness of Petitioner's	ACP

				mark and Opposer C&D letter, search concerning Opici's mark, third party uses and Petitioner's record before the TTAB (Responsive to RPD 17 / Rog 21, and RPDs 6 and 32-35)	
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	Confidential communication with client regarding legal advice and legal strategy - pertains to Opici awareness of Petitioner's mark, Opici adoption of REBELLION, informal search, and Opposer C&D letter (Responsive to RPDs 6, 7 and 17 / Rog 21)	ACP
6/26/12	Email	SP	SB	Confidential client communication with counsel regarding legal advice - pertains to Opici adoption of REBELLION (Responsive to RPD 7)	ACP
7/19/12	Email	Dina	SB, SP	Confidential client communication with counsel regarding legal advice - pertains to Opici adoption of REBELLION and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
7/2/12	Email	SB	Dina, SP	Confidential communication with client regarding legal advice and legal strategy - pertains to Opici adoption of REBELLION and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
6/27/12	Email	Dina	SB, SP	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to Opici adoption and development of REBELLION and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
6/26/12	Email	SB	SP Cc: Dina	Confidential communication with client regarding legal advice - pertains to Opici adoption of REBELLION and trademark application therefor (Responsive to RPDs	ACP

				3 and 7)	
9/30/13	Email	Dina	SB	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to Opici adoption and development of REBELLION and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
9/30/13	Email	SB	Dina	Confidential communication with client regarding legal advice and legal strategy - pertains to Opici adoption and development of REBELLION and trademark application therefor and search concerning Opici's mark (Responsive to RPDs 3, 6 and 7)	ACP
9/27/13	Email	Dina	SB Cc: SP, Don	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to third party use of REBELLION (Responsive to RPDs 34 and 35)	ACP
9/26/13	Email	Dina	SB	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to Opici adoption and development of REBELLION and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
7/29/13	Email	JB	Dina Cc: DC, SB, PC, SC	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD 3 )	ACP
7/30/13	Email	SB	Dina, SP, JB Cc: Don, SC, DC	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD 3 )	ACP
7/29/13	Email	SB	Dina, SP, JB Cc: Don, SC, SB	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD 3 )	ACP
7/29/13	Email	Dina	SB, SP, JB Cc: Don	Confidential client communication with counsel regarding legal advice - pertains	ACP

				to Opici adoption of REBELLION and trademark application therefor (Responsive to RPDs 3 and 7)	
7/29/13	Email	SB	SP, JB, Dina	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to Opici adoption of REBELLION and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
7/29/13	Email	SP	JB, SB Dina	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to Opici adoption and development of REBELLION and trademark application therefor as well as first use of REBELLION on spirits (Responsive to RPDs 1, 2, 3 and 7)	ACP
7/29/13	Email	JB	Dina, DC, SB, PC, SC	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION RUM mark (Responsive to RPD 3 )	ACP
7/19/13	Email	SP	SB Cc: SC, Dina, Don	Confidential client communication with counsel regarding legal advice - pertains to trademark ITU application for REBELLION RUM (Responsive to RPD 3)	ACP
7/19/13	Email	SB	Dina, Don Cc: SP, SC	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION RUM mark (Responsive to RPD 3 )	ACP
7/18/13	Email	Dina	SB, Don Cc: SP, SC	Confidential client communication with counsel regarding legal advice - pertains to trademark ITU application for REBELLION RUM (Responsive to RPD 3)	ACP
7/18/13	Email	SB	Don, Dina Cc: SP, SC	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION RUM mark (Responsive to RPD 3 )	ACP
5/31/13	Email	SP	SB	Confidential client communication with	ACP

			Cc: Dina	counsel regarding legal advice - pertains to trademark ITU application for REBELLION and first use (Responsive to RPDs 1, 2 and 3)	
3/29/13	Email	SB	Dina, SP, SC	Confidential communication with client regarding legal advice - pertains to first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark (Responsive to RPDs 1, 2, 3 and 7)	ACP
3/29/13	Email	Dina	SB, SP, SC	Confidential client communication with counsel regarding legal advice - pertains to first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark (Responsive to RPDs 1, 2, 3 and 7)	ACP
3/29/13	Email	SB	SP, SC Cc: Dina, KD	Confidential communication with client regarding legal advice - pertains to first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark (Responsive to RPDs 1, 2, 3 and 7)	ACP
2/15/13	Email	SP	SB, SC Cc: Dina	Confidential client communication with counsel regarding legal advice - pertains to first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark (Responsive to RPDs 1, 2, 3 and 7)	ACP
2/15/13	Email	SP	JB Cc: KW, PC, Dina	Confidential client communication with counsel regarding legal advice - pertains to first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark (Responsive to RPDs 1, 2, 3 and 7)	ACP
2/9/13	Email	JB	Dina, KD, PC	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD	ACP

				3)	
9/7/12	Email	SP	KW Cc: Dina, SB	Confidential client communication with counsel regarding legal advice - pertains to first use of the REBELLION mark, "adoption" of the REBELLION mark, and to trademark application for the REBELLION mark (Responsive to RPDs 1, 3 and 7)	ACP
9/7/12	Email	KW	SP Cc: Dina, SB	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD 3)	ACP
9/12/12	Email	SB	Dina Cc: SP	Confidential communication with client regarding legal advice and legal strategy - pertains to adoption of REBELLION, constructive use, trademark application for REBELLION and informal trademark search (Responsive to RPDs 3, 6 and 7)	ACP
9/9/12	Email	Dina	SB Cc: SP	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to first use of the REBELLION mark, adoption and development of the REBELLION mark, and to trademark application for the REBELLION mark (Responsive to RPDs 1, 2, 3 and 7)	ACP
9/6/12	Email	SB	Dina Cc: SP	Confidential communication with client regarding legal advice and legal strategy - pertains to adoption of REBELLION, constructive use, and trademark application for REBELLION (Responsive to RPDs 3 and 7)	ACP
7/2/12	Email	Dina	SB, SP	Confidential client communication with counsel regarding legal advice and legal strategy - pertains adoption and development of REBELLION, and trademark application for REBELLION (Responsive to RPDs 3 and 7)	ACP
6/26/12	Email	SB	SP Cc: Dina	Confidential communication with client regarding legal advice - pertains to adoption of REBELLION, first use, and trademark application for REBELLION	ACP

				(Responsive to RPDs 1, 2, 3 and 7)	
6/8/12	Email	SP	SB Cc: Dina	Confidential client communication with counsel regarding legal advice and legal strategy - pertains to adoption and development of REBELLION, and trademark application for REBELLION (Responsive to RPDs 1, 2, 3, 7 and 10)	ACP
7/20/10	Email/ Ltr	SB	SP	Confidential communication with client regarding legal advice – pertains to Opinion letter concerning registerability (Responsive to RPD 6)	ACP
7/20/10	Email	SP	SB	Confidential communication with client regarding legal advice – pertains to adoption of the REBELLION mark and to availability searches (Responsive to RPD 6 and 7)	ACP
7/27/10	Email	SP	SB	Confidential client communication with counsel regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD 3)	ACP
8/24/12	Email	Dina	SB Cc: SP	Confidential client communication with counsel regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD 3)	ACP
3/15/12	Email	Dina	SB, Don, SP Cc: KH	Confidential client communication with counsel regarding legal advice - pertains to adoption of the REBELLION mark and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
3/6/12	Email	JD	SP Cc: KW, PC	Confidential communication with client regarding legal advice - pertains to trademark application for the REBELLION mark (Responsive to RPD 3)	ACP
12/9/11	Email	SB	SP Cc: Don, LG, Dina, PC, KW	Confidential communication with client regarding legal advice and legal strategy – pertains to first/constructive date of use, adoption of the REBELLION and REBELLION RUM marks, and trademark applications therefor (Responsive to RPDs 3 and 7)	ACP

12/9/11	Email	SP	SB Cc: Don, LG, Dina	Confidential client communication with counsel regarding legal advice and legal strategy – pertains to adoption of the REBELLION and REBELLION RUM marks, and trademark applications therefor (Responsive to RPDs 1, 3 and 7)	ACP
10/11/11	Email	SP	SB	Confidential client communication with counsel regarding legal advice – pertains to adoption of REBELLION mark, and trademark application therefor (Responsive to RPDs 3 and 7)	ACP
10/11/11	Email	SB	SP	Confidential communication with client regarding legal advice – pertains to trademark applications for REBELLION and REBELLION RUM (Responsive to RPD 3)	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 – Prior employee - Opici

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

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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 8**

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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**REGISTRANT’S RESPONSES TO LUXCO INC.’S FIRST SET OF  
INTERROGATORIES TO REGISTRANT**

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

Preliminary Statement

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

General Objections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **INTERROGATORIES**

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

**ANSWER: National sales and marketing of alcoholic beverages**

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

**ANSWER: Bourbon**

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

**ANSWER: April 23, 2014; invoices demonstrating first sale**

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

**ANSWER: None**

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

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

**ANSWER:**

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

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

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

**ANSWER: Total to date: \$57,180.60**

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

**ANSWER: Use has never been interrupted.**

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

**ANSWER: Print media**

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

**ANSWER: All use inures to the benefit of Registrant.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ANSWER:** None at this time

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**AS TO OBJECTIONS:**

  
\_\_\_\_\_  
Stephen L. Baker  
BAKER AND RANNELLS PA  
Attorneys for Registrant

**AS TO RESPONSES:**

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

  
\_\_\_\_\_  
Don Opici

**CERTIFICATE OF SERVICE**

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

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

  
\_\_\_\_\_  
Stephen L. Baker

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

---

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

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**DECLARATION OF JOHN RANNELLS  
IN SUPPORT OF  
REGISTRANT'S RESPONSE AND OBJECTION  
TO PETITIONER'S MOTION TO COMPEL**

**EXHIBIT 9**

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

---

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

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**REGISTRANT’S AMENDED RESPONSES AND OBJECTIONS TO PETITIONER’S  
FIRST SET OF INTERROGATORIES TO REGISTRANT  
(i.e., to Interrogatories 23, 24, 26, 27 and 28)**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Registrant Opici IP Holdings, LLC (hereinafter, “Registrant”) hereby serves its amended responses and objections to Interrogatory Nos. 23, 24, 26, 27 and 28 of Petitioner Luxco, Inc’s (hereinafter, “Petitioner”) First Set of Interrogatories as follows:

**Preliminary Statement**

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Registrant at the present state of this proceeding.

Accordingly, Registrant reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

**General Objections**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **AMENDED RESPONSES**

**Interrogatory No. 23.** State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812. [Naked licensing]

**AMENDED ANSWER:**

Registrant relied upon the advice of counsel. Counsel conducted an informal search of USPTO database records, TTB database records, and a general Google Internet search all of which revealed numerous third party uses, registrations, applications and label approvals for alcoholic beverages under the term REBEL and variations thereof. The results were not downloaded or saved in any way. Counsel also conducted a search of TTAB database records concerning Petitioner and Petitioner's litigation efforts (or non-efforts as the case may be) before the TTAB. The results were not downloaded or saved in any way.

**Interrogatory No. 24.** State all facts that you relied on to support your contention in paragraph 27 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812. [Failure to Police]

**AMENDED ANSWER:**

Registrant relied upon the advice of counsel. Counsel conducted an informal search of USPTO database records, TTB database records, and a general Google Internet search all of which revealed numerous third party uses, registrations, applications and label approvals for alcoholic beverages under the term REBEL and variations thereof. The results were not downloaded or saved in any way. Counsel also conducted a search of TTAB database records concerning Petitioner and Petitioner's litigation efforts (or non-efforts as the case may be) before the TTAB. The results were not downloaded or saved in any way.

**Interrogatory No. 26.** State all facts that you relied on to support your contention [i.e., Affirmative Defense] that Luxco "is barred by the acquiescence and laches in that the respective marks of the parties coexisted with the knowledge of and without prior legal action from Petition," as stated in Registrant's second affirmative defense.

**AMENDED ANSWER:** (1) Luxco's failure to oppose Registrant's mark. (2) Use by Registrant of its mark since April 2013 and the seemingly obvious fact of co-existence since such time. As further non-privileged facts come to light during the course of the proceeding, they will be identified.

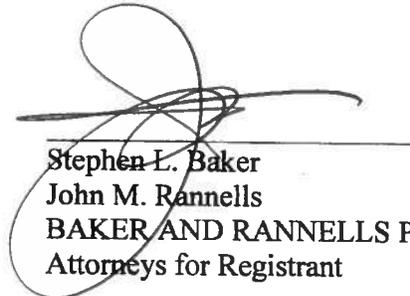
**Interrogatory No. 27.** State all facts that you relied on to support your contention that Luxco's "Petition for Cancellation is barred by the doctrine of waiver and estoppel," as stated in Registrant's third affirmative defense.

**AMENDED ANSWER:** (1) Luxco's failure to oppose Registrant's mark. (2) Use by Registrant of its mark since April 2013 and the seemingly obvious fact of co-existence since such time. As further non-privileged facts come to light during the course of the proceeding, they will be identified.

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

**AMENDED ANSWER:** As Petitioner's counsel was advised during the meet and confer, Registrant relied upon the advice of counsel. Counsel conducted an informal search of USPTO database records, TTB database records, and a general Google Internet search all of which revealed numerous third party uses, registrations, applications and label approvals for alcoholic beverages under the term REBEL and variations thereof. The results were not downloaded or saved in any way. Counsel also conducted a search of TTAB database records concerning Petitioner and Petitioner's litigation efforts (or non-efforts as the case may be) before the TTAB. The results were not downloaded or saved in any way.

**AS TO OBJECTIONS:**

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

**AS TO RESPONSES:**

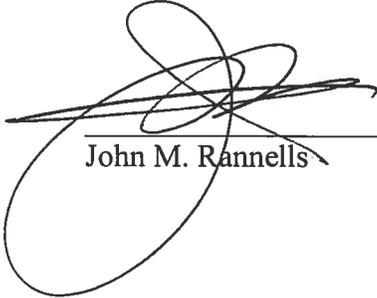
I, Don Opici, Manager of Opici IP Holdings, LLC, have reviewed the responses set forth above and declare this 25<sup>th</sup> day of September, 2014, that they are true and correct to the best of my knowledge and my review of corporate and division records.

  
Don Opici

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing AMENDED RESPONSES AND OBJECTIONS TO PETITIONER'S FIRST SET OF INTERROGATORIES (i.e., to Interrogatories 23, 24, 26, 27 and 28) has been served on Petitioner by first class mail this 1st day of October 2014:

Andrew R. Gilfoil, Esq.  
HUSCH BLACKWELL LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63108



John M. Rannells