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

Proceeding	92058638
Party	Plaintiff Lisa Alyn
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Submission	Motion to Extend
Filer's Name	Gregory D. Latham
Filer's e-mail	glatham@iplawconsulting.com
Signature	/Greg Latham/
Date	02/06/2015
Attachments	AlynCombinedMotionCompelExtendDiscoveryDeadline.pdf(42170 bytes) Exhibit 1 Combined Motion Compel Extend Discovery.pdf(338807 bytes) Exhibit 2 Combined Motion Compel Extend Discovery.pdf(83402 bytes) Exhibit 3 Combined Motion Compel Extend Discovery.pdf(60810 bytes) Email_Latham_Michels_Feb4_6.pdf(32020 bytes) Exhibit 5 Combined Motion Compel Extend Discovery.pdf(60016 bytes)

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

Lisa Alyn
Petitioner,

v.

Southern Land Company, LLC
Registrant.

Opposition No. 92058638

U.S. Trademark Reg. Nos. 3,101,151 and
3,101,151

**PETITIONER’S COMBINED MOTION TO COMPEL
AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Petitioner Lisa Alyn (“Ms. Alyn”) respectfully moves the Board for an order compelling Registrant Southern Land Company, LLC (“Southern Land”) to (i) provide for inspection documents identified in Southern Land’s responses to Ms. Alyn’s document requests; and, (ii) produce for deposition certain corporate employees and the appropriate corporate representatives pursuant to Rule 30(b)(6).

In addition, Petitioner requests an extension of the discovery period for the limited purpose of allowing Petitioner time to review Registrant’s documents made available for inspection and, if necessary, pursue follow-up discovery. Petitioner also asks that the testimony period be re-set to follow close of discovery.

Such an Order is appropriate because Registrant has failed entirely to make documents available for inspection and make its corporate representatives available for deposition. Counsel for Petitioner has made repeated good faith efforts to resolve the issues with Registrant’s counsel but, to date, such efforts have been unsuccessful.

I. BACKGROUND

On February 5, 2014, Petitioner filed a Petition for Cancellation of U.S. Reg. No. 3101151 for the word mark WESTHAVEN and U.S. Reg. No. 3101150 for the composite mark W WESTHAVEN. Petitioner asserts that Registrant obtained the registrations by fraud;

specifically, in response to inquiries by the trademark examining attorney, Registrant knowingly misrepresented that the term WESTHAVEN has no geographic significance when, in fact, it does. Had Registrant responded truthfully to the trademark examiner's inquiries regarding geographical significance, the registrations would have not issued. On February 6, 2014, the Board instituted this proceeding and set discovery to close on October 14, 2014.

On August 22, 2014, Petitioner served Registrant with Petitioner's First Set of Interrogatories and First Set of Document Requests. On September 22, 2014, Registrant served Petitioner with its responses to the discovery requests. In response to Petitioner's document requests, Registrant refused to provide copies of documents but rather stated that all responsive documents and things would be made available for inspection. (A copy of Registrant's Responses and Objections to Petitioner's First Set of Requests for Production of Documents is attached as Exhibit 1).

Days later, on October 1, 2014, Petitioner's counsel asked Registrant's counsel for "convenient dates/times to inspect the documents identified in Southern Land's discovery responses" and for "convenient date(s) to schedule" the Rule 30(b)(6) deposition of Southern Land as well as the individual depositions of Southern Land representatives Mary Lee Bennett and Tim Downey. *See* October 1, 2014 email from Gregory D. Latham to Randy Michels, attached as Exhibit 2.

On October 3, 2014, Petitioner's counsel again requested dates to inspect documents and conduct depositions. Registrant's counsel responded that (i) the Rule 30(b)(6) deposition could occur on October 6, 7 or 8, (ii) Mary Lee Bennett's individual deposition could occur on those same dates; and, (iii) Tim Downey's deposition could occur on October 13, 2014. In response, Petitioner's counsel asked that Registrant attempt to find a single day, or consecutive days, on which all depositions could occur so as to minimize travel costs. *See* email exchange between Mr. Latham and Mr. Michels, attached as Exhibit 3.

On October 6, 2014, Registrant filed a Motion to Compel. On October 7, 2014, Registrant's counsel refused to further cooperate in the scheduling of document inspection or

depositions; instead, Registrant's counsel took the position that the proceedings would be suspended on account of Registrant's motion to compel and that Registrant would be "happy to work with [Petitioner] to find dates once the Board rules on the motion to compel." *See* October 7-10, 2014, email exchange between Mr. Latham and Mr. Michels attached as Exhibit 4.

On February 4, 2015, the Board issued its decision denying in part, and granting in part, Registrant's compel motion. The Board reset the close of discovery for February 10, 2014.

The same day, February 4, 2015, Petitioner's counsel immediately contacted Registrant's counsel seeking consent to a brief discussion of the discovery deadline so that the unresolved issues of document inspection and depositions could be resolved. Registrant's counsel did not respond; on February 5, 2015, Petitioner's counsel again emailed Registrant's counsel regarding the unresolved discovery issues. In response, Registrant's counsel agreed to discuss the matter with Registrant. On February 6, 2015 – still not having received a substantive response from Registrant's counsel – Petitioner's counsel again emailed Registrant's counsel regarding an extension of the discovery deadline so that the open discovery issues could be resolved. On February 6, 2015, Registrant's counsel stated that Registrant "was reluctant to agree to a discovery extension." *See* February 4-6, 2015, email exchange between Mr. Latham and Mr. Michels, attached as Exhibit 5.

II. MOTION TO COMPEL AND EXTEND DISCOVERY

In accordance with Trademark Rule 2.120(e), Petitioner submits that she has made a good faith effort to resolve with Registrant the issues presented in this motion. Registrant, on the other hand, is clearly attempting to manipulate the timing of the Board's recent Order so as to avoid complying with its discovery obligations. Prior to the suspension of this matter in October, 2014, Registrant agreed to allow inspection of documents and produce representatives for deposition. Even after Registrant filed its motion to compel, Registrant's counsel stated that Registrant would be "happy to work with [Petitioner] to find dates once the Board rules on the motion to compel." Nonetheless, now, Registrant refuses to cooperate in any meaningful fashion to allow discovery to be completed.

Petitioner's document requests were timely submitted. Petitioner's request to inspect documents was timely made. Petitioner's requests to take depositions were timely submitted. Petitioner has not delayed in any fashion to undertake discovery. Petitioner has been diligent during the discovery period. Accordingly, Petitioner respectfully requests that the Board order Registrant to (i) make available for inspection the documents and things identified in Registrant's responses to Petitioner's discovery requests; and, (ii) make available for deposition pursuant to Rule 30(b)(6) a corporate representative(s); and, (iii) make available for deposition Mary Lee Bennett and Tim Downey.

Further, in accordance with Fed. R. Civ. P. 6(b), Petitioner hereby moves the Board for a thirty (30) day extension of the discovery period for the limited purpose of allowing Petitioner time to pursue follow-up discovery after Petitioner has reviewed Registrant's documents and deposed Registrant's representatives. It is requested that the thirty (30) day extension run from the last date of inspection of Registrant's documents or deposition of Registrant's representatives.

Petitioner does not seek this extension of time for purpose of delay.

III. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Board grant Petitioner's motion to compel and order Registrant to (i) make available for inspection the documents and things identified in Registrant's responses to Petitioner's discovery requests; and, (ii) make available for deposition pursuant to Rule 30(b)(6) a corporate representative(s); and, (iii) make available for deposition Mary Lee Bennett and Tim Downey. Petitioner also respectfully requests that the Board grant Petitioner's motion for an extension of the discovery period for the limited purpose of allowing Petitioner time to complete inspection of Registrant's documents and depositions of Registrant's representatives, and to pursue follow-up discovery if necessary. Petitioner requests that the testimony period be reset to follow close of discovery.

Respectfully submitted,

Dated: February 6, 2015

/Greg Latham/
Gregory D. Latham
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Attorney for Petitioner, Lisa Alyn

CERTIFICATE OF SERVICE

I certify that on this 6th day of February 2015, a true copy of the above Petitioner's Combined Motion to Compel and Motion to Extend Discovery and Trial Dates was served via e-mail and via First Class Mail on Respondent's counsel:

James R. Michels
Trust Tree Legal, P.C.
1321 Adams St.
NASHVILLE, TN 37208
UNITED STATES
randy@trust-tree.com

By: /Greg Latham/
Gregory D. Latham

Exhibit 1

Petitioner's Combined Motion to Compel
and Motion to Extend Discovery and Trial
Dates

Land Company, Southern Land Company reserves the right to supplement or amend its responses or objections.

3. Southern Land Company objects to each instruction, definition and request to the extent it purports to impose any requirement or discovery obligation on Southern Land Company greater or different from those imposed by the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedure, or any schedule or ruling that may be set forth by the Board, or other applicable rule or statute.

4. Southern Land Company objects to each instruction, definition and request to the extent it seeks documents and things protected from disclosure by the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity, including any applicable right of privacy.

5. Southern Land Company objects to terms and phrases defined or used by Petitioner to the extent those terms and/or phrases are vague and/or ambiguous or beyond their customary meaning. To the extent Southern Land Company adopts any terms or phrases defined or used by Petitioner, they are adopted solely for the sake of convenience in responding to these requests, and Southern Land Company does not accept or concede that any of the terms, phrases or definitions are appropriate, descriptive or accurate.

6. Southern Land Company objects to each instruction, definition and request to the extent they are overly broad and inconsistent with the applicable discovery rules by purporting to require Southern Land Company to search for and produce documents and/or things that are not in its possession, custody, or control. Southern Land Company's responses to these requests are limited to documents and things that are within its possession, custody, or control.

7. Southern Land Company objects to each request to the extent that it seeks production of publicly available documents that are equally available to Petitioner.

8. Southern Land Company objects to each request to the extent it is overbroad in that it seeks documents and things that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence relevant to the subject matter of this cancellation proceeding.

9. Southern Land Company objects to each request as overly broad and unduly burdensome to the extent it is unlimited in temporal scope or otherwise not limited to a timeframe relevant to this cancellation proceeding and the trademarks at issue.

10. Southern Land Company objects to each request to the extent it is unduly burdensome insofar as it may be construed to require Southern Land Company to recreate files or documents no longer in existence or to require Southern Land Company to make an unduly burdensome search for documents.

11. Southern Land Company objects to each request seeking “all documents” relating to or referring to a particular subject matter as overly broad and unduly burdensome, and as seeking documents or things which are not reasonably calculated to lead to the discovery of admissible evidence.

12. In addition to these General Objections, Southern Land Company has specific objections to certain definitions, instructions and document requests as set forth below. By stating these specific objections, Southern Land Company does not waive any of the general objections that may also be applicable to specific document requests.

13. By responding to each request, Southern Land Company does not concede the relevancy or materiality of the request or of the subject to which such request refers. Southern

Land Company's responses are made expressly subject to, and without waiving or intending to waive, any questions or objections to the competence, relevance, materiality, privilege or admissibility as evidence for any other purpose, of any of the documents referred to or produced or of the responses given herein, or of the subject matter thereof, in any proceeding (including the trial of this action or in any subsequent proceeding). The responses are made subject to Southern Land Company's right to object to any discovery proceedings involving or relating to the subject matter of the request responded to herein.

14. Southern Land Company's investigations are continuing and it reserves the right to amend or modify its responses to the requests. These responses are based on information presently known to Southern Land Company and are given without prejudice to Southern Land Company's right to produce evidence of any subsequently discovered documents or facts.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Southern Land Company objects to the defined term "Document" to the extent Petitioner seeks to broaden the definition of "documents" provided by the Federal Rules of Civil Procedure, to the extent Petitioner seeks documents no longer in the possession, custody or control of Southern Land Company, to the extent the definition seeks to include drafts or preliminary versions of documents which are neither relevant nor likely to lead to the discovery of admissible evidence, and to the extent Petitioner seeks information protected from disclosure by the attorney-client privilege, work product doctrine, or are otherwise immune from discovery.

2. Southern Land Company objects to the defined term "Communication" to the extent it is overly broad and renders the document requests unduly burdensome and not reasonably calculated to the discovery of admissible evidence.

3. Southern Land Company objects to the defined terms "Southern Land Company", "Southern Land", "Registrant", "You", or "Your" to the extent Petitioner seeks to include within

the penumbra of these definitions any person or entity that is not properly within Southern Land Company's control or any other person or entity that is not involved in and otherwise has no connection to this proceeding, rendering Petitioner's document requests overly broad, unduly burdensome, irrelevant, and not likely to lead to the discovery of admissible evidence. Southern Land Company further objects to these defined terms to the extent Petitioner seeks to include Southern Land Company's attorneys within the definition of the entity and when applied to Petitioner's discovery requests has the effect of seeking information in violation of the attorney client privilege or work product doctrine.

4. Southern Land Company objects to the defined terms "Lisa Alyn", "Ms. Alyn", or "Petitioner" to the extent they include the phrase "her agents, servants, employees, investigators, attorneys and all other persons or entities representing either her or acting on her behalf" as being vague, ambiguous and overly broad as Petitioner fails to identify or to give Southern Land Company notice of the identity of Petitioner's agents, servants, employees, investigators, attorneys and all other persons or entities representing either her or acting on her behalf.

5. Southern Land Company objects to Instruction No. 6 to the extent it seeks to attribute any meaning to the term "control" that exceeds or is inconsistent with the definition of that term ascribed under Rule 34 of the Federal Rules of Civil Procedure. Southern Land Company further objects to the extent Petitioner seeks documents and things protected from discovery by the attorney-client privilege or the work product doctrine.

6. Southern Land Company objects to Instruction No. 7 to the extent it exceeds or is otherwise inconsistent with the obligations of parties and their attorneys governing responses to discovery requests under the Federal Rules of Civil Procedure.

7. Southern Land Company objects to Instruction No. 8 to the extent it exceeds or is otherwise inconsistent with the requirements for responding to a request for production under Rule 34 of the Federal Rules of Civil Procedure.

RESPONSES AND SPECIFIC OBJECTIONS TO REQUESTS FOR PRODUCTION

REQUEST NO. 1: Produce any and all Documents that You may use to support any defense in this cancellation proceeding.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive. Southern Land Company also objects to this request to the extent it seeks documents that are already in Petitioner’s possession, custody or control.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents.

REQUEST NO. 2: Produce any and all Documents that You may use or rely on to support Your position that the WESTHAVEN Marks are not geographically descriptive with the meaning of the U.S. Trademark Act.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this

request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive. Southern Land Company also objects to this request to the extent it seeks documents that are already in Petitioner’s possession, custody or control. Southern Land Company further objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company’s U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents.

REQUEST NO. 3: Produce any and all Documents associated with and evidencing Your creation and development of the WESTHAVEN Marks. Your answer should include but is not limited to interoffice communications and communications with outside consultants, advisors or other professionals providing services such as marketing surveys, legal opinions and expert opinions.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the prosecution histories for the trademarks at issue.

REQUEST NO. 4: Produce any and all Documents evidencing Your knowledge of Westhaven, Connecticut and Your use of that knowledge in Your creation and development of the WESTHAVEN Marks.

RESPONSE: Southern Land Company has no documents responsive to this request.

REQUEST NO. 5: Produce any and all Documents that evidence Your decision to use the WESTHAVEN Marks including but not limited to interoffice communications and communications with outside consultants, advisors or other professionals providing services such as marketing services, legal opinions and expert opinions.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this

request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the prosecution histories for the trademarks at issue.

REQUEST NO. 6: Produce any and all documents related to any market research studies or survey You may have conducted or You authorized to be conducted regarding the term WESTHAVEN as a potential mark for Your use.

RESPONSE: Southern Land Company has no documents responsive to this request.

REQUEST NO. 7: Produce any and all Documents that evidence Your first use of the WESTHAVEN Marks.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the prosecution histories for the trademarks at issue.

REQUEST NO. 8: Produce any and all Documents that evidence Your decision to apply for U.S. trademark registrations for the WESTHAVEN Marks.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the prosecution histories for the trademarks at issue.

REQUEST NO. 9: Produce any and all Documents surrounding the United States Trademark application filings of the WESTHAVEN Marks including but not limited to any and all communications between You and the U.S. Patent and Trademark Office and its examiners about the geographical significance of the WESTHAVEN Marks.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the prosecution histories for the trademarks at issue.

REQUEST NO. 10: On January 5, 2004, two Office Actions were issued by the examiner from the U.S. Patent and Trademark Office one for each of Your U.S. trademark application serial nos. 76/524,401 and 76/524,137 with both stating “The applicant must indicate whether ‘WESTHAVEN’ has any significance in the relevant trade, or any geographical significance. 37 C.F.R. §2.61(b).”

On July 6, 2004, You submitted the following response to both Office Actions: “Applicant submits that ‘WESTHAVEN’ does not have any significance in the relevant trade, or any geographical significance.”

Produce any and all Documents that evidence Your decision to submit those July 6, 2004 responses to the January 5, 2004 Office Actions including but not limited to all interoffice communications and communications with outside individuals or entities that provided advice or guidance regarding the decision.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the prosecution histories for the trademarks at issue.

REQUEST NO. 11: Produce any and all documents relating to legal or non-legal opinions regarding the U.S. trademark applications and subsequent communications and proceedings leading up to the approval of the U.S. trademark registrations of the WESTHAVEN Marks.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company has no non-privileged documents responsive to this request.

REQUEST NO. 12: Produce any and all documents relating to any other marks You considered using instead of the WESTHAVEN Marks.

RESPONSE: Southern Land Company has no documents responsive to this request.

REQUEST NO. 13: Produce Documents evidencing Your annual expenditures on marketing, branding, advertising, and promoting the WESTHAVEN Marks from January 1, 2002 through July 31, 2014.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

REQUEST NO. 14: Produce illustrative samples of Your advertising using the WESTHAVEN Marks services since January 1, 2002.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company specifically objects to this request to the extent it seeks documents that are no longer in Southern Land Company's possession, custody, or control.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged documents responsive to this request to the extent they exist.

REQUEST NO. 15: Produce any Documents evidencing all Your sales using the WESTHAVEN Marks to offer your land development and real estate brokerage services since January 1, 2002.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the prosecution histories for the trademarks at issue.

REQUEST NO. 16: Produce any and all Documents including communications and correspondence that evidence the authorized use of the WESTHAVEN Marks by third-parties other than You.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

REQUEST NO. 17: Produce any and all agreements between You and any third-parties that you authorized to use or license the WESTHAVEN Marks, in any way, including but not limited to advertising, marketing, sublicensing, or promotionally.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed.

Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

REQUEST NO. 18: Produce any and all Documents including communications and correspondence that evidence Your knowledge of unauthorized use of the WESTHAVEN Marks by third-parties.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

REQUEST NO. 19: Produce any and all Documents that evidence Your demands to stop any third-party's unauthorized use of the WESTHAVEN Marks.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither

relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

REQUEST NO. 20: Produce any and all Documents that evidence Your protection of the WESTHAVEN Marks from unauthorized third-party users.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained

registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150.

REQUEST NO. 21: Produce any and all Documents that evidence a challenge to the WESTHAVEN Marks or any litigation against the validity of the WESTHAVEN Marks by a third-party.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request to the extent it seeks the production of documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine. In addition, Southern Land Company objects to this request on the ground that the phrase “all Documents” is unreasonably vague, general and overbroad and, as such, renders this request unduly burdensome and oppressive. Southern Land Company also objects to this request to the extent it seeks documents that are already in Petitioner’s possession, custody or control. Southern Land Company further objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company’s U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150. Southern Land Company also objects to

this request to the extent it seeks documents that are already in Petitioner's possession, custody or control.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents, namely the documents filed in this cancellation proceeding.

REQUEST NO. 22: Produce any and all Documents that You submitted to or filed with the City of Franklin or the City of Franklin Planning Commission related to the development of multi-residential projects, neighborhoods, communities, or homes including but not limited to site plans, permit applications, and zoning and zone change applications from January 1, 2001 through July 31, 2004.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request as unduly burdensome insofar as it may be construed to require Southern Land Company to produce documents no longer in existence.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents to the extent they exist.

REQUEST NO. 23: Produce any and all Documents that You submitted to or filed with the City of Franklin or the City of Franklin Planning Commission related to the development of commercial shopping centers or malls including but not limited to site plans, permit applications, and zoning and zone change applications from January 1, 2001 through July 31, 2004.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request as unduly burdensome insofar as it may be construed to require Southern Land Company to produce documents no longer in existence.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents to the extent they exist.

REQUEST NO. 24: Produce a document listing all of Your active and inactive employees and their contact information of record that worked for You from January 1, 2002 through present including any executives, directors, officers, managers or members of the limited liability company.

RESPONSE: In addition to the incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company objects to this request because it is neither relevant nor likely to lead to the discovery of admissible evidence. Petitioner is seeking to cancel the Class 36 services in Southern Land Company's U.S. Trademark Registration Nos. 3,101,151 and 3,101,150 on the ground that Southern Land Company fraudulently obtained registrations for these two classes. Fraud in procuring a trademark registration occurs only when an applicant knowingly makes a false, material representation with the intent to deceive the United States Patent and Trademark Office. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). The information sought by this request is neither relevant nor likely to lead to the discovery of admissible evidence that Southern Land Company fraudulently obtained registrations for the Class 36 services in its U.S. Trademark Registration Nos. 3,101,151 and 3,101,150. Southern Land Company objects to this request as unduly burdensome insofar as it

may be construed to require Southern Land Company to produce documents no longer in existence.

Subject to and without waiver of the foregoing specific objections and incorporated General Objections and Objections to Definitions and Instructions, Southern Land Company will permit inspection and copying of non-privileged, responsive documents to the extent they exist.

Respectfully submitted,

STITES & HARBISON, PLLC



James R. Michels
Mari-Elise Taube
STITES & HARBISON PLLC
401 Commerce Street, Suite 800
Nashville, TN 37219
Telephone: (615) 782-2234
Facsimile: (615) 742-7215
Email: randy.michels@stites.com
Email: mtaube@stites.com

*Counsel for Registrant,
Southern Land Company, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2014, a copy of Southern Land Company's Responses and Objections to Petitioner's First Set of Requests for Production was served on counsel for Petitioner, via email and first class mail, postage prepaid to:

Gregory D. Latham
Intellectual Property Consulting, LLC
201 St. Charles, Suite 2500
New Orleans, LA 70170
E-mail: glatham@iplawconsulting.com

Brandon Frank
Pailet & Ostendorf, LLP
650 Poydras Street, Suite 1470
New Orleans, Louisiana 70130
E-mail: brandon@proentertainmentlaw.com



Counsel for Registrant

Exhibit 2

Petitioner's Combined Motion to Compel
and Motion to Extend Discovery and Trial
Dates

Greg Latham

From: Greg Latham [glatham@iplawconsulting.com]
Sent: Wednesday, October 01, 2014 3:12 PM
To: 'Michels, James R.'; 'brandon@proentertainmentlaw.com'
Cc: 'Taube, Mari-Elise'
Subject: RE: Lisa Alyn v. Southern Land Company - Discovery Responses

Randy -- please provide us with convenient dates/times to inspect the documents identified in Southern Land's discovery responses. We presume that inspection will occur in Westhaven or Nashville. Brandon and/or I will be traveling for the document inspection. On the same trip, we would like to take the following depositions:

- 30(b)(6) deposition of Southern Land;
- deposition of Mary Lee Bennett
- deposition of Tim Downey

The depositions should be scheduled for the day following the document inspection. If we can start the depositions early, we should be able to conclude all three on the same day.

Please let us know of a convenient date(s) to scheduled these discovery matters.

Greg Latham
Intellectual Property Consulting
glatham@iplawconsulting.com
Phone: 504.322.7166
Fax: 504.322.7184

From: Michels, James R. [<mailto:randy.michels@stites.com>]
Sent: Monday, September 22, 2014 5:41 PM
To: Greg Latham; brandon@proentertainmentlaw.com
Cc: Taube, Mari-Elise
Subject: Lisa Alyn v. Southern Land Company - Discovery Responses

Attached you will find copies of Southern Land Company's discovery responses. Hard copies will follow via regular mail.

James ("Randy") Michels

Member
Direct: 615-782-2234
Fax: 615-742-7215
randy.michels@stites.com

STITES & HARBISON PLLC
401 Commerce Street, Suite 800, Nashville, TN 37219
[About Stites & Harbison](#) | [Bio](#) | [V-Card](#)

[LinkedIn](#) | [Twitter](#) | [Blog](#)

NOTICE: This message is intended only for the addressee and may contain information that is privileged, confidential and/or attorney work product. If you are not the intended recipient, do not read, copy, retain or forward this message or any attachment. Please notify the sender immediately and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission, constitutes a waiver of any applicable legal privilege. To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Exhibit 3

Petitioner's Combined Motion to Compel
and Motion to Extend Discovery and Trial
Dates

Greg Latham

Subject: FW: Lisa Alyn v. Southern Land Company - Discovery Responses

From: Michels, James R. [<mailto:randy.michels@stites.com>]
Sent: Friday, October 03, 2014 3:17 PM
To: Greg Latham
Cc: brandon@proentertainmentlaw.com; Taube, Mari-Elise
Subject: RE: Lisa Alyn v. Southern Land Company - Discovery Responses

Mary Lee Bennett is available October 6-8. She would likely be the 30(b)(6) representative as well.

Tim Downey has availability on the afternoon of October 13.

From: Michels, James R.
Sent: Friday, October 03, 2014 9:02 AM
To: Greg Latham
Cc: brandon@proentertainmentlaw.com; Taube, Mari-Elise
Subject: Re: Lisa Alyn v. Southern Land Company - Discovery Responses

Yes, I will get back to you later today.

James ("Randy") Michels
Stites & Harbison, PLLC
[401 Commerce Street, Suite 800](#)
[Nashville, Tennessee 37219](#)
Direct Dial: [\(615\) 782-2234](tel:(615)782-2234)
Direct Fax: [\(615\) 742-7215](tel:(615)742-7215)
Email: randy.michels@stites.com
Blog: www.trademarkologist.com

On Oct 3, 2014, at 8:53 AM, "Greg Latham" <glatham@iplawconsulting.com> wrote:

Randy -- can we hear from you today regarding dates for inspection of documents and depositions?
Thanks.

Greg Latham
Intellectual Property Consulting
glatham@iplawconsulting.com
Phone: 504.322.7166
Fax: 504.322.7184

Greg Latham

From: Randy Michels [Randy@trust-tree.com]
Sent: Friday, February 06, 2015 11:41 AM
To: Greg Latham
Cc: brandon@proentertainmentlaw.com
Subject: Re: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 92058638

Greg,

My client is reluctant to agree to your request for an extension before receiving a counteroffer from your client. Please let me know where we stand on that issue.

Randy

On 2/6/15, 11:28 AM, "Greg Latham" <glatham@iplawconsulting.com> wrote:

>Randy -- we need your input on this issue today. You will recall that
>you made several representations that your client and client's
>representatives would be made available for deposition after the motion
>to compel was resolved; you refused to go forward despite our requests.
>If Southern Land will not agree to extend the deadline to allow the
>parties to complete these tasks, we will file a motion to compel and a
>motion to extend the deadline attaching all of our prior
>communications. Obviously, we need to file that motion very soon.

>

> Please let us have your today.

>

> _____

>

>Greg Latham

>Intellectual Property Consulting

>glatham@iplawconsulting.com

>Phone: 504.322.7166

>Fax: 504.322.7184

>

>

>-----Original Message-----

>From: Randy Michels [<mailto:Randy@trust-tree.com>]

>Sent: Thursday, February 05, 2015 1:15 PM

>To: Greg Latham

>Cc: brandon@proentertainmentlaw.com

>Subject: Re: TTAB Order - Do Not Reply By E-mail. Mail Box Not

>Monitored - proceeding 92058638

>

>I will check with my client and get back to you.

>

>Is your client going to be making a settlement offer?

>

>Randy

>

>

>On 2/5/15, 12:29 PM, "Greg Latham" <glatham@iplawconsulting.com> wrote:

>

>>Randy -- please let us hear from you today regarding my email below.

>>

>>Greg

>>

>>

>>-----Original Message-----

>>From: Greg Latham [<mailto:glatham@iplawconsulting.com>]

>>Sent: Wednesday, February 04, 2015 4:18 PM

>>To: 'randy@trust-tree.com'

>>Cc: 'brandon@proentertainmentlaw.com'

>>Subject: FW: TTAB Order - Do Not Reply By E-mail. Mail Box Not

>>Monitored

>>- proceeding 92058638

>>

>>Randy -- the Board's Order on the motion to compel resets the
>>discovery deadline as February 10th -- less than one week. As you
>>will recall, prior to Southern Land's motion to compel, Ms. Alyn had
>>served discovery and noticed several depositions. It seems unlikely
>>we can complete those by February 10th.

>>

>> We suggest a 30 day extension of the deadlines established in
>today's

>>order. Any objection?

>>

>>_____

>>

>>Greg Latham

>>Intellectual Property Consulting

>>glatham@iplawconsulting.com

>>Phone: 504.322.7166

>>Fax: 504.322.7184

>>

>>

>>

>>-----Original Message-----

>>From: ESTTA@uspto.gov [<mailto:ESTTA@uspto.gov>]

>>Sent: Wednesday, February 04, 2015 8:31 AM

>>To: glatham@iplawconsulting.com; brandon@proentertainmentlaw.com

>>Subject: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored -

>>proceeding 92058638

>>

>>UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal

>>Board

>>

>>Proceeding No. 92058638

>>

>>02/04/2015

>>

>>IMPORTANT NOTICE

>>

>>The Trademark Trial and Appeal Board (TTAB) has issued an order in
>>this proceeding. To see the order, click on the link below or paste
>>the URL into the address box of your browser.

>>

>><http://ttabvue.uspto.gov/ttabvue/v?pno=92058638&pty=CAN&eno=11>

>>

>>This order contains important information which you should review

>>immediately. A response may be required and trial dates may have
>>changed. In some cases, this will be the only notification of this
>>order you will receive. An e-mail copy of the order itself will not
>>be
>sent.
>>
>>If you are unable to view the order, call the TTAB for technical
>>assistance at 571-272-8500. Do not use the reply button to respond to
>>this message by e-mail.
>>_____

>>
>>The entire public file of this proceeding may be viewed at
>><http://ttabvue.uspto.gov>.
>>
>>Papers in Board proceedings may be filed electronically with ESTTA at
>><http://estta.uspto.gov>.
>>
>>Further information is available at the TTAB s web page at [http://](http://www.uspto.gov)
>>www.uspto.gov.
>>
>>
>>
>>
>

Exhibit 5

Petitioner's Combined Motion to Compel
and Motion to Extend Discovery and Trial
Dates

Greg Latham

From: Randy Michels [Randy@trust-tree.com]
Sent: Friday, February 06, 2015 11:41 AM
To: Greg Latham
Cc: brandon@proentertainmentlaw.com
Subject: Re: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 92058638

Greg,

My client is reluctant to agree to your request for an extension before receiving a counteroffer from your client. Please let me know where we stand on that issue.

Randy

On 2/6/15, 11:28 AM, "Greg Latham" <glatham@iplawconsulting.com> wrote:

>Randy -- we need your input on this issue today. You will recall that
>you made several representations that your client and client's
>representatives would be made available for deposition after the motion
>to compel was resolved; you refused to go forward despite our requests.
>If Southern Land will not agree to extend the deadline to allow the
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>communications. Obviously, we need to file that motion very soon.

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> Please let us have your today.

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>

>Greg Latham

>Intellectual Property Consulting

>glatham@iplawconsulting.com

>Phone: 504.322.7166

>Fax: 504.322.7184

>

>

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>From: Randy Michels [<mailto:Randy@trust-tree.com>]

>Sent: Thursday, February 05, 2015 1:15 PM

>To: Greg Latham

>Cc: brandon@proentertainmentlaw.com

>Subject: Re: TTAB Order - Do Not Reply By E-mail. Mail Box Not

>Monitored - proceeding 92058638

>

>I will check with my client and get back to you.

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>Is your client going to be making a settlement offer?

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>Randy

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>>Greg

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>>From: Greg Latham [<mailto:glatham@iplawconsulting.com>]

>>Sent: Wednesday, February 04, 2015 4:18 PM

>>To: 'randy@trust-tree.com'

>>Cc: 'brandon@proentertainmentlaw.com'

>>Subject: FW: TTAB Order - Do Not Reply By E-mail. Mail Box Not

>>Monitored

>>- proceeding 92058638

>>

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>> We suggest a 30 day extension of the deadlines established in
>today's

>>order. Any objection?

>>

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>>

>>Greg Latham

>>Intellectual Property Consulting

>>glatham@iplawconsulting.com

>>Phone: 504.322.7166

>>Fax: 504.322.7184

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>>

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>>From: ESTTA@uspto.gov [<mailto:ESTTA@uspto.gov>]

>>Sent: Wednesday, February 04, 2015 8:31 AM

>>To: glatham@iplawconsulting.com; brandon@proentertainmentlaw.com

>>Subject: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored -

>>proceeding 92058638

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>>UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal

>>Board

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>>02/04/2015

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>>

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>>
>>Further information is available at the TTAB s web page at [http://](http://www.uspto.gov)
>>www.uspto.gov.
>>
>>
>>
>>
>