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Filing date: **07/18/2014**

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

Proceeding	92058667
Party	Defendant SagaCity Media, Inc.
Correspondence Address	JAMES L VANA PERKINS COIE LLP 1201 THIRD AVENUE, 49TH FLOOR SEATTLE, WA 98101-3099 UNITED STATES pctrademarks@perkinscoie.com, mhadley@perkinscoie.com
Submission	Motion to Extend
Filer's Name	James L. Vana
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Signature	/James L. Vana/
Date	07/18/2014
Attachments	Registrant's Motion for Extension of Discovery Response Deadline (40046.7004).pdf(1246296 bytes)

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

DM Luxury, LLC,

Petitioner,

v.

SagaCity Media, Inc.,

Respondent.

Cancellation No.: 92058667

**REGISTRANT'S MOTION FOR
EXTENSION OF DISCOVERY
RESPONSE DEADLINE**

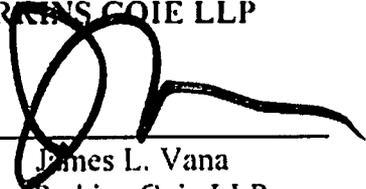
Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Section 509 of the Trademark Trial and Appeal Board Manual of Practice ("TBMP"), SagaCity Media, Inc. ("Registrant") hereby moves the Board for an extension of the current discovery response deadline of July 18, 2014 for 15 days, until August 2, 2014.

DM Luxury, LLC ("Petitioner") has served on Registrant the attached written discovery, consisting of interrogatories, requests for production of documents, and requests for admission. Responses to that discovery are due today, July 18, 2014 (by earlier agreement of the parties). However, the parties have reached agreement on circumstances (the details of which are confidential) that will result in the dismissal of the instant cancellation proceeding. The only remaining steps required for completion of the agreed-upon resolution of this matter are execution of the relevant documents and filing of a stipulation of dismissal. See attached redacted correspondence between counsel for the parties.

A party may move the Board for an extension of any relevant deadline prior to such deadline, for good cause shown. F.R.C.P. 6(b); TBMP § 509. Because the parties have reached agreement regarding resolution of the instant cancellation proceeding, and are in the process of executing the relevant documents, allocating resources to the preparation of discovery responses

would be unproductive and inefficient. Registrant respectfully submits that such circumstances demonstrate good cause.

DATED: July 18 2014.

<p>CERTIFICATE OF SERVICE</p> <p>I hereby certify that this, RESPONDENT'S MOTION FOR EXTENSION OF DISCOVERY RESPONSE DEADLINE, is being deposited with the United States Postal Service with sufficient postage as first class mail on July 18, 2014 in an envelope addressed to Applicant's counsel: William P. Atkins, Pillsbury Winthrop Shaw Pittman LLP, P.O. Box 2824, San Francisco, CA 94126-2824</p> <p>Signature: </p> <p>Printed Name: <u>Linda L. Martin</u></p>	<p>PERKINS COIE LLP</p> <p>By </p> <p>James L. Vana Perkins Coie LLP 1201 Third Avenue, Suite 4900 Seattle, Washington 98101-3099 (206) 359-3036 Attorney for Respondent</p>
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DM Luxury, LLC,	)	Cancellation No. 92058667
)	
Petitioner,	)	<u>PETITIONER'S FIRST SET OF REQUESTS</u>
	)	<u>FOR PRODUCTION OF DOCUMENTS TO</u>
v.	)	<u>RESPONDENT</u>
)	
SagaCity Media, Inc.,	)	Mark: HOUSTONIA
	)	Registration No.: 4456510
Respondent	)	Registration Date: December 24, 2013
)	

Propounded by: DM Luxury, LLC

Propounded to: SagaCity Media, Inc.

Set Number: One

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, DM Luxury, LLC ("DM Luxury") submits to SagaCity Media, Inc. ("SagaCity") this First Set of Requests for Production of Documents. These requests are to be responded to separately, fully, in writing and under oath no later than thirty (30) days after the date of service of these requests, and responses served on DM Luxury's counsel at that time.

DEFINITIONS AND INSTRUCTIONS

A. For the convenience of counsel and the Board, it is requested that each numbered request be answered by repeating the request in its entirety and then providing the corresponding response and reference to the applicable documents.

B. These requests shall be deemed to be continuing within the meaning of Federal Rule of Civil Procedure 26(e).

C. "Affiliate" means any entity controlling, controlled by, or under common control with another entity.

D. "Commerce" means all commerce that may be lawfully regulated by the Congress of the United States of America.

E. The term "communication" means an oral, written or symbolic expression or interchange of any type.

F. "DM Luxury" means DM Luxury, LLC, and includes any agents, officers, employees and representatives.

G. "DM Luxury's Goods" means any goods or services offered or intended to be offered by DM Luxury in connection with DM Luxury's Marks (defined below), including but not limited to magazines.

H. "DM Luxury's Marks" means the marks HOUSTON, HOUSTON MAGAZINE, HOUSTON MODERN LUXURY and HOUSTON MONTHLY MAGAZINE as used in Commerce by DM Luxury.

I. The term "document" means and includes "documents" and "things" within the meaning of F.R.C.P. 34(a), and also includes without limitation a writing as defined by Federal Rules of Evidence Rule 1001 and any document or thing, originals and copies, letters, words, numbers, or their equivalent, data, images or sound set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other media in the possession, custody or control of SagaCity (as defined below) or its attorney(s), or known to SagaCity or its attorney(s).

J. "Identify" or "identify" in the case of a natural person, means the person's name, mailing address, email address, and telephone number (both mobile and landline).

K. "Identify" or "identify" in the case of an entity, means to state, where applicable, its full name, its state of organization, its principal place of business or activity, its mailing address, and its telephone number.

L. "Identify" or "identify" in the case of a document which is not a communication, means to state the document's title and a description of its subject matter and its date or the date it was prepared.

M. "Identify" or "identify" in the case of a communication, means to state (1) the method of communication (e.g., in person, by hard copy, via landline or mobile telephone, via facsimile transmission, or via electronic mail), (2) the date of the communication, (3) the persons who were parties to the communication and, if applicable, the person's relationship to SagaCity, and (4) the content of the communication.

N. The term "mark" shall mean trademark, service mark or both.

O. "Person" means and includes, without limiting the generality of its meaning, every natural person, corporate entity, sole proprietorship, partnership, association, governmental body or agency.

P. The phrase "relating to" shall mean affecting, bearing upon, comprising, constituting, containing, embodying, embracing, encompassing, entailing, evidencing, identifying, implicating, including, incorporating, regarding or reflecting in any manner.

Q. "SagaCity" means SagaCity Media, Inc. and includes any of its agents, officers, members, employees, representatives and Affiliates, as well as any predecessors-in-interest to SagaCity's Mark (as defined below).

R. "SagaCity's Goods" means any goods or services offered or intended to be offered by SagaCity in connection with SagaCity's Mark (defined below), including but not

limited to magazines.

S. "SagaCity's Mark" means HOUSTONIA in or as a name or mark in the United States, alone or in combination with any other term, and shall include any form of said mark used or intended to be used by SagaCity in the United States.

T. The term "thing" means, without limitation, any tangible thing contemplated by F.R.C.P. 34(a).

U. The terms "use" or "used", unless otherwise expressly explained, mean use or used in Commerce.

V. Where the request seeks the identification or production of documents, things, or other information that is not within your actual or constructive possession, custody, control, or knowledge, you shall so state and shall answer the request to the extent of your knowledge or belief based on the best information presently available. Where you have knowledge or belief as to other persons having such possession, custody, control or knowledge, you shall identify, to the extent known and based on the best information presently available, all such persons, together with a brief summary of the nature of the documents, things, or other information believed to be known to such persons.

W. The documents and things requested herein should be produced within thirty (30) days to the attention of Robert B. Burlingame, at the offices of Pillsbury Winthrop Shaw Pittman LLP, P.O. Box 2824, San Francisco, California 94126-2824, or at such other location as may be agreed upon by counsel for DM Luxury and SagaCity.

X. If any document or thing requested herein is withheld on a claim of attorney-client privilege, work product doctrine, or other privilege or immunity, or other grounds for exclusion, as to each such claim: (a) identify each such document, thing or communication

supporting the failure to answer; (b) identify each recipient or custodian of such document, thing or communication; and (c) state the basis upon which the privilege or ground for exclusion is claimed.

REQUESTS FOR PRODUCTION

Request No. 1: All documents referring or relating to any consumer or market survey, test, or study that SagaCity has ever conducted or caused to be conducted regarding the public's or the trade's recognition of or reaction to any name or mark that contains the term HOUSTON.

Request No. 2: All documents referring or relating to any consumer or market survey, test, or study that SagaCity has ever conducted or caused to be conducted regarding the public's or the trade's recognition of or reaction to any name or mark that contains the term HOUSTONIA.

Request No. 3: All documents referring or relating to any instances of actual confusion between SagaCity and DM Luxury.

Request No. 4: All documents referring or relating to any instances of actual confusion between SagaCity's Mark and any of DM Luxury's Marks.

Request No. 5: All documents identified in SagaCity's responses to DM Luxury's "First Set of Interrogatories to Respondent" in this Cancellation No. 92058667.

Request No. 6: All documents referring or relating to any oral or written statements or inquiries by any Person concerning any relationship or affiliation between SagaCity and DM Luxury.

Request No. 7: All documents referring or relating to any oral or written statements or inquiries by any Person concerning any relationship or affiliation between SagaCity's Mark and any of DM Luxury's Marks.

Request No. 8: All documents received from third parties (other than SagaCity's legal counsel) and referring or relating to DM Luxury and/or any of DM Luxury's Marks.

Request No. 9: All documents that refer to or evidence SagaCity's awareness of DM Luxury's use of any of DM Luxury's Marks prior to February 6, 2013.

Request No. 10: All trademark applications and trademark registration certificates for SagaCity's Mark.

Request No. 11: Each issue of SagaCity's HOUSTONIA magazine.

Request No. 12: All documents evidencing the date that SagaCity's Mark was first publicly displayed or used in the United States.

Request No. 13: All documents, including but not limited to invoices and/or purchase orders, referring or relating to SagaCity's first sale in the United States of any good bearing SagaCity's Mark.

Request No. 14: Documents sufficient to identify every city in the United States where SagaCity's HOUSTONIA magazines have been sold.

Request No. 15: Documents sufficient to identify every city in the United States to which SagaCity's HOUSTONIA magazines have been delivered.

Request No. 16: For each city in the United States where SagaCity's HOUSTONIA magazines have been sold, documents sufficient to identify the date of the first sale of SagaCity's HOUSTONIA magazines in that city.

Request No. 17: For each city in the United States to which SagaCity's HOUSTONIA magazines have been delivered, documents sufficient to identify the date of the first delivery of SagaCity's HOUSTONIA magazines in that city.

Request No. 18: For each city in the United States where SagaCity's HOUSTONIA magazines have been sold, documents sufficient to identify the total quantity and retail value of SagaCity's HOUSTONIA magazines sold through the present date in that city.

Request No. 19: For each city in the United States where SagaCity's HOUSTONIA magazines have been distributed, documents sufficient to identify the total quantity and retail value of SagaCity's HOUSTONIA magazines distributed through the present date in that city.

Request No. 20: Documents sufficient to identify all of the types of goods and services offered or intended to be offered in the United States in connection with SagaCity's Mark.

Request No. 21: Documents sufficient to identify the pricing or intended pricing in the United States of each of SagaCity's Goods.

Request No. 22: Any and all invoices and purchase orders relating to the sale of SagaCity's Goods in the United States.

Request No. 23: Documents sufficient to identify all geographic areas in the United States in which magazines bearing SagaCity's Mark have been promoted.

Request No. 24: Documents sufficient to identify all geographic areas in the United States in which magazines bearing SagaCity's Mark have been distributed.

Request No. 25: Any and all documents that constitute advertising and promotion of SagaCity's Goods in the United States, including but not limited to all advertisements, promotions, reviews, articles, webpages, and transcripts and recordings of radio or television advertisements.

Request No. 26: Documents sufficient to identify all public events, including but not limited to trade shows, sponsored by and/or featuring HOUSTONIA magazine.

Request No. 27: All packaging, tags, labels and point-of-sale displays bearing SagaCity's Mark that have been used in the United States.

Request No. 28: Documents sufficient to identify the per annum advertising and promotion expenditures for SagaCity's Goods, by geographic or distribution regions where SagaCity's Goods have been offered or sold in the United States.

Request No. 29: Documents sufficient to identify the channels of trade through which SagaCity's Goods are marketed or sold, including documents sufficient to identify all the classes of Persons who act as distributors and sellers of SagaCity's Goods.

Request No. 30: Documents sufficient to identify the geographic scope of the advertising of SagaCity's Goods in the United States.

Request No. 31: All documents relating to any succession of legal title in and to SagaCity's Mark.

Request No. 32: All documents relating to any licensing or co-ownership of SagaCity's Mark.

Request No. 33: All documents relating to any agreement or proposed agreement between SagaCity and other Persons regarding the use of the term HOUSTONIA or any name or trademark that incorporates the term HOUSTONIA.

Request No. 34: All results of any trademark searches conducted by a third party on behalf of SagaCity for the mark HOUSTONIA or any name or trademark that incorporates the term HOUSTONIA.

Request No. 35: All results of any trademark searches conducted by a third party on behalf of SagaCity for the mark HOUSTON or any name or trademark that incorporates the term HOUSTON.

Request No. 36: All results of any trademark investigations conducted by a third party on behalf of SagaCity, relating to the mark HOUSTONIA or any name or trademark that incorporates the term HOUSTONIA.

Request No. 37: All results of any trademark investigations conducted by a third party on behalf of SagaCity, relating to the mark HOUSTON or any name or trademark that incorporates the term HOUSTON.

Request No. 38: All documents evidencing SagaCity's exercise of quality control over other Persons' use of SagaCity's Mark.

Request No. 39: Documents sufficient to substantiate SagaCity's claim to the United States Patent and Trademark Office that SagaCity began using the mark HOUSTONIA in Commerce for "print publications, namely, magazines and newsletters featuring topics of interest to residents of and visitors to the Houston, Texas metropolitan area" at least as early as March 25, 2013.

Request No. 40: Documents sufficient to substantiate SagaCity's claim to the United States Patent and Trademark Office that SagaCity began using the mark HOUSTONIA in Commerce for "providing online publications, namely, magazines and newsletters featuring topics of interest to residents of and visitors to the Houston, Texas metropolitan area" at least as early as March 24, 2013.

Request No. 41: All documents evidencing SagaCity's use, if any, of SagaCity's Mark in Commerce prior to March 24, 2013.

Request No. 42: All documents evidencing that SagaCity, on January 10, 2013, had a bona fide intent to use, either itself or through a licensee, SagaCity's Mark in Commerce for "print publications, including magazines, featuring topics of interest to residents of and visitors to the Houston, Texas metropolitan area" and "on-line publications, including magazines, featuring topics of interest to residents of and visitors to the Houston, Texas metropolitan area".

Request No. 43: Documents illustrating all of the formats (e.g., stylizations, designs) in which SagaCity has displayed HOUSTONIA in or as any name or mark in advertisements or on goods.

Request No. 44: Documents evidencing the approximate number of Persons who have a subscription to the digital and/or printed editions of SagaCity's HOUSTONIA magazine.

Request No. 45: Documents evidencing the approximate number of Persons who have visited SagaCity's website at www.houstoniamag.com since that website first became publicly accessible.

Request No. 46: Documents evidencing the approximate number of Persons who have signed up with SagaCity to receive free email newsletters from SagaCity.

Request No. 47: All documents evidencing the total online sales of SagaCity's products bearing SagaCity's Mark.

Request No. 48: All documents evidencing SagaCity's instructions to the firm Perkins Coic LLP to file a trademark application with the United States Patent and Trademark Office for the mark HOUSTONIA.

Request No. 49: All documents that SagaCity has sent to Persons (other than SagaCity's attorneys) regarding DM Luxury or any of DM Luxury's Marks, including all communications that SagaCity sent to Persons other than its attorneys regarding this cancellation proceeding or settlement negotiations with DM Luxury.

Request No. 50: All written agreements between SagaCity and another Person regarding SagaCity's Mark and/or SagaCity's Goods.

Request No. 51: All documents substantiating SagaCity's claims (as displayed at <http://www.houstoniamag.com/site/advertise>) that its HOUSTONIA magazine "is the largest local magazine and the only paid circulation local magazine."

Request No. 52: All documents substantiating SagaCity's claims (as displayed at <http://www.houstoniamag.com/site/advertise>) that its HOUSTONIA magazine "is available at

800 grocery stores, book stores, and specialty stores across metropolitan Houston” and that “over 25,000 copies” of its HOUSTONIA magazine “are placed in intensely high readership and pass-along venues, such as prominent hotels, hospitals, and physicians’ and attorneys’ offices.”

Request No. 53: All documents substantiating SagaCity’s claims (as displayed at <http://www.houstoniamag.com/site/advertise>) that the readers of its HOUSTONIA magazine have a median age of 42, have an average household income of \$191,000, have an average net worth of \$1,199,000, and have an average home value of \$875,750, and that 35% of such readers are male, 65% of such readers are female, 63% of such readers have “executive, professional or managerial” occupations, and that 20% of such readers hold the title CEO, CFO, CTO, COO, President or Vice President.

Request No. 54: All documents substantiating SagaCity’s claims (as displayed at <http://www.houstoniamag.com/site/advertise>) that the target readership of its HOUSTONIA magazine is 368,738 readers per issue and a circulation of 65,934.

Request No. 55: Documents sufficient to identify all of the stores and other locations in Houston, Texas, in which SagaCity’s publications are sold and/or distributed.

Request No. 56: All documents evidencing communications between SagaCity and Louis F. DeLone regarding the possibility of Louis F. DeLone becoming an employee or agent of SagaCity.

Request No. 57: All documents evidencing communications between SagaCity and Louis F. DeLone regarding DM Luxury, DM Luxury’s Marks and/or DM Luxury’s Goods.

Request No. 58: All documents evidencing the reasons for SagaCity’s termination of its employment or engagement of Louis F. DeLone.

Request No. 59: All documents evidencing communications between SagaCity and Louis F. DeLone regarding Louis F. DeLone's performance as an employee or agent of SagaCity, and/or regarding SagaCity's decision to terminate its employment or engagement of Louis F. DeLone.

Request No. 60: If you contend that there has been no actual or apparent confusion between SagaCity's Mark and any of DM Luxury's Marks, all documents that support or refute your contention.

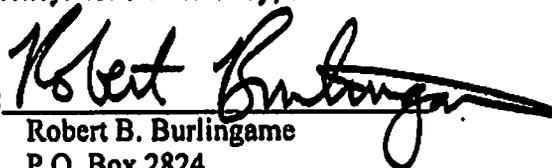
Request No. 61: If you contend that SagaCity's employment or engagement of Louis F. DeLone did not affect SagaCity's selection and/or adoption of the mark HOUSTONIA, all documents that support or refute your contention.

Date: June 2, 2014

Respectfully Submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP
Attorneys for DM Luxury, LLC

By:



Robert B. Burlingame
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San Francisco, CA 94126-2824
Phone: 415-983-1274
rburlingame@pillsburylaw.com
sftrademarks@pillsburylaw.com

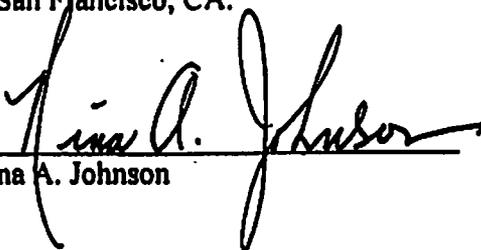
Cancellation No. 92058667

PROOF OF SERVICE BY FIRST-CLASS MAIL

I, Nina A. Johnson, the undersigned, hereby certify and declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in San Francisco, CA.
2. My business address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111. My mailing address is P.O. Box 2824, San Francisco, CA 94126-2824.
3. On June 2, 2014, I served a true copy of the attached document titled exactly "Petitioner's First Set of Requests for Production of Documents to Respondent" upon Respondent's attorney James L. Vana by first-class mail addressed to: James L. Vana, Perkins Coie LLP, 1201 Third Avenue, 49th Floor, Seattle, WA 98101-3099.

Executed this 2nd day of June, 2014, at San Francisco, CA.



Nina A. Johnson

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

DM Luxury, LLC,	)	Cancellation No. 92058667
)	
Petitioner,	)	<u>PETITIONER'S FIRST SET OF</u>
	)	<u>INTERROGATORIES TO</u>
v.	)	<u>RESPONDENT</u>
)	
SagaCity Media, Inc.,	)	Mark: HOUSTONIA
	)	Registration No.: 4456510
Respondent	)	Registration Date: December 24, 2013
)	

Propounded by: DM Luxury, LLC
Propounded to: SagaCity Media, Inc.
Set Number: One

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, DM Luxury, LLC ("DM Luxury") submits to SagaCity Media, Inc. ("SagaCity") this First Set of Interrogatories. These interrogatories are to be answered separately, fully, in writing and under oath no later than thirty (30) days after the date of service of these interrogatories, and responsive answers served on DM Luxury's counsel at that time.

DEFINITIONS AND INSTRUCTIONS

A. For the convenience of counsel and the Board, it is requested that each numbered interrogatory be answered by repeating the interrogatory in its entirety and then providing the corresponding answer.

B. These interrogatories shall be deemed to be continuing within the meaning of Federal Rule of Civil Procedure 26(e).

C. "Affiliate" means any entity controlling, controlled by, or under common control with another entity.

D. "Commerce" means all commerce that may be lawfully regulated by the Congress of the United States of America.

E. The term "communication" means an oral, written or symbolic expression or interchange of any type.

F. "DM Luxury" means DM Luxury, LLC, and includes any agents, officers, employees and representatives.

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H. "DM Luxury's Marks" means the marks HOUSTON, HOUSTON MAGAZINE, HOUSTON MODERN LUXURY and HOUSTON MONTHLY MAGAZINE as used in Commerce by DM Luxury.

I. The term "document" means and includes "documents" and "things" within the meaning of F.R.C.P. 34(a), and also includes without limitation a writing as defined by Federal Rules of Evidence Rule 1001 and any document or thing, originals and copies, letters, words, numbers, or their equivalent, data, images or sound set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other media in the possession, custody or control of SagaCity (as defined below) or its attorney(s), or known to SagaCity or its attorney(s).

J. "Identify" or "identify" in the case of a natural person, means the person's name, mailing address, email address, and telephone number (both mobile and landline).

K. "Identify" or "identify" in the case of an entity, means to state, where applicable, its full name, its state of organization, its principal place of business or activity, its mailing address, and its telephone number.

L. "Identify" or "identify" in the case of a document which is not a communication, means to state the document's title and a description of its subject matter and its date or the date it was prepared.

M. "Identify" or "identify" in the case of a communication, means to state (1) the method of communication (e.g., in person, by hard copy, via landline or mobile telephone, via facsimile transmission, or via electronic mail), (2) the date of the communication, (3) the persons who were parties to the communication and, if applicable, the person's relationship to SagaCity, and (4) the content of the communication.

N. The term "mark" shall mean trademark, service mark or both.

O. "Person" means and includes, without limiting the generality of its meaning, every natural person, corporate entity, sole proprietorship, partnership, association, governmental body or agency.

P. "SagaCity" means SagaCity Media, Inc. and includes any of its agents, officers, members, employees, representatives and Affiliates, as well as any predecessors-in-interest to SagaCity's Mark (as defined below).

Q. "SagaCity's Goods" means any goods or services offered or intended to be offered by SagaCity in connection with SagaCity's Mark (defined below), including but not limited to magazines.

R. "SagaCity's Mark" means HOUSTONIA in or as a name or mark in the United States, alone or in combination with any other term, and shall include any form of said mark

used or intended to be used by SagaCity in the United States.

S. The term "thing" means, without limitation, any tangible thing contemplated by F.R.C.P. 34(a).

T. The terms "use" or "used", unless otherwise expressly explained, mean use or used in Commerce.

U. If a response discloses more than one item (e.g., a response to an Interrogatory mentions more than one communication or more than one Person), you shall provide all information requested for each item.

V. Where an interrogatory seeks the identification or production of documents, things, or other information that is not within your actual or constructive possession, custody, control, or knowledge, you shall so state and shall answer the interrogatory to the extent of your knowledge or belief based on the best information presently available. Where you have knowledge or belief as to other persons having such possession, custody, control or knowledge, you shall identify, to the extent known and based on the best information presently available, all such persons, together with a brief summary of the nature of the documents, things, or other information believed to be known to such persons.

W. The responses to these interrogatories should be produced within thirty (30) days to the attention of Robert B. Burlingame, at the offices of Pillsbury Winthrop Shaw Pittman LLP, P.O. Box 2824, San Francisco, California 94126-2824, or at such other location as may be agreed upon by counsel for DM Luxury and SagaCity.

X. If any response to any of these interrogatories is withheld on a claim of attorney-client privilege, work product doctrine, or other privilege or immunity, or other grounds for exclusion, as to each such claim: (a) identify each such document, thing or communication

supporting the failure to answer; (b) identify each recipient or custodian of such document, thing or communication; and (c) state the basis upon which the privilege or ground for exclusion is claimed.

INTERROGATORIES

Interrogatory No. 1: Describe in detail each of SagaCity's Goods.

Interrogatory No. 2: For each of SagaCity's Goods, state the date on which SagaCity's Mark was first used in the United States on or in connection with that good or service.

Interrogatory No. 3: Describe in detail the circumstances of the first use of SagaCity's Mark in the United States.

Interrogatory No. 4: Identify the cities in the United States in which SagaCity's Goods have been sold or distributed.

Interrogatory No. 5: For each of the cities in the United States in which SagaCity's Goods have been sold or distributed, state the dates on which such sales and distributions occurred.

Interrogatory No. 6: Identify three Persons, other than SagaCity or its legal counsel, who are most knowledgeable about SagaCity's current and proposed use of SagaCity's Mark.

Interrogatory No. 7: State the date on which SagaCity first became aware of each of DM Luxury's Marks.

Interrogatory No. 8: Describe in detail how SagaCity first became aware of each of DM Luxury's Marks.

Interrogatory No. 9: Identify all communications between or among SagaCity employees, representatives and/or agents regarding any of DM Luxury's Marks prior to the first date on which SagaCity's Goods were first used or distributed in Commerce.

Interrogatory No. 10: Identify all communications between or among SagaCity employees, representatives and/or agents that (i) occurred prior to the first date on which SagaCity's Goods were first used or distributed in Commerce and (ii) mentioned or otherwise discussed the mark that would be used for SagaCity's Goods.

Interrogatory No. 11: Describe all marks, other than SagaCity's Mark, that SagaCity considered as a mark for SagaCity's Goods before choosing SagaCity's Mark for SagaCity's Goods.

Interrogatory No. 12: Describe in detail each reason why SagaCity decided to use the mark HOUSTONIA, rather than any alternative mark, for the title of the magazine that SagaCity has named HOUSTONIA.

Interrogatory No. 13: Describe in detail all information on which SagaCity relied in selecting the mark HOUSTONIA as the title for one of SagaCity's magazines, including but not limited to the results of all market surveys (whether formal or informal), communications with Persons other than officers or employees of SagaCity, and financial projections.

Interrogatory No. 14: Describe in detail the channels of trade by which SagaCity's Goods have been marketed in the United States.

Interrogatory No. 15: Describe in detail the channels of trade by which SagaCity's Goods have been distributed in the United States.

Interrogatory No. 16: Identify the stores and other locations in the United States in which SagaCity's Goods have been sold.

Interrogatory No. 17: For each of SagaCity's Goods, state the average retail price to United States consumers.

Interrogatory No. 18: State the total sales in the United States, in dollars and units, for each of SagaCity's Goods for each month from March 2013 to the present.

Interrogatory No. 19: State the quantities of SagaCity's Goods sold during each month from March 2013 to the present.

Interrogatory No. 20: State the total advertising expense or monetary expenditure attributable to SagaCity's Mark in the United States from January 2013 to the present.

Interrogatory No. 21: Identify the types of retailers in the United States which sell SagaCity's Goods.

Interrogatory No. 22: Describe in detail any succession of interest in title to SagaCity's Mark.

Interrogatory No. 23: Describe in detail any grant of interest in SagaCity's Mark, including but not limited to grants of security interests or grants of trademark licenses.

Interrogatory No. 24: Describe in detail all instances of actual confusion between SagaCity's Mark and any of DM Luxury's Marks.

Interrogatory No. 25: Describe in detail all instances of apparent confusion between SagaCity's Mark and any of DM Luxury's Marks as reflected in any oral or written

communications received by or made known to SagaCity or any of its representatives or agents. This would include, but not be limited to, instances in which SagaCity has received any communications addressed to, or intended for, DM Luxury or DM Luxury's Goods.

Interrogatory No. 26: Identify all experts that SagaCity has retained to provide an opinion, advice and/or testimony regarding the term HOUSTONIA or HOUSTON in or as any name or mark, including any expert retained for the preparation of any survey and/or whom SagaCity intends to call as a witness in these Trademark Trial and Appeal Board proceedings.

Interrogatory No. 27: Identify all applications and registrations of SagaCity's Mark in any territories or jurisdictions and/or under any international treaties.

Interrogatory No. 28: Describe in detail all instances when SagaCity relied on its alleged rights in the mark HOUSTONIA to demand that another party halt use of a name or trademark.

Interrogatory No. 29: Describe in detail all instances when SagaCity expressly agreed to allow another party to use the term HOUSTONIA.

Interrogatory No. 30: Describe in detail all instances when another party expressly agreed to allow SagaCity to use the term HOUSTONIA.

Interrogatory No. 31: For the year 2013 and the year 2014 (to present), state the total net profit that SagaCity has earned from sales of SagaCity's Goods in the United States.

Interrogatory No. 32: Describe in detail all instances when a media entity in the United States has publicly published a review or discussion, by someone other than SagaCity, of SagaCity and/or SagaCity's Mark.

Interrogatory No. 33: Identify SagaCity's intended meanings and/or connotations of the term HOUSTONIA in SagaCity's Mark.

Interrogatory No. 34: Describe in detail all instances when SagaCity has communicated with DM Luxury prior to February 2013.

Interrogatory No. 35: Describe in detail the demographics of SagaCity's target consumer groups for each of SagaCity's Goods.

Interrogatory No. 36: Describe in detail all information on which SagaCity relied in selecting the target consumer group for SagaCity's Goods, including but not limited to market surveys (whether formal or informal), communications with Persons other than officers or employees of SagaCity, and financial projections.

Interrogatory No. 37: Describe in detail the reasons why SagaCity chose its current target consumer groups for each of SagaCity's Goods.

Interrogatory No. 38: For each of SagaCity's Goods, identify the Persons employed or retained by SagaCity who made the decision to direct those SagaCity's Goods to a particular target consumer group.

Interrogatory No. 39: Describe the circumstances under which SagaCity learned of Louis F. DeLone's presence in the Houston, Texas metropolitan area.

Interrogatory No. 40: Identify all communications between or among employees, representatives and/or agents of SagaCity about whether and why it might be of value to SagaCity to hire Louis F. DeLone.

Interrogatory No. 41: Identify all communications SagaCity and/or its employees, representatives and/or agents had with Louis F. DeLone about the possibility of becoming an employee or agent of SagaCity.

Interrogatory No. 42: Identify the date on which Louis F. DeLone was hired as an employee or retained as an agent for SagaCity.

Interrogatory No. 43: Identify all agreements, including any written contracts for employment or retention, between Louis F. DeLone and SagaCity.

Interrogatory No. 44: Describe in detail the reasons why SagaCity decided to hire Louis F. DeLone to be publisher of SagaCity's HOUSTONIA magazine.

Interrogatory No. 45: Describe in detail the reasons why SagaCity decided to terminate its employment or engagement of Louis F. DeLone.

Interrogatory No. 46: Identify all of the Persons who made the decision to terminate the employment or engagement of Louis F. DeLone.

Interrogatory No. 47: Identify the date on which SagaCity made its decision to terminate its employment or engagement of Louis F. DeLone.

Interrogatory No. 48: Identify all communications that any SagaCity employee, representative or agent had with Louis F. Delone regarding (1) Louis F. Delone's performance as an employee or agent of SagaCity and/or (2) the decision to terminate Louis F. Delone's employment or engagement with SagaCity.

Interrogatory No. 49: Describe in detail all of the information that SagaCity received from Louis F. DeLone regarding DM Luxury and/or any of DM Luxury's publications.

Interrogatory No. 50: Describe in detail all communications that SagaCity had with Louis F. DeLone regarding Louis F. Delone's agreements with DM Luxury and/or Louis F. Delone's obligations not to compete with DM Luxury.

Interrogatory No. 51: Describe in detail the results of all consumer surveys conducted or requested by SagaCity regarding SagaCity's Mark and/or any of DM Luxury's Marks.

Interrogatory No. 52: Identify all of the Persons who assisted or were consulted in preparing the responses to this First Set of Interrogatories to Respondent.

Interrogatory No. 53: For each of SagaCity's Goods, identify the approximate number of Persons who have purchased, downloaded or otherwise received such goods or services.

Interrogatory No. 54: Describe in detail all intentions or plans that SagaCity currently has to use HOUSTON in or as any name or mark other than the name or mark HOUSTONIA.

Interrogatory No. 55: Describe in detail all intentions or plans that SagaCity currently has to use the mark HOUSTONIA in all capital letters.

Interrogatory No. 56: If you contend that there has been no actual or apparent confusion between SagaCity's Mark and any of DM Luxury's Marks, identify all facts and documents that support or refute your contention.

Interrogatory No. 57: If you contend that SagaCity's hiring or engagement of Louis F. DeLone did not affect SagaCity's selection and/or adoption of the mark HOUSTONIA for the

Opp. No. 92058667

title of one of SagaCity's publications, identify all facts and documents that support or refute your contention.

Date: June 2, 2014

Respectfully Submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

Attorneys for DM Luxury, LLC

By: 

Robert B. Burlingame

P.O. Box 2824

San Francisco, CA 94126-2824

Phone: 415-983-1274

rburlingame@pillsburylaw.com

sftrademarks@pillsburylaw.com

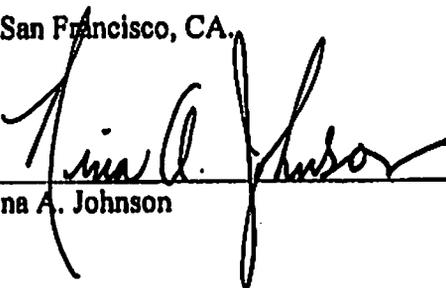
Cancellation No. 92058667

PROOF OF SERVICE BY FIRST-CLASS MAIL

I, Nina A. Johnson, the undersigned, hereby certify and declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in San Francisco, CA.
2. My business address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111. My mailing address is P.O. Box 2824, San Francisco, CA 94126-2824.
3. On June 2, 2014, I served a true copy of the attached document titled exactly "Petitioner's First Set of Interrogatories to Respondent" upon Respondent's attorney James L. Vana by first-class mail addressed to: James L. Vana, Perkins Coie LLP, 1201 Third Avenue, 49th Floor, Seattle, WA 98101-3099.

Executed this 2nd day of June, 2014, at San Francisco, CA.


Nina A. Johnson

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

DM Luxury, LLC,	)	Cancellation No. 92058667
)	
Petitioner,	)	<u>PETITIONER'S FIRST SET OF</u>
	)	<u>REQUESTS FOR ADMISSION TO</u>
v.	)	<u>RESPONDENT</u>
)	
SagaCity Media, Inc.,	)	Mark: HOUSTONIA
	)	Registration No.: 4456510
Respondent	)	Registration Date: December 24, 2013
)	

Propounded by: DM Luxury, LLC
Propounded to: SagaCity Media, Inc.
Set Number: One

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, DM Luxury, LLC ("DM Luxury") submits to SagaCity Media, Inc. ("SagaCity") this First Set of Requests for Admission. These requests are to be responded to separately, fully, in writing and under oath no later than thirty (30) days after the date of service of these requests, and responses served on DM Luxury's counsel at that time.

DEFINITIONS AND INSTRUCTIONS

A. For the convenience of counsel and the Board, it is requested that each numbered request be answered by repeating the request in its entirety and then providing the corresponding response.

B. These requests shall be deemed to be continuing within the meaning of Federal Rule of Civil Procedure 26(e).

C. "Affiliate" means any entity controlling, controlled by, or under common control with another entity.

D. "Commerce" means all commerce that may be lawfully regulated by the Congress of the United States of America.

E. The term "communication" means an oral, written or symbolic expression or interchange of any type.

F. "DM Luxury" means DM Luxury, LLC, and includes any agents, officers, employees and representatives.

G. "DM Luxury's Goods" means any goods or services offered or intended to be offered by DM Luxury in connection with DM Luxury's Marks (defined below), including but not limited to magazines.

H. "DM Luxury's Marks" means the marks HOUSTON, HOUSTON MAGAZINE, HOUSTON MODERN LUXURY and HOUSTON MONTHLY MAGAZINE as used in Commerce by DM Luxury.

I. The term "document" means and includes "documents" and "things" within the meaning of F.R.C.P. 34(a), and also includes without limitation a writing as defined by Federal Rules of Evidence Rule 1001 and any document or thing, originals and copies, letters, words, numbers, or their equivalent, data, images or sound set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other media in the possession, custody or control of SagaCity (as defined below) or its attorney(s), or known to SagaCity or its attorney(s).

J. "Identify" or "identify" in the case of a natural person, means the person's name, mailing address, email address, and telephone number (both mobile and landline).

K. "Identify" or "identify" in the case of an entity, means to state, where applicable, its full name, its state of organization, its principal place of business or activity, its mailing address, and its telephone number.

L. "Identify" or "identify" in the case of a document which is not a communication, means to state the document's title and a description of its subject matter and its date or the date it was prepared.

M. "Identify" or "identify" in the case of a communication, means to state (1) the method of communication (e.g., in person, by hard copy, via landline or mobile telephone, via facsimile transmission, or via electronic mail), (2) the date of the communication, (3) the persons who were parties to the communication and, if applicable, the person's relationship to SagaCity, and (4) the content of the communication.

N. The term "mark" shall mean trademark, service mark or both.

O. "Person" means and includes, without limiting the generality of its meaning, every natural person, corporate entity, sole proprietorship, partnership, association, governmental body or agency.

P. "SagaCity" means SagaCity Media, Inc. and includes any of its agents, officers, members, employees, representatives and Affiliates, as well as any predecessors-in-interest to SagaCity's Mark (as defined below).

Q. "SagaCity's Goods" means any goods or services offered or intended to be offered by SagaCity in connection with SagaCity's Mark (defined below), including but not limited to magazines.

R. "SagaCity's Mark" means HOUSTONIA in or as a name or mark in the United States, alone or in combination with any other term, and shall include any form of said mark

used or intended to be used by SagaCity in the United States.

S. The term "thing" means, without limitation, any tangible thing contemplated by F.R.C.P. 34(a).

T. The terms "use" or "used", unless otherwise expressly explained, mean use or used in Commerce.

U. Where the request requires a response based on the identification or production of documents, things, or other information that is not within your actual or constructive possession, custody, control, or knowledge, you shall so state and shall answer the request to the extent of your knowledge or belief based on the best information presently available. Where you have knowledge or belief as to other persons having such possession, custody, control or knowledge, you shall identify, to the extent known and based on the best information presently available, all such persons, together with a brief summary of the nature of the documents, things, or other information believed to be known to such persons.

V. The responses requested herein should be produced within thirty (30) days to the attention of Robert B. Burlingame, at the offices of Pillsbury Winthrop Shaw Pittman LLP, P.O. Box 2824, San Francisco, California 94126-2824, or at such other location as may be agreed upon by counsel for DM Luxury and SagaCity.

W. If any response requested herein is withheld on a claim of attorney-client privilege, work product doctrine, or other privilege or immunity, or other grounds for exclusion, as to each such claim: (a) identify each such document, thing or communication supporting the failure to answer; (b) identify each recipient or custodian of such document, thing or communication; and (c) state the basis upon which the privilege or ground for exclusion is claimed.

REQUESTS FOR ADMISSION

Request No. 1: Since March 2013, SagaCity has used the mark HOUSTONIA for magazines distributed to consumers in Houston, Texas.

Request No. 2: Despite receiving correspondence from counsel for DM Luxury demanding that SagaCity refrain from and cease using the mark HOUSTONIA for magazines, SagaCity continued to use the mark HOUSTONIA for magazines and has never halted such use.

Request No. 3: SagaCity's HOUSTONIA magazine is distributed by Comag Marketing Group.

Request No. 4: The stores in which SagaCity's HOUSTONIA magazine is currently sold include Barnes and Noble Booksellers, Central Market, Costco Wholesale, HEB, Houston's Own Rice Epicurean, Kroger, Randalls, Safeway, Sam's Club, Whole Foods Market, Target, Walgreens and WalMart.

Request No. 5: SagaCity's HOUSTONIA magazines contain news articles, essays and guides to businesses and activities in Houston, Texas.

Request No. 6: SagaCity has never licensed SagaCity's Mark to another Person.

Request No. 7: SagaCity publishes magazines in the states of Washington, Oregon, Texas, Colorado and Utah.

Request No. 8: The first use of SagaCity's Mark in Commerce for "print publications, namely, magazines and newsletters featuring topics of interest to residents of and visitors to the Houston, Texas metropolitan area" was March 25, 2013.

Request No. 9: The first use of SagaCity's Mark in Commerce for "providing online publications, namely, magazines and newsletters featuring topics of interest to residents of and visitors to the Houston, Texas metropolitan area" was March 24, 2013.

Request No. 10: Third parties have asked SagaCity employees whether SagaCity's HOUSTONIA magazine is related to DM Luxury and/or DM Luxury's publications.

Request No. 11: SagaCity has received a communication, document or thing which the originator of that communication, document or thing intended to be received by DM Luxury.

Request No. 12: In a motion filed June 12, 2013, with the United States District Court for the Southern District of Texas, Houston Division, SagaCity informed the court that SagaCity and DM Luxury "have negotiated an agreement settling the dispute" set forth in SagaCity's Complaint and that SagaCity and DM Luxury "have reached agreement on the final settlement document."

Request No. 13: In deciding whether to use the mark HOUSTONIA, one of the factors that SagaCity considered was DM Luxury's use of HOUSTON in or as a mark.

Request No. 14: In deciding whether to hire Louis F. DeLone, one of the factors that SagaCity considered was DM Luxury's prior employment of Louis F. DeLone.

Request No. 15: Louis F. DeLone was the publisher for SagaCity's initial issue of the HOUSTONIA magazine.

Request No. 16: SagaCity terminated its employment of Louis F. DeLone in April 2013.

Request No. 17: Through its employment of Louis F. DeLone, SagaCity obtained trade secrets belonging to DM Luxury.

Request No. 18: SagaCity's HOUSTONIA magazine is a monthly publication.

Request No. 19: SagaCity had considered using the mark HOUSTONIAN or the mark HOUSTONIAN MAGAZINE but chose to instead use the mark HOUSTONIA due in part to a trademark-related objection that SagaCity received from the Houstonian Hotel.

Request No. 20: The average purchaser of SagaCity's Goods does not exercise a high degree of care in selecting such goods or services.

Request No. 21: The retail price of SagaCity's HOUSTONIA magazine is approximately US\$9.95 per issue.

Request No. 22: More than 25,000 copies of SagaCity's HOUSTONIA magazine have been placed in hotels, hospitals, physicians' offices and attorneys' offices in Houston, Texas.

Request No. 23: SagaCity's HOUSTONIA magazine currently has approximately 368,738 readers per issue, and a circulation of approximately 65,934.

Request No. 24: 42 is the median age of the readers of SagaCity's HOUSTONIA magazine.

Request No. 25: Approximately 35% of the readers of SagaCity's HOUSTONIA magazine are male, while approximately 65% of the readers of SagaCity's HOUSTONIA magazine are female.

Request No. 26: The average household income, average net worth and average home value of the readers of SagaCity's HOUSTONIA magazine are approximately \$191,000, approximately \$1,199,000 and approximately \$875,750, respectively.

Request No. 27: Approximately 63% of the readers of SagaCity's HOUSTONIA magazine have occupations that are generally classified as executive, professional and/or managerial.

Request No. 28: Approximately 20% of the readers of SagaCity's HOUSTONIA magazine have the occupational titles CEO, CFO, CTO, COO, President or Vice President.

Request No. 29: On its webpage at <http://www.houstoniamag.com/site/advertise>, SagaCity states that the readers of SagaCity's HOUSTONIA magazine "do not read print newspapers."

Date: June 2, 2014

Respectfully Submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP
Attorneys for DM Luxury, LLC

By:



Robert B. Burlingame

P.O. Box 2824

San Francisco, CA 94126-2824

Phone: 415-983-1274

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sftrademarks@pillsburylaw.com

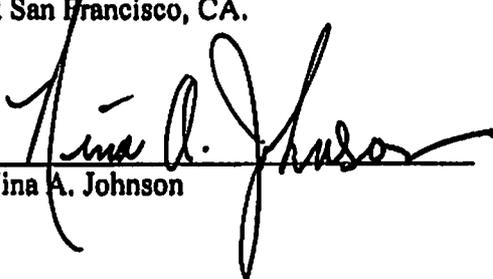
Cancellation No. 92058667

PROOF OF SERVICE BY FIRST-CLASS MAIL

I, Nina A. Johnson, the undersigned, hereby certify and declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in San Francisco, CA.
2. My business address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111. My mailing address is P.O. Box 2824, San Francisco, CA 94126-2824.
3. On June 2, 2014, I served a true copy of the attached document titled exactly "Petitioner's First Set of Requests for Admission to Respondent" upon Respondent's attorney James L. Vana by first-class mail addressed to: James L. Vana, Perkins Coie LLP, 1201 Third Avenue, 49th Floor, Seattle, WA 98101-3099.

Executed this 2nd day of June, 2014, at San Francisco, CA.


Nina A. Johnson

Vana, James L. (Perkins Coie)

From: Vana, James L. (Perkins Coie)
Sent: Thursday, July 17, 2014 11:04 AM
To: Burlingame, Robert B. (rburlingame@pillsburylaw.com)
Cc: Atkins, William P. (william.atkins@pillsburylaw.com)
Subject: HOUSTONIA Trademark Matter (Our ref: 40046.7004)
Attachments: [REDACTED]

Bob,

I attach an executed signature page. Please have your client sign as well, and return a copy to me. With that, I will sign the dismissal of the cancellation proceeding and return it to you.

Jim Vana
Perkins Cole LLP
Direct: (206) 359-3036
jvana@perkinscole.com