

ESTTA Tracking number: **ESTTA654176**

Filing date: **02/05/2015**

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

Proceeding	92058690
Party	Plaintiff Barlow Designs, Inc.
Correspondence Address	JOHN L WELCH LANDO & ANASTASI LLP ONE MAIN STREET , ELEVENTH FLOOR CAMBRIDGE, MA 02142 UNITED STATES jlwtrademarks@lalaw.com
Submission	Motion to Compel Discovery
Filer's Name	John L. Welch
Filer's e-mail	jlwtrademarks@lalaw.com
Signature	/johnlwelch/
Date	02/05/2015
Attachments	92058690 Motion to Compel.pdf(584018 bytes)

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

_____ BARLOW DESIGNS, INC.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92058690
)	
ALLAN T. HAO CHIN,)	Registration No. 3,593,654
)	
Respondent.)	
_____)	

OPPOSER’S MOTION FOR AN ORDER
TO COMPEL DISCOVERY

Pursuant to Rule 2.120(e)(1) of the *Trademark Rules of Practice*, Petitioner BARLOW DESIGNS, INC., by its undersigned attorneys, hereby moves for an Order compelling Respondent to respond in writing to the following discovery requests:

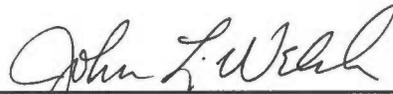
- Petitioner’s Third Request for the Production of Documents and Things (served September 23, 2014). [Exhibit 1 hereto].
- Petitioner’s Interrogatories Nos. 15 and 16 (served October 15, 2014). [Exhibit 2 hereto].
- Interrogatories Nos. 18 and 19 of Petitioner’s Interrogatories Nos. 17-19 to Respondent. (served on October 23, 2014). [Exhibit 3 hereto].

and to produce the documents and things requested in said Third Request for Production, all as more fully set forth below.

In light of Respondent's failure to respond to the above-listed discovery demands, Petitioner hereby requests that the Board issue an Order compelling Respondent to respond promptly and fully thereto, and to produce the documents requested. In addition, Petitioner requests that the Board rule that Respondent has forfeited his right to object to said Production Requests and said Interrogatories in view of Respondent's failure to timely respond thereto. *See, e.g., Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448 (TTAB 1979).

BARLOW DESIGNS, INC.

2/5/15



John L. Welch
Lando & Anastasi, LLP
One Main Street, Eleventh Floor
Cambridge, MA 02142
617-395-7000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Respondent this 5th day of February, 2015, by mailing a copy thereof via first-class mail, postage pre-paid, to Brian Edward Banner, Esq., The Banner Firm, LLC, 2734 Unicorn Lane, N.W., Washington, D.C. 20015.



John L. Welch

EXHIBIT 1

26

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

BARLOW DESIGNS, INC.)	
)	
Petitioner,)	
)	Cancellation No. 92058690
v.)	
)	
ALLAN T. HAO CHIN,)	Registration No. 3,593,654
)	
Respondent.)	

PETITIONER'S THIRD REQUEST FOR THE PRODUCTION OF
DOCUMENTS AND THINGS

Pursuant to Rule 34, Fed. R. Civ. P., Petitioner Barlow Designs, Inc., requests that Respondent produce for inspection and copying each of the following documents and things. Said production shall take place at the office of the undersigned, or at some other mutually-convenient location, at 9:30 A.M. on the thirty-fifth day following service hereof.

DEFINITIONS

1. The term "person" or "persons" as used in these interrogatories includes, without limitation, any individual or association, partnership, corporation, firm, or organization.
2. The term "Respondent" includes Allan T. Hao Chin, and his licensees, agents, and representatives.
3. All request herein are continuing, and responses should be supplemented

whenever additional documents are obtained that are required to be produced by Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS

REQUEST NO. 20

The documents that support Petitioner's verified statement in Application Serial No. 77-121,895 that he was using the mark "periwinkle" in commerce in connection with all the goods listed in that application as of the filing date of March 5, 2007.

REQUEST NO. 21

Documents that support or substantiate that Petitioner was selling in commerce each of the items listed in Application Serial No. 77-121,895, under the mark "periwinkle" as of the filing date of March 5, 2007.

REQUEST NO. 22

Documents that report or reflect that annual sales in commerce for each of the goods listed in Registration No. 3,593,654 under the mark "periwinkle" for each year from 2000 to date.

REQUEST NO. 23

The documents that support or substantiate Respondent's response to Petitioner's Interrogatory No. 15.

REQUEST NO. 24

The documents that support or substantiate Respondent's response to Petitioner's Interrogatory No. 16.

BARLOW DESIGNS, INC.



John L. Welch
Lando & Anastasi, LLP
One Main Street, Eleventh Floor
Cambridge, MA 02142
617-395-7000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Respondent this 23rd day of September, 2014, by mailing a copy thereof via first-class mail, postage pre-paid, to Brian Edward Banner, Esq., The Banner Law Firm, 2734 Unicorn Lane N.W., Washington, D.C. 20015



John L. Welch

EXHIBIT 2

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

BARLOW DESIGNS, INC.)	
)	
Petitioner,)	
)	Cancellation No. 92058690
v.)	
)	
ALLAN T. HAO CHIN,)	Registration No. 3,593,654
)	
Respondent.)	
)	

PETITIONER'S INTERROGATORIES NOS. 15 AND 16 TO RESPONDENT

Pursuant to Rule 33, Fed. R. Civ. P., Petitioner Barlow Designs, Inc., directs the following interrogatories to Respondent Allan T. Hao Chin.

DEFINITIONS

1. The term "person" or "persons" as used in these interrogatories includes, without limitation, any individual or association, partnership, corporation, firm, or organization.
2. All interrogatories herein are continuing, and responses should be supplemented whenever additional responsive information is created or discovered that is required to be produced by Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 15

With respect to each item listed in Registration No. 3,593,654, state Respondent's annual sales in commerce, in dollars and units, under the mark "periwinkle" for each year from 2000 to 2014.

INTERROGATORY NO. 16

With respect to each item listed in Registration No. 3,593,654, state the number of unites of each items distributed in commerce, other than by sale, under the mark "periwinkle" for each year from 2000 to 2014.

BARLOW DESIGNS, INC.



John L. Welch
Lando & Anastasi, LLP
One Main Street, Eleventh Floor
Cambridge, MA 02142
617-395-7000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Respondent this 15th day of October, 2014, by mailing a copy thereof via first-class mail, postage pre-paid, to Brian Edward Banner, Esq., The Banner Law Firm, 2734 Unicorn Lane N.W., Washington, D.C. 20015



John L. Welch

EXHIBIT 3

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

_____)	
BARLOW DESIGNS, INC.)	
)	
Petitioner,)	
)	Cancellation No. 92058690
v.)	
)	
ALLAN T. HAO CHIN,)	Registration No. 3,593,654
)	
Respondent.)	
_____)	

PETITIONER’S INTERROGATORIES NOS. 17 -19 TO RESPONDENT

Pursuant to Rule 33, Fed. R. Civ. P., Petitioner Barlow Designs, Inc., directs the following interrogatories to Respondent Allan T. Hao Chin.

DEFINITIONS

1. The term “person” or “persons” as used in these interrogatories includes, without limitation, any individual or association, partnership, corporation, firm, or organization.

2. All interrogatories herein are continuing, and responses should be supplemented whenever additional responsive information is created or discovered that is required to be produced by Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 17

With regard to each request for admission contained in PETITIONER'S SECOND SET OF REQUESTS FOR ADMISSIONS, state the facts that support each denial or partial denial of said request.

INTERROGATORY NO. 18

With respect to each item listed in Registration No. 3,593,654 as originally issued, state Respondent's annual sales in commerce, in dollars and units, under the mark "periwinkle" for each year from 2000 to 2014.

INTERROGATORY NO. 19

With respect to each item listed in Registration No. 3,593,654 as originally issued, state the number of unites of each items distributed in commerce, other than by sale, under the mark "periwinkle" for each year from 2000 to 2014.

/

/

/

/

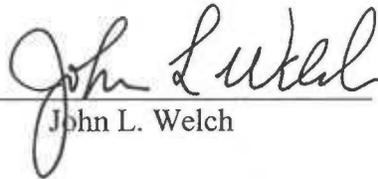
BARLOW DESIGNS, INC.



John L. Welch
Lando & Anastasi, LLP
One Main Street, Eleventh Floor
Cambridge, MA 02142
617-395-7000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Respondent this 23rd day of October, 2014, by mailing a copy thereof via first-class mail, postage pre-paid, to Brian Edward Banner, Esq., The Banner Law Firm, 2734 Unicorn Lane N.W., Washington, D.C. 20015



John L. Welch

EXHIBIT 4

John L. Welch

From: John L. Welch
Sent: Wednesday, December 03, 2014 4:02 PM
To: 'Brian Banner'
Subject: RE: Barlow v. Chin

Hello, Mr. Banner.

WE have yet to receive responses to the following discovery requests:

Petitioner's Third Request for the Production of Documents and Things (served by mail on September 23, 2014).

Petitioner's Interrogatories Nos. 15 and 16 to Respondent (served by mail on October 15, 2014).

Interrogatories Nos. 18 and 19 of Petitioner's Interrogatories Nos. 17-19 to Respondent (served by mail on October 23, 2014).

Would you please let me know when we may expect to receive responses?

I also note that the testimony period for petitioner commences on December 24. I will be on vacation from December 21 through January 10th. I also note that petitioner's pre-trial disclosures are due on December 10.

In light of the outstanding discovery issues and in light of my vacation plans, I request on behalf of petitioner that respondent consent to a postponement of all dates by 30 days.

Please let me know as soon as you can if your client is agreeable. If I do not hear from you, I will file a motion requesting re-setting of all dates, and your client can oppose the motion if he sees fit.

Regards,

JLW

John L. Welch
 **LANDO &
ANASTASI**
One Main Street
Cambridge, MA 02142
Direct: +1-617-395-7072
Main: +1-617-395-7000
Fax: +1-617-395-7070
Email: Jwelch@LALaw.com
www.LALaw.com

*Confidentiality Note: This e-mail message and any attachments may contain confidential or privileged information. If you are not the intended recipient, please notify me immediately by replying to this message. Please destroy all copies of this message and any attachments.
Thank you.*