

ESTTA Tracking number: **ESTTA631150**

Filing date: **10/06/2014**

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

Proceeding	92058638
Party	Defendant Southern Land Company, LLC
Correspondence Address	MARI=ELISE TAUBE STITES & HARBISON PLLC 401 COMMERCE STREET, SUITE 800 NASHVILLE, TN 37219 UNITED STATES randy.michels@stites.com, mtaube@stites.com
Submission	Motion to Compel Discovery
Filer's Name	Mari-Elise Taube
Filer's e-mail	mtaube@stites.com, randy.michels@stites.com
Signature	/mari-elise taube/
Date	10/06/2014
Attachments	SOUTHERN_LAND_ALYN_--_Motion_to_Compel.pdf(147013 bytes ) Motion to Compel Exhibit A.pdf(217715 bytes ) Motion to Compel Exhibit B.pdf(584667 bytes ) Motion to Compel Exhibit C.pdf(601710 bytes ) Motion to Compel Exhibit D.pdf(170209 bytes ) Motion to Compel Exhibit E.pdf(31945 bytes )

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

<b>LISA ALYN,</b>	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92058638
	)	U.S. Registration Nos. 3,101,150
	)	3,101,151
<b>SOUTHERN LAND COMPANY, LLC</b>	)	
	)	
Registrant	)	
	)	
	)	
	)	

---

**RESPONDENT’S MOTION TO COMPEL DISCOVERY**

Respondent **SOUTHERN LAND COMPANY, LLC** (hereinafter “Respondent”) hereby submits this motion to compel discovery pursuant to TBMP § 523.01, *et seq.*, and for an order deeming its requests for admission admitted pursuant to TBMP § 407.03 and Fed. R. Civ. P. 36(a), and in support thereof states the following.

**I. INTRODUCTION**

This is a Cancellation proceeding brought to cancel Respondent’s Registration No. 3,101,150 for WESTHAVEN (& Design), which issued on June 6, 2006, and Registration No. 3,101,150 for WESTHAVEN, which also issued on June 6, 2006, both for a variety of services, including real estate services and land development services (collectively, the “Westhaven Marks”).<sup>1</sup> Respondent coined the term “Westhaven” for a mixed-use community that it is building in Franklin, Tennessee.

---

<sup>1</sup>Registration Nos. 3,101,150 and 3,101,151 are for “Real estate brokerage services; leasing of real estate; real estate management; Real estate development; land development services, namely, master planning and laying out of residential and/or commercial communities; residential and commercial building construction and construction management services; golf course construction; landscape lighting installation services; installation of landscape

Lisa Alyn (“Petitioner” or “Alyn”) filed her Petition for Cancellation on February 5, 2014, alleging that U.S. Registration Nos. 3,101,150 and 3,101,151 were obtained fraudulently. Therefore, the burden to produce evidence in support of her allegations and the burden of persuasion to prove fraud, by clear and convincing evidence, remains on Alyn at all times in the proceeding. *See Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 186 Fed. Appx. 1005, 77 USPQ2d 1917, 1926 (TTAB 2006); *Smith International Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (TTAB 1981) (“It thus appears that the very nature of the charge of fraud requires that it be proven ‘to the hilt’ with clear and convincing evidence. There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party.”).

A party seeking cancellation of a trademark registration for fraudulent procurement bears a heavy burden of proof. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009) (internal citation omitted). Nevertheless, Petitioner has yet to produce any evidence that Petitioner acted fraudulently. Alyn has evaded her discovery obligations and refused to produce a single document or provide any substantive information that would reveal the grounds she had for alleging fraud in the prosecution of the Westhaven Marks. She has also refused to provide information as to her knowledge of Respondent’s use of Westhaven Marks, and has also refused to provide complete responses to Respondent’s discovery requests directed to Alyn’s own intended use. Alyn must be compelled to respond to Respondent’s discovery requests or face an entry of judgment dismissing her Petition.

---

irrigation systems; Landscape lighting design; interior decorating; architectural design; architectural drafting services; Landscape gardening design for others; landscape maintenance services, namely, lawn and plant care; landscape installation services, namely, landscape gardening.”

## II. BACKGROUND

On June 6, 2014,<sup>2</sup> Respondent served Petitioner with: a) Respondent's First Set of Interrogatories; (b) Respondent's First Request for Production of Documents and Things; and (c) Respondent's First Set of Requests for Admission (collectively "Discovery Requests"). *See* Discovery Requests attached as Exhibit A hereto.

Alyn provided unsatisfactory and incomplete written responses to the Discovery Requests on July 11, 2014 (Exhibit B hereto). Respondent promptly and comprehensively addressed Alyn's deficiencies by letters of August 8, 2014, and September 17, 2014. (Exhibit C hereto). Petitioner has refused to supplement her responses. In Petitioner's email dated August 22, 2014, Petitioner promised to provide a signed verification to her discovery responses, and also promised to supplement her responses to Respondent's Requests for Admission. (Exhibit D hereto). Despite these promises, Petitioner never provided the signed verification and never supplemented her responses to Respondent's Requests for Admission. Petitioner finally served Respondent with bare-bones, deficient Initial Disclosures on August 26, 2014, over three months late.

Among the requests that Alyn has refused to answer are interrogatories and document requests directed to her claim of fraud, Petitioner's knowledge of Respondent's marks and Petitioner's use of the Westhaven mark. Alyn cannot rest on the allegations contained in her Petition for Cancellation to prove her fraud claim. In fact, in a case such as this, Alyn has an affirmative duty to come forward with evidence to support its claims, or she will face an entry of judgment against her. Indeed, "the very nature of the charge of fraud requires that it be proven 'to the hilt' with clear and convincing evidence. There is no room for speculation, inference or

---

<sup>2</sup> Discovery in this matter opened on April 17, 2014, and Initial Disclosures were due on May 17, 2014. Discovery is set to close on October 14, 2014.

surmise and, obviously, any doubt must be resolved against the charging party.” *In re Bose*, 91 USPQ2d at 1939 (citing *Smith Int’l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (TTAB 1981)).

In a further effort to frustrate the discovery process, Alyn has refused to answer substantively a number of requests for admissions depriving the Board and Respondent the ability to narrow the facts in dispute. Accordingly, Respondent moves to have Requests for Admission Nos. 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, and 34 deemed admitted.

Petitioner has also refused to provide entire categories of information and documents that bear on the issues in this proceeding, namely Respondent’s ownership and rights in its WESTHAVEN marks, the validity of U.S. Registration Nos. 3,101,150 and 3,101,151, and Petitioner’s awareness of Respondent and Respondent’s ownership and rights in its marks. Also at issue in this proceeding are the likelihood of confusion factors set forth in *In re E.I. DuPont DeNemours & Co.*, 177 USPQ 563 (CCPA 1973), since Petitioner claims to be injured by the continued existence of Respondent’s marks on the Principal Register. Alyn has raised the nature of her own (infringing) use of the mark WESTHAVEN by relying on Section 2(d), 15 U.S.C. § 1052(d), to assert standing in its Petition for Cancellation. *See* Petition for Cancellation, ¶ 14.

The scope of discovery in a Board proceeding is governed by Fed. R. Civ. P. 26(b)(1), which provides that “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(2). Paragraph 14 of Petitioner’s Petition for Cancellation states that “Petitioner will be damaged by the continued existence of United States Trademark Registration No. 3,101,151 and No. 3,101,150 because they will give color of rights to the Respondent and will continue to be an impediment to Petitioner’s ability to use ‘Westhaven’ in regard to her business services and advertising.” In its Answer, Southern Land Company denied this allegation. Since Petitioner claimed that she will be damaged by the

continued existence of the Westhaven Marks on the Principal Register, under the Federal Rules of Civil Procedure, Respondent is entitled to take discovery on this claim.

It is time for Alyn to put up or shut up. If she has no evidence of fraud, then Respondent is entitled to summary judgment on the merits of this proceeding. Moreover, given her deficient discovery responses, it is hard to imagine how Alyn fulfilled her obligations under Rule 11 of the Federal Rules of Civil Procedure to conduct a reasonable inquiry such that that the claims in its Petition were warranted by existing law and facts and not presented for an improper purpose. Fed. R. Civ. P. 11.

### **III. ARGUMENT**

#### **A. Alyn Has Failed to Admit or Deny Respondent's Requests for Admission**

Under Federal Rule of Civil Procedure 36(a), a matter is admitted unless, within thirty days after being served, the party to whom the request is directed serves a written answer or objection addressed to the matter. Fed. R. Civ. P. 36(a)(3). But a party may not avoid the consequences of this Rule simply by submitting meaningless responses to the requests. "If a matter is not admitted, the answer must specifically deny it, or state in detail why the answering party cannot truthfully admit or deny it." Fed. R. Civ. P. 36(a)(4).

If a propounding party is dissatisfied with an answer or objection to a request for admission, the propounding party may file a motion with the Board to determine the sufficiency of the answer or objection. If the Board determines that an answer does not comply with the requirements of Fed. R. Civ. P. 36(a), it may order either that the matter stand admitted or that an amended answer be served. TBMP § 411.02.

Alyn has refused to respond properly or to object to Request for Admission Nos. 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, and 34. Each of the requests asks Alyn to admit or deny facts pertaining to her knowledge of Respondent and Respondent's services. In each case, Alyn

objects to the request, and then states, “Petitioner is without sufficient information or knowledge to enable her to admit or deny the request.” A sample request and response follow.

**REQUEST NO. 12.** Admit that Registrant offers real estate services.

**RESPONSE:** Ms. Alyn is without sufficient information or knowledge to enable her to admit or deny the request.

Not only is this an insufficient response, but it is also untrue. Alyn offers her real estate services in the Westhaven community, so it is impossible for her to not have knowledge of Respondent and Respondent’s services. Alyn’s boilerplate “non-response” appears to be designed to avoid admitting facts that are detrimental to Ms. Alyn’s fraud claim (and to prolong this proceeding). Regardless, pursuant to Fed. R. Civ. P. 36(a) and TBMP § 407.03(b), a party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made a reasonable inquiry and that the information known or readily obtainable by the party to admit or deny the request. Alyn’s responses do not comply with the requirements of these rules, and Alyn should be ordered to supplement her responses.

**B. Alyn Should Be Compelled to Supplement Discovery Responses**

The scope of discovery in a Board proceeding is governed by Fed. R. Civ. P. 26(b)(1), which provides that “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(2). The rule contemplates liberal discovery. *See* TBMP § 402.02. It is a general rule that parties are entitled to seek discovery as they may deem necessary to help them prepare for trial. *See Dow Corning Corp. v. The Doric Corp.*, 183 USPQ 377, 378 (TTAB 1974). Alyn has refused to produce any meaningful discovery in support of its Petition for Cancellation, despite the fact that she carries the burden of both production of evidence and of proof on the question of fraud. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009).

Petitioner refuses to provide entire categories of information and documents that bear on the issues in this proceeding, namely Registrant's ownership and rights in its WESTHAVEN marks, the validity of U.S. Registration Nos. 3,101,150 and 3,101,151, and Petitioner's awareness of Registrant and Registrant's ownership and rights in its marks, all of which are relevant to the claims and defenses in this proceeding. Respondent is entitled to discovery on these topics, since they are relevant to the claims and defenses in the action.

Respondent addresses Alyn's deficient discovery responses below *seriatim*.

Alyn's Awareness of Respondent and Respondent's Marks

Interrogatory No. 9 Identify all documents in the possession, custody or control of You referring or relating to Registrant and Registrant's Marks.

Interrogatory No. 10 Identify all documents in the possession, custody or control of Petitioner relating to Registrant's services sold under Registrant's Marks.

Request No. 6 Produce all documents in your possession that refer to Registrant.

Request No. 7 Produce all documents in your possession that refer to Registrant's Marks.

Request No. 8 Produce all documents relating to Your knowledge of Registrant's intellectual property protection for Registrant's Marks.

Request No. 25 Produce all documents related to Petitioner's knowledge of Registrant and any or all of the Registrant's Marks.

Request No. 26 Produce all documents related to Petitioner's knowledge of services offered by Registrant under any or all of Registrant's Marks.

Respondent is well aware of Respondent's use of its Westhaven Marks and rights in its Westhaven Marks. In fact, Alyn advertises her real estate services in Respondent's Westhaven community. Yet Petitioner provided inconsistent responses to Interrogatory No. 9 and Request No. 6 and 7. In response to Interrogatory No 9, Petitioner stated that she had no documents that

refer or relate to Respondent yet Petitioner states that it would be overly burdensome to produce documents that identify Respondent and Respondent's Marks in response to Respondent's requests. Which is it? Respondent is entitled to clear and consistent responses. Alyn should be compelled to produce documents that reflect any knowledge of Respondent's and Respondent's use of its Westhaven Marks.

#### Alyn's Target Customers

Interrogatory No. 7 Identify Your target purchasers for the services offered under the WESTHAVEN mark.

Request No. 31 Produce all documents reflecting or regarding the buyers of the services offered by You under the WESTHAVEN mark.

Alyn refuses to provide discovery related to her target customers. The classes of customers for a party's involved goods or services are discoverable. TBMP § 414(3); *see J.B. Williams Co. v. Pepsodent G.m.b.H.*, 188 USPQ 577, 580 (TTAB 1975) (must identify class of customers who purchase products under mark). Thus, Respondent seeks an order directing Alyn to supplement her discovery responses pertaining to her target customers.

#### Petitioner's Sales and Advertising

Request No. 14 Produce all documents showing or relating to sales of the Your services under the mark WESTHAVEN.

Request No. 16 Produce all documents relating to the costs of advertising already implemented for any and all services offered under the mark WESTHAVEN by You.

Request No. 18 Produce all documents relating to sales strategies for the services offered under the mark WESTHAVEN by You.

Request No. 34 Produce all documents reflecting or regarding the dollar value of sales or projected sales of the services offered by You under the WESTHAVEN mark, including but not limited to documents reflecting or discussing how such projected sales numbers were determined.

Request No. 35 Produce all documents showing the amount of money budgeted and/or expended to date to promote the services offered by You under the WESTHAVEN mark.

Interrogatory No. 8 Identify (a) the three persons most knowledgeable as to the advertising or the plans for advertising Your services under the WESTHAVEN mark and (b) documents showing the sales and plans for sales and advertising and plans for advertising under the WESTHAVEN mark.

Request No. 15 Produce all documents showing or relating to the advertising of Your services under the mark WESTHAVEN.

Request No. 17 Produce representative samples of all advertising which has been implemented and representative samples of all planned advertising for the services offered by You under the mark WESTHAVEN.

Request No. 18 Produce all documents relating to sales strategies for the services offered under the mark WESTHAVEN by You.

Request No. 19 Produce all documents relating to the advertising strategies for the services offered under the mark WESTHAVEN by You.

Respondent requested information and documents reflecting sales and advertising figures for Petitioner's services offered under the WESTHAVEN mark at issue. Annual sales and advertising figures, stated in round numbers, for a party's involved goods or services sold under its involved mark are proper matters for discovery. TBMP § 414(18); *see American Optical Corp. v. Exomet, Inc.*, 181 USPQ 120, 123 (TTAB 1974). Respondent also asked for representative samples of marketing materials and comprehensive information regarding Respondent's advertising and sales strategies for its services. Marketing materials and channels of advertising are directly relevant to the legal issues in this proceeding and are thus discoverable. In particular, these requests bear on Petitioner's knowledge of Respondent and Petitioner's use of the Westhaven Marks, which pertain directly to Petitioner's defenses in the proceeding and to Petitioner's standing.

Alyn's Agreements Regarding WESTHAVEN

Interrogatory No. 15 Identify all agreements relating to Your use of the mark WESTHAVEN and services offered or to be offered under the mark WESTHAVEN, including without limitation agreements relating to advertising of the services offered under the WESTHAVEN mark, assignments, licenses, authorizations, permissions or consents.

Request No. 24 To the extent that documents have not been produced in response to the preceding document requests, produce all documents showing any and all agreements related to the mark WESTHAVEN, including without limitation, agreements relating to advertising under the mark, assignments, licenses, authorizations, permissions or consents.

Alyn refuses to provide information about or produce the agreements relating to Alyn's use of the WESTHAVEN mark on the basis of relevance. However, agreements regarding a mark at issue, including license agreements or other arrangements between the owner and third-parties, are discoverable in Board proceedings. *See Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 16771 (TTAB 1988). Alyn has rendered agreements relating to her own proposed WESTHAVEN mark relevant by claiming rights to the mark in her Petition.

Alyn's Selection and Adoption of Petitioner's WESTHAVEN Mark

Interrogatory No. 1 Identify (a) the three people most knowledgeable as to the creation, selection, adoption, and use of WESTHAVEN by You and (b) the three people most knowledgeable as to the services provided by You under the WESTHAVEN mark.

Interrogatory No. 4 State the reasons for Your selection of the WESTHAVEN mark for use on or in connection with real estate services and identify the person(s) who first suggested, proposed, recommended, conceived of, or suggested use of the WESTHAVEN mark in connection with these services.

Interrogatory No. 5: Describe in detail all steps which were taken in connection with creation and adoption of Petitioner's Mark, and identify all documents which relate to creation and adoption of Petitioner's Mark.

Request No. 2 Produce all documents related to your creation, selection and adoption of the WESTHAVEN mark, including without limitation search reports, market surveys, emails and interoffice memoranda.

Request No. 10 Produce all documents relating to the reasons for Your selection of the WESTHAVEN mark in connection with Your real estate services.

Request No. 44 Produce all documents that relate to every other alternative mark which was considered for adoption and use in connection with Your real estate services.

Respondent requested documents and things related to the creation, selection and adoption of Petitioner's mark, including any non-privileged search materials. Information concerning a party's selection and adoption of its involved mark, including those directing mark selection, is discoverable. TBMP § 414(4); *Volkswagenwerk Aktiengesellschaft v. MTD Products Inc.*, 181 USPQ 471, 473 (TTAB 1974) (identification of persons who suggested use of involved mark on involved goods is not improper); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (whether applicant received opinions concerning adoption of mark is not privileged and applicant must identify person, date and documents relating thereto). Alyn has rendered discovery relating to the selection and adoption of her own proposed WESTHAVEN mark relevant by claiming rights to the mark in her Petition.

Alyn's First Use of the WESTHAVEN Mark

Request No. 20 Produce all documents relating to the date the mark WESTHAVEN was first used by You in connection with real estate services

Request No. 21 Produce all documents, as applicable, relating to the first property sold under the mark WESTHAVEN by You.

Petitioner has refused to provide information and documents related to the first use of her purported WESTHAVEN mark. Information concerning a party's first use of its mark is discoverable. TBMP § 414(5); *Georgia Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976). This is also particularly relevant because Paragraph 14 of Petitioner's Petition for Cancellation states that "Petitioner will be damaged by the continued existence of United States Trademark Registration No. 3,101,151 and No. 3,101,150 because they will give color of rights to the Respondent and will continue to be an impediment to Petitioner's ability to use 'Westhaven' in regard to her business services and advertising." In its Answer, Southern Land Company denied this allegation. Since Petitioner claimed that she will be damaged by the continued existence of Registrant's marks on the Principal Register, under the Federal Rules of Civil Procedure, Respondent is entitled to take discovery on this claim. Therefore, Petitioner should be ordered to supplement her discovery responses.

Alyn's Use of the WESTHAVEN Mark on Petitioner's Services

Interrogatory No. 2 Identify and describe in detail each service offered by You under the mark WESTHAVEN and identify and describe in detail where these services are offered.

Request No. 4 Produce all documents which relate or refer to Your use of the WESTHAVEN mark in connection with real estate..

Petitioner has refused to provide information and documents related to the use of her purported WESTHAVEN mark on her services. Information that a party sells the same goods or services as the propounding party is relevant. TBMP § 414 (11). Parties must provide discovery with respect to those of its marks and services that are involved in the proceeding. *Id.* Therefore, Petitioner should be ordered to supplement her discovery responses.

**C. Alyn Should Be Compelled to Sign Her Interrogatories**

Pursuant to Fed. R. Civ. P. 33(b)(5), the person who makes the answers must sign them, and the attorney who objects must sign any objections. In her response to Interrogatory No. 11, Alyn confirmed that she answered the Interrogatories, yet never provided Respondent with a signed verification. In its letter of August 8, 2014, Respondent reminded Petitioner of her obligation to sign her interrogatory responses, and Respondent's email of August 22, 2014, states that Alyn will provide a signed verification of her discovery responses within a week from that date. *See* Exhibits C and D. Respondent has yet to receive the signed verification. Petitioner should be compelled to provide Respondent with a signed verification to Petitioner's interrogatory responses.

**D. Alyn Should Be Compelled to Supplement Her Initial Disclosures**

Finally, Ms. Alyn's Initial Disclosures are deficient. Though these disclosures were due on May 17, 2014, Ms. Alyn did not serve her bare-bones disclosures until August 26, 2014. (Exhibit E.) A party failing to make initial disclosures may be subject to a motion to compel, and ultimately, a motion for discovery sanctions. TBMP § 401.02 (citing *Luster Products Inc. v. Van Zandt*, 104 USPQ2d 1877, 1878-79 (TTAB 2012) (motion to compel is available remedy for failure to serve, or insufficient, initial disclosures)). Pursuant to Fed. R. Civ. P. 26(a)(1), Initial Disclosures must include the name, address, and telephone number of each individual likely to have discoverable information, along with the subjects of information, that the disclosing party may use to support its claims and defenses. Initial Disclosures must also include a copy (or a description by category and location) of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. Fed. R. Civ. P. 26(a)(1). Alyn's Initial Disclosures do not disclose the subjects of information for which each individual disclosed has personal knowledge, and they also fail to include a copy of the listed documents. *See* Exhibit E. If Alyn does not want to

provide copies of the documents disclosed in the Initial Disclosures, she must at least supplement the disclosures to state the location of the listed documents. TBMP § 401.02. Because Alyn's Initial Disclosures are deficient, Respondent requests an order compelling Alyn to supplement her Initial Disclosures.

#### **IV. CONCLUSION**

Petitioner Alyn initiated this proceeding. Alyn may not now shirk her obligations under the Federal Rules of Civil Procedure to respond fully to discovery, whether in the form of initial disclosures or responses to interrogatories and requests for production of documents or requests for admissions. If Alyn has no evidence in support of her contentions of fraud, the Petition should be dismissed.

For the foregoing reasons, Respondent requests that the Board grant its Motion to Compel Discovery by issuing an Order compelling Petitioner to complete supplemental responses to the discovery issued by Respondent and provide supplemental Initial Disclosures.

Respondent, through counsel, has made a good faith effort to resolve with Petitioner's counsel the issues presented in this motion, and has been unable to reach an agreement.

October 6, 2014

Respectfully submitted,

STITES & HARBISON PLLC

*Mari-Elise Taube*

---

James R. Michels  
STITES & HARBISON PLLC  
401 Commerce St., Suite 800  
Nashville, TN 37219  
Telephone: (615) 782-2234  
Email: [randy.michels@stites.com](mailto:randy.michels@stites.com)

Mari-Elise Taube  
STITES & HARBISON PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
Telephone: (703) 837-3932  
Email: [mtaube@stites.com](mailto:mtaube@stites.com)

Counsel for Respondent  
Southern Land Company, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing were served on counsel for Petitioner, this 6th day of October, 2014, by sending it via U.S. Mail, postage prepaid, and by e-mail, to:

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

Brandon Frank  
Paillet & Ostendorf, LLP  
650 Poydras Street, Suite 1470  
New Orleans, Louisiana 70130  
E-mail: [brandon@proentertainmentlaw.com](mailto:brandon@proentertainmentlaw.com)

*Mari-Elise Taube*

\_\_\_\_\_  
Mari-Elise Taube

10797N:131487:339509:2:ALEXANDRIA

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

<b>LISA ALYN,</b>	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92058638
	)	U.S. Registration Nos. 3,101,150
	)	3,101,151
<b>SOUTHERN LAND COMPANY, LLC</b>	)	
	)	
Registrant	)	
	)	
	)	
	)	

**REGISTRANT’S FIRST SET OF INTERROGATORIES**

Registrant, **SOUTHERN LAND COMPANY, LLC** (“Registrant”), pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, hereby serves the following interrogatories to be answered separately and fully in writing and under oath, pursuant to the definitions and instructions contained herein, by Petitioner **LISA ALYN** (“Petitioner”). Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. Responses should be served upon the offices of Stites & Harbison, PLLC, at the address listed below. Furthermore, these interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules, and Petitioner shall provide Registrant with any supplemental answers and additional information that are requested herein which shall become available to Petitioner at a later date.

## **DEFINITIONS AND INSTRUCTIONS**

1. The terms “Petitioner,” “You” and “Your” refer to Lisa Alyn, your partners, joint venturers, affiliates, agents, attorneys, successors-in-interest, predecessors-in-interest, employees, representatives, subsidiaries, parent companies, and any others acting on her behalf or over whom or which she may or does control.

2. The term “Registrant” shall mean, except where otherwise stated, Southern Land Company, LLC.

3. As used herein, the words “Registrant’s Marks” shall include Registrant’s trademarks “WESTHAVEN” and “W WESTHAVEN (plus design)”.

4. The term “document” shall be construed in its broadest permissible sense, and shall include any and all means of conveying, storing, or memorializing information, whether in paper or other tangible physical form, or in electronic form, and shall mean, without limitation, every writing or record of every type and description that is or has been in the possession, control, or custody of Petitioner or of which Petitioner has knowledge, correspondence, including, but not limited to, e-mail correspondence, invoices, contracts, purchase orders, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, films, voice recordings, maps, graphs, reports, surveys, minutes, writings, notations, packaging, artwork, photographs, tear sheets, flyers, brochures, proofs, displays, videotapes, models, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, or statistical compilations, every copy of such writing or record where the original is not in the possession, custody or control of Petitioner and every copy of every such writing or record where such copy is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original.

5. The term “date” means the exact day, month and year, if ascertainable; if not ascertainable, the closest approximation that can be made by means of relationship to other events or matters.

6. The terms “and” as well as “or” shall be construed both disjunctively and conjunctively, as necessary, to bring within the scope of these interrogatories information which might otherwise be construed to be outside their scope.

7. Wherever a singular form appears, it also shall be construed as plural, and vice versa, as necessary, to bring within the scope of these interrogatories information that might otherwise be construed to be outside their scope.

8. The terms “concerning,” “regarding” and “related to” mean reflecting, referring to, incorporating, comprising, touching upon, indicating, evidencing, affirming, denying, or relevant to, in addition to its other customary and usual meaning, and includes, but is not limited to, discussing, constituting, pertaining to, describing, evidencing, identifying, touching upon and/or summarizing.

9. The term “identify” or the phrase “state the identity of” means (in addition to any other information requested by the context specified herein):

a. In the case of a person who is an individual: state the full name, present or last known residence or address (designating which) and present or last known position or business affiliation (designating which); job title; employment address; business and residence telephone numbers of each individual;

b. In the case of a company, partnership, corporation, proprietorship, association, or other organization or entity, state: the full name and present or last known

address and telephone number; the legal form of such entity or organization; if incorporated, the identity of the person or persons having knowledge of the matter with respect to which the company is named; and the identity of its chief executive officer;

c. In the case of an act, state: a description of that act; when it occurred; where it occurred; the identity of the person or persons performing said act (or in the case of an omission, the identity of the person or persons failing to act); the identity of all persons who have knowledge, information or belief about the act; when the act or omission first became known; and the circumstances and manner in which such knowledge was first obtained;

d. In the case of an oral communication, state: the date, subject matter, communicator, the person to whom the communication was made, nature of communication, whether it was recorded, and the identity of any witness thereto;

e. In the case of a document, state: the identity of the person or persons who prepared it, the sender and recipient, if any; the title or a description of the general nature of its subject; the date of preparation; the date and manner of distribution and publication, if any; the location of each copy and the identity of the present custodian; the identity of the person or persons who can identify it; the contents of the document verbatim (In lieu of the foregoing, a copy of the document may be supplied.); and if privilege is claimed, the specific basis therefor.

f. In the case of a lost document the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

11. Each interrogatory or request shall be read to be inclusive rather than exclusive. Accordingly, “including” means “including without limitation.” The word “all” includes “any”

and vice versa. The past tense includes the present tense and vice versa. The masculine form of any word includes the feminine form and vice versa.

12. If Petitioner refuses to identify and/or produce any document(s) based upon a claim of confidentiality, privilege, or work product immunity, Petitioner shall, in log form, (i) identify each document by its author, intended recipient(s), the date of the document, and its general subject matter, and (ii) set forth for each withheld document the particular basis for the refusal of production.

13. In responding to the interrogatories and requests for admission, Petitioner is required to furnish responsive information within its knowledge or the personal knowledge of its attorneys, agents, employees, or other representatives.

14. In responding to the document requests Petitioner is required to furnish responsive documents within its possession, custody, or control or within the possession, custody, or control of its attorneys, agents, employees or other representatives.

15. Each objection, if any, shall be set forth with specificity and shall include a statement of the grounds for the objection.

16. If any document requested to be identified or produced has been destroyed, provide the following additional information as to each such document:

- a. the date of destruction;
- b. the reason for the destruction;
- c. the identification of the person who destroyed the document; and
- d. the identification of any person who directed that the document be destroyed.

17. If any of the interrogatories or requests cannot be answered in full, respond to the extent possible, specifying the reasons for the inability to respond to the interrogatory or request and provide whatever information or knowledge is available concerning the unanswered portion.

18. If any responsive information, communication or document is withheld on the basis of any claim of privilege, identify such information, communication or document withheld, state the privilege being relied upon or claimed and the basis for the claim, and identify all persons or entities who have had access to such information, communication or document.

19. Petitioner is to supplement its responses to all discovery requests as required by Fed. R. Civ. P. 26(e).

20. The interrogatories and requests shall be deemed to seek responses as of the date hereof but shall be deemed to be continuing so that any additional information relating in any way to these requests which Petitioner acquires or which becomes known to Petitioner up to and including the time of final disposition shall be furnished to Registrant immediately after such information is first acquired or becomes known.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify (a) the three people most knowledgeable as to the creation, selection, adoption, and use of WESTHAVEN by You and (b) the three people most knowledgeable as to the services provided by You under the WESTHAVEN mark.

**ANSWER:**

**INTERROGATORY NO. 2:** Identify and describe in detail each service offered by You under the mark WESTHAVEN and identify and describe in detail where these services are offered.

**ANSWER:**

**INTERROGATORY NO. 3:** Explain the basis for and identify all facts which evidence, support, refer or relate to the good faith use of the WESTHAVEN mark by You.

**ANSWER:**

**INTERROGATORY NO. 4:** State the reasons for Your selection of the WESTHAVEN mark for use on or in connection with real estate services and identify the person(s) who first suggested, proposed, recommended, conceived of, or suggested use of the WESTHAVEN mark in connection with these services.

**ANSWER:**

**INTERROGATORY NO. 5:** Describe in detail all steps which were taken in connection with creation and adoption of Petitioner's Mark, and identify all documents which relate to creation and adoption of Petitioner's Mark.

**ANSWER:**

**INTERROGATORY NO. 6:** Identify and describe in detail the channels of trade in the United States that You use or intend to use to offer and promote your real estate services under the WESTHAVEN mark.

**ANSWER:**

**INTERROGATORY NO. 7:** Identify Your target purchasers for the services offered under the WESTHAVEN mark.

**ANSWER:**

**INTERROGATORY NO. 8:** Identify (a) the three persons most knowledgeable as to the advertising or the plans for advertising Your services under the WESTHAVEN mark and (b) documents showing the sales and plans for sales and advertising and plans for advertising under the WESTHAVEN mark.

**ANSWER:**

**INTERROGATORY NO. 9:** Identify all documents in the possession, custody or control of You referring or relating to Registrant and Registrant's Marks.

**ANSWER:**

**INTERROGATORY NO. 10:** Identify all documents in the possession, custody or control of Petitioner relating to Registrant's services sold under Registrant's Marks.

**ANSWER:**

**INTERROGATORY NO. 11:** Identify all persons who participated in any way in the preparation of the responses to these interrogatories, Registrant's First Set of Requests for Production of Documents and Things, and Registrant's First Set of Requests for Admissions, and for each person, identify the responses for which the person provided information (excluding only Petitioner's outside counsel and/or their representatives).

**ANSWER:**

**INTERROGATORY NO. 12:** State whether Petitioner has requested or received or has knowledge of any opinions, legal or otherwise, of any type regarding the right to use the WESTHAVEN mark or the registrability of the mark WESTHAVEN by Petitioner. If Your answer to this question is anything other than an unqualified "No", (a) identify the person or persons requesting each such opinion, (b) identify the person or persons rendering each such opinion, and (c) identify all documents relating to the opinion.

**ANSWER:**

**INTERROGATORY NO. 13:** Describe all steps taken by You to determine whether the mark WESTHAVEN was available for use by You and would not conflict with any prior used or registered mark or name, and identify the three persons who are most knowledgeable as to the steps taken to determine availability of the mark and all related documents.

**ANSWER:**

**INTERROGATORY NO. 14:** State the date that you first offered services under the mark WESTHAVEN by You.

**ANSWER:**

**INTERROGATORY NO. 15:** Identify all agreements relating to Your use of the mark WESTHAVEN and services offered or to be offered under the mark WESTHAVEN, including without limitation agreements relating to advertising of the services offered under the WESTHAVEN mark, assignments, licenses, authorizations, permissions or consents.

**ANSWER:**

**INTERROGATORY NO. 16:** For each expert that Petitioner has retained to give testimony in this proceeding, provide the information required in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

**ANSWER:**

**INTERROGATORY NO. 17:** With respect to each Request for Admission as to which Your response is anything other than an unequivocal admission, please state all facts upon which You base that response.

**ANSWER:**

**INTERROGATORY NO. 18:** For each of the allegations in the Complaint, state the factual basis on which You intend to rely to prove each of these allegations and identify all the documents on which You will rely to support these allegations.

**ANSWER:**

June 6, 2014

Respectfully submitted,

STITES & HARBISON PLLC

*Mari-Elise Taube*

---

James R. Michels  
STITES & HARBISON PLLC  
401 Commerce St., Suite 800  
Nashville, TN 37219  
Telephone: (615) 782-2234  
Email: [randy.michels@stites.com](mailto:randy.michels@stites.com)

Mari-Elise Taube  
STITES & HARBISON PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
Telephone: (703) 837-3932  
Email: [mtaube@stites.com](mailto:mtaube@stites.com)

Counsel for Respondent  
Southern Land Company, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing were served on counsel for Petitioner, this 6<sup>th</sup> day of June, 2014, by sending it via U.S. Mail, postage prepaid, and by e-mail, to:

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

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

*Mari-Elise Taube*

---

Mari-Elise Taube

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

<b>LISA ALYN,</b>	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92058638
	)	U.S. Registration Nos. 3,101,150
	)	3,101,151
<b>SOUTHERN LAND COMPANY, LLC</b>	)	
	)	
Registrant	)	
	)	
	)	
	)	

---

**REGISTRANT’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
AND THINGS**

Registrant, **SOUTHERN LAND COMPANY, LLC**, (“Registrant”), serves the following requests for the production of documents and things under Federal Rule of Civil Procedure 34 and Rules 2.116 and 2.120 of the Trademark Rules of Practice, that Petitioner, **LISA ALYN** (“Petitioner”) produce, pursuant to the definitions and instructions contained or incorporated herein, the documents and things listed below for inspection and copying, and that said production be made accompanying Petitioner’s service of its responses to these requests upon Registrant at the offices of Stites & Harbison PLLC, 401 Commerce St., Suite 800, Nashville, TN 37219, or such other place as counsel may agree and permit Registrant to inspect and copy the documents and things listed below. Furthermore, these requests shall be deemed to be continuing to the fullest extent permitted by the Rules, and Petitioner shall provide Registrant with any supplemental responses and additional documents and things that are requested herein which shall become available to Petitioner at a later date.

## **DEFINITIONS AND INSTRUCTIONS**

1. The Definitions and Instructions contained in Registrant's First Set of Interrogatories (the "interrogatories") are incorporated herein by reference.

## **DOCUMENTS REQUESTED**

1. Produce all documents related to market research (including, surveys, studies, investigations and focus group inquiries) conducted by or on behalf of You regarding the use of WESTHAVEN as a mark.

2. Produce all documents related to your creation, selection and adoption of the WESTHAVEN mark, including without limitation search reports, market surveys, emails and interoffice memoranda.

3. Produce all documents which relate or refer to Your intention to use the WESTHAVEN mark in connection with real estate services.

4. Produce all documents which relate or refer to Your use of the WESTHAVEN mark in connection with real estate services.

5. Produce all documents responsive to each and every request for identification of documents in Registrant's First Set of Interrogatories.

6. Produce all documents in your possession that refer to Registrant.

7. Produce all documents in your possession that refer to Registrant's Marks.

8. Produce all documents relating to Your knowledge of Registrant's intellectual property protection for Registrant's Marks.

9. Produce all documents related to the consideration of each and every other alternative mark which was considered for adoption and use in connection with Your real estate services.
10. Produce all documents relating to the reasons for Your selection of the WESTHAVEN mark in connection with Your real estate services.
11. Produce all documents related to the steps taken by You to determine the availability of WESTHAVEN as a mark for use in connection with real estate services.
12. Produce all documents related to or reflecting opinions as to whether Your use of WESTHAVEN would conflict with any prior used or registered mark.
13. Produce all documents related to or reflecting opinions obtained on the inherent registrability of “WESTHAVEN” for the services which You offer under the mark WESTHAVEN.
14. Produce all documents showing or relating to sales of the Your services under the mark WESTHAVEN.
15. Produce all documents showing or relating to the advertising of Your services under the mark WESTHAVEN.
16. Produce all documents relating to the costs of advertising already implemented for any and all services offered under the mark WESTHAVEN by You.
17. Produce representative samples of all advertising which has been implemented and representative samples of all planned advertising for the services offered by You under the mark WESTHAVEN.

18. Produce all documents relating to sales strategies for the services offered under the mark WESTHAVEN by You.
19. Produce all documents relating to the advertising strategies for the services offered under the mark WESTHAVEN by You.
20. Produce all documents relating to the date the mark WESTHAVEN was first used by You in connection with real estate services.
21. Produce all documents, as applicable, relating to the first property sold under the mark WESTHAVEN by You.
22. Produce copies of all legal and non-legal opinions which you have obtained that relate to Your use or application for registration of the mark WESTHAVEN for the services You offer or intend to offer under the mark WESTHAVEN.
23. Produce all documents related to the channels of trade and distribution in the United States that You use or intend to use for the offering of Your services under the mark WESTHAVEN.
24. To the extent that documents have not been produced in response to the preceding document requests, produce all documents showing any and all agreements related to the mark WESTHAVEN, including without limitation, agreements relating to advertising under the mark, assignments, licenses, authorizations, permissions or consents.
25. Produce all documents related to Petitioner's knowledge of Registrant and any or all of the Registrant's Marks.

26. Produce all documents related to Petitioner's knowledge of services offered by Registrant under any or all of Registrant's Marks.
27. Produce all documents related to studies, surveys or polls conducted by or for Petitioner relating to Registrant or Registrant's Marks.
28. Produce all documents relating to Petitioner's policies for keeping and retaining records.
29. Produce all documents relating to trademark searches, clearance, approval, and evaluation of the mark WESTHAVEN for use by You.
30. Produce all documents that demonstrate, discuss or describe the services in connection with which You use the WESTHAVEN mark.
38. Produce all documents regarding the geographical areas in which You offer and intend to offer your services under the WESTHAVEN mark.
31. Produce all documents reflecting or regarding the buyers of the services offered by You under the WESTHAVEN mark.
32. Produce all documents regarding or discussing Registrant's rights in connection with the exclusive use of WESTHAVEN in connection with real estate services.
33. Produce all documents regarding or discussing Registrant's rights in connection with the exclusive use of WESTHAVEN in connection with land development services.
34. Produce all documents reflecting or regarding the dollar value of sales or projected sales of the services offered by You under the WESTHAVEN mark, including but not limited to documents reflecting or discussing how such projected sales numbers were determined.

35. Produce all documents showing the amount of money budgeted and/or expended to date to promote the services offered by You under the WESTHAVEN mark.
36. For each expert that Petitioner intends to call to testify in this proceeding produce the written report required by Fed. R. Civ. P. 26(a)(2)(B).
37. Produce all documents upon which Petitioner relies to support its position that Registrant's Marks are geographically descriptive.
38. Produce all documents upon which Petitioner relies to support its position that Registrant's Marks are geographically descriptive within the meaning of the Trademark Act.
39. Produce all documents upon which Petitioner relies to support its position that fraud was committed in prosecuting the applications for registration of Registrant's Marks.
40. Produce all documents which Petitioner referred to or relied upon in responding to Registrant's first set of interrogatories in this proceeding.
41. Produce any and all documents reflecting objections by or disputes with third parties relating to Your use of the mark WESTHAVEN.
42. Produce any and all documents which refer or relate to Your knowledge of the application for registration of "WESTHAVEN" by Registrant.
43. Produce any and all documents which refer or relate to Your knowledge of the application for registration of "WESTHAVEN (plus design)" by Registrant.
44. Produce all documents that relate to every other alternative mark which was considered for adoption and use in connection with Your real estate services.

45. Produce all documents that relate to or reference consumer confusion or possible consumer confusion between the services offered by You under the WESTHAVEN mark and the services offered by Registrant under Registrant's Marks.
46. Produce all documents that relate or refer to whether the use of Petitioner's Mark might infringe Registrant's rights in Registrant's Marks.
47. Produce all documents reflecting internal communications referring or relating to possible conflict with Registrant's Marks in using or possibly using the mark WESTHAVEN.
48. Produce all documents which refer or relate to communications with third parties referring or relating to possible conflict with Registrant's Marks in using or possibly using the mark WESTHAVEN.
49. Produce all documents relating to Petitioner's knowledge of Registrant's prosecution of U.S. Registration No. 3,101,150.
50. Produce all documents relating to Petitioner's knowledge of Registrant's prosecution of U.S. Registration No. 3,101,151.

June 6, 2014

Respectfully submitted,

STITES & HARBISON PLLC

*Mari-Elise Taube*

---

James R. Michels  
STITES & HARBISON PLLC  
401 Commerce St., Suite 800  
Nashville, TN 37219  
Telephone: (615) 782-2234  
Email: [randy.michels@stites.com](mailto:randy.michels@stites.com)

Mari-Elise Taube  
STITES & HARBISON PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
Telephone: (703) 837-3932  
Email: [mtaube@stites.com](mailto:mtaube@stites.com)

Counsel for Respondent  
Southern Land Company, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing were served on counsel for Petitioner, this 6<sup>th</sup> day of June, 2014, by sending it via U.S. Mail, postage prepaid, and by e-mail, to:

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

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

*Mari-Elise Taube*

---

Mari-Elise Taube

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

<b>LISA ALYN,</b>	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92058638
	)	U.S. Registration Nos. 3,101,150
	)	3,101,151
<b>SOUTHERN LAND COMPANY, LLC</b>	)	
	)	
Registrant	)	
	)	
	)	
	)	

---

**REGISTRANT’S FIRST REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Registrant **SOUTHERN LAND COMPANY** (“Registrant”) requests that Petitioner **LISA ALYN** (“Petitioner”) serve upon Registrant signed responses to the requests for admission set forth below within thirty (30) days after the service hereof. These discovery requests are intended to be continuing in nature and any information that may be discovered subsequent to the service and filing of the answer should be brought to Registrant’s attention through supplemental answers within a reasonable time following such discovery.

For the convenience of the Board and the parties, Registrant requests that each request for admission be quoted in full immediately preceding your response.

**DEFINITIONS AND INSTRUCTIONS**

Registrant incorporates by reference the definitions and instructions set forth in Registrant’s First Set of Interrogatories to Petitioner and Registrant’s First Set of Requests for Admission to Petitioner. In addition, Registrant provides the following definitions and instructions:

- a. If the request is not admitted, Your answer must specifically deny it or state in detail why you cannot truthfully admit or deny the request.
- b. Your denial of a request must fairly respond to the substance of the request. If, in good faith, you must qualify an answer or deny only a part of a request, your answer must specify the part admitted and qualify or deny the rest of the request.
- c. You may assert lack of knowledge or information as a reason for failing to admit or deny only if you state that you have made reasonable inquiry and that the information you know or can readily obtain is insufficient to enable you to admit or deny.
- d. The grounds for objecting to a request must be specifically stated. You may not object solely on the ground that the request presents a genuine issue for trial.

#### **REQUESTS FOR ADMISSION**

1. Admit that the documents and things produced by You in response to Registrant's First Request for Production of Documents are authentic.
2. Admit that Initial Disclosures were due May 17, 2014.
3. Admit that You did not serve Initial Disclosures by May 17, 2014.
4. Admit that prior to commencing use of "WESTHAVEN" as a mark for your real estate services, You were aware of Registrant's use and registration of "WESTHAVEN" in connection with real estate and land development services.
5. Admit that prior to commencing use of "WESTHAVEN" as a mark for your real estate services, You were aware of Registrant's use and registration of "WESTHAVEN (and design)" in connection with real estate and land development services.
6. Admit that Registrant created the Westhaven community in Franklin, Tennessee.

7. Admit that before Registrant created the Westhaven community in Franklin, Tennessee, it did not exist.
8. Admit that “Westhaven” has no geographical significance under the meaning of the Trademark Act.
9. Admit that “WESTHAVEN” had no geographical significance in Franklin, Tennessee, in 2002.
10. Admit that “WESTHAVEN” is a term coined by Registrant.
11. Admit that Registrant is a land developer.
12. Admit that Registrant offers real estate services.
13. Admit that Registrant offers real estate services under the mark “WESTHAVEN”.
14. Admit that Registrant offers real estate services under the mark “WESTHAVEN (plus design)”.
15. Admit that Registrant offers land development services under the mark “WESTHAVEN”.
16. Admit that Registrant offers land development services under the mark “WESTHAVEN (plus design)”.
17. Admit that in 2002, Registrant began offering land development services under the mark “WESTHAVEN”.
18. Admit that in 2002, Registrant began offering land development services under the mark “WESTHAVEN (plus design)”.
19. Admit that in 2002, Registrant began offering real estate services under the mark “WESTHAVEN”.

20. Admit that in 2002, Registrant began offering real estate services under the mark “WESTHAVEN (plus design)”.
21. Admit that prior to 2002, the Westhaven community did not exist in Franklin, Tennessee.
22. Admit that the Westhaven community was designed by Registrant.
23. Admit that the Westhaven community was developed by Registrant.
24. Admit that Registrant selected the mark WESTHAVEN for the name of the community it created in Franklin, Tennessee.
25. Admit that You are using the mark “WESTHAVEN” for your real estate services.
26. Admit that You are marketing Your real estate services under the mark “WESTHAVEN” in Registrant’s Westhaven community.
27. Admit that You have no rights in the mark “WESTHAVEN” for your real estate services.
28. Admit that You are using the mark “WESTHAVEN” to advertise your real estate services.
29. Admit that you are attempting to sell real estate within Registrant’s WESTHAVEN community.
30. Admit that You have received legal opinion(s) regarding the possible infringement of one or more of Registrant’s Marks because of use of the mark WESTHAVEN.
31. Admit that You have received legal opinion(s) regarding possible infringement of one or more of Registrant’s Marks because of your use of WESTHAVEN in connection with real estate services.
32. Admit that You have conducted market studies or surveys to measure the consumer impression created by one or more of Registrant’s Marks.

33. Admit that You commenced use of the “WESTHAVEN” mark to increase your real estate sales in Registrant’s Westhaven community.
34. Admit that the services You offer under the WESTHAVEN mark are directly competitive with the services offered under one or more of Registrant’s Marks.
35. Admit that You are aware of instances of actual confusion between the source of the your real estate services and those of Registrant.
36. Admit that You are aware of instances where consumers mistakenly thought that you were affiliated with Registrant.
37. Admit that You are aware of instances where consumers mistakenly thought that your services were provided by Registrant.
38. Admit that You are aware of instances where consumers mistakenly thought that you were employed by Registrant.
39. Admit that You knowingly adopted Registrant’s WESTHAVEN mark.

June 6, 2014

Respectfully submitted,

STITES & HARBISON PLLC

*Mari-Elise Taube*

---

James R. Michels  
STITES & HARBISON PLLC  
401 Commerce St., Suite 800  
Nashville, TN 37219  
Telephone: (615) 782-2234  
Email: [randy.michels@stites.com](mailto:randy.michels@stites.com)

Mari-Elise Taube  
STITES & HARBISON PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
Telephone: (703) 837-3932  
Email: [mtaube@stites.com](mailto:mtaube@stites.com)

Counsel for Respondent  
Southern Land Company, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing were served on counsel for Petitioner, this 6<sup>th</sup> day of June, 2014, by sending it via U.S. Mail, postage prepaid, and by e-mail, to:

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

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

*Mari-Elise Taube*

---

Mari-Elise Taube

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

**LISA ALYN,**  
Petitioner,

v.

**SOUTHERN LAND COMPANY, LLC**  
Registrant.

Cancellation No. 92058638

U.S. Trademark Reg. Nos. 3,101,150 and  
3,101,151

---

**LISA ALYN’S RESPONSES TO  
SOUTHERN LAND COMPANY’S FIRST REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS**

Petitioner Lisa Alyn responds to the Request for Production of Documents and Things served upon it by Registrant, Southern Land Company, LLC as follows:

**GENERAL OBJECTIONS**

Under Rules 26 and 34 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Petitioner hereby makes the following general responses and objections (“General Objections”) to each Request for Production of Documents and Things propounded in Registrant’s First Requests for Production of Documents and Things. These General Objections are hereby incorporated into each specific response. The assertion of the same, similar or additional objections or partial responses to individual interrogatories does not waive any of Petitioner’s General Objections.

1. Petitioner objects to each Request to the extent the request is vague, ambiguous, overbroad, or unduly burdensome, or purport to impose upon Petitioner any duty or obligation

that is inconsistent with or in excess of those obligations that are imposed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice, or any other applicable rule.

2. Petitioner objects to the extent they purport to define words or phrases to have a meaning different from their commonly understood meaning, or to include more than their commonly understood definitions.

3. Petitioner objects to each Request as overbroad and unduly burdensome to the extent that it calls for information that is neither relevant to this proceeding or the claims or defenses of the parties nor reasonably calculated to lead to the discovery of admissible evidence.

4. Petitioner objects to any Request to the extent it seeks irrelevant information about Petitioner's services or business operations. Such requests are overbroad and unduly burdensome. Petitioner will only respond to Requests that is relevant to the trademarks subject to this cancellation proceeding, or that is otherwise related to the claims or defenses of the parties asserted by the parties in this proceeding.

5. Petitioner objects to each Request to the extent that it would impose a duty on Petitioner to undertake a search for or an evaluation of information, documents, or things for which Registrant is equally able to search for and evaluate. In particular, Petitioner objects to each Request to the extent that it seeks information or documents that are publicly available or in Registrant's possession, custody, and control.

6. Petitioner objects to the Requests to the extent they seek information that is not in the possession, custody, or control of Petitioner.

7. Petitioner objects to the Requests to the extent they would require Petitioner to draw a legal conclusion or contention to make a proper response.

8. Petitioner objects to any Request to the extent that it purports to require identification of oral communications. Such requests are overbroad, vague, ambiguous and unduly burdensome.

9. Petitioner objects to the Requests to the extent they are not limited in time and seek information for periods of time that are not relevant to any claim or defense in this proceeding.

10. Petitioner objects to Registrant's definition of "PETITIONER", "YOU" and "YOUR" to the extent they purport to include persons or entities that are separate and distinct from Petitioner or are not under Petitioner's control. For the purpose of these responses and objections, the terms "Petitioner", "You" and "Your" refer only to Lisa Alyn.

11. Petitioner objects to Registrant's definition of "REGISTRANT'S MARKS" because it is inaccurate, overly broad, vague, ambiguous, and unduly burdensome. The definition is particularly vague and ambiguous in its use of the phrase "Registrant's Marks shall include", and overly broad in attempting to include other trademarks and information other than that cited to the Trademark Office during the prosecutions of the trademarks that are the subject of this Cancellation Proceeding. For the purpose of these responses and objections, the words "Registrant's Marks" means the marks shown in U.S. Registration Nos. 3,101,150 and 3,101,151.

12. Petitioner objects to every Request that uses the phrase "under the WESTHAVEN mark", "use of the WESTHAVEN mark" or other similar iteration because it is inaccurate, misleading, overly broad, vague, ambiguous and unduly burdensome. Use of these phrases inappropriately assumes that use of the geographically descriptive term Westhaven is a trademark use.

13. Petitioner objects to Registrant's definition of "DOCUMENT" because it is overly broad and unduly burdensome because it would require Petitioner to include in its responses, for example, documents related to trademarks that Registrant may own or claim to own other than the trademarks covered by U.S. Registration Nos. 3,101,150 and 3,101,151; documents and testimony supporting every fact in Petitioner's responses; information and documents that is neither relevant to this proceeding, the claims or defenses of the parties, nor reasonably calculated to lead to the discovery of admissible evidence.

14. Petitioner objects to each Request to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, doctrine, or discovery immunity.

15. Petitioner provides these objections and responses to the best of its current knowledge. Discovery or further investigation may reveal additional or different information warranting amendment of these objections and responses. Petitioner reserves the right to produce at trial and make reference to any evidence, facts, documents, or information not discovered at this time, omitted through good-faith error, mistake, or oversight, or the relevance of which Petitioner has not presently identified.

16. Petitioner's objections as set forth herein are made without prejudice to Petitioner's right to assert any additional or supplemental objections pursuant to Rule 26(e).

17. Petitioner will make, and has made, reasonable efforts to respond to Registrant's Requests, to the extent that no objection is made, as Petitioner reasonably understands and interprets each Request. If Registrant subsequently asserts any interpretation of any request that differs from the interpretation of Petitioner, then Petitioner reserves the right to supplement and amend its objections and responses.

Subject to the above objections, and without waiving the same, Petitioner now answers and objects to the numbered Request for Production of Documents and Things as follows:

### **SPECIFIC RESPONSES AND OBJECTIONS**

1. Produce all documents related to market research (including, surveys, studies, investigations and focus group inquiries) conducted by or on behalf of You regarding the use of WESTHAVEN as a mark. Subject to the objections and without waiving them, Ms. Alyn has no documents responsive to this request.

**RESPONSE:** Petitioner has no documents responsive to this request.

2. Produce all documents related to your creation, selection and adoption of the WESTHAVEN mark, including without limitation search reports, market surveys, emails and interoffice memoranda.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject

to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

3. Produce all documents which relate or refer to Your intention to use the WESTHAVEN mark in connection with real estate services.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

4. Produce all documents which relate or refer to Your use of the WESTHAVEN mark in connection with real estate services.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for

cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Ms. Alyn further objects to this request on the grounds that it is overly broad, harassing and unduly burdensome because, to fully respond to this request, Ms. Alyn would have to provide every single piece of paper relating to her real estate business for nearly a decade; obviously, most of those documents would have absolutely no relevance to the claims or defenses in this proceeding.

5. Produce all documents responsive to each and every request for identification of documents in Registrant's First Set of Interrogatories.

**RESPONSE:** Ms. Alyn incorporates her answers to Registrant's First Set of Interrogatories. Petitioner further objects to this request on the ground that the request is harassing, overly broad and unduly burdensome.

6. Produce all documents in your possession that refer to Registrant.

**RESPONSE:** Petitioner further objects to this request on the ground that the request is harassing, overly broad and unduly burdensome because any documents in Ms. Alyn's possession are also within the possession, custody, or control of the Registrant, and publicly available.

7. Produce all documents in your possession that refer to Registrant's Marks.

**RESPONSE:** Ms. Alyn objects to this request on the ground that the request is harassing, overly broad and unduly burdensome. The term "Registrant's Marks" have been defined to include the designation "Westhaven"; as Ms. Alyn's business also uses the term "Westhaven", to respond to this request Ms. Alyn would be required to produce every single piece of paper relating to her real estate business for nearly a decade. Obviously, most of those documents would have absolutely no relevance to the claims or defenses in this proceeding.

8. Produce all documents relating to Your knowledge of Registrant's intellectual property protection for Registrant's Marks.

**RESPONSE:** Petitioner objects to this request on the ground that the request is vague and ambiguous. Subject to that objection, and without waiving it, Ms. Alyn does not believe she has any documents responsive to this request. Ms. Alyn will supplement this response if and when the request is clarified.

9. Produce all documents related to the consideration of each and every other alternative mark which was considered for adoption and use in connection with Your real estate services.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

10. Produce all documents relating to the reasons for Your selection of the WESTHAVEN mark in connection with Your real estate services.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of

fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

11. Produce all documents related to the steps taken by You to determine the availability of WESTHAVEN as a mark for use in connection with real estate services.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

12. Produce all documents related to or reflecting opinions as to whether Your use of WESTHAVEN would conflict with any prior used or registered mark.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing*, *Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

13. Produce all documents related to or reflecting opinions obtained on the inherent registrability of "WESTHAVEN" for the services which You offer under the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it is vague and ambiguous; Ms. Alyn is uncertain what is meant by the phrase "inherent registrability." Further, Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern

Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

14. Produce all documents showing or relating to sales of the Your services under the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving

infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011).

15. Produce all documents showing or relating to the advertising of Your services under the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See Trademark Rule 402* ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request.

16. Produce all documents relating to the costs of advertising already implemented for any and all services offered under the mark WESTHAVEN by You.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for

cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

17. Produce representative samples of all advertising which has been implemented and representative samples of all planned advertising for the services offered by You under the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving

infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011).

18. Produce all documents relating to sales strategies for the services offered under the mark WESTHAVEN by You.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See Trademark Rule 402* ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

19. Produce all documents relating to the advertising strategies for the services offered under the mark WESTHAVEN by You.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical

significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

20. Produce all documents relating to the date the mark WESTHAVEN was first used by You in connection with real estate services.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

21. Produce all documents, as applicable, relating to the first property sold under the mark WESTHAVEN by You.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

22. Produce copies of all legal and non-legal opinions which you have obtained that relate to Your use or application for registration of the mark WESTHAVEN for the services You offer or intend to offer under the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that may be subject to the attorney-client privilege or the work product privilege. Subject to those objections, and without waiving them, Ms. Alyn does not have any documents which are responsive to this request.

23. Produce all documents related to the channels of trade and distribution in the United States that You use or intend to use for the offering of Your services under the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

24. To the extent that documents have not been produced in response to the preceding document requests, produce all documents showing any and all agreements related to the mark WESTHAVEN, including without limitation, agreements relating to advertising under the mark, assignments, licenses, authorizations, permissions or consents.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical

significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

25. Produce all documents related to Petitioner's knowledge of Registrant and any or all of the Registrant's Marks.

**RESPONSE:** Petitioner objects to this request on the ground that the request is overbroad and unduly burdensome; Ms. Alyn is uncertain what is meant by "documents related to Petitioner's knowledge of Registrant." Subject to this objection, and without waiving it, Ms. Alyn responds that she has no documents responsive to this request except those publically available, such as Registrant's website.

26. Produce all documents related to Petitioner's knowledge of services offered by Registrant under any or all of Registrant's Marks.

**RESPONSE:** Ms. Alyn has no documents in her possession that are not otherwise publically available, such as copies of Registrant's website.

27. Produce all documents related to studies, surveys or polls conducted by or for Petitioner relating to Registrant or Registrant's Marks.

**RESPONSE**: Petitioner has no documents responsive to this request in its possession or control.

28. Produce all documents relating to Petitioner's policies for keeping and retaining records.

**RESPONSE**: Petitioner has no documents responsive to this request in its possession or control.

29. Produce all documents relating to trademark searches, clearance, approval, and evaluation of the mark WESTHAVEN for use by You.

**RESPONSE**: Petitioner has no documents responsive to this request.

30. Produce all documents that demonstrate, discuss or describe the services in connection with which You use the WESTHAVEN mark.

**RESPONSE**: Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving

infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011).

38. Produce all documents regarding the geographical areas in which You offer and intend to offer your services under the WESTHAVEN mark.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See Trademark Rule 402* ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

31. Produce all documents reflecting or regarding the buyers of the services offered by You under the WESTHAVEN mark.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by

Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

32. Produce all documents regarding or discussing Registrant's rights in connection with the exclusive use of WESTHAVEN in connection with real estate services.

**RESPONSE:** Except for the prosecution records relating to the trademark applications filed by Registrant, which documents are publicly available to Registrant, Petitioner has no documents responsive to this request.

33. Produce all documents regarding or discussing Registrant's rights in connection with the exclusive use of WESTHAVEN in connection with land development services.

**RESPONSE:** Except for the prosecution records relating to the trademark applications filed by Registrant, which documents are publicly available to Registrant, Petitioner has no documents responsive to this request

34. Produce all documents reflecting or regarding the dollar value of sales or projected sales of the services offered by You under the WESTHAVEN mark, including but not limited to documents reflecting or discussing how such projected sales numbers were determined.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

35. Produce all documents showing the amount of money budgeted and/or expended to date to promote the services offered by You under the WESTHAVEN mark.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving

infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011).

36. For each expert that Petitioner intends to call to testify in this proceeding produce the written report required by Fed. R. Civ. P. 26(a)(2)(B).

**RESPONSE:** At this time, Petitioner has no documents responsive to this request in its possession or control. Ms. Alyn reserves the right to supplement this response pursuant to the deadlines established by the Board's scheduling order.

37. Produce all documents upon which Petitioner relies to support its position that Registrant's Marks are geographically descriptive.

**RESPONSE:** Ms. Alyn will produce all responsive documents in her possession and control.

38. Produce all documents upon which Petitioner relies to support its position that Registrant's Marks are geographically descriptive within the meaning of the Trademark Act.

**RESPONSE:** Ms. Alyn will produce all responsive documents in her possession and control.

39. Produce all documents upon which Petitioner relies to support its position that fraud was committed in prosecuting the applications for registration of Registrant's Marks.

**RESPONSE:** Ms. Alyn will produce all responsive documents in her possession and control.

40. Produce all documents which Petitioner referred to or relied upon in responding to Registrant's first set of interrogatories in this proceeding.

**RESPONSE:** Ms. Alyn will produce all responsive documents, if any, in her possession and control.

41. Produce any and all documents reflecting objections by or disputes with third parties relating to Your use of the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to these objections, and without waiving them, except for Registrant, no third party has objected to Ms. Alyn's use of the geographical term Westhaven. Ms. Alyn will produce all responsive documents in her control and possession, relating to the current dispute with Registration.

42. Produce any and all documents which refer or relate to Your knowledge of the application for registration of “WESTHAVEN” by Registrant.

**RESPONSE:** Ms. Alyn’s knowledge of Registrant’s trademark application is limited to the publically available file wrapper for Registrant’s registration.

43. Produce any and all documents which refer or relate to Your knowledge of the application for registration of “WESTHAVEN (plus design)” by Registrant.

**RESPONSE:** Ms. Alyn’s knowledge of Registrant’s trademark application is limited to the publically available file wrapper for Registrant’s registration.

44. Produce all documents that relate to every other alternative mark which was considered for adoption and use in connection with Your real estate services.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing*, *Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

45. Produce all documents that relate to or reference consumer confusion or possible consumer confusion between the services offered by You under the WESTHAVEN mark and the services offered by Registrant under Registrant's Marks.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn has no documents responsive to this request in her possession or control.

46. Produce all documents that relate or refer to whether the use of Petitioner's Mark might infringe Registrant's rights in Registrant's Marks.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical

significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

47. Produce all documents reflecting internal communications referring or relating to possible conflict with Registrant's Marks in using or possibly using the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn has no documents responsive to this request in her possession or control.

48. Produce all documents which refer or relate to communications with third parties referring or relating to possible conflict with Registrant's Marks in using or possibly using the mark WESTHAVEN.

**RESPONSE:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. *See* Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn has no documents responsive to this request in her possession or control.

49. Produce all documents relating to Petitioner's knowledge of Registrant's prosecution of U.S. Registration No. 3,101,150.

**RESPONSE:** Ms. Alyn's knowledge of Registrant's prosecution of U.S. Registration No. 3,101,150 is limited to the publically available file wrapper for Registrant's registration.

50. Produce all documents relating to Petitioner's knowledge of Registrant's prosecution of U.S. Registration No. 3,101,151.

**RESPONSE:** Ms. Alyn's knowledge of Registrant's prosecution of U.S. Registration No. 3,101,151 is limited to the publically available file wrapper for Registrant's registration.

Respectfully submitted,

/Brandon J Frank /

Dated: July 11, 2014

---

Gregory D. Latham  
Intellectual Property Consulting, LLC  
201 St. Charles, Suite 2500  
New Orleans, LA 70170  
Telephone: (504) 322-7166  
Facsimile: (504) 322-7184  
E-mail: [glatham@iplawconsulting.com](mailto:glatham@iplawconsulting.com)

Brandon Frank  
Pailet & Ostendorf, LLP  
650 Poydras, Suite 1470  
New Orleans, Louisiana 70130  
Tel: 504-299-3415  
Fax: 504-527-5111  
E-mail: [Brandon@proentertainmentlaw.com](mailto:Brandon@proentertainmentlaw.com)

*Attorney for Petitioner, Lisa Alyn*

**CERTIFICATE OF SERVICE**

I certify that on this 11 day of July, 2014, a true copy of the foregoing were served on counsel for Registrant, by e-mail and via First Class Mail, postage prepaid, to:

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

Mari-Elise Taube  
STITES & HARBISON PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
Telephone: (703) 837-3932  
Email: mtaube@stites.com

/Brandon J Frank/

---

Brandon J. Frank

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

**LISA ALYN,**  
Petitioner,

v.

**SOUTHERN LAND COMPANY, LLC**  
Registrant.

Cancellation No. 92058638

U.S. Trademark Reg. Nos. 3,101,150 and  
3,101,151

---

**LISA ALYN’S RESPONSE TO  
SOUTHERN LAND COMPANY’S FIRST REQUESTS FOR ADMISSION**

Lisa Alyn, Petitioner, by and through its undersigned counsel, responds and objects to the Requests for Admissions issued to Petitioner by the Registrant, Southern Land Company, LLC, on or about June 6, 2014, and in support of her objection represents as follows:

**GENERAL OBJECTIONS**

Under Rules 26 and 36 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Petitioner hereby makes the following general responses and objections (“General Objections”) to each Request for Admission propounded in Registrant’s First Requests for Admission to Petitioner. These General Objections are hereby incorporated into each specific response. The assertion of the same, similar or additional objections or partial responses to individual interrogatories does not waive any of Petitioner’s General Objections.

1. Petitioner objects to each Request for Admission to the extent the request is vague, ambiguous, overbroad, or unduly burdensome, or purport to impose upon Petitioner any duty or obligation that is inconsistent with or in excess of those obligations that are imposed by

the Federal Rules of Civil Procedure and the Trademark Rules of Practice, or any other applicable rule.

2. Petitioner objects to the Registrant's First Requests for Admission to the extent they purport to define words or phrases to have a meaning different from their commonly understood meaning, or to include more than their commonly understood definitions.

3. Petitioner objects to each Request for Admission as overbroad and unduly burdensome to the extent that it calls for information that is neither relevant to this proceeding or the claims or defenses of the parties.

4. Petitioner objects to any Request for Admission to the extent it seeks irrelevant information about Petitioner's services or business operations. Such requests are overbroad and unduly burdensome. Petitioner will only respond to Requests for Admission that is relevant to the trademarks subject to this cancellation proceeding, or that is otherwise related to the claims or defenses of the parties asserted by the parties in this proceeding.

5. Petitioner objects to each Request for Admission to the extent that it would impose a duty on Petitioner to undertake a search for or an evaluation of information, documents, or things for which Registrant is equally able to search for and evaluate. In particular, Petitioner objects to each Request for Admission to the extent that it seeks information or documents that are publicly available or in Registrant's possession, custody, and control.

6. Petitioner objects to the Requests for Admission to the extent they seek information that is not in the possession, custody, or control of Petitioner.

7. Petitioner objects to the Requests for Admission to the extent they would require Petitioner to draw a legal conclusion or contention to make a proper response.

8. Petitioner objects to any Request for Admission to the extent that it purports to require identification of oral communications. Such requests are overbroad, vague, ambiguous and unduly burdensome.

9. Petitioner objects to the Requests for Admission to the extent they are not limited in time and seek information for periods of time that are not relevant to any claim or defense in this proceeding.

10. Petitioner objects to Registrant's definition of "PETITIONER", "YOU" and "YOUR" to the extent they purport to include persons or entities that are separate and distinct from Petitioner or are not under Petitioner's control. For the purpose of these responses and objections, the terms "Petitioner", "You" and "Your" refer only to Lisa Alyn.

11. Petitioner objects to Registrant's definition of "REGISTRANT'S MARKS" because it is inaccurate, overly broad, vague, ambiguous, and unduly burdensome. The definition is particularly vague and ambiguous in its use of the phrase "Registrant's Marks *shall include*", and overly broad in attempting to include other trademarks and information other than that cited to the Trademark Office during the prosecutions of the trademarks that are the subject of this Cancellation Proceeding. For the purpose of these responses and objections, the words "Registrant's Marks" means the marks shown in U.S. Registration Nos. 3,101,150 and 3,101,151.

12. Petitioner objects to every Request for Admission that uses the phrase "under the WESTHAVEN mark", "use of the WESTHAVEN mark" or other similar iteration because it is inaccurate, misleading, overly broad, vague, ambiguous and unduly burdensome. Use of these phrases inappropriately assumes that use of the geographically descriptive term Westhaven is a trademark use.

13. Petitioner objects to Registrant's definition of "DOCUMENT" because it is overly broad and unduly burdensome because it would require Petitioner to include in its responses, for example, documents related to trademarks that Registrant may own or claim to own other than the trademarks covered by U.S. Registration Nos. 3,101,150 and 3,101,151; documents and testimony supporting every fact in Petitioner's responses; information and documents that is neither relevant to this proceeding or to the claims or defenses of the parties.

14. Petitioner objects to each Request for Admission to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, doctrine, or discovery immunity.

15. Petitioner provides these objections and responses to the best of her current knowledge. Discovery or further investigation may reveal additional or different information warranting amendment of these objections and responses. Petitioner reserves the right to produce at trial and make reference to any evidence, facts, documents, or information not discovered at this time, omitted through good-faith error, mistake, or oversight, or the relevance of which Petitioner has not presently identified.

16. Petitioner's objections as set forth herein are made without prejudice to Petitioner's right to assert any additional or supplemental objections pursuant to Rule 26(e).

17. Petitioner will make, and has made, reasonable efforts to respond to Registrant's First Requests for Admission, to the extent that no objection is made, as Petitioner reasonably understands and interprets each Request for Admission. If Registrant subsequently asserts any interpretation of any request that differs from the interpretation of Petitioner, then Petitioner reserves the right to supplement and amend its objections and responses.

Subject to the above objections, and without waiving the same, Petitioner now answers and objects to the numbered Request for Admission of Registrant's First Requests for Admission as follows:

1. Admit that the documents and things produced by You in response to Registrant's First Request for Production of Documents are authentic.

**Response:** Unless specifically stated otherwise, Ms. Alyn admits that documents supplied are authentic.

2. Admit that Initial Disclosures were due May 17, 2014.

**Response:** Admit.

3. Admit that You did not serve Initial Disclosures by May 17, 2014.

**Response:** Admit.

4. Admit that prior to commencing use of "WESTHAVEN" as a mark for your real estate services, You were aware of Registrant's use and registration of "WESTHAVEN" in connection with real estate and land development services.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court

proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and without waiving it, Ms. Alyn admits that she was aware of Southern Land's use of the geographic designation "Westhaven"; just as Ms. Alyn was aware of numerous third parties using the geographic designation "Westhaven" in connection with their services, or to identify locations, places or addresses. Ms. Alyn denies that she was aware of Southern Land's fraudulently-procured registration for the designation "Westhaven."

5. Admit that prior to commencing use of "WESTHAVEN" as a mark for your real estate services, You were aware of Registrant's use and registration of "WESTHAVEN (and design)" in connection with real estate and land development services.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and

without waiving it, Ms. Alyn further objects to this request on the grounds that it assumes that Ms. Alyn uses the designation "Westhaven" as a mark; she does not. Ms. Alyn uses the term "Westhaven" to signify the geographical location in which she lives and provides her services. Subject to these objections, and without waiving them, Ms. Alyn admits that she was aware of Southern Land's use of the geographic designation "Westhaven (and design)"; just as Ms. Alyn was aware of numerous third parties using the geographic designation "Westhaven" in connection with their services, or to identify locations, places or addresses. Ms. Alyn denies that she was aware of Southern Land's fraudulently-procured registration for the designation "Westhaven (and design)."

6. Admit that Registrant created the Westhaven community in Franklin, Tennessee.

**Response:** Ms. Alyn does not have personal information required to admit or deny this request.

7. Admit that before Registrant created the Westhaven community in Franklin, Tennessee, it did not exist.

**Response:** Ms. Alyn objects to this request on the grounds that it is vague and ambiguous. Subject to those objections, and without waiving them, Ms. Alyn responds that the designation "Westhaven" has been used in many instances as a geographical term throughout the United States; Registrant did not "create" the term "Westhaven."

8. Admit that "Westhaven" has no geographical significance under the meaning of the Trademark Act.

**Response:** Deny.

9. Admit that "WESTHAVEN" had no geographical significance in Franklin, Tennessee, in 2002.

**Response:** Deny.

10. Admit that “WESTHAVEN” is a term coined by Registrant.

**Response:** Deny.

11. Admit that Registrant is a land developer.

**Response:** Admit.

12. Admit that Registrant offers real estate services.

**Response:** Ms. Alyn is without sufficient information or knowledge to enable her to admit or deny the request.

13. Admit that Registrant offers real estate services under the mark “WESTHAVEN”.

**Response:** Ms. Alyn is without sufficient information or knowledge to enable her to admit or deny the request.

14. Admit that Registrant offers real estate services under the mark “WESTHAVEN (plus design)”.

**Response:** Petitioner is without sufficient information or knowledge to enable her to admit or deny the request.

15. Admit that Registrant offers land development services under the mark “WESTHAVEN”.

**Response:** Ms. Alyn admits that Registrant offers land development services in or around Westhaven, Franklin, Tennessee; but denies that use of the designation Westhaven is a trademark use.

16. Admit that Registrant offers land development services under the mark “WESTHAVEN (plus design)”.

**Response:** Ms. Alyn admits that Registrant offers land development services in or around Westhaven, Franklin, Tennessee; but denies that use of the designation Westhaven is a trademark use.

17. Admit that in 2002, Registrant began offering land development services under the mark “WESTHAVEN”.

**Response:** Ms. Alyn objects to this request on the grounds that it improperly assumes that the designation "Westhaven" serves as a trademark; it does not. Subject to that objection, and without waiving it, Ms. Alyn does not have personal information required to admit or deny this request.

18. Admit that in 2002, Registrant began offering land development services under the mark “WESTHAVEN (plus design)”.

**Response:** Ms. Alyn objects to this request on the grounds that it improperly assumes that the designation "Westhaven" serves as a trademark; it does not. Subject to that objection, and without waiving it, Ms. Alyn does not have personal information required to admit or deny this request.

19. Admit that in 2002, Registrant began offering real estate services under the mark “WESTHAVEN”.

**Response:** Ms. Alyn objects to this request on the grounds that it improperly assumes that the designation "Westhaven" serves as a trademark; it does not. Subject to that objection, and without waiving it, Ms. Alyn does not have personal information required to admit or deny this request.

20. Admit that in 2002, Registrant began offering real estate services under the mark “WESTHAVEN (plus design)”.

**Response:** Ms. Alyn objects to this request on the grounds that it improperly assumes that the designation "Westhaven" serves as a trademark; it does not. Subject to that objection, and without waiving it, Ms. Alyn does not have personal information required to admit or deny this request.

21. Admit that prior to 2002, the Westhaven community did not exist in Franklin, Tennessee.

**Response:** Ms. Alyn does not have personal information required to admit or deny this request.

22. Admit that the Westhaven community was designed by Registrant.

**Response:** Ms. Alyn does not have personal information required to admit or deny this request.

23. Admit that the Westhaven community was developed by Registrant.

**Response:** Ms. Alyn does not have personal information required to admit or deny this request.

24. Admit that Registrant selected the mark WESTHAVEN for the name of the community it created in Franklin, Tennessee.

**Response:** Ms. Alyn does not have personal information required to admit or deny this request.

25. Admit that You are using the mark "WESTHAVEN" for your real estate services.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a

term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", citing, *Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn admits that she, as well as numerous other third parties, use the geographical term 'Westhaven' to identify a geographical area where she or they provide real estate services.

26. Admit that You are marketing Your real estate services under the mark "WESTHAVEN" in Registrant's Westhaven community.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", citing, *Frito-Lay North America Inc. v. Princeton*

*Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and without waiving it, Ms. Alyn admits that she, as well as numerous other third parties, uses the geographical term 'Westhaven' to identify a geographical area where she markets her real estate services.

27. Admit that You have no rights in the mark “WESTHAVEN” for your real estate services.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and without waiving it; denied. Ms. Alyn has the right to use the geographical term 'Westhaven' in connection with her real estate services.

28. Admit that You are using the mark “WESTHAVEN” to advertise your real estate services.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern

Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn admits that she, as well as numerous other third parties, use the geographical term 'Westhaven' to identify a geographical area where she advertises her real estate services.

29. Admit that you are attempting to sell real estate within Registrant's WESTHAVEN community.

**Response:** Ms. Alyn admits that she sells real estate in and around Westhaven, Franklin, Tennessee.

30. Admit that You have received legal opinion(s) regarding the possible infringement of one or more of Registrant's Marks because of use of the mark WESTHAVEN.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. This is not an infringement proceeding. Ms. Alyn further objects to this request to the extent it seeks information that is subject to the attorney-client privilege or the work product privilege. Subject to

those objections, and without waiving them, Ms. Alyn has not received legal opinions from anyone other than current legal counsel.

31. Admit that You have received legal opinion(s) regarding possible infringement of one or more of Registrant's Marks because of your use of WESTHAVEN in connection with real estate services.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. This is not an infringement proceeding. Ms. Alyn further objects to this request to the extent it seeks information that is subject to the attorney-client privilege or the work product privilege. Subject to those objections, and without waiving them, Ms. Alyn has not received legal opinions from anyone other than current legal counsel.

32. Admit that You have conducted market studies or surveys to measure the consumer impression created by one or more of Registrant's Marks.

**Response:** Deny.

33. Admit that You commenced use of the "WESTHAVEN" mark to increase your real estate sales in Registrant's Westhaven community.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven"

or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and without waiving it, Ms. Alyn admits to using the designation Westhaven to increase sales in the area known as Westhaven, Franklin, Tennessee.

34. Admit that the services You offer under the WESTHAVEN mark are directly competitive with the services offered under one or more of Registrant's Marks.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and without waiving it, Ms. Alyn has no personal knowledge or information as to whether Registrant provides real estate services in and around Westhaven Franklin, Tennessee.

35. Admit that You are aware of instances of actual confusion between the source of the your real estate services and those of Registrant.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to those objections, and without waiving them, denied.

36. Admit that You are aware of instances where consumers mistakenly thought that you were affiliated with Registrant.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does

not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to those objections, and without waiving them, denied.

37. Admit that You are aware of instances where consumers mistakenly thought that your services were provided by Registrant.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to those objections, and without waiving them, denied.

38. Admit that You are aware of instances where consumers mistakenly thought that you were employed by Registrant.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to those objections, and without waiving them, denied.

39. Admit that You knowingly adopted Registrant's WESTHAVEN mark.

**Response:** Ms. Alyn objects to this request on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This request does not seek any information relating to geographical significance of the term "Westhaven"

or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to those objections, and without waiving them, denied. Subject to such objection, and without waiving it, Ms. Alyn admits that she knowingly adopted the geographically descriptive term "Westhaven" to describe where her services are offered; Ms. Alyn denies that Southern Land holds exclusive rights to use the geographically descriptive term or that she adopted the geographically descriptive term with the knowledge that Southern Land had fraudulently procured trademark registrations for the term.

Respectfully submitted,

Dated: July 11, 2014

/Brandon J Frank/

---

Gregory D. Latham  
Intellectual Property Consulting, LLC  
201 St. Charles, Suite 2500  
New Orleans, LA 70170  
Telephone: (504) 322-7166  
Facsimile: (504) 322-7184  
E-mail: [glatham@iplawconsulting.com](mailto:glatham@iplawconsulting.com)

Brandon Frank  
Paillet & Ostendorf, LLP  
650 Poydras, Suite 1470  
New Orleans, Louisiana 70130  
Tel: 504-299-3415  
Fax: 504-527-5111  
E-mail: [Brandon@proentertainmentlaw.com](mailto:Brandon@proentertainmentlaw.com)

*Attorney for Petitioner, Lisa Alyn*

**CERTIFICATE OF SERVICE**

I certify that on this 11 day of July, 2014, a true copy of the foregoing were served on counsel for Registrant, by e-mail and via First Class Mail, postage prepaid, to:

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

Mari-Elise Taube  
STITES & HARBISON PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
Telephone: (703) 837-3932  
Email: mtaube@stites.com

/Brandon J Frank/

---

Brandon J Frank

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

**LISA ALYN,**  
Petitioner,

v.

**SOUTHERN LAND COMPANY, LLC**  
Registrant.

Cancellation No. 92058638

U.S. Trademark Reg. Nos. 3,101,150 and  
3,101,151

---

**LISA ALYN’S RESPONSE TO  
SOUTHERN LAND COMPANY’S FIRST SET OF INTERROGATORIES**

Lisa Alyn, Petitioner, by and through her undersigned counsel, responds and objects to the Interrogatories issued to the Petitioner by the Registrant, Southern Land Company, LLC, on or about June 6, 2014, and in support of her objection represents as follows:

**GENERAL OBJECTIONS**

Under Rules 26 and 33 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Petitioner hereby makes the following general responses and objections (“General Objections”) to each definition, instruction, and interrogatory propounded in Registrant’s First Set of Interrogatories to Petitioner. These General Objections are hereby incorporated into each specific response. The assertion of the same, similar or additional objections or partial responses to individual interrogatories does not waive any of Petitioner’s General Objections.

1. Petitioner objects to each Interrogatory and to Registrant’s “Definitions” and “Instructions” to the extent they are vague, ambiguous, overbroad, or unduly burdensome, or purport to impose upon Petitioner any duty or obligation that is inconsistent with or in excess of

those obligations that are imposed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice, or any other applicable rule.

2. Petitioner objects to the Registrant's First Set of Interrogatories to the extent they purport to define words or phrases to have a meaning different from their commonly understood meaning, or to include more than their commonly understood definitions.

3. Petitioner objects to each Interrogatory as overbroad and unduly burdensome to the extent that it calls for information that is neither relevant to this proceeding or the claims or defenses of the parties.

4. Petitioner objects to any Interrogatory to the extent it seeks irrelevant information about Petitioner's services or business operations. Such requests are overbroad and unduly burdensome. Petitioner will only produce information that is relevant to the trademarks subject to this cancellation proceeding, or that is otherwise related to the claims or defenses of the parties asserted by the parties in this proceeding.

5. Petitioner objects to each Interrogatory to the extent that it would impose a duty on Petitioner to undertake a search for or an evaluation of information, documents, or things for which Registrant is equally able to search for and evaluate. In particular, Petitioner objects to each Interrogatory to the extent that it seeks information or documents that are publicly available or in Registrant's possession, custody, and control.

6. Petitioner objects to the Interrogatories to the extent they seek information that is not in the possession, custody, or control of Petitioner.

7. Petitioner objects to the Interrogatories to the extent they would require Petitioner to draw a legal conclusion or contention to make a proper response.

8. Petitioner objects to any Definition, Instruction or Interrogatory to the extent that it purports to require identification of oral communications. Such Definition, Instruction or Interrogatory is overbroad, vague, ambiguous and unduly burdensome.

9. Petitioner objects to the Interrogatories to the extent they are not limited in time and seek information for periods of time that are not relevant to any claim or defense in this proceeding.

10. Petitioner objects to Registrant's definition of "PETITIONER", "YOU" and "YOUR" to the extent they purport to include persons or entities that are separate and distinct from Petitioner or are not under Petitioner's control. For the purpose of these responses and objections, the terms "Petitioner", "You" and "Your" refer only to Lisa Alyn.

11. Petitioner objects to Registrant's definition of "REGISTRANT'S MARKS" because it is inaccurate, overly broad, vague, ambiguous, and unduly burdensome. The definition is particularly vague and ambiguous in its use of the phrase "Registrant's Marks *shall include*", and overly broad in attempting to include other trademarks and information other than that cited to the Trademark Office during the prosecutions of the trademarks that are the subject of this Cancellation Proceeding. For the purpose of these responses and objections, the words "Registrant's Marks" means the marks shown in U.S. Registration Nos. 3,101,150 and 3,101,151.

12. Petitioner objects to every Interrogatory that uses the phrase "under the WESTHAVEN mark", "use of the WESTHAVEN mark" or other similar iteration because it is inaccurate, misleading, overly broad, vague, ambiguous and unduly burdensome. Use of these phrases inappropriately assumes that use of the geographically descriptive term Westhaven is a trademark use.

13. Petitioner objects to Registrant's definition of "DOCUMENT" because it is overly broad and unduly burdensome because it would require Petitioner to include in its responses, for example, documents related to trademarks that Registrant may own or claim to own other than the trademarks covered by U.S. Registration Nos. 3,101,150 and 3,101,151; documents and testimony supporting every fact in Petitioner's responses; information and documents that is neither relevant to this proceeding or to the claims or defenses of the parties.

14. Petitioner objects to each Interrogatory to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, doctrine, or discovery immunity.

15. Petitioner provides these objections and responses to the best of its current knowledge. Discovery or further investigation may reveal additional or different information warranting amendment of these objections and responses. Petitioner reserves the right to produce at trial and make reference to any evidence, facts, documents, or information not discovered at this time, omitted through good-faith error, mistake, or oversight, or the relevance of which Petitioner has not presently identified.

16. Petitioner's objections as set forth herein are made without prejudice to Petitioner's right to assert any additional or supplemental objections pursuant to Rule 26(e).

17. Petitioner will make, and has made, reasonable efforts to respond to Registrant's First Set of Interrogatories, to the extent that no objection is made, as Petitioner reasonably understands and interprets each Interrogatory. If Registrant subsequently asserts any interpretation of any Interrogatory that differs from the interpretation of Petitioner, then Petitioner reserves the right to supplement and amend its objections and responses.

Subject to the above objections, and without waiving the same, Petitioner now answers and objects to the numbered Interrogatories of Registrant's First Set of Interrogatories to Petitioner as follows:

## **OBJECTIONS AND RESPONSES TO INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify (a) the three people most knowledgeable as to the creation, selection, adoption, and use of WESTHAVEN by You and (b) the three people most knowledgeable as to the services provided by You under the WESTHAVEN mark.

### **RESPONSE AND OBJECTIONS TO INTERROGATORY 1:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Lisa Alyn and Becky Best.

**INTERROGATORY NO. 2:**

Identify and describe in detail each service offered by You under the mark WESTHAVEN and identify and describe in detail where these services are offered.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 2:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn is a licensed real estate agent in the state of Tennessee and provides real estate services in and around Westhaven Franklin Tennessee.

**INTERROGATORY NO. 3:**

Explain the basis for and identify all facts which evidence, support, refer or relate to the good faith use of the WETSHAVEN mark by You.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 3:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of

Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn uses the designation Westhaven to identify a geographical location in which she provides real estate services. Ms. Alyn uses the designation Westhaven similar to other third parties uses of said designation to refer to places, addresses or locations in and around Westhaven, Franklin, Tennessee.

**INTERROGATORY NO. 4:**

State the reasons for Your selection of the WESTHAVEN mark for use on or in connection with real estate services and identify the person(s) who first suggested, proposed, recommended, conceived of, or suggested use of the WESTHAVEN mark in connection with these services.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 4:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern

Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn selected "Westhaven" to refer to a location or area where she provides her real estate services.

**INTERROGATORY NO. 5:**

Describe in detail all steps which were taken in connection with creation and adoption of Petitioner's Mark, and identify all documents which relate to creation and adoption of Petitioner's Mark.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 5:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement

and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and without waiving it, Ms. Alyn did not create the Westhaven designation; rather she uses the designation to refer to a location where she lives and provides real estate services.

**INTERROGATORY NO. 6:**

Identify and describe in detail the channels of trade in the United States that You use or intend to use to offer and promote your real estate services under the WESTHAVEN mark.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 6:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011). Subject to this objection, and without waiving it, Ms. Alyn provides her real estate services in and around Westhaven Franklin Tennessee.

**INTERROGATORY NO. 7:**

Identify Your target purchasers for the services offered under the WESTHAVEN mark.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 7:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Ms. Alyn offers real estate services to individuals who want to purchase a home, as well as to individuals who want to sell their home in and around Westhaven, Franklin, Tennessee.

**INTERROGATORY NO. 8:**

Identify (a) the three persons most knowledgeable as to the advertising or the plans for advertising Your services under the WESTHAVEN mark and (b) documents showing the sales and plans for sales and advertising and plans for advertising under the WESTHAVEN mark.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 8:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently

represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Lisa Alyn and Becky Best are most knowledgeable about advertising Ms. Alyn's real estate services in and around Westhaven, Franklin, Tennessee.

**INTERROGATORY NO. 9:**

Identify all documents in the possession, custody or control of You referring or relating to Registrant and Registrant's Marks.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 9:**

In addition to the general objections, Ms. Alyn objects to this interrogatory on the ground that is overbroad, harassing and unduly burdensome because it requires Ms. Alyn to produce any and all documents that refer or relate to or contain the term Westhaven.

**INTERROGATORY NO. 10:**

Identify all documents in the possession, custody or control of Petitioner relating to Registrant's services sold under Registrant's Marks.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 10:**

In addition to the general objections, Ms. Alyn objects to this interrogatory on the grounds that it is overbroad, harassing and unduly burdensome. Subject to this objection, and

without waiving it, Ms. Alyn has no documents responsive to this request other than documents that are publicly available, for example, information contained on Registrant's website and on the trademark registrations subject to this proceeding.

**INTERROGATORY NO. 11:**

Identify all persons who participated in any way in the preparation of the responses to these interrogatories, Registrant's First Set of Requests for Production of Documents and Things, and Registrant's First Set of Requests for Admissions, and for each person, identify the responses for which the person provided information (excluding only Petitioner's outside counsel and/or their representatives).

**RESPONSE AND OBJECTIONS TO INTERROGATORY 11:**

Lisa Alyn.

**INTERROGATORY NO. 12:**

State whether Petitioner has requested or received or has knowledge of any opinions, legal or otherwise, of any type regarding the right to use the WESTHAVEN mark or the registrability of the mark WESTHAVEN by Petitioner. If Your answer to this question is anything other than an unqualified "No", (a) identify the person or persons requesting each such opinion, (b) identify the person or persons rendering each such opinion, and (c) identify all documents relating to the opinion.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 12:**

Ms. Alyn objects to this request to the extent it seeks information that is subject to the attorney-client privilege or the work product privilege. Subject to those objections, and without waiving them, Ms. Alyn has not received legal opinions from anyone other than current legal counsel.

**INTERROGATORY NO. 13:**

Describe all steps taken by You to determine whether the mark WESTHAVEN was available for use by You and would not conflict with any prior used or registered mark or name, and identify the three persons who are most knowledgeable as to the steps taken to determine availability of the mark and all related documents.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 13:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Subject to this objection, and without waiving it, Petitioner submits that she did not make a "formal determination" regarding the availability of the Westhaven designation for use (1) because it's a geographically descriptive term, (2) because of the widespread third party use of the designation Westhaven indicates that it is available for use, and (3) when Ms. Alyn registered the www.westhavenfranklin.com and www.westhavenfranklin.net domain names she informed Southern Land and Southern Land did not object to her use of the designation Westhaven.

**INTERROGATORY NO. 14:**

State the date that you first offered services under the mark WESTHAVEN by You.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 14:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)). Petitioner further objects on the ground that the question assumes that Ms. Alyn's use of the designation Westhaven serves as a trademark, but it does not. Ms. Alyn has offered real estate services in and around Westhaven Franklin Tennessee since 2006.

**INTERROGATORY NO. 15:**

Identify all agreements relating to Your use of the mark WESTHAVEN and services offered or to be offered under the mark WESTHAVEN, including without limitation agreements relating to advertising of the services offered under the WESTHAVEN mark, assignments, licenses, authorizations, permissions or consents.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 15:**

Ms. Alyn objects to this interrogatory on the grounds that it seeks information that is not relevant to any claim or defense in these proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the USPTO that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. This interrogatory does not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. See Trademark Rule 402 ("The scope of discovery in Board proceedings, though, is generally narrower than in court proceedings, especially those involving infringement and/or where both parties have made extensive use of the marks", *citing, Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1907 (TTAB 2011)).

**INTERROGATORY NO. 16:**

For each expert that Petitioner has retained to give testimony in this proceeding, provide the information required in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 16:**

Petitioner has not retained experts but reserve the right to do so under scheduling order.

**INTERROGATORY NO. 17:**

With respect to each Request for Admission as to which Your response is anything other than an unequivocal admission, please state all facts upon which You base that response.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 17:**

Petitioner objects to this interrogatory on the grounds that is overbroad, harassing, irrelevant, and unduly burdensome because it could include, for example, privileged information,

mental impressions and information beyond the scope of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, or any other applicable rule.

**INTERROGATORY NO. 18:**

For each of the allegations in the Complaint, state the factual basis on which You intend to rely to prove each of these allegations and identify all the documents on which You will rely to support these allegations.

**RESPONSE AND OBJECTIONS TO INTERROGATORY 18:**

Petitioner objects to this interrogatory on the grounds that is overbroad, harassing, irrelevant, and unduly burdensome because it could include, for example, privileged information, mental impressions and information beyond the scope of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, or any other applicable rule.

Respectfully submitted,

Dated: July 11, 2014

/Brandon J Frank/

---

Gregory D. Latham  
Intellectual Property Consulting, LLC  
201 St. Charles, Suite 2500  
New Orleans, LA 70170  
Telephone: (504) 322-7166  
Facsimile: (504) 322-7184  
E-mail: [glatham@iplawconsulting.com](mailto:glatham@iplawconsulting.com)

Brandon Frank  
Paillet & Ostendorf, LLP  
650 Poydras, Suite 1470  
New Orleans, Louisiana 70130  
Tel: 504-299-3415  
Fax: 504-527-5111  
E-mail: [Brandon@proentertainmentlaw.com](mailto:Brandon@proentertainmentlaw.com)

*Attorney for Petitioner, Lisa Alyn*

**CERTIFICATE OF SERVICE**

I certify that on this 11 day of July, 2014, a true copy of the foregoing were served on counsel for Registrant, by e-mail and via First Class Mail, postage prepaid, to:

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

Mari-Elise Taube  
STITES & HARBISON PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
Telephone: (703) 837-3932  
Email: mtaube@stites.com

/Brandon J Frank/

---

Brandon J Frank

SunTrust Plaza  
401 Commerce Street  
Suite 800  
Nashville, TN 37219-2405  
(615) 244-5200  
(615) 782-2371 FAX  
www.stites.com

August 8, 2014

James R. Michels  
(615) 782-2234  
(615) 742-7215 FAX  
randy.michels@stites.com

**VIA EMAIL ONLY**

Brandon Frank  
Paillet & Ostendorf, LLP  
650 Poydras Street, Suite 1470  
New Orleans, Louisiana 70130

Gregory D. Latham  
Intellectual Property Consulting, LLC  
201 St. Charles, Suite 2500  
New Orleans, LA 70170

Re: ***Lisa Alyn v. Southern Land Company, LLC***  
**Cancellation No. 92058638**

Dear Brandon and Greg:

We have reviewed Petitioner's Responses to Registrant's First Set of Interrogatories, Petitioner's Responses to Registrant's First Request for Production of Documents and Things, and Petitioner's Responses to Registrant's First Requests for Admissions. As detailed below, Petitioner's discovery responses are woefully deficient.

As an initial matter, the Board expects parties and their attorneys to cooperate in the discovery process. TBMP § 408.01. Parties and their attorneys have a duty to make a good faith effort to satisfy the discovery needs of their adversaries. *Id.*; see also *Johnson Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1674 (TTAB 1988). Petitioner has refused to provide entire categories of information and documents that bear on the issues in this proceeding, namely Registrant's ownership and rights in its WESTHAVEN marks, the validity of U.S. Registration Nos. 3,101,150 and 3,101,151, and Petitioner's awareness of Registrant and Registrant's ownership and rights in its marks. Also at issue in this proceeding are the likelihood of confusion factors set forth in *In re E.I. DuPont DeNemours & Co.*, 177 USPQ 563 (CCPA 1973), since Petitioner claims to be injured by the continued existence of Registrant's marks on the principal register.

We write in a good faith effort to resolve disputes arising from Petitioner's deficient discovery responses and address the deficient responses below *seriatim* by subject matter area. We request that your client provide supplemental responses and/or documents to address these deficiencies at your earliest convenience, **but no later than August 22, 2014.**

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 2

### **Requests for Admission**

We note that your response to numerous Requests for Admission was “Petitioner is without sufficient information or knowledge to enable her to admit or deny the request.” Specifically, you responded with this answer to Request Nos. 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, and 34. This response is insufficient. Pursuant to Fed. R. Civ. P. and TMBP § 407.03(b), a party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made a reasonable inquiry and that the information known or readily obtainable by the party to admit or deny the request. Your client’s responses do not comply with the requirements of these rules, and we request that Ms. Alyn supplement her responses. On a related note, you stated that Interrogatory No. 17 was “burdensome” and “irrelevant.” We disagree. Interrogatory No. 17 states, “With respect to each Request for Admission as to which Your response is anything other than an unequivocal admission, please state all facts upon which You base that response.” The Requests for Admission are all directed to information that is relevant to the claims and defenses in this proceeding. Accordingly, please supplement your response to Interrogatory No. 17 and provide the requested information to which my client is entitled.

### **Discovery Directed to Sales and Advertising Information**

We have requested information and documents reflecting sales and advertising figures for Petitioner’s services offered under the WESTHAVEN mark at issue. Annual sales and advertising figures, stated in round numbers, for a party’s involved goods or services sold under its involved mark are proper matters for discovery. TMBP § 414(18); *see American Optical Corp. v. Exomet, Inc.*, 181 USPQ 120, 123 (TTAB 1974). Accordingly, please provide amended responses to the following discovery requests:

Request No. 14 Produce all documents showing or relating to sales of the Your services under the mark WESTHAVEN.

Request No. 16 Produce all documents relating to the costs of advertising already implemented for any and all services offered under the mark WESTHAVEN by You.

Request No. 18 Produce all documents relating to sales strategies for the services offered under the mark WESTHAVEN by You.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 3

Request No. 34 Produce all documents reflecting or regarding the dollar value of sales or projected sales of the services offered by You under the WESTHAVEN mark, including but not limited to documents reflecting or discussing how such projected sales numbers were determined

Request No. 35 Produce all documents showing the amount of money budgeted and/or expended to date to promote the services offered by You under the WESTHAVEN mark.

### **Discovery Directed to Petitioner's Advertising and Promotion**

We have asked for representative samples of marketing materials and comprehensive information regarding Petitioner's advertising and sales strategies for its services. Marketing materials and channels of advertising are directly relevant to the legal issues in this proceeding and are thus discoverable. In particular, these requests bear on Petitioner's knowledge of Registrant and Petitioner's use of Registrant's marks, which pertain directly to Petitioner's defenses in the proceeding. Please supplement your responses to the following requests:

Interrogatory No. 8 Identify (a) the three persons most knowledgeable as to the advertising or the plans for advertising Your services under the WESTHAVEN mark and (b) documents showing the sales and plans for sales and advertising and plans for advertising under the WESTHAVEN mark.

Request No. 15 Produce all documents showing or relating to the advertising of Your services under the mark WESTHAVEN.

Request No. 17 Produce representative samples of all advertising which has been implemented and representative samples of all planned advertising for the services offered by You under the mark WESTHAVEN.

Request No. 18 Produce all documents relating to sales strategies for the services offered under the mark WESTHAVEN by You.

Request No. 19 Produce all documents relating to the advertising strategies for the services offered under the mark WESTHAVEN by You.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 4

We note that in response to Interrogatory No. 8, listed above, while Ms. Alyn did list herself and Becky Best as the individuals most knowledgeable as to plans pertaining to advertising, Ms. Alyn neglected to list a third individual and failed to acknowledge her duty to identify documents showing the sales and plans for sales and advertising and plans for advertising under the WESTHAVEN mark. We ask that Ms. Alyn amend her response to Interrogatory No. 8 to comply with her discovery obligations to identify documents.

### **Discovery Directed to Petitioner's Channels of Trade**

We have requested and are entitled to documents that evidence the channels of trade through which Petitioner sells her services. Specific information regarding Petitioner's sales channels are relevant to an *inter partes* proceeding before the Board. TBMP § 414(16). Accordingly, supplement the response to the interrogatory listed below and please produce the documents requested below:

Interrogatory No. 6 Identify and describe in detail the channels of trade in the United States that You use or intend to use to offer and promote your real estate services under the WESTHAVEN mark.

Request No. 23 Produce all documents related to the channels of trade and distribution in the United States that You use or intend to use for the offering of Your services under the mark WESTHAVEN.

### **Discovery Directed to Agreements Involving Petitioner's Mark**

The existence of Petitioner's agreements including licensees and terms of related agreements are also relevant and discoverable in this proceeding. *See Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (licensing agreements and arrangements between Opposer and third-parties are relevant). Accordingly, please provide amended responses to the following discovery requests:

Interrogatory No. 15 Identify all agreements relating to Your use of the mark WESTHAVEN and services offered or to be offered under the mark WESTHAVEN, including without limitation agreements relating to advertising of the services offered under the WESTHAVEN mark, assignments, licenses, authorizations, permissions or consents.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 5

Request No. 24 To the extent that documents have not been produced in response to the preceding document requests, produce all documents showing any and all agreements related to the mark WESTHAVEN, including without limitation, agreements relating to advertising under the mark, assignments, licenses, authorizations, permissions or consents.

### **Discovery Directed to Selection and Adoption of Petitioner's Mark**

We have requested documents and things related to the creation, selection and adoption of Petitioner's mark, including any non-privileged search materials. As you are likely aware, information concerning a party's selection and adoption of its involved mark, including those directing mark selection, is discoverable. TBMP § 414(4); *Volkswagenwerk Aktiengesellschaft v. MTD Products Inc.*, 181 USPQ 471, 473 (TTAB 1974) (identification of persons who suggested use of involved mark on involved goods is not improper); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (whether applicant received opinions concerning adoption of mark is not privileged and applicant must identify person, date and documents relating thereto). We note that in response to Interrogatory No. 1, Ms. Alyn only provided the names of two individuals rather than the requested three. We also note, in response to Request No. 1, Ms. Alyn claimed to have no documents pertaining to the selection and adoption of the WESTHAVEN mark. We find this extremely difficult to believe, and remind you of Ms. Alyn's duty to thoroughly search her records for all information properly sought in each of the discovery requests. With this duty in mind, please supplement your responses to the discovery requests listed below:

Interrogatory No. 1 Identify (a) the three people most knowledgeable as to the creation, selection, adoption, and use of WESTHAVEN by You and (b) the three people most knowledgeable as to the services provided by You under the WESTHAVEN mark.

Interrogatory No. 4 State the reasons for Your selection of the WESTHAVEN mark for use on or in connection with real estate services and identify the person(s) who first suggested, proposed, recommended, conceived of, or suggested use of the WESTHAVEN mark in connection with these services.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 6

Interrogatory No. 5: Describe in detail all steps which were taken in connection with creation and adoption of Petitioner's Mark, and identify all documents which relate to creation and adoption of Petitioner's Mark.

Request No. 2 Produce all documents related to your creation, selection and adoption of the WESTHAVEN mark, including without limitation search reports, market surveys, emails and interoffice memoranda.

Request No. 10 Produce all documents relating to the reasons for Your selection of the WESTHAVEN mark in connection with Your real estate services.

Request No. 44 Produce all documents that relate to every other alternative mark which was considered for adoption and use in connection with Your real estate services

#### **Discovery Directed to First Use the WESTHAVEN Mark**

We have requested documents related to the first use of your client's mark. Information concerning a party's first use of its mark is discoverable. TBMP § 414(5); *Georgia Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976). Please provide the documents and things requested below:

Request No. 20 Produce all documents relating to the date the mark WESTHAVEN was first used by You in connection with real estate services

Request No. 21 Produce all documents, as applicable, relating to the first property sold under the mark WESTHAVEN by You.

As to the requests above, we note that in response to Interrogatory No. 14, you state that Ms. Alyn first offered services under the mark WESTHAVEN in 2006, yet you objected to the above requests and refused to provide responses. Petitioner is entitled to clear and consistent responses. Please modify your responses to the above requests to comply with your obligations under the Board's rules.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 7

### **Discovery Directed to Legal Opinions Received by Ms. Alyn**

Your have refused to provide information about legal opinions received by your client and have refused to identify documents relating to the legal opinions received. While your client states in response to Interrogatory No. 12 that she has not obtained any legal opinions from anyone other than you, she fails to even acknowledge her duty to identify documents pertaining to the legal opinions that you have provided. We demand that you supplement your response to Interrogatory No. 12, which, for your convenience, has been listed below. The identification of discovery documents (as opposed to their substance) is not privileged or confidential. TBMP § 414(1); *see Goodyear Tire & Rubber Co.*, 186 USPQ at 208 (fact that client received legal opinions and identity of documents related thereto, not privileged). Please amend your response to the following:

Interrogatory No. 12 State whether Petitioner has requested or received or has knowledge of any opinions, legal or otherwise, of any type regarding the right to use the WESTHAVEN mark or the registrability of the mark WESTHAVEN by Petitioner. If Your answer to this question is anything other than an unqualified “No”, (a) identify the person or persons requesting each such opinion, (b) identify the person or persons rendering each such opinion, and (c) identify all documents relating to the opinion

### **Discovery Directed to Target Customers**

We have requested information and documents that indicate Ms. Alyn’s target customers. The classes of customers for a party’s involved goods or services are discoverable. TBMP § 414(3); *see J.B. Williams Co. v. Pepsodent G.m.b.H.*, 188 USPQ 577, 580 (TTAB 1975) (must identify class of customers who purchase products under mark). Accordingly, please provide amended responses to the following discovery requests:

Interrogatory No. 7 Identify Your target purchasers for the services offered under the WESTHAVEN mark.

Request No. 31 Produce all documents reflecting or regarding the buyers of the services offered by You under the WESTHAVEN mark.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 8

### **Petitioner's Knowledge of Registrant and Registrant's Marks**

As you are likely aware, information concerning a party's knowledge of the opposing party's use of that party's mark is discoverable in Board proceedings. TBMP § 414 (19); *see Volkswagenwerk Aktiengesellschaft v. MTD Products Inc.*, 181 USPQ 471 (TTAB 1974). Please supplement your responses to the following discovery requests:

Interrogatory No. 9 Identify all documents in the possession, custody or control of You referring or relating to Registrant and Registrant's Marks.

Interrogatory No. 10 Identify all documents in the possession, custody or control of Petitioner relating to Registrant's services sold under Registrant's Marks.

Request No. 6 Produce all documents in your possession that refer to Registrant.

Request No. 7 Produce all documents in your possession that refer to Registrant's Marks.

Request No. 8 Produce all documents relating to Your knowledge of Registrant's intellectual property protection for Registrant's Marks.

Request No. 25 Produce all documents related to Petitioner's knowledge of Registrant and any or all of the Registrant's Marks.

Request No. 26 Produce all documents related to Petitioner's knowledge of services offered by Registrant under any or all of Registrant's Marks.

We note that you have provided inconsistent responses to Interrogatory No. 9 and Request No. 6 and 7. In response to Interrogatory No 9, you state that you have no documents that refer or relate to Registrant, which we know is simply untrue, yet you say that it would be overly burdensome to produce documents that identify Registrant and Registrant's marks in response to Registrant's Requests. Which is it? Registrant is entitled to clear and consistent responses. These are not the only discovery requests where Petitioner has provided inconsistent answers. This is unacceptable. Please modify the responses accordingly.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 9

### **Petitioner's Use of the Mark on Petitioner's Services**

As you are no doubt aware, information that a party sells the same goods or services as the propounding party is relevant. TBMP § 414 (11). Parties must provide discovery with respect to those of its marks and services that are involved in the proceeding. *Id.* Accordingly, please supplement your responses to the following discovery requests:

Interrogatory No. 2 Identify and describe in detail each service offered by You under the mark WESTHAVEN and identify and describe in detail where these services are offered.

Request No. 4 Produce all documents which relate or refer to Your use of the WESTHAVEN mark in connection with real estate.

Additionally, we must bring it to your attention that Petitioner has objected to a large number of Registrant's discovery requests on the basis of relevance. We remind you that parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence and description of any relevant documents. Relevant information includes any discovery reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1).

In conclusion, Registrant has refused to provide entire categories of information and documents that bear on the validity of its claims, on Registrant's defenses in this matter, and on the presence or absence of a likelihood of confusion under the facts set forth in *In re E.I. duPont DeNemours & Co.*, 177 USPQ 563 (CCPA 1973). These deficiencies must be promptly remedied in order to avoid Board involvement in this matter.

Additionally, I note that your Initial Disclosures have yet to be produced. These disclosures were due on May 17, 2014. Ms. Alyn admitted in her Responses to Registrant's First Requests for Admission that she did not provide Initial Disclosures. If Ms. Alyn refuses to produce Initial Disclosures, Southern Land will be left with no choice but to file a motion to compel, and ultimately, a motion for discovery sanctions. *See* 7 CFR § 2.120(e); 37 CFR § 2.120(g)(1); *See also Luster Products Inc. v. Van Zandt*, 104 USPQ2d 1877, 1878-79 (TTAB 2012) (motion to compel is available remedy for failure to serve, or insufficient, initial disclosures).

Finally, you are reminded of your client's ongoing duty to search and to supplement discovery responses imposed by TBMP § 408.02 ("a responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
August 8, 2014  
Page 10

discovery request but was not included in the response thereto”). We ask that Petitioner supplement the discovery responses to include any newly discovered, responsive information or documents during the course of the proceeding.

You are also reminded of your client’s duty to sign her responses to Registrant’s First Set of Interrogatories. Pursuant to Fed. R. Civ. P. 33(b)(5), the person who makes the answers must sign them, and the attorney who objects must sign any objections. In her response to Interrogatory No. 11, Ms. Alyn confirmed that she answered the Interrogatories. **Please produce a copy of her signed verification as soon as possible.**

Should you have any questions about anything contained in this letter, I invite you to contact me at your convenience. We look forward to resolving these discovery disputes amicably and professionally.

Regards,



James R. Michels

cc: Mari-Elise Taube

SunTrust Plaza  
401 Commerce Street  
Suite 800  
Nashville, TN 37219-2405  
(615) 244-5200  
(615) 782-2371 FAX  
www.stites.com

September 17, 2014

James R. Michels  
(615) 782-2234  
(615) 742-7215 FAX  
randy.michels@stites.com

**VIA EMAIL ONLY**

Brandon Frank  
Paillet & Ostendorf, LLP  
650 Poydras Street, Suite 1470  
New Orleans, Louisiana 70130

Gregory D. Latham  
Intellectual Property Consulting, LLC  
201 St. Charles, Suite 2500  
New Orleans, LA 70170

Re: ***Lisa Alyn v. Southern Land Company, LLC***  
**Cancellation No. 92058638**

Dear Brandon and Greg:

We are in receipt of your email dated August 22, 2014, and remain unpersuaded by your comments as to why Ms. Alyn's responses are not deficient. We write to once again attempt to resolve the discovery dispute without Board intervention. However, if Ms. Alyn's responses are not satisfactorily supplemented by Wednesday, September 24, then Southern Land will have no choice but to file a Motion to Compel with the Board.

We remind you that the Board expects parties and their attorneys to cooperate in the discovery process, and that parties and counsel have a duty to make a good faith effort to satisfy the discovery needs of their adversaries. TBMP § 408.01. The scope of discovery in a Board proceeding is governed by Fed. R. Civ. P. 26(b)(1), which provides that "[p]arties may obtain discovery regarding any non-privileged matter that is relevant to ***any party's claim*** or defense." Fed. R. Civ. P. 26(b)(2) (emphasis added). Paragraph 14 of Petitioner's Petition for Cancellation states that "Petitioner will be damaged by the continued existence of United States Trademark Registration No. 3,101,151 and No. 3,101,150 because they will give color of rights to the Respondent and will continue to be an impediment to Petitioner's ability to use 'Westhaven' in regard to her business services and advertising." In its Answer, Southern Land Company denied this allegation. Since Petitioner claimed that she will be damaged by the continued existence of Registrant's marks on the principal register, under the Federal Rules of Civil Procedure, Respondent is entitled to take discovery on this claim.

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
September 17, 2014  
Page 2

Furthermore, your email of August 22, 2014, inaccurately states that Southern Land's standing does not deny Ms. Alyn's standing. This is not true. As noted above, Southern Land's Answer very clearly denies that Petitioner will be damaged by the continued existence of United States Trademark Registration No. 3,101,151 and No. 3,101,150 because they will give color of rights to the Respondent and will continue to be an impediment to Petitioner's ability to use 'Westhaven' in regard to her business services and advertising. *See Answer*, ¶ 14. Ms. Alyn would only be injured by the continued existence of U.S. Registration Nos. 3,101,151 and 3,101,150 if Ms. Alyn intended to use WESTHAVEN and WESTHAVEN (plus design) as a trademark. If Ms. Alyn intended to use WESTHAVEN in a descriptive sense, then she would not be injured by the continued existence of U.S. Registration Nos. 3,101,151 and 3,101,150 on the principal register. Therefore, the likelihood of confusion factors are at issue and relevant to Ms. Alyn's claim to be injured by Southern Land's registrations.

The rule contemplates liberal discovery. *See* TBMP § 402.02. It is a general rule that parties are entitled to seek discovery as they may deem necessary to help them prepare for trial. *See Dow Corning Corp. v. The Doric Corp.*, 183 USPQ 377, 378 (TTAB 1974). The information sought in Southern Land's discovery requests pertaining to Petitioner's claims that she will be injured by the continued existence of Registrant's marks on the principal register will help Respondent prepare for discovery. Injury to the Petitioner is relevant to the issues in this proceeding.

Petitioner continues to refuse to provide entire categories of information and documents that bear on the issues in this proceeding, namely Registrant's ownership and rights in its WESTHAVEN marks, the validity of U.S. Registration Nos. 3,101,150 and 3,101,151, and Petitioner's awareness of Registrant and Registrant's ownership and rights in its marks, all of which are relevant to the claims and defenses in this proceeding. Petitioner is entitled to discovery on these topics, since they are relevant to the claims and defenses in the action.

Additionally, Ms. Alyn's Initial Disclosures are deficient. Though these disclosures were due on May 17, 2014, we did not receive Ms. Alyn's bare-bone disclosures until August 26, 2014. Pursuant to Fed. R. Civ. P. 26(a)(1), Initial Disclosures must include the name, address, and telephone number of each individual likely to have discoverable information, along with the subjects of information, that the disclosing party may use to support its claims and defenses. Initial Disclosures must also include a copy (or a description by category and location) of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. Fed. R. Civ. P. 26(a)(1). Ms. Alyn's Initial Disclosures do not disclose the subjects of information for which each individual disclosed has personal knowledge, and they also fail to include a copy of the listed documents. If Ms. Alyn does not want to provide copies of the documents disclosed in the

Brandon Frank and Gregory Latham  
*Lisa Alyn v. Southern Land Company, LLC*  
September 17, 2014  
Page 3

Initial Disclosures, she must at least supplement the disclosures to state the location of the listed documents.

You are also once again reminded of your client's duty to sign her responses to Registrant's First Set of Interrogatories. Pursuant to Fed. R. Civ. P. 33(b)(5), the person who makes the answers must sign them, and the attorney who objects must sign any objections. Your email of August 22, 2014, states that Ms. Alyn will provide a signed verification of her discovery responses within a week from that date. We have yet to receive the signed verification. Please produce a copy of her signed verification as soon as possible. Similarly, your email states that Ms. Alyn will supplement her responses to Southern Land's requests for admissions. Despite this representation, we have not yet received her supplemental responses.

We remain hopeful that we can resolve these discovery disputes amicably and professionally. We reiterate our request that your client provide supplemental responses and/or documents to address the deficiencies outlined in our letter of August 8, 2014, as well as supplemental initial disclosures, at your earliest convenience, **but no later than September 24, 2014.**

Regards,



James R. Michels

cc: Mari-Elise Taube

**Taube, Mari-Elise**

---

**From:** Greg Latham <glatham@iplawconsulting.com>  
**Sent:** Friday, August 22, 2014 5:06 PM  
**To:** Michels, James R.; Taube, Mari-Elise  
**Cc:** brandon@proentertainmentlaw.com  
**Subject:** RE: Lisa Alyn v. Southern Land Company - Discovery Deficiencies

Randy:

I am writing in response to your August 8, 2014 letter regarding Ms. Alyn's discovery responses. We respectfully disagree with Southern Land's statement that Ms. Alyn's responses are deficient; Ms. Alyn will not be supplementing her responses except as specifically set forth below.

The August 8th letter fails to consider the limited scope of the current proceedings. Ms. Alyn has moved for cancellation of Southern Land's trademark registrations on the grounds that Southern Land fraudulently represented to the Board that the term "Westhaven" has no geographical significance; Southern Land has answered that the term "Westhaven" is a term coined by Southern Land and is not geographically significant. The discovery requests that Southern Land complains are deficient do not seek any information relating to geographical significance of the term "Westhaven" or to Ms. Alyn's allegations of fraud by Southern Land. Rather, those discovery requests wrongfully attempt to broaden this proceeding into something akin to an infringement lawsuit.

The August 8th letter states that the likelihood of confusion factors are at issue since Ms. Alyn claims to be injured by Southern Land's marks. The requirement that Ms. Alyn allege injury relates only to whether Ms. Alyn has standing to bring these Opposition proceedings. Southern Land's Answer does not deny Ms. Alyn's standing; it is not an issue as this case moves forward. As a result, discovery requests aimed at the issue of standing are not relevant.

We have thoroughly reviewed each Board decision cited in the August 8th letter; in each decision, the parties were engaged in a dispute regarding likely confusion. Obviously, the scope of discovery is significantly broader where confusion is at issue. In this proceeding, there are no claims or defenses that rely upon a showing of confusion (or a lack of confusion). The cited cases are inapposite because the factual scenarios underlying those discovery disputes were very different than the circumstances here. Additionally, the repeated, vague citations to Section 414 of the TBMP does not support Southern Land's position; Section 414 primarily pertains to likelihood of confusion claims under Section 2(d).

Ms. Alyn will agree to supplement her responses in two manners requested by Southern Land. First, Ms. Alyn will provide a signed verification of her discovery responses; we will have that to you next week. Second, Ms. Alyn will supplement her responses to Southern Land's admission requests to state, where applicable, that she has made a reasonable inquiry and that the information she knows or can readily obtain is insufficient to enable her to admit or deny the request.

Please let us know if you would like to discuss this further.

---

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:** Friday, August 08, 2014 3:41 PM  
**To:** brandon@proentertainmentlaw.com; Greg Latham  
**Cc:** Taube, Mari-Elise  
**Subject:** Lisa Alyn v. Southern Land Company - Discovery Deficiencies

Brandon and Greg,

Please see the attached letter regarding Lisa Alyn's discovery deficiencies.

As noted in the letter, we are asking that your client cure the deficiencies by August 22. We also request a copy of the signed verification for the answers to interrogatories. In addition, your client's Initial Disclosures are long overdue. Please produce them.

Thanks,

Randy

**James ("Randy") Michels**

*Member*

*Direct: 615-782-2234*

*Fax: 615-742-7215*

[randy.michels@stites.com](mailto: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.

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

---

**LISA ALYN’S RULE 26(a)(1) INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Lisa Alyn (“Petitioner”) provides the following initial disclosures:

**I. Individuals Likely to Have Discoverable Information Supporting Petitioner’s claim:**

1. Lisa Alyn

Through undersigned counsel

Ms. Alyn has personal knowledge of the facts alleged in Ms. Alyn’s Complaint.

2. Becky Best

Through undersigned counsel

Ms. Best, an employee of the Petitioner, has personal knowledge of facts alleged in Petitioner’s Complaint.

3. Joanne Arunst

Through undersigned counsel

Ms. Arunst, an employee of the Petitioner, has personal knowledge of facts alleged in Petitioner’s Complaint.

4. Mary Lee Bennett

Through Respondent's counsel

Petitioner believes Ms. Bennett, an employee of Southern Land Company, LLC ("Respondent"), has personal knowledge of facts alleged in Petitioner's Complaint.

5. Brian Sewall

Through Respondent's counsel

Petitioner believes Mr. Sewall, an employee of Respondent, has personal knowledge of facts alleged in Petitioner's Complaint.

6. Tim Downey

Through Respondent's counsel

Petitioner believes Mr. Downey, an employee of Respondent, has personal knowledge of facts alleged in Petitioner's Complaint.

7. James R. Michels

Through Respondent's counsel

Mr. Michels is an attorney for Respondent. He signed the application that Petitioner believes is fraudulent.

8. Dianne Balciar

5111 Maryland Way, Brentwood, TN 37027

Ms. Balciar is a real estate agent who also uses the WESTHAVEN mark.

**II. Documents By Category Supporting Petitioner's Claims**

1. United States Patent and Trademark Office documents evidencing Southern Land's fraudulently obtained trademark registration;

2. Documents evidencing Southern Land's selection and development of the term Westhaven for its planned community;
3. Printouts of the website operated by Southern Land at <westhaventn.com> demonstrating the use of the term Westhaven in a geographical sense;
4. Printouts of Ms. Alyn's website and other marketing materials evidencing use of the term Westhaven;
5. Documents evidencing Southern Land's knowledge of Lisa Alyn's use of the term Westhaven;
6. Printout of the WHOIS registration data for Ms. Alyn's domain names;
7. Documents evidencing third party use of the term Westhaven;

**II. Computation of Damages**

Not applicable.

**IV. Insurance**

Not applicable.

Respectfully submitted,

Dated: August 26, 2014

/s/ Greg Latham  
Gregory D. Latham  
Intellectual Property Consulting, LLC  
201 St. Charles, Suite 2500  
New Orleans, LA 70170  
Telephone: (504) 322-7166  
Facsimile: (504) 322-7184  
E-mail: glatham@iplawconsulting.com

*Attorney for Petitioner, Lisa Alyn*

**CERTIFICATE OF SERVICE**

I certify that on this 26<sup>th</sup> day of August, a true copy of the above Lisa Alyn's Rule 26(a)(1) Initial Disclosures were served via e-mail on Respondent's counsel at the following addresses:

James R. Michels  
Stites & Harbison PLLC  
401 Commerce St., Suite 1800  
Nashville, TN 37219  
E-mail: [randy.michels@stites.com](mailto:randy.michels@stites.com)

Mari-Elise Taube  
Stites & Harbison PLLC  
1199 North Fairfax St., Suite 900  
Alexandria, VA 22314  
E-mail: [mtaube@stites.com](mailto:mtaube@stites.com)

By: Greg Latham  
Gregory D. Latham